



REPUBLIC OF
SLOVENIA



HUMAN
RIGHTS
OMBUDSMAN

**ANNUAL REPORT OF
THE HUMAN RIGHTS
OMBUDSMAN OF
THE REPUBLIC
OF SLOVENIA
FOR 2019**

2019



REPUBLIC OF
SLOVENIA



HUMAN
RIGHTS
OMBUDSMAN

THE 25th ANNUAL REPORT OF THE HUMAN RIGHTS OMBUDSMAN OF THE REPUBLIC OF SLOVENIA FOR 2019

Ljubljana, June 2020



REPUBLIC OF
SLOVENIA



HUMAN
RIGHTS
OBUDSMAN

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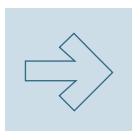
Legend:



Ombudsman's commendations



Ombudsman's warnings



Ombudsman's new recommendations



Ombudsman's new recommendations from other chapters



REPUBLIKA
SLOVENIJA



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Spoštovani gospod predsednik Igor Zorčič,

v skladu s 43. členom Zakona o varuhu človekovih pravic vam pošiljam petindvajseto redno letno poročilo, ki se nanaša na del Varuha človekovih pravic Republike Slovenije v letu 2019. Del poročila je tudi Poročilo o izvajanju nalog in pooblastil državnega preventivnega mehanizma po Zakonu o ratifikaciji Opcijskega protokola h Konvenciji proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju, ki je tiskano v ločeni publikaciji.

Povzetek poročila in svoje ugotovitve o stanju človekovih pravic v Republiki Sloveniji bi želel osebno predstaviti na seji Državnega zbora ob obravnavi rednega letnega poročila na podlagi 44. člena Zakona o varuhu človekovih pravic.

S spoštovanjem,



Peter Svetina
varuh človekovih pravic

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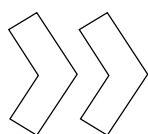
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The terms used in this Report
expressed by means of the
masculine gender shall be
deemed neutral and applicable
to both men and women.

1.

INTRODUCTION BY THE OMBUDSMAN AND PRESENTATION OF THE OMBUDSMAN'S WORK IN 2019



We envisage a world of universal respect for human rights and human dignity, the rule of law, justice, equality and non-discrimination; of respect for race, ethnicity and cultural diversity; and of equal opportunity permitting the full realisation of human potential and contributing to shared prosperity.

(The 2030 Agenda for Sustainable Development, Our vision, point 8)

1.1

INTRODUCTION BY THE HUMAN RIGHTS OMBUDSMAN

Dear Reader,

before you is my first Report that I am delivering to the President of the National Assembly as the fifth Human Rights Ombudsman. As per the Human Rights Ombudsman Act, 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 the legal certainty of citizens in the Republic of Slovenia.

After the first year of my term, I determine that the institution of the Human Rights Ombudsman of the Republic of Slovenia (hereinafter: the Ombudsman) and its work succeeded in contributing to the elimination of irregularities, violations or injustices in individual cases. In general, it must be acknowledged that the standard of observing human rights is high in the Republic of Slovenia, but there are still many fields where a step forward must be made for this standard to affect everyone and ensure that no vulnerable social group will be excluded or deprived in any way. It is becoming more evident that the number of socially disadvantaged people is increasing and that despite general wage growth many people cannot survive on their income. The first question I wish to highlight, and which occupied us greatly in the first term, was whether social transfers actually reach people when they are needed. **As the Ombudsman, I notice that poverty is increasing in society, which is diverse and multi-layered. It also increased in 2019 despite the economic growth, which is most alarming.** It was detected in the fields of unemployment, housing issues, long-term incapacity for work, etc. Solutions must be found for persons who are permanently unemployable or unable to work and who fail to meet employment conditions, so that they are enabled a dignified life. The same care must be dedicated to the elderly, whose distress is also a growing problem, not only because of loneliness, but also the feeling of being a burden to others. The Ombudsman paid special attention to this issue in 2019.

After one year's work, I have noticed that we as a society do not move forwards in several fields. Our institution has been pointing out numerous issues for several years. We deal with people whose rights have been violated for many years. When examining all recommendations, I discover that the Ombudsman's past findings, claims and recommendations still remain, unfortunately, topical. **I therefore want to highlight the unrealised recommendations in particular, as I still believe that we share common objectives with the competent state authorities. When working together and integrating, we can be successful** in the realisation of universal respect for human rights and human dignity, the rule of law, justice, equality and non-discrimination; of respect for race, ethnicity and cultural diversity and equal opportunities though promoting peaceful and inclusive societies for sustainable development to provide access to justice for all and build effective, accountable and inclusive institutions at all levels, if I may borrow the text from the 2030 Agenda for Sustainable Development. **There is likely a systemic problem in the unresponsiveness of competent authorities and the lack of efficient cooperation with them, which may lead to systemic violations of the principle of good administration.** This year, I thus give a general recommendation with regard to the Ombudsman's past recommendations, and I hope that it will not fall on deaf ears. **There are more than 200 recommendations that have not been realised in their entirety or only partially; some have been topical since 2013 and the competent authorities have not approached them seriously enough.** We nevertheless issue numerous new recommendations, i.e. **as many as 158, which shows that as a society we tackle countless and frequently new challenges,** and it is thus imperative that the violations or deficiencies occurred are eliminated as actively and promptly as possible.



Recommendation no. 1: The Ombudsman proposed that the Government of the Republic of Slovenia examine and explain in its response report why some of the Ombudsman's past recommendations were not realised. The Government of the Republic of Slovenia should ensure that the competent authorities begin realising substantively unrealised recommendations which the Ombudsman has been highlighting for several years, and to this end, the authorities will cooperate if necessary.

Although the Ombudsman's recommendations are not legally binding, their realisation by the competent authorities is an indicator of how the Government, individual state authorities and their heads and state officials **actually strive** to enhance the respect for human rights and fundamental freedoms in Slovenia.

On that note, it is of particular concern that the competent state authorities do not always observe the decisions of the Constitutional Court or the European Court of Human Rights, or the realisation of the relevant courts' decisions is frequently too slow. Such conduct by the executive and legislative branches of government, including the local self-government bodies, causes doubt about the observance of the principle of the rule of law and diminishes the legitimacy of state authorities' actions with the citizens. I note with regret

that as many as 13 decisions of the Constitutional Court remain unrealised. We specifically pointed this out during the third cycle of the Universal Periodic Review of Slovenia, which took place within the framework of the United Nations in Geneva in October 2019. As the Ombudsman, I commend the progress regarding the implementation of judgments of the European Court of Human Rights (ECHR) in recent years, but I must emphasise that every violation is one too many. It is one too many for the relevant individual and for society as a whole. In the case of evident violations of the Convention rights as per the existing case law of the ECHR, it would be sensible to consider the application of a friendly settlement or a unilateral declaration enabled by the European Convention for the Protection of Human Rights and the ECHR Rules of Court.

Recommendation no. 2: The Ombudsman recommends that the competent authorities eliminate unconstitutionality established in the decisions of the Constitutional Court of the Republic of Slovenia on a timely basis or as soon as possible, and promptly implement the judgments of the European Court of Human Rights against Slovenia.



In all fields, the Ombudsman **systematically monitors 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 justified complaint, including the violator (state authorities, local self-government bodies or holders of public authority). Based on the foregoing, I can note **that 200 violations of rights were established in 2019; we most frequently detected** violations of the principle of good administration (82 times, and 87 times in 2018) and of children's rights (19 times, and 22 times in 2018). We requested the elimination of undue delays in proceedings (17 times, and 25 times in 2018) and the enforcement of the constitutional principle stating that Slovenia is a social state governed by the rule of law (16 times, and 30 times in 2018), and we detected the violation of the right to social security (15 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.

At this point, I wish to particularly highlight the importance of **respecting the second generation of human rights, i.e. economic, social and cultural rights** referring to our cohabitation, **and the third generation (solidarity and collective) rights**, which also include the right to development and the right to a healthy living environment **as the baskets of rights equal to the first generation of human rights, i.e. civil and political rights**. I assess that their realisation is frequently less transparent. Furthermore, the control over their realisation is loose and insufficiently concrete. I emphasise once again that we strive to realise all human rights for everyone.

In the field of equality before the law and discrimination, individuals contacted the Ombudsman for various personal circumstances. In 2019, they most frequent-

ly contacted us with regard to disability. **We noted the examples of multiple or intersectional discrimination increasingly frequently.** In these cases, individuals are discriminated against on the basis of several personal circumstances simultaneously, which means that such discrimination particularly affects vulnerable groups (e.g. disabled children, Roma children, older women). This expression has not been used frequently in the work of decision-making bodies yet, although the Protection Against Discrimination Act defines this type of discrimination as severe. I believe that we should be particularly sensitive towards such a severe form of discrimination in the future, define it and consider it accordingly.

This year's report particularly focuses on the vulnerable groups discussed. By means of which we wish to convey that as a society we must be especially sensitive and attentive to these groups. We discussed employed and unemployed persons, children, the disabled, the elderly, religious communities, national and ethnic communities, and foreigners, which does not mean that other vulnerable groups, such as women, are less vulnerable, but we did not discuss many justified cases relating to these groups in 2019. So, we do not particularly highlight these groups, but they are nevertheless discussed in the chapter on equality before the law and the prohibition of discrimination.

I find that disability discrimination is gradually becoming more evident in numerous fields in Slovenia. In 2019, the complications regarding access to courts for disabled persons continued, including problems in providing access to public schools for physically impaired children and those with long-term illnesses. It was determined that the majority of general upper secondary schools in Ljubljana lack access for physically impaired persons. When inquiring about the accessibility to schools for the disabled at the Ministry of Education, Science and Sport (MIZŠ), it was found that the Ministry does not even know the exact number of secondary and public primary schools that enable such access. Such a situation is alarming, discriminatory and contrary to the Equalisation of Opportunities for Persons with Disabilities Act that governs the disabled persons' access to inclusive education and the Convention on the Rights of Persons with Disabilities, which was also pointed out by the Committee on the Rights of Persons with Disabilities that monitors the implementation of this Convention. The Committee pointed out the lack of sufficient adjustments to programmes and an inclusive learning environment for the disabled in Slovenia. The issue of accessibility to television information and content for blind and visually impaired persons was also topical, and the regulations that would enable free transport for persons with mental disorders have not yet been amended. Persons with disabilities frequently deal with unemployment. We discovered a lack of sufficient adjustments to measures for the disabled in this field as well. We highlight that the obligation of reasonable adjusting refers to all fields of social life as per international rights. **It is evident that an independent body for promoting, safeguarding and monitoring the implementation of the Convention on the Rights of Persons with Disabilities is needed in Slovenia in accordance with paragraph two of Article 33 of the Convention. The Ombudsman is prepared to assume this responsibility and mission.**

When dealing with the Roma issue, the judgment of the European Court of Human Rights in the case of Hudorovič v. Slovenia and Novak and Others v. Slovenia received a lot of attention in 2020. In these cases, the Court did not establish a vi-

olation of convention rights regarding access to drinking water and sanitary facilities in two Roma settlements. The Ombudsman dealt with the problem of Roma children, Roma spatial issues, rejected municipal sectoral programmes, measures for the realisation of special rights of members of the Roma community, and the problem of the status and regulation of Roma settlements.

Similarly, as with the Roma, the Ombudsman also received various complaints regarding our supposed excessive advocacy of foreigners. As many times before, I emphasise once again that I will always advocate the realisation of human rights for all, irrespective of the directness and sharpness of those with opposing viewpoints. After all, this is compliant with the internationally recognised standards of human rights protection. Following our justified warning issued in 2017 on the constitutionality and legality of the Foreigners Act (ZTuj-2), the Constitutional Court of the Republic of Slovenia decided in 2019 that certain provisions of Article 10b be annulled due to impermissible interference with Article 18 of the Constitution (Prohibition of Torture – aspect of the non-refoulement principle). Slovenia is also significantly overdue in transposing Directive (EU) 2016/801 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing. **In practice, one of the key problems lies in lengthy decision-making procedures.** The constantly increasing workload in administrative decision-making urgently requires personnel and organisational adjustment to such conditions. Lengthy procedures may encroach upon other rights, e.g. the right to family life in the case of a decision-making procedure on the application for family reunification, which takes several years. We also dealt with such a case in 2019. It is of special concern if the executive authority fails to respect the judicial authority. The procedures for obtaining and revoking residence permits and the realisation of rights arising from permits remain problematic as well.

Several issues also remain open with regard to employed and unemployed persons. A number of cases involving unemployment referred to the problems of people with disabilities when seeking suitable jobs, which is a cause for concern. The non-payment of social security contributions and the lack of control over the payment of salaries remain topical issues in the field of employment. We believe that the Government should adopt measures that would enable a transparent, effective and prompt supervision system. **The question of what was done in the fight against precarious forms of employment is especially pressing.** We discussed the employment of cleaners in the public sector and the port service providers. We have also been highlighting the issue of cross-border implementation of services for several years.

In 2019, we witnessed the entry into force of the Family Code and the Non-Contentious Civil Procedure Act regarding **children's rights**, and the warnings that their enforcement **increased the need for experts in clinical psychology for children and adolescents, psychiatry and paedopsychiatry**, which is reflected in the backlogs in criminal and family proceedings, are particularly worrying. **The lack of these experts in Slovenia is also alarming.** Furthermore, care of children with special needs is still not regulated systemically. In the legislative field, the Ombudsman supports the drafting of the Liability of Minors for Criminal Offences Act and the Act on comprehensive treatment of child victims of criminal offences

in a children's home (Barnahus). The children's right to be heard and involved in decision making that affects their lives is becoming more important, and I thus support their participation at children's parliaments. Findings and conclusions of the 29th session of the National Children's Parliament are presented for the first time in this Annual Report because we want the children's voices to be louder, and we advise the MIZŠ and other authorities to state their position on the findings and conclusions.

Relations between parents and children and contacts with parents remain topical and refer to various levels of children's lives. Both parents have the right to decide in many circumstances that significantly affect the child's development, which should be observed consistently by responsible authorities, or else a court should decide on such matters. Transferring children from one school to another against the will of one of the parents or their knowledge is a quite frequent occurrence according to our data, and one which we wish to end with our warnings. We received the largest amount of complaints regarding contacts with children in 2019 and their number grows every year. It must be observed that the speed of proceedings is the best medicine for a hurting child, especially when they are deprived of contacts with one of their parents unjustifiably. It is vital to further enhance the capacity of social work centres when implementing supervised contacts.

The Ombudsman's activities in the field of **child advocacy** were further enhanced in 2019. The advocacy was presented to the expert public at five regional consultations (in Maribor, Koper, Murska Sobota, Celje and Novo mesto) where a positive response from expert workers from social work centres, courts, schools, kindergartens, health care, police and NGOs was noted. We issued three brochures on child advocacy: for carers, i.e. parents and other adults, for experts who oversee children's rights, and for children and adolescents. After the Family Code entered into force, we discussed the question of involving children in mediation. However, this multi-layered issue requires a broad expert discussion between various stakeholders despite the adopted Rules on Mediation According to the Family Code. In particular, I would like to highlight that we have noticed inconsistent implementation of Article 3 of the Convention on the Rights of the Child within the activities taking place regarding child advocacy as lengthy procedures involving children are certainly not in their best interest. The authorities should take advantage of all the legal options available for the procedures to be implemented as soon as possible.

In the field of the observance of children's rights, we also notice that the number of children with special needs grows, which is perhaps the result of improved identification of these conditions. The complaints discussed referred to various aspects of care regarding these children. For example, we discussed a complaint from a mother of two children with special needs who would need the help of a personal assistant, which the applicable legislation does not envisage. We anticipate the long-promised amendment to the legislation that would regulate the field of assistants for children with autistic spectrum disorders and for blind and visually impaired children.

With regard to protection of dignity, personal rights, safety and privacy, the Ombudsman paid special attention to the permissible use of technical methods

when supervising communication. Due to our efforts, the (un)permissible use of technical methods for optical recognition of registration plates and drones became clearer. In 2019, the Constitutional Court decided on two Ombudsman's requests for a constitutional review regarding personal data. The Constitutional Court agreed with our opinion and decided that certain provisions of the Police Tasks and Powers Act be annulled.

Regarding freedom of expression, the importance of ethics of public discourse must be stressed in particular. The Ombudsman has been speaking about this for years and it seems that we remain unheard. The National Assembly has not yet adopted the ethics code of deputies or formed a tribunal that would respond to individual cases of hate speech in politics subject to public condemnation. Important changes in case law of the Supreme Court of the Republic of Slovenia occurred in 2019 relating to what is known as hate speech. Our newly established Human Rights Centre began a survey of prosecution files in 2019 regarding the treatment of hate speech.

Concerning the assembly, association and participation in the management of public affairs, several topical cases are linked with **electoral law**, where we noted insufficient realisation of the right to vote of persons with disabilities. In 2019, we discussed concrete cases which further enhanced our belief that the realisation of the right to petition under Article 45 of the Constitution of the Republic of Slovenia should be regulated by law. I especially wish to emphasise that **the principle of good administration** also requires that the ministries and governmental services respond to the proposals submitted via the predlagam.vladi.si portal, which received sufficient support, on a timely basis and with arguments. **The Ombudsman is also encountering unacceptable delays when enquiring about and obtaining the information necessary for its work in dealing with complaints.** Certain authorities reply only after several reminders, which severely hinders our work.

Relating to the restriction of personal liberty and complaints from detainees and prisoners, we wish to commend the cooperation of the competent authorities (courts, the Ministry of Justice, the Prison Administration of the Republic of Slovenia (URSIKS)) which promptly responded to our requests. **We determine that the main problems in our prisons remain overcrowding,** in part due to the significant increase in the number of foreigners, and the lack of staff in all fields of work, particularly regarding security and expert work with prisoners. The Ombudsman thus supports the operations of the Probation Administration, which is also faced with a lack of staff in practice. I particularly wish to emphasise that a comprehensive renovation of Ig Prison is required, and a new facility must be sought for the juvenile correctional facility that would enable the realisation of the security measure of placing a minor in a correctional facility. The complaints submitted by detainees and other prisoners referred to various aspects of serving a prison sentence. The Ombudsman again discussed the unsuitable living conditions of prisoners who, due to their age, illness or disability, require additional assistance when meeting their basic needs in the form of care or social care during imprisonment or remand to ensure respect for their personality and dignity. There has been no progress in accommodating convicted persons in need of institutional care outside a prison. **The upgrade of forensic psychiatry in Slovenia has not yet been implemented,** and the work of the working group for the establishment of a

specialised unit for treating persons with profound mental disorders also came to a halt in 2019. Among other things, we considered the case of a complainant who was issued a security measure of compulsory psychiatric treatment and protection in a health care institution by one court, while another court sentenced him to imprisonment. This case revealed unsatisfactory conditions in implementing the security measure of compulsory psychiatric treatment of persons at liberty and perhaps a normative deficiency of the regulation.

We discussed several complaints regarding persons with restricted movement in psychiatric hospitals and social care institutions. When visiting Dom na Krasu Dutovlje and Hrastovec special social care institutions, I especially highlighted living conditions unfit for people due to a lack of regulation with regard to accommodating persons in secure wards in social care institutions and urgent care for the most vulnerable. I also pointed out the intolerable working conditions of the staff in the institutions and the need to organise spatial capacities in other special social care institutions in Slovenia as well.

Regarding pension insurance, the Ombudsman is still dealing with the purchased employment periods. We are certain that there are no legal grounds for differentiating between the insured persons of the Pension and Disability Insurance Institute of the Republic of Slovenia (ZPIZ) who purchased employment periods and those with voluntary pension insurance. **When speaking about the disability insurance,** the non-observance of fundamental rules of the administrative procedure by the ZPIZ must be stressed again. The ZPIZ decisions must also be duly substantiated, including a description of the actual situation on the basis of which the ZPIZ makes its decision. Furthermore, determining the date of when the disability occurred is questionable since this cannot be the date when the expert opinion was written, but the date when the disability occurred as evident from the medical records.

Ensuring health care is high on our priority list of activities. Unfortunately, normative regulation in health care remained unchanged in 2019. **The new Health Care and Health Insurance Act has not yet been drafted although repeatedly announced and supposedly drafted by experts, as frequently asserted by the Ministry of Health.** Numerous past recommendations remain unrealised in this field. Based on a concrete complaint regarding access to a speech therapist, which was resolved positively for the complainant, we decided to **discuss the broader issue of child development clinics.** We established that the problems experienced by child development clinics prolong waiting times, which prevents individual children from obtaining medical treatment to the degree required. We also discussed the **field of rare diseases**, where there are many possibilities for improvement. The Ombudsman also stresses the urgent need to regulate complementary, traditional and alternative forms of diagnostics, treatment and rehabilitation, and psychotherapy.

As the Ombudsman, I also highlighted the issue of preventing and managing hospital-acquired infections in retirement homes in 2019. We have already discussed this issue in more detail in the 2018 Annual Report. Despite assurances from the Ministry of Health, the proposal of amendments of the Communicable Diseases Act was not drafted by the end of 2019.

Regarding health insurance, we point to unacceptable delays in the decision-making procedures of the Health Insurance Institute of Slovenia (ZZZS) when deciding on the rights arising from health insurance, as such delays result in consequences for the insured persons and employers. It is also not always evident, from the decisions given, on which day the insured person must return to work after their sick leave. Such uncertainty is burdening for workers and employers. The ZZZS explained that 350,000 decisions are issued annually and a relatively large proportion, i.e. 80 per cent, are issued correctly. According to calculations, we can determine that as many as 70,000 decisions a year are not correct. We believe that this share is significantly too large and that the ZZZS is responsible for the organisation of its work, and the quality and timeliness of the decisions. It is unacceptable that the burden of lengthy procedures conducted by the ZZZS is borne by insured persons.

In 2019, the Ombudsman discussed numerous complaints regarding **social matters**. These involve a broad and diverse field of social benefits, assistance and scholarships, including social services and institutional care. For the first time last year, we independently discussed the issues of poverty and violence in society. It is not surprising that many recommendations were made in this field. Social work centres lack effective mechanisms to help socially endangered persons in the event of loss of financial social assistance. In 2019, we highlighted that the problem of institutional care (particularly of the elderly) was pressing and even deepening. The claims stating that living conditions in institutions, especially in retirement homes, were worsening due to the lack of staff are of particular concern. We note that there is also a lack of suitable services that can offer support to people irrespective of their age who wish to stay at home, but are unable to live on their own without additional care and assistance. We recommend that the ministry responsible for social matters enhance its network of providers and expand the selection of services assisting people who can no longer live on their own so that they will be able to stay in the environment in which they feel comfortable and where their social network is established. We call on the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ) to finally commence deinstitutionalisation. On the other hand, we have been issuing reminders since 2014 that the current staffing standards in retirement homes are insufficient due to the increasing necessity for care and assistance and a more demanding level of health care required by current service users.

Slovenia's legislation governing **domestic violence and violence against women** is very good, but the expert staff in various institutions require more training for the legislation to be implemented in real life and reduce the tolerance of violence.

The Ombudsman was also active in the realisation of its mission of the **National Preventive Mechanism** (NPM) as per the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. A separate annual report has been drafted about the activities and recommendations in this field. In 2019, we visited 63 places of deprivation of liberty, i.e. 27 police stations, six prisons and Radeče Juvenile Correctional Facility, the Aliens Centre in Postojna, two psychiatric hospitals, 19 social care institutions (mainly retirement homes), four educational institutions or youth homes, and several residential groups operating within these institutions. For the first time, we also

visited three locations where an education, work and care centre operates. Some 41 persons from nine selected NGOs participated in the visits in 2019. The realisation of NPM recommendations is a commitment of the State Party to the Optional Protocol as the competent authorities of the State Party must address recommendations of the NPM and establish a dialogue with it concerning possible measures to implement the recommendations.

In the field of administrative matters, we dealt with legal property matters, taxes, customs and the administrative procedure. Among legal property matters, we discussed at our own initiative the activity of the Government when ensuring compliance of cultural heritage protection with Article 69 of the Constitution and received a positive response to our findings. The Ombudsman and the Court of Audit of the Republic of Slovenia established that the ZZZS transferred the decision making on follow-up rehabilitation onto the organisers of such rehabilitation, which do not decide on these rights in an administrative procedure and that is problematic as the prescribed legal protection is only ensured to the insured persons by means of the administrative procedure. We also addressed the ongoing topic of residence registration. We discussed a case in which two municipalities waived their duty to provide inspection control by means of which they violated the principle of good administration.

In general, we detect positive developments **in the field of justice** with regard to trial within a reasonable time and other activities. We have had good experiences with the response of the competent authorities when discussing complaints as these regularly responded to our inquiries and other queries in a timely manner. It is nevertheless imperative to constantly strive for high-quality, fair and independent court rulings. The extensive Act Amending the Criminal Procedure Act (ZKP-N) was finally passed in 2019. We also participated with our comments in the procedure of its drafting. All legal solutions that strengthen the position of the injured party or the victim of a criminal offence and vulnerable groups must be commended. It is encouraging that the change in defining the criminal offence of rape in the Criminal Code (KZ-1) is being considered. As stated before, a step forward was also made with regard to discussing juvenile delinquency. In several cases, we established violations of the principle of good administration in courts as those who send a request to the court are entitled to expect a reply.

Although the Ombudsman has no powers with regard to private banks, we monitor the issue of loans in Swiss francs and the **efforts of the Frank Association**. The Ombudsman supports the search for solutions that could improve the situation of borrowers, but the solution must be compliant with the Constitution.

We addressed fewer cases relating to **police proceedings**, private security services, detectives and traffic wardens in 2019 than a year before. In police proceedings, we determined violations of the principle of good administration, protection of a person's personality and dignity, children's rights, protection of personal freedom, the right to legal remedy and undue delay in proceedings. The efforts aimed at resolving complaints against the work of police officers must be commended. This issue is regulated by the Police Tasks and Powers Act (ZNPPol) which authorises the Police and Security Directorate of the Ministry of the Interior (MNZ) to resolve such complaints. It is necessary to stress that the principle of good administration

also binds the Police. We discussed a case in which the police did not permit a complainant to inform her husband about her arrest. We informed the MNZ that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (**CPT**) **clearly states that a detained person has rights from the very outset of their deprivation of liberty, including the right to inform others of their deprivation of liberty.** The CPT previously pointed to this obligation during their first visit to Slovenia in 1995 and proposed that additional measures be adopted. We also noted that forced hospitalisation with police intervention in a public place requires the presence of a doctor at the location of police intervention as per the Mental Health Act. In one of the cases discussed, we determined that a doctor was not present at the location of police intervention, resulting in a person being transported by ambulance to a psychiatric hospital.

The complaints involving **the environment and spatial planning** dealt with noise, odour, the introduction of fifth-generation mobile communications (G5 wireless technology), siting of various spatial regimes and rehabilitation of degraded areas. As per the Environmental Protection Act (ZVO-1), the state should draft a **national report on the state of the environment in the country every four years, but it has not prepared one since 2008.** The addressing of the Celje Basin issue, which is one of the most degraded areas in Slovenia, is to commence in 2021 and that is too late. We advocate immediate comprehensive rehabilitation as the residents live in a very polluted environment which poses a risk to their health. We particularly call on the competent authorities to speed up the activities for prompt remediation of polluted soil in the kindergartens of the Municipality of Celje. We also expect that the rehabilitation of the Upper Mežica Valley will continue with a special emphasis on, and attention to, preventing new pollution.

The number of complaints involving **regulated activities** increased in 2019. We discussed a complaint from a resident of Sveti Tomaž in the settlement of Velike Poljane in the Municipality of Ribnica, who has been unsuccessfully striving for 23 years to obtain **access to clean drinking water.** Despite the fact that the right to drinking water was entered into the Constitution, the municipality failed to approach the drafting of the municipal rules with due diligence. The municipality thus also violated the principle of good administration as the Constitution binds it to this principle; however, more concrete legislative amendments, as stated by the new **Article 70a of the Constitution**, cannot be expected shortly. Only after the Ombudsman's intervention did the Municipality of Rogašovci enable all residents in its area to be connected to the public water supply system. At its own initiative, the Ombudsman discussed the broader issue of suitable infrastructure for the provision of drinking water supply in 2019. The common denominator of replies received from the authorities we contacted was **the lack of suitable public calls which would enable municipalities to obtain cohesion funds** for the construction of water supply systems (also small ones).

The issues detected in education still heavily prevail in the field of social activities. The legislator has not yet responded satisfactorily to decision no. U-I-269/12-24 of the Constitutional Court on state-approved programmes of primary education. We focused on the connection between school performance and the social and economic status of children and adolescents. Although differences in school performance of pupils and secondary school students from families with different

living standards are small in Slovenia when compared to OECD countries, the survey of the National Examinations Centre (RIC) revealed that differences between secondary school students after completing secondary education are greater than those between pupils after completing primary school. The research pointed to the importance of cooperation between the RIC and the Statistical Office of the Republic of Slovenia (SURS), and the Ministry of Education, Science and Sport also detected the need to monitor such data. The latter highlighted that social, economic and cultural status do not only denote financial status but also the parental level of education. This topic should also be emphasised in the activities for the preparation of the white paper. A headmistress of a primary school contacted the Ombudsman with a request to support the implementation of an activity day with the topic of hate speech, to which she invited the **Pride Parade Association**. But a group of parents disagreed with the participation of the relevant association. The Ombudsman believes that school activities intended to raise awareness of the prohibition of discrimination or hate speech on the basis of sexual orientation do not interfere inadmissibly with the right of parents to the freedom of conscience if the said topic is presented in an objective, critical and neutral manner and takes into account modern standards in science and education. However, parents who do not agree with such events are free to express their opinion in an appropriate way. **We also discussed the issue of co-financing private kindergartens.** Considering the lack of vacancies in kindergartens and waiting periods in certain municipalities, this topic should also be treated from the viewpoint of discrimination as per the place (or municipality) of residence.

The Ombudsman received many complaints regarding **housing matters** which led us to examine the question of **whether the housing supply system in Slovenia is satisfactory**. The Ombudsman cannot reply in the affirmative. The key Ombudsman's finding is that the lack of a serious and systematic method of resolving housing issues in general and particularly regarding vulnerable groups, such as the disabled, the elderly, young people, families living in violence and others, has been observed for a number of years, but unfortunately with no successful result. The lack of non-profit rental dwellings and housing units in several Slovenian municipalities was evident again from multiple complaints. We also noted that the housing problem of the most vulnerable groups in the Municipality of Ljubljana deepens. We propose that the Municipality of Ljubljana conducts an analysis of the management of multi-dwelling buildings and drafts amendments to the applicable regulation in accordance with the findings.

In 2019, we **continued our efforts to obtain A status of a national human rights institution as per the Paris Principles relating to the Status of National Institutions for Promotion and Protection of Human Rights (1993)**. The Human Rights Council as the Ombudsman's consultative body continued its operations on the basis of amendments to the Human Rights Ombudsman Act (ZVarCP), and the Human Rights Centre also commenced its work. We enhanced our presence in the international sphere and drafted an alternative report in October 2019. We actively participated in the third cycle of the Universal Periodic Review of Slovenia within the UN Human Rights Council. In 2019, we also enhanced international cooperation at the European and global levels by conducting bilateral meetings.

I wish to emphasise explicitly that the Ombudsman's Annual Report is much more than just a collection of recommendations. It is a document that, in addition to recommendations, discusses numerous matters, legal and actual findings, proposals, opinions and criticisms presented in the substantive section of the report on our activities. The 2019 Ombudsman's Annual Report is published in its entirety only on our website at www.varuh-rs.si. The printed version that you are reading only contains the assessment of the situation and a review of recommendations. We hope that the updated online version of the Annual Report is even more transparent for users as it enables a targeted use of the report when using a search engine. We thus wish to convey a green message for the **environmentally friendly operations** of state authorities.

It is impossible to mention all substantive fields, established deficiencies and violations of human rights and freedoms in the introduction. In the report, you can read about the situation of human rights and fundamental freedoms, including legal certainty in the country. The review of the Ombudsman's work in 2019 is discussed in the first chapter, and the content of work and a review of the cases discussed are covered in the second chapter. The situation of the vulnerable groups discussed is presented first, followed by other substantive fields of our operations or involvement. The integral part of the Ombudsman's Report is the Report of the Ombudsman on the Implementation of Tasks and Powers of the National Preventive Mechanism against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which is printed in a separate publication.

The Ombudsman is a recognised and esteemed institution in Slovenia, which is to the credit of all the past holders of the office of Ombudsman and the dedicated work of all associates of the Ombudsman's institution, to whom I am grateful for their contribution.

The first year of my term is over, but I can certainly conclude on the basis of the foregoing that there is a great deal of work ahead of us. During my six-year term, all injustices will certainly not be eliminated. I have no illusions. But I, along with my colleagues, wish to contribute, to the best of our abilities, to making changes for the better and being a loud voice for all of those who are not heard. Society's attitude towards the most vulnerable is its best mirror.

Finally, I would like to thank everyone who cooperated with us in the past year. I also hope for good cooperation in the future, particularly regarding the realisation of our recommendations, which I hope I will be able to announce in the 2020 report we have been realising successfully. If our guideline at work and generally in our lives is to be more humane to one another, then with joint efforts we will also move the functioning of the state apparatus closer to the individual. Let us put an individual and their problems at the centre. We are in the service of people and we carry great responsibility towards them, each in our own field, so let us consider that as our work.

Peter Svetina
Human Rights Ombudsman

1.2.

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



HUMAN RIGHTS OMBUDSMAN OF THE REPUBLIC OF SLOVENIA

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1.3

THE OMBUDSMAN, HIS DEPUTIES, SECRETARY GENERAL AND EMPLOYEES IN 2019



PETER SVETINA

Human Rights Ombudsman
(24 February 2019 –)


IVAN ŠELIH

BA in Law
Deputy Ombudsman
(17 June 2015 –)

Deputy
Ombudspersons


MIHA HORVAT

MA in Law and BA in Political Science
Deputy Ombudsman
(29 March 2016 –)


Dr KORNELIJA MARZEL

BA in Law
Deputy Ombudsman
(23 May 2013 – 23 May 2019)


TONE DOLČIČ

BA in Law
Deputy Ombudsman
(31 January 2015 – 16 April 2019)


KRISTIJAN LOVRAK

BA in Economics
Secretary General of
the Ombudsman
(1 July 2017 –)

The Ombudsman's Office
is comprised of the Expert
Service and the Secretariat. It
is managed by the Secretary
General of the Ombudsman.


MARTINA OČEPEK

BA in Law
Director of the
Ombudsman's
Expert Service

**The Director of the
Ombudsman's Expert Service**
organises and manages the work
of public employees in the Expert
Service in accordance with the
instructions of the Ombudsman
and Deputy Ombudsmen.

As of 31 December 2019, there were 50 employees working in the Ombudsman's office. Four of these were public office holders (the Ombudsman, two Deputies and the Secretary General), 38 officials and eight expert and technical public employees.

Some 37 employees hold a university degree or a Bologna master's degree (these include four PhDs and three masters), nine employees have a higher vocational college degree (two have completed specialisation in higher education), two public employees have a short-cycle college education, and two have secondary education.

As of 31 December 2019, the **Expert Service** employed 29 public employees, comprising 29 permanently employed officials. Some 27 public employees in the Expert Service hold a university degree, of whom four hold PhDs and three master's degrees, and two public employees have a higher vocational college degree, of whom one has completed a specialisation.

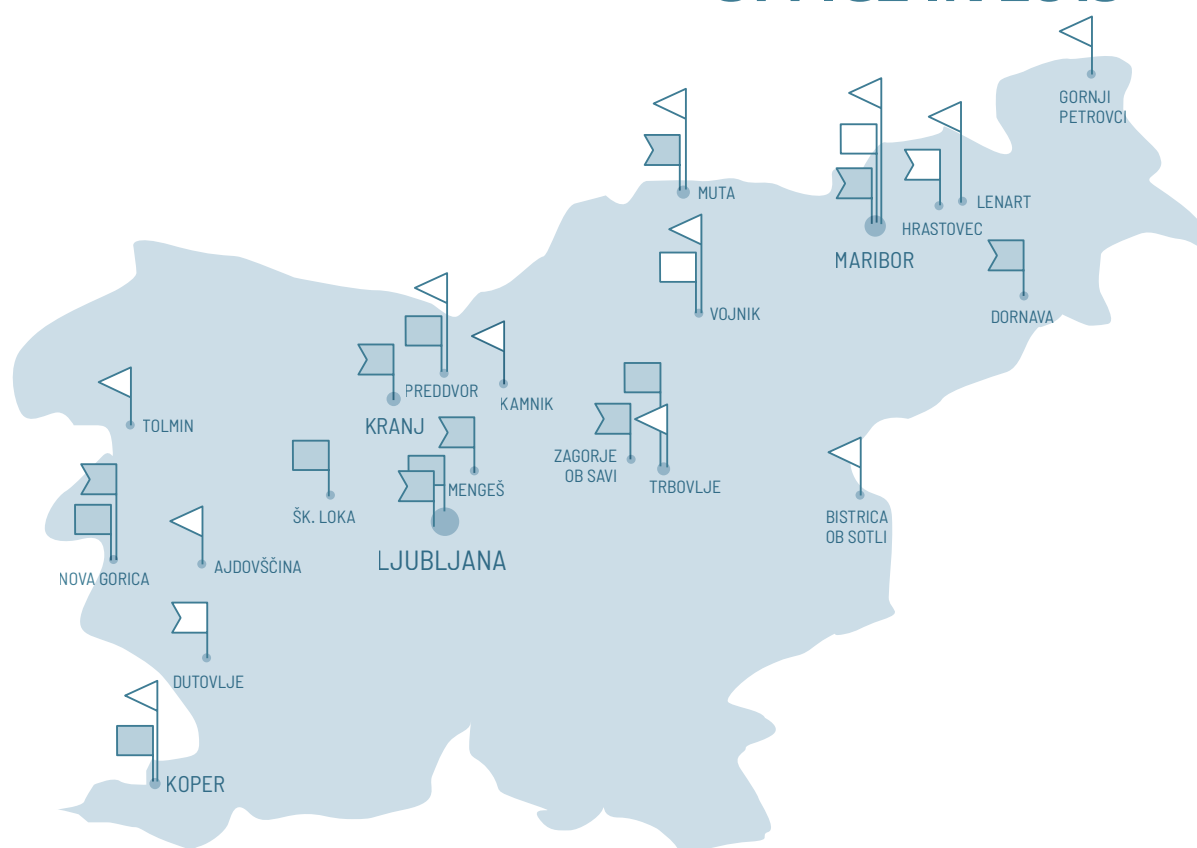
As of 31 December 2019, the **service of the Secretary General** permanently employed eleven public employees, three of whom were officials and eight expert and technical public employees. One public employee has a university degree, seven completed a higher vocational college, of whom one obtained a specialisation. One public employee completed a higher education and two have a secondary school degree.

Six public employees are employed in the **Ombudsman's office**, of whom one is employed for a fixed period during the Ombudsman's term, and five are permanently employed as officials. All six public employees hold a university degree or a Bologna master's degree.

Six employees were promoted to higher salary grades and one obtained a higher title in 2019. The rights arising from promotion were obtained according to the applicable legislation on 1 December 2019.

1.4

ACCESS TO THE OMBUDSMAN AND OPERATIONS OUTSIDE THE HEAD OFFICE IN 2019



In 2019, Peter Svetina, the Human Rights Ombudsman, visited several social care institutions. These were:

-  **Retirement homes (6)** Ljubljana Šiška Retirement Home, Nova Gorica Retirement Home, Koper Retirement Home, Preddvor Retirement Home, Škofja Loka Centre for the Blind, Visually Impaired and Elderly, Franc Salamon Trbovlje Retirement Home
-  **Occupational activity centres (7):** Stara Gora Unit of Nova Gorica Occupational Activity Centre, Muta Occupational Activity Centre, Kranj Occupational Activity Centre, Polž Occupational Activity Centre (Maribor), Zagorje ob Savi Occupational Activity Centre, Mengeš Unit of INCE Occupational Activity Centre, Korak Centre (Kranj)
-  **Special education, work and care centre/institute (2):** Vižmarje Home of Draga Centre for Training, Work and Care, Dornava Institute for Education, Work and Care
-  **Special social care institution (2):** Dom na Krasu (Dutovlje), Hrastovec Social Care Institution
-  **Other:** We also visited non-governmental organisation Ozara Slovenia (Maribor), a day centre in Maribor, and Vojnik Reuse Centre – Employment Centre.

◀ In 2019, we held **12 meetings outside the head office** at which the Ombudsman and his Deputies conducted 168 personal interviews. When holding meetings outside the head office, the Ombudsman wishes to approach people who, due to distance or any other reason, cannot visit the Ombudsman at the head office. Places visited by the Ombudsman in 2019:

9 January 2019 Ajdovščina, 6 February 2019 Bistrica ob Sotli, 6 March 2019 Maribor, 3 April 2019 Lenart, 8 May 2019 Muta, 5 June 2019 Trbovlje, 3 July 2019 Gornji Petrovci, 7 August 2019 Koper, 4 September 2019 Kamnik, 2 October 2019 Preddvor, 6 November 2019 Tolmin, 4 December 2019 Vojnik

Data on the Ombudsman's visits in the role of the National Preventive Mechanism (hereinafter: NPM) are provided in the chapter on the NPM.

2

IN 2019, WE RECEIVED

21,628

INCOMING DOCUMENTS

(22,448 in 2018)

0

WE GENERATED

9,613

OUTGOING DOCUMENTS

(9,067 in 2018)

1

IN 2019, INFORMATION OFFICERS RECEIVED

9,500

PHONE CALLS

(8,039 in 2018)

9

IN 2019, EXPERT COLLEAGUES HELD

1,551

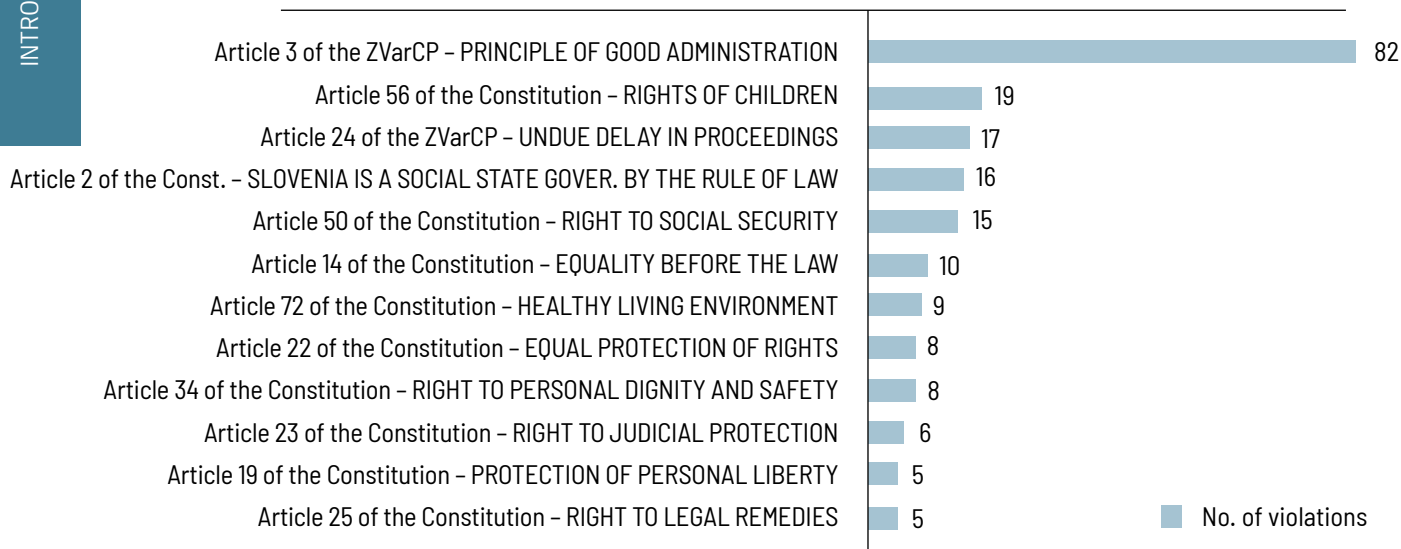
INTERVIEWS WITH CALLERS WHO HAD
NOT (YET) SUBMITTED THEIR COMPLAINTS

(1,548 in 2018)

1.5

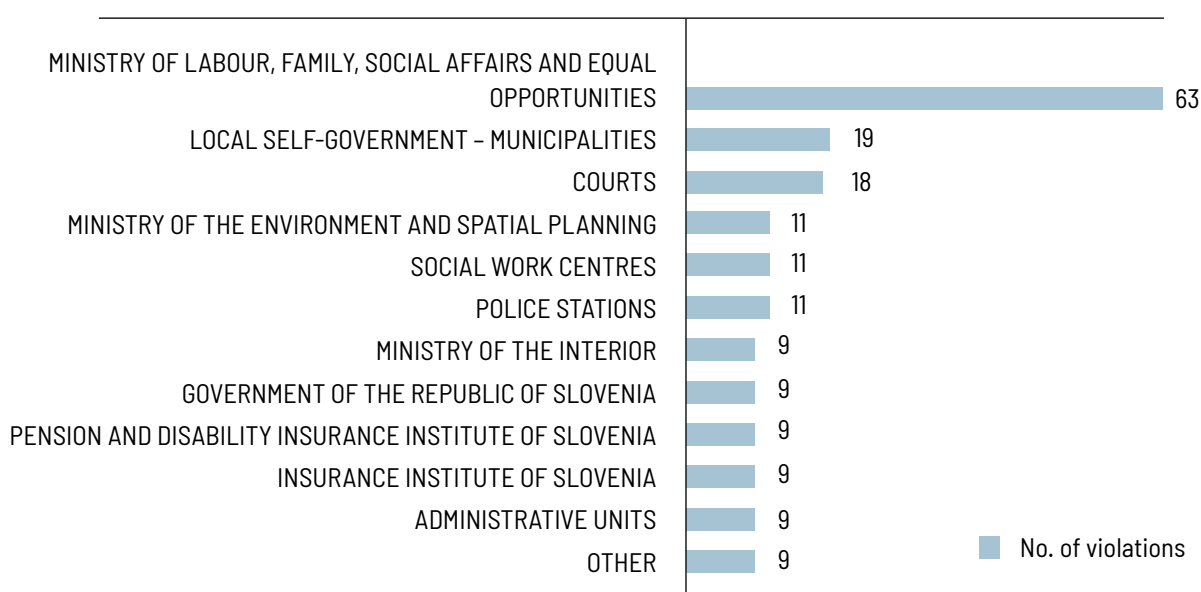
STATISTICS FOR 2019

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



The Ombudsman determined these **305 violations of human rights** and fundamental freedoms or other irregularities in the work of **48 authorities**.

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.

4,600

CASES WERE DEALT WITH BY THE OMBUDSMAN IN 2019.

In 2018, we dealt with 4,719 cases
which denotes a 2.52-per cent decrease in 2019

1,551

INTERVIEWS

with callers who had not (yet)
submitted their complaints

92

INTERVIEW

during meetings held outside
the head office, which were
recorded in official minutes
as the complainants received
clarifications and the issue did
not require further treatment
by the Ombudsman

2,545

newly opened
complaints

412

complaints
carried forward
from 2018

2,404

ali **81.3 %**

complaints were
completed

2,957

COMPLAINTS

were discussed by the Ombudsman in
2019 of which, as of 31 December 2019:

553 ali

18.7 %

were being dealt with

346

or **14.4 %**

were justified;
113 of these were
from the field of
advocacy

327

or **13.6 %**

were
unfounded

1,446

ali **60.1 %**

provided
no further
conditions for
discussion

282 or

11.7 %

did not fall
under the
Ombudsman's
jurisdiction

3 or

0.1 %

denoted a
withdrawal of
consent in the
field of advocacy

The Ombudsman found that the claims concerning the violations of human rights and fundamental freedoms were **well-founded in 233 complaints**, and that at least one (or more) fundamental human right or freedom (according to the Constitution of the Republic of Slovenia) had been violated, and that the principles of equity and good administration were not observed.

Among 233 justified complaints, the Ombudsman **established 305 violations of human rights** and fundamental freedoms (determined in the Constitution of the Republic of Slovenia) and other irregularities, such as the violation of the principles of equity and good administration, undue delay in proceedings and evident abuse of authority as per the ZVarCP.

To these 305 violations, **113 cases regarding child advocacy** must be added, in which no concrete violations were established, but which were treated as justified and thus also included among the 346 justified complaints.

A higher number of rights violations in comparison with the number of justified complaints is the result of a higher number of established concrete violations in an individual complaint. Among the complaints discussed, we thus determined two or more violations of human rights and fundamental freedoms or other irregularities in several cases.

1.6

THE OMBUDSMAN AS THE NATIONAL HUMAN RIGHTS INSTITUTION

1.6.1 The Human Rights Council

On 23 February 2019, the term of Vlasta Nussdorfer, the Human Rights Ombudsman, ended, and so did the term of the members of the Human Rights Council who were appointed with the Ombudsman's decision no. 0601-1/2018 of 12 June 2018.

The preparations to appoint new members of the Human Rights Council (the Council) commenced immediately thereafter, i.e. drafting the tender documentation, preparing the public call for appointing new members, collecting applications and selection.

With decision no. 0101-11/2019-57 of 10 May 2019, Peter Svetina, the Human Rights Ombudsman, appointed members to the Council for the period of his term until 24 February 2025. These include the representatives of the civil society: Margerita Jurković, Dr Robert Masten, Žiga Vavpotič, Neli Dimc, mag. Cveto Uršič, mag. Lea Benedejčič, mag. Nataša Briški; representatives of science: Dr Simona Kustec Lipicer, Dr Jurij Toplak, Dr Patrick Vlačič, and the representatives of state authorities: Aldijana Ahmetović from the National Council, Alenka Jerše of the Information Commissioner, Samo Novak of the Advocate of the Principle of Equality, Peter Pavlin and Dr Marko Rakovec of the Government, and Nataša Voršič of the National Assembly.

The conditions for the Council's work were thus met.

The Ombudsman generated a new post of secretary of the Human Rights Council and reassigned to this post Dr Kornelija Marzel, who previously worked as the Deputy Ombudsman. In addition to her other tasks, the secretary is responsible for preparing and convening sessions of the Council, drafting documentation for harmonising the work of the Council and that of the Ombudsman and the Ombudsman's employees, and the Council's cooperation with NGOs and the national and international science sphere.

The members of the Council met four times in 2019.

The first, constitutive session took place on 10 June 2019. The members of the Council learned about the legal bases for the establishment of the Council, and the objectives and purposes of its functioning. They became acquainted with one another and discussed in detail the Council's rules of procedure. The members agreed to meet again in autumn when they would focus on certain substantive issues regarding human rights.

The second session of the Council took place during the Bled Strategic Forum on 3 September. **The session was attended by Michelle Bachelet, the United Nations High Commissioner for Human Rights.** After meeting the Ombudsman, who introduced her to the importance of this key consultative body and also to the national human rights institution in Slovenia, Bachelet spoke with the Council's members about certain challenges of the United Nations when enforcing guidelines for the realisation of human rights. The esteemed guest discussed, in particular, rights in the business sector, which was also the central topic of the Council's second session.

The third session of the Council was held on the occasion of Human Rights Day at Brdo pri Kranju on 9 December 2019.

The last session of the Human Rights Council in 2019 was held on 18 December at the Ministry of Justice, where a presentation of the new publication, »On the Special Position of Women in Prisons: Contributions and Selected International Acts«, took place within the framework of the 40th anniversary of the Convention on the Elimination of All Forms of Discrimination against Women, which was followed by a discussion.

The first year of the second composition of the Human Rights Council involved learning about each other, presenting the Ombudsman's work and efforts to improve the situation of human rights, and the exchanging of experience, views and positions on the provision of human rights in the business sector.

1.6.2 The Human Rights Centre

The provisions of Article 50b of the ZVarCP about the establishment, tasks and operations of the Human Rights Centre (the Centre) entered into force on 1 January 2019. The Ombudsman actually established this internal organisational unit in 2019 when it began its operations (as per Article 17 of the Rules of Procedure of the Human Rights Ombudsman, it is managed by the Deputy Ombudsman and it also employs two advisers/analysts for this purpose).

The Centre's representative **regularly cooperates at the sessions of the Inter-Ministerial Commission on Human Rights** in connection with which the Human Rights Department at the Ministry of Foreign Affairs is managed and harmonised. With regard to other domestic stakeholders, the Centre focused in the first year of its operations particularly on **cooperation with faculties** (e.g. the meeting with students of the European Faculty of Law in cooperation with their Career Centre) **and schools** (e.g. lecture at Črnomelj secondary school on the topic of migrants with the objective to educate and raise awareness about tolerance and solidarity, which was attended by some 200 secondary school students).

As the Centre's basic role at the national level in 2019, the analysis of all (already archived) prosecution files on the criminal offence of public incitement to hatred, violence or intolerance as per Article 297 of the KZ-1 must be mentioned, which was implemented with the aim to establish more comprehensively the ac-

tual prosecution of the relevant criminal offence. As the time frame encompasses more than a decade, the scope of the documentation to be examined was obviously exceptionally large. This analysis also continues after the end of the reporting year and we are thus not yet able to report on its findings.

In the first year of its operations, the Centre dedicated a considerable amount of attention to enhancing the institution's operations at the international level. We thus **significantly increased the scope of the Ombudsman's response to numerous requests for expert clarifications and data received from abroad, particularly from the United Nations.** These include various fields and aspects of protection of human rights and fundamental freedoms in the country and frequently serve as the basis for drafting international reports and other documents. We also draft several Ombudsman's alternative reports regarding the country's meeting of its Convention obligations.

Through the Centre, the Ombudsman actively participated in the Universal Periodic Review of Slovenia (the third cycle) within the UN Human Rights Council for the first time in 2019. As per certain rules, we became involved in the relevant process by means of a written application as an external stakeholder. The Centre's representative then attended a session in Geneva on 11 October where she addressed the present representatives of other countries and proposed the Ombudsman's recommendations. We also drafted an information document for the relevant third cycle¹ which, in addition to brief descriptions of the fields discussed, comprised a total of 27 recommendations in the following 17 sets:

- ratification of certain international treaties not yet ratified in the field of human rights;
- timely reporting on the realisation of ratified international human rights treaties;
- ensuring the Ombudsman's independence so that its financing is independent from the Government;
- realising the constitutional right to water;
- collecting data broken down by personal circumstances that would enable inequality monitoring in society;
- observing the decisions of the Constitutional Court;
- ensuring the realisation of voting rights for those who were detained or admitted to hospital ten days before elections and were thus unable to vote at polling stations or by mail;
- ensuring the efficient work of inspection services;
- ensuring suitable conditions in prisons;
- ensuring suitable accommodation and treatment of persons with mental disabilities in social care institutions;

¹ The informative document for the third cycle of the Universal Periodic Review of Slovenia is available in English on the Ombudsman's website <<http://www.varuh-rs.si/promocija-publikacije-projekti/publikacije-gradiva/univerzalni-periodicni-pregled-upr/>> (15 May 2020).

- ceasing the immigration detention of children at the Aliens Centre in Postojna;
- ensuring access to the asylum procedure and suitable procedural provisions in case of return;
- ensuring suitable access to health-care services (shortening waiting periods where necessary);
- ensuring suitable and accessible care for the elderly and persons with disabilities, including the deinstitutionalisation of such care;
- accessibility of courts for persons with disabilities;
- access to water, sanitary facilities and electricity in Roma settlements;
- elimination of pollution in certain polluted industrial areas.

The Ombudsman's recommendations given within the framework of Slovenia's Universal Periodic Review mostly referred to the Ombudsman's past recommendations or topical recommendations, and the recommendations relating to the Ombudsman's financial independence, the observance of the decisions of the Constitutional Court, the provision of suitable access to health-care services, and appropriate and accessible care for the elderly and persons with disabilities were further emphasised. The Ombudsman again highlights these additional recommendations in this Annual Report:

3. The Ombudsman recommends that the Government of the Republic of Slovenia, in accordance with the ratified international human rights treaties, regularly and in a timely manner submits reports on the realisation of its obligations arising from these international treaties to competent committees established on the basis of these treaties.



4. The Ombudsman recommends that the competent state authorities ensure independence and autonomy of the Human Rights Ombudsman by amending the legislation on public finance so that its financing and financial supervision are provided independently of the Government.

5. The Ombudsman recommends that the Government of the Republic of Slovenia drafts and the National Assembly adopts suitable legislation on personal data protection and sector-specific legislation to determine special exemption with regard to collecting disaggregated data as per individual personal circumstances in order to promote equal treatment and equal opportunities when observing applicable national and international standards on personal data protection.

6. The Ombudsman advises the competent authorities to enable and ensure systematic collection of disaggregated data as per protected personal circumstances in all fields of social life in order to accurately determine the situation and trends regarding (in)equality in society, and that the competent line ministry takes over the management of the informal



working group for resolving the issue of disaggregated data collection as per paragraph one of Article 62 of the ZDU-1, and, if the ministries fail to reach an agreement, the Government of the Republic of Slovenia should decide on the issue as per paragraph two of Article 62 of the ZDU-1.

7. The Ombudsman recommends that the Prison Administration of the Republic of Slovenia provides a programme of activities for all prisoners in cooperation with prisons as it was advised by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in 2017.

8. The Ombudsman recommends that the Government of the Republic of Slovenia and the competent authorities adopt all necessary measures to ensure suitable involuntary admission and treatment of persons with mental disorders in social care institutions, including suitable additional capacities and personnel to provide appropriate social care services for such persons.

9. The Ombudsman recommends that the Government of the Republic of Slovenia and the competent authorities ensure that migrant minors are accommodated together with their parents in suitable replacement accommodation facilities, while their accommodation in detention centres should only be exceptional.

10. The Ombudsman advises the Government of the Republic of Slovenia and the National Assembly to ensure suitable access to health-care services by reducing long waiting times in health care where this is necessary.

11. The Ombudsman recommends that the Government of the Republic of Slovenia provides suitable, accessible, affordable and appropriate services for the elderly and persons with disabilities who need assistance to be able to exercise their right to an independent life and inclusion in their community in towns and rural areas.

12. The Ombudsman recommends the deinstitutionalisation of care services in accordance with the recommendations of the Committee on the Rights of Persons with Disabilities.

Slovenia received 157 recommendations from other countries.² In several cases, other countries' recommendations were the same as those of the Ombudsman (e.g. on providing access to the asylum procedure and suitable procedural provisions in case of return, and access to drinking water, sanitary facilities and electricity in Roma settlements).

² See <<https://undocs.org/A/HRC/43/15>>.

1.6.3 Paris Principles on the status of national human rights institutions

Principles referring to the status of national institutions (Paris Principles) adopted by UN General Assembly resolution 48/134 of 20 December 1993

Expertise and responsibilities

1. A national institution is responsible for the promotion and protection of human rights.
2. The national institution is awarded the broadest scope of work possible, which is clearly defined in the constitutional or legislative text determining its composition and powers.
3. The national institution has, among others, the following powers to:
 - (a) provide opinions, recommendations, proposals and reports about all matters concerning the promotion and protection of human rights to the Government, the Parliament and all other competent authorities on an advisory basis either at the request of individual authorities or by exercising its powers to discuss issues without an instruction from a higher authority; the national institution may decide to publish them; these opinions, recommendations, proposals, reports and all other powers of the national institution refer to the following fields:
 - (I) any legislative or administrative provisions, including provisions regarding judicial organisations whose purpose is to maintain and expand human rights protection; in this regard, the national institution examines the applicable legislation, administrative provisions and legislative proposals, and drafts recommendations that seem suitable to ensure compliance of these provisions with the fundamental principles of human rights; if necessary, it recommends the adoption of new legislation, amending of the applicable legislation and the adoption or amending of administrative measures;
 - (II) any violation of human rights which it decides to discuss;
 - (III) draft reports on the situation of human rights in the country in general and on more specific matters;
 - (IV) inform the Government about the conditions in any part of the country where human rights are being violated, proposing initiatives to eliminate such conditions, and expressing opinions about the Government's positions and responses when necessary;
 - (b) promote and ensure the harmonisation of the national legislation, regulations and practices with international instruments for (ensuring) human rights whose contracting party is the state, and their efficient implementation;
 - (c) promote the ratification of the above instruments or the accession to these instruments, and ensure their implementation;

- (d)** contribute to reports which countries must submit to bodies and committees of the United Nations and regional institutions in accordance with their contractual obligations and, if necessary, express its opinion on a certain matter while observing their independence;
- (e)** cooperate with the United Nations and all other organisations within the United Nations system and regional institutions and national institutions in other countries which are responsible for the protection and promotion of human rights;
- (f)** help form educational and research programmes on human rights and participate in their implementation in schools, at universities and in expert circles;
- (g)** publicise human rights and efforts in the fight against all forms of discrimination, particularly racial discrimination, by raising public awareness, i.e. by informing, educating and using all printed media.

Composition and provision of independence and pluralism

1. Composition of the national institution and appointing its members either by elections or in any other way is determined as per the procedure providing all necessary guarantees for ensuring pluralist representation of social forces (civil society) which participate in the protection and promotion of human rights, particularly by means of authorisations that will enable effective co-operation with the representatives or through the presence of representatives of:
 - (a)** NGOs responsible for human rights and efforts in fighting racial discrimination, trade unions, social and professional organisations, e.g. associations of lawyers, doctors, journalists and esteemed scientists;
 - (b)** trends in the field of philosophy and religion;
 - (c)** universities and trained experts;
 - (d)** the Parliament;
 - (e)** governmental services (if these are participating, their representatives may only have an advisory role in discussions).
2. The national institution shall have an infrastructure which is suitable for the smooth implementation of its activities, particularly suitable financing. The financing should enable the institution to have its own staff and premises, so that it would be independent from the Government and not subject to financial supervision that could affect its independence.
3. To ensure a stable term to the national institution's members, without which independence is not possible, their appointment is implemented with an official act determining the special duration of the term. If pluralism of the institution's members is guaranteed, the term may be renewed.

The manner of operating

Within the framework of its operations, the national institution:

- (a)** freely discusses all issues falling under its jurisdiction either at the Government's proposal or at the initiative of its members or any other proposer without instruction from a higher authority;
- (b)** listens to everyone and obtains all information and documents necessary for assessing cases within its competence;
- (c)** considers public opinion directly or via any other public media, especially to publish its opinions and recommendations;
- (d)** convenes regularly and with all its members present, if necessary, after these have expressed their concern in advance;
- (e)** forms working groups with its members if this is needed, and establishes local or regional departments that assist in the implementation of its tasks;
- (f)** consults with other bodies, either competent ones or those responsible for the promotion and protection of human rights in another way (particularly human rights ombudsmen, mediators and similar institutions);
- (g)** enhances relations with NGOs involved in the promotion and protection of human rights, economic and social development, fight against racism, protection of particularly vulnerable groups (especially children, migrant workers, refugees, persons with physical and mental impairments) and other specialised fields as per the fundamental role of NGOs in spreading the work of national institutions.

Additional principles relating to the status of committees with apparent authority

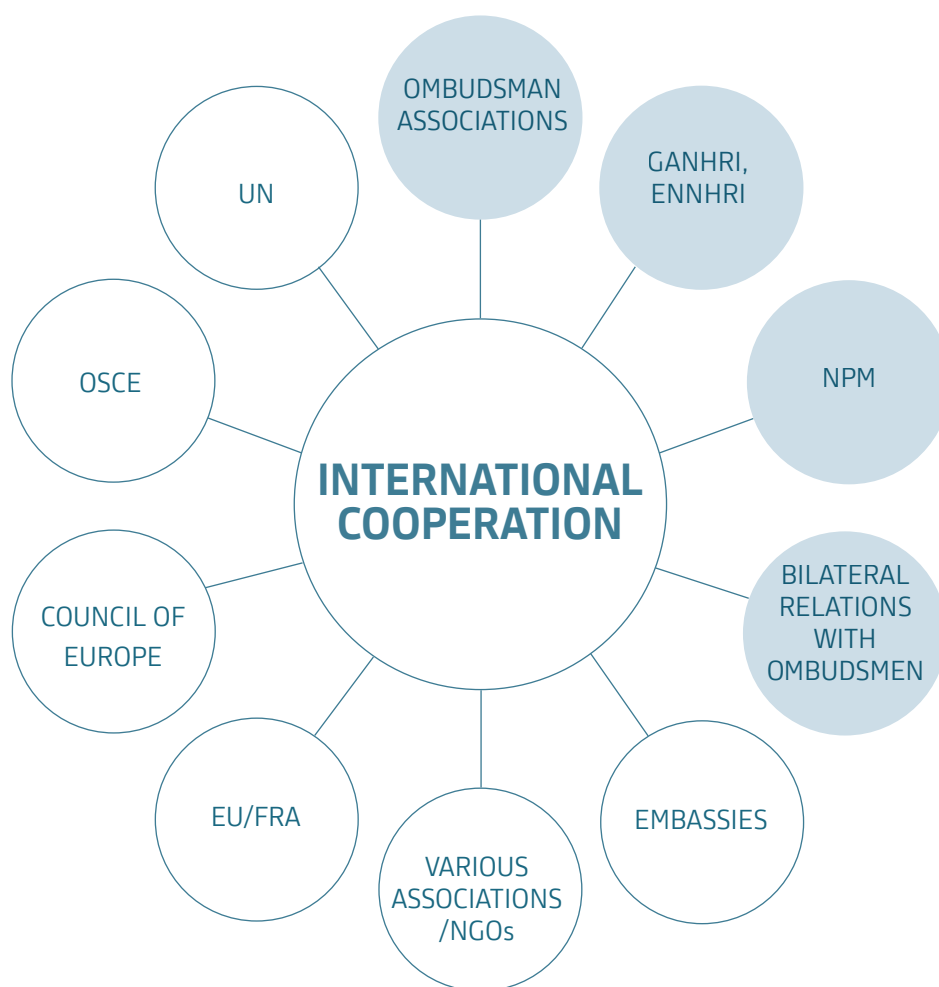
The national institution may be authorised to discuss complaints and petitions relating to individual cases. These may be submitted by individuals, their representatives, third persons, NGOs, trade union confederations or other representative organisations. In such circumstances and with no interference with the aforementioned principles regarding other committees' authorisations, the tasks entrusted to them may be based on the following principles:

- (a)** seeking an amicable settlement in a conciliation procedure or within limits permitted by the law by means of binding decisions or on the basis of confidentiality when this is necessary;
- (b)** informing the client who filed a complaint about their rights, especially about the legal remedies available, and promoting access to these remedies;
- (c)** discussing complaints and petitions or forwarding them to another competent authority within the limits permitted by the law;
- (d)** submitting recommendations to competent authorities, especially by proposing amendments to, or reforms of, acts, regulations and administrative practices, particularly if they caused problems encountered by persons who file the petitions in order to enforce their rights.

1.7

INTERNATIONAL COOPERATION

The Ombudsman cooperates actively with international and intergovernmental organisations dealing with particular fields of human rights and fundamental freedoms (UN, EU, the Council of Europe, OSCE), Ombudsman Associations, other ombudsmen and the representatives of foreign countries in the Republic of Slovenia. Below is a brief description of the most significant part of the activities in this field.



IN 2019, THE OMBUDSMAN ATTENDED MORE THAN

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INTERNATIONAL EVENTS

COOPERATION WITH THE COUNCIL OF EUROPE

At the invitation of the Council of Europe Children's Rights Division, we attended the event titled »Monitoring places where migrant children are deprived of their liberty: How to conduct an effective visit?«, which took place in Paris, France, in March. The purpose of the seminar was to provide practical guidelines and skills for effecting visiting of places where children deprived of their liberty are accommodated.

The European Commission against Racism and Intolerance (ECRI) invited us to attend the conference commemorating its 25th anniversary in Paris, France, in September.

In the same month, we also hosted a delegation of the Committee of Experts of the European Charter for Regional or Minority Languages of the Council of Europe. The Committee visited Slovenia due to the fifth periodic report on the implementation of the Charter submitted by Slovenia to the Council of Europe, and the Committee wanted to meet the Ombudsman regarding problems about the protection of minority languages in Slovenia.

Together with a representative of the Peace Institute, one of the NGOs that cooperates in the implementation of the tasks and powers of the Slovenian NPM, we attended several events organised by the Council of Europe, the Association for the Prevention of Torture (APT) from Geneva and OSCE ODIHR on the occasion of the 30th anniversary of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of the Council of Europe in Strasbourg, France, in November.

COOPERATION WITH THE EUROPEAN UNION

In February, we attended the 3rd Workshop on handling of environmental complaints at the invitation of the Directorate-General for the Environment in Brussels, Belgium. The event was organised by the European Commission in cooperation with the Ecologic Institute and it took place at the Environment Department in Brussels. It was attended by representatives of the EU Member States from national administrative authorities, judicial authorities, inspectorates, local authorities and other public authorities. The Ombudsman's representative and the head of the department for environmental complaints at the Spanish Ombudsman, Pedro Baena, participated at the workshop as the representatives of the European Network of Ombudsmen.

We attended the European consultative workshop within the project, »Strengthening the rights of persons suspected or accused in criminal proceedings – the role of National Human Rights Institutions«, implemented by the Peace Institute in cooperation with the Ludwig Boltzmann Institute of Austria as the coordinator, and the Hungarian Helsinki Committee of Hungary and the Helsinki Foundation for Human Rights of Poland, which was organised in Budapest, Hungary, in February. The workshop was attended by the representatives of numerous European national human rights institutions (especially ombudsmen) and certain international organisations. The participants learned about the study on the functioning

of national human rights institutions in the field of procedural rights of persons suspected and accused in the European Union.

In April, the Ombudsman held an introductory meeting with Zoran Stančič, the Head of the European Commission's Representation in Slovenia.

We also attended the 12th European Forum on the rights of the child: Where we are and where we want to go, that was organised in Brussels in April by the European Commission and attended by the ENOC members (European Network of Ombudspersons for Children) and the representatives of Iceland and Norway.

In May, at the request of the TAIEX, the European Commission's instrument, we organised, in cooperation with the Ministry of the Interior, a study visit by the representatives of the Palestinian Council of Ministers and their Ministry of the Interior, and presented good practices and methodologies regarding complaint procedures in Slovenia. The visit was attended by Rudayna Baniowda from the Grievances and Human Rights Department of the Palestinian Ministry of the Interior, Kamel Darabuzidan, the Director General of the Complaints Directorate of the Palestinian Council of Ministers, and Ayman Fawadleh of the same Directorate. The Ombudsman's representatives presented the Ombudsman's institution to the attendees of the study visit, whereby they learned about the manner of processing individual complaints (specifically those that refer to police procedures) and the Ombudsman's operations in the role of the National Preventive Mechanism (NPM).

In June, we attended the expert meeting on the situation of national human rights institutions in the EU Agency for Fundamental Rights (FRA) in Vienna, Austria.

At the House of the European Union in Vienna, we attended the conference within the EU project, »Strengthening the rights of persons suspected or accused in criminal proceedings – the role of National Human Rights Institutions« in October. Within the project, its partners, i.e. the Ludwig Boltzmann Institute of Austria, the Hungarian Helsinki Committee of Hungary, the Helsinki Foundation for Human Rights of Poland and the Peace Institute of Slovenia, conducted detailed research on the current and future role of national institutions in the promotion and protection of the rights of persons suspected and accused in criminal proceedings, with a special emphasis on the application of suitable EU instruments.

COOPERATION WITH THE UNITED NATIONS

Riikka Peltonen Quijano, the representative of the Regional Office of UNHCR in Budapest, visited the Ombudsman's head office in April. We spoke about possible forms of cooperation.

In the margins of the Bled Strategic Forum in September, the Human Rights Council met at its second session. The introductory section of the session was attended by Michelle Bachelet, the United Nations High Commissioner for Human Rights. After meeting Ombudsman Svetina, who introduced the operations of this key consultative body and the importance of its functioning for the national human rights institution in Slovenia, Ms Bachelet spoke about certain challenges of the UN when enforcing guidelines for the realisation of human rights. The esteemed guest discussed, in particular, rights in the business sector, which was

also the central topic of the relevant Council's session.

In October, we attended a meeting of national human rights institutions, NGOs and permanent missions, which was organised in Geneva, Switzerland, before the discussion of the Universal Periodic Review by the UN Human Rights Council in Geneva. The UN Human Rights Council prepares a review of the realisation of human rights for the Member States every five years. This year, on 12 November, it was Slovenia's turn. The Ombudsman's representative actively participated at the meeting, where the most burning issues regarding fundamental human rights and freedoms were discussed.

COOPERATION WITH THE OSCE

In February, we attended the ombudsmen's meeting on the environment and spatial planning titled »Environmental Protection – Role of the Ombudsperson«, organised by the Human Rights Ombudsman of Bosnia and Herzegovina and supported by the OSCE Mission to Bosnia and Herzegovina, which took place in Banja Luka. The meeting was a continuation of the work of the Network of Ombudsmen for the Environment and Spatial Planning, which was founded in September 2017 in Ljubljana. The Ombudsman's representative spoke about the joint efforts of the Ombudsman and the civil society in Slovenia for a healthy living environment. She emphasised the importance of cooperation with the civil society as both advocate the rights of individuals and certain interest groups.

In April, we attended the expert meeting in Zagreb, Croatia, entitled »Addressing violations of rights at the border, racism, xenophobia and hate crime in the context of migration in South-Eastern Europe«. The meeting was attended by institutions involved in migration in South-Eastern Europe and the representatives of certain NGOs from Slovenia dealing with migrations in order to exchange views on expulsion, ill-treatment, racism, xenophobia and hate crimes against migrants and the civil society. This was also an opportunity for certain international (OSCE, ODIHR and FRA) and other organisations to present options to help and assist stakeholders working in this field.

We conducted a two-day training course for the personnel of the North Macedonian Ombudsman on writing letters of amicus curiae in Veles, North Macedonia, together with Tena Šimonović Einwalter, the representative of the Croatian Ombudsman, which was organised by the OSCE Mission to Skopje.

We welcomed the OSCE delegation from Skopje, North Macedonia, to a working visit in September. The delegation met with the representatives of various institutions in Slovenia and visited the Ombudsman. The representatives of the OSCE Mission to Skopje were particularly interested in the organisation of the institution of the Human Rights

Ombudsman in the Republic of Slovenia, its role, status and autonomy. The discussion partners paid attention to the relationship between the executive and legislative branches of government towards the national human rights institution.

COOPERATION WITH OMBUDSPERSONS, INTERNATIONAL OMBUDSMAN ASSOCIATIONS AND NATIONAL HUMAN RIGHTS INSTITUTIONS

In March, we hosted the delegation of the Committee on Human Rights and Freedoms of the Parliament of Montenegro.

We attended the conference of the European Network of Ombudsmen in Brussels, Belgium, in April. The conference, »The state of European democracy: Making citizen participation meaningful«, was opened by the European Ombudsman, Emily O'Reilly, with a discussion on exploring the wider political context, including the rise of populism and the normalisation of rhetoric and behaviour previously considered unacceptable. The participants were involved in various working groups where they discussed different topics such as participatory democracy, development of soft skills, GDPR, demographic challenges – ageing society, health care, family benefits, custody of children and the social rights of posted workers.

At the invitation of the Serbian Ombudsman, we attended the international conference in Niš in November, where we discussed the accessibility of ombudsman institutions for people. Deputy Horvat spoke at the first panel about the meetings of the Human Rights Ombudsman of the Republic of Slovenia held outside the institution's head office. This work method is not legally prescribed, but the Ombudsman introduced it in 1995 to get closer to people who are unable to come to its office in Ljubljana.

In November, we attended the annual meeting of the European Network of National Human Rights Institutions (ENNHRI) in Brussels, Belgium, where we spoke about the importance and role of national human rights institutions for the realisation of economic and social rights in Europe.

At the special invitation of the Armenian Ombudsman and under the auspices of the Armenian Prime Minister and the President of the National Assembly, we attended the international conference commemorating the 15th anniversary of the Armenian Ombudsman in Yerevan in November. Both institutions share a long-standing cooperation as Armenia reproduced and established a national preventive mechanism with the help of Slovenian colleagues. With the participants from other countries, Ombudsman Svetina discussed the challenges encountered by the institutions competent for the protection of human rights at their work.

Other Ombudsman's employees also attended and actively participated at various meetings and workshops organised by different international networks and organisations.

The European Network of National Human Rights Institutions (ENNHRI) organised a meeting of the Communications Working Group in Brussels, Belgium, in May, which combines twenty national human rights institutions. As part of the meeting, workshops on effective communication of social and economic rights took place. The Fundamental Rights Agency (FRA) prepared the meeting of the Communications Working Group with workshops in October.

The ENNHRI also organised a meeting in Madrid, Spain, on the topic of »Migrants' rights at the borders« in October.

At the international conference in Rijeka, Croatia, we held a lecture titled »Health-care as a Public Space. Social Integration and Social Diversity in the Context of Access to Healthcare in Europe«. The conference took place in September and was organised by the Department of Social Sciences and Medical Humanities of the Faculty of Medicine of the University of Rijeka.

In October, the Latvian Ombudsman hosted in Riga a workshop of the International Ombudsman Institute (IOI) on the General Data Protection Regulation and various aspects of this Regulation in everyday work.

As part of the thematic meetings of the CRONSEE Network, a discussion on best practices and challenges when supporting children of refugees and migrants took place in Tirana, the capital of Albania, in October. On this occasion, the members of the Children's Rights Ombudspersons' Network in South and Eastern Europe drafted joint observations and issued a joint statement commemorating the 30th anniversary of the Convention on the Rights of the Child.

The Ombudsman dedicates a lot of attention to enhancing bilateral relations. We thus responded to the invitation of the Catalan Ombudsman, Rafael Ribó, the President of the European Section of the International Ombudsman Institute and visited Barcelona in May. The purpose of the visit was to exchange experience and good practices in the field of human rights protection. The Catalan Ombudsman returned the visit in October. After the first meeting in Barcelona in May 2019, the second visit denoted the continuation of good bilateral cooperation whose aim was primarily the exchange of experiences between the institutions.

At the invitation of the Greek Ombudsman, Andreas I. Pottakis, we made an official visit to Athens, Greece, in December. During the visit, we spoke about good cooperation between both institutions and the activities within the Association of Mediterranean Ombudsmen presided over by the Greek Ombudsman. On this occasion, the Slovenian Ombudsman responded to an invitation by the Hellenic Parliament and addressed the members of the Standing Committee on Public Administration, Public Order and Justice and the Subcommittee for people with disabilities operating within the framework of the Special Permanent Committee on Equality, Youth and Human Rights. Ombudsman Svetina introduced the operations and the arrangement of the Slovenian national human rights institution and shared his experience regarding employing the disabled in Slovenia. Deputy Šelih spoke about the work, tasks and powers of the national preventive mechanism in Slovenia. The MPs listened to the guests' presentations with interest and thanked them for their guidelines and for sharing the experience and good practices.

INTERNATIONAL COOPERATION IN THE FIELD OF NPM

The Ombudsman's model of implementing the tasks and powers as the National Preventive Mechanism is still exceptionally interesting for other ombudspersons across Europe and beyond. Under the guidance of Deputy Ivan Šelih, the Ombudsman's colleagues attended the following events in 2019:

In March, we attended the scientific conference entitled »Compliance of Domestic Regulations with the Acquis of the European Union« in Banja Luka, Bosnia and Herzegovina. Our participation was active as we introduced the work of the national preventive mechanism in Slovenia.

In May, we attended the meeting on the functioning of the FRONTEX pool of monitors.

We attended the meetings of the SEE NPM Network in Skopje, North Macedonia, in June and October, which were organised by the Human Rights Ombudsman of North Macedonia within the framework of their presidency of the Network and with the assistance of the United Nations High Commissioner for Refugees (UNHCR). The meetings aimed at exchanging experience when forming policies for the prevention of retaliation as per Article 21 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

In September, we hosted a study visit for the representatives of the Croatian NPM.

We attended the first meeting of the Nafplion Group in Rome, Italy, in October. Assisted by the Council of Europe, the meeting was organised by the Italian NPM (Garante Nazionale dei Diritti delle Persone Detenute e private della Libertà Personale).

In October, we also responded to the invitation of the Georgian Ombudsman and attended the high-profile international conference entitled »Measuring and Enhancing the Impact of National Preventive Mechanisms«. The Georgian Ombudsman organised the conference on the occasion of the 10th anniversary of the Georgian National Preventive Mechanism.

The Ombudsman attended a workshop in Sofia, Bulgaria, in November intended for NPM titled »Working towards harmonised detention standards in the EU – the role of National Preventive Mechanisms (NPMs)«. The meeting was organised by the Ludwig Boltzmann Institute in cooperation with the Bulgarian Helsinki Committee.

At the invitation of the Croatian Ombudsman, we attended a round table on vulnerable groups in the prison system that took place in Split in December. The purpose of the round table was to exchange experience and highlight the need to recognise special vulnerable groups of prisoners, such as minors, women, the disabled, the elderly, members of ethnic and religious minorities, members of sexual minorities, foreigners and others, both at the start of incarceration and when planning their processing.

COOPERATION WITH EMBASSIES

In 2019, the Ombudsman also held several working meetings with various ambassadors. Among others, he hosted Andrej Slapničar, the Permanent Representative of the Republic of Slovenia to the Council of Europe in Strasbourg, Darja Bavdaž Kuret, the Permanent Representative of the Republic of Slovenia to the United Nations in New York, Jakob Štunf, the Ambassador of the Republic of Slovenia to the Holy See in the Vatican, and Sabina Repnik Stadler, the Permanent Representative of the Republic of Slovenia to the United Nations Office in Geneva. At the head office, the Ombudsman also hosted Klaus Riedel, the Ambassador of the Federal Republic of Germany in Ljubljana, and Susan K. Falatko, the Chargé d'Affaires ad interim at the US Embassy in Slovenia. The Ombudsman and his Deputies also met two representatives of the US Embassy in Ljubljana.

1.8

THE OMBUDSMAN AS THE NATIONAL PREVENTIVE MECHANISM

The Ombudsman also implements the tasks and powers of the National Preventive Mechanism (NPM). 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 preventive 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 have acquired the status of a humanitarian organisation in the Republic of Slovenia.«

The purpose of the execution of these tasks is to enhance the protection of persons deprived of their 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 or could 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.

Places of deprivation of liberty in Slovenia include:

- educational institutions,
- certain social care institutions – retirement homes and special social care institutions,
- psychiatric hospitals,
- the Aliens Centre and the Asylum Centre,
- detention rooms operated by the Slovenian Armed Forces,
- detention rooms at police stations and Ljubljana Police Detention Centre,
- prisons and all their units, including Radeče Juvenile Correctional Facility, and
- all other locations as per Article 4 of the Optional Protocol (e.g. police intervention vehicles, etc.).

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 led by Deputy Ombudsman Ivan Šelih. The unit includes three additional officials: **a graduate in criminal justice and security who is a specialist in criminal investigation** responsible for visiting prisons, police stations, foreigners and asylum centres, a **Master in Law** responsible for

visiting social care institutions and psychiatric hospitals, and a **law graduate** who is, within her work obligations, responsible for visiting residential treatment (educational) institutions and social care institutions.

Each group conducting a visit consists of the representatives of the Ombudsman and the selected organisations. **Non-governmental organisations, cooperating with the Ombudsman in 2019 when performing the tasks of the NPM, include:** Novi paradoks with four members, Humanitarno društvo Pravo za VSE with seven members, Caritas Slovenia with two members, SKUP – Community of Private Institutes with five members, Legal-Informational Centre for NGOs – PIC with four members, the Peace Institute with five members, the Slovenian Federation of Pensioners' Associations with seven members and now also Spominčica – Alzheimer Slovenija with four members and the Slovenian Foundation for UNICEF with three members.

In 2019, the NPM visited 63 locations in Slovenia where persons deprived of liberty are accommodated on the basis of an act issued by the authorities, i.e. 27 police stations, six prisons and Radeče Juvenile Correctional Facility, the Aliens Centre, two psychiatric hospitals, 19 retirement homes and four residential treatment institutions or youth homes, and several residential groups operating within these institutions. All visits (except the visit to the Intensive Child and Adolescent Psychiatry Unit of Ljubljana University Psychiatric Clinic, which was the NPM's first visit to the institution) were conducted without prior notification. There were 37 regular visits, 13 control ones (during which we particularly examined the realisation of NPM recommendations given during past visits) and 13 thematic visits (which focused on a certain topic selected in advance). Of 63 visits, 50 were conducted in the morning and 13 in the afternoon. For the first time, we also visited three locations where the Dolfka Boštjančič Education, Work and Care Centre of Draga pri Igu operates.

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 for 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).

All recommendations and responses from competent authorities regarding the NPM visits in 2019 are published in special tables on the Ombudsman's website in accordance with the institutions visited.³ The full recommendation is listed in the table, followed by a brief explanation of the recommendation if necessary. The key word is used for a clarification of the type of recommendation (systemic, general, or targeted), including a response to the recommendation and the comment on the response if necessary, findings from the control visit,

³ See: <https://www.varuh-rs.si/en/about-us/organisational-units-and-hro-council/ombudsman-as-a-nmp/>

and the response to these findings. Good practice and commendations provided during our work are also entered into the table. On the basis of the responses (from the institution visited or their superior body) to our recommendations, we take into consideration that a visited institution and/or its line ministry has accepted an NPM recommendation, carried it out, or has not accepted it. The realisation of our recommendations is regularly verified during our subsequent visits to the institutions in question and, if necessary, by way of control visits.

The National Preventive Mechanism drafts a report on its work every year. The report of the NPM for 2019 is its twelfth and is printed in a separate publication, but it forms an integral part of the regular Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2019. Both reports are published on the Ombudsman's website.

The NPM may also submit proposals and comments regarding applicable or draft acts (Article 19 of the Optional Protocol). This option 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 2019, we thus participated in the working group of the Ministry of Health when drafting the amendments to the Mental Health Act (ZDZdr), and we also provided our comments and proposals to the drafts of the Liability of Minors for Criminal Offences Act and the Act on the Intervention for Children and Teenagers with Emotional and Conduct Disorders and Problems in Education. We also submitted our comments when drafting the Rules amending the Rules on the Implementation of Prison Sentences and other regulations.

1.9

CHILD ADVOCACY



Posters on child advocacy intended for children and their parents

Child advocacy became the Ombudsman's regular task when an amendment to the Human Rights Ombudsman Act was passed in 2017. The advocacy was described in more detail in the 2018 Report, and it was introduced to the expert public at five consultation sessions (Maribor, Koper, Murska Sobota, Celje and Novo mesto) where we were surprised by the positive response from expert workers of social work centres, courts, and also schools, kindergartens, health care, police and NGOs.

During the consultations, we focused particularly on showcasing individual cases in an anonymised form as the advocacy's advantages and also its (limited) possibilities are presented best with concrete examples from everyday life. Every year, the Ombudsman receives several unfounded proposals for appointing an advocate, which are rejected since a child either requires an advocate in a certain legal procedure or an authority conducting the procedure assesses that an advocate could successfully replace a required expert opinion. In its work, the Ombudsman ascertains that the familiarisation with, and understanding of, the child advocacy still varies greatly, and it is thus determined that it would continue to educate the broader expert public about the advocacy in 2020 as well.

On 15 April 2019, the Family Code (DZ) became fully applicable and linked the implementation of children's right to an advocate to the entry into force of a special act on advocacy.

Since the start of the application of the DZ, the Ombudsman discussed several proposals either from a parent, a mediator or a court which proposed mediation to the parents so that their minor children could also be indirectly involved in the mediation procedure.

In some cases, we submitted a child's statement drafted during the advocacy procedure to the mediator, subject to the parents' and child's consent. When speaking with certain mediators and lawyers, these expressed a desire to include the child's opinion in the mediation procedure more frequently, but they were unfamiliar with the advocacy. They proposed that a broader circle of mediators and lawyers becomes acquainted with the advocacy.

At its session on 23 September 2019, the Expert Council for Child Advocacy, which monitors the implementation of child advocacy as per the Human Rights Ombudsman Act, also discussed the inclusion of children in mediation procedures. The Council adopted the position that if a child is appointed an advocate and the parents participate in the mediation, the child's statement is also sent to the mediator based on the parents' and child's consent. If the advocacy has not yet been completed, the mediator becomes acquainted with the advocacy so that the mediation is not completed without the acknowledgement of the child's opinion.

The Expert Council also highlighted that caution is required when including children directly in mediation as this may be an additional burden for the child if they are already included in the advocacy or when the conditions are met for the advocate to be appointed. The time aspect is also important in this respect and competent institutions (e.g. SWC, the court) must inform the parents about the option for advocacy in a timely manner.

According to the opinion of the Expert Council, it is vital that the mediators are informed of the advocacy, and it is expected that the Ombudsman will ensure that the advocacy is discussed at training courses for new mediators and in the further mandatory training of active mediators.

To exchange opinions and present the Ombudsman's practice with regard to the foregoing, we invited to a meeting in October 2019 representatives of both competent ministries, i.e. the Ministry of Labour, Family, Social Affairs and Equal Opportunities and the Ministry of Justice, including the Judicial Training Centre and the Association of Centres for Social Work, which are responsible for mediators' education in the field of justice or social matters.

The reason for the meeting was a delay of several months when drafting the Rules on Mediation in accordance with the Family Code (the Rules) which govern the mediation procedure as per the DZ and the rules for work, education and supervision over the work of mediators according to the DZ.

The participants of the meeting fully agreed with the opinion of the Expert Council for Child Advocacy. The Ombudsman's representatives also pointed to the in-

terpretation of Article 210 in the commentary of the DZ (ed. B. Novak), which anticipates direct inclusion of children in mediation that may only exceptionally be in the interest of a child, but only when the parents have already agreed on key matters which do not prevent the child's active participation.

The Rules were finally passed in December, as was promised by the competent authorities at the meeting in October, but that does still not suffice for mediation to commence at social work centres as the Rules anticipate numerous tasks to be implemented beforehand. It was nevertheless agreed that child advocacy would be included in various education courses of the Judicial Training Centre.

The Ombudsman determines that the decision on the inclusion of children in mediation is multi-layered and requires a broader expert discussion that would combine the drafters and interpreters of the DZ, the mediation providers and their intermediaries, social work centres and courts.

Regarding diverging views on when and in what way a child should be included in mediation and the very diverse practices that we have learned about from the discussed complaints, the Ombudsman will carefully monitor the work of the competent ministry in this field in the future so that the legal provision is actually applied in practice with the aim of children's more frequent participation in decision-making about their future without causing them additional distress.

In consideration of the new field that may be incorporated in the advocacy, the Ombudsman will inform the advocates about the rules of mediation in the future so that they can provide suitable information to children when this is necessary.

Within the activities underway in child advocacy, the Ombudsman notices inconsistent implementation of Article 3 of the United Nations Convention on the Rights of the Child as lengthy procedures involving a child are certainly not in the best interest of the child. The authorities should take advantage of all legal and procedural options available so that the procedures involving children are implemented as soon as possible. The appointment of an expert, or even several experts in one case, is one of the key obstacles when resolving lengthy procedures in court as there are too few court experts and these are too burdened as per the number of cases allocated to them by courts, which is the reason why procedures are unreasonably protracted.

With the enforcement of the Non-Contentious Civil Procedure Act as of 14 March 2019, there should no longer be any legal obstacles for the full realisation of children's rights as per Article 12 of the United Nations Convention on the Rights of the Child.

In 2019, the Ombudsman received 88 proposals for the appointment of an advocate, of which the advocate was appointed in 37 cases. In 23 cases, the conditions were not met to appoint an advocate, and 28 cases that began in 2019 are also underway in 2020.

Most frequently, i.e. in 44 cases, the proposers were parents, courts were proposers in 25 cases, SWC in 13 cases, and in six cases, the proposer was another party. There were no children among the proposers in 2019.

Regarding regional classification, it must be highlighted that among 65 children (39 girls and 26 boys) appointed an advocate, 17 were from the Gorenjska region, 14 from north-eastern Slovenia, nine from Primorska, the Karst and Notranjska, eight from Ljubljana and its surrounding area, eight from the Celje area, Koroška and Zasavje, five were from Dolenjska and Posavje and four from the Goriška region.

The advocate was appointed to 48 children on the basis of their parents' consent; two children were appointed an advocate on the basis of the consent of a child above the age of 15; 15 children were appointed an advocate by means of a court decision, while no advocate was appointed on the basis of a SWC decision in 2019.

In total, 591 meetings with children were held, which is the largest number in the history of child advocacy; the average age of a child was 10.8 years.

Eleven persons passed the exam for an advocate and 15 new advocates completed the theoretical part of advocate training. **At the end of 2019, the Ombudsman had a list of 63 advocates.**

Some **7 supervisory groups** were formed in the territory of the entire country in 2019, and each group carried out 20 hours of supervision. All advocates attended regional supervision sessions every second month at their regional coordinator. The intervention of regional coordinators took place at the Ombudsman's head office; 10 meetings were implemented.

Expert training of advocates was carried out on 25 May 2019 in Ljubljana, while a two-day expert consultation was organised between 11 and 12 October in Portorož.

In 2020, we will continue regional consultations on advocacy as such practice has proven very effective for disseminating information on child advocacy to the expert public.



Recommendation no. 13: In cases of child advocacy, the Ombudsman establishes that the lack of court experts in family matters may result in violations of children's rights, which requires the immediate action of the competent authorities.

Example: Child advocacy in long-standing disputes between parents

In proposals to appoint an advocate to a child, the Ombudsman frequently discusses cases in which children are involved in court proceedings much too frequently than is suitable for their age and level of maturity.

In one of the cases, the father of a 12-year-old boy filed at the court a proposal for the fourth time in six years after the divorce to determine contacts, change contacts and finally to withdraw the mother's parental right as the father's contacts with his son were not carried out in a way and within the scope the father wanted and were also broken off periodically over the years.

With regard to his relationship and contacts with his parents, the boy was at the social work centre at least three times during this period. He was appointed an advocate for the first time at the age of seven and he already stated at that time that he did not want contact with the father. The reasons lay in several bad experiences with the father, which he shared with the advocate and with which the court was acquainted. The court expert also believed at the time that contact could not be carried out without detriment to the child, and it was decided that contact would be implemented under the centre's supervision, but these soon ceased because the child was in distress. The expert noted that the child's behaviour corresponded to that of a person who had undergone a traumatic experience, although the cause was undefinable. The court failed to determine contact.

After a long time without contact, the father filed a new motion to determine contact and the family underwent psychotherapeutic treatment, which was not successful. The social work centre held another interview with the boy during which it was determined that he showed distinct signs of distress and a disrupted sense of security due to several years of conflict between the parents. The child stated that he was afraid of his father and of losing his mother. He was upset with the institutions and various experts because he had already stated his opinion about contact with his father several times, yet he was being asked about that time and again.

In recent court proceedings for the withdrawal of the mother's parent right, the court contacted the Ombudsman for a re-appointment of an advocate as the parents agreed on that matter. We notified the court that we would not appoint the advocate only because the parents agreed to it, but we would also ask the boy, who was now twelve, about it. The court observed our opinion and the boy's wish to meet the advocate after the summer holidays.

In agreement with the mother, the boy met with the advocate, whom he had already spoken with five years previously. He remembered her well and still trusted her although they had had no contact in the interim. He was willing to listen to her again about what advocacy was and what he could expect from it, and she also explained about what kind of proceedings were underway at the court.

The boy was not excited about the advocacy but was nevertheless willing to meet the advocate several times more in order to draft his opinion for the court about his relationship and contacts with his parents. He also expressed the desire to speak to the judge in the presence of the advocate and his wish was granted.

We can understand the father's despair due to the fact that his son was refusing to have contact with him, but we would like to highlight the situation of a minor who was, unwill-

ingly and for no fault of his own, involved in the court disputes of his parents four times between the ages of six and twelve.

What consequences a child may suffer when growing up in such an environment, we are unwilling to predict, but it is nevertheless the adults' responsibility to protect a child from the harmful conduct of the parents as effectively as possible, and lengthy irregular contact of the child with both parents certainly can be construed as harmful.

The advocate can also pose additional stress for the child in this case, which is why special caution is required about when and in what circumstances the institutions require the appointment of an advocate.

The Ombudsman does not appoint an advocate based only on the court's request or both parents' consent. It is vital that the child is willing to cooperate with the advocate as it is their right to express their opinion, but not their duty.

In an informal interview with the judge, the boy explained his reasons for rejecting contacts in the presence of the advocate, and the court decided that there were no grounds for withdrawing the mother's parental right. In this case, the child's opinion was heard and observed.

We hope that with the help of suitable experts and the mother, the father and son re-establish contact after several years, which would be in the interest of the child and a satisfactory outcome for everyone. However, there are still six years before the boy becomes an adult, during which time new court proceedings are likely to be instigated.

Example: Discussion of a proposal to appoint an advocate in the procedure of changing contacts

The Ombudsman received a proposal from a mother who requested that an advocate be appointed to her son in the procedure of changing the child's contact with his father, but due to prompt and effective cooperation between the mother, SWC and the court, the advocate was not needed.

The mother of a 13-year-old boy, whose contact with his father was determined by agreement, wrote to the Ombudsman. Because the father worked abroad, he usually had contact with his son once every two months on the weekends when he returned home. The mother explained that the son did not want to have contact with his father because he was upset during the last two visits as the father did not make time for him. The father made him go to bars with him and he was drunk. The son told his mother that he wanted a different contact arrangement with his father. The mother informed the SWC about what had happened, and they spoke with the boy and suggested that the mother file a motion with the court for supervised contact and to appoint an advocate.

When examining the proposal to appoint an advocate, we spoke with the mother and the SWC, and we also decided to propose the appointment of the advocate to the father. The father did not submit his consent and also failed to respond to our letter. We received a call from his partner, who justified his lack of response and also denied that her partner had alcohol problems. When his son is with him at weekends, her son also visits, and they have another child together.

We informed the mother and the SWC that we did not obtain the father's consent. At this

time, the mother acquired free legal aid and proposed to the court to issue an interim order to determine supervised contact. We learned from the SWC that they conducted an interview with the partner's son, who confirmed the story of the proposer's son. The SWC assessed that contact was not in the best interest of the child due to the father's heavy drinking and instigated procedures to protect all children in the family. They submitted their opinion to the court in which they supported the mother's proposal for supervised contact.

The court promptly convened the first hearing, at which the judge proposed that a court expert be appointed in the case and not a child advocate as that would supposedly prolong the proceedings. We consulted with the SWC and the mother about the suitability of submitting a proposal to the court for appointing an advocate. The SWC believed that the boy had good support from the mother and the appointment was not necessary with regard to the events. The mother agreed and the son was of the same opinion. As the boy had already stated his opinion at the SWC and an expert was appointed in the case, and the SWC thought that the mother heard and supported the child, we assessed that the appointment of an advocate was no longer required and we did not propose that the court appoint an advocate on the basis of an order.

Example: The Family Code introduces the option of including a child in mediation – directly or through a child advocate?

Since the Family Code (DZ) entered into force on 15 April 2019, the Human Rights Ombudsman of the Republic of Slovenia has discussed several times within the field of child advocacy the proposal from one of the parents, a mediator or the court which advised the parents to use mediation, to also indirectly involve minor children in the mediation procedure.

In some cases, we submitted a child's statement drafted during the advocacy procedure to the mediator subject to the parents' and child's consent. When speaking with certain mediators and lawyers, they expressed a desire to include the child's opinion in the mediation procedure more frequently, but were unfamiliar with the advocacy. They proposed that a broader circle of mediators and lawyers becomes acquainted with the advocacy.

At its session in September 2019, the Expert Council for Child Advocacy, which monitors the implementation of child advocacy as per the Human Rights Ombudsman Act, also discussed the inclusion of children in mediation procedures. The Council adopted the position that if a child is appointed an advocate and the parents participate in the mediation, the child's statement should also be sent to the mediator based on the parents' and child's consent. If the advocacy has not yet been completed, the mediator will then become acquainted with the advocacy so that the mediation is not completed without acknowledging the child's opinion.

The Expert Council also highlighted that caution is required when including children directly in mediation as this may be an additional burden for the child if they are already included in the advocacy or when the conditions are met for the advocate to be appointed. The time aspect is also important in this respect and competent institutions (e.g. SWC, the court) must inform the parents about the option for advocacy in a timely manner.

According to the opinion of the Expert Council, it is vital that the mediators are informed of the advocacy, and it is expected that the Ombudsman will ensure that the advocacy is discussed at training courses for new mediators and in the further mandatory training of active mediators.

To exchange opinions and present the Ombudsman's practice with regard to the foregoing, we invited to a meeting in October 2019 representatives of both competent ministries, i.e. the Ministry of Labour, Family, Social Affairs and Equal Opportunities and the Ministry of Justice, including the Judicial Training Centre and the Association of Centres for Social Work, which are responsible for mediators' education in the field of justice or social matters.

The reason for the meeting was a delay of several months when drafting the Rules on Mediation in accordance with the Family Code (the Rules) which govern the mediation procedure as per the DZ and the rules for work, education and supervision over the work of mediators according to the DZ.

The participants of the meeting fully agreed with the opinion of the Expert Council for Child Advocacy. The Ombudsman's representatives also pointed to the interpretation of Article 210 in the commentary of the DZ (ed. B. Novak), which anticipates direct inclusion of children in mediation that may only exceptionally be in the interest of a child, but only when the parents have already agreed on key matters which do not prevent the child's active participation.

The Rules were finally passed in December, as was promised by the competent authorities at the meeting in October, but that does still not suffice for the mediation to commence at social work centres as the Rules anticipate numerous tasks that require implementation beforehand. We nevertheless agreed that advocacy would be included in various programmes of the Judicial Training Centre and presumably also in the education of mediators at social work centres.

The Ombudsman determines that the decision on the inclusion of children in mediation is multi-layered and requires a broader expert discussion that would combine the drafters and interpreters of the Family Code, the mediation providers and their intermediaries, social work centres and courts.

Regarding diverging views on when and in what way a child should be included in mediation and the very diverse practices that we have learned about from the discussed complaints, the Ombudsman will carefully monitor the work of the competent ministry in this field in the future so that the legal provision is actually applied in practice with the aim of more frequent participation for children in decision-making about their future without causing them additional distress.

In consideration of the new field of advocacy that may become topical, the Ombudsman will inform the advocates about the rules of mediation in the future so that they can provide suitable information to children when this is necessary.

[More examples from the work of child advocates](#) are featured in the electronic version of the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2019 at www.varuh-rs.si.

1.10

RELATIONS WITH THE MEDIA IN 2019

When amending the Human Rights Ombudsman Act (ZVarCP-B) in 2017, the status of the Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) and consequently the level of respect for human rights became further enhanced, which is in the best interest of individuals, the country and society as a whole. The Ombudsman's powers have been expanded due to the amendments.

Due to the amendments, certain changes in the way in which communication is undertaken with various sectors of the public were necessary, including the use of different communication tools. After starting his term in February 2019, Peter Svetina, the Human Rights Ombudsman, designed guidelines for improving operations in the field of public relations. The aim of this proactive approach is to achieve high-quality substantive participation in discussions on the issue of human rights, enhance the role of the institution as a credible player when ensuring human rights and fundamental freedoms, and raise awareness of the importance of respect for human rights. Various forms and methods of raising the awareness of certain target groups regarding the Ombudsman's work and contents are being formulated that promote the importance of human rights and the ways in which they are enabled.

We enhanced our presence on Facebook and also became active on Twitter where the Ombudsman informs the public about its opinions on issues related to human rights and fundamental freedoms, and contributes to intensive communication on certain content important for society in the field of human rights. This enhanced social media presence has replaced the sending of weekly newsletters to a limited number of addressees. All events organised by the Ombudsman, all meetings and various activities are extensively presented to various sectors of the public and representatives of the media in person. The media further and regularly express interest in the issues involving human rights, and Ombudsman Svetina always responds to their invitation to present the Ombudsman's views or details on the matters examined.

The Ombudsman also continues to ensure the publicity and transparency of its work on its website, where its recommendations to different bodies and notifications about its work are promptly published, including the complaints with which it deals.

A group of colleagues prepared an intensive campaign in 2019 on raising the awareness of different authorities and the general public about child advocacy. The addressing of the public was intensive, the response was excellent and so was the media coverage. The reporting about the Ombudsman's meetings outside the head office was also enhanced, including the visits by the Ombudsman's workers to various institutions which accommodate the most vulnerable groups, including public institutes, administrative units, social work centres, primary schools, inspection services, other authorities, and the Ombudsman's work which takes place in a different municipality each month.

International relations were also enhanced with the implementation of the tasks of the national human rights institution. The public was promptly informed of the forms of international cooperation. The European Network of National Human Rights Institutions (ENNHRI) organised a meeting of the Communications Working Group in Brussels, Belgium, in May, which combines twenty national human rights institutions. As part of the meeting, workshops on effective communication of social and economic rights took place. In October, the Fundamental Rights Agency (FRA) prepared a meeting of the Communications Working Group with workshops.

1.11

LEGAL BASES OF THE OMBUDSMAN'S WORK

THE CONSTITUTION OF THE REPUBLIC OF SLOVENIA

Article 159

(Ombudsman for Human Rights and Fundamental Freedoms)

In order to protect human rights and fundamental freedoms in relation to state authorities, local self-government authorities, and bearers of public authority, the office of an Ombudsman for the rights of citizens shall be established by law.

THE HUMAN RIGHTS OMBUDSMAN ACT

(ZVarCP; Official Gazette of the Republic of Slovenia [Uradni list RS], No. 69/17 – official consolidated text)

Article 1

To protect human rights and fundamental freedoms against state authorities, local self-government bodies and holders of public authority, the Human Rights Ombudsman and their jurisdiction and powers shall be established by this Act

Comment on Article 1

The foregoing text is from paragraph one of Article 159 of the Constitution of the Republic of Slovenia, but the word "citizens" (in Slovenian: male citizens) appearing next to the name of the institution has been deleted, as it would be discriminatory if the Ombudsman protected only the rights of male citizens.

In its work, the Ombudsman shall be independent and autonomous. In its work, the Ombudsman shall comply with the provisions of the Constitution of the Republic of Slovenia and international legal acts on human rights and fundamental freedoms. When intervening, the Ombudsman may also invoke the principles of equity and good administration (Article 3 and 4 of the ZVarCP).

In addition to general provisions, the Human Rights Ombudsman Act also defines the election and position of the Ombudsman, the jurisdiction of the Ombudsman and his/her deputies, the procedure for processing complaints, the maintaining of personal databases, the rights of the Ombudsman, and his/her duties.

THE RULES OF PROCEDURE OF THE HUMAN RIGHTS OMBUDSMAN

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

The new Rules of Procedure of the Human Rights Ombudsman that entered into force on 26 January 2019 was adopted on 3 January 2019.

The Rules harmonised the organisation of the Ombudsman with the Act Amending the Human Rights Ombudsman Act (ZVarCP-B; Official Gazette of the Republic of Slovenia [Uradni list RS], No. 54/17) from 2017. The Rules also govern the method of work of the Human Rights Ombudsman, define the division of work areas and the procedure for processing complaints.

The Ombudsman's first Rules were 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 Human Rights Ombudsman Act defines the establishment of the **Human Rights Ombudsman Council** (Article 50a) as the Ombudsman's consultative body and three internal organisational units:

- **Child advocacy** (Article 25a)
- **Human Rights Centre;** conducting broader tasks, including the promotion of human rights (Article 50b)
- **National Preventive Mechanism as per the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (NPM)** (Article 50c)

RULES OF PROCEDURE OF THE OMBUDSMAN'S COUNCIL

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

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.

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 as of 29 June 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.

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 as of 9 November 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 preventive 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:

- Constitutional Court Act,
- State Prosecution Service Act,
- Courts Act,
- Judicial Service Act,
- Equal Opportunities for Women and Men Act,
- Defence Act,
- Patient Rights Act,

- Environmental Protection Act,
- Personal Data Protection Act,
- Criminal Procedure Act,
- Police Tasks and Powers Act,
- Attorneys Act,
- Enforcement of Criminal Sanctions Act,
- Administrative Fees Act,
- Classified Information Act,
- Integrity and Prevention of Corruption Act,
- Infertility Treatment and Procedures for Biomedically-Assisted Procreation Act,
- Public Employees Act,
- Public Sector Salary System Act,
- Court Experts, Certified Appraisers and Court Interpreters Act,
- Travel Documents Act.

International acts that govern the Ombudsman's operational standards:

- Principles referring to the status of national institutions (Paris Principles) adopted by UN General Assembly resolution 48/134 of 20 December 1993,
- Principles on the protection and promotion of the Ombudsman institution (the Venice Principles) adopted by the Venice Commission at its 118th Plenary Session (Venice, 15–16 March 2019) and endorsed by the Committee of Ministers at the 1345th Meeting of the Ministers' Deputies (Strasbourg, 2 May 2019).

1.12

FINANCES

Review of the Ombudsman's resources in 2019 by budget headings within individual sub-programmes

	Funds allocated (AB) in EUR	Applicable budget (AP) in EUR	Funds used in EUR	Residual balance as compared to AR in EUR
Human Rights Ombudsman of the Republic of Slovenia	2,803,988	2,844,150	2,828,403	15,747
SUB-PROGRAMMES				
Protection of human rights and fundamental freedoms	2,502,934	2,549,275	2,545,279	3,996
Salaries	1,777,934	1,827,354	1,823,816	3,538
Material costs	525,000	543,413	542,996	417
Investments	200,000	178,508	178,467	41
Implementation of the tasks and powers of the NPM	181,054	166,152	166,152	0
Salaries	124,554	114,136	114,136	0
Material costs	45,000	43,954	43,954	0
Cooperation with non-governmental organisations	11,500	8,062	8,062	0
Child advocacy	120,000	117,026	116,972	54
Material costs	120,000	117,026	116,972	54
Earmarked funds*	0	11,697	0	11,697
Compensation funds	0	2,147	0	2,147
Funds from the sale of state assets	0	9,550	0	9,550

*Earmarked funds will be carried over into the 2020 budget.

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. The National Assembly allocated EUR 2,803,988 in the 2019 state budget for the Ombudsman's work.

The Ombudsman transferred EUR 11,697 to the 2019 budget (funds from received compensations and the sale of state assets). During the year, the Ombudsman received additional funds in the amount of EUR 55,000 for salaries (Decision of the Government of the Republic of Slovenia, no. 41012-46/2019/3 of 19 November 2019).

For the needs of covering legal obligations from the state budget, the Ombudsman reallocated EUR 26,535 at the end of the year.

With the observance of the aforementioned, the applicable budget of the Ombudsman for 2019 amounted to EUR 2,844,150.

On three sub-programmes, the Ombudsman spent EUR 2,828,403, i.e.:

- protection of human rights and fundamental freedoms: EUR 2,545,279;
- implementation of the tasks and powers of the NPM: EUR 166,152;
- child advocacy: EUR 116,972.

Funds spent on the sub-programme Protection of human rights and fundamental freedoms

In 2019, EUR 1,823,816 were spent on wages and other staff expenses, of which wages and benefits amounted to EUR 1,382,004; annual leave allowance to EUR 41,462; reimbursement and compensation to EUR 67,760; funds for work performance for increased workload to EUR 29,973; funds for overtime work to EUR 5,101; other employees expenses to EUR 48,054, and funds for employer's social security contributions to EUR 234,478. Some EUR 17,983 were spent on premiums for collective supplementary pension insurance as per the Collective Supplementary Pension Insurance for Public Employees Act.

In 2019, EUR 542,996 were spent on material costs. Some EUR 189.39 were spent on office and general material and services (the largest amount was earmarked for the design and printing of the Ombudsman's Annual Report, which was published in Slovenian and English; the costs of translation of the Annual Report, various correspondence and complaints submitted to the Ombudsman by complainants in foreign languages, studies, contributions and articles). We spent EUR 8,514 on special material and services; EUR 19,772 on transportation; EUR 66,241 on electricity, water, municipal services and communications; EUR 30,931 on business trips; EUR 41,784 on regular maintenance; EUR 130,996 on business rents and leases, and EUR 54,920 on other operating costs.

In 2019, EUR 178,467 were spent on investment expenses.

Some EUR 51,399 were used for the purchase of a vehicle, EUR 99,240,97 for the purchase of equipment (the largest amount for office furniture and computer hardware), EUR 23,594 for investment maintenance and renovations, EUR 3,379 for the purchase of licensed software, and EUR 854 for the preparation of a plan and project documentation.

Funds spent on the sub-programme Implementation of tasks and powers of the NPM

In 2019, EUR 114,136 were spent on wages and other staff expenses. Wages and benefits amounted to EUR 87,249, the annual leave allowance to EUR 1,773, reimbursement and compensations to EUR 3,579, and payments for work performance for increased workload to EUR 602, while employer social security contributions amounted to EUR 14,547. EUR 976 were spent on premiums of collective supplementary pension insurance as per the Collective Supplementary Pension Insurance for Public Employees Act.

In 2019, EUR 43,954 were spent on material costs within the scope of the Optional Protocol, i.e. EUR 12,831 on office and general material and services, EUR 220 on communication services, EUR 1,918 on business trips, EUR 2,878 on other operating costs, and EUR 25,907 on commercial rentals.

From the funds earmarked for cooperation with NGOs, EUR 8,062 were spent in 2019, of which EUR 4,797 on other operating costs and EUR 3,265 on current transfers to NGOs and institutions.

Funds spent on the sub-programme Child advocacy

In 2019, EUR 116,972 were spent on child advocacy.

The funds were spent on material costs, of which EUR 10,085 were spent on office and general material and services, EUR 96 on communication services, EUR 168 on business trips, and EUR 106,623 on other operating costs (advocate expenses, supervisions, consultation sessions).



2.

CONTENT OF WORK AND REVIEW OF CASES HANDLED

- A. Vulnerable groups
- B. Substantive fields discussed

A. Vulnerable groups

2.1 FREEDOM OF CONSCIENCE AND RELIGIOUS COMMUNITIES

	CASES CONSIDERED			RESOLVED AND JUSTIFIED		
FIELD OF WORK	2018	2019	INDEX 19/18	NO. OF RESOLVED	NO. OF JUSTIFIED	SHARE OF JUSTIFIED AMONG RESOLVED
3. FREEDOM OF CONSCIENCE AND RELIGIOUS COMMUNITIES	5	1	20.00	1	0	0.0
3.1 FREEDOM OF CONSCIENCE	4	1	25.00	1	0	0.0
3.2 RELIGIOUS COMMUNITIES	0	0	0.00	0	0	0.0
3.0 FREEDOM OF CONSCIENCE AND RELIGIOUS COMMUNITIES – OTHER	1	0	0.00	0	0	0.0

2.1.1 General findings and assessment of the situation

As evident from the table above, only one complaint was discussed in the relevant field in 2019. But it must be added that religious matters frequently involve matters that are classified under the freedom of expression while observing other factors.

We also add that the session of the Council of the Government of the Republic of Slovenia for Dialogue on Religious Freedom was not convened in 2018 nor in 2019. At the end of November 2018, its then president submitted a message that not a single request for discussion from qualified proposers had been received since the last session (23 October 2017), but he still anticipated that the next session would be convened no later than by the end of March 2019. The new president then convened the fourth session only within the last four months of the year, which was then also cancelled (since “the representative of the Islamic Community in the Republic of Slovenia in the Council of the Government of the Republic of Slovenia for Dialogue on Religious Freedom withdrew from further dialogue on the issues of religious freedom which refer to his religious commu-

nity in his letters to the Council of 2 and 8 October 2019”⁴). We determined that since the last session of the Council of the Government of the Republic of Slovenia for Dialogue on Religious Freedom, which was convened in 2017, not a single representative of religious communities has filed a proposal for discussion in this forum. Not to be misunderstood, we add that we do not wish to criticise any of the parties involved, but we merely want to highlight certain facts that are in our opinion important for producing an overall assessment of the situation in this field. It is imperative for the Ombudsman that **it is clear that religious communities or their individual members are not prevented from making any contact with the authorities if they so desire.**



To summarise, a small number of complaints and a general (public) lack of engagement in dialogue by religious communities on the one hand denote a lack of actual serious problems in the religious field with regard to the state, while on the other hand, the seldom detected content in this field is usually quite emotionally intense, which shows that freedom of conscience or the functioning of religious communities also remain topical in modern society and can be sources of altercation – in this regard, the Ombudsman is frequently the target of criticism, as we have previously reported⁵. The same was noted in this reporting year; below, we describe in more detail the claims regarding the Ombudsman’s assumed discrimination against Christians in one of the cases. It is significant that we have witnessed similar, and just as easily refutable, claims in the past, e.g. from a representative of the Islamic Community in the Republic of Slovenia⁶. Such sensitivity, blindly focused only on one’s religious identity, in the face of numerous easily verifiable facts compiled from the Ombudsman’s practice, therefore says more about these critics than it does about the Ombudsman.

2.1.2 Realisation of the Ombudsman’s past recommendations

In recommendation no. 12 (2018)⁷, 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. **The recommendation remains unrealised**, but we are not repeating it again. With more than a two third majority of all deputies, the National Assembly ac-



⁴ Letter no. 013-16/2018/27 of 8 October 2019.

⁵ Previously on p. 75 of the Annual Report for 2017.

⁶ See the Annual Report for 2017, p. 76.

⁷ Annual Report for 2018, p. 100.

cepted the recommendation intended for⁸ “all institutions and high officials at all levels to observe the recommendations of the Human Rights Ombudsman of the Republic of Slovenia stated in the 24th Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2018”, but not even one deputy actually proposed the relevant amendment to the act, which suggests a lack of political will among the elected representatives of the people. After several years of submitting proposals to the ministry and with regard to the unrealised proposal after its submission directly to the legislator, we assess that it is not realistic to expect that repeating this recommendation would achieve its purpose.

2.1.3 The Ombudsman’s activities

The Ombudsman’s activity with substantive explanations about freedom of conscience and religious communities is addressed in more detail in the following chapters of the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2019 available on the Ombudsman’s website <www.varuh-rs.si> in the online edition of the report:

- 2.1.3.1 **Some would immediately repress dissenters – but through the Ombudsman!**
- 2.1.3.2 **A “Christmas greeting” may also hurt religious feelings**
- 2.1.3.3 **Should islamophobia be defined?**
- 2.1.3.4 **The Ombudsman’s activity relating to freedom of religion and religious communities in other chapters of the Annual Report**
- 2.1.3.5. **Freedom of religion in other chapters of the Annual Report**

Issues related to freedom of religion and religious communities are also discussed in the Annual Report under Chapter 2.12 Freedom of expression, i.e. in the following section:

- 2.11.3.3 **When the expression of an official clashes with religious feelings...**

⁸ Official Gazette of the Republic of Slovenia [Uradni list RS], No. 43/19.

2.2 NATIONAL AND ETHNIC COMMUNITIES

FIELD OF WORK	CASES CONSIDERED			RESOLVED AND JUSTIFIED		
	2018	2019	INDEX 19/18	NO. OF RESOLVED	NO. OF JUSTIFIED	SHARE OF JUSTIFIED AMONG RESOLVED
6. NATIONAL AND ETHNIC COMMUNITIES	26	25	96.15	17	1	5.9
6.1 SLOVENIANS ABROAD	1	3	300.00	1	0	0.0
6.2 POSITION AND RIGHTS OF THE ITALIAN AND HUNGARIAN NATIONAL COMMUNITIES AND THEIR MEMBERS	4	2	50.00	1	0	0.0
6.3 POSITION AND RIGHTS OF THE ROMA COMMUNITY AND ITS MEMBERS	13	16	123.08	11	0	0.0
6.4 OTHER NATIONAL OR ETHNIC COMMUNITIES	4	3	75.00	3	0	0.0
6.0 NATIONAL AND ETHNIC COMMUNITIES – OTHER	4	1	25.00	1	1	100.0

2.2.1 General findings and assessment of the situation

The numbers in the table above show that in the field of national and ethnic communities no significant changes occurred (at least relatively). The majority of cases in this field referred to the Roma community or its members in 2019. As in the previous year, we received letters from Kočevje and Šentjernej concerning the conduct of members of the local Roma communities. **On this occasion, the Ombudsman repeats⁹ its principled stance that inadequate legal and municipal services in Roma settlements pose a threat to the realisation of the human and special rights of the Roma community and its members on the one**

⁹ Official Gazette of the Republic of Slovenia [Uradni list RS], No. 43/19.

hand, and the realisation of the human rights and fundamental freedoms of other residents who live there on the other. Both have the right to feel hurt about their dignity, personal rights, property rights, equality before the law and, finally, trust in the rule of law. We emphasise again that the assurance of special protection for the Roma community and its members should not be equated with protection against any culpability for unlawful conduct.

Although **the decision of the European Court of Human Rights (ECHR) in the case of Hudorovič and Novak and Others v. Slovenia**¹⁰ was made in 2020, it is nevertheless of such importance that it must be mentioned in this Report. The applicants from the Roma settlements of Goriča vas v Ribnici and Dobruška vas in the Municipality of Škocjan complained about the circumstances regarding drinking water and sanitary facilities. The Chamber of Section II of the relevant court did not establish any violation of the Convention for the Protection of Human Rights and Fundamental Freedoms. The opinion of this international authority thus stated that the authorities met the Convention minimum. However, it must be emphasised that this judgment **does not represent the ultimate verdict of the Strasbourg Court on the rights of every Roma person in every Roma settlement in Slovenia**. Likewise, it should not be overlooked that this decision of the judges was not unanimous and was adopted with five votes against two (relating to the right to a private life in the case of Goriča vas). Nor would it be the first time that, following the appellants' appeal, the Great Chamber of the same court then ruled differently.

The relevant case is certainly historic as the ECHR dealt for the first time with the question of whether the Convention for the Protection of Human Rights and Fundamental Freedoms ensures the right to drinking water in circumstances in which there is no legal recourse for connection to a public water supply system. As is evident above, the reply was negative this time. It is necessary to point out that the relevant Convention is usually intended for the protection of the so-called first generation of human rights, i.e. civil and political rights. The social aspect (i.e. the second generation of human rights) is much more explicit in the relevant case and that gives rise to the question of whether the ECHR was actually the most appropriate forum to decide on this matter. **According to the Ombudsman, the relevant case is a specific warning that the Republic of Slovenia has not yet ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. As per this Protocol, the Committee on Economic, Social and Cultural Rights has powers to receive and discuss notifications from individuals and groups of individuals who are under the jurisdiction of the signatory state and believe that their economic, social and cultural rights as specified by the International Covenant on Economic, Social and Cultural Rights have been violated.**

¹⁰ Applications no. 24816/14 and 25140/14.



Recommendation no. 14: The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities, the Ministry of Foreign Affairs and the Government of the Republic of Slovenia do everything necessary while observing Article 75 of the ZZZ-1 to start the ratification procedure in 2020 for the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. The Ombudsman also advises that the National Assembly, at the proposal of the Government of the Republic of Slovenia, adopts the act on the ratification of the relevant protocol as soon as possible.

Relating to the above judgment of the ECHR in the case of *Hudorovič and Novak and Others v. Slovenia*, it must be stressed that it is evident from the judgment that **this court also recognised the Roma community (again) as a vulnerable social group. There should thus be no doubt that suitable attention must be (further) dedicated to their particularities.** After all, in its less than one year-old report on Slovenia, the European Commission against Racism and Intolerance, which is also a body of the Council of Europe, stated, as did the relevant court, that the unavailability of drinking water in Roma settlements or in their vicinity is one of the most serious indicators of the Roma's poor living conditions in the country. It thus repeated its recommendation that Slovenian authorities take immediate action. After his visit to Slovenia less than two years ago, the UN Special Rapporteur on Minority Issues reported that access to drinking water for the Roma community had not yet been adequately provided and that this issue should have been discussed as urgent at the highest levels.

After the relevant judgment of the ECHR, the Ombudsman still hopes that the efforts to enable decent living conditions for all Slovenian residents would continue. To avoid misunderstanding, we highlight in particular that this applies to all, not only to the Roma, and that we have drawn attention to the issue of access to drinking water in the area of Roma settlements and elsewhere in the country on several past occasions (e.g. also see Chapter 2.22.3.2 Municipal utility services in this Annual Report).

Two newly opened cases in 2019 referred to the Italian national community, which, together with the Hungarian national community, is already recognised at the constitutional level (only one complaint was concrete and it is discussed in more detail in the sub-chapter on the Ombudsman's activities and new recommendations), while no new complaints were received in connection with the Hungarian national community. Several such cases date from the period prior to 2019 and their discussion continued this year as described below.

There still remain wishes to register the national communities of the former Yugoslavia in the Constitution of the Republic of Slovenia; more on this can be found in the third sub-chapter below.

2.2.2 Realisation of the Ombudsman's past recommendations

Unfortunately, many of the Ombudsman's past recommendations that refer to national and ethnic communities remain only partially realised or even fully un-realised:

- **recommendation no. 17 (2018)**¹¹ with which the Ombudsman recommended that the Government pays special attention to older members of the Roma community in the next National Programme of Measures for Roma, and then include their protection among the fundamental strategic goals and define concrete measures in this regard;
- **recommendation no. 18 (2018)**¹² with which the Ombudsman proposed that the Office for National Minorities of the Government of the Republic of Slovenia proposes or submits 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 responsible for this field to examine the organisation of free bus transport for Roma children to primary school in the Municipality of Šentjernej and determine under sentence two of paragraph three of Article 88a of the Local Self-Government Act 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;
- **recommendation no. 19 (2018)**¹³ with which the Ombudsman proposed that the Office for National Minorities of the Government of the Republic of Slovenia proposes or submits 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 responsible for this field to examine the detailed sectoral programme and measures of the Municipality of Šentjernej, if these exist, or provide reasons why these do not exist, and determine as per sentence two of paragraph three of Article 88a of the Local Self-Government Act 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.

The online edition of the annual report available on the Ombudsman's website includes [additional substantive explanations](#) regarding the (non)realisation of past recommendations.

¹¹ Annual Report for 2018, p. 133.

¹² Annual Report for 2018, p. 134.

¹³ Annual Report for 2018, p. 135.

2.2.3 The Ombudsman's new recommendations and activities

2.2.3.1 Recommendations

With regard to national and ethnic communities, the Ombudsman gives the authorities the following recommendations:

14. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities, the Ministry of Foreign Affairs and the Government of the Republic of Slovenia do everything necessary while observing Article 75 of the ZZZ-1 to start the ratification procedure in 2020 for the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. The Ombudsman also advises that the National Assembly, at the proposal of the Government of the Republic of Slovenia, adopts the act on the ratification of the relevant protocol as soon as possible.

15. When drafting the next National Programme of Measures for Roma, the Ombudsman recommends that the Office for National Minorities of the Government of the Republic of Slovenia informs the competent Ministry of Labour, Family, Social Affairs and Equal Opportunities about the content referring to this topic in the Ombudsman's Annual Report for 2018, and propose that measures relating to the elderly members of the Roma community be included in the next programme after a thorough examination.

16. The Ombudsman advises the Government Office for National Minorities to propose 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 responsible for this field to examine the organisation of free bus transport for Roma children to primary school in the Municipality of Šentjernej and determine under sentence two of paragraph three of Article 88a of the Local Self-Government Act 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.

17. The Ombudsman recommends that the Government Office for National Minorities proposes or submits 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 responsible for this field to examine





the detailed sectoral programme and measures of the Municipality of Šentjernej, if these exist, or provide reasons why these do not exist, and determine as per sentence two of paragraph three of Article 88a of the Local Self-Government Act 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.

18. The Ombudsman advises the Ministry of Public Administration to draft proposals for amending the Act Regulating the Coat-of-Arms, Flag and Anthem of the Republic of Slovenia and the Flag of the Slovenian Nation as soon as possible, which will eliminate deficiencies of legal arrangements regarding supervision over the use of the flag of the Republic of Slovenia, and propose to the Government of the Republic of Slovenia to submit the proposals for amending the relevant Act to the National Assembly for discussion and adoption.

19. The Ombudsman recommends that the Ministry of Justice continues the discussion on using the languages of the Italian and Hungarian national communities in judicial proceedings, in which exclusive jurisdiction is determined in 2020, and to inform the Ombudsman about new findings and possible measures in this field before the end of the year.

20. The Ombudsman advises the Health Insurance Institute of Slovenia that Koper Regional Unit issues forms in Slovenian and Italian for the applicants requesting e-forms in Italian (the same recommendation applies to the issuance of forms in Hungarian in the territory where, in addition to Slovenian, the official language is also Hungarian).

21. The Ombudsman recommends that the Government of the Republic of Slovenia instructs the Ministry of the Environment and Spatial Planning on the basis of paragraph two of Article 56 of the State Administration Act to examine the fulfilment of legal obligations concerning the adoption of a detailed sectoral programme and measures for arranging spatial issues in Roma settlements (paragraph two of Article 6 in connection with paragraph eight of Article 16 of the Roma Community in the Republic of Slovenia Act) in the Municipality of Šentjernej and implement a task in this regard as per sentence two of paragraph three of Article 88a of the Local Self-Government Act.

22. The Ombudsman advises the Government of the Republic of Slovenia to enhance activities for drafting a special act for emergency regulation of Roma settlements.

23. The Ombudsman recommends that the Government of the Republic of Slovenia appoints a ministry to implement supervision as per Chapter 10 of the Local Self-Government Act over the (un)fulfilment of the legal obligation of the Municipality of Brežice regarding the adoption of a detailed sectoral programme and measures for legal regulation of the settlement of Krušče and the provision of municipal utility services (paragraph two of Article 6 of the Roma Community in the Republic of Slovenia Act).

The Ombudsman's activity with substantive explanations about national and ethnic communities is addressed in more detail in the following chapters of the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2019, available on the Ombudsman's website <www.varuh-rs.si> in the online edition of the report:

2.2.3.2 It is still not determined who will implement supervision over the use of the flag of the Republic of Slovenia

2.2.3.3 Languages of national communities in practice

- Operation of courts in the languages of national communities in judicial proceedings where exclusive jurisdiction is determined
- If the official language of the administrative authority is (in addition to Slovenian) also the language of a national community, the authority must ensure operations in the language as per the client's citizenship if so requested by the client during the procedure
- In areas where Italian or Hungarian are the official languages in addition to Slovenian, the applicants have the right to (also) request the issue of an e-form in the language of the national community

2.2.3.4 Briefly on the so-called Roma problem

- Lengthiness of the procedure for submitting the Final Report on the Work of the Inter-ministerial Working Group on Resolving Spatial Problems of Roma to the Government
- Legal obligation of adopting detailed municipal sectoral programmes and measures for realising the special rights of members of the Roma community as a dead letter
- Futility of regulating Roma settlements from the viewpoint of ownership right of legal land (co)owners – example of the Krušče Roma settlement

2.2.3.5 Legal situation of the national communities of the former Yugoslavia

2.2.3.6 The Roma in other chapters of the Annual Report

The Roma issues are also discussed in Chapter 2.11 Protection of dignity, personal rights, safety and privacy, i.e. in the following section:

2.11.3.4 Positions on a decent burial of Roma killed in World War II differ, and the legislation is incomplete

2.3 EMPLOYED PERSONS

	CASES CONSIDERED			RESOLVED AND JUSTIFIED		
FIELD OF WORK	2018	2019	INDEX 19/18	NO. OF RESOLVED	NO. OF JUSTIFIED	SHARE OF JUSTIFIED AMONG RESOLVED
10. LABOUR LAW MATTERS	161	124	77.02	109	7	6.4
10.1 EMPLOYMENT RELATIONS	72	33	45.83	31	2	6.5
10.2 PUBLIC-SECTOR WORKERS	66	61	92.42	50	5	10.0
10.3 OTHER	23	30	130.43	28	0	0.0

2.3.1 General findings and assessment of the situation

The key finding based on the table above is a significantly lower number of cases if compared to 2018. The reason may lie in the improvement of the economic situation in the country and in general, which stimulates activity in the labour market, increases the demand for workers and reduces unemployment. A reduced number of cases examined also lowers the proportion of cases in which violations and irregularities made by the authorities were established, resulting in a lower percentage of justified complaints, which amounted to 6.4 per cent in 2019, and 16.3 per cent in 2018.

On that note, we cannot overlook the fact that many questions relating to labour law were resolved during the Ombudsman's meetings held outside the head office and in direct dialogue with complainants whom we advised about the options for resolving the situation that occurred, where they could turn for help and which legal channels are available for eliminating violations and irregularities. The majority of these cases related to employment relationships in the private sector, which is not in the Ombudsman's direct jurisdiction.

The fundamental content of the discussed notifications and complaints by individuals, and with regard to our own observations and media publications, referred to the circumstances of performing work or a workplace, i.e. harassment in the workplace, employer's supervision of sick leave, problems of personal assistance providers and

personal assistants, refund of benefits for occupational rehabilitation, exploitation of people unfit to work for gainful employment, non-payment of wages, manner of paying wages, inability to take annual leave, extension of employment contract and fixed-term employment, cross-border provision of services, undeclared employment, and the work of the supervisory mechanisms related to all of the above issues. In the public sector, we dealt with the following open questions which have been topical for several years: the lack of staff in social care, the situation in the Slovenian prison system and the Slovenian Armed Forces, and others.

At our own initiative, we examined four issues related to the problems and lives of a greater number of people.

In particular, we established violations of the right to legal remedy, the right to personal dignity and safety, and the principle of good administration.

Cooperation with the competent authorities is assessed as good. As an example of excellent cooperation, we highlight communication with the Labour Inspectorate of the Republic of Slovenia and the Financial Administration of the Republic of Slovenia, which was implemented in written form. We met the representatives of the Health Insurance Institute of Slovenia (ZZZS), the Pension and Disability Insurance Institute of the Republic of Slovenia (ZPIZ), and the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ) in person and discussed with them current problems and options for their resolution.



There has been a significant improvement in communication with the MDDSZ, which we discussed in several past annual reports, whereby it is particularly commendable that the MDDSZ began intensively eliminating backlogs in decision making at the second level and the results are evident. More on this can be found in the chapter on other administrative matters.



The adoption of new legislation. As per the Act Amending the Minimum Wage Act, the definition and amount of the minimum wage changed on 1 January 2020. The latter now amounts to EUR 940.00 and does not include benefits determined by acts and collective agreements, including the length-of-service increment, part of the wage for work performance and payment for business performance. The hourly rate for student work is also higher as of the same date, based on the Act Amending the Fiscal Balance Act, and now amounts to EUR 5.40. The Act Amending the Labour Market Regulation Act provided for a more flexible regulation of the temporary and occasional work of retired persons. This change has the same temporal applicability as those mentioned above in the field of labour legislation.

The Ombudsman is pleased with the aforementioned changes as we have publicly stated several times that benefits should be excluded from the minimum wage; this was also stated in the 2018 Annual Report on page 254. **We repeat: the minimum wage should enable a decent standard of living for the worker and their family.**



2.3.2 Realisation of the Ombudsman's past recommendations

Unfortunately, numerous past Ombudsman's recommendations that refer to employed persons remain only partially or even fully unrealised:



- **recommendation no. 46 (2018)** stating that the Government must ensure that procedures in all supervisory institutions are carried out within reasonable time limits and that the Labour Inspectorate of the Republic of Slovenia (IRSD) obtains additional staff, by reassignments where possible, has been, according to the Government's response, partially realised due to the additional employment of inspectors for labour relations. The situation in the field of inspection overseeing the protection of health and safety at work and social inspection remained unchanged. **We emphasise that the relevant recommendation of the Ombudsman remains an ongoing task of the Government;**
- **recommendation no. 47 (2018)** states that the Government should monitor and implement measures to ensure a transparent, efficient and fast supervision system for the payment of wages, i.e. for net amounts and all withheld taxes related to wages. The Government replied that the recommendation was being implemented. The Ombudsman has recently received fewer complaints referring to these issues;
- **recommendation no. 48 (2018)** on urgent amendments to the Vocational Rehabilitation and Employment of Persons with Disabilities Act so that persons with disabilities 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, and that lunch costs are reimbursed to persons with disabilities who receive on-the-job training;
- **recommendation no. 49 (2018)** that the Ministry of Justice and the Government immediately commence resolving the problem of prison officers and adopt measures which will ensure the consistent protection of the rights of prison officers, protect their dignity and enable the effective operation of Slovenian prisons;
- **recommendation no. 50 (2018)** refers to the Government's obligation to provide national defence security and a stable working environment. It should also supply sufficient financial, human and other resources for work in the Slovenian Armed Forces, which is an ongoing task;
- **recommendation no. 51 (2018)** was used by the Ombudsman to request that the Minister of Public Administration prioritises the Public Sector Salary System Act;
- **recommendation no. 84 (2014)** discusses necessary additional employments in the Inspection Board;
- **recommendation no. 113 (2013)** refers to the credible interpretation of Article 137 of the Employment Relationships Act (concerning the direct payment of benefits from the ZZZS);
- **recommendations no. 110 (2013) and no. 85 (2014)** concern amendments to the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act so that non-payments for work which an individual must perform prior to submitting an extraordinary termination of employment relationship will also be considered priority claims;

- **recommendations no. 111 and no. 113 (2013)** concern amendments to the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act regarding the state's liability for the non-payment of severance pay in state-owned companies.

The online edition of the annual report available on the Ombudsman's website includes [additional substantive explanations](#) regarding the (non)realisation of past recommendations.

2.3.3 The Ombudsman's new recommendations and activities

2.3.3.1 Recommendations

On the basis of the considered topics, the Ombudsman forwards to the competent authorities the following recommendations:

24. The Ombudsman again recommends that the Government of the Republic of Slovenia regularly monitors and implements measures which will ensure a fast supervision system for the payment of wages, i.e. for net amounts and all withheld taxes related to wages (ongoing task).

25. The Ombudsman advises the Ministry of Labour, Family, Social Affairs and Equal Opportunities to legally define precarious work, its most common forms and prohibit precarious employment relationships while enforcing sanctions for violating this ban.

26. The Ombudsman recommends that the Government of the Republic of Slovenia ensures the drafting and adoption of the rules for the return of contributions and the reimbursement of costs for exercising the rights arising from compulsory health insurance and defines a procedure for cross-border reimbursement of funds when the A1 form is abolished as anticipated by paragraph nine of Article 9 of the Transnational Provision of Services Act.

27. The Ombudsman recommends that the Government of the Republic of Slovenia examines the options for dealing with and preventing all forms of harassment and bullying in the workplace and appoints a body to implement this.

28. The Ombudsman again recommends that, for the purposes of attaining national defence security and the dignity of the employees and their families, the Government of the Republic of Slovenia regularly provide all necessary resources for work in the Slovenian Armed Forces (ongoing task).



29. The Ombudsman again recommends that the Government of the Republic of Slovenia starts regulating the situation in Slovenian prisons immediately. It should ensure sufficient human and other resources for the provision of the security and dignity of the staff and prisoners, and also for the rehabilitation of prisoners.

The Ombudsman's activity with substantive explanations about employed persons is addressed in more detail in the following chapters of the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2019 available on the Ombudsman's website <www.varuh-rs.si> in the on-line edition of the Report:

- 2.3.3.2** **Who is responsible for the payment of social security contributions: an employee or an employer?**
- 2.3.3.3** **Was anything done in the fight against precarious work?**
- 2.3.3.4** **Cross-border provision of services**
- 2.3.3.5** **Protection of public-sector employees**
- 2.3.3.6** **Is the sole commitment to respect human rights in the business sector sufficient?**
- 2.3.3.7** **Our other findings**

2.4 UNEMPLOYED PERSONS

FIELD OF WORK	CASES CONSIDERED			RESOLVED AND JUSTIFIED		
	2018	2019	INDEX 19/18	NO. OF RESOLVED	NO. OF JUSTIFIED	SHARE OF JUSTIFIED AMONG RESOLVED
November UNEMPLOYMENT	21	22	104.76	18	3	16.7
11.1 UNEMPLOYMENT	11	12	109.09	10	1	10.0
11.2 OTHER	10	10	100.00	8	2	25.0

2.4.1 General findings and assessment of the situation

The number of cases considered in 2019 is approximately the same as last year, but the level of justification is lower than in 2018 when it was 50 per cent. With a low absolute number of cases and a lower share of established violations (justification), the said statistics have no substantive significance that would require further explanation.

In 2019, we encountered cases of an inappropriate attitude of employees at the Employment Service of Slovenia (ZRSZ) towards unemployed persons. Such cases could not be verified, as it is perfectly clear that the affected persons claim one thing and the “accused” public employees another. However, as there were allegations, similar to those recorded in previous years, of individuals citing problems with ZRSZ employees, we judged that these were not the possibly subjective experiences of job seekers, but actual problems that require a response from the competent authorities.

Certain cases considered were related to problems of persons with disabilities when jobseeking. In the specific cases dealt with, we did not establish violations of the rights of persons with disabilities or discrimination against them, as the employers were from the private sector; therefore, we advised most complainants concerning the authorities to which to complain. **Nevertheless, we can say that disability or discrimination against persons with disabilities is still the factor that most adversely affects the employability of persons with disabilities, particularly due to the discriminatory behaviour of employers as cited by persons with disabilities in their complaints, and due to the impact of social and physical obstacles on employability, such as poorer skills resulting from obstacles to inclusion in educational programmes and others.**





Applicable international legal acts are frequently not taken into account. National acts and implementing regulations do not always take into account international standards in the protection of the rights of persons with disabilities. We would like to recall Article 52 of the Constitution, entitled Rights of Persons with Disabilities, and ratified Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (Directive) and the UN Convention on the Rights of Persons with Disabilities (Convention). **Regardless of the aforementioned, persons with disabilities in Slovenia are still faced with numerous obstacles that hamper their active participation in various spheres of life, including employment.** Therefore, they frequently live in poverty at the margins of society, which is all the more obvious if they are not supported by family or a social community.



As we pointed out in reports on the work of the Ombudsman several times (2006, page 40, 2007, page 44, 2008, page 54, 2011, page 245 and most recently in reports for 2017 on pages 334 and 335, and 2018 on page 255), the aforementioned did not change in any way, therefore we find problems with providing jobs to persons with disabilities and protecting their jobs. Employers can avoid this obligation only if the measures necessary are deemed a disproportionate burden for them. Factors considered are the needs of employees (physical and psychological work conditions, the possibility of working with aids, removal of movement or sensory obstacles, additional training, the accommodation of work tasks, working hours) on the one hand, and the actual needs and ability of a specific employer (the nature of the activity, economic capacity, the effect of measures on business operations), and the availability of financial and other aids, e.g. from public sources, on the other. The Pension and Disability Insurance Act (ZPIZ-2) and the Vocational Rehabilitation and Employment of Persons with Disabilities Act (ZZRZI) suitably regulate this obligation particularly for persons who became disabled during the insurance or employment period. Most measures are relatively simple and easily realisable, relieving the burden on employers. **In our opinion, the employment of persons with disabilities and the obligations of employers in relation to the accommodation of jobs are crucial.** In accordance with the Directive, employers must provide reasonable accommodation for employees and ensure that such accommodation does not put a disproportionate burden on the organisation. Reasonable accommodation is also the obligation referred to in Article 5 of the Convention. In our opinion, ZZRZI does not fully comply with this obligation. Fulfilment of the obligation to prevent indirect discrimination only with the right to occupational rehabilitation is not sufficient, and the same applies to mere consideration of the status of a person with disabilities. The state must adopt positive measures to protect and promote the employment of persons with disabilities. The obligation to employ persons with disabilities stems from Article 62 of the ZZRZI, which stipulates the general obligation to employ person with disabilities applies only to employers with over 20 employees. Employment quotas and financial penalties for non-compliance with these quotas apply. Regarding the prevention of indirect discrimination, all employers, including small employers, have obligations regarding the reasonable adjustment of jobs to accommodate persons with disabilities.



Insufficiently clear regulations bring many problems, which is why we point out again that, in accordance with international law, the obligation of reasonable accommodation has been expanding to all areas of social life, as it is comprehensively focused on the elimination of discrimination and the consequences of various types of disabilities, as stipulated by the Convention.

Adopted legislation. The Act Amending the Labour Market Regulation Act (ZUTD-E) was adopted by the National Assembly of the Republic of Slovenia on 29 November 2019. **The crucial change brought by the said Act is a higher minimum unemployment benefit from EUR 350 gross to approximately EUR 530 gross, which we support, as it will improve the social situation of unemployed persons.**



2.4.2 Realisation of the Ombudsman's past recommendations

Unfortunately, numerous past Ombudsman's reports that refer to unemployed persons remain only partially realised or even fully unrealised:

- **recommendation no. 52 (2018)** that 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;
- **recommendation no. 53 (2018)** with which the Ombudsman encourages the Ministry of Labour, Family, Social Affairs and Equal Opportunities and the Employment Service of Slovenia to amend the 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; we are not satisfied;
- **recommendations nos. 67 (2016) and 72 (2017)** to urgently amend Article 63 of the Labour Market Regulation Act (ZUTD) so that a worker 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 violations or illegality regarding the termination of employment at a later time;
- **recommendation no. 73 (2017)** to amend the ZUTD so that parental leave is not considered an interruption of the period required for inclusion in active employment policy programmes;
- **recommendation no. 134 (2013)** to prepare amendments to Article 50 of the ZUTD which will facilitate, exceptionally, due to the nature of an individual type of work (e.g. personal assistance) and by taking into account extreme circumstances (e.g. illness of the unemployed person), the performance of public work by the same unemployed person at the same public work provider for a period longer than the statutory 24-month limitation.

In the online edition of the annual report available on the Ombudsman's website, we provide [additional substantive explanations](#) regarding the (non)realisation of past recommendations.

2.4.3 The Ombudsman's new recommendations and activities

2.4.3.1 Recommendations

On the basis of the considered topics, the Ombudsman recommends to all competent authorities as follows:



30. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities and the Employment Service of Slovenia study the contents of seminars and workshops available for unemployed persons as part of the AEP measures, and assess, analyse and establish whether participation has improved the employability of the participants (ongoing task).

31. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities analyse the effectiveness of the services of the Employment Service of Slovenia and adopt organisational measures in view of its findings (ongoing task).

32. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities adopt measures to reduce waiting times for inclusion in vocational rehabilitation programmes (ongoing task).

33. The Ombudsman recommends that the Government of the Republic of Slovenia provide sufficient funds to implement the AEP measures to reduce unemployment (ongoing task).

34. The Ombudsman again recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities 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.

35. 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 the 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.

The Ombudsman's activity with substantive explanations concerning unemployed persons is addressed in more detail in the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2019 available on the Ombudsman's website <www.varuh-rs.si> in the online edition of the report:

2.4.3.2. The Ombudsman's activities

2.4.3.3 Unemployed persons in other chapters of the annual report

The problem of unemployed persons is also addressed in Chapter 2.10 Equality before the law and prohibition of discrimination of the annual report in the following sections:

2.10.3.1 Recommendations

59. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities study the significantly poorer treatment of citizens of the so-called third countries in comparison to citizens of the Member States of the EU, EEA or the Swiss Confederation regarding registration in the unemployment register, and if necessary ensures suitable changes.



2.10.3.8 Why are citizens of the so-called third countries (in comparison to citizens of the Member States of the EU, EEA and the Swiss Confederation) treated differently regarding registration in the unemployment register and the rights that (may) be related to such a registration?

- On the position of persons granted international protection
- On the position of persons with long-term residence status

2.5 CHILDREN

FIELD OF WORK	CASES CONSIDERED			RESOLVED AND JUSTIFIED		
	2018	2019	INDEX 19/18	NO. OF RESOLVED	NO. OF JUSTIFIED	SHARE OF JUSTIFIED AMONG RESOLVED
21 PROTECTION OF CHILDREN'S RIGHTS	234	199	85.04	151	24	15.9
21.1 CONTACTS WITH PARENTS	62	77	124.19	60	4	6.7
21.2 CHILD SUPPORT, CHILD BENEFITS AND CHILD PROPERTY MANAGEMENT	26	13	50.00	11	3	27.3
21.3 FOSTER CARE, GUARDIANSHIP, INSTITUTIONAL CARE	21	7	33.33	6	1	16.7
21.4 CHILDREN WITH SPECIAL NEEDS	32	36	112.50	23	8	34.8
21.5 CHILDREN OF MINORITIES AND VULNERABLE GROUPS	0	0	0.00	0	0	0.0
21.6 DOMESTIC VIOLENCE AGAINST CHILDREN	15	16	106.67	13	2	15.4
21.7 VIOLENCE AGAINST CHILDREN OUTSIDE THE FAMILY	2	4	200.00	2	0	0.0
21.0 OTHER	76	46	60.53	36	6	16.7

2.5.1 General findings and assessment of the situation

The number of complaints in this field again slightly decreased in 2019. We handled 199 complaints compared to 234 the year before. The number of complaints increased in certain sub-fields (contacts with parents, children with special needs, violence) but reduced in others.

We contacted the competent social work centres, courts and responsible ministries (the Ministry of Labour, Family, Social Affairs and Equal Opportunities, the Ministry of Education, Science and Sport) and other authorities with enquiries and other interventions.

In 2019, the Family Code became fully applicable regulates marriage, cohabitation, relationships between parents and children, forms of state aid in cases of problems with partners and in family life, measures to protect the child's best interests, and subsistence, adoption, granting parental responsibility to a relative, foster care, and care of children and adults who need special protection. The Non-Contentious Civil Procedure Act was also introduced, which stipulates the rules of proceedings with which the court deals with personal situations, family and property relationships and other matters which are resolved in non-litigious civil procedures as stipulated by this Act or other acts. We have not yet detected any special impacts of the new acts when handling complaints. The objective of both acts is to improve the position of children; therefore, **warnings that their introduction increased the need for experts in clinical psychology for children and adolescents, psychiatry and pedopsychiatry, and that this is reflected in backlogs in criminal and family proceedings, are worrying.**



In 2019, we marked the thirtieth anniversary of the Convention on the Rights of the Child, which has a central role in improving the lives of children around the world, **with various events (at some of which we actively participated)**. This is the first legally binding international act to comprehensively regulate the protection of children's rights. It has become a tool or guide for everyone in a relationship with a child. According to the United Nations Convention on the Rights of the Child, the family is the basic unit that must take care of the child. Unfortunately, not all children in Slovenia have the same opportunity to live with families which can protect their rights. Additionally, unsuitable social and economic conditions mean that they do not have the opportunity to develop all their abilities. They may even be victims of violence and other types of abuse. To protect them, Slovenia has established a relatively good system of social protection, health care and institutional care, education, foster care, adoption, counselling, legal and judicial protection, and other assistance for children and parents. **Nevertheless, we establish (which is also demonstrated by complaints handled by the Ombudsman in 2019) that not everything has been done in practice in individual fields to fully protect children's rights or comply with the principles and provisions of the Convention.**

The Ombudsman frequently addresses poverty-related distress, there are problems with social exclusion, peer and online violence, lengthy foster care periods and numerous problems due to parental divorce are pressing. We also address violations of the rights of Roma children, children of refugees, unequal treatment of children regarding healthcare. **The Ombudsman points out the lack of pedopsychiatrists, clinical psychologists and other experts, and the fact that the care of children with special needs and disabilities is still not regulated systemically, instead depending on the awareness of individuals and their individual efforts.**



In the field of children's rights, information and communication technology bring further challenges, as it persistently expands to all spheres of our lives, increasing the risk of abuse. Online, verbal, sexual and economic violence can turn into physical violence. The number of children with parents who have different citizenships or live in different countries where international kidnappings of children, problems with maintaining contacts or paying child support occur, has been on the rise.



Irregularities established and pointed out by the Ombudsman during their work are being eliminated too slowly. To provide care for children, various authorities and institutions should connect and cooperate. We establish all too frequently that **responsibility** for unresolved issues or dilemmas regarding the protection of children's rights **is shifted**, as institutions write letters to each other in a bureaucratic manner, shift responsibility to others and do not defend the rights of each child in distress with all due responsibility and direct obligation according to the Convention on the Rights of the Child. **We believe that in practice we have not done everything to truly protect the best interests of the child so that they take priority in decision making in all matters which involve children or proceedings that significantly affect their situation.** We still do not consider their opinions, desires and interests sufficiently, and decide on their "interests" on inadequate bases. **Therefore, a programme for children, which will take into account the specific features of the position of children in our country, should be adopted as soon as possible.**

2.5.2 Realisation of the Ombudsman's past recommendations

Unfortunately, numerous Ombudsman's past recommendations that refer to children and their rights remain only partially realised or even fully unrealised:

- **Recommendation no. 87 (2018)** with which the Ombudsman recommended 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.
- **With recommendation no. 88 (2018)**, the Ombudsman recommended that legislative solutions be adopted for the entire field of education that will arrange accordingly the inspection of school bags and testing for the presence of drugs or alcohol. We dealt with this in 2019 when we reiterated that the testing of students for the presence of illicit drugs should be regulated and pointed out that only an act can regulate an encroachment upon human rights and fundamental freedoms.
- **Recommendation no. 75 (2017)** that the Government should draft a proposal for an act that will regulate the position, management and operation of a children's home, and define manners for coordinated cooperation of various services and authorities in the treatment of children who are victims of crime, despite our opinion last year that the preparations for the establishment of a children's home (Barnahus) were proceeding smoothly.

The online edition of the annual report available on the Ombudsman's website includes [additional substantive explanations](#) regarding the (non)realisation of past recommendations.

2.5.2.1 The Ombudsman's past recommendations on children discussed in other chapters

Unfortunately, numerous Ombudsman's past recommendations discussed in other chapters of the annual report which refer to children and their rights remain only partially realised or even fully unrealised:

2.2 National and ethnic communities

- **recommendation no. 18 (2018)** with which the Ombudsman proposed that the Government Office for National Minorities propose 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 responsible for this field to examine the organisation of free bus transport for Roma children to primary school in the Municipality of Šentjernej and determine under sentence two of paragraph three of Article 88a of the Local Self-Government Act 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.

2.14 Restriction of personal liberty

- **recommendation no. 30 (2018)** with which the Ombudsman proposed that the Ministry of Education, Science and Sport continue the drafting of the act on residential treatment institutions and observe the sound comments and proposals of the experts thereof;
- **recommendations nos. 28, 29 (2015) and 22 (2016)** to prepare an analysis of the work already done with children and adolescents with emotional and behavioural disorders in residential treatment institutions and a vision of the development, and to introduce necessary systemic changes; to prepare expert bases and uniform guidelines for suitable and more uniform treatment of adolescents with explicitly deviant behaviour; to prepare an upgrade of the educational programme and necessary systemic solutions for the treatment of children with emotional and behavioural disorders in residential treatment institutions;
- **recommendation no. 34 (2014)** to adopt a special act that would comprehensively regulate the organisation and operations of residential treatment institutions, and also harmonise technical terms;
- **recommendation no. 31 (2018)** with which the Ombudsman recommended 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;

- **recommendation no. 23 (2016)** to prepare systemic solutions for adequate accommodation of unaccompanied foreign minors; and
- **recommendation no. 30 (2015)** to adopt measures to respect the best interests of foreign minors by accommodating them in suitable institutions instead of the Aliens Centre.

2.16 Health care

- **recommendation no. 127 (2013)** that the Ministry of Health include in new health legislation the obligation of health care institutions to promptly inform parents about whether they will be entitled to wage compensation during a hospital stay with a child.

2.18. Other administrative matters

- **recommendation no. 58 (2018)** that the Government examine the applicable 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 and disability insurance on which income tax is not paid to be supplemented by stating an indication of the survivor's pension received by a child under the age of 18 or 26, respectively, if they are full-time students;
- **recommendations nos. 38 (2016) and 37 (2017)** that the competent authorities adopt special tax relief for individuals who maintain their family members (parents and adoptive parents), regardless of whether they all live in a common household or in institutional care, and pay the costs of services on their behalf;
- **recommendations nos. 39 (2016) and 38 (2017)** that the competent authorities draft amendments to the Personal Income Tax Act that would allow the list of income arising from compulsory pension and disability insurance on which income tax is not paid to be supplemented by stating an indication of the survivor's pension received by a child under the age of 18 or 26, respectively, if they are full-time students.

2.5.3 The Ombudsman's new recommendations and activities

2.5.3.1 Recommendations

On the basis of the cases considered in the field of the protection of children's rights, we drafted the following new recommendations in 2019:



36. The Ombudsman recommends that the Government of the Republic of Slovenia draft, and the National Assembly adopt, as soon as possible, an act that will regulate the comprehensive treatment of children in children's homes (Barnahus) who are victims of crime.



37. The Ombudsman recommends that all responsible authorities carefully consider the decision to show individual children in public in order to avoid any unnecessary harmful consequences for their future (ongoing task).

38. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities, in cooperation with other competent authorities, address findings, proposals and conclusions of the 29th national children's parliament, take a stand on each finding, proposal and conclusion, and suitably take them into account when making decisions that affect children.

39. The Ombudsman recommends that all responsible authorities fully respect the fact that parents must agree on a decision on all issues that significantly affect the development of a child in accordance with the best interests of the child; if they cannot do that, the court decides (ongoing task).

40. The Ombudsman recommends that, in the case of the enforcement of court decisions on the custody of a child, social work centres not attempt to influence the enforcement of a court decision or focus their influence solely on the enforcement of a court decision rather than against it (ongoing task).

41. The Ombudsman recommends that all responsible authorities take into account that professional and effective work with families must be the main principle when resolving children's distress brought on by life in an inappropriate family environment before and after the potential removal of a child from their parents (ongoing task).

42. The Ombudsman recommends that all responsible authorities, particularly courts, adopt all necessary measures without undue delay for regular contacts between children and parents if they do not live together, unless the court finds that there are justified grounds to limit contacts (ongoing task).

43. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities ensures suitable amendments to the Rules on minimum technical requirements for providers of social security services (Official Gazette of the Republic of Slovenia [Uradni list RS], No. 67/06) as soon as possible to provide a suitable place for contacts of minors under the supervision of social work centres in order to meet its obligation referred to in paragraph four of Article 163 of the Family Code, based on which they must ensure spatial and staff conditions for supervised contacts.

44. The Ombudsman recommends the unification of minimum standards to ensure the safety of employees at all social work centres, and



proposes all social work centres are informed of the uniform Protocol to ensure safety at social work centres adopted by the MDDSZ, and observe it in their work for the benefit of employees and users.

45. The Ombudsman recommends that courts take into account that decisions of the criminal court on contacts of detainees may only be bound to specific reasons as to why the prisoner is in remand and that contacts with the closest family members may only be limited if it is proportional to the reasons for limiting due to the management and course of criminal proceedings (ongoing task).

46. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities, in cooperation with the MIZŠ, ensure that potential separation of siblings is clearly professionally and legally justified (ongoing task).

47. The Ombudsman recommends that the Ministry of Education, Science and Sport promptly provide suitably qualified persons for regular work with children with autism, since an assistant, within the current meaning, is not suitable for this purpose.

48. The Ombudsman recommends that courts take into account the best interest of the child when deciding on restraining orders prohibiting parents from contacting children.

49. The Ombudsman recommends that, in cases of domestic violence, social work centres focus on the protection of children, and carry out procedures and measures stipulated by the Domestic Violence Prevention Act meticulously and as quickly as possible (ongoing task).

The Ombudsman's activity with substantive explanations concerning children and their rights is addressed in more detail in the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2019 available on the Ombudsman's website <www.varuh-rs.si> in the online edition of the report:

2.5.3.2 Children's rights

- Sensationalism is not the only way to evoke sympathy
- Children's parliaments

2.5.3.3 Relationships between parents and children

- On the removal of children

2.5.3.4 Contacts with parents

- Remand is not a reason to limit parental care
- Contacts between parents and children via videoconference

2.5.3.5 Child support, child benefit and child property management

- Deciding on the right to public funds

2.5.3.6 Foster care, guardianship and institutional care

2.5.3.7 Children with special needs

- Guidance for children
- Right to partial payment for lost income for both parents
- Violations of the rules on administrative procedure when making decisions on childcare allowance
- Correction of injustices also for parents of children who received assistance and attendance allowance pursuant to the ZDVDTP

2.5.3.8 Violence against children

3.5.3.9 Children in other chapters of the annual report

In this annual report, the following recommendations provided in other substantive chapters also refer to children's rights:

1.6.2 The Human Rights Centre

10. The Ombudsman recommends that the Government of the Republic of Slovenia and the competent authorities ensure that migrant minors are accommodated together with their parents in suitable replacement accommodation facilities, while their accommodation in detention centres should only be enforced in exceptional circumstances.

1.11 Child advocacy

13. In cases of child advocacy, the Ombudsman establishes that the lack of court experts in family matters may result in violations of children's rights, which requires the immediate action of the competent authorities.

2.2 National and ethnic communities

16. The Ombudsman recommends that the Government Office for National Minorities propose 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 responsible for this field to examine the organisation of free bus transport for Roma children to primary school in the Municipality of Šentjernej and determine under sentence two of paragraph three of Article 88a of the Local Self-Government Act





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.

2.10 Equality before the law and prohibition of discrimination

55. The Ombudsman recommends that (based on best practice of the Ministry of Justice, which commenced the analysis of court accessibility in 2017) the Ministry of Education, Science and Sport promptly commence the analysis of the accessibility of secondary and primary schools for persons with disabilities, and on this basis, draft a feasible plan to provide access to all such facilities that includes a timetable and a financial plan for the implementation of measures.

56. Taking into account the lengthy period of resolving the issue of access to Bežigrad Grammar School and the fact that there is no grammar school providing the International Baccalaureate Diploma programme that is physically accessible for persons with disabilities in the central and western regions of Slovenia, the Ombudsman recommends that the Ministry of Education, Science and Sport provide funds in the budget to eliminate architectural barriers at Bežigrad Grammar School.

58. The Ombudsman recommends that the Government of the Republic of Slovenia draft a proposal from the aspect of human rights for a more harmonised legislative regulation of the right to social security benefits for foreigners with only a temporary residence permit but who are very connected with the country; at the same time, the proposed new regulation in this field should eliminate discrimination against children whose parents hold only a temporary residence permit.

2.14 Restriction of personal liberty

83. The Ombudsman recommends that the Ministry of Justice in cooperation with the Ministry of Labour, Family, Social Affairs and Equal Opportunities draft an act that will stipulate the treatment of juvenile offenders, carry out a thorough analysis of the situation related to the implementation of the measure of admittance to the special education institute and provide suitable legislative solutions for the implementation in practice.

84. The Ombudsman recommends that, when treating unaccompanied foreign minors, police officers continually observe their statutory rights and the best interests of the child (ongoing task).

85. The Ombudsman recommends that the Government Office for the Support and Integration of Migrants in cooperation with the Ministry of the Interior, the Ministry of Labour, Family, Social Affairs and Equal Opportunities, the Ministry of Education, Science and Sport, and the Ministry of Health establish a systemic form of the accommodation and treatment of unaccompanied foreign minors.

2.16 Health care



95. The Ombudsman recommends that the Ministry of Health promptly convene a meeting of representatives of the Ministry of Health, the Ministry of Education, Science and Sport, the Health Insurance Institute of Slovenia and the National Institute of Public Health, and prepare legal bases for the accessibility of adrenaline autoinjectors in schools.

104. The Ombudsman recommends that the Ministry of Health, in amendments to the Health Care and Health Insurance Act, regulate child care benefit for parents of hospitalised children as soon as possible, making parents of hospitalised children eligible for child care benefit for the duration of their stay with the child in hospital.

2.18 OTHER ADMINISTRATIVE MATTERS

122. 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 that allows the taxpayer to exercise this relief whenever they are actually maintaining family members, regardless of whether they live in a common household with them or in institutional care and pay costs on their behalf.

123. Regarding the taxation of survivor's pension, the Ombudsman recommends that the Government of the Republic of Slovenia amend the Personal Income Tax Act (ZDoh-2) that would allow the list of income arising from compulsory pension and disability insurance on which income tax is not paid to be supplemented by stating an indication of the survivor's pension received by a child under the age of 18 or 26, respectively, if they are full-time students.

2.23 Social activities

155. The Ombudsman recommends that the Ministry of Education, Science and Sport in cooperation with the Association for Technical Culture of Slovenia promptly regulate the issue of pupil participation in competitions involving logic, provided that parents agree to the publication of the results of the competition and photos of the participants

The Ombudsman's activity concerning children and their rights is addressed in more detail in the following sections of the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2019 available on the Ombudsman's website <www.varuh-rs.si> in the online edition of the report:

- 1.6.1 The Human Rights Centre
- 1.9 Child advocacy
- 2.9.3.2 The Ombudsman's experience with the protracted procedures of the competent authorities involving foreigners is becoming increasingly lengthy.
 - A protracted decision-making procedure (lasting several years) on an application for family reunification may be a violation of the right to family life.
- 2.9.3.6 The existence of family and social ties must be assessed in the procedure to revoke the residence permit.
- 2.10.3.3 There are problems with the provision of access to public schools for physically impaired persons
- 2.13.1.4 Minors in residential treatment institutions and special education institutes
- 2.14.2.4 Minors in residential treatment institutions and special education institutes
- 2.14.3.5 Minors in residential treatment institutions and special education institutes
 - Problems with the implementation of an educational measure regarding admittance to the special education institute
- 2.16.3.2 Health care
 - Termination of the National Institute for Congenital Heart Disease
 - Inaccessibility of adrenaline autoinjectors in schools
 - Problems of child development clinics
- 2.16.3.3 Health insurance
 - Inability to conclude compulsory insurance in the case of injury at work and occupational disease for a secondary school student when receiving compulsory practical training – continuation
 - The right to childcare benefit for parents of hospitalised children

2.19.3.3 Enforcement proceeding

- Limitation of enforcement on child benefit paid in another country

2.20 Police proceedings, private security service, detectives and traffic wardens

- 2.20.3.8 An alcohol test for children, too?

2.23.3.2 On the connection between school performance and the social and economic status of children and adolescents

2.23.3.4 The co-financing of private nursery causes a stir

2.23.3.5 In the procedure of recognising education (enrolment in secondary school following completed primary school in Austria), the main principle should be the best interest of the child

2.23.3.6 The participation of pupils in competitions involving logic provided that parents agree to the publication of the results of the competition and photos of the participants, and the unresponsiveness of the Ministry of Education, Science and Sport

2.6 PERSONS WITH DISABILITIES

2.6.1 General findings and assessment of the situation

In 2019, the Ombudsman addressed initiatives related to the rights of persons with disabilities in a number of areas of his work – these fields include **employment, unemployment, the rights of children, equality before the law and prohibition of discrimination, assembly and association, restriction of personal liberty, disability insurance, social security, administrative matters and the judicial system.**

Firstly, we would like to clarify that disability is discussed on the basis of the definition of paragraph two of Article 1 of the Convention on the Rights of Persons with Disabilities, which states that persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

We work hard for the Republic of Slovenia to establish an independent body for promoting, safeguarding and monitoring the implementation of the Convention on the Rights of Persons with Disabilities in accordance with paragraph two of Article 33 of the Convention. The Ombudsman is prepared to assume this responsibility and mission.

In 2019, we also pointed out non-compliance with the United Nations Convention on the Rights of Persons with Disabilities in the field of deinstitutionalisation. The Government and the competent ministries neither respond to the needs of persons with disabilities nor provide the necessary support services in the community. An institutional mindset and capacity increase in institutions, the planning and construction of smaller institutions instead of large ones are not the appropriate steps for the proper implementation of the Convention. Deinstitutionalisation is a step away from the institutional mindset towards independent life with the support of the community. The state must implement it, so the Ombudsman will monitor this, actively draw attention to anomalies and demand action in the future.



Recommendation no. 113: The Ombudsman recommends that the Government of the Republic of Slovenia adopt the necessary measures to regulate long-term care.

We point out that the awareness that not only persons with disabilities but also their families, co-workers, schoolmates, friends and other want to live in an environment that will provide them with a comparable quality of life is crucial. This principle must not remain only a principle but must be implemented daily in our actions. Accepting our fellow human beings, regardless of their personal circumstances, is a reflection of the maturity of society. **We encourage various state in-**

stitutions to enable persons with disabilities to be heard, seen and understood regardless of their disability. We are noticing that the acceptance of persons with disabilities in Slovenian society has improved in recent decades, but we still have much to do to ensure their equal inclusion in society.

We have noticed and pointed out the lack of systemic solutions in several fields.

The Ombudsman specifically alerted the director of the Pension and Disability Insurance Institute of Slovenia (ZPIZ) to the violations and anomalies in the system established in the operation of the ZPIZ regarding procedures to establish disability rights. In such procedures, several violations of the principles of the administrative procedure have been established, including the principle of the examination of parties, material truth and the discretion of evidence. The director of the ZPIZ presented certain measures to the Ombudsman, which were adopted on the basis of the Ombudsman's recommendations.

In 2019, Ombudsman Peter Svetina visited nine occupational activity centres, six retirement homes, and the non-governmental organisations Ozara and the day care centre in Maribor. On the basis of interviews with the managements of the institutions and their employees, beneficiaries of services, relatives of beneficiaries and visits to the institutions, [**the Ombudsman hereby provides his findings and recommendations in the following fields:**](#) (See Chapter 2.17.3.4 Institutional care, The Ombudsman's findings and recommendations on the basis of visits to the institutions).

- 1. health care services in guidance, care and employment services under special conditions;**
- 2. the treatment of persons with acquired brain injury;**
- 3. common accommodation of persons with different problems;**
- 4. the ageing of users at occupational activity centres and special education institutes;**
- 5. insufficient personnel standards and the lack of personnel;**
- 6. the treatment of the most demanding auto- or hetero-aggressive users;**
- 7. charging for the institutional care service at special education, work and care centres and institutes for users aged between 18 and 26, which are focused on the special educational programmes and included in whole-day institutional care;**
- 8. wait times and deinstitutionalisation;**
- 9. vbenefits for beneficiaries of programmes in educational institutions;**
- 10. guidance, care and employment services under special conditions.**

For example: with regard to the treatment of persons with acquired brain injury, we believe that a network of specialised regional centres for persons with acquired brain injury should be established and capacities to meet their needs should be provided following the example of the (visited) centres Korak and Naprej. We also estimate that the Social Security Act should be amended so as to define the provision of services for persons with acquired brain injury as an independent social care service under suitable personnel and technical conditions. We provide findings and recommendations for each of the said fields and a general recommendation to the Ministry of Labour, Family, Social Affairs and Equal Opportunities and other competent authorities.



Recommendation no. 114: The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal opportunities study his findings from visits to institutions in 2019 and adopt all necessary measures to realise the given recommendations in cooperation with other competent authorities..

More attention must be paid to problems encountered by occupational activity centres. Community care in the local environment, accessibility of social care and health care services and their funding pose major problems in certain areas. Occupational activity centres face a lack of space for new users, but new concessions for the pursuit of this activity have not been tendered since 2009. The ageing of users has become a pressing problem. The Ombudsman assesses that the situation of persons with mental disorders in Slovenia is not satisfactory despite efforts on various levels. Regarding the legal position of persons with mental disorders, we point out that amendments to the provisions of the Family Code, which entered into force on 15 April 2019, abolished the institution of the withdrawal of legal capacity and the extension of the parental right of parents or other stated adults; to this end, the Ombudsman expects the legislator to take this into account when amending the electoral legislation.

It is also high time for the Charter of Rights of persons with autism, a declaration adopted by the European Parliament in 1996 to be fully implemented in Slovenia. Autism is classified as a disability category, facilitating a more appropriate treatment of persons with autism spectrum disorders. However, in practice it is curtailed, since the lack of suitable personnel – pedopsychiatrists, psychologists, occupational therapists – is also a pressing problem in this field. The Ombudsman has been pointing this out for years. Health workers on the primary level and social security workers frequently do not have sufficient knowledge of this disorder. The knowledge of law enforcement authorities is equally weak. Numerous solutions in the field of work with persons with autism spectrum disorders have been implemented and have an effect, but their wider accessibility and systematic nature are urgent. Unfortunately, the state seeks systemic solutions (too) slowly. Due to the aforementioned it is important to recognise early on that people with autism spectrum disorders, who are often more problematic to employ, can be promptly directed to suitable programmes designed to help them with labour market entry and other aspects of life. One of the methods that has proven successful is vocational rehabilitation, and we also welcome moves in the field of personal assistance for adults with autism.

The Ombudsman has been pointing out the accessibility of institutions, including schools, municipalities and administrative units, for physically impaired persons, and the construction of a suitable public infrastructure. We point out the use of the Slovenian sign language and other adaptations that enable persons with various disabilities to be equally integrated into society. In cases of discrimination on the basis of several personal circumstance at the same time, we speak of multiple (or intersectional) discrimination defined by the Protection Against Discrimination Act as a severe form of discrimination. The Ombudsman's recommendations and his activities concerning the rights of persons with disabilities are presented below.

2.6.2 Realisation of the Ombudsman's past recommendations from other sections of the Annual Report

Unfortunately, numerous Ombudsman's past recommendations that refer to persons with disabilities remain only partially realised or even fully unrealised. They are discussed in various substantive sets, but their systematic overview from the aspect of ensuring the rights of persons with disabilities is also urgent. These recommendations include:

2.3 Employees:

- **recommendation no. 48 (2018)** on urgent amendments to the Vocational Rehabilitation and Employment of Persons with Disabilities Act so that persons with disabilities are entitled to a cash benefit in proportion to the number of hours worked, i.e. even if more or fewer than 100 hours are worked, and that persons with disabilities undergoing on-the-job training as part of vocational rehabilitation are reimbursed for lunch expenses;

2.5 Children:

- **recommendation no. 87 (2018)** with which the Ombudsman recommended that the Ministry of Education, Science and Sport regulate the rights of students with special needs and those with special status (e.g. with status of a sportsperson) more comprehensively.

2.10 Equality before the law and prohibition of discrimination:

- **recommendation no. 3 (2018)** with which the Ombudsman recommended that the Ministry of Infrastructure promptly draft a proposal for an act that will systemically regulate the rights of students with disabilities regarding their commute 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 proposal and submit it to the National Assembly for discussion and adoption;
- **recommendation no. 4 (2018)** with which the Ombudsman recommended suitable action within which the prompt adoption of suitable legal bases relating to the rights of students with disabilities regarding their commute from their place of residence to their place of education will meet the obligation referred to in paragraph three of Article 38 of the Equalisation of Opportunities for Persons with Disabilities Act (ZIMI) after suitably adjusting the study process for students with disabilities;
- **recommendation no. 5 (2018)** with which the Ombudsman recommended that the Ministry of Justice take into account its announcement in response to the Ombudsman's specific three recommendations regarding the analysis of the physical accessibility of courts for persons with disabilities and strive to make satisfactory the physical accessibility of courts for persons with disabilities as soon as possible.

2.13 Assembly, association and participation in the management of public affairs:

- **recommendation no. 16 (2018)** with which the Ombudsman proposed that the Ministry of Labour, Family, Social Affairs and Equal Opportunities promptly provide suitable legislative amendments, enabling a certain authority for the 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 the operations and business activities of disabled people's organisations should be made public).

2.14 Restriction of personal liberty:

- **recommendation no. 21 (2018)** with which the Ombudsman recommended that the Prison Administration of the Republic of Slovenia further 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;
- **recommendation no. 25 (2018)** with which the Ombudsman recommended 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;
- **recommendations nos. 14 (2016) and 19 (2015)** to provide adapted space for convicts who need additional assistance during their imprisonment due to age, illness or disability;
- **recommendation no. 13 (2017)** to take measures to realise recommendations from a special thematic report to improve conditions for the accommodation and treatment of vulnerable prisoners;
- **recommendation no. 26 (2018)** with which the Ombudsman proposed that the Ministry of Health in cooperation with the Ministry of Justice adopt all necessary measures to resolve the problems of the Unit for Forensic Psychiatry;
- **recommendation no. 27 (2018)** with which the Ombudsman again recommended the adoption of all necessary measures to promptly compose and publish a list of health institutions meeting the conditions for implementing the relevant security of mandatory treatment measures;
- **recommendation no. 17 (2016)** to consider the suitability of the current regulation of mandatory treatment measures;
- **recommendations nos. 31 (2014) and 21 (2016)** to adopt measures for suitable admission of persons in accordance with the ZDZdr;
- **recommendation no. 26 (2015)** to study the payment of the care costs of persons in secure wards of social care institutions on the basis of court decisions;
- **recommendation no. 17 (2017)** to realise the recommendation issued by the National Assembly when discussing the Ombudsman's Special Report on violations of human rights of persons with mental disorders with their involuntary admission and treatment in secure wards of social care institutions;

- **recommendation no. 19 (2017)** on regular publication of data regarding the number of vacancies in all secure wards of social care institutions;
- **recommendation no. 28 (2018)** with which the Ombudsman again called for the adoption of measures to ensure more suitable involuntary admission and treatment of persons with mental disorders in social care institutions pursuant to the ZDZdr together with suitable spatial capacities and staff, which will enable adequate social care services to these persons;
- **recommendation no. 29 (2018)** with which the Ombudsman proposed that social care institutions provide security for their residents, particularly those who require special protection and care, and consistently observe the ZDZdr when restricting liberty.

2.15 Pension and disability insurance:

- **recommendation no. 37 (2018)** that the National Assembly of the Republic of Slovenia, when discussing each act proposal, 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;
- **recommendation no. 53 (2019)** that the competent authorities carry out a comprehensive analysis and assessment of the work of experts participating in procedures for evaluating the work capacity of insured persons, and take suitable measures against those violating the rules;
- **recommendations nos. 69 (2015) and 56 (2017)** that the competent authorities determine the levels and types of physical impairment which serve as the basis for enforcing the rights arising from disability insurance – the recommendation has been unrealised for 17 years (!);
- **recommendation no. 91 (2014)** that the Government determine the responsibility of employees at the Ministry of Health for a delay of over a year in the preparation of an implementing regulation on occupational diseases, and suitably sanction them;
- **recommendation no. 58 (2017)** to prepare expert groundwork for the uniform normative regulation of expert medical opinions in procedures of exercising the rights arising from social insurance;
- **recommendation no. 68 (2015)** to improve communication between disability commissions and experts.

2.16 Health care:

- **recommendation no. 72 (2015)** with which the Ombudsman proposed that the Ministry of Health examine the possibility of combining the tasks of advocates of patients' rights and advocates of persons with mental disorders in the light of new legislative solutions.

2.17 Social matters:

- **recommendation no. 71 (2017)** that the competent authorities draft proposals for amendments to the Act ratifying the Convention on the Rights of persons

with Disabilities and Optional Protocol to the Convention on the Rights of Persons with Disabilities, which will observe the established Slovenian legal terminology;

- **recommendation no. 100 (2014)** with which the Ombudsman recommended that the Government prepare a programme to expand the capacities of occupational activity centres and enable persons affected to participate in the service of guidance, care and employment under special conditions;
- **recommendation no. 101 (2014)** with which the Ombudsman recommended the adoption of measures to improve the accessibility of institutional care services for adults with moderate, severe and profound mental disorders and/or with several disorders, and to ensure more balanced regional coverage.

2.19 Judicial system

- **recommendation no. 50 (2013)** that persons with functional impairment have access to all buildings of judicial authorities.

2.6.3 The Ombudsman's new recommendations and activities from other sections of the Annual Report

2.6.3.1 Recommendations

In this annual report, the following recommendations provided in individual substantive chapters below refer to the rights of persons with disabilities.



The Human Rights Centre

August The Ombudsman recommends that the Government of the Republic of Slovenia and the competent authorities adopt all necessary measures to ensure suitable involuntary admission and treatment of persons with mental disorders in social care institutions, including suitable additional capacities and personnel to provide appropriate social care services for such persons.

November The Ombudsman recommends that the Government of the Republic of Slovenia provide suitable, accessible, affordable and appropriate services for the elderly and persons with disabilities who need assistance so that they are able to exercise their right to an independent life and inclusion in their community in towns and rural areas.

12. The Ombudsman recommends the deinstitutionalisation of care services in accordance with the recommendations of the Committee on the Rights of Persons with Disabilities.

Unemployed

32. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities adopt measures to reduce waiting times for inclusion in vocational rehabilitation programmes (ongoing task).

Children

47. The Ombudsman recommends that the Ministry of Education, Science and Sport promptly provide suitably qualified persons for regular work with children with autism, since an assistant, within the current definition, is not suitable for this purpose.

2.10 Equality before the law and prohibition of discrimination

55. The Ombudsman recommends that (based on best practice of the Ministry of Justice, which commenced the analysis of court accessibility in 2017) the Ministry of Education, Science and Sport promptly commence the analysis of the accessibility of secondary and primary schools for persons with disabilities and, on this basis, draft a feasible plan to provide access to all such facilities that includes a timetable and a financial plan for the implementation of measures.

56. Taking into account the lengthy period of resolving the issue of access to Bežigrad Grammar School and the fact that there is no grammar school providing the International Baccalaureate Diploma programme that is physically accessible for persons with disabilities in the central and western regions of Slovenia, the Ombudsman recommends that the Ministry of Education, Science and Sport provide funds in the budget to eliminate architectural barriers at Bežigrad Grammar School.

57. The Ombudsman recommends that the Ministry of Culture adopt suitable strategies and, if necessary, legislative measures and provide financial incentives to improve the accessibility of television programmes for the blind and partially sighted.

2.13 Assembly, association and participation in the management of public affairs

65. The Ombudsman recommends that the Ministry of Public Administration promptly prepare everything required for the Government of the Republic of Slovenia to re-propose amendments to electoral legislation which will ensure that persons who are unexpectedly deprived of liberty less than ten days prior to voting or are unexpectedly admitted to hospital for treatment or in institutional care of a social care institution (for example detainees, persons in a ward under special supervision at the psychiatric hospital) are able to efficiently exercise the right to vote.





2.14 Restriction of personal liberty

73. The Ombudsman recommends that the Ministry of Justice adopt all necessary measures to ensure suitable accommodation in adapted spaces (inside or outside of the prison system) and assistance with everyday and other required care for all prisoners who require additional assistance due to age, illness, disability or other impairments.

79. The Ombudsman recommends that the Ministry of Health study the need for amendments to the regulation regarding the use of a special protection measure concerning restriction using safety devices, particularly the time limit thereof, when preparing amendments to the ZDZdr.

81. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities, in cooperation with other competent authorities, adopt further required measures for suitable accommodation and treatment of persons who the court decides, pursuant to the ZDZdr, should be admitted to a secure ward of a social care institution.

82. The Ombudsman recommends that the Ministry of Health, which is drafting amendments to the ZDZdr, also prepare suitable amendments to the Act regarding the longer detention of persons in secure wards to ensure the Act is implemented without delay.

2.15 Pension and disability insurance

89. The Ombudsman recommends that the Pension and Disability Insurance Institute of the Republic of Slovenia prepare an analysis of temporal circumstances of decision making regarding assistance and attendance allowance. On the basis of findings, they should adopt measures for procedures to be completed within statutory time limits and for all bodies, particularly expert bodies, to respect the dignity of each individual in such procedures. The Institute should publicly report on the aforementioned.

90. The Ombudsman expects that the Pension and Disability Insurance Institute and the Ministry of Labour, Family, Social Affairs and Equal Opportunities fully respect the standards of procedural guarantees and other provisions of the General Administrative Procedure Act when deciding on the rights arising from disability insurance (ongoing task).

91. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities draft amendments to the ZPIZ-2 so as to exclude employers as parties from procedures to establish disability rights.

92. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities draft amendments to the Pension and Disability Insurance Act (Article 403 of the ZPIZ-2) and recog-

nise the right to disability allowance of all insured persons regardless of the reason for their physical impairment.



93. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities draft amendments to the Social Inclusion of Disabled Persons Act, and provide for the same types of impairments of persons with disabilities the maximum assistance and attendance allowance (currently EUR 418.88), which also applies pursuant to the Pension and Disability Insurance Act.

2.17 Social matters

108. The Ombudsman recommends that the Government of the Republic of Slovenia ensure that the Ministry of Labour, Family, Social Affairs and Equal Opportunities draft amendments to legislation so that all persons with disabilities, i.e. persons with disabilities with status pursuant to the Vocational Rehabilitation and Employment of Persons with Disabilities Act and persons with disabilities with status pursuant to the Social Inclusion of Disabled Persons Act, enjoy comparable social security.

110. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities together with other competent authorities systemically regulate the Social Assistance Act, which regulates home care assistants, the Personal Assistance Act, which stipulates the institute of a personal assistant, and the act that will regulate long-term care.

111. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities regulate the position and status of a home care assistant more suitably, also by providing sufficient social security to home care assistants and persons with disabilities.

112. The Ombudsman recommends that social work centres act swiftly in procedures regarding placing a person under guardianship, including a swift processing of applications for placing a person under guardianship.

113. The Ombudsman recommends that the Government of the Republic of Slovenia adopt necessary measures to regulate long-term care.

114. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities study his findings from visits to institutions in 2019 and adopt all necessary measures to realise the given recommendations in cooperation with other competent authorities.

115. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities supplement the network of providers and expands the set of services to assist persons who cannot live alone so that they can live at home in an environment where they feel well and have an established social network.



2.18 Other administrative matters

122. The Ombudsman recommends that the Government of the Republic of Slovenia regulate the right to 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 and pay costs on their behalf.

124. The Ombudsman recommends that the right to follow-up rehabilitation be suitably regulated in the Health Care and Health Insurance Act so that authorities that make decisions on this right and legal protection against their decisions are determined.

2.6.3.2 The Ombudsman's activities concerning the rights of persons with disabilities

The Ombudsman's activities concerning persons with disabilities and their rights is addressed in more detail in the following sections of the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2019 available on the Ombudsman's website <www.varuh-rs.si> in the online edition of the report:

- 1.6.2 The Human Rights Centre
- 2.5.3.7 Children with special needs
 - Guidance for children
 - Right to partial payment for lost income for both parents
 - Violations of the rules on administrative procedure when making decisions on childcare allowance
 - Remedy of injustices also for parents of children who received assistance and attendance allowance pursuant to the ZDVDTP
- 2.10.1 General findings and assessment of the situation
- 2.10.3.2 There are still complications with access to courts for persons with disabilities
- 2.10.3.3 There are problems with the provision of access to public schools for physically impaired persons
- 2.10.3.4 Access to television information and contents for the blind and partially sighted must be improved

- 2.10.3.5 Access to free transport for persons with mental disorders
- 2.10.3.6 Is there unjustified discrimination when deciding on the allocation of a housing unit due to the personal circumstance that a person who has had mental health problems is involved?
- 2.10.3.7 The regulation that does not classify foreign citizens with a temporary residence permit among beneficiaries for social security benefits despite them demonstrating an important connection to the country is unjustified discrimination on the basis of status of a foreigner
- Demonstrating the existence of an important connection to the country of a person who is not a Slovenian citizen for the purpose of demonstrating eligibility to receive social security benefits
 - Discrimination against children who are Slovenian citizens in view of the type of residence permit of a parent who is not a Slovenian citizen
 - Current response of the Ministry to the Ombudsman's criticism
- 2.14.1.3 Persons with restricted movement at psychiatric hospitals and social care institutions
- 2.14.2.2 Unit for Forensic Psychiatry
- 2.14.2.3 Persons with restricted movement at psychiatric hospitals and social care institutions
- 2.14.3.2 Detainees and convicted persons
- No progress with regard to accommodating convicted persons in need of institutional care outside a prison
- 2.14.3.3 Unit for Forensic Psychiatry
- General
 - Establishment of a specialised unit for the treatment of persons with the most severe mental disorders
 - The problem of implementing the security measures of mandatory psychiatric treatment outside prison
- 2.14.3.4 Persons of restricted mobility in psychiatric hospitals and social care institutions
- General
 - Time limit of the duration of special protection measures pursuant to the Mental Health Act
 - Reports on the implementation of special protection

measures (SPM)

- The problem of admitting persons to secure wards of social care institutions
- Time pressure if there is a need to extend the detention of a person with mental health problems in a secure ward of a social care institution on the basis of the provisions of the ZDZdr
- Supervised treatment in a special social care institution

2.15.1.2 Disability insurance

2.15.3.3 Disability insurance

- How does the Pension and Disability Insurance Institute (ZPIZ) understand decision making pursuant to the ZUP?
- Explanation of the provisions by the Pension and Disability Insurance Institute
- Realisation of the principle of the examination of parties
- Realisation of the principle of the discretion of evidence and material truth
- Unsuitability of the conditions of permanent health changes when establishing the right to assistance and attendance
- The Ombudsman's position

2.17.3.2 Social benefits, assistance and scholarships

- Social security of persons with disabilities

2.17.3.3 Social services

- Home care assistants
- Sole traders still cannot become home care assistants
- Guardianship
- Monitoring the guardian's work
- Other

2.17.3.4 Institutional care

- The Ombudsman's findings and recommendations on the basis of visits to the institutions

2.20.3.11 Who is to implement an order issued by the court pursuant to paragraph three of Article 52 of the ZDZdr?

2.7 THE ELDERLY

2.7.1 General findings and assessment of the situation

In 2019, the Ombudsman considered complaints regarding the rights of the elderly within the numerous fields encompassed by his work – these fields include **national and ethnic communities, restriction of personal liberty, pension insurance, social security and administrative matters.**

Not only Slovenia, but the whole of Europe has been facing changes in the age structure of the population. According to the data of the Statistical Office of the Republic of Slovenia, almost every fifth resident of Slovenia was over 65 (i.e. 20 per cent of the population) in 2019. Life expectancy at birth is also increasing and so persons who are born in Slovenia now may expect to live approximately seven years longer than persons who were born 25 years ago.¹⁴

We are becoming a long-living society, which brings numerous challenges but also opportunities for intergenerational integration and the realisation of intergenerational solidarity. The state has been responding (too) slowly to these challenges and is poor at recognising new opportunities. According to the data of the Statistical Office, **the poverty risk rate among the elderly is higher than among the population as a whole, and their self-assessment of satisfaction with life is the lowest.** At the beginning of 2019, approximately 268,000 residents of Slovenia lived on an income below the poverty threshold, among them 89,000 pensioners (which is 18.1 per cent of all pensioners) of which 60,000 are retired women and 29,000 retired men. An average self-assessment of general satisfaction with life was the lowest among persons aged 65 or more. People's assessment of general satisfaction with life significantly depends on their health. In 2018, approximately ten per cent of residents assessed their health as poor or very poor; their share among the elderly (aged 65 or more) was significantly higher and stood at 23 per cent.¹⁵

Based on discussions with the elderly, the civil society and non-governmental organisations, the Ombudsman feels that the gravest problems the elderly face are poverty and loneliness. The elderly encounter discrimination, violence and abuse, and a lack of special measures and services. The elderly must be provided with quality, safe and proper care aimed directly at users and their needs. **The Ombudsman has been regularly pointing out that only by suitably regulating long-term care as a society will we convey the message about the value of life in all its stages and respect for human dignity.** The basis must undoubtedly be a manner of operation which has the utmost respect for human dignity, equality and human rights as a principle in establishing a social care and support system suitable for the 21st century. We must be aware that the elderly are just as eligible for all human rights as anyone else. All human rights apply to all people.

¹⁴ Source: <<https://www.stat.si/StatWeb/News/Index/8374>> (5 June 2020).

¹⁵ Ibid.

We must strive for the elimination of all forms of discrimination against the elderly, and particularly discrimination against older women. Multiple (or intersectional) discrimination on the basis of several personal circumstance is the worst kind of discrimination.

The fact that we still do not have a long-term care act, for which we have been waiting for almost 20 years and from which we expect a lot, must not be an excuse for a failure to resolve matters now. We believe that the entire social legislation must be amended as the long-term care act by itself will not resolve all problems. The Ombudsman believes that the response to a long-living society does not lie in increasing the capacities of institutions but to take a step towards **deinstitutionalisation. 4.5 per cent of persons aged 65 or more reside in retirement homes, amongst whom only every fourth person is a man. On 1 January 2019, 19,260 people resided in retirement homes**, which provide them with residence, organised meals, care and health care to replace or supplement their homes and own families; 95 per cent of them were at least 65 years old. The average age of their residents was 83. The number of residents in retirement homes has increased by 15 per cent in the last eight years (also on account of new capacities). The fact is that the proportion of the elderly who live in so-called collective households, which include retirement homes, increases with age.¹⁶

The Ombudsman believes that large and small institutions cannot provide the elderly (and other persons who reside there) with the individualised services and support that would enable the occupants to be fully socially included. The EU Cohesion Policy and the social investment package emphasise social inclusion in Member States as an important factor in the development and updating of social policies. The construction and renovation of long-term care institutions (regardless of their size) have not been eligible for funding from the European Structural and Investment (ESI) Funds for quite a few years, as these funds support a wide range of measures to prevent institutionalisation and reforms for transition to community care. The Ombudsman expects this to be an objective of Slovenian social policy.

Considering that society is also ageing on a global level, it is alarming that there is (as yet) no international legal instrument that would comprehensively regulate the rights of the elderly. The Ombudsman supports the adoption of a special convention on the rights of the elderly by the United Nations, similar to the conventions on the rights of children, women and persons with disabilities. We welcome the efforts of Slovenian foreign policy regarding the rights of the elderly in the UN; however, we would like these efforts to be better reflected in the Republic of Slovenia in the adoption of suitable legislation and measures, and in the state's attitude towards the elderly in general.

The Ombudsman's recommendations and his activities concerning the rights of the elderly are presented below.

¹⁶ Ibid.

2.7.2 Realisation of the Ombudsman's past recommendations from other chapters of the Annual Report

Unfortunately, numerous past recommendations of the Ombudsman concerning the elderly remain only partially realised or even fully unrealised. They are discussed in various substantive sets, but their systematic overview from the aspect of ensuring the rights of the elderly is also urgent. These recommendations include:

2.2 National and ethnic communities:

- recommendation no. 17 (2018) with which the Ombudsman recommended that the Government pay special attention to older members of the Roma community in the next National Programme of Measures for Roma, including their protection among the fundamental strategic goals and defining concrete measures in this regard.

14. Restriction of personal liberty:

- **recommendation no. 21 (2018)** with which the Ombudsman recommended that the Prison Administration of the Republic of Slovenia further 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;
- **recommendation no. 25 (2018)** with which the Ombudsman recommended 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 when this is required;
- **recommendations nos. 14 (2016) and 19 (2015)** to provide adapted space for convicts who need additional assistance during their imprisonment due to age, illness or disability;
- **recommendation no. 15 (2016)** with which we advocated prompt adoption of a protocol on the accommodation of convicts who need more intensive and demanding care in retirement homes;
- **recommendation no. 13 (2017)** to take measures to realise recommendations from a special thematic report to improve conditions for the accommodation and treatment of vulnerable prisoners.

15. Pension and disability insurance:

- **recommendation no. 36 (2018)** that the Government, as they plan amendments to the Pension and Disability Insurance Act, study again the suitability of the regulation that has been regulating various rights arising from voluntary insurance and voluntary purchase of years of service since 31 December 2012 or, if they insist on such a regulation, to enable the affected insured persons to decide on the potential reimbursement of the paid funds, since the basic intention of payment failed due to the actions of the state;

- **recommendation no. 57 (2017)** to draw expert bases in accordance with the principle of equity to enable the return of funds paid for the purchase of insurance periods, the purpose of which was thwarted by legal amendments;
- **recommendation no. 59 (2017)** to study the option to determine the amicable solution of disputes in an administrative procedure or procedures of exercising the rights arising from social insurance;
- **recommendations nos. 123 (2013) and 89 (2014)** that the Pension and Disability Insurance Institute adopt measures to significantly shorten the deadlines for the consideration of received cases and decide on complaints within a statutory time limit;
- **recommendation no. 123 (2013)** that the Pension and Disability Insurance Institute establish how to simplify and shorten procedures in which foreign policyholders are involved;
- **recommendation no. 90 (2014)** that all records with data affecting the rights of individuals should be edited and updated before the informative calculation of the pension is issued;
- **recommendation no. 88 (2014)** that the Pension and Disability Insurance Institute study the reasons for complaints and appeals of insured persons, and attempt to improve their communication with the insured persons on this basis.

2.17 Social security:

- **recommendation no. 44 (2018)** with which the Ombudsman recommended that the ministry responsible for social security in cooperation with the Social Chamber of Slovenia and the Association of Social Institutions of Slovenia examine the suitability of staffing standards in retirement homes and more fully adjust them to the residents' needs;
- **recommendation no. 102 (2014)** with which the Ombudsman proposed a renewal of staffing standards for health care and care workers in retirement homes where young persons with disabilities live;
- **recommendation no. 65 (2016)** with which the Ombudsman pointed out that there are no standards based on which the meals provided in retirement homes can be assessed.

2.7.3 The Ombudsman's activity and new recommendations from other chapters of the Annual Report

2.7.3.1 Recommendations

In this annual report, the recommendations provided in the individual substantive chapters below refer to the rights of the elderly.

1.6.2 The Human Rights Centre

November The Ombudsman recommends that the Government of the Republic of Slovenia provide suitable, accessible, affordable and appropriate services for the elderly and persons with disabilities who need assistance for them to be able to exercise their right to an independent life and inclusion in their community in towns and rural areas.



2.2 National and ethnic communities

15. The Ombudsman recommends that the Government Office for National Minorities, upon the preparation of the next National Programme of Measures for Roma, inform the Ministry of Labour, Family, Social Affairs and Equal Opportunities of the contents of the Ombudsman's report for 2018, which refers to the topic, and propose to include measures regarding older members of the Roma community in the next programme after suitably studying them.

2.14 Restriction of personal liberty

73. The Ombudsman recommends that the Ministry of Justice adopt all necessary measures to ensure suitable accommodation in adapted spaces (inside or outside of the prison system) and assistance with everyday and other required care to all prisoners who require additional assistance due to age, illness, disability or other impairments.

1.15 Pension and disability insurance

87. The Ombudsman recommends that the Government of the Republic of Slovenia draft amendments to the Pension and Disability Insurance Act and create a parity between insured persons who have purchased years of service with insured persons who have been voluntarily included in pension insurance.

88. The Ombudsman recommends that the Government of the Republic of Slovenia draft amendments to the Pension and Disability Insurance Act



and recognise the time granted to political prisoners on the basis of a decision of a special commission as a pension period without additional payment.

2.17 Social security

113. The Ombudsman recommends that the Government of the Republic of Slovenia adopt necessary measures to regulate long-term care.

114. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities study his findings from visits to institutions in 2019 and adopt all necessary measures to realise the given recommendations in cooperation with other competent authorities.

115. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities supplement the network of providers and expands the set of services to assist persons who cannot live alone so that they can live at home in an environment where they feel well and have an established social network.

116. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities address the lack of suitable personnel in retirement homes on the systemic level by establishing suitable staffing standards that will facilitate safe and quality treatment of users with better work conditions and suitable payment for the work performed.

117. The Ombudsman recommends that the Association of Social Institutions of Slovenia, in cooperation with the Ministry of Labour, Family, Social Affairs and Equal Opportunities, draft and adopt more detailed standards to implement individual types of care and the criteria for placing users under individual types of institutional care in retirement homes to enhance the transparency of charging for services and provide equal access to services.

2.18 Administrative matters

122. The Ombudsman recommends that the Government of the Republic of Slovenia regulate the right to special tax relief for taxpayers who maintain their family members (parents and adoptive parents) in a manner that allows them to always benefit from this relief when they are actually maintaining family members, regardless of whether they live in a common household with them or in institutional care, and pay costs on their behalf.

2.6.3.2 The Ombudsman's activities concerning the rights of the elderly

The Ombudsman's activities concerning the elderly and their rights is addressed in more detail in the following sections of the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2019 available on the Ombudsman's website <www.varuh-rs.si> in the online edition of the report:

1.6.2 The Human Rights Centre

2.13.3.2 Detainees and convicted persons

- On the position of prisoners who need additional assistance due to their age, illness or disability

2.14.1.1 Pension insurance

2.14.3.2 Pension insurance

- The same recognition of pensionable service without purchase for everyone?
- More on assistance and attendance allowance

2.15.3.2 Health care

- End-of-life issues: the right to have a previously expressed wish respected

2.15.3.3 Health insurance

2.17.1.4 Poverty

2.17.3.4 Institutional care

- The Ombudsman's findings and recommendations on the basis of visits to the institutions
- Lack of care capacities in the community
- Lack of personnel in retirement homes
- Charging for additional services in retirement homes
- Allocation of single rooms in retirement homes
- Inclusion of users of a housing unit in retirement home activities

2.8 LGBTI+

2.8.1 General findings and assessment of the situationa

In 2019, the Ombudsman considered few complaints regarding the rights of lesbian, gay, bisexual, transgender, intersex and other sexuality, sex and gender diverse people (LGBTI+). The considered cases referred to **equal opportunities and the prohibition of discrimination on the basis of sexual identity or orientation**, and one complaint referred to **social activities**.

On the initiative of two non-governmental organisations, we approached the Ministry of Health to obtain responses to their urgent **call to the Ministry to “formally regulate procedures to confirm sexual identity for transgender people”**. In the field of social activities, we considered a complaint from a headmistress of a primary school, who contacted the Ombudsman with a request to support the implementation of an activity day with the topic of hate speech to which she invited the **Pride Parade Association**. A group of parents were opposed to the participation of this association. The Ombudsman believes that school activities intended to raise awareness of the prohibition of discrimination or hate speech on the basis of sexual orientation do not interfere inadmissibly with the right of parents to freedom of conscience if the said topic is presented in an objective, critical and neutral manner and takes into account modern standards in education. However, parents who do not agree with such events are free to express their opinion in an appropriate way.

We wish to point out that the European Union Fundamental Right Agency (FRA) carried out the most extensive survey on LGBTI in 2019 in which 140,000 persons from the LGBTI group in the EU (including the United Kingdom), Northern Macedonia and Serbia participated.¹⁷ Only little progress has been made since the survey on LGBTI carried out by the FRA in 2012. Certain EU Member States promote the equality of sexual minorities; nevertheless, it is evident that persons from the LGBTI group still face negative experiences and cannot be what they are in everyday life. The data for Slovenia (and the EU), which speak for themselves, show that:

- **25 per cent** of respondents from the LGBTI group said that they **always or frequently avoid certain places out of fear of being attacked** (EU average is 33 per cent);
- **37 per cent** of respondents from the LGBTI group said that they are **very or quite open about their sexual identity** (EU average is 47 per cent);

¹⁷ European Union Fundamental Right Agency (FRA): A long way to LGBTI equality, EU-LGBTU II, 2020. The research is available at <fra.europa.eu/sites/default/files/fra_uploads/fra-2020-lgbti-equality_en.pdf> (5 June 2020).

- **17 per cent** of respondents **felt discriminated against in the workplace in the past year** (EU average is 21 per cent);
- **34 per cent** of respondents from the LGBTI group **said that they had been harassed in the past year** (EU average is 38 per cent);
- **seven per cent** of respondents from the LGBTI group **reported a physical or sexual attack on them to the police** (EU average is 14 per cent);
- **ten per cent** of respondents from the LGBTI group **were attacked in the five years prior to the survey** (EU average is 11 per cent);
- **34 per cent** of respondents from the LGBTI group believed that the **Government has successfully fought prejudice against and intolerance of persons from the LGBTI group** (EU average is 33 per cent);
- **64 per cent** of respondents from the LGBTI group **avoid holding hands** (EU average is 61 per cent);
- **33 per cent of respondents from the LGBTI group felt discriminated against in at least one sphere of life, such as going to bars, restaurants, hospitals or shops** (EU average is 42 per cent);
- **34 per cent of young persons aged between 15 and 17 hide their sexual orientation or identity at school** (EU average is 30 per cent);
- **33 per cent said that someone at school frequently or always defended or protected their rights as the rights of persons from the LGBTI group** (which is significantly less than on the EU level, where the average is 48 per cent);
- **34 per cent of adolescents aged between 15 and 17 from Slovenia said that their peers or teachers frequently or always supported persons from the LGBTI group** (EU average is 60 per cent);
- **a percentage of respondents (32 per cent)** similar to that in the EU (33 per cent) **said that issues related to LGBTI were discussed at school in a positive or balanced way.**

Of persons from the LGBTI group who felt discriminated against in the past year, only an average of 11 per cent in the EU reported it to an organisation or institution. The lowest percentage (three per cent) **was in Slovenia.** This is supported by the few complaints received by the Ombudsman. An average of 61 per cent of respondents in the EU had heard of at least one institution that operates in the field of equality, while in Slovenia the awareness is significantly lower, i.e. 33 per cent. However, **55 per cent of respondents from the LGBTI group in Slovenia estimated that prejudice against and intolerance of persons from the LGBTI group have reduced in the last five years** (EU average is 40 per cent), and **15 per cent of respondents believed that they have increased** (E36 per cent in the EU).

The Ombudsman's recommendations and his activities concerning the rights of LGBTI+ are presented below.

2.8.2 Realisation of the Ombudsman's past recommendations from other chapters of the Annual Report

We point out three Ombudsman's past recommendations from Chapter 2.10 Equality before the law and prohibition of discrimination, which refer to homosexual persons and remain unrealised. These recommendations include:

- **recommendation no. 7 (2018)** with which the Ombudsman recommended that the Ministry of the Interior and the Ministry of Labour, Family, Social Affairs and Equal Opportunities start cooperating on the joint issue of normative regulation of gender or legal gender recognition and, in the case of disputable issues, turn to the Government of the Republic of Slovenia pursuant to 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 stand on the issue pursuant to paragraph two of Article 58 of the State Administration Act (ZDU-1);
- **recommendation no. 8 (2018)** with which the Ombudsman recommended that the Prime Minister of the Government decide whether preparations of the act proposal, which would govern the change of gender or legal gender recognition, are considered a project of the Government for the management of which one of the ministers should be appointed pursuant to Article 63 of the ZDU-1;
- **recommendation no. 9 (2018)** with which the Ombudsman recommended that the Ministry of Health determine whether there are suitable legal bases for permanent prohibition of blood donation by men who have had sexual relations with other men.

2.8.3 The Ombudsman's new recommendations and activities from other chapters of the Annual Report

2.8.3.1 Recommendations

In this Annual Report, the following recommendation refers to the right of LGBTI+, which is provided and discussed in Chapter 2.10 Equality before the law and prohibition of discrimination:

54. The Ombudsman recommends that the Inter-Ministerial Working Group for examining the legal regulation of change of gender or legal gender recognition in the Republic of Slovenia conclude work in 2020 and that the competent ministry draft an act proposal that will regulate legal gender recognition in the same year.



2.8.3.2 The Ombudsman's activities

The Ombudsman's activities concerning the rights of LGBTI+ and issues of sexual identity are addressed in more detail in the following sections of the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2019 available on the Ombudsman's website <www.varuh-rs.si> in the online edition of the report:

- 2.10.2 Realisation of the Ombudsman's past recommendations
- 2.10.3.10 Sexual identity
- 2.23.3.3 Participation of the Pride Parade Association in an activity day at a primary school may be disturbing

2.9 FOREIGNERS

FIELD OF WORK	CASES CONSIDERED			RESOLVED AND JUSTIFIED		
	2018	2019	INDEX 19/18	NO. OF RESOLVED	NO. OF JUSTIFIED	SHARE OF JUSTIFIED AMONG RESOLVED
7. FOREIGNERS	103	110	106.80	74	13	17.6
7.1 ACQUISITION AND TERMINATION OF CITIZENSHIP	5	5	100.00	5	1	20.0
7.2 ENTRY, EXIT AND RESIDENCE OF FOREIGNERS IN THE COUNTRY	62	74	119.35	48	9	18.8
7.3 INTERNATIONAL PROTECTION, TEMPORARY PROTECTION AND THE PRINCIPLE OF NON-REFOULEMENT	9	23	255.56	16	3	18.8
7.4 UNACCOMPANIED MINORS	14	4	28.57	2	0	0.0
7.0 FOREIGNERS - OTHER	13	4	30.77	3	0	0.0

2.9.1 General findings and assessment of the situation



As in regard to the Roma¹⁸, **it is frequently and more or less openly asserted that the Ombudsman practices excessive advocacy in regard to the interests of foreigners** at the expense of¹⁹ those of Slovenian citizens. We have already shown, with many examples of the Ombudsman's requests for a review of constitutionality, that such accusations are not based on facts²⁰. In the 25-year history of the office, the Ombudsman has only filed two requests for a review of constitutionality that referred to foreigners (in 2011, the Ombudsman disputed the then International Protection Act (ZMZ) and the Foreigners Act (ZTuj-2) in 2017) among numerous requests for a review of the constitutionality of regulation filed with the Constitutional Court of the Republic of Slovenia. We may reiterate another important fact from 2019: on 15 February, we organised a press conference on two topics announced in

¹⁸ See, for example, p. 139 of the Annual Report for 2018.

¹⁹ See, for example, p. 257 of the Annual Report for 2017.

²⁰ See, for example, pp. 257–258 of the Annual Report for 2017.

advance, i.e. the Ombudsman's request for a review of the constitutionality of the Decree on limit values for environmental noise indicators and on findings regarding the treatment of foreigners on the southern border by the police.

The press conference received extensive media coverage²¹; nevertheless, none of the participants posed a question regarding the said request for the review of the constitutionality of the so-called Noise Decree, but many questions were asked regarding foreigners. On this occasion, environmental noise protection as a general topic appeared completely irrelevant to the public in comparison with substantively more restricted treatment of foreigners by the police. This goes to show that **the Ombudsman does not focus primarily or even solely on foreigners. Instead, topics related to foreigners are at the centre of public discussion. The reason is the attractiveness of the we-they dichotomy²², which divides by default and which certain politicians, at least (scoring cheap political points with voters), and part of the media (for higher ratings) try to exploit. However, such intentions do not distort the Ombudsman's actual practice.**

The Ombudsman does not have (and does not wish to have) a convenient opportunity to address only the rights of certain people²³. In most cases considered annually by the Ombudsman, (not) being a Slovenian is not a crucial circumstance; if decisive consequences for certain people are related to this status, we should remind ourselves of the fact that foreigners are people, too, and should, therefore, be entitled to legal certainties similar to those enjoyed by Slovenian citizens. This must be observed out of respect for human dignity, without which democratic society cannot exist.

We have already reported²⁴ that the Ombudsman praised the then government when it wished to amend the applicable legislation due to the so-called migrant crisis so that the response to such a crisis, if it were to be repeated, would be better than the first time, when the state had no experience thereof. Nevertheless, in our opinion, the concrete solution, which was enacted in 2017 with a new Article 10.b of the ZTuj-2, did not comply with the level of development of constitutional and convention standards of the protection of human rights, which is why we decided to contest it before the Constitutional Court. **Now we can report that we succeeded, as the Constitutional Court of the Republic of Slovenia decided in case no. U-I-59/17 that the second, third and fourth sentences of paragraph two and paragraph three of Article 10.b of the ZTuj-2 are repealed due to inadmissible prejudice to Article 18 of the Constitution (Prohibition of Torture).** Decision of 18 September 2019, which is also publicly accessible, contains more details; therefore, we only point out that the Constitutional Court classified the said decision among those that form a "precedent from the constitutional aspect, as they are a new and important contribution to the understanding of the Constitution".²⁵



Although this took place in 2020 (February), before this report was drafted, we would like to add, due to the relevance of the matter, that the Grand Chamber of the European Court of Human Rights decided (differently than the Chamber of Section III of the same court in January 2018) in the case of N.D. and N.T. v.

²¹ It was attended by representatives of the STA, Dnevnik, TV Slovenija, POP TV, Kanal A, Radio Slovenija, Radio Študent, Večer, Amnesty Akcija and the Society for human rights and supportive action HUMANITAS

²² See also p. 256 of the Annual Report for 2017.

²³ Already on p. 259 of the Annual Report for 2017.

²⁴ See also p. 260 of the Annual Report for 2017.

²⁵ P. 34 of their report for 2019.

Spain²⁶ that Spain did not breach the prohibition collective expulsion of foreigners referred to in Article 4 of Protocol No. 4 by promptly returning, without individual treatment, a group of foreigners who had climbed the fences surrounding the Spanish enclave of Melilla on the North African coast.

Certain people immediately drew parallels with the hypothetical cases in Slovenia and expressed their disagreement with the said decision of our Constitutional Court; a deputy initiative²⁷ was filed that the Government “promptly amend the Foreigners Act and re-legalise the option of prompt return of migrants, as this complies with the judgment of the European Court of Human Rights in cases 8675/15 and 8697/15 of 13 February 2020”. In addition to the cheap discrediting of the constitutional judges who voted in favour of the decision in the said case, the author of the deputy initiative also stated that “the Slovenian Ombudsman has never done anything good for Slovenians in their work; they mainly advocated the rights of marginal and deviant groups and foreigners”. The reason why such claims are absurd is clear from the matter stated above. Regarding the said judgment of the ECHR, we should particularly not ignore the fact that the protection standards of the rights and freedoms referred to in the Convention, which were involved in the court decision, are the minimum Member States should provide under their rule, **but each of them can also have higher constitutional standards**. Otherwise, every decision of the court in Strasbourg, which does not apply directly to the Republic of Slovenia, tries to show itself by analogy as decisive one way or another for our country. After all, the Ombudsman referred to the positions from several international judgments that applied to other countries in the request for a review of the constitutionality of the amended legislation on foreigners. It may be expected that the said judgment of the ECHR will be a frequently used reference in different cases related to migration for a long time, and that the authorities will rely on its strict aspect, although it also contains the basis for the other side (for example, the obligation to make available genuine and effective access to means of legal entry – see point 209). We draw particular attention to paragraph 232 of the said judgment, in which the ECHR emphasised that the decision that Article 4 of Protocol No. 4 (Prohibition of collective expulsions) was not breached does not call into question the broad consensus within the international community regarding the commitment of the Contracting States to protect their or the Schengen borders in a manner which complies with the Convention guarantees, and in particular with the obligation of nonrefoulement. **In case U-I-59/17, the Constitutional Court of the Republic of Slovenia repealed the second, third and fourth sentences of paragraph two and paragraph three of Article 10.b of the ZTuj-2 due to non-compliance with Article 18 of the Constitution of the Republic of Slovenia (prohibition of torture, non-refoulement principle) and did not take a stand on the prohibition of collective expulsions, while the Grand Chamber of the European Court of Human Rights decided in the case of N.D. and N.T. v. Spain that there had been no breach of the prohibition of collective expulsions referred to in Article 4 of Protocol No. 4 and did not take a stand on potential violations of the nonrefoulement principle.**

Let us also point out that, **with regard to foreigners, the Ombudsman sometime receives comments from the responsible ministry that portray us in a negative**

²⁶ Applications nos. 8675/15 and 8697/15.

²⁷ On 17 February 2020; the applicant was the leader of the deputy group of the Slovenian National Party.

way. The last such event was when we emphasised during an enquiry that legal sources do not contain the expression “record of accommodation” and that there is no legal basis for such personal data records of applicants for international protection. The Ministry of the Interior responded²⁸ by stating “that courts are competent to review the constitutionality and legality of legislation and its implementation in the Republic of Slovenia” and that we “interfered with the competence of the judicial branch with our letter”. Not only does Article 159 of the Constitution (which, in view of the stated comments by the Ministry, is ironically included in a chapter entitled CONSTITUTIONALITY AND LEGALITY) stipulate that the Ombudsman was established to protect human rights and fundamental freedoms and that the office is not even remotely a negligible part of the Constitution, but the obvious erroneousness of the Ministry’s quoted explanation of the Ombudsman’s actions is also supported by the fact that, pursuant to Article 23.a of the Constitutional Court Act (ZUstS), the Ombudsman may even initiate proceedings for the review of constitutionality or legality by filing such requests with the Constitutional Court of the Republic of Slovenia. Therefore, the question why the Ombudsman can do that if they cannot take a stand on the “constitutionality and legality of legislation and its implementation in the Republic of Slovenia” cannot be understood. The allegation of interfering “with the competence of the judicial branch is similarly unconvincing, although the Ministry did not substantiate the specific nature of the Ombudsman’s letter to the Ministry under Article 7 of the Human Rights Ombudsman Act (ZVarCP) or explain how the independence of the judicial branch or judges is affected (not even the Ombudsman sending their “opinion from the aspect of the protection of human rights and fundamental freedoms” directly to the court pursuant to Article 25 of the ZVarCP constitutes an interference). In addition, it should be added regarding the case in question that, pursuant to Article 59 of the Personal Data Protection Act (ZVOP-1), personal data protection is a special field of the Ombudsman’s work, i.e. “shall perform his tasks in the area of personal data protection in relation to state bodies, self-governing local community bodies and holders of public powers in accordance with the statute regulating the Human Rights Ombudsman”.

When, during the consideration of another case, we sent to the Ministry of the Interior a criticism of the Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Croatia regarding the readmission of persons whose entry or residence is illegal, the Ministry similarly established in its response²⁹ that we assessed the compliance of the Agreement with EU law, more specifically of directives, which, in their opinion, is not under our competence. In this regard, we additionally point out that Article 3 of the ZVarCP expressly stipulates that, in their work, the Ombudsman complies with the provisions of the Constitution and international legal acts on human rights and fundamental freedoms (the Charter of Fundamental Rights of the European Union is, undoubtedly, such an act). The Ombudsman clearly stated the legal bases for the criticism, i.e. Article 7 of the ZVarCP. Therefore, it seems **that the Ministry’s understanding of the legal bases for the Ombudsman’s opinions, proposals, criticisms and recommendations is completely inaccurate – they are not substantively formally binding on anyone in terms of content, but still the Ministry erroneously claims**

²⁸ Letter no. 2142-2110/2018/65 (1312-09) of 20 January 2020.

²⁹ Letter no. 2142-1785/2018/54 (131-01) of 15 July 2019.



on this inaccurate basis that they have authoritarian characteristics and that the Ombudsman's actions are inappropriate.

Regarding the said agreement between the Government of the Republic of Slovenia and the Government of the Republic of Croatia on the readmission of persons whose entry or residence is illegal, the Ombudsman's stand is that the Agreement does not comply with EU law and therefore, actions on its basis signify authoritarian actions which unlawfully encroach upon human rights and fundamental freedoms, as it foresees neither proceedings in which an individual would have the right to be heard nor the issue of a substantiated decision on return or surrender to a neighbouring country or legal remedies against the decision of the competent authorities of the contracting parties. In a specific case, we sent our opinion on the basis of Article 25 of the ZVarCP (as so-called *amicus curiae*) to the Constitutional Court of the Republic of Slovenia. The explanation of Judgment Ref. No. I U 1412/2019-16 of 18 December 2019 shows that the court agreed with the Ombudsman on the essential part. It ruled that the detention of the plaintiff, without a decision on return and with his surrender to the Croatian security authority, constituted an inadmissible encroachment upon his right to the protection of personal liberty referred to in Article 19, right to equal protection of rights referred to in Article 22, right to judicial protection referred to in Article 23 and right to legal remedies referred to in Article 25 of the Constitution. At the time of the preparation of this report, the Supreme Court of the Republic of Slovenia has an open case in which we issued the same opinion on the basis of Article 25 of the ZVarCP to the highest court in the country. For this reason, our criticism of the said agreement is not explained in more detail **(7.2-41/2019)**.



We should also point out that **the Republic of Slovenia is considerably late with the transposition of EU rules on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (Directive (EU) 2016/801)**. Member States should harmonise the national legislation with this Directive by 23 May 2018 and inform the Commission thereof. We also contacted the Ministry of the Interior about the potential position on the direct effect of Article 25 (Stay for the purpose of job-searching or entrepreneurship for researchers and students) of the said directive, whose response³⁰ that, despite the expiry of the deadline for transposition, the stated article "is not directly applicable but that the transposition of the directive is required for its application" did not surprise us. Let us point out that the Contact Group on Legal Migration³¹ (an expert group established by the European Commission and Member States to transpose directives on legal migration) published in 2019 a document³² in which its explicit answer to the question of whether Article 25 of Directive (EU) 2016/801 had a direct effect was that the provisions of the said article did have a direct effect, as they are clear and accurate, which means that Member States, even if they have not yet transposed the directive into their legislation, must provide students and researchers with an opportunity to keep residing in its territory to seek a job or establish a company (0705-11/2020) for nine months after the completion of studies or research.

³⁰ Letter no. 500-76/2020/2 (1311-07) of 19 February 2020.

³¹ Contact Group on Legal Migration.

³² Labelled Mig Dir 154, p. 29.

Recommendation no. 50: The Ombudsman recommends that the Government of the Republic of Slovenia do everything possible under its competences for legislative amendments that would fully transpose Directive (EU) 2016/801 in the national legislation.



We also emphasise that **the Republic of Slovenia has not yet ratified the Convention on the Reduction of Statelessness from 1961**. The definition of a stateless person in this convention is wider than the definition of a stateless person in the Convention relating to the Status of Stateless Persons from 1954 whose contracting party is the Republic of Slovenia and which defines only a person who is stateless de jure, while the Convention from 1961 provides protection also to persons who are stateless de facto. In compliance with the obligations referred to in the said unratified convention, certain complainants considered by the Ombudsman should be classified as stateless de facto and provided with suitable protection; instead, they are treated as citizens of other republics of the former SFRY³³. We drew attention to this situation in our written application for the third round of the Universal Period Review of Slovenia.



Recommendation no. 51: The Ombudsman recommends that the Ministry of Foreign Affairs and the Government of the Republic of Slovenia, while taking into account Article 75 of the Foreign Affairs Act (ZZZ-1), make every effort to initiate the ratification procedure of the Convention on the Reduction of Statelessness, and that the National Assembly promptly adopt an act ratifying the said convention on the basis of the proposal by the Government.



As with many other countries, Slovenia, too, still **faces dilemmas regarding the age assessment procedures of applicants for international protection**. In this regard, the Ombudsman stated in the Annual Report for 2017³⁴ that alarming circumstances had been established, since only three expert opinions regarding age assessment were issued in five years (between 2012 and 2017). In all cases, the Division of Paediatrics, which was tasked with the preparation of expert opinions, prepared an opinion on the basis of the medical examination of a minor, but then informed the Ministry of the Interior that it would no longer prepare expert opinions. The Response Report of the Government of the Republic of Slovenia to the Ombudsman's regular annual report 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 of preparing expert opinions". As stated in the Ombudsman's report for 2018³⁵, the Ministry of the Interior had explained that "they agreed with the Institute of Forensic Medicine in Ljubljana to prepare expert opinions regarding the actual age of applicants for international protection whose age is questionable.

³³ Regarding this, see more on pp. 158 and 159 of the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2018.

³⁴ Pp. 269 and 70.

³⁵ Pp. 166.

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 radiation-free alternative to dental X-rays, but the images will be obtained using a modern device that involves a minimum amount of 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 are doubts as to their age will be referred to the procedure to assess their age.” Now we can report that we discovered during a discussion with the director of the Government Office for the Support and Integration of Migrants prior to visiting the branch of the Asylum Centre in Logatec that age was assessed at the Medical Centre in Rogaška Slatina, where the MRI of a joint and a dental examination were carried out (three age assessments were carried out in 2019). We are still waiting for the explanation of the Ministry of the Interior as to why there was no agreement on age assessment with the Institute of Forensic Medicine of the Faculty of Medicine and whether it was true that only an image of one joint and a dental x-ray were sufficient for the Medical Centre to assess age, while the Institute of Forensic Medicine anticipated it would need the images of both clavicles and wrists as well as a brief discussion and routine medical examination of the applicant to do the same. We will report on these findings in the next annual report **(7.3-1/2020)**.

The Ombudsman still considers cases of foreigners who claim that they are financially excluded as they do not have access to a bank account in Slovenia. Banks are also bound by the prohibition of discrimination and clients (consumers) have the right to be treated in a non-discriminatory way in all services provided by banks on the market. In this regard, we have recently sent a proposal to the Ministry of Finance and the Bank of Slovenia, thus we will have to report on the response of the addressees next time **(2.06/2019)**.

2.9.2 Realisation of the Ombudsman's past recommendations

With **recommendation no. 20 (2018)**³⁶, the Ombudsman recommended that the Government 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 various 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 pursuant to the European Convention on Human Rights (ECHR). The response was prepared by the Ministry of the Interior³⁷, which states among other things that the Foreigners Act (ZTuj-2E) suitably regulates the option of the status legal-

³⁶ Annual Report for 2018, p. 159.

³⁷ Pp. -243 and 10-1106.

isation of foreigners who have been illegally staying here for a long period, which also observes the standards and criteria of the European Convention on Human Rights. We cannot deem the report (fully) realised, but do not reiterate it on the abstract level. We reported on the so-called tolerated long-term illegal residence in several consecutive annual reports, i.e. for 2016³⁸, 2017³⁹ and 2018⁴⁰; in view of the received responses from the authorities, we estimate that we cannot expect recommendations such as the one above to be realised in the foreseeable future. Therefore, we remain focused on providing (more) concrete recommendations until further notice.

2.9.2.1 The Ombudsman's past recommendations discussed in other chapters

The Ombudsman's past recommendations discussed in Chapter 2.14 Restriction of personal liberty also refer to foreigners and their rights. Many of them remain partially or fully unrealised.

- **recommendation no. 33 (2018)** with which the Ombudsman recommended that, when an applicant is deprived of their liberty, the Ministry of the Interior act swiftly and without undue delay, and to again consider additional amendments to the International Protection Act (ZMZ-1) or additional, more lenient measures to enable more individualised discussion of applicants for international protection and 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;
- **recommendation no. 34 (2018)** with which the Ombudsman encouraged the Ministry of the Interior, in dialogue with the Administrative Court of the Republic of Slovenia, to adopt all necessary measures, including legislative amendments (if necessary), to enable the implementation of legally determined judicial supervision of the execution of all measures of restriction of movement;
- **recommendation no. 23 (2016)** to prepare systemic solutions for adequate accommodation of unaccompanied foreign minors; and
- **recommendation no. 30 (2015)** to adopt measures to respect the best interests of foreign minors by accommodating them in suitable institutions instead of the Aliens Centre.

³⁸ Pp. 231–233

³⁹ P. 26–0262

⁴⁰ P. 14–3159

2.9.3 The Ombudsman's new recommendations and activities

2.9.3.1 Recommendations

The Ombudsman gives the authorities the following recommendations regarding foreigners:



50. The Ombudsman recommends that the Government of the Republic of Slovenia do everything possible under its competences for legislative amendments that would fully transpose Directive (EU) 2016/801 into the national legislation.

51. The Ombudsman recommends that the Ministry of Foreign Affairs and the Government of the Republic of Slovenia, while taking into account Article 75 of the Foreign Affairs Act (ZZZ-1), make every effort to initiate the ratification procedure of the Convention on the Reduction of Statelessness, and that the National Assembly promptly adopt an act ratifying the said convention on the basis of the proposal by the Government.

52. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities prepare in 2020 proposed amendments for the statutory text to expressly stipulate that holders of a temporary residence permit have free access to the labour market for other valid reasons (which includes the right to be entered in the unemployment register).

53. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities prepare in 2020 proposed amendments to the Transnational Provision of Services Act (ZČmIS) to suitably regulate process issues related to the issue of A1 forms pursuant to Article 13 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.

The Ombudsman's activity with substantive explanations concerning foreigners and their rights is addressed in more detail in the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2019 available on the Ombudsman's website <www.varuh-rs.si> in the online edition of the report:

2.9.3.2 The Ombudsman's experience with the lengthy procedures of the competent authorities involving foreigners is becoming increasingly extensive

- The increased workload over several years can no longer be deemed exceptional.

- A special problem is that the executive authority frequently does not respect the judicial authority
- A lengthy decision-making procedure (lasting several years) on an application for family reunification may be a violation of the right to family life.
- The duty to issue an administrative decision within two months and a wait for the decision of the state prosecutor
- Lengthy administrative procedures may also be a result of the incompleteness of an application

2.9.3.3 Danger(s) of the instrumentalisation of the administrative procedure for the needs of criminal prosecution

2.9.3.4 The police do not establish facts or collect evidence in international protection procedures or provide an assessment of the presented evidence on which a decision on the international protection application would be based

2.9.3.5 EU citizens applications for international protection in other Member States

2.9.3.6 The existence of family and social ties must be assessed in the procedure to revoke the residence permit

2.9.3.7 Holders of a temporary residence permit issued after an individual has been allowed to stay in Slovenia for a longer period and their return to the country of origin is not permitted or possible, should have free access to the labour market

2.9.3.8 More on the perceived problems of foreign workers – international transport drivers

- In 2019, we were informed of certain particular problems of foreign workers – international transport drivers, which we had not yet considered. Fictitious reports of foreign workers employed as international transport drivers may not be approached by deviating from the individualised treatment of specific administrative matters.
- A1 form for foreign workers – international transport drivers who do not have to register residence in the Republic of Slovenia
- Incomplete procedural arrangements for deciding on the issuance of the A1 form on the basis of the Regulation on the coordination of social security systems

2.9.3.9 Foreigners in other chapters of the annual report

In this annual report, the following recommendations provided in other substantive chapters also refer to the rights of foreigners:



1.7.1 The Human Rights Centre

9. The Ombudsman recommends that the Government of the Republic of Slovenia and the competent authorities ensure that migrant minors are accommodated together with their parents in suitable replacement accommodation facilities, while their accommodation in detention centres should only be in exceptional circumstances.

2.10 Equality before the law and prohibition of discrimination

59. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities study the significantly poorer treatment of citizens of the so-called third countries in comparison to citizens of the Member States of the EU, EEA or the Swiss Confederation regarding registration in the unemployment register, and if necessary ensure suitable changes.

The Ombudsman's activities concerning foreigners and their rights is addressed in more detail in the following sections of the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2019 available on the Ombudsman's website <www.varuh-rs.si> in the online edition of the report:

- 2.10.3.7 The regulation that does not classify foreign citizens with a temporary residence permit among the beneficiaries for social security benefits despite them demonstrating an important connection to the country is unjustified discrimination on the basis of status of a foreigner
- Demonstrating the existence of an important connection to the country for the eligibility to social security benefits of a person who is not a Slovenian citizen
 - Discrimination against children who are Slovenian citizens in view of the type of residence permit of a parent who is not a Slovenian citizen
 - Current response of the Ministry to the Ombudsman's criticism
- 2.10.3.8 Why are citizens of the so-called third countries (in comparison to citizens of the Member States of the EU, EEA and the Swiss Confederation) treated differently regarding registration in the unemployment register and the rights that (may) be related to such a registration?
- On the position of persons granted international protection

B. Substantive fields discussed

2.10 EQUALITY BEFORE THE LAW AND PROHIBITION OF DISCRIMINATION

FIELD OF WORK	CASES CONSIDERED			RESOLVED AND JUSTIFIED		
	2018	2019	INDEX 19/18	NO. OF RESOLVED	NO. OF JUSTIFIED	SHARE OF JUSTIFIED AMONG RESOLVED
1. EQUALITY BEFORE THE LAW AND PROHIBITION OF DISCRIMINATION	46	49	106.52	41	5	12.2
1.1 EQUALITY BEFORE THE LAW	1	5	500.00	5	0	0.0
1.2 EQUAL OPPORTUNITIES FOR PERSONS WITH DISABILITIES	24	14	58.33	10	3	30.0
1.3 EQUAL OPPORTUNITIES RELATING TO SEXUAL IDENTITY OR ORIENTATION	8	6	75.00	6	1	16.7
1.4 EQUAL OPPORTUNITIES RELATING TO RACE, NATIONALITY OR ETHNIC ORIGIN	5	4	80.00	3	1	33.3
1.0 EQUALITY BEFORE THE LAW AND PROHIBITION OF DISCRIMINATION - OTHER	8	20	250.00	17	0	0.0

2.10 EQUALITY BEFORE THE LAW AND PROHIBITION OF DISCRIMINATION

2.10.1 General findings and assessment of the situation

2019 did not bring any significant changes in the number of cases handled in the field of equality before the law and prohibition of discrimination. Even where it seems that the number of complaints in this field is much higher, figures show that the number of cases is actually low.

In general, we can state that **equality before the law and the prohibition of discrimination** remain ongoing social topics. Many people who write to us state that their case includes such an occurrence. We noticed that people **frequently do not distinguish between the two notions** and perceive their cases as unacceptable due to treatment that is, in their eyes, discriminatory or unequal in comparison to the treatment of others. Not every case in which a complainant claims a breach of non-discriminatory treatment or equality before the law was classified as pertaining to this field (for example, if a complainant claimed that the court treated them unequally, as it only presented evidence proposed by the opposing party, while their motions for evidence were rejected, the case was considered in the field of justice regarding equal protection of rights referred to in Article 22 of the Constitution, although the complainant claimed to be discriminated against by the court).

The data in the table above show that complainants **contacted the Ombudsman regarding various connecting factors which were most frequently (20) factors which are not elaborated in special sub-fields** (various types of disability prevailed in 14 cases in the latter field).

In the reporting year, we detected certain movements in this field but these are still required.

It should be especially emphasised that we received a complaint in 2019 regarding the financing of schools and nurseries due to an alleged violation of Article 14 of the Constitution; however, the second mentioned topic is addressed in the chapter on social activities (see Chapter 2.23.4.4 The co-financing of private nursery causes a stir).

2.10.2 Realisation of the Ombudsman's past recommendations

Unfortunately, numerous Ombudsman's past recommendations that refer to equality before the law and prohibition of discrimination remain only partially realised or even fully unrealised.

- **recommendation no. 3 (2018)**⁴¹ with which the Ombudsman recommended that the Ministry of Infrastructure promptly draft a proposal for an act that will systematically regulate the rights of students with disabilities regarding their commute 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 proposal and submit it to the National Assembly for discussion and adoption;
- **recommendation no. 4 (2018)**⁴² with which the Ombudsman recommended suitable action within which the prompt adoption of suitable legal bases relating to the rights of students with disabilities regarding their commute from their place of residence to their place of education will meet the obligation referred to in paragraph three of Article 38 of the Equalisation of Opportunities for Persons with Disabilities Act (ZIMI) after suitably adjusting the study process for students with disabilities;

⁴¹ P. 67.

⁴² Ibid.

- **recommendation no. 5 (2018)**⁴³ with which the Ombudsman recommended that the Ministry of Justice stick to their forecast in the response to three Ombudsman's recommendations regarding the analysis of the physical accessibility of courts for persons with disabilities, and strive for the physical accessibility of courts for persons with disabilities to become satisfactory as soon as possible;
- **recommendation no. 7 (2018)**⁴⁴ with which the Ombudsman recommended that the Ministry of the Interior and the Ministry of Labour, Family, Social Affairs and Equal Opportunities start cooperating on the joint issue of normative regulation of gender or legal gender recognition and, in the case of disputable issues, turn to the Government of the Republic of Slovenia pursuant to 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 that the Government of the Republic of Slovenia take a stand on the issue pursuant to paragraph two of Article 58 of the ZDU-1 (with recommendation no. 8 (2018)⁴⁵ the Ombudsman recommended that the Prime Minister decide whether preparations of the act proposal, which would govern the change of gender or legal gender recognition, are considered a project of the Government, for the management of which one of the ministers should be appointed pursuant to Article 63 of the State Administration Act (ZDU-1);
- **recommendation no. 9 (2018)**⁴⁶ with which the Ombudsman recommended that the Ministry of Health determine whether there are suitable legal bases for permanent prohibition of blood donation by men who have had sexual relations with other men.

The online edition of the annual report available on the Ombudsman's website includes [additional substantive explanations](#) regarding the (non)realisation of past recommendations.

2.10.3 The Ombudsman's new recommendations and activities

2.10.3.1 Recommendations

In the field of equality before the law and prohibition of discrimination, the Ombudsman drafted the following recommendations:

54. The Ombudsman recommends that the Inter-Ministerial Working Group for examining the legal regulation of the change of gender or legal gender recognition in the Republic of Slovenia conclude work in 2020 and that the competent ministry draft an act proposal that will regulate legal gender recognition in the same year.



⁴³ P. 69.

⁴⁴ P. 76.

⁴⁵ Ibid.

⁴⁶ P. 79.



55. The Ombudsman recommends that (based on the best practice of the Ministry of Justice, which started preparing an analysis of the accessibility of courts in 2017) the Ministry of Education, Science and Sport promptly commence the analysis of the accessibility of secondary and primary schools for persons with disabilities and, on this basis, draft a feasible plan to provide access to all such facilities which will include a timetable and a financial plan for the implementation of measures.

56. Taking into account the lengthy period of resolving the issue of access to Bežigrad Grammar School and the fact that there is no grammar school providing the International Baccalaureate Diploma programme that is physically accessible for persons with disabilities in the central and western regions of Slovenia, the Ombudsman recommends that the Ministry of Education, Science and Sport provide funds in the budget to eliminate architectural barriers at Bežigrad Grammar School.

57. The Ombudsman recommends that the Ministry of Culture adopt suitable strategies and, if necessary, legislative measures, and provide financial incentives to improve the accessibility of television programmes for the blind and partially sighted.

58. The Ombudsman recommends that the Government of the Republic of Slovenia draft a proposal from the aspect of human rights for a more harmonised legislative regulation of the right to social security benefits for foreigners with only a temporary residence permit but who are very connected with the country; at the same time, the proposed new regulation in this field should eliminate the discrimination against children whose parents only hold a temporary residence permit.

59. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities study the significantly poorer treatment of citizens of the so-called third countries in comparison to citizens of the Member States of the EU, EEA or the Swiss Confederation regarding registration in the unemployment register, and if necessary ensure suitable changes.

The Ombudsman's activity with substantive explanations concerning equality before the law and prohibition of discrimination is addressed in more detail in the chapters Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2019 available on the Ombudsman's website <www.varuh-rs.si> in the online edition of the report:

2.10.3.2 There are still complications regarding access to courts for persons with disabilities

2.10.3.3 There are problems regarding the provision of access to public schools for physically impaired persons

- 2.10.3.4 Access to television information and contents for the blind and partially sighted must be improved**
- 2.10.3.5 Again regarding free transport for persons with mental disorders**
- 2.10.3.6 Is there unjustified discrimination when deciding on the allocation of a housing unit due to the personal circumstance that a person who has had mental health problems is involved?**
- 2.10.3.7 The regulation that does not classify foreign citizens with a temporary residence permit among beneficiaries for social security benefits despite them demonstrating an important connection to the country is unjustified discrimination on the basis of status of a foreigner**
- Demonstrating the existence of an important connection to the country for the eligibility to social security benefits of a person who is not a Slovenian citizen
 - The treatment of children who are Slovenian citizens in view of the type of residence permit of a parent who is not a Slovenian citizen
 - Current response of the Ministry to the Ombudsman's criticism
- 2.10.3.8 Why are citizens of the so-called third countries treated differently regarding registration in the unemployment register and the rights that (may) be related to such a registration (in comparison to citizens of the Member States of the EU, EEA and the Swiss Confederation)?**
- On the position of persons granted international protection
 - On the position of persons with long-term residence status
- 2.10.3.9 Adequate knowledge of the Slovene language is in the public interest for ensuring an appropriate quality of health services, but there is still no constitutional requirement to establish equality before the law.**
- On the application of Directive 2005/36/EC
 - On non-discrimination and equality before the law
 - Administrative and legal assessment of the case
 - The aspect of potential legitimate expectations
- 2.10.3.10 Sexual identity**
- 2.10.3.11 Collective complaint proceedings against Slovenia regarding fair payment and non-discrimination on the basis of gender are still in progress before the European Committee of Social Rights**

2.11 PROTECTION OF DIGNITY, PERSONAL RIGHTS, SAFETY AND PRIVACY

	CASES CONSIDERED			RESOLVED AND JUSTIFIED		
FIELD OF WORK	2018	2019	INDEX 19/18	NO. OF RESOLVED	NO. OF JUSTIFIED	SHARE OF JUSTIFIED AMONG RESOLVED
2. PROTECTION OF DIGNITY, PERSONAL RIGHTS, SAFETY AND PRIVACY	62	79	127,42	65	1	1,5
2.1 PROTECTION OF PERSONAL DATA AND OTHER PRIVACY ASPECTS	50	63	126,00	52	1	1,9
2.2 PROTECTION OF PERSONAL RIGHTS	3	2	66,67	2	0	0,0
2.3 PREVENTION, SUPPRESSION AND PUNISHMENT OF TRAFFICKING IN PERSONS	1	1	100,00	0	0	0,0
2.4 REPAIR	5	3	60,00	3	0	0,0
2.5 PROTECTION OF DIGNITY, PERSONAL RIGHTS, SAFETY AND PRIVACY – OTHER	3	10	333,33	8	0	0,0

2.11.1 General findings and assessment of the situation

A glance at the numbers in the table above shows that the qualitative assessment of the situation in this field is not an adequate criterion of the Ombudsman's work.



The Republic of Slovenia **still does not have a new personal data protection act** (it is expected to bear the acronym ZVOP-2), although it will soon be two years since the GDPR (General Data Protection Regulation) entered into force on 25 May 2018. Although it is directly applicable, it also contains important provisions regarding

some of its national legal implementations. It must be acknowledged that specific activities of the Ministry of Justice have been carried out in that regard and more than one version of the proposed ZVOP-2 has been drafted; however, the government has changed twice in this time, which affects the adoption process of such an important and complex legislation, particularly given the various interests connected to it.

The Republic of Slovenia has still not transposed into its legislation Directive (EU) 2016/680 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 by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA. The deadline for the transposition expired on 6 May 2018. According to the latest available data, a special act is to be drafted for this purpose (initially, it was planned that the ZVOP-2 would also include this section).



Recommendation no. 60: The Ombudsman recommends that the Ministry of Justice prepare an act proposal that will transpose Directive (EU) 2016/680 in the national legislation.



It should also be pointed out that **the state has not yet ratified the Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data**⁴⁷. Last year, we reported on the revision of the said convention (ratified in Slovenia with the Act Ratifying the Convention for the Protection of Individuals with Automatic Processing of Personal Data (MKVP)⁴⁸); in the first half of 2019, the Ministry of Justice submitted an initiative to conclude the Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data⁴⁹; the Republic of Slovenia signed it (16 May 2019) but has not yet been ratified (as it has been in, for example, Croatia). Details regarding potential further activities to ratify the said protocol are not known.



Recommendation no. 61: The Ombudsman recommends that the Ministry of Foreign Affairs and the Government of the Republic of Slovenia, while taking into account Article 75 of the Foreign Affairs Act (ZZZ-1), make every effort to initiate the ratification procedure of the Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, and that the National Assembly promptly adopt an act ratifying the said protocol on the basis of the proposal by the Government.



⁴⁷ Original title: 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.

⁴⁸ Official Gazette of the Republic of Slovenia [Uradni list RS] – International Treaties, No. 3/94.

⁴⁹ No. 51002-25/2019/3 of 16 April 2019.



In the year addressed in this report, two important decisions of the Constitutional Court of the Republic of Slovenia should be pointed out in relation to personal data protection, which occurred due to the Ombudsman's request for a review of the constitutionality of the Police Tasks And Powers Act (ZNPPol) – one refers to the use of automatic number plate recognition (ANPR) technology by the police, while the other refers to the use of drones; both are reported in more detail in the last sub-chapter of this chapter. **At least three cases relevant from the aspect of personal data protection are still pending** before the highest judicial authority for the protection of constitutionality and legality, and human rights and fundamental freedoms. Regarding the **first case** registered under no. U-I-152/17 regarding the Ombudsman's request for a review of the constitutionality of the ZNPPol regarding the use of data from the passenger name record (PNR) by the police to prevent, detect, investigate and prosecute terrorist and serious crime – related to the disputable compliance of Directive (EU) No 2016/681 (which was transposed in the national legislation with a new said act) with Articles 7 and 8 of the EU Charter of Fundamental Rights, we must (unfortunately) establish that the Belgian constitutional court submitted at the end of October certain questions to be decided by the Court of Justice of the European Union – it will probably be clear this year whether the Slovenian court will also submit any such question to be decided in its case, which was instigated in 2017. The **second case** registered under no. U-I-144/19 refers to a request of a group of National Assembly deputies for a review of the constitutionality of Article 150.a of the Criminal Procedure Act (ZKP) (the use of technical means to supervise the mobile telephony signal – so called IMSI-catchers by the police); the Constitutional Court withheld (ex officio) the implementation of the contested provision, stating that explicitly non-targeted collection and processing of personal data from the private life of many individuals is allowed. The **third case** registered under no. U-I-103/17 refers to the request of the Information Commissioner for a review of the constitutionality of paragraphs one and three of Article 21 of the Slovene Intelligence and Security Agency Act (ZSOVA), which stipulate the supervision of international communication on the basis of a written order of the director of the Slovene Intelligence and Security Agency (SOVA). The described situation **while those who propose a review of the constitutionality of the Constitutional Court Act (ZUstS) are certainly passionate in their pursuit thereof**. In none of the said cases did anyone have to appear before a regular court and prove interest to have the opportunity to give the initiative for a review of the constitutionality of the act on the basis of which their rights, legal interests or legal position have been directly encroached upon.

At the end of the year, **the option for the police to use computer technology for face recognition caused quite a stir**. Following the publication of the findings of AlgorithmWatch⁵⁰, a non-profit organisation from Berlin, on the use of the said technology in 25 EU Member States, some people were upset by the information that the Slovenian Police has been using it since 2014.

⁵⁰ See <https://algorithmwatch.org/en/story/face-recognition-police-europe/>.

The media⁵¹ published the explanations of the General Police Directorate that “the tool is not intended for the automatic recognition of a series of photos (for example, passers-by, crowds at football matches, etc.) and is not connected with external sources for capturing photos or videos (e.g. security cameras, road network cameras, ATM cameras, social media, etc.)” and that the selection of photos is only limited to the police record of photographed persons. The application for the Slovenian Police called Face Trace was developed by CENT SI, a private limited company that deals with the development of other biometric applications, on the basis of a public tender. We received several questions from journalists on this issue, and also a few comments on the fact that the Ombudsman did not contest the part of the ZNPPol that refers to the processing of data on the biometric characteristics of people by the police in 2017. Certain people even stated that the Ombudsman was not doing their job and protecting the interests of the repressive state authority⁵² or, for example, led readers to ask themselves why the Police and the Human Rights Ombudsman go hand in hand in this matter⁵³, etc.

Irrefutable facts clearly attest to the fact that such accusations of conspiratorial collaboration of the Ombudsman with the Police or any other authority are obviously misguided. How could these accusations be true when the Ombudsman filed a request for the review of the constitutionality of new provisions on automatic number plate recognition, a request for the review of the constitutionality of the new provision on drones and a request for the review of the constitutionality of new provisions on the passenger name record (PNR) (in addition to these three requests for a review of the constitutionality of the ZNPPol, there was also a request for the review of the constitutionality of the ZTuj-2, which is also an act on internal affairs) the same year that the amended ZNPPol-A was adopted. At the abstract level, many statutory provisions may be discussed from the aspect of human rights and fundamental freedoms, which is particularly evident in acts that regulate the operation of repressive authorities. However, this cannot mean that the Ombudsman requests a review of constitutionality in every case, as this would mean irresponsible exploitation of the privileged access to this legal forum entrusted to the Ombudsman by the legislator. We should not forget that the system of the protection of constitutionality and human rights and fundamental freedoms by the Constitutional Court, as defined in the ZUstS, implies that requests for a review of the constitutionality by individuals who can prove that the specific regulation directly encroaches upon their rights, legal interests or legal position are to be discussed within its framework. The Ombudsman has not received a single complaint in which an individual addressed specific processing of data pertaining to their biometric characteristics by the police, or any other police power or measure foreseen in an abstract legal text.

⁵¹ See feature “Tudi slovenska policija uporablja avtomatsko prepoznavo obrazov” at <https://www.rtv slo.si/slovenija/tudi-slovenska-policija-uporablja-avtomatsko-prepoznavo-obrazov/510776>.

⁵² See “Slovenska policija in biometrijske metode nadzora” na <https://www.eticen.it/2019/12/12/slovenska-policija-in-biometrijske-metode-nadzora/>.

⁵³ See “Srhljive razsežnosti tehnologije prepoznavanja obrazov” in the Zarja and Jana magazines.

Particularly as the latter anticipates possible encroachments upon human right and freedoms, which are not absolute by nature, by the police, while there is certainly no lack of space to theorise about (dis)proportionality in all kinds of imaginary scenarios. However, such a potential cannot give rise to a realistic expectation that a review of the constitutionality of each such statutory provision will actually be filed.

Individuals and groups often expect the Ombudsman, even in the form of more or less direct pressure, to challenge the constitutionality of different laws for various reasons. However, the Ombudsman always decides whether to file a request for a review of constitutionality on the basis of their own assessment of all relevant information and circumstances. The Ombudsman is independent in their work as explicitly stipulated by Article 4 of the ZVarCP, and this statutory provision clearly indicates that the Ombudsman's positions are their own and, as such, not necessarily the same as the positions of other authorities, individuals or groups. If this was not the case, the existence of this state authority would be meaningless.⁵⁴ We should also point out that **the relationship between the Ombudsman and the civil society is not a relationship between an "attorney" and the "affected party", as the Ombudsman is not an advocate of the civil society,** but ensures, at their discretion and within their powers, that rights and freedoms are respected in all fields of society.⁵⁵

As an interesting fact, let us state that many complaints received in this field refer in one way or another to the deceased, as war and post-war executions remain a constant (we still receive various criticisms in this regard, and we can only explain what we wrote in our last year's annual report⁵⁶); also this time in connection with Roma, we handled an interesting complaint regarding the burial of a Slovenian citizen abroad, and the admissibility of the exhibiting of old photos which show the deceased. All three cases are described in more detail below.

2.11.2 Realisation of the Ombudsman's past recommendations

With **recommendation no. 11 (2018)**⁵⁷ the Ombudsman recommended that the Government of the Republic of Slovenia (again examine this issue and then) decide whether it should officially request reimbursement from the Federal Republic of Germany in regard to the damage caused during World War II.

The Ministry of Foreign Affairs responded to this recommendation with an explanation that Slovenia's position is that the former Yugoslavia and Germany have never resolved the issue of war reparations and this issue remains open for Slovenia.

⁵⁴ Already on p. 105 of the Annual Report for 2018.

⁵⁵ Already on p. 120 of the Annual Report for 2002.

⁵⁶ See for example pp. 96-79 of the Annual Report for 2018.

⁵⁷ Annual Report for 2018, p. 97.

However, the Ministry emphasised as relevant the suitability of the moment, as the opening of such issues at a time when Europe seeks consent on important matters regarding the future of the EU, multi-annual financial framework, the exit of the United Kingdom from the EU and migration could strongly affect relations between countries and weaken European integration. In relation to the realisation of this recommendation, they stated that it was an ongoing task, but we believe that no significant changes in this field can be realistically expected in the foreseeable future and do not see the point in repeating this recommendation in this report.

2.11.3 The Ombudsman's new recommendations and activitiesa

2.11.3.1 Recommendations

In the field of the protection of dignity, personal rights, safety and privacy, the Ombudsman prepared the following recommendations:

60. The Ombudsman recommends that the Ministry of Justice prepares an act proposal that will transpose Directive (EU) 2016/680 into the national legislation.



61. The Ombudsman recommends that the Ministry of Foreign Affairs and the Government of the Republic of Slovenia, while taking into account Article 75 of the Foreign Affairs Act (ZZZ-1), make every effort to initiate the ratification procedure of the of the Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, and that the National Assembly promptly adopt an act ratifying the said protocol on the basis of the proposal by the Government.

62. The Ombudsman recommends that the Ministry of Economic Development and Technology propose suitable (statutory) regulation of the burials of victims from hidden wartime mass graves pursuant to paragraph one of Article 58 of the State Administration Act (ZDU-1) (or if necessary, pursuant to paragraph two of Article 58 of the ZDU-1, ask the Government for its position and/or guidelines regarding the resolution of the said issues).

The Ombudsman's activity with substantive explanations concerning the protection of dignity, personal rights, safety and privacy is addressed in more detail in the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2019 available on the Ombudsman's website <www.varuh-rs.si> in the online edition of the report:

- 2.11.3.2 Due to the Ombudsman's requests, the issue regarding the (in)admissibility of the use of technical means for automatic number plate recognition and drones became clearer
- 2.11.3.3 How are communications (international) supervised by the Slovene Intelligence and Security Agency (SOVA)?
- 2.11.3.4 Positions on a decent burial of Roma killed in World War II differ, and the legislation is incomplete
- 2.11.3.5 Burial of a Slovenian citizen who died abroad
- 2.11.3.6 Publication of old photos of deceased persons

2.12 FREEDOM OF EXPRESSION

FIELD OF WORK	CASES CONSIDERED			RESOLVED AND JUSTIFIED		
	2018	2019	INDEX 19/18	NO. OF RESOLVED	NO. OF JUSTIFIED	SHARE OF JUSTIFIED AMONG RESOLVED
4. FREEDOM OF EXPRESSION	54	35	64.81	31	2	6.5
4.1 FREEDOM OF EXPRESSION	2	4	200.00	4	0	0.0
4.2 ETHICS OF PUBLIC SPEAKING	39	20	51.28	16	0	0.0
4.3 ACCESS TO PUBLIC INFORMATION	8	3	37.50	3	0	0.0
4.0 FREEDOM OF EXPRESSION - OTHER	5	8	160.00	8	2	25.0

2.12.1 General findings and assessment of the situation

The situation regarding freedom of expression remains **distinctly related to current social developments** in terms of number and content. We are still expected to publicly respond, whether directly or indirectly, to various publicly expressed opinions, particularly of politically exposed persons. **The Ombudsman does not take a stand lightly in such cases** due to the importance of the concept of freedom of expression. The Ombudsman's main guideline when assessing whether to publicly react in such situations is generally the constitutional prohibition (Article 63 of the Constitution) 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. Many expectations regarding our public response frequently remain unfulfilled, but the reason for the Ombudsman's assessment that an expressed opinion does not show signs of constitutional non-freedom of expression and does not require **the Ombudsman's public comment is never motivated with a desire to contribute to the legitimacy of any form of inequality, hatred or intolerance.**

Parliamentary elections constitute current social developments in any democratic society. In view of the aforementioned, we were not surprised that we reported in our previous annual report on certain disputable posters from the election campaign related to the National Assembly elections⁵⁸; we were equally not surprised when we received complaints about posters of the DOM – Domovinska liga political party (on their website, they state that they “strive for Slovenia in Europe, the homeland of freedom), which read “GO SLOVENIA Not Albania. VOTE FOR DOM” and “The mission of Slovenia is not concern for the welfare of the people of Afghanistan, Nigeria or Pakistan, but concern for the welfare and safety of Slovenian citizens” during the campaign related to the election of representatives of the Republic of Slovenia to the European Parliament. To address this case, even the Ministry of Foreign Affairs contacted the Ombudsman after they received, due to the negative mention of Albania, its ambassador who expressed concern and emphasised the inadmissibility of such a message; he was contacted by several Albanian citizens living in Slovenia and journalists asking him for a comment; Slovenian journalists also contacted the Slovenian embassy in Tirana. A complainant believed that such a message was “inappropriate and hostile towards a particular group of people” and that it spread “fear and prejudice”.

Pursuant to the ZVarCP, the Ombudsman has competences and powers only in relation to the authorities but not in relation to private law entities or political parties. Nevertheless, **the Ombudsman has condemned obvious expressions of the constitutionally prohibited (Article 63) incitement to inequality and intolerance and violence and war, although they could not be attributed to a state authority, local self-government authority or holder of public authority.** Regarding a Slovenian journalist's tweet (“I'd let refugees approach only 500 metres from the Slovenian border, otherwise I'd shoot them”), we stated in a press release⁵⁹ that it undoubtedly exceeded freedom of expression, that it was unlawful and a morally twisted act; similarly, the Ombudsman condemned graffiti with unambiguous expressions of hatred against Christians (“Christians – we slaughtered you in 1945 – we will slaughter you in 2013”), i.e. against a social group that is usually not classified as a vulnerable group⁶⁰.

Regarding the election campaign posters to which we were alerted, we assessed that they could not be equated with the cases referred to in the preceding paragraph. In them, we perceived a populist criticism of the migration and integration policy of the EU, which **can definitely be a reason for concern.** After all, the Parliamentary Assembly of the Council of Europe recognised in Resolution 1889 (2012) that (point 4) during election campaigns certain candidates and political parties portray migrants and refugees as a threat to, and burden upon, 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, which also applies to election campaigns. However, **we do not**

⁵⁸ See for example pp. 107 and 108 of the Annual Report for 2018.

⁵⁹ Of 28 August 2015, available at <http://www.varuh-rs.si/medijsko-sredisce/n-o-v-i-c-e/de-tajl/varuh-o-pojavih-nestrpnega-sovraznega-govora-do-beguncev>

⁶⁰ More details are on pages 38 and 347 and 348 of the Ombudsman's Annual Report for 2013.

doubt that certain people will continue to lead similarly provocative election campaigns to attain their objective. We should not dismiss the fact that such is the nature of politics. We should particularly not forget that voters have an opportunity at elections to show with their vote what attracted or deterred them in a campaign and to vote accordingly. Pursuant to Article 21 of the ZUstS, the Constitutional Court of the Republic of Slovenia also decides on the unconstitutionality of the activities of political parties, whereby, pursuant to Article 68 of the said act, anyone may file a request for a review of the unconstitutionality of the activities of political parties. Unconstitutional activities of political parties may be prohibited with a decision in proceedings before the said authority.

Let us state, as an interesting fact, that we were among the addressees to receive “a report of the suspicion of a violation of the Geneva Convention Relative to the Treatment of Prisoners of War adopted on 12 August 1949 and 1929” against a political party and the author of the poster which displayed a photo of soldiers (recruits) who were captured in Rožna dolina near Nova Gorica in 1991. This poster was used by the Social Democratic Party (SDS) to congratulate Slovenian citizens on Slovenian Statehood Day (25 June). We deduced that the sender also sent the report to the State Prosecutor’s Office. We do not know how the matter was decided **(15.1-10/2019)**.

Also a constant is that the National Assembly has not yet adopted the ethics code of deputies or formed a tribunal that would respond to individual cases of hate speech in politics subject to public condemnation⁶¹. According to the available information, a dedicated working group met in 2019, but the code and tribunal are still non-existent.



Nevertheless, we can mention **at least one significant change in the case law regarding hate speech**: the Supreme Court of the Republic of Slovenia issued a judgment in case ref. no. I lps 65803/2012 regarding a criminal offence pursuant to paragraph one of Article 297 of the Criminal Code (KZ-1). The significance of this judgment of the highest court in the country lies in an interpretation of the criminalisation of the act referred to in the said article that is different to previous interpretations. According to this judgment, “the use of threats, abusive language or insults, if these are expressed publicly to promote or incite hatred, violence or intolerance, is in terms of intensity equal to the legal element of a potential threat to peace and public order; therefore this section of the statutory text must be interpreted in such a way that the two additional conditions are set alternatively and not cumulatively”. This means that it is not necessary for both conditions to be met, but rather the fulfilment of one of them will suffice (this had not previously been the case). Undoubtedly, this is a significant change in case law regarding a criminal offence pursuant to Article 297 of the KZ-1, but we will have to wait for its actual effects in further criminal law practice. After all, a single court decision does not constitute established case law. An additional interesting aspect of the said case is a description of the criminal offence: in 2011, the perpetrator published a comment below an article entitled

⁶¹ In this regard see p. 103 of the Annual Report for 2018 and the references stated therein.

“Entrepreneur targeted in thefts and burglaries” on the online portal of Radio Krka, which read: “A few sticks of amatol, a few M75 bombs and a few AK-47s just in case, I think there’s no other way. Or one by one, this could also work to make them think. Radio Krka, I’d have a song request; Korado/Brendi, kam so šli vsi cigani (where did all the gypsies go?). Thanks.” Such public expression is no longer admissible according to the said court decision.

2.12.2 Realisation of the Ombudsman’s past recommendations

Unfortunately, numerous past recommendations of the Ombudsman referring to freedom of expression remain only partially realised or even fully unrealised.

- **recommendation no. 13 (2018)**⁶² with which the Ombudsman recommended 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;
- **recommendation no. 14 (2018)**⁶³ with which the Ombudsman proposed that the Ministry of Culture do everything possible within its power to determine the following in relation to the realisation of the provision on the prohibition of spreading hatred in the media (Article 8 of the Mass Media Act): 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 that allow the publication of hate speech.

The online edition of the annual report available on the Ombudsman’s website includes [additional substantive explanations](#) regarding the (non)realisation of past recommendations.

⁶² Annual Report for 2018, p. 104.

⁶³ Annual Report for 2018, p. 107.

2.12.3 The Ombudsman's new recommendations and activities

2.12.3.1 1. Recommendations

In the field of freedom of speech, the Ombudsman reiterates two recommendations:

63. The Ombudsman recommends that all who participate in public discussions, particularly politicians in their statements and writing, avoid inciting inequality, hatred or intolerance on the basis of any personal circumstance, and when such cases occur, to respond and condemn them immediately (ongoing task).



64. Relating to the realisation of the provision on the prohibition of spreading hatred in the media (Article 8 of the Mass Media Act), the Ombudsman proposes that the Ministry of Culture 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 that allow the publication of hate speech.

The Ombudsman's activity with substantive explanations concerning freedom of expression is addressed in more detail in the chapters Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2019 available on the Ombudsman's website <www.varuh-rs.si> in the online edition of the report:

2.12.3.2 What should the media coverage of terrorist attacks be like?

2.12.3.3 Opposition to abortion in front of the Gynaecological Clinic in view of freedom of expression

2.12.3.4 When the expression of an official clashes with religious feelings...

2.13 ASSEMBLY, ASSOCIATION AND PARTICIPATION IN THE MANAGEMENT OF PUBLIC AFFAIRS

FIELD OF WORK	CASES CONSIDERED			RESOLVED AND JUSTIFIED		
	2018	2019	INDEX 19/18	NO. OF RESOLVED	NO. OF JUSTIFIED	SHARE OF JUSTIFIED AMONG RESOLVED
5. ASSEMBLY, ASSOCIATION AND PARTICIPATION IN THE MANAGEMENT OF PUBLIC AFFAIRS	21	17	80,95	15	1	6,7
5.1 RIGHT TO ASSEMBLY AND ASSOCIATION	2	2	100,00	2	0	0,0
5.2 RIGHT TO VOTE	14	8	57,14	8	0	0,0
5.3 RIGHT TO VOTE IN A REFERENDUM	1	1	100,00	1	0	0,0
5.4 RIGHT TO PETITION	1	0	0,00	0	0	0,0
5.0 ASSEMBLY, ASSOCIATION AND PARTICIPATION IN THE MANAGEMENT OF PUBLIC AFFAIRS - OTHER	3	6	200,00	4	1	25,0

2.13.1 General findings and assessment of the situation

In terms of numbers, the situation in this field has not changed significantly. Additionally, in terms of content, most considered cases are similar. **election-related questions predominate**, and we addressed the controversial mayoral conduct again and continued to appeal **for the right to petition to be regulated on a legislative basis**.



There were no concrete changes on the basis of the Ombudsman's recommendations in certain fields, although the authorities ensured they would take ac-

tion in this regard. The issue of voting for persons who, following the expiry of the deadline for expressing the intention to vote by mail, find themselves through no fault of their own (for example due to hospitalisation, detention, etc.) in a situation where they cannot come to the polling station remains open; also open is the question of which authority is to lead, and decide in, minor offence proceedings if the criminal offence was committed due to non-public activities or the operations of a disabled people's organisation.

We emphasise that **the realisation of the right to vote of persons with disabilities, more specifically of persons with mental disorders**, was discussed at considerable length. We have reported on this topic several times⁶⁴. It is still newsworthy, and we met with the president of Sonček – Cerebral Palsy Association of Slovenia in 2019. He said, among other things, that the recognition of the right to vote of persons with mental disorders bore a symbolic meaning for such persons, particularly regarding self-acceptance and the changed attitude of close family and society in general towards them. We also learned that, prior to the spring European Parliamentary elections, certain parents instigated proceedings regarding the entry of persons into the electoral register whose right to vote was revoked. There was one constitutional complaint (which was dismissed as legal remedies were not exhausted) and a review of a judgment, wherein two Ombudsman's opinions were used. He also told us that he had received information from the Ministry of the Interior that **around 2,000 people in Slovenia lost their right to vote.**

The revoking of the right to vote is differently regulated in various EU Member States. In Slovenia, the revocation of the right to vote of persons deprived of their legal capacity or the parental right of their parents has been extended past the age of 18 or who are under guardianship is not automatic; the right to vote may only be revoked on the basis of a decision of the court that establishes during proceedings that the person is not able to understand the meaning, purpose and effects of elections. In this regard, we add that the practice of the European Court of Human Rights also shows that **the revocation of the right to vote in judicial proceedings is not in contravention of the European Convention on Human Rights (ECHR), and the Ombudsman believes it is not in contravention of the Slovenian Constitution.** We have pointed out several times that the Committee on the Rights of Persons with Disabilities stated in points 48 and 49 in General comment No. 1 from 2014 that the content of Article 29 of the Convention on the Rights of Persons with Disabilities meant that a person's decision-making ability cannot be a justification for any exclusion of persons with disabilities from exercising the right to vote or the right to stand for election. It should be added that there are also different positions on the international level, for example of the Human Rights Committee in its General Comment No. 25 to the International Covenant on Civil and Political Rights, which stated that objective and reasonable limitations of the right to vote are possible, whereby it is unreasonable if the right to vote is limited (only) on the basis of physical disability and that mental incapacity may be grounds for limiting the right to vote. The Ombudsman was also alerted to the issue of the revocation of the right to vote of persons with mental disorders at meetings with representatives of the OSCE Office for Democratic Institutions and Human Rights⁶⁵.

⁶⁴ See for example pp. 116 and 117 of the Annual Report for 2018 and further references contained therein.

⁶⁵ See for example p. 6 of the ODIHR Final Report entitled REPUBLIC OF SLOVENIA EARLY PARLIAMENTARY ELECTIONS 3 June 2018 (available also at <https://www.osce.org/sl/odihr/elections/slovenia/400523>).

2.13.2 Realisation of the Ombudsman's past recommendations

Unfortunately, certain past recommendations of the Ombudsman that refer to the freedom of assembly and association and the participation in the management of public affairs remain only partially realised or even fully unrealised.

- **recommendation no. 15 (2018)**⁶⁶ with which the Ombudsman recommended 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 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.
- **recommendation no. 16 (2018)**⁶⁷ with which the Ombudsman proposed that the Ministry of Labour, Family, Social Affairs and Equal Opportunities promptly provide suitable legislative amendments, enabling a certain authority for the 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).

The online edition of the annual report available on the Ombudsman's website includes [additional substantive explanations](#) regarding the (non)realisation of past recommendations.

2.13.3 The Ombudsman's new recommendations and activities

2.13.3.1 Recommendations

In the field of assembly and association and participation in the management of public affairs, the Ombudsman reiterates or provides the following four recommendations:



65. The Ombudsman recommends that the Ministry of Public Administration promptly prepare everything required for the Government of the Republic of Slovenia to re-propose amendments to electoral legislation which will ensure that persons who are unexpectedly deprived of liberty less than ten days prior to voting or are unexpectedly admitted to hospital for treatment or in institutional care of a social care institution (for example detainees, persons in a ward under special supervision at the psychiatric hospital) are able to efficiently exercise the right to vote.

⁶⁶ Annual Report for 2018, p. 116.

⁶⁷ Annual Report for 2018, p. 119.



66. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities provide suitable legislative amendments as soon as possible, enabling the appointment of a body for the 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).

67. The Ombudsman recommends that the National Assembly as the legislator regulate the exercise of the right to petition referred to in Article 45 of the Constitution of the Republic of Slovenia by law.

68. The Ombudsman recommends that all ministries and government services promptly respond to proposals sent to them by the Government Communication Office for consideration after receiving sufficient support at predlagam.vladi.si (ongoing task).

The Ombudsman's activity with substantive explanations concerning assembly and association and the participation in management is addressed in more detail in the chapters Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2019 available on the Ombudsman's website <www.varuh-rs.si> in the online edition of the report:

- 2.13.3.2 The exercise of the right to petition referred to in Article 45 of the Constitution of the Republic of Slovenia should be regulated by law**
- 2.13.3.3 According to the principle of sound administration, ministries and government services must promptly respond to proposals that receive sufficient support at predlagam.vladi.si**
- 2.13.3.4 Dismissal of members of the councils of public institutes must be carried out according to the prescribed procedure**

2.14 RESTRICTION OF PERSONAL LIBERTY

	CASES CONSIDERED			RESOLVED AND JUSTIFIED		
FIELD OF WORK	2018	2019	INDEX 19/18	NO. OF RESOLVED	NO. OF JUSTIFIED	SHARE OF JUSTIFIED AMONG RESOLVED
8. RESTRICTION OF PERSONAL LIBERTY	159	151	94.97	116	18	15.5
8.1 DETAINEES	26	26	100.00	22	3	13.6
8.2 PRISONERS	65	64	98.46	49	4	8.2
8.3 PSYCHIATRIC PATIENTS	18	18	100.00	17	3	17.6
8.4 PERSONS IN SOCIAL CARE INSTITUTIONS	26	26	100.00	18	4	22.2
8.5 MINORS IN YOUTH HOMES, RESIDENTIAL TREATMENT AND OTHER INSTITUTIONS	4	5	125.00	2	1	50.0
8.6 ILLEGAL FOREIGNERS AND ASYLUM SEEKERS	12	10	83.33	7	3	42.9
8.7 PERSONS AT THE UNIT FOR FORENSIC PSYCHIATRY	5	2	40.00	1	0	0.0
8.0 OTHER	3	0	0.00	0	0	0.0

2.14.1 General findings and assessment of the situation

In this chapter, we address complaints related to the restriction of personal liberty, including those of individuals deprived of liberty or whose freedom of movement was restricted. These include detainees, convicted persons serving sentences in (home, alternative) confinement, persons at the unit for forensic psychiatry, minors in juvenile prison, 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.

2.14.1.1 Detainees and convicted persons

In 2019, we considered **the same number of complaints from detainees as in 2018**, i.e. 26 cases, and one less complaint from a convicted person serving a prison sentence than in the year before, when we considered 65 cases. Also in this field, **professional assistants solved quite a few issues in telephone conversations with the complainants**; therefore, there was no need to consider these cases in further and 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.



The complaints of detainees 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. **We must commend this cooperation as the authorities we contacted regularly responded to our requests.**



If a procedure was initiated in a certain case (for example 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 inadequate and insufficient. If complainants did not respond, we were unable to continue our enquiries. **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 decide on it are reflected in the share of closed justified cases in the field of dealing with prisoner complaints.**

Our work in this field is aimed at establishing whether the state observes the rules and standards to which it is bound by the Constitution and international conventions to respect human rights when depriving people of their liberty, particularly human personality and dignity. **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 detention.**



At the beginning of 2019, the situation regarding detention and imprisonment in Slovenian prisons was abundantly publicly discussed when two detainees escaped from Koper Prison, and the problem was also addressed by the Committee on Justice of the National Assembly of the Republic of Slovenia.

Based on the handling of complaints from prisoners and findings determined when visiting prisons, the NPM establishes that **the main problem in Slovenian prisons and their units remains overcrowding** (with the exception of Ig Prison), which is also due to **a substantial inflow of foreigners** (whose treatment results in additional problems) and **the shortage of staff in all fields of work, particularly in the field of expert work with prisoners and security issues** (prison officers). **Overcrowding has an adverse effect on ensuring suitable accommodation**





premises for prisoners, necessary privacy, hygiene maintenance, implementation of activities and order and discipline (it causes tension and mutual conflict). These problems are expected to be solved **with the construction of new prison facilities in Ljubljana or the renovation of Ig Prison**, although (as we continuously highlight), overcrowding cannot be eliminated with the construction of new prisons alone. Therefore, we agree with the Prison Administration of the Republic of Slovenia (URSIKS) that **other measures will be required for a long-term solution to overcrowding not only within the prison system but with all other stakeholders, including those in the field of criminal policy**. More frequent use of alternative sanctions can also contribute to reducing the number of prisoners. **For this reason, the Ombudsman welcomed the beginning of the operation of the probation service**. Slovenia finally joined the states that pay special attention to the fact that imprisonment is (also) carried out in the community and not only in prison. **In 2019, we were informed in more detail on the operation of the Probation Administration, a body within the Ministry of Justice. The director's warnings regarding their problems (also systemic) in practice, and the shortage of personnel in particular, were alarming**, as only 19 persons were employed in January 2019 out of a planned 45. These find it difficult to perform all the tasks in the many cases assigned to them to resolve. Therefore, the Ombudsman expects vacant positions to promptly be filled; if not, this may affect the efficiency of the expert treatment of persons included in probation.



Despite certain staff reinforcement, the shortage of personnel in the prison systems remains significant. The staffing standards and norms for the work of prison officers and other professionals were adopted at the end of 2018. Since this is an important strategic document in the field of employment, we expect it to be observed to fill vacant positions. Despite the approval of additional employment, the information that **there is little interest in working in the prison system** is worrying. Therefore, additional efforts and measures will be needed to increase the popularity of such occupations. The lack of prison officers and other such professionals results in their excessive workload and dissatisfaction at work, which may be reflected in their work with prisoners and which especially hampers the preparation of convicted persons for life outside prison.

Taking into account the purpose of punishment (Article 45.a of the KZ-1), the perpetrator of a criminal offence must be prepared to be re-integrated in a dignified manner into the common social environment after being in prison while having their human dignity and personality respected. Imprisonment must be carried out so as to prepare convicted persons for life outside prison in accordance with social norms and eliminate the risk of reoffence. For this purpose, they must be included in various activities such as work and education, depending on the perpetrator's needs. **We have been constantly pointing out the recommendation of the CPT that prisoners and detainees should spend a reasonable portion of the day (i.e. eight or more hours) outside their rooms, attending to various useful activities: work, which is preferably useful for their occupation, education, sports, recreation or socialising. In our prisons, this standard has not yet been met, particularly for detainees.**



It is well known that **most prisons are located in old facilities that are** in need of complete renovation. Another problem is the dilapidated and worn-out equipment in some of these facilities and the lack of work and activities available for prisoners (particularly detainees). Therefore, constant investment in better living conditions for prisoners, and in equipment and infrastructure are required. **When visiting Radeče Juvenile Correctional Facility in 2019, we emphasised that the existing facilities are unsuitable for minors to live in.** Large renovation works would be required to ensure suitable minimum living conditions, but this is not possible because the building is subject to monument protection and major interventions are not permitted. **The facilities are not minor-friendly and do not support their successful rehabilitation.** We recommended that the management of Radeče Juvenile Correctional Facility, together with the Head Office of the Prison Administration, promptly solve the spatial problem by taking into account the principles of normative architectural design and designing a humane environment that will support the social rehabilitation of minors and enable them to integrate into the community and normal life. It is of the utmost importance that rooms do not cause additional stress and trauma for children but provide an appropriate support environment.



We also draw attention to the position of other vulnerable groups. **For some time now, the Ombudsman has been striving to improve the situation of prisoners who, due to age, illness or disability, require additional assistance to meet their basic needs in the form of care or social care during imprisonment in order to ensure respect for their personality and dignity. During imprisonment, it is necessary to ensure suitable accommodation and dignity while they serve their sentences;** otherwise, this may be considered inhuman or degrading treatment and a violation of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (more on this below).



Problems also occur in the treatment of minors. As a result, much is expected from the act currently being prepared that will comprehensively regulate the treatment of juvenile offenders (for example shorten the duration of detention, introduce mandatory defence by an attorney from police detention onwards, etc.).



Female prisoners hold a special position in the prison system due to their needs and circumstances, which is also highlighted in international rules (e.g. the so-called Bangkok Rules). **Nevertheless, we find that conditions for the imprisonment or detention of women are, in certain fields (e.g. regarding receiving visitors), worse in comparison to those of men.** For that reason, we are glad that the **Ministry of Justice drafted a journal entitled "On the Special Position of Women in Prisons: Contributions and Selected International Acts"**, which includes important expert starting points for the dignified treatment of women and their needs during imprisonment. Its purpose is to raise awareness of this sensitive topic and provide a foundation for future expert discussions or legislative projects. Much is expected in this field from the **planned renovation of the women's prison in Ig,** which is the only prison for females in Slovenia. Complaints from female convicted persons and detainees in Ig Prison concerning poor conditions (such as inappropriate rooms for visits from their children, and the impossibility of their partners and children spending the night) further confirm the correctness of the decision that a major overhaul of this prison is required.



2.14.1.2 Unit for Forensic Psychiatry

We only considered two cases in this field. The implementation of the measures of mandatory psychiatric treatment and protection in a health care institution, and the hospitalisation of detainees and convicted persons if they need psychiatric treatment, is still provided by the Unit **for Forensic Psychiatry of the Department of Psychiatry at Maribor University Medical Centre (the Unit)**. If necessary, observation to prepare an expert psychiatric opinion regarding sanity or ability to participate in proceedings is also carried out.

Within the project task “Organisation of forensic psychiatry in Slovenia” of the Ministry of Justice carried out in December 2015, it was established that forensic psychiatry in Slovenia needs to be modernised by way of the following actions, i.e.:

- define norms and standards for the treatment of forensic patients in health care institutions (particularly minors);
- define norms and standards for the treatment of forensic patients outside prison (particularly minors);
- define programmes for the psychosocial and vocational rehabilitation of forensic patients;
- define norms and standards for the institutional treatment of former forensic patients in the community;
- define cooperation protocols between various authorities and institutions to plan further treatment for forensic patients following the expiry of a decision;
- prepare an analysis of the situation with international comparison, and prepare the short-term (up to five years), medium-term (up to ten years) and long term strategies of the Republic of Slovenia;
- study and, if necessary, amend legislation to implement the strategy;
- prepare an evaluation tool to monitor the development of the field (system) of forensic and post-forensic psychiatry.

In this regard, in 2019 we contacted the Expanded Professional Board of Psychiatry as the highest expert body in the field for information on whether and which activities are in progress or planned to **modernise forensic psychiatry in Slovenia (particularly for the implementation of security measures of mandatory psychiatric treatment and institutional care, and mandatory treatment outside prison)**, **but we had not yet received a response at the time of drafting this report.**



2.14.1.3 Persons with restricted movement in psychiatric hospitals and social care institutions

In the sub-field relating to the deprivation of the freedom of movement or liberty due to a mental disorder or illness, **we considered 18 complaints involving the restriction of movement in psychiatric hospitals in 2019** (the same number as the year before). **The same number of cases was also considered regarding persons in social care institutions**, i.e. 26. We continued to visit these institutions in the capacity of the NPM (more details on this are provided in a special report). Certain issues pertaining to this were considered in other areas of the Ombudsman's work. We report on forced hospitalisation with police intervention in a public place in the chapter on police proceedings.

As in previous years, the complaints in 2019 also referred to admission to treatment without consent in a ward under the special supervision of psychiatric hospitals or the admission and discharge of persons from the secure wards of social care institutions, and requests for relocation, the possibilities of going outdoors, exits and others. Certain complaints that were handled also referred to living conditions (overcrowding), 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 the secure wards of social care institutions.

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 the secure wards of social care institutions on the basis of court decisions. The Ombudsman's opinion is that problems of persons in judicial proceedings are frequently a result of **the lack of information on their needs and suitable communication** between the participants in proceedings pursuant to the ZDZdr. To effectively protect the right of persons with mental disorders, we believe it is desirable that **judges and attorneys participating in the said proceedings are allowed access to (additional) knowledge that would contribute to more efficient recognition and consideration of the special needs of this vulnerable group and suitable communication with them.**



Problems in the field of restricted movement in psychiatric hospitals and social care institutions were resolved directly with representatives of the competent ministries, managements of institutions and (inter-ministerial) working groups. As usual, complainants' claims were verified by making enquiries at the competent authorities, and the 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 complainants 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 the treatment of persons with mental disorders or illnesses is played by **advocates of the rights of persons in the field of mental health**. These can suitably inform a person of the content of the rights, methods, and options for exercising their rights, provide guidelines for exercising their

rights, and propose possible solutions, advise a person on exercising their rights, and make efforts towards those rights being observed. To this end, we continued advising complainants to seek their assistance.



In 2019, 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 the Association of Centres for Social Work of Slovenia, we organised mental health days. On the Ombudsman's initiative, the first such conference was held in 2016 as the successor to the consultation on the implementation of the Mental Health Act. The participants discussed the implementation of this act; problems with involuntary admission and treatment of persons with mental disorders in social care institutions; the treatment of children and adolescents with mental health problems; supervised treatment and treatment in a community. The underlying theme of the 2019 conference was efficient transitions in the treatment process – from the community through the court to institutional treatment and back. **Unfortunately, we received notification at the end of January 2020 that this event was not included in the programme of the Judicial Training Centre for 2020.** Due to the shortage of personnel and financial limitations, the Judicial Training Centre had to limit the number of educational events. The said event was very complex in terms of organisation for the Centre and will be held every other year. The next mental health days are planned for 2021.



2.14.1.4 Minors in residential treatment institutions and special education institutes

Educational institutions for children and adolescents with special needs (**residential treatment institutions, residential groups and youth homes**) under the auspices of the Ministry of Education, Science and Sport (MIZŠ) receive children and adolescents with emotional and behavioural disorders. The legal basis for placing children and adolescents in residential treatment institutions is a court decision pursuant to the act governing family relations or a court decision on imposing the correctional measure of committing to a residential treatment institution as per the act governing juvenile criminal offenders.

We did not receive any complaints from minors in residential treatment institutions or special education institutes in this field in 2019. We visited certain residential treatment institutions as part of the implementation of tasks and powers of the NPM (more on this in a special report), paying special attention to checking **how institutions regulate the rules of conduct and the measures in place regarding violations.** The aim was to ascertain in more detail whether individual institutions have adopted internal acts to regulate the rules and measures in place regarding violations, how the procedures are carried out upon violations taking place, how children and adolescents are informed of these rules and measures, and also which violations are most frequent and how the institutions deal with them. During our visits to institutions which provide educational programmes for children and adolescents, the NPM noticed several times that **their rules of conduct and the procedures regarding correctional measures when these rules are violated are regulated in different ways.**



2.14.1.5 Foreigners and applicants for international protection

In this sub-field, we report the consideration of complaints by foreigners related to the restriction of movement or deprivation of liberty. Other complaints by foreigners are included in the chapter on foreigners, while visits to the Aliens Centre and police stations (also regarding the treatment of foreigners) are 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 the civil society (non-governmental organisations) and refugee counsellors who work extensively with refugees or migrants, and with representatives of the Ministry of the Interior and the Police.

Also in this field, there were accusations regarding the work of police officers when dealing with foreigners apprehended for illegally crossing the state border and returning them to Croatia, and accusations regarding the accommodation and treatment of unaccompanied foreign minors, and the conditions at the Asylum Centre. A topic related to this field was covered by the media and highlighted by certain non-governmental organisations and the civil society.



On our initiative, the accusations of poor conditions in the Asylum Centre and the inappropriate attitude of the security guards there towards applicants for asylum were addressed. The accusations of the overcrowding of the Asylum Centre, poor health care, the shortage of personnel, lengthy procedures, and particularly of mutual disputes were alarming. We did not finish addressing this problem in 2019 and cannot report on the findings of the consideration.

On the basis of reports by the media that police officers dealt with a large group of foreigners for illegally crossing the state border, we decided to check, on our initiative, how police officers were prepared for the apprehension of a large number of persons in terms of reception and treatment. The Ombudsman is well aware of the fact that the role of the police on the state border is extremely important, as they ensure the safety of citizens and everyone else in Slovenia. Due to the powers of the police which they may use to encroach upon the rights and freedoms of individuals (including the deprivation of liberty) in the most sensitive way, it is imperative that the treatment of persons in police proceedings fully complies at all times with laws and other regulations stipulating the conduct of police tasks and powers. **As we established several irregularities in the work of the police officers in this case** (for example the issue of decisions on detention, the questionable way detainees were informed of their rights and others), we proposed to the Ministry of the Interior that the Police and Security Directorate (DPDVN) take over the case for consideration within their supervisory powers, and study the legality and professionalism in the implementation of police tasks and powers. We also recommended that the Ministry of the Interior provide the police with the necessary assistance so that they can treat large numbers of apprehended foreigners without violating their legal rights. **On 24 December 2019, the Ministry of the Interior informed us that the DPDVN, within its powers, requested written explanations from the police regarding the implementation of the police proceedings in the case in question** and that they would send a response to the Ombudsman when the DPDVN completes the procedure, which is why the case remained open in 2019.



In 2019, we paid additional attention in our work (particularly during visits as the NPM) to the treatment of unaccompanied minors in police proceedings. We did not finish dealing with this problem and cannot report on our findings (certain findings are stated below).

2.14.2 Realisation of the Ombudsman's past recommendations

Unfortunately, numerous past reports of the Ombudsman that refer to the restriction of personal liberty remain only partially realised or even fully unrealised. In the online edition of the annual report available on the Ombudsman's website, we provide [additional substantive explanations](#) regarding the (non)realisation of past recommendations.

2.14.2.1 Detainees and convicted persons

In the field of complaints from detainees and convicted persons, the following recommendations remain only partially realised or fully unrealised:

- **recommendation no. 21 (2018)** with which the Ombudsman recommended that the Prison Administration of the Republic of Slovenia further 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;
- **recommendation no. 22 (2018)** with which the Ombudsman proposed that prisons pay special attention when discussing prisoners' requests to attend the funerals of their loved ones;
- **recommendation no. 25 (2018)** with which the Ombudsman recommended 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; nos. 20 (2013) and 17 (2014) to eliminate overcrowding in certain prisons by better utilisation of legal options to replace imprisonment;
- **recommendations nos. 14 (2016) and 19 (2015)** to provide adapted space for convicted persons who need additional assistance during their imprisonment due to age, illness or disability;
- **recommendation no. 15 (2016)** with which we advocated prompt adoption of a protocol on accommodation of convicted persons who need more intensive and demanding care in retirement homes; and
- **recommendation no. 13 (2017)** to take measures to realise recommendations from a special thematic report to improve conditions for the accommodation and treatment of vulnerable prisoners. priporočilo št. 13 (2017), naj se sprejmejo ukrepi za uresničitev priporočil iz posebnega tematskega poročila glede izboljšanja razmer za nameščanje in obravnavo ranljivih zaprtih oseb).

2.14.2.2 Unit for Forensic Psychiatry

In the field of forensic psychiatry, the following recommendations remain only partially realised or fully unrealised:

- **recommendation no. 26 (2018)** with which the Ombudsman proposed that the Ministry of Health in cooperation with the Ministry of Justice adopt all necessary measures to resolve problems of the Unit;
- **recommendation no. 27 (2018)** with which the Ombudsman again recommended the adoption of all necessary measures to promptly compose and publish a list of health institutions meeting the conditions for implementing the relevant security of mandatory treatment measures;
- **recommendation no. 17 (2016)** to consider the suitability of the current regulation of mandatory treatment measures.

2.14.2.3 Persons with restricted movement in psychiatric hospitals and social care institutions

Regarding the Ombudsman's past recommendations that refer to persons with restricted movement in psychiatric hospitals and social care institutions, we find that quite a few of them remain unrealised:

- **recommendations nos. 31 (2014) and 21 (2016)** to adopt measures for suitable admission of persons according to the ZDZdr;
- **recommendation no. 26 (2015)** to study the payment of the care costs of persons in secure wards of social care institutions on the basis of court decisions;
- **recommendation no. 17 (2017)** to realise the recommendation issued by the National Assembly when discussing the Ombudsman's Special Report on violations of human rights of persons with mental disorders with their involuntary admission and treatment in secure wards of social care institutions;
- **recommendation no. 19 (2017)** on regular publication of data on the number of vacancies in all secure wards of social care institutions;
- **recommendation no. 28 (2018)** with which the Ombudsman again called for the adoption of measures to ensure more suitable involuntary admission and treatment of persons with mental disorders in social care institutions pursuant to the ZDZdr together with suitable spatial capacities and staff, which will enable adequate social care services to these persons;
- **recommendation no. 29 (2018)** with which the Ombudsman proposed that social care institutions provide security for their residents, particularly those who require special protection and care, and consistently observe the ZDZdr when restricting liberty.
- During visits to retirement homes, the NPM found that, convinced that they met the conditions for the verification of secure wards, homes filed applica-

tions for verification with the Ministry of Labour, Family, Social Affairs and Equal Opportunities. Certain applications were filed several years ago, but, according to the retirement homes, they have not yet been decided on (the Ministry was informed of this on the basis of the recommendations of the NPM when visiting these institutions).

2.14.2.4 Minors in residential treatment institutions and special education institutes

Regarding recommendations from past years that refer to minors in residential treatment institutions and special education institutes, the following recommendations remain only partially realised or fully unrealised:

- **recommendation no. 30 (2018)** with which the Ombudsman proposed that the Ministry of Education, Science and Sport continue the drafting of the act on residential treatment institutions and observe the sound comments and proposals of the experts thereof;
- **recommendations nos. 28, 29 (2015) and 22 (2016)** to prepare an analysis of the work already done with children and adolescents with emotional and behavioural disorders in residential treatment institutions and a vision of the development, and to introduce necessary systemic changes; to prepare expert foundations and uniform guidelines for the suitable and more uniform treatment of adolescents with explicitly deviant behaviour; to prepare an upgrade of the educational programme and necessary systemic solutions for the treatment of children with emotional and behavioural disorders in residential treatment institutions;
- **recommendation no. 34 (2014)** to adopt a special act that would comprehensively regulate the organisation and operations of residential treatment institutions, and also harmonise technical terms;
- **recommendation no. 31 (2018)** with which the Ombudsman recommended 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;

2.14.2.5 Foreigners and applicants for international protection

Regarding recommendations from past years that refer to foreigners and applicants for international protection, the following recommendations remain only partially realised or fully unrealised:

- **recommendation no. 33 (2018)** with which the Ombudsman recommended that, when an applicant is deprived of their liberty, the Ministry of the Interior act swiftly and without undue delay, and to again consider additional amendments to the International Protection Act (ZMZ-1) or additional, more lenient measures to enable a more individualised treatment of applicants for international protection and more effective procedures, particularly less encroach-

ment into the right to personal liberty, relating to defining objective measures on which the grounds for suspecting that the applicant for international protection may abscond are based;

- **recommendation no. 34 (2018)** with which the Ombudsman encouraged the Ministry of the Interior, in dialogue with the Administrative Court of the Republic of Slovenia, to adopt all necessary measures, including legislative amendments (if necessary), to enable the implementation of legally determined judicial supervision of the execution of all measures of restriction of movement;
- **recommendation no. 23 (2016)** to prepare systemic solutions for the adequate accommodation of unaccompanied foreign minors; and
- **recommendation no. 30 (2015)** to adopt measures to respect the best interests of foreign minors by accommodating them in suitable institutions instead of the Aliens Centre.

2.14.3 The Ombudsman's new recommendations and activities

2.14.3.1 Recommendations

On the basis of the problems addressed in the field of the restriction of personal liberty in 2019, we drafted the following new recommendations:

69. The Ombudsman recommends that when a convicted person is placed in solitary confinement with special equipment, the prison personnel ensure that the personality and dignity of the prisoner are respected during the placement procedure.



70. The Ombudsman recommends that the Ministry of Justice and the Prison Administration in their role as supervisors ensure the legality of the treatment of prisoners (ongoing task).

71. The Ombudsman recommends that the Prison Administration provide information to prisoners by way of regular daily access to current news on life and developments outside prison (ongoing task).

72. The Ombudsman recommends that the Ministry of Justice in cooperation with other responsible authorities adopt the necessary measures to reduce the shortage of personnel, and in this way reduce the number of cancellations of prisoner escorts to external institutions.

73. The Ombudsman recommends that the Ministry of Justice adopt all necessary measures to ensure suitable accommodation in adapted spaces (inside or outside of the prison system) and assistance with everyday



and other required care to all prisoners who require additional assistance due to age, illness, disability or other impairments.

74. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities provide social care services to eliminate social distress and problems of convicted persons, including institutional care if necessary, to ensure their dignified life and care.

75. The Ombudsman recommends that the Ministry of Justice, in order to prepare a program for the treatment of persons addicted to psychoactive substances, ensure the establishment of a suitable environment within the Unit for Forensic Psychiatry in prisons to which prisoners can return after detoxification.

76. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities ensure that the working group on establishment of a specialised unit for the treatment of persons with the most severe mental health problems continues its work and promptly carries out its tasks.

77. The Ombudsman recommends that the Ministry of Health, in cooperation with the Ministry of Justice, promptly prepare and publish a list of providers of the security measure of mandatory psychiatric treatment outside prison for the whole country.

78. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities together with Ministry of Health provide additional incentives and develop community services to gradually relieve pressure on institutional forms of treatment.

79. The Ombudsman recommends that the Ministry of Health study the need for amendments to the regulation of the use of a special protection measure of restriction with safety belts, particularly the time limit of such a measure, when preparing amendments to the ZDZdr.

80. The Ombudsman recommends that the Ministry of Health and the Ministry of Labour, Family, Social Affairs and Equal Opportunities regularly evaluate received reports on the use of special protective measures and measures necessary in cases of established irregularities.

81. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities, in cooperation with other competent authorities, adopt further required measures for suitable accommodation and treatment of persons who the court decides, pursuant to the ZDZdr, should be admitted to a secure ward of a social care institution.

82. The Ombudsman recommends that the Ministry of Health, which is drafting amendments to the ZDZdr, also prepare suitable amendments to the Act regarding the longer detention of persons in secure wards to ensure the Act is implemented without delay.



83. The Ombudsman recommends that the Ministry of Justice, in cooperation with the Ministry of Labour, Family, Social Affairs and Equal Opportunities, draft an act that will stipulate the treatment of juvenile offenders, carry out a thorough analysis of the situation related to the implementation of the measure of admittance to the special education institute and provide suitable legislative solutions for the implementation in practice.

84. The Ombudsman recommends that, when treating unaccompanied foreign minors, police officers continually observe their statutory rights and the best interests of the child (ongoing task).

85. The Ombudsman recommends that the Government Office for the Support and Integration of Migrants, in cooperation with the Ministry of the Interior, the Ministry of Labour, Family, Social Affairs and Equal Opportunities, the Ministry of Education, Science and Sport, and the Ministry of Health, establish a systemic form of accommodation and treatment of unaccompanied foreign minors.

86. The Ombudsman recommends that the Ministry of the Interior, if necessary, take additional measures so that police officers, when implementing procedures with foreigners, respect their rights, including the right to access the international protection procedure, and consistently document all circumstances of these procedures.

The Ombudsman's activity with substantive explanations concerning the restriction of personal liberty is addressed in more detail in the online version of the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2019, available on the Ombudsman's website <www.varuh-rs.si> in the following chapters and sections:

2.14.3.2 Detainees and convicted persons

- General
- Supervision of lawful treatment of foreigners
- Provision of the right of prisoners to be informed
- Problem of the cancellation of escorts
- On the position of prisoners who need additional assistance due to their age, illness or disability
- No progress with regard to accommodating convicted persons in need of institutional care outside a prison
- Conditional release (only) for convicted persons with more prison time?

2.14.3.3 Unit for Forensic Psychiatry

- General
- Establishment of a specialised unit for the treatment of persons with

- the most severe mental disorders
- The problem of implementing the security measures of mandatory psychiatric treatment outside prison

2.14.3.4 Persons with restricted movement in psychiatric hospitals and social care institutions

- General
- Reports on the implementation of special protection measures (SPM)
- The problem of admitting persons to secure wards of social care institutions
- Time pressure if there is a need to extend the detention of a person with mental health problems in a secure ward of a social care institution on the basis of the provisions of the ZDZdr
- Supervised treatment in a special social care institution

2.14.3.5 Minors in residential treatment institutions and special education institutes

- Problems with the implementation of an educational measure regarding admittance to the special education institute

2.14.3.6 Foreigners and applicants for international protection

- Treatment of unaccompanied foreign minors
- Accommodation of unaccompanied foreign minors
- Does restricted movement have to be reported again following the receipt of a judgment that eliminated it?
- Handling of accusations of unsuitable treatment by Slovenian police officers

2.15 PENSION AND DISABILITY INSURANCE

FIELD OF WORK	CASES CONSIDERED			RESOLVED AND JUSTIFIED		
	2018	2019	INDEX 19/18	NO. OF RESOLVED	NO. OF JUSTIFIED	SHARE OF JUSTIFIED AMONG RESOLVED
PENSION AND DISABILITY INSURANCE	90	110	122.22	82	17	20.7
PENSION INSURANCE	52	46	88.46	34	4	11.8
DISABILITY INSURANCE	38	64	168.42	48	13	27.1

2.15.1 General findings and assessment of the situation

2.15.1.1 Pension insurance

The number of cases considered in 2019 remained approximately the same as the year before. However, that share of justified cases in which we established violations of human rights and other irregularities in the work of authorities should be pointed out. This share was significantly higher in 2019 than in previous years, i.e. 11.8 per cent, while it stood at 2.1 per cent in 2018 and 6.8 per cent in 2017.

Most complainants contacted the Ombudsman regarding the amount of assessed pension (persons whose insurance covered a smaller package of rights and others). They expected that we can make a change and influence the amount of their pensions.

Several individuals wrote us to express their disagreement with how the purchase of pensionable service was regulated, which we discuss again (as we have in recent years) later in this report. **They also complained about the lengthiness of procedures at the Pension and Disability Insurance Institute of the Republic of Slovenia (ZPIZ), the actions of the expert bodies of the ZPIZ and the complexity of procedures in which foreign policyholders are involved.**

On our initiative, the Ombudsman considered two substantive issues or wider fields which refer to several individuals.





We established violations and irregularities regarding equality before the law, the constitutional principle of the rule of law and the social state, the right to legal protection and the principle of sound administration.

2.15.1.2 Disability insurance

We considered significantly more complaints than in 2018 (64) and the justification of complaints regarding which we established violations and irregularities of the authorities was significantly higher than usual, i.e. 27.10 per cent, while it was 16.7 per cent in 2018 and 20 per cent in 2017.



The crucial topics we addressed were **the abolishment of the disability allowance, the amount of the assistance and attendance allowance, the cessation of partial compensation for disabled workers due to the termination of employment, the manner of work of the ZPIZ, particularly its expert bodies and disability commissions, and the lengthy decision-making procedures of the ZPIZ.**



On our initiative, we investigated two issues that referred to several individuals.

We established violations regarding equality before the law, the constitutional principle of the rule of law and the social state, the right to legal protection and the principle of sound administration.

2.15.2 Realisation of the Ombudsman's past recommendations

The past recommendations of the Ombudsman that remain partially realised or fully unrealised are highlighted below. In the online edition of the annual report available on the Ombudsman's website, we provide [additional substantive explanations](#) regarding the (non)realisation of past recommendations.

2.15.2.1 Pension insurance

The past recommendations of the Ombudsman that remain partially realised or unrealised are specifically:



- **recommendation no. 36 (2018)** that the Government, as it plans amendments to the Pension and Disability Insurance Act, study again the suitability of the regulation that has been modulating various rights arising from voluntary insurance and voluntary purchase of years of service since 31 December 2012 or, if they insist on such a regulation, to enable the affected insured persons to decide for themselves regarding the possible reimbursement of funds paid since the initial purpose of the payment changed due to the state's conduct;
- **recommendation no. 57 (2017)** to prepare expert bases in accordance with the principle of equity to enable the reimbursement of funds paid for the purchase of insurance periods, the purpose of which failed due to legal amendments;

- **recommendation no. 57 (2017)** to study the option to determine an amicable solution to disputes in an administrative procedure or procedures of exercising the rights arising from social insurance;
- **recommendations nos. 123 (2013) and 89 (2014)** that the Pension and Disability Insurance Institute adopt measures to significantly shorten the deadlines for the consideration of received cases and decide on complaints within a statutory time limit;
- **recommendation no. 123 (2013)** that the Pension and Disability Insurance Institute establish means by which procedures involving foreign policyholders can be simplified and shortened;
- **recommendation no. 90 (2014)** to regulate and refresh all records that affect the rights of individuals prior to the issue of an informative pension calculation;
- **recommendation no. 88 (2014)** that the Pension and Disability Insurance Institute study the reasons for the complaints and appeals of insured persons, and attempt to improve their communication with insured persons on this basis.

2.15.2.2 Disability insurance

The past recommendations of the Ombudsman that remain partially realised or unrealised are specifically:

- **recommendation no. 37 (2018)** that the National Assembly of the Republic of Slovenia, when discussing each act proposal, 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;
- **recommendation no. 53 (2019)** that the competent authorities carry out a comprehensive analysis and assessment of the work of experts participating in procedures for evaluating the work capacity of insured persons, and take suitable measures against those violating the rules;
- **recommendations nos. 69 (2015) and 56 (2017)** that the competent authorities determine the levels and types of physical impairment which serve as the basis for exercising the rights arising from disability insurance; **the recommendation has been unrealised for 17 years!**
- **recommendation no. 91 (2014)** that the Government determine the responsibility of employees at the Ministry of Health for delay of over a year in the preparation of an implementing regulation on occupational diseases, and suitably sanction them;
- **recommendation no. 58 (2017)** to prepare expert groundwork for uniform normative regulation of expert medical opinions in procedures for exercising the rights arising from social insurance;
- **recommendation no. 68 (2015)** to improve the communication between disability commissions and experts.



2.15.3 The Ombudsman's new recommendations and activities

2.15.3.1 Recommendations

On the basis of the considered topics, the Ombudsman recommends the following ongoing tasks to the competent authorities:



87. The Ombudsman recommends that the Government of the Republic of Slovenia draft amendments to the Pension and Disability Insurance Act and establish equity between insured persons who purchased years of service and insured persons who were voluntarily included in pension insurance.

88. The Ombudsman recommends that the Government of the Republic of Slovenia draft amendments to the Pension and Disability Insurance Act and take into account the time granted to former political prisoners on the basis of a decision of a special commission as pensionable service without additional payment.

89. The Ombudsman recommends that the Pension and Disability Insurance Institute of the Republic of Slovenia prepare an analysis of the temporal circumstances of decision making regarding assistance and attendance allowance. On the basis of findings, they should adopt measures for procedures to be completed within statutory time limits and for all bodies, particularly expert bodies, to respect the dignity of each individual in such procedures. The Institute should publicly report on the aforementioned.

90. The Ombudsman expects that the Pension and Disability Insurance Institute and the Ministry of Labour, Family, Social Affairs and Equal Opportunities fully respect the standards of procedural guarantees and other provisions of the General Administrative Procedure Act when deciding on the rights arising from disability insurance (ongoing task).

91. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities draft amendments to the ZPIZ-2 so as to exclude employers as parties from procedures to establish disability rights.

92. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities draft amendments to the Pension and Disability Insurance Act (Article 403 of the ZPIZ-2) and recognise the right to disability allowance to all insured persons regardless of the reason for their physical impairment.

93. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities draft amendments to the Social Inclusion of Disabled Persons Act, and provide for the same types of restrictions of persons with disabilities the maximum assistance and attendance allowance (currently EUR 418.88), which also applies pursuant to the Pension and Disability Insurance Act.



The Ombudsman's activity in 2019 with substantive explanations concerning pension and disability insurance in 2019 is addressed in more detail in the online version of the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2019 available on the Ombudsman's website <www.varuh-rs.si>:

2.15.3.2 Pension insurance

- The same recognition of pensionable service without purchase for everyone?
- More on assistance and attendance allowance

2.15.3.3 Disability insurance

- How does the Pension and Disability Insurance Institute (ZPIZ) interpret decision making pursuant to the ZUP?
- Explanation of the provisions by the Pension and Disability Insurance Institute
- Realisation of the principle of the examination of parties
- Realisation of the principle of the discretion of evidence and material truth
- Unsuitability of the conditions of permanent health changes when establishing the right to assistance and attendance
- The Ombudsman's position

2.16 HEALTH CARE

	CASES CONSIDERED			RESOLVED AND JUSTIFIED		
FIELD OF WORK	2018	2019	INDEX 19/18	NO. OF RESOLVED	NO. OF JUSTIFIED	SHARE OF JUSTIFIED AMONG RESOLVED
HEALTH CARE AND HEALTH INSURANCE	231	130	56.28	92	16	17.4
HEALTH INSURANCE	47	49	104.26	35	6	17.1
HEALTH CARE	184	81	44.02	57	10	17.5

2.16.1 General findings and assessment of the situation

In the field of health care and health insurance, we considered 130 complaints in 2019; 17.4 per cent of which were justified, which is significantly more than in 2018 when the figure stood at five per cent.

The trend shows that caseload and justification in the field of health care and health insurance have remained unchanged since 2013 with the exception of 2018.

Since 1991, the Ministry of Health has been headed by 17 ministers. This is undoubtedly reflected in the work of the Ministry, its work organisation, the (non-) resolution of systemic issues, such as a health care reform in the field of health care and health insurance, and the backlog of cases that require inter-ministerial cooperation. The communication of the Ministry with citizens and the Ombudsman is poor. The Ombudsman must intervene several times for the Ministry to respond. Responses are frequently substantively insufficient, and the Ministry foresees solutions to problems in long promised new legislation (which was not yet in public discussion when we prepared this report).

There were no significant changes in the normative regulation of health care in 2019; therefore, all current comments remain in place. Despite the assurances of the Ministry, there is as yet no **new health care and health insurance act. It has been announced several times, but is still non-existent; the rights of insured persons continue to be regulated by an implementing regulation, which is an inadmissible violation of Article 15 of the Constitution of the Republic of Slo-**



venia, established by a decision of the Constitutional Court of the Republic of Slovenia.

The Health Insurance Institute of Slovenia (ZZZS) sends us the required responses promptly, but these are frequently substantively insufficient.

These are the reasons for a high percentage of justified complaints in the field of health care in its wider meaning.

problems with which complainants contacted the Ombudsman were very diverse and did not differ significantly from those of previous years. The content may be summarised in the following classifications: dissatisfaction with health care, attitude of health care workers, poor organisation in health care institutions, waiting times, the lack of normative regulation in certain fields, and lengthiness and violations of procedures managed by the ZZZS.

In justified cases, we found violations of the right to health care, social security, unjustified delays in proceedings, but also of the principles of sound administration and procedure.

In November 2019, the Ombudsman met the General Manager of the ZZZS as part of working meetings with state authorities. At the meeting, the Ombudsman cited specific violations established regarding the operation of the ZZZS. At the meeting with the Minister of Health in January 2020, the Ombudsman pointed out that with **health reforms the state should ensure accessible, high-quality and safe disease prevention, treatment and rehabilitation programmes, while also reducing inequalities and ensuring accessible health care to all groups of people. At the meeting, we were assured that the proposed new health care and health insurance act and the long-term care act would be submitted for public discussion by the end of February 2020.**



2.16.2 Realisation of the Ombudsman's past recommendations¹

The Ombudsman's past recommendations that remain partially realised or fully unrealised are highlighted below:

- **recommendation no. 38 (2018)** with which the Ombudsman recommended that the Government draft amendments to the Patient Rights Act which will take into account the fact that regulations from the field of health insurance also govern the majority of these rights;
- **recommendation no. 39 (2018)** with which the Ombudsman recommended that the Ministry of Health prepare a comprehensive analysis of reasons for waiting times and of the systemic organisation of health care, and proposals to eliminate administrative barriers and simplify procedures that will respect patients' time;

- **recommendation no. 63 (2017)** with which the Ombudsman recommended that the Ministry of Health study applicable protocols for gynaecological examinations of victims of sexual violence and establish whether they provide an opportunity to select a gynaecologist who will inspire confidence in victims and not add to their distress or make them feel uncomfortable;
- **recommendation no. 41 (2018)** with which the Ombudsman recommended the Communicable Diseases Act be amended accordingly after the completed analysis in order to further ensure suitable protection from communicable diseases, and observe scientific and expert findings regarding the risks and adverse effects of vaccination;
- **recommendation no. 42 (2018)** with which the Ombudsman recommended that the Government of the Republic of Slovenia examine the possibility that an appeal against the decision of an appointed physician would suspend its execution;
- **recommendation no. 60 (2017)** that the Ministry of Health execute a broader awareness-raising campaign for all citizens regarding new legal solutions, particularly their rights and procedures for enforcing these rights, after all the planned acts implementing health reform and governing patients' rights come into force;
- **recommendation no. 61 (2017)** that the Ministry of Health draft criteria for determining a network of health care providers without undue delay, on the basis of which the Government will determine the network in 2018, providing equal opportunities for public and private health care providers and equal access to providers for users;
- **recommendation no. 54 (2016)** that the Government of the Republic of Slovenia require all state authorities drafting individual regulations with the help of external experts to publish details of how their working groups are structured, what their basic duties are, and the time limits for drafting expert groundwork.
- **recommendation no. 55 (2016)** that the Ministry of Health in cooperation with the Information Commissioner study the option for the Patient Rights Act to lay down the possibility of releasing doctors from their obligation to professional secrecy when a patient has already publicly disclosed sensitive information about their medical condition;
- **recommendation no. 57 (2016)** that the Ministry of Health draft in 2017 legislation on the performance of psychotherapy services;
- **recommendation no. 58 (2016)** that the Ministry of Health in cooperation with the Health Insurance Institute of Slovenia study the possibility of a price breakdown of health care services (into labour and material costs), as this would enable a greater overview of the funds spent, and make it possible for complainants to select a surcharge for above-standard services;
- **recommendation no. 59 (2016)** to regulate the rights of individuals that arise from compulsory health insurance and dependency on their place of residence by law;

- **recommendation no. 60 (2016)** that the payment of an inadequate amount of sick-leave compensation based on false grounds and concerning which no judicial proceedings are pending be regulated by law retroactively, ensuring equal treatment for all beneficiaries;
- **recommendation no. 70 (2015)** that it is necessary to inform the public in advance of any qualitative changes, stating the reasons for such changes and their basic content;
- **recommendation no. 71 (2015)** that the Ministry of Health also examine proposals for the work of advocates of patients' rights to be expanded to the field of compulsory health insurance;
- **recommendation no. 72 (2015)** with which the Ombudsman proposed that the Ministry of Health examine the possibility of combining the tasks of advocates of patients' rights and advocates of persons with mental disorders in the light of new legislative solutions;
- **recommendation no. 72 (2015)** with which the Ombudsman proposed that the procedures with respect to the right to medical treatment abroad be regulated in more detail;
- **recommendation no. 124 (2013)** with which the Ombudsman recommends that the Ministry of Health promptly prepare the foundations for health care and health insurance reform, and organise a wide public debate involving all interested parties. The public discussion should include several alternative solutions supported by all relevant information, particularly regarding the financial consequences for patients. (page 265);
- **recommendation no. 125 (2013)**, with which the Ombudsman recommends that the Ministry of Health promptly establish organisational reasons for violating individual patients' rights, especially the right to respect for patients' time, and imposes on the managements of health care institutions to prepare plans for their elimination. Organisations of patients and their relatives should also take part in the preparation of such plans.
- **recommendation no. 126 (2013)** that the Ministry of Health examine the regulatory framework of complementary and alternative medicine and individual treatment methods, and on this basis prepare suitable legislative amendments that will ensure providers have free financial choice and provide users with the right to select their treatments;
- **recommendation no. 127 (2013)** that the Ministry of Health include in new health legislation the obligation of health care institutions to promptly inform parents about whether they will be entitled to wage compensation during a hospital stay with a child.

The online edition of the annual report available on the Ombudsman's website includes [additional substantive explanations](#) regarding the (non)realisation of past recommendations.

2.16.3 The Ombudsman's new recommendations and activities

2.16.3.1 Recommendations

On the basis of the cases considered in the field of health care and health insurance, we drafted the following recommendations:



94. The Ombudsman recommends that the Ministry of Health raise awareness of the competences of the Commission of the Republic of Slovenia for the Protection of Patient Rights and of procedures concerning the handling of complaints against the work of advocates of patients' rights.

95. The Ombudsman recommends that the Ministry of Health promptly convene a meeting of representatives of the Ministry of Health, the Ministry of Education, Science and Sport, the Health Insurance Institute of Slovenia and the National Institute of Public Health, and prepare legal bases for the accessibility of adrenaline autoinjectors in schools.

96. The Ombudsman recommends that the Ministry of Health promptly determine a timetable for drafting an act proposal on supplementary, traditional and alternative forms of diagnostics, treatment and rehabilitation, and ensure that the new act proposal be submitted for public discussion in accordance with the timetable (as soon as possible).

97. The Ombudsman recommends that the Ministry of Health prepare a timetable of activities in accordance with the commitments from the Resolution on the National Mental Health Programme 2018–2028, taking into account the fact that they are aware of the urgency of regulating the field of psychotherapy.

98. The system of rights and their limitations may only be regulated by law. The Ombudsman again warns the Ministry of Health and the Government of the Republic of Slovenia that the rights arising from compulsory health insurance which are regulated with an implementing regulation must be promptly regulated in a suitable act. Unconstitutional regulation of rights arising from compulsory health insurance was established by the Constitutional Court with decision no. U-I-50/97 of 16 December 1999.

99. The Ombudsman recommends that the Health Insurance Institute of Slovenia render decisions within statutory time limits and enforce the constitutional provision that Slovenia is a state governed by the rule of law and a social state. They should prepare a plan to eliminate backlogs in decision making on the rights arising from compulsory health insurance and immediately stop the practice of making retroactive decisions.



100. The Ombudsman again proposes that the Government of the Republic of Slovenia, in the preparation of legislative amendments, examine the possibility that an appeal against the decision of an appointed physician would suspend its execution.

101. The Ombudsman again proposes that the Government of the Republic of Slovenia, in the preparation of legislative amendments, examine the possibility that an insured person's inability to work is recognised or the sick leave is approved pending a decision on the proposal of the appointed physician.

102. The Ombudsman proposes that the Health Insurance Institute of Slovenia (ZZZS) adopt measures to improve the quality of decisions of appointed physicians and annually assess them.

103. The Ombudsman proposes that the ZZZS emphasise that personal physicians must consistently observe Article 244 of the Rules on compulsory health insurance.

104. The Ombudsman recommends that the Ministry of Health in amendments to the Health Care and Health Insurance Act regulates childcare benefit for parents of hospitalised children as soon as possible, making parents of hospitalised children eligible for childcare benefit for the duration of their stay with the child in hospital.

The Ombudsman's activity with substantive explanations concerning health care is addressed in more detail in the online version of the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2019 available on the Ombudsman's website <www.varuh-rs.si>.

2.16.3.2 Health care

- Patient Rights Act
- Termination of the National Institute for Congenital Heart Disease
- Inaccessibility of adrenaline autoinjectors in schools
- Problems of child development clinics
- Rare diseases
- End-of-life issues: the right to have a previously expressed wish respected
- Lengthy preparation of the act on supplementary, traditional and alternative forms of diagnostics, treatment and rehabilitation
- Normative regulation of psychotherapy is just a dead letter

- Preventing and managing healthcare-associated infections in retirement homes
- The right to lend medical aids to temporarily immobile insured persons

2.16.3.3 Health insurance

- Delays in decision making by the ZZSZ on health insurance rights and their consequences for insured persons and employers
- Decisions issued by appointed physicians or a medical committee are binding for insured persons and their personal physicians
- The burden of lengthy procedures conducted by the ZZSZ is borne by insured persons
- The protection of human rights in relation to the state is one of the greatest achievements of contemporary society⁶⁸
- Inability to conclude compulsory insurance in the case of injury at work and occupational disease for a secondary school student when receiving compulsory practical training – continuation
- The right to childcare benefit for parents of hospitalised children

⁶⁸ (Trpin: 1984, p. 1)

2.17 SOCIAL MATTERS

FIELD OF WORK	CASES CONSIDERED			RESOLVED AND JUSTIFIED		
	2018	2019	INDEX 19/18	NO. OF RESOLVED	NO. OF JUSTIFIED	SHARE OF JUSTIFIED AMONG RESOLVED
9. SOCIAL SECURITY	269	238	88.48	186	33	17.7
SOCIAL BENEFITS, ASSISTANCE AND SCHOLARSHIPS	73	72	98.63	56	8	14.3
SOCIAL SERVICES	26	48	184.62	37	8	21.6
INSTITUTIONAL CARE	77	60	77.92	44	13	29.5
POVERTY - GENERAL	9	11	122.22	10	0	0.0
VIOLENCE - IN ALL CONTEXTS	13	16	123.08	13	1	7.7
OTHER	71	31	43.66	26	3	11.5

2.17.1 General findings and assessment of the situation

VIn 2019, the most significant difference was in the cases considered in the sub-field of social services, in which 84.62 per cent more cases were considered than the year before.⁶⁹ The most significant decline in the number of cases was in the sub-field of institutional care, i.e. 23 per cent, although this field remains a pressing problem. The percentage of justified complaints, where we established viola-

⁶⁹ The number of the considered cases in this sub-chapter declined by around 12 per cent in comparison to 2018, which does not reflect the seriousness and sensitivity of the considered cases. The chapter on social matters does not cover social insurance which includes pension and disability insurance, health insurance, parental protection and unemployment insurance. They are described in separate chapters.

tions of human rights or other irregularities of the authorities, was 17.7 per cent, it stood at 17.4 per cent in 2018 and 14.4 per cent in 2017, which is more than the average, which was 10.3 per cent in 2019 without the field of child advocacy and the National Prevention Mechanism.

However, as mentioned, changed numbers, percentage and shares do not signify substantive changes.



In the field of social benefits, assistance and scholarships, we dealt with wider issues on our own initiative.

2.17.1.1 Social benefits, assistance and scholarships

In 2019, we considered almost the same number of cases as the year before. The percentage of justified complaints with established violations of the authorities is slightly above average and stood at 14.3 per cent. **Key issues we handled were connected with the material situation of individuals in various ways**, and referred to the amount of social assistance in cash, the settlement or reimbursement of unjustifiably received monies from public funds, the exercise of individual rights to public funds and related obligation of public authorities to provide explanations, and the quality (legality pursuant to the General Administrative Procedure Act) of administrative acts. We also addressed the social security of persons with disabilities, the payment of a large family allowance in the event of a divorce, the significance of an agreement on active resolution of social problems of temporarily unemployable persons and other topics. **In the field of scholarships, we point to a case** in which a complainant succeeded in a social dispute and was granted the right to a state scholarship, but the question whether she was entitled to default interest after three years of litigation was complicated.

We mainly handled violations and irregularities regarding the right to social security, equality before the law, and the principle of sound administration and justice. Most frequent violators were the Ministry of Labour, Family, Social Affairs and Equal Opportunities and individual social work centres.



The Ombudsman believes that most problems in the field of social matters in 2019 referred to the issue of administrative decisions, as administrative authorities frequently did not observe the requirements and standards referred to in the General Administrative Procedure Act, did not comply with the obligation to provide explanations and did not respond to clients.

Several complainants exercised their right to public funds at a social work centre, but due to a lack of knowledge, they did not exercise the right to financial social assistance although they met the conditions therefor. We noticed that decision making on the rights to public funds has numerous peculiarities that require a different regulation to the one applicable pursuant to the ZUP. In all procedures, minimum procedural guarantees to protect the rights of clients must be ensured, as most clients belong to **particularly vulnerable groups**.



A question was raised as to which of the divorced parents may receive a large family allowance. **We could not accept the justification of the Ministry of Labour, Family, Social Affairs and Equal Opportunities that the payment of a pro-**

portional share of a large family allowance to each parent would constitute an administrative burden. The Ombudsman believes that a large family allowance is intended for families; therefore, a fairer regulation would be that both parents were entitled to a proportional share of a large family allowance. Since the applicable Parental Protection and Family Benefits Act allows only one parent to receive this allowance, the Ombudsman proposes amending this regulation.

Regarding the different treatment of persons with disabilities on the basis of various legal foundations, we believe that international documents clearly indicate that, on the basis of convention provisions, persons with disabilities include persons with mental health problems if those problems are long-term and affect the individual's ability to fully and efficiently participate in society. We are convinced that persons who have the status of a person with disabilities pursuant to the Vocational Rehabilitation and Employment of Persons with Disabilities Act are in the same position as persons who have the status of a person with disabilities pursuant to the Social Inclusion of Disabled Persons Act (i.e. lack of profit-making ability) but are not entitled to the same amount of social protection, which is a contravention of Article 14 of the Constitution of the Republic of Slovenia. Therefore, the Ombudsman believes that legislative amendments in the field of the **social security of persons with disabilities** are imperative.

2.17.1.2 Social services

Social care services intended to prevent social distress and problems (social prevention) pursuant to the Social Assistance Act include various activities and assistance for self-help to individuals, families and population groups.

The number of cases considered in this field significantly grew in 2019 (from 26 in 2018 to 48), and the share of justified complaints is also high. The cases considered referred to various aspects of the resolution of social matters, including the accessibility of social services (for example home care services for the elderly and persons with disabilities) and other types of care, possibilities for decent living, social distress and dissatisfaction with the responsiveness or treatment received from competent social work centres. In addition to actions, when these were possible in accordance with the powers of the Ombudsman, we also attempted to help complainants by giving them advice and guidelines on how to improve their situation and solve their problems.

Certain considered cases referred to the poor situation in the field of the institute of a home care assistant and guardianship. We should not ignore that, within one year of the entry into force of the Personal Assistance Act, alerts regarding deficiencies in its implementations and calls for its amendment (which certain people oppose) occurred, and particularly evident is the need for a more effective (professional) supervision of personal assistance and prevention of the abuse of this institute. In 2019, the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ) drafted amendments to the Personal Assistance Act; however, in view of responses during public discussion, they decided to withdraw the proposed amendments to this act from public discussion. Prior to this, the MDDSZ had announced that, in the light of the discussion, they would take into account the key remarks of personal assistance providers that family members can be personal assistants.



Many complaints regarding social services in 2019 referred to home care assistants. Under the conditions stipulated by the Social Assistance Act, the right to select home care assistance pertains to an adult with a severe mental disorder or an adult with a severe physical impairment who needs assistance with basic needs (person with disabilities). In their annual reports, the Ombudsman pointed out several times the **systemic deficiencies of the institute of home care assistants**. In the Ombudsman's opinion, the applicable regulation, which does not provide home care assistants and persons with disabilities with sufficient social security, does not support temporary solutions for persons with disabilities if a home care assistant falls ill, and does not grant home care assistants the right to a leave of absence or another form of rest, is not adequate or just. Therefore, it is no surprise that home care assistants who contact the Ombudsman with complaints highlight that their work is demanding but undervalued. **The Ombudsman cannot accept the fact that the state has not regulated the position of home care assistants more suitably in all these years.**



Sole traders still cannot become home care assistants. In 2017, we proposed amendments to regulations which would enable persons who pursue the activity to obtain the status of a home care assistant under conditions comparable to the conditions applicable to workers with employment contracts who may obtain the status even if they are (remain) employed part-time. **The Ombudsman's recommendation was taken into account in the working version of the proposed material for the long-term care act sent to us by the Ministry of Health in November 2018;** for this reason, we expect the proposed solution to be adopted promptly, **eliminating existing inequality.**

Problems arise also with guardianship, which is a special form of protection for adults who cannot take care of themselves, their rights and interests in accordance with the Family Code. Procedures to place a person under guardianship and appoint a guardian for special cases must be executed rapidly, and in the meantime, the rights and interests of the persons involved in these procedures must be protected, which is not always the case. In the Ombudsman's opinion, social work centres must treat the issue as urgent until they establish whether the conditions to initiate the procedure to place an adult under guardianship or appoint a guardian for special cases have been met.

The Ombudsman also believes that a suitable balance between the right of guardians to independently perform their tasks and the duty of social work centres to monitor the guardians' work must be achieved.

Irregularities in the communication of social work centres must also be emphasised. The Ombudsman believes that social work centres do not have a legal basis for warning about the obligation of the guardian to consult with a social work centre. The assistance that may be provided by social work centres to the guardian in the framework of its tasks must not constitute an obligation to obtain consent to individual guardianship tasks.

The cases considered by the Ombudsman in this regard show that all three legislative regulations, i.e. the Social Assistance Act, which governs home care assistants, the Personal Assistance Act, which stipulates the institute of a personal assistant, and the act that will govern long-term care, must be regulated systemically.

Recommendation no. 110: The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities together with other competent authorities systemically regulate the Social Assistance Act, which regulates home care assistants, the Personal Assistance Act, which stipulates the institute of a personal assistant, and the act that will regulate long-term care.



2.17.1.3 Institutional care

The number of cases considered in this field slightly reduced in 2019, but the problems related to institutional care of (particularly elderly) persons used to substitute or supplement the functions of their home and their family, and in particular residence, organised meals, care and health care remain pressing or have even escalated. This is also indicated by a high share of justified complaints in this field in 2019, which stood at 29.5 per cent.



The cases considered referred to the lack of capacities in institutions, waiting times for admission to institutional care, the payment of institutional care, the shortage of personnel, who have an additional workload due to their responsible and demanding work with residents, accusations of poor treatment of, and care for, residents, and other problems. The claims stating that living conditions in institutions, especially in retirement homes, were worsening due to the lack of staff are of particular concern. We should not ignore, when reviewing the successful provision of access to, and availability of, social care services for persons who need other people's assistance due to their age, mental or physical impairment, that the Court of Audit pointed out that the state did not pay sufficient attention to providing assistance to these persons in the period to which the audit refers (1 January 2017–30 June 2018).



When considering cases, we contacted the institutions to which the complaints referred and the competent ministries, if necessary. In view of the content of the complaints, for example dissatisfaction with the provision of health care, we pointed complainants towards the existing complaint channels regulated by the Patients' Rights Act and the role of the Chamber of Nursing and Midwifery Services of Slovenia – the association of professional nurses, midwives and medical technicians of Slovenia, which carries out the supervision of health care providers and their employees with consultancy in health care (midwifery). We informed them of the complaint channels pursuant to the Social Assistance Act and the competences of the Social Affairs Inspection Service and the Honorary Arbitration Board at the Social Chamber of Slovenia.

In 2019, we were particularly active in the field of institutional care. In addition to considering individual complaints, we visited certain institutions that provide institutional care and on this basis prepared recommendations to improve the situation.⁷⁰ Our visits were aimed at approaching residents and their relatives who

⁷⁰ See Chapter 2.16.3.4 below.

need assistance to exercise their rights, and giving the opportunity to the management and employees to inform us of potential problems in their work (more on this below).



In 2019, as in many previous years (annual reports for 2017, 2016, 2014, etc.), we established that **existing personnel standards for health care and care workers in retirement homes were unsuitable in view of the ever increasing need for care and assistance and more demanding health care users need.** This is related to various problems that affect the dignity of residents. The lack of suitable personnel in retirement homes must be urgently resolved on a systemic level.



The applicable method of charging for institutional care services lacks transparency. It is unacceptable that a draft of detailed standards was prepared in 2008 which was not adopted due to the opposition of certain providers; later, the preparation of detailed standards was no longer a priority, as long-term care was promised. A special problem is also the inability to allocate single rooms in retirement homes. Personnel in retirement homes should check whether newly admitted residents still want a single room and record this in an official note, and promptly enter them on the waiting list for relocation to a single room if that is what they still require.

Based on media reports, we noticed that persons over 65 were placed in psychiatric hospitals, as there is no other suitable option for their accommodation after they leave the hospital. The modern approach is to plan more home care services for the elderly with dementia and other diseases; nevertheless, the elderly will continue to need space in retirement homes. The Ombudsman joins calls for an urgent systemic solution to the problems of caring for the elderly in the field of mental health.



We are well aware that institutional care is the essential and only choice for many people, particularly the elderly, but we also believe that increasing the capacities in institutions is not the right response to increased longevity of the population; instead more should be done towards deinstitutionalisation. **We find that there is also a lack of suitable services that would offer support to people (irrespective of their age) who wish to stay at home, but are unable to live on their own without additional assistance and care.**

It is unacceptable that the elderly are forced to live in institutions when their desire is to spend their life with dignity in their domestic environment. **For this reason, the comprehensive regulation of long-term care should be a priority.** Slovenia urgently needs an accessible, efficient and financially sustainable system based on social justice and intergenerational solidarity.

Not only has life expectancy been increasing, which in turn increases the number of people who need long-term care services, but the proportion of working people, i.e. on whom this service relies, has also been reducing. It is imperative that the network of providers is supplemented and the set of services to assist persons who cannot live alone is expanded so that they can live at home in the environment where they feel comfortable and have an established social network.

In the chapter on the restriction of personal liberty, we point out that better treatment in the domestic environment or the community, home and social care may reduce the need for institutional care and problems related to the lack of such capacities. Therefore, we recommended that the Ministry of Labour, Family, Social Affairs and Equal Opportunities together with the Ministry of Health provide additional incentives and develop community services to gradually relieve the pressure on institutional forms of treatment.

We alerted the Ministry of Health of this at a meeting on 7 January 2020 and were told that the long-term care act would be submitted for public discussion no later than February 2020; however, this forecast was not fulfilled. On 27 May 2019, we met the Minister of Labour, Family, Social Affairs and Equal Opportunities, Mag. Ksenija Klampfer, at an extensive working meeting and pointed out the changes necessary in this field.

Recommendation no. 113: The Ombudsman recommends that the Government of the Republic of Slovenia adopt necessary measures to regulate long-term care.



2.17.1.4 Poverty

The Ombudsman also compiles information regarding poverty through complaints received. Poverty is diverse and multilayered. We encounter it in the field of unemployment, housing problems, long-term inability to work, etc. It is also reflected in complaints considered in the field of pension and disability insurance, benefits and assistance in cash, social services and institutional care, on which we report in other chapters.

Complainants that contact the Ombudsman due to various material and social issues also ask us for financial aid. In response to such requests, we can only advise the complainants to contact a social work centre and non-governmental organisations operating in the field of assistance for socially disadvantaged individuals and families for help and advice. The Ombudsman does not have a financial fund from which to allocate resources to the most disadvantaged population.

Individuals who contact the Ombudsman in writing or by phone and are in severe material and social distress are members of various groups. They include unemployed individuals, recipients of financial social assistance or pension support who experience difficulties in living off their income, and pensioners with low pensions. We should particularly mention temporarily unemployed persons who are referred to social work centres. These include long-term unemployable persons.

Poverty is accompanied by a loss of dignity, feelings of shame and humiliation experienced by individuals as they are forced to ask various institutions for help to survive. The elderly generally do not want to be a burden to their children; instead, they waive the option to exercise the right to pension support. At a panel

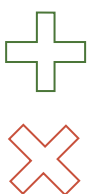
discussion on the implementation of the EU measure to eliminate material deprivation of the most deprived between 2021 and 2027, which was organised by the Ministry of Labour, Family, Social Affairs and Equal Opportunities on 22 November 2019, representatives of Caritas Slovenia and the Slovenian Red Cross stated that it was frequently difficult for individuals in distress to apply personally for a food package and support. The elderly who live alone are in particular distress. It is difficult to understand and accept the poverty in which families find themselves when only one parent is employed, or both are employed but their incomes are so low that the family cannot survive without additional help.

Occasionally, we receive letters with proposals on how to solve the problem of poverty. One such letter included a proposal that the Ombudsman propose the establishment of a "Slovenian poor people's fund".

The Ombudsman's desire and focus is that **more effective solutions should be put in place to solve the problem of poverty which people face**. Conditions should be established on the labour market that will enable unemployed persons who are able to work to find a job and maintain themselves (and their family if they have one) with their income. Solutions must be found for persons who are permanently unemployable or permanently unable to work and do not meet the retirement conditions that would provide them with an acceptable standard of living. The same attention should be paid to the elderly. The Ombudsman notes distress due to loneliness and the belief of some people that they are only a burden to others.

2.17.1.5 Violence

In the field of violence, the Ombudsman considered more complaints this year than in the years before, i.e. 16 cases were considered, while three cases less were considered in 2018, which shows an increase in the amount of all types of violence. Most complaints in 2019 referred to violence between former or current partners, and unfortunately, a few cases of violence by adult children against elderly and helpless parents. **Slovenian society is still consumed with such tolerance of violence and numerous gender-based prejudices that victims are frequently misunderstood and unsupported in their decision to leave violence behind.** Another Slovenian phenomenon is that individuals do not want to meddle in the partnerships of other people who they know (neighbours or acquaintances in their social network) despite hearing loud quarrels and witnessing various types of violence.



Principally, the Slovenian legislation on domestic violence and violence against women is well regulated. However, legislation alone does not suffice to reduce the occurrence of violence; highly qualified personnel in various institutions are required to integrate legislation in daily life and reduce tolerance towards violence. The complaints of people who contact the Ombudsman show that citizens do not receive the same quality of institutional services everywhere in Slovenia although they should. **One of the most acute problems is that most programmes for both victims and perpetrators of violence are held in Ljubljana, while other areas lack such services.**

Slovenia has signed almost all the important declarations, conventions and agreements dealing with domestic violence and violence against women. In

2014, Slovenia ratified a very important document, i.e. the **Council of Europe Convention on preventing and combating violence against women and domestic violence (the so-called Istanbul Convention)**. The main goal of the Convention is to create a Europe without violence against women and domestic violence. This strategic document is the basis for various measures that legally and actually integrate domestic violence and violence against women in the wider framework of combating discrimination against women and achieving gender equality. The signatories are obliged to comprehensively approach the consideration of violence, including the prevention of violence, protection and support for victims, the prosecution of perpetrators, and comprehensive and coordinated actions. The recent study conducted by the European Institute for Gender Equality, entitled Estimating the costs of gender-based violence in the European Union, has also proven that the adoption of the Convention was a necessary step towards a more comprehensive and effective consideration of domestic violence. The study has shown that such violence particularly affects women's human rights and the basic purpose of the measures is to prevent further violations of these rights, as such violations have harmful consequences for vulnerable groups, especially women.

In 2014, Slovenia commenced the implementation of the ratified **Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (the so-called Lanzarote Convention)**, which is an important protection mechanism for children but only if expert workers are familiar with the content of the Convention and aware of the obligations it imposes on them.⁷¹

The Ombudsman also deals with violence against the elderly. Such a form of domestic violence is specific, as violence against helpless parents (neglect, extortion, threats) is more difficult to detect and the elderly are ashamed of reporting violence perpetrated against them by their own children. However, the elderly have a limited social network and only the health visiting service, among the expert services that work in the field, has access to them.

Attention must also be paid to forced marriages of Roma girls and boys. The consequences of child marriage are similar for all children regardless of whether the marriages are forced or not. A girl can become pregnant soon after the wedding and drops out of school, and only rarely is a girl included in the labour market.

Uneducated women whose main concern is to care for their children are restricted to only their private life. A woman excluded from society, however, can easily fall victim to violence at home as, due to a lack of other options, she can become resigned to her situation, thus repeating the patriarchal pattern of society in the future. Roma women are not only held back by norms and values characteristic of the Roma culture, but also by prejudice, discrimination and the stereotypical mindset of the majority of society. The issue of forced marriages should be resolved with a wider and more comprehensive regulation of the living conditions of Roma in terms of education, health care, housing policy, employment, etc. The European Union Agency for Fundamental Rights (FRA) proposes that forced marriages be criminalised on the basis of the Istanbul Convention. Slovenian leg-

⁷¹ Regarding this, see chapter "Children", sub-chapter "Realisation of the Ombudsman's past recommendations".

isolation does not define forced marriage as a type of violence, but applicable legislative provisions contain individual elements (for example trafficking in human beings, sexual assault against persons under 15, child neglect and maltreatment, using coercion against underage girls, violation of personal dignity and safety). Most European countries that decided to criminalise forced marriage regulated this field in the national criminal code.

The Ombudsman has for years been finding inconsistencies among various authorities when implementing measures to protect the victims and perpetrators of violence. Unfortunately, there are still cases when a person accompanying a victim to a social work centre is not allowed to be present at an interview with the victim at the social work centre, despite the act being adopted in 2008 and amended six years later. **The Ombudsman points out that the competent authorities must constantly ensure that their expert workers (social work centres, educational institutions, health care, justice, the police) receive regular training; we must be aware of the importance of coordinated action, otherwise neither the victim not the perpetrators of violence will receive the help they need.**

We should also highlight that **we also have to work with perpetrators of violence**; frequently, these grow up in families consumed with violence, leading them to adopt violent behaviour as something natural and socially acceptable. At the same time, we must point out the role of **secondary socialisation**; a child who experiences domestic violence will continue with such behaviour regardless of gender if they are not informed at school about human rights, respect for others and nonviolent communication. The purpose of schools is not only to educate but to bring up. This part of prevention is systemically ignored too frequently despite its high importance.

Children are born into families consumed with violence through no fault of their own, so they must be given an opportunity to learn to live without violence, in the harmony of diversity and respect for others, as this is the only way to create a society that has zero tolerance of violence in the long term.



Recommendation no. 118: The Ombudsman recommends that the competent authorities (social work centres, educational institutions, health care, justice, the police) constantly provide training in violence to their expert workers (ongoing task).

2.17.2. Realisation of the Ombudsman's past recommendations

The Ombudsman's past recommendations that remain partially realised or fully unrealised are highlighted below. In the online edition of the annual report available on the Ombudsman's website, we provide [additional substantive explanations](#) regarding the (non)realisation of past recommendations.

2.17.2.1 Social benefits, assistance and scholarships

The Ombudsman's past recommendations that remain partially realised or fully unrealised are:

- **recommendation no. 43 (2018)** on the necessary amendment to 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;
- **recommendation no. 70 (2017)** to, in addition to the reorganisation of social work centres, standardise the information system so that it flags up whether a decision has been issued but not shipped and served to the client;⁷²
- **recommendation no. 68 (2017)** that the Ministry of Labour, Family, Social Affairs and Equal Opportunities restore the complaint metric to inform the public of indicative deadlines for their resolution; the recommendation has been partially realised, as the number of unresolved cases has significantly declined (more in the chapter "Administrative matters");
- **recommendation no. 99 (2014)** to amend the Social Assistance Payments Act to expand the range of beneficiaries of funeral payment to other relatives and persons who were not related to the deceased but who arranged their funeral; this recommendation has been partially realised;⁷³
- **recommendations nos. 129 (2013) and 69 (2017)** that the Ministry of Labour, Family, Social Affairs and Equal Opportunities ensure decision making at second instance within statutory time limits and promptly inform clients in writing how they can prevent the loss of their rights due to a lengthy decision-making process which they could not influence;
- **recommendation no. 71 (2017)** that the competent authorities draft proposals for amendments to the Act ratifying the Convention on the Rights of persons with Disabilities and Optional Protocol to the Convention on the Rights

⁷² The Ombudsman is aware of the established Krpan information system; however, we would like a clear confirmation from the competent authorities that the said system supports automatic alerts regarding issued but not shipped and served decisions.

⁷³ The Act Amending the Social Assistance Payments Act has been in force since 1 June 2018, which stipulates that brothers or sisters, nephews or nieces and grandsons or granddaughters are also entitled to funeral or bereavement payments. This expanded the range of beneficiaries of funeral payments.

of Persons with Disabilities, which will observe the established Slovenian legal terminology;

- **recommendation no. 95 (2014)** to take measures to speedily provide high-quality information to residents regarding the various options to exercise their social rights;
- **recommendation no. 63 (2016)** that social rights are exercised in accordance with a special regulation, as the General Administrative Procedure Act is not adjusted to any special cases in this field;
- **recommendations nos. 96 (2014) and 74 (2015)** and other Ombudsman's recommendations to enhance the personnel capacities of social work centres and their counselling role so that they can provide each resident with high-quality counselling regarding their rights;
- **recommendation no. 117 (2013)** to amend regulations so that, if a student skips a year, grades from the certificate for the year when the grades are higher are taken into account to calculate the average;
- **recommendation no. 118 (2013)** to amend regulations so as to enable secondary school pupils to receive a scholarship as a one-off payment at the end of the academic year during which the pupil fulfils the obligations for two years, and not only after the education has been completed.

2.17.2.2 Social services and institutional care

The Ombudsman's past recommendations that remain partially or fully unrealised are specifically:

- **recommendation no. 44 (2018)** with which the Ombudsman recommended that the ministry responsible for social security in cooperation with the Social Chamber of Slovenia and the Association of Social Institutions of Slovenia examine the suitability of staffing standards in retirement homes and adjust them more to the residents' needs;
- **recommendation no. 102 (2014)** with which the Ombudsman proposed a renewal of staffing standards for health care and care workers in retirement homes where young persons with disabilities live;
- **recommendation no. 65 (2018)** with which the Ombudsman pointed out that there are no standards by which the meals provided in retirement homes can be assessed;
- **recommendation no. 100 (2014)** with which the Ombudsman recommended that the Government prepare a programme to expand the capacities of occupational activity centres and enable persons affected to participate in the service of guidance, care and employment under special conditions;
- **recommendation no. 101 (2014)** with which the Ombudsman recommended the adoption of measures to improve the accessibility of institutional care services for adults with moderate, severe and profound mental disorders and/or with several disorders, and to ensure more balanced regional coverage.

2.17.3. The Ombudsman's new recommendations and activities

2.17.3.1 Recommendations

On the basis of the cases considered in the field of social matters in 2019, we give the competent authorities the following recommendations:

105. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities ensure that persons entitled to an individual right to public funds are automatically informed of the incurrance of debt of this person and that they are informed of the amount of debt at the settlement of unjustifiably received public funds.



106. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities examine peculiarities in the decision-making process on social rights and prepare suitable legislative amendments that will take this into account and determine the discontinuation of the use of rules on general administrative procedure.

107. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities draft amendments to the Parental Protection and Family Benefits Act so that divorced parents can claim a proportional share of a large family allowance.

108. The Ombudsman recommends that the Government of the Republic of Slovenia ensure that the Ministry of Labour, Family, Social Affairs and Equal Opportunities draft amendments to legislation so that all persons with disabilities, i.e. persons with disabilities with status pursuant to the Vocational Rehabilitation and Employment of Persons with Disabilities Act and persons with disabilities with status pursuant to the Social Inclusion of Disabled Persons Act, enjoy comparable social security.

109. The Ombudsman recommends that the Government of the Republic of Slovenia draft legislative amendments so that persons under house arrest are entitled to financial social assistance for their basic needs if they meet legal requirements.

110. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities together with other competent authorities systemically regulate the Social Assistance Act, which regulates home care assistants, the Personal Assistance Act, which stipulates the institute of a personal assistant, and the act that will regulate long-term care.



111. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities regulate the position and status of a home care assistant more suitably, also by providing sufficient social security to home care assistants and persons with disabilities.

112. The Ombudsman recommends that social work centres act swiftly in procedures on placing a person under guardianship, including a swift processing of applications for placing a person under guardianship.

113. The Ombudsman recommends that the Government of the Republic of Slovenia adopt necessary measures to regulate long-term care.

114. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities study his findings from visits to institutions in 2019 and adopt all necessary measures to realise the given recommendations in cooperation with other competent authorities.

115. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities supplement the network of providers and expands the set of services to assist persons who cannot live alone so that they can live at home in an environment where they feel comfortable and have an established social network.

116. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Opportunities address the lack of suitable personnel in retirement homes on the systemic level by establishing suitable staffing standards that will facilitate safe and quality treatment of users with better work conditions and suitable payment for the work performed.

117. The Ombudsman recommends that the Association of Social Institutions of Slovenia in cooperation with the Ministry of Labour, Family, Social Affairs and Equal Opportunities draft and adopt more detailed standards to implement individual types of care and the criteria for placing users under individual types of institutional care in retirement homes to enhance the transparency of charging for services and provide equal access to services.

118. The Ombudsman recommends that the competent authorities (social work centres, educational institutions, health care, justice, the police) constantly provide training in violence to their expert workers (ongoing task).

The Ombudsman's activity with substantive explanations in the field of social matters in 2019 is addressed in more detail in the online version of the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2019 available on the Ombudsman's website <www.varuh-rs.si>:

2.17.3.2 Social benefits, assistance and scholarships

- Unjustifiably received public funds and their settlement
- Assistance for clients to exercise the rights to public funds as a duty of administrative authorities
- Payment of social assistance in cash
- Large family allowance
- Social security of persons with disabilities
- Agreement on the active resolution of social problems
- More about possible financial social assistance during house arrest

2.17.3.3 Social services

- Home care assistants
- Sole traders still cannot become home care assistants
- Guardianship
- Monitoring the guardian's work
- Other

2.17.3.4 Institutional care

- The Ombudsman's findings and recommendations on the basis of visits to the institutions
- Lack of care capacities in the community
- Lack of personnel in retirement homes
- Charging for additional services in retirement homes
- Allocation of single rooms in retirement homes
- Inclusion of users of a housing unit in retirement home activities

2.18 OTHER ADMINISTRATIVE MATTERS

	CASES CONSIDERED			RESOLVED AND JUSTIFIED		
FIELD OF WORK	2018	2019	INDEX 19/18	NO. OF RESOLVED	NO. OF JUSTIFIED	SHARE OF JUSTIFIED AMONG RESOLVED
14. OTHER ADMINISTRATIVE MATTERS	237	185	78.06	147	20	13.6
14.1 DENATIONALISATION	4	4	100.00	3	0	0.0
14.2 PROPERTY LAW MATTERS	41	41	100.00	30	5	16.7
14.3 TAXES	50	47	94.00	39	5	12.8
14.4 CUSTOMS DUTIES	1	3	300.00	3	0	0.0
14.5 ADMINISTRATIVE PROCEDURES	105	59	56.19	51	9	17.6
14.6 OTHER	36	31	86.11	21	1	4.8

2.18.1 General findings and assessment of the situation

In 2019, we considered slightly fewer cases of the set in question than we did during the year before, including administrative matters that do not belong anywhere else. The percentage of justified cases in which we identified violations of human rights or other irregularities of the authorities was also lower this year, i.e. 13.6 per cent cumulatively. We estimate that a comparison of the number of considered cases and percentage of violations does not make sense, as the differences do not warrant it; in addition, this is a field in which the annual caseload depends on the method of recording individual content. This stems from the chapter “Other matters”. Since this is a very diverse field, we must point out that the report includes

only the most important questions, highlights and findings of the Ombudsman, i.e. everything that affected several individuals or has remained unresolved for several years and requires a serious consideration of urgent changes.

On our initiative, we considered six thematic issues that refer to several individuals and a larger problem.



In this context, we draw attention to a finding we have highlighted many times. Certain municipal administrative bodies have their own ideas about the independence of local self-government and this is frequently reflected in the arbitrariness of individual mayors or municipal public employees and their tendency to ignore their own citizens and, unfortunately, the Ombudsman. **It is unacceptable that we had to request explanations several times, i.e. from the municipalities of: Idrija, Cerklje, Trzinj. Piran, Medvode, Kungota and Gornji Petrovci. In some of these examples, even the Ombudsman's repeated request was not enough.**



2.18.1.1 Denationalisation

Denationalisation has not yet been completed, which is the main finding and accusation regarding the competent authorities; this problem is being resolved too slowly; it will soon be 30 years since the adoption of the Denationalization Act (1991).



2.18.1.2 Property law matters

In 2019, we considered the same number of complaints as in the year before, and the share of established violations and irregularities remains the same. Unfortunately, we cannot report on a significantly different pressing problem, so we can conclude that our findings and recommendations from previous years are not being implemented as we would expect. **Therefore, we had to deal again with the problem of public roads sited on private land and the urgency of regulating this field, which we have been drawing attention to for several years.**



2.18.1.3 Taxes

This chapter refers to the circumstances of the tax and financial burden of people who consider(ed) themselves taxable persons.

We considered slightly fewer cases than in 2018. The percentage of justification with established violations was also lower. It stood at 12.8 per cent in 2019 and 20 per cent in 2018. The crucial finding is that the cases handled in the field of taxes are extremely diverse, which makes the legislation to be covered extensive. This required an in-depth consideration of each case.

We received letters from complainants who stated various problems, such as the payment of tax on compensation received by a complainant for injury sustained in a traffic accident, the non-receipt of disability pension due to a blocked account due to tax enforcement, the decision-making process regarding residence status, double taxation, severance pay tax assessment, the assessment of the fee

for the use of building land, the tax debt of the deceased, the taxation of persons who work abroad, lengthy decision-making periods and others.

Several complainants sought information, mainly by phone, on the rights of debtors in tax enforcement and claimed irregularities in tax enforcement proceedings. As implied in the complainants' statements, several cases could include disputable actions of banks or savings banks in tax enforcement, i.e. failure to comply with restrictions they must observe by law. Therefore, the Ombudsman points out again that, on the systemic level, the options available to individuals if they believe that a bank or a savings bank committed an irregularity in tax enforcement are not suitable. **We insist that the Tax Procedure Act should contain a special article according to which a debtor could submit a request with a tax authority to have the seized and paid or transferred income or funds in an amount that exceeded the legal restrictions of tax enforcement reimbursed, and determine a special deadline for the tax authority to make a decision on such a request.**

For most received complaints, we prepared an explanation either of legislation or legal proceedings and the means available to individuals for changing a decision of the tax authority. **We find that complainants frequently contact the Ombudsman with the expectation that the Ombudsman will "compensate for the appeal" or otherwise help to bring about changes in the decisions of the competent authorities. This was also the case in 2019. Most such complaints opposed the imposed tax obligations in specific cases or systemic irregularities.**



As we did last year, we draw attention to the lengthy decision making in appeal proceedings. We considered a case during which the Ministry of Finance took a year to decide on an appeal against a decision on personal income tax, which we deem an unjustified delay in proceedings.

2.18.1.4 Administrative procedures

In 2019, we considered 59 cases under the title in question, which is significantly fewer than in 2018, when we considered 105 cases related to the implementation of administrative procedures. The percentage of justified complaints was 17.6 per cent and 25.8 per cent in 2018. Although the difference compared to the previous year seems considerable, it is not particularly significant, as the reason for it is only due to the way in which individual cases are recorded under a certain set of content. It is impossible to always distinguish when an individual case refers to a certain substantive problem and when it refers to an administrative procedure; frequently, cases can be classified in several categories.

Key topics addressed within this sub-field were as follows: failure to comply with statutory deadlines for management and decision making, the preparation of responses to received letters, the implementation of the obligation to explain, the registration of residence and related service issues, inspection procedures, non-recovery of life annuities pursuant to the Victims of War Aggression Act, lengthy decision making of the Agency for Agricultural Markets and Rural Development on subsidies, and others.

2.18.2 Realisation of the Ombudsman's past recommendations

The Ombudsman's past recommendations that remain partially realised or fully unrealised are pointed out below. In the online edition of the annual report available on the Ombudsman's website, we provide [additional substantive explanations](#) regarding the (non)realisation of past recommendations.

2.18.2.1 Denationalisation

Recommendations nos. 54 (2018), 35 (2017), 62 (2014) and 74 (2013) with which the Ombudsman encourages the Government of the Republic of Slovenia to ensure that competent authorities complete the denationalisation procedures as soon as possible remain unrealised.

2.18.2.2 Property matters

Recommendation no. 55 (2018) and reasonably similar recommendations from previous years, i.e. **recommendations nos. 36 (2017), 37 (2016) and 50 (2015)** that the Government of the Republic of Slovenia prepare, adopt and ensure the implementation of concrete measures to regulate the ownership of all categorised roads sited on private land **remained largely unrealised.**



2.18.2.3 Taxes

The Ombudsman's past recommendations that remain partially realised or fully unrealised are:

- **recommendation no. 58 (2018)** with which the Ombudsman encourages the Ministry of Finance to comply with statutory deadlines when making decisions about complaints;
- **recommendation no. 57 (2018)** with which the Ombudsman recommends that the Government regulate the right to a special tax relief for taxpayers for maintaining their family members (parents and adoptive parents) in a manner that allows taxpayers to always claim 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;
- **recommendation no. 58 (2018)** that the Government examine the applicable 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 and disability insurance on which income tax is not paid to be supplemented by the inclusion of survivor's pension, the recipient of which is a child under the age of 18 or 26 if they are full-time students;

- **recommendations nos. 38 (2016) and (2017)** that the competent authorities adopt a special tax relief for individuals who maintain their family members (parents and adoptive parents), regardless of whether they all live in a common household or in institutional care, and pay the costs of services on their behalf;
- **recommendations nos. 39 (2016) and 38 (2017)** that the competent authorities draft amendments to the Personal Income Tax Act that would allow the list of income arising from compulsory pension and disability insurance on which income tax is not paid to be supplemented by the inclusion of survivor's pension, the recipient of which is a child under the age of 18 or 26 if they are full-time students.

2.18.2.4 Administrative procedures

The Ombudsman's past recommendations that remain partially realised or fully unrealised are:

- **recommendation no. 59 (2018)** that the Government provide suitable working conditions for all inspection services, i.e. material and financial resources, which will also enable the hiring of more staff and the effective work of inspection services;
- **recommendation no. 60 (2018)** that the Ministry of Public Administration consider amending the regulations of compulsory training of public employees so that repeat training in administrative procedure content would be obligatory after a certain time period for those public employees who conduct, and make decisions in, administrative procedures;
- **recommendation no. 72 (2013)** that the competent authorities comply with statutory deadlines when making decisions about complaints at first and second instance; this is an ongoing task;
- **recommendation no. 39 (2017)** that the competent authorities provide suitable material and financial resources for all inspection services, which will also enable the hiring of more staff and the effective work of inspection services;
- **recommendation no. 40 (2017)** to amend paragraphs one and three of Article 251 of the General Administrative Procedure Act so that authorities of second instance will be obliged to decide upon matters on their merits instead of merely setting aside the decisions of authorities of first instance and submitting the case for reconsideration;
- **recommendation no. 80 (2013)** to determine a deadline in the Residence Registration Act within which the ex officio procedure of establishing permanent residence must be concluded.

2.18.3 The Ombudsman's new recommendations and activities

2.18.3.1 Recommendations

On the basis of the problems considered in the field of administrative matters in 2019, we drafted the following new recommendations:

119. The Ombudsman encourages the Government of the Republic of Slovenia to adopt efficient measures to complete denationalisation (ongoing task).



120. The Ombudsman recommends that the Government of the Republic of Slovenia prepare, adopt and ensure the implementation of concrete measures to regulate ownership of all categorised roads sited on private land (ongoing task).

121. The Ombudsman recommends that the Ministry of Finance eliminate backlogs in making decisions in appeal proceedings regarding tax obligations.

122. 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 claim this relief when they are actually maintaining family members, regardless of whether they live in a common household with them or in institutional care, and pay costs on their behalf.

123. Regarding the taxation of survivor's pension, the Ombudsman recommends that the Government of the Republic of Slovenia amend the Personal Income Tax Act (ZDoh-2) that would allow the list of income arising from compulsory pension and disability insurance on which income tax is not paid to be supplemented by the inclusion of survivor's pension, the recipient of which is a child under the age of 18 or 26 if they are a full-time student.

124. The Ombudsman recommends that the right to follow-up rehabilitation be suitably regulated in the Health Care and Health Insurance Act so that authorities that make decisions on this right and legal protection against their decisions are determined.

125. The Ombudsman recommends that the Ministry of the Interior together with the Ministry of Labour, Family, Social Affairs and Equal Opportunities ensure that registered mail and other shipments of state authorities or other authorities are served to persons with a registered so-called legal residence in a way that least encroaches upon the rights of these persons.

The Ombudsman's activity with substantive explanations about administrative matters in 2019 is addressed in more detail in the following chapters of the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2019 available on the Ombudsman's website <www.varuh-rs.si> in the online edition of the report:

2.18.3.2 Denationalisation

2.18.3.3 Property law matters

2.18.3.4 Taxes

2.18.3.5 Administrative procedures

- Registration of residence
- Unacceptable actions of local self-government
- On farmers and poverty in rural areas
- Inspection procedures
- Elimination of backlogs at the Ministry of Labour, Family, Social Affairs and Equal Opportunities
- Work of the Farmland and Forest Fund of the Republic of Slovenia

2.19 JUDICIAL SYSTEM

FIELD OF WORK	CASES CONSIDERED			RESOLVED AND JUSTIFIED		
	2018	2019	INDEX 19/18	NO. OF RESOLVED	NO. OF JUSTIFIED	SHARE OF JUSTIFIED AMONG RESOLVED
15 JUDICIAL SYSTEM	410	377	91.95	341	19	5.6
15.1 PRE-TRIAL PROCEEDINGS – PROSECUTOR'S OFFICE	28	19	67.86	17	2	11.8
15.2 CRIMINAL PROCEEDINGS	64	48	75.00	46	6	13.0
15.3 CIVIL PROCEEDINGS AND RELATIONS	200	191	95.50	172	8	4.7
15.4 PROCEEDINGS BEFORE LABOUR AND SOCIAL COURTS	16	16	100.00	15	1	6.7
15.5 MINOR OFFENCE PROCEEDINGS	41	50	121.95	42	1	2.4
15.6 ADMINISTRATIVE JUDICIAL PROCEEDINGS	1	9	900.00	9	1	11.1
15.7 ATTORNEYS AND NOTARIES	14	17	121.43	15	0	0.0
15.8 OTHER	46	27	58.70	25	0	0.0

2.19.1 General findings and assessment of the situation

In the wider field of the judicial system, we considered 377 cases in 2019 (410 cases in 2018), and 314 cases (322 cases in 2018) in the narrower field of judicial proceedings. Of this number, 48 complaints were related to criminal proceedings (64 in 2018), 191 to civil proceedings and relations (200 in the year before), 16 to proceedings before labour and social courts (the same as before), 50 to minor offence proceedings (41 in 2018) and nine to administrative judicial proceedings

(one in 2018). 19 cases (28 in 2018) were considered in the sub-field of pre-trial proceedings – prosecutor's office, 17 in the sub-field of attorneys and notaries (14 in 2018) and 27 other cases (46 in 2018).



The number of considered cases grew only in the sub-fields of minor offence proceedings and administrative judicial proceedings, and attorneys and notaries, while **it declined in all other sub-fields. The reason may lie in fewer complaints referring to the lengthiness of judicial proceedings as judicial backlogs were successfully eliminated** regardless of the staffing and spatial problems of courts.



However, information on the poor efficiency of the judicial system in criminal proceedings (also supported by the information on justified complaints compiled by the Ombudsman), particularly on the conditions at specialised sections, are alarming.



The proportion of justified complaints (it stands out in criminal proceedings) related to judicial proceedings is closely connected to our (limited) competences in relation to the judicial branch of power. In ongoing judicial proceedings, the Ombudsman may only intervene if the proceedings are unduly delayed or in obvious abuses of power. The Ombudsman is not an authority that could provide guidelines or even instructions to other state authorities on how to make decisions in matters under their competence. The Ombudsman is also not another authority for establishing irregularities and the legality of court (and other state authorities) decisions. In the case of disagreement, legal remedies (regular and extraordinary) are available to a party to proceedings, which may be used to ensure that the correctness and legality of a decision of a court of lower instance are assessed by the directly superior court. **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 specifically to judicial administration. **Therefore, we comment again that the assessment of the work of the judicial system cannot be based solely on the number of such complaints filed with the Ombudsman and/or their justification.**



The received complaints and the Ombudsman's recommendations relating to judicial proceedings in 2019 disclosed issues which (to a lesser extent) still refer to the lengthiness of individual judicial proceedings, while most complaints refer to the quality of trials. **The complaints primarily address the right to judicial protection, equal protection of rights, the right to legal remedy, legal guarantees in criminal proceedings and other rights, including the principle of sound administration.**



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 concerning issues of a systemic nature or regarding the regulatory framework governing the work of the judicial system, and to the Ministry of the Interior concerning procedures carried out by the police as a minor offence authority and procedures of individual municipal police departments. **We were satisfied with the responses of the competent authorities in addressing complaints, as they regularly responded to our enquiries and other interventions.**

In April 2019, the Ombudsman was informed in more detail of the **Procedural Fairness project**. The project aims to make judicial proceedings friendlier to parties in courts and the general public so that people feel that they are heard, respected and treated in an unbiased way. The project also aims to devise a communication system for the judicial system that will foster a better experience for parties to judicial proceedings, and support prompt, clear, consistent and transparent communication of the court with parties and other stakeholders in proceedings.

Several qualitative studies (workshops with 13 groups of experts, observations in pilot courts, in-depth interviews with users, monitoring and analysis of online publications) were carried out as part of the project with the purpose of comprehensively analysing the communication of the courts with various stakeholders, exploring their problems and obstacles in open discussions in depth, and preparing concrete measures to improve satisfaction with the work of courts. On this basis, **the Supreme Court of the Republic of Slovenia prepared informative material for parties to judicial proceedings and the public with the aim of providing basic information on the judicial system in Slovenia, and highlighting its simplicity and user-friendliness.**



The Ombudsman is satisfied with the activities of the judicial system in this field. We believe that the concrete products and information on the judicial system (including a special website nasodiscu.si) and particularly on individual judicial proceedings may be useful information tools for individuals when they come into contact with the court. The need for this is based on the consideration of individual complaints and direct contacts with complainants who contact us (e.g. during external operations). We also point out in our annual reports the need for the adoption of measures to improve the satisfaction of users and the general public with the work of the judiciary.



2019 finally saw **the adoption of the new Criminal Procedure Act (ZKP-N)**. We participated in its preparation with our comments. We focused (only) on those sections of the legislative regulation which we assessed, on the basis of the content of complaints considered in this field, could have a major impact on the protection of human rights and fundamental freedoms, and legal security in the Republic of Slovenia, while taking into account that the Ombudsman cannot take part in the preparation of specific legislative solutions so that they can avoid being accused of participating in the drafting of an act. When preparing comments of the proposed amendments to the ZKP, we allowed for the possibility that we will continue to take a stand on the legislative regulation if necessary when handling complaints.



We welcome all legislative amendments that strengthen the position of victims of crime and of vulnerable groups, and any amendments intended to improve the effectiveness of criminal proceedings and eliminate the shortcomings discovered in the arrangement of criminal proceedings to ensure greater legal certainty and legality in view of the findings of the Constitutional Court of the Republic of Slovenia and the European Court of Human Rights. We are particularly glad to find that **some of our proposals were taken into account in the preparation of the new act, including proposals provided in the past when handling concrete complaints.** Since a new criminal proceedings model has been drafted for a long time, we reiterate that it is high time for our state to also obtain a stable legis-



lative framework in this legal field, which would not be subject to such frequent amendments as is the case of the existing ZKP.

The Ombudsman pays special attention to the respect for the rights of victims of criminal offences and the protection of victims of criminal offences. This topic was the focus of a working meeting in 2015 between the Ombudsman and non-governmental organisations which also provide help to victims of criminal offences, during which we pointed out **that the inter-ministerial cooperation of the competent ministries and state authorities must be enhanced, implementation protocols must be prepared, and systemic training and specialisation with effective supervision must be strengthened.** Further cooperation of non-governmental organisations in this field and the Ombudsman was also agreed.

Unfortunately, when we consider cases in this field, we still find that the position of victims of criminal offences is neglected. We pointed out one such case in our report for 2017 (Repeated victimisation of a victim during criminal proceedings, pp. 189–199). Therefore, we deemed the message that the Ministry of Justice announced thorough **consideration of amendments to the Criminal Code that regulates rape** encouraging. We will keep monitoring the highlighted problem and intervene if necessary in considered cases.



The purpose of **victim support services** is also to prevent or mitigate secondary victimisation, discomfort, fear and other unpleasant feelings experienced by victims. **On the basis of the new ZKP-N, such services were established in certain courts to support victims, judges and court staff in their communication with victims and the preparation of measures for their protection.** In a note on the commencement of the operation of this service, Ljubljana District Court explained that a service contact person will explain judicial proceedings to the victim who contacts them, provide information and support pursuant to Article 65.a of the ZKP-N, refer them if necessary to suitable non-governmental organisations, ask about their feeling of being at risk and having contact with the defendant, explain the option to file a property legal claim and apply for free legal aid, and provide other information the victim needs.



A step forward was made in the preparation of the proposed Liability of Minors for Criminal Offences Act. This signifies the realisation of paragraph two of Article 5 of the Criminal Code (KZ-1), which announced the adoption of a special act that will determine criminal liability of minors. According to the Ministry of Justice, the objectives of the act proposal are:



- to comprehensively and systemically regulate the treatment of juvenile offenders;
- to define clear bases that differ from the bases of general criminal legislation, stemming from the peculiar features of juvenile delinquency;
- to regulate the special features of individual institutes when treating minor suspects or defendants of criminal offences in one place, which would make the treatment system clearer and more transparent, providing legal security more consistently.

The act proposal transposes Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, which stipulates minimum procedural safeguards.

We participated in the preparation of this act with our comments and proposals.

2.19.2 Realisation of the Ombudsman's past recommendations

The Ombudsman's past recommendations that remain partially realised or fully unrealised are pointed out below. In the online edition of the annual report available on the Ombudsman's website, we provide additional substantive explanations regarding the (non)realisation of past recommendations.

The following recommendations remain only partially realised or unrealised:

- **recommendation no. 62 (2018)** with which the Ombudsman recommended that the Supreme Court of the Republic of Slovenia further encourage all courts to improve operations and the quality of trials in order to ensure uniform case law, and advised that the Ministry of Justice further enhance the operations of the judicial system for effective and high-quality implementation of judicial power. This is a recommendation whose realisation must be an ongoing task;
- **recommendation no. 63 (2018)** with which the Ombudsman proposed that the Slovenian judicial system continues to suitably inform the public with well thought-out measures, and responds accordingly to the complaints about their work highlighted by the media. This recommendation must also be an ongoing task of the Slovenian judicial system;
- **recommendation no. 64 (2018)** with which the Ombudsman proposed that the courts continue to dedicate due attention to reducing the number of unresolved cases and shortening the time for their resolution, particularly in important cases, while obtaining appropriate spatial and staffing conditions. This recommendation is an ongoing task of the Slovenian judicial system;
- **recommendation no. 65 (2018)** with which the Ombudsman proposed that the Rules on the 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;
- **recommendation no. 67 (2018)** with which the Ombudsman proposed that both ordinary courts, when deciding on the allocation of free legal aid for personal bankruptcy, as well as bankruptcy courts and official receivers in personal bankruptcy proceedings, should be better informed 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. The realisation of his recommendation must be an ongoing task;

- **recommendation no. 68 (2018)** with which the Ombudsman proposed that minor offence authorities and courts consistently observe all guarantees of a fair procedure, impartial decision making and trial, including in minor offence proceedings. This recommendation is also an ongoing task;
- **recommendation no. 69 (2018)** with which the Ombudsman proposed that the Ministry of the Interior ensures 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, includes the date of its composition;
- **recommendation no. 70 (2018)** with which the Ombudsman proposed that the prosecution service continue to provide for the speedy and effective criminal prosecution of perpetrators of criminal offences, and to consistently inform injured parties of the clear and substantiated reasons for decisions on the potential dismissal of indictments and a legal notice.
- **recommendation no. 10 (2018)** with which the Ombudsman called on the Bar Association of Slovenia to consider the option to draft necessary amendments to the regulative framework (including necessary amendments to tax legislation) to improve accessibility of the attorneys' pro bono aid, and submit them for consideration to the Ministry of Justice and the Ministry of Finance, which should discuss them sympathetically.
- **recommendations nos. 47 (2013), 37 (2014), 32 and 33 (2015) and 24 (2016)** with which the Ombudsman called on the competent authorities to study the application (in practice) of the Protection of Right to Trial without Undue Delay Act (ZVPSBNO) and adopt necessary amendments, and the judicial system to adopt additional measures to consistently implement measures referred to in the Act, particularly the observance of deadlines;
- **recommendations nos. 39 (2014) and 34 (2015)** with which the Ombudsman called on the Ministry of Justice to enhance the effectiveness of supervisory authorities' operations in order to ensure the quality of work of courts and the quality of trials;
- **recommendation no. 38 (2014)** to examine the efficiency of measures taken by labour and social courts to reduce court backlogs and ensure trials in reasonable time;
- **recommendation no. 45 (2014)** that the competent authorities adopt additional measures that enhance the efficiency of free legal aid and contribute to the better accessibility of such aid;
- **recommendation no. 50 (2013)** that persons with functional impairment have access to all buildings of the judicial authorities;
- **recommendation no. 53 (2013)** to examine the possibilities of providing additional assistance to municipalities for establishing or maintaining various forms of legal aid for their residents;
- **recommendations nos. 51 (2014) and 28 (2017)** on tax arrangements regarding free legal aid provided by attorneys from the aspect of income tax and value added tax;

- **recommendation no. 29 (2016)** on drafting amendments to the state prosecution legislation and regulating a special complaint procedure concerning the work of police officers of the Special Department;
- **recommendation no. 51 (2013)** on the adoption of additional measures to improve the efficiency of enforcement proceedings in a way which does not undermine the rights of debtors that are guaranteed by the Constitution;
- **recommendation no. 60 (2013)** on a thorough examination of the need to amend the legislative regulation of the disciplinary liability of notaries serving in the capacity of an attorney; and
- **recommendation no. 41 (2015)** to amend the provisions of the Notariat Act which refer to the disciplinary liability of notaries.

2.19.3 The Ombudsman's new recommendations and activities

2.19.3.1 Recommendations

On the basis of the cases considered in the field of the judicial system in 2019, the Ombudsman drafted the following recommendations:

126. The Ombudsman recommends that the courts consistently observe the principle of sound administration in their work (ongoing task).



127. The Ombudsman recommends that judges act with particular care when issuing orders to obtain electronic communications network traffic data (ongoing task).

128. The Ombudsman recommends that courts continue to eliminate court backlogs and trials without undue delay, and pay special attention to better operations and quality of the conduct of judicial proceedings and trials, and to their decisions (ongoing task).

129. The Ombudsman recommends that courts assess particularly carefully the balance between the rights of debtors and creditors in enforcement proceedings against property or against the clearing and handover of the property that is the debtor's home (ongoing task).

130. The Ombudsman recommends that courts verify the accuracy of data on parties to enforcement proceedings even more consistently and pay additional attention in cases when the enforceable instrument debtor



data does not correspond to data in the application for enforcement (ongoing task).

131. The Ombudsman recommends that all authorities that are directly responsible for supervising the work of enforcement officers and establishing their disciplinary liability should actively exercise control over the performance and operations of enforcement officers pursuant to the Enforcement and Security Act (ongoing task).

132. The Ombudsman recommends that the Ministry of Justice in cooperation with other competent authorities adopt additional measures to increase the number of experts in family relations.

133. The Ombudsman recommends again that Ministry of Justice examine the options for addressing the deficiencies that occur in practice when providing and exercising free legal aid.

134. The Ombudsman continues to recommend that courts and minor offence authorities respect the basic guarantees of fair proceedings and other rights of parties, and carefully address requests for judicial protection when considering minor offences (ongoing task).

135. The Ombudsman recommends again that state prosecutors perform their work regularly, diligently and to a professionally accurate standard (ongoing task).

136. The Ombudsman recommends that the Bar Association of Slovenia continue to efficiently and objectively respond to alleged violations committed in the provision of attorney services (ongoing task).

137. The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities, in cooperation with the Chamber of Notaries of Slovenia re-examine the suitability of the normative regulation of the role of notaries in drafting parental maintenance agreements, particularly regarding the establishment of the parental ability to support the child.

The Ombudsman's activity with substantive explanations about the judicial system is addressed in more detail in the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2019 available on the Ombudsman's website <www.varuh-rs.si> in the online edition of the report:

2.19.3.2 Judicial proceedings

- General
- Observing the principle of sound administration
- Verifying medical condition prior to surrendering a person to a foreign country
- Correction of the issued order of an investigating judge to obtain electronic communications network traffic data
- Lengthiness of judicial proceedings
- Non-cash payment of court fees directly at the courts' cash desks
- Problems of loans in Swiss francs
- Problems of struck-off companies

2.19.3.3 Enforcement proceedings

- Limitation of enforcement on child benefit paid in another country
- Lengthiness of enforcement proceedings
- Enforcement against the wrong debtor
- Enforcement officers
- Supervisions of the enforcement officers' work

2.19.3.4 Court experts, certified appraisers and court interpreters

2.19.3.5 Free legal aid

- Free legal aid and the conditions for its allocation continue to be regulated by the Legal Aid Act
- Reimbursement of paid free legal aid

2.19.3.6 Minor offences

- Provision of the basic guarantees of fair trial in expedited minor offence proceedings
- On statute of limitations

2.19.3.7 Prosecution service

2.19.3.8 Attorneys and notaries

2.20 POLICE PROCEEDINGS, PRIVATE SECURITY SERVICE, DETECTIVES AND TRAFFIC WARDENS

FIELD OF WORK	CASES CONSIDERED			RESOLVED AND JUSTIFIED		
	2018	2019	INDEX 19/18	NO. OF RESOLVED	NO. OF JUSTIFIED	SHARE OF JUSTIFIED AMONG RESOLVED
16 POLICE PROCEEDINGS, PRIVATE SECURITY SERVICE, DETECTIVES AND TRAFFIC WARDENS	94	104	110.64	91	12	13.2
16.1 POLICE PROCEEDINGS	83	95	114.46	82	12	14.6
16.2 PRIVATE SECURITY SERVICE	1	4	400.00	4	0	0.0
16.3 DETECTIVES	0	0	0.00	0	0	0.0
16.4 TRAFFIC WARDENS	6	1	16.67	1	0	0.0
16.5 OTHER	4	4	100.00	4	0	0.0

2.20.1 General findings and assessment of the situation

2.20.1.1 Police proceedings



In 2019, we considered **95 complaints, most of which referred to police proceedings** (certain complaints were also considered in other fields). That is **12 cases more than in 2018**, when we considered 83 complaints. Problems that refer to proceedings in which the police act as a minor offence authority are described in more detail in the chapter “Judicial system – Minor offence proceedings”. These cases include violations of public order and peace, traffic offences or accidents,

and other offences. Complainants particularly pointed out the (in)activity of police officers, bias when establishing the facts and circumstances of alleged minor offences, incomplete establishment of the actual situation, and dissatisfaction with the issue of a payment order or a fine and other violations of rights. In the chapter “Restriction of personal liberty – Foreigners and applicants for international protection”, we report on the consideration of cases related to the deprivation of liberty of this group of individuals.

In 2019, 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 2019 as part of the implementation of the tasks and powers of the NPM.**

Complainants who were dissatisfied with the (in)activity of police officers were encouraged to **actively utilise the complaint channels pursuant to the Police Tasks And Powers Act**, with which they may submit their reservations and comments about specific police proceedings. The rule of subordination also applies to complaints about the work of police officers, i.e. the affected person first contacts the appellate body within the system in which the claimed irregularity appeared. Only if this route of appeal failed to meet the expectations of the complainant or in other cases that required our intervention, did we take action in the case. This way of working is reflected in the proportion of justified complaints (14.6 per cent), whereby we point out again that the assessment of police officers’ actions in terms of respect for human rights and freedoms cannot be based solely on the number of such complaints filed with the Ombudsman and/or their justification. We should bear in mind that the reason for (un)founded complaints is frequently the lack of cooperation by complainants.

As usual, 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 must commend again the responses and cooperation of the Ministry of the Interior and the Police.** If necessary, we contacted a special department of the Specialised State Prosecutor’s Office responsible for the handling of criminal offences committed by official persons.



Complaints in this area referred to various aspects or fields of operation of police officers such as: responses to applications, restraining orders, search for a missing person, addressing domestic violence, proceedings involving foreigners, the treatment of ethnic minorities, minor offence proceedings, actions of police officers regarding detention, the confiscation of items, handling a traffic accident. Complainants accused police officers of inappropriate or unequal treatment, failure to accept or address reported criminal offences or unresponsiveness of the police, lengthy consideration of criminal offences, excessive use of force, violent behaviour, bias when addressing disputes between neighbours, inappropriate communication and others. The complaints considered in 2019 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, the right to the protection of personal freedom and others, including failure to comply with



the principles of sound administration. **Violations established in resolved cases included violations of the principle of sound administration and the protection of a person's personality and dignity, the rights of children, the protection of personal freedom, the right to a legal remedy and undue delays in proceedings.**

As part of the planning for the development of guidelines and mandatory instructions for the preparation of the police work plan and planning supervision of the police, **we met with the Police and Security Directorate at the Ministry of the Interior** in the year in question. We also met the **Minister of the Interior and his colleagues and the police management**, and discussed further cooperation in the consideration of complaints of individuals against police officers' actions. 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 continues to bring together 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 tasks and powers of the police continue to be regulated by the **Police Tasks and Powers Act (ZNPPol)** and certain other regulations. Pursuant to the ZNPPol, the police carry out tasks and powers in compliance with the basic obligations of the police, including ensuring safety for individuals and communities, respecting human rights and fundamental freedoms, and enhancing the rule of law. **In 2019, the ZNPPol was amended with a new ZNPPol-B** (Official Gazette of the Republic of Slovenia [Uradni list RS], No. 47/19). We stated our comments about the new act in our report for 2018. **In 2019, the Constitutional Court of the Republic of Slovenia made two decisions on the contested sections of the regulation pursuant to the ZNPPol, which were important for the sensitive field of privacy and related use of state-of-the-art technologies** (more on this in the chapter on the protection of dignity, personal rights, safety and privacy).

2.20.1.2 Private security service, detectives and traffic wardens

In this field, we explained to complainants **the tasks and actions of security guards, and powers of wardens as well as potential complaint channels**. As they did not contact us further, we could not continue the procedure in these cases. The Ombudsman does not have any direct competences to take action in such cases. **However, in two cases whose consideration was not completed in 2019, we uncovered the need for a more active role of the police in the comprehensive examination of reports on the use of measures by security guards as determined in paragraphs three and four of Article 57 of the Private Security Act.** This provision authorises the police to act appropriately not only when they establish illegality or professional incompetence in the use of measures but also when they find that there is a possibility that security personnel used a measure in an illegal or professionally incompetent way. **We believe that only consistent implementation of these provisions can result in the realisation of effective supervision of the legality and professionalism of the measures used by security guards, which was entrusted to the police by the legislator.** The assessment provided by the police in such cases contributed to the situation in the field of work of security guards who encroach upon the rights of individuals on a daily basis as they carry out their tasks.



When considering a case, questions arose as to the proportionality of measures and the professionalism of security guards when implementing them, as stipulated by the law and implementing regulations. To this end, we proposed that the Ministry of the Interior state its position on the Ombudsman's findings not only regarding the appropriateness of the actions of security guards in the specific case but particularly regarding the need to thoroughly study a report on the use of measures by security guards each time.

It is encouraging that, on 13 February 2019, the Faculty of Criminal Justice and Security and the Detective Chamber of the Republic of Slovenia presented their findings from the research entitled "Detective activity in the Republic of Slovenia – the analysis of the current situation, the directions of future development and amendments to the normative and legal regulation". At the event, we took part in the discussion, supporting the efforts of the Detective Chamber to make detective activity recognisable and improve the situation in this field.



2.20.2 Realisation of the Ombudsman's past recommendations

We find that most of our recommendations and proposals to the Ministry of the Interior and the Police are taken into account. This is also shown by an overview of the realisation of recommendations from 2018 regarding police proceedings. The Ombudsman's past recommendations that remain partially realised or even fully unrealised are pointed out below:



- **recommendation no. 72 (2018)** with which the Ombudsman recommended that the Ministry of the Interior continue to dedicate attention to independent, impartial and expert discussion of complaints against police officers, enhancing the awareness of the role of civilian supervision of police proceedings and to improving the quality of the implementation of police tasks (this is an ongoing task as pointed out by the Ministry of the Interior in their response to this recommendation);
- **recommendation no. 73 (2018)** with which the Ombudsman recommended 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 (this is an ongoing task).
- **recommendation no. 43 (2018)** with which the Ombudsman recommended that police officers always carefully assess the conditions stipulated by the law and other regulations on exercising police powers when establishing identity.
- **recommendation no. 33 (2017)** with which the Ombudsman calls on the Ministry of the Interior and the Detective Chamber of the Republic of Slovenia to take into account the Ombudsman's comments when renewing regulations that refer to detective activity;

- **recommendation no. 35 (2016)** to prepare a systemic solution for providing carefully selected witnesses when conducting house or personal searches and for potentially establishing a court list of people who could participate in a pre-trial investigation as witnesses when these searches are carried out;
- **recommendation no 48 (2015)** to amend, in preparation for the new Private Security Act (ZZasV-1), Article 58 of the Act so that it does not allow different interpretations regarding a criminal offence being prosecuted on someone's proposal.

The online edition of the annual report available on the Ombudsman's website includes [additional substantive explanations](#) regarding the (non)realisation of past recommendations.

2.20.3 The Ombudsman's new recommendations and activities

2.20.3.1 Recommendations

On the basis of the cases considered in the field of police proceedings, private security service, detectives and traffic wardens, we drafted the following new recommendations:



138. The Ombudsman recommends that the Ministry of the Interior continue to ensure that each complaint against police proceedings pursuant to the ZNPPol is thoroughly and broadly verified, and that the decision on the complaint is carefully considered and includes a response that will contain a justified explanation of the positions of a board of appeal on all understandable claims or accusations referred to in the complaint (ongoing task).

139. The Ombudsman recommends that the Ministry of the Interior and the Police thoroughly consider applications they receive for consideration by observing the principle of sound administration (ongoing task).

140. The Ombudsman recommends that the Ministry of the Interior and the Ministry of Justice ensure (if necessary by amending regulations) the reimbursement of costs incurred due to a police summons even if criminal proceedings are not instigated against them, and that the Police observe the Rules on the reimbursement of travel costs to summoned persons pending potential amendments to the legislative regulation.

141. The Ombudsman recommends that the Ministry of the Interior regulate, on the systemic level, potential exemptions from the prompt exercise

of the right of detainees to inform a third party of the deprivation of their liberty, and that supervision will ensure careful consideration of the deprivation of liberty individually in each case, which will be ordered only in extreme cases.



The Ombudsman's activity with substantive explanations concerning police proceedings, private security service, detectives and traffic wardens is addressed in more detail in the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2019 available on the Ombudsman's website <www.varuh-rs.si> in the online edition of the report:

- 2.20.3.2 Resolving complaints about the work of police officers**
- 2.20.3.3 Handling of other applications**
- 2.20.3.4 Non-reimbursement of costs to a person who responds to a summons by the police**
- 2.20.3.5 Restraining order**
- 2.20.3.6 Right to inform a third party of the deprivation of liberty**
- 2.20.3.7 Police detention with an error**
- 2.20.3.8 Disputable police report**
- 2.20.3.9 Tests for alcohol also for children?**
- 2.20.3.10 The issue of including the time of a house search in the time of detention**
- 2.20.3.11 Forced hospitalisation with police intervention in a public place**
- 2.20.3.12 Who is to implement an order issued by the court pursuant to paragraph three of Article 52 of the ZDZdr?**

2.21 ENVIRONMENT AND SPATIAL PLANNING

FIELD OF WORK	CASES CONSIDERED			RESOLVED AND JUSTIFIED		
	2018	2019	INDEX 19/18	NO. OF RESOLVED	NO. OF JUSTIFIED	SHARE OF JUSTIFIED AMONG RESOLVED
17 ENVIRONMENT AND SPATIAL PLANNING	166	146	87.95	120	14	11.7
17.1 ACTIVITIES IN THE ENVIRONMENT	92	75	81.52	63	5	7.9
17.2 SPATIAL PLANNING	22	39	177.27	28	3	10.7
17.0 OTHER	52	32	61.54	29	6	20.7

2.21.1 General findings and assessment of the situationa

The number of cases considered in 2019 was not significantly different from that of previous years. The percentage of justified complaints was 11.7 per cent, which is slightly higher than the annual average of 10.3 per cent.



On our initiative, we considered 12 cases and substantive problems (one case with the consent of the complainant, i.e. allegedly affected person, and 11 wider issues that referred to more comprehensive topics and several people).

Complaints considered in 2019 were related particularly to irritating noise, smell, the introduction of the fifth generation of cellular technology (5G), placement of various interventions in space (wind turbines, permanent crops, hop plantations and others) and the restoration of brownfield areas. In this regard, we should mention the Meža and Celje valleys, the problems of which have been considered continuously for many years, but the progress thus far attained is not at a desirable level. In addition, more pollution of the already polluted environment was established, which is unacceptable. Local residents should be urgently protected, not additionally exposed. **The Ombudsman assesses that pollution is a general problem. We add that there is no will to make progress, as we find that there is no strategy to improve the living environment. Most problems occur where restoration requires the cooperation of several ministries.** We should also point

out the lengthiness of inspection procedures, priorities in addressing inspection reports and lengthy multiannual delays in the field of land with water use.

We considered several complaints which showed that **municipalities changed the planned use of land from building to non-building in spatial planning documents without the knowledge of the relevant land owners**. All procedures in these cases were carried out pursuant to the Spatial Planning Act (ZPNačrt). A decision of the Constitutional Court of the Republic of Slovenia ref. no. U-I-6/17-21 was issued on the said problematic issue in 2019, in which the Constitutional Court stated (page 13, point 25): "In the field of planned use as part of spatial planning, the Constitutional Court has already substantively considered such complaints with demonstrated legal interest and repealed the contested decisions on registrations and determined the way to execute the decision."

We established violations of the right to a healthy living environment, the principle of legality and the rule of law, the right to fairness and sound administration.

At the Ombudsman's head office, we personally met the Minister of the Environment and Spatial Planning, Simon Zajc, the Director of the Slovenian Environment Agency, Lilijana Kozlovič, and the Acting Chief Inspector for the environment and spatial planning, Dr Dragan Matić, while we discussed with mayors of individual municipalities the problems of their citizens and possible solutions outside the Ombudsman's head office. **Cooperation with state authorities was mainly suitable, while we frequently encountered problems with local self-government bodies which did not respond to enquiries, observe deadlines or returned incomplete responses.**



2.21.2 Realisation of the Ombudsman's past recommendations

We establish that none of our recommendations from 2018 that referred to the Ministry of the Environment and Spatial Planning (MOP) were realised. We point out the following fully or partially unrealised recommendations:



- **recommendation no. 77 (2018)** on the urgently needed adoption of a regulation to control odour emissions in the environment, which we have been repeating since 2010, i.e. in **recommendations nos. 54 (2015), 42 (2016) and 44 (2017)**;
- **recommendations nos. 78 (2018) and 94 (2013)** on the urgently needed fulfilment of staffing and other conditions for the work of the Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning (IRSOP);
- **recommendation no. 79 (2018)** that the MOP prepare a systemic solution regarding the acquisition of authorisations for measuring emissions into the air, and ensure the independent supervision and financing of measurements has been repeated as unrealised in annual **recommendations nos. 90 (2013), 68 (2014), 56 (2015), 45 (2016) and 47 (2017)**. **The Ombudsman has been drawing**





attention to the absurdity of the regulation whereby polluters order, and pay for, the measurements of emissions since 2005;

- **recommendation no. 80 (2018)** that the precautionary principle referred to in the Environmental Protection Act be observed when siting wind farms pending the adoption of suitable regulations;
- **In 2011 and 2012 recommendation no. 87, recommendations nos. 88 (2013), 66 (2014) and 55 (2015)** to eliminate backlogs in the resolution of cases in the field of water rights and ownership relations on land with water use, monitor the dynamics and report to the Government;
- **recommendation no. 91 (2013)** on the preparation of a uniform regulation for the rehabilitation of all polluted and brownfield areas in the country;
- **recommendation no. 92 (2013)** on ensuring conditions for efficient inspection task management of the Transport, Energy and Spatial Planning Inspectorate (now IRSOP and Infrastructure Inspectorate); and
- **recommendation no. 96 (2013)** regarding options to implement operational monitoring of illegal constructions.

The online edition of the annual report available on the Ombudsman's website includes [additional substantive explanations](#) regarding the (non)realisation of past recommendations.

2.21.3 The Ombudsman's new recommendations and activities

2.21.3.1 Recommendations

On the basis of the cases considered in the field of the environment and spatial planning, we drafted the following recommendations:



142. The Ombudsman calls on all inspection services to inform complainants regarding the receipt of complaints and the anticipated time limit for their processing (ongoing task).

143. The Ombudsman requires that the competent authorities continue adopting and implementing all measures to improve the quality of the living environment and health of people affected in excessively polluted and brownfield areas, also by implementing suitable public health measures (ongoing task).

144. The Ombudsman recommends that the Ministry of the Environment and Spatial Planning promptly prepare a national report on the state of the environment.

145. The Ombudsman recommends that the Ministry of the Environment and Spatial Planning draft a regulation to govern odour emissions in the environment.



146. The Ombudsman recommends that the Chief Inspector for the environment and spatial planning establish independent supervision to determine the order of addressing new reports and existing inspection procedures.

147. The Ombudsman recommends that the Government of the Republic of Slovenia provide the Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning with staffing and other conditions for efficient conduct of procedures.

148. The Ombudsman recommends that the Ministry of the Environment and Spatial Planning thoroughly examine the existing system of operational monitoring and, following such an evaluation, prepare changes that will ensure independent implementation, supervision and financing of monitoring.

149. The Ombudsman recommends that the Ministry of Agriculture, Forestry and Food promptly prepare all implementing regulations referred to in Article 83 of the Game and Hunting Act, and particularly define in such a regulation the exact criteria for defining types of damage referred to in the paragraphs preceding this Article, and the method and criteria for establishing their levels.

150. The Ombudsman recommends that the Slovenian Water Agency prepare concrete measures to eliminate backlogs in the field of waters and land with water use, and inform the Government and the public thereof.

The Ombudsman's activity with substantive explanations concerning environment and spatial planning is addressed in more detail in the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2019 available on the Ombudsman's website <www.varuh-rs.si> in the online edition of the report:

2.21.3.2 Environmental pollution

- Noise
- Odour
- Dust particles, heavy metals and other pollutants

2.21.3.3 Game-inflicted damage

2.21.3.4 Inspection procedures

- Building inspection service
- Environmental inspection service

2.21.3.5 Water and land with water use

2.22 REGULATED ACTIVITIES

	CASES CONSIDERED			RESOLVED AND JUSTIFIED		
FIELD OF WORK	2018	2019	INDEX 19/18	NO. OF RESOLVED	NO. OF JUSTIFIED	SHARE OF JUSTIFIED AMONG RESOLVED
18 REGULATED ACTIVITIES	72	93	129.17	69	10	14,5
18.1 MUNICIPAL UTILITY SERVICES	38	32	84.21	25	6	24,0
18.2 COMMUNICATION	6	11	183.33	7	0	0,0
18.3 ENERGY	7	22	314.29	16	0	0,0
18.4 TRANSPORT	12	17	141.67	12	3	25,0
18.5 CONCESSIONS	1	3	300.00	3	1	33,3
18.6 LICENCES	0	0	0.00	0	0	0.0
18.0 OTHER	8	8	100.00	6	0	0.0

2.22.1 General findings and assessment of the situation

In 2019, we considered around 30 per cent more complaints in the field of regulated activities (they require the fulfilment of certain conditions before they can be pursued, i.e. regarding the level and type of education, national vocational qualifications, special permits, entry in public registers, equipment, space, the acquisition of licences, concessions, certificates and others) in 2019 than in 2018. There were also more justified complaints regarding which we established violations by the authorities. There was 14.5 per cent of such complaints in comparison with 11.7 per cent in 2018.

The table above shows that the data is slightly different but not to the extent that would signify important substantive changes. On the contrary, it is impossible to ignore the circumstances that the topics considered this year are actually the same as in 2018; for this reason, we can accuse the authorities of behaving as though the statements in our reports do not concern them at all. Therefore, we report again on the predominance of cases related to the circumstances of people with no or difficult access to water, electricity, heating, internet, telecommunications, who

have problems with transport connections or cannot pay for the provided services and delivered goods; however, it is very significant that “ordinary” consumers show a pronounced lack of understanding of the various items on the invoices received. We have addressed this criticism to the competent authorities several times. For example, we wrote on pages 256 and 257 of the Annual Report of the Ombudsman for 2016 as follows: “The Ombudsman points out to all public service providers that they should issue invoices for the provision of individual services or the delivery of goods which are clear and comprehensible and leave no doubt as to the correctness of the calculations.” The same call by the Ombudsman was repeated on page 314 of the Annual Report for 2017 and on page 372 of the Annual Report for 2018.

It is impossible to avoid **energy poverty** when dealing with this substantive field. In this regard, we ask the competent authorities whether a serious study has been carried out concerning this issue and whether concrete forms of assistance have been envisaged. **In short, the Ombudsman has been, on its own initiative, examining access to energy for everyone, and expects the competent authorities to provide accurate data on the state’s activities to eliminate energy poverty and ensure a decent standard of living for everyone. On our initiative, we addressed and studied four substantive sets regarding an issue that affects many individuals.**

The essential unresolved problem from previous years is the failure to adopt implementing regulations that would support the exercise of the constitutional right to drinking water (Article 70.a of the Constitution). The said article was included in the Constitution at the end of 2016, and May 2018 denoted the end of the period when suitable legislative amendments should have been adopted, but these have not yet been adopted. We justifiably expected that the inclusion in the Constitution would be the foundation for consistent exercise of this human right to drinking water and prompt amendments to legislation. For this reason, the Ombudsman’s suspicion that the inclusion of the right to drinking water in the Constitution was merely a political gesture which lacked the actual willpower to harmonise legislation is legitimate and justifiable. **The Ombudsman highlights again that the right to drinking water is a human right whose realisation must be determined by law.** Self-sufficiency in drinking water must be suitable regulated, and other alternative sources must be provided if the conditions for access to drinking water are not met.

In complaints we deem founded, we established violations of the right to drinking water, a healthy living environment, the constitutional principle of the state being responsible for preserving natural wealth and cultural heritage and creating opportunities for a balanced civilisational and cultural development of Slovenia, the principle of sound administration and the principle of fairness.

2.22.2 Realisation of the Ombudsman’s past recommendations

We cannot be satisfied with the realisation of our last year’s recommendations in this field. We point out the following partially or even fully unrealised recommendations:





- **recommendation no. 81 (2018) on urgent adoption of regulations to protect the constitutional right to drinking water;**
- **recommendation no. 82 (2018)** that refers to supervision of chimney-sweeping service providers;
- **recommendation no. 48 (2017)** that refers to the preparation and adoption of regulations that will protect the constitutional right to drinking water;
- **recommendations nos. 101 (2013), 71 (2014) and 59 (2015)** on the necessary changes in the field of cemetery and funeral service to regulate the currently non-uniform practice regarding the right to (continue) the lease of a grave more suitably.

The online edition of the annual report available on the Ombudsman's website includes [additional substantive explanations](#) regarding the (non)realisation of past recommendations.

2.22.3 The Ombudsman's new recommendations and activities

2.22.3.1 Recommendations

On the basis of the cases considered in the field regulated activities, we drafted the following recommendations:



151. The Ombudsman recommends that the inspection service step up supervision of chimney-sweeping service providers (ongoing task).

152. The Ombudsman recommends that the Government of the Republic of Slovenia and the National Assembly of the Republic of Slovenia promptly draft and adopt the regulations necessary to support the exercise of the right to drinking water determined in the Constitution of the Republic of Slovenia, the Environmental Protection Act, the Services of General Economic Interest Act, the Local Self-Government Act, and elsewhere.

153. The Ombudsman recommends that the Ministry of the Environment and Spatial Planning prepare an analysis of supervision of chimney-sweeping service providers in light of the announced amendments to the Chimney Sweeping Services Act.

The Ombudsman's activity with substantive explanations concerning regulated activities in 2019 is addressed in more detail in the following chapters of the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2019 available on the Ombudsman's website <www.varuh-rs.si> in the online edition of the report:

2.22.3.2 Municipal utility services

2.22.3.3 Transport

2.22.3.4 Chimney-sweeping services

2.23 SOCIAL ACTIVITIES

FIELD OF WORK	CASES CONSIDERED			RESOLVED AND JUSTIFIED		
	2018	2019	INDEX 19/18	NO. OF RESOLVED	NO. OF JUSTIFIED	SHARE OF JUSTIFIED AMONG RESOLVED
19 SOCIAL ACTIVITIES	64	60	93.75	51	1	2.0
19.1 EDUCATION	56	55	98.21	47	1	2.1
19.2 SPORT	5	3	60.00	2	0	0.0
19.3 CULTURE	2	1	50.00	1	0	0.0
19.0 OTHER SOCIAL ACTIVITIES	1	1	100.00	1	0	0.0

2.23.1 General findings and assessment of the situation

The data from the table above do not show any significant changes. Education-related issues still strongly prevail.

We noticed arguments regarding the financing of educational and care institutions which attracted the attention of the public, and the Ombudsman received complaints regarding the financing of private schools and nurseries. More information on the latter is in the third sub-chapter; however, we must initially point out in the assessment of the situation that **it is undoubtedly unacceptable that the legislator has not yet responded adequately to the decision of the Constitutional Court of the Republic of Slovenia no. U-I-269/12-24 of 4 December 2014 on state-approved programmes of primary education.** In 2019, there was an attempt at legislative amendments which failed. The coalition at the time mostly interpreted the decision as it being necessary to provide equal funding only for the compulsory part of the public programme, while the state would no longer finance the extended part. On the other hand, certain people believed that the decision did not distinguish between the compulsory and the extended public programme, so both programmes must be fully financed. Following a veto from the National Council, the proposed amendments did not receive the absolute majority of votes.



Recommendation no. 154: The Ombudsman reiterates the recommendation that the Government of the Republic of Slovenia promptly draft, and the National Assembly adopt suitable legislative amendments to ensure the equal position of all education providers.

2.23.2 Realisation of the Ombudsman's past recommendations

With **recommendation no. 42 (2017)**⁷⁴ the Ombudsman recommended that the Government of the Republic of Slovenia promptly draft and the National Assembly adopt suitable legislative amendments to ensure the equal position of all education providers. **However, Decision of the Constitutional Court of the Republic of Slovenia no. U-I-269/12-24 of 4 December 2014 remains unobserved and the Ombudsman's recommendation unrealised.**

In the report for 2016⁷⁵, we stated that "such failures to observe the obligation to meet a deadline imposed by a decision issued by the highest judiciary body are unacceptable and also very alarming, justifying severe criticism of themselves". **More than three years later, this applies even more.**

2.23.3 The Ombudsman's new recommendations and activities

2.23.3.1 Recommendations

On the basis of the cases considered in the field of regulated activities, we drafted the following recommendations:



154. The Ombudsman reiterates the recommendation that the Government of the Republic of Slovenia promptly draft, and the National Assembly adopt suitable legislative amendments to ensure the equal position of all education providers.

155. The Ombudsman recommends that the Ministry of Education, Science and Sport, in cooperation with the Association for Technical Culture of Slovenia, promptly regulate the issue of pupil's participation at competitions in logic provided that parents agree to the publication of the results of the competition and photos of the participants.

⁷⁴ Annual Report of the Ombudsman for 2017, p. 290.

⁷⁵ P. 69.

The Ombudsman's activity with substantive explanations concerning social activities in 2019 is addressed in more detail in the following chapters of the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2019 available on the Ombudsman's website <www.varuh-rs.si> in the online edition of the report:

- 2.23.3.2** On the connection between school performance and the social and economic status of children and adolescents
- 2.23.3.3** Participation of the Pride Parade Association on an activity day at a primary school may be disturbing
- 2.23.3.4** The co-financing of a private nursery causes a stir
- 2.23.3.5** In the procedure of recognising education (enrolment in secondary school following completed primary school in Austria), the main principle should be the best interest of the child
- 2.23.3.6** The participation of pupils at competitions in logic provided that parents agree to the publication of the results of the competition and photos of the participants, and the unresponsiveness of the Ministry of Education, Science and Sport

2.24 HOUSING MATTERS

FIELD OF WORK	CASES CONSIDERED			RESOLVED AND JUSTIFIED		
	2018	2019	INDEX 19/18	NO. OF RESOLVED	NO. OF JUSTIFIED	SHARE OF JUSTIFIED AMONG RESOLVED
20 HOUSING MATTERS	77	81	105.19	61	4	6.6
20.1 HOUSING RELATIONS	27	32	118.52	24	3	12.5
20.2 HOUSING ECONOMY	29	27	93.10	18	0	0.0
20.0 OTHER	21	22	104.76	19	1	5.3

2.24.1 General findings and assessment of the situation

The number of considered cases and the proportion of established violations and irregularities by the authorities (justification) are approximately the same as in 2018. We cannot report on significantly different problems and issues in terms of content, making our findings similar to those reported in 2018.

Based on the table above, it also does not make sense to draw far-reaching conclusions regarding the groundlessness of cases and the “smallness” or insignificance of violations of rights in the field of housing relations, as the pure figures do not reflect the actual situation. We can only receive an impression of the magnitude of the housing problem if we thoroughly read the whole report, as the Ombudsman’s substantive fields partially overlap and similar complaints are placed under various core sections.

After all, it makes sense to take into account the fact that the Ombudsman is contacted by numerous individuals who claim to have diverse problems when seeking suitable housing, but such complaints are deemed unfounded, as no violations or irregularities of the authorities may be found under the Ombudsman’s competence as provided by the Constitution and the Human Rights Ombudsman Act. It is true, however, that the abundance of complaints with such content drives the Ombudsman to study whether the housing supply system in Slovenia is suitable, which the Ombudsman cannot confirm as explained below.

The greatest achievement in the field of housing relations (if we can call it that) in the period in question, is the draft Housing Act prepared by the Ministry of the Environment and Spatial Planning (MOP), which also put it forward for consideration. Much has been written in our reports and discussed in the public sphere regarding the urgency of renewing the applicable housing legislation. We expect the details of the prepared draft in the legislative procedure to be harmonised and the final text of the regulation to be adopted as soon as possible.

Complainants contacted the Ombudsman concerning various problems, most of which were related to social distress resulting from an inability to pay housing costs due to job loss, resulting in eviction and having to find a new dwelling or home. We handled cases of housing problems of young people who want to be independent but encounter difficulties in finding a suitable home. The lack of a serious and systematic method of resolving housing issues in general and particularly regarding vulnerable groups such as persons with disabilities, the elderly, young people, families living in violence and others, has been a key finding of the Ombudsman for a number of years but, unfortunately, this has resulted in no successful outcome.

As we examined complaints, we found that the problems of individuals were related to seeking either non-profit or market housing and the maintenance of non-profit dwellings, as municipalities frequently want to avoid this obligation, to the amount of rent in general, the exercise of subsidies for market rents, the competences and work of the Housing Inspection Service, managers of multi-dwelling buildings and the supervision of the use of funds from the reserve fund. Many cases referred to disputes between neighbours and, in this regard, we could only advise complainants to try to solve disputes amicably or through the courts. We also dealt with complaints from the owners of dwellings returned pursuant to the Denationalisation Act, made inquiries with the Ministry of the Environment and Spatial Planning and proposed that it regulates its position in relation to “non-profit” tenants with amendments to the Housing Act.

On our initiative, we addressed the wider issue of lifts in multi-dwelling buildings and the necessary consent.

The right to decent housing is an important part of the social security and dignity of an individual, which is the foundation of human rights. Article 78 of the Constitution stipulates that the state must create opportunities for citizens to obtain decent housing. This field is “adequately” regulated with the Housing Act. It is reasonable to emphasise at this point that the housing policy is not only the responsibility of the state but primarily of the local community where it is realised. The housing policy of the state is at a standstill. In 2015, the Resolution on the National Housing Programme 2015–2025 was adopted, which was expected to be the basis for the realisation of the housing policy of the state. However, there is no clear national housing policy. **The state should increase investment in the housing policy and provide systemic financing sources in particular.** The tasks of the local and national policies must be clearly defined to help people who cannot afford housing as this is the state’s responsibility according to Article 78 of the Constitution and the European Social Charter. The state must support the exercise of the right to decent housing with its measures and activities, but the Ombudsman has not noticed any progress in this field. **We stated in our Annual**

Report for 2016 that a violation of the right to housing is also a violation of the right to dignity and family or private life, family and health, and we reiterate it in the report for 2019,

The state attempts to resolve the challenges of the housing policy with the new Housing Act, and we expect our recommendations to be taken into account and the situation to improve. Now is already too late.

2.24.2 Realisation of the Ombudsman's past recommendations

Most Ombudsman's recommendations from the Annual Report for 2018 in the field of housing matter were not realised, and the same applies to several recommendations from previous years:

- **recommendation no. 82 (2018)** that the Ministry of the Environment and Spatial Planning (MOP) promptly prepare amendments to the Housing Act to clearly define the obligation of municipalities to ensure a certain number of residential units and publish calls for applications for non-profit dwellings for rent in a certain period (Ombudsman's past **recommendations nos. 105 (2013), 77 (2014), 62 (2015), 46 (2016) and 49 (2017)** were the same in terms of content);
- **recommendation no. 85 (2018)** on the necessary Inspection Service and extending its competence (Ombudsman's past **recommendations nos. 80 (2014), 64 (2015), 48 (2016) and 51 (2017)** were the same in terms of content);
- **recommendation no. 84 (2018)** on a thorough analysis of the management of multi-dwelling buildings and the necessary amendments to the legislation in this field, and the constant supervision of the work of managers (the same recommendations were provided in previous years, i.e. **recommendations nos. 79 (2014), 63 (2015), 47 (2016) and 50 (2017)**);
- **recommendations nos. 106 (2013) and 76 (2014)** on subsidies for market rents if the applicant meets the income criteria but has not applied for the current call for applications for the allocation of non-profit dwellings for rent;
- **recommendation no. 81 (2014)** on the elimination of violations stemming from the unequal position of all former holders of an occupancy right (in denationalised dwellings and other social dwellings);
- **recommendation no. 108 (2013)** on the termination of violations of the rights of tenants in denationalised dwellings and the adoption of measures to eliminate the violations;
- **recommendation no. 107 (2013)** on the preparation of uniform regulations for all users of caretakers' dwellings.

The online edition of the annual report available on the Ombudsman's website includes [additional substantive explanations](#) regarding the (non)realisation of past recommendations.

2.24.3 The Ombudsman's new recommendations and activities

2.24.3.1 Recommendations

On the basis of the cases considered in the field of housing relations, we drafted the following recommendations:

156. The Ombudsman recommends that the Ministry of the Environment and Spatial Planning determine the obligation of municipalities to provide a certain number of residential units of a suitable living standard (depending on the number of residents) in amendments to the Housing Act and publish a call for applications for the allocation of non-profit dwellings for rent.



157. The Ombudsman recommends that the Ministry of the Environment and Spatial Planning conduct an analysis of the management of multi-dwelling buildings and amend the applicable regulation in view of the findings, and particularly to constantly supervise the work of managers of multi-dwelling buildings.

158. The Ombudsman recommends that the Ministry of the Environment and Spatial Planning enhance housing inspection services in terms of personnel, and define their competences in the Housing Act so that housing inspection services obtain powers to take action regarding the management of multi-dwelling buildings and the supervision of the implementation of regulations on housing relations, regardless of the ownership of multi-dwelling buildings.

The Ombudsman's activity with substantive explanations concerning housing matters is addressed in more detail in the following chapters of the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2019 available on the Ombudsman's website <www.varuh-rs.si> in the online edition of the report:

- 2.24.3.2 Analysis of considered complaints – statistics**
- 2.24.3.3 Non-profit dwellings for rent**
- 2.24.3.4 Private sector and disputes between neighbours**
- 2.24.3.5 Management of multi-dwelling buildings**
- 2.24.3.6 Termination of lease contracts and evictions**
- 2.24.3.7 Other**



3.

LIST OF USEFUL ABBREVIATIONS AND ACRONYMS

ACTS AND OTHER LEGAL ACTS

DPR	Spatial Order of Slovenia
DZ	Family Code
EZ-1	Energy Act
GDPR	General Data Protection Regulation
GZ	Building Act
KPND	Collective Agreement for non-commercial activities in the Republic of Slovenia
KZ-1	Criminal Code
MKVP	Act Ratifying the Convention for the Protection of Individuals with Automatic Processing of Personal Data
MOPPM	Act ratifying the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
PIPNNP	Rules on the exercise of the duties and powers of prison officers
PoDZ-1	Rules of Procedure of the National Assembly
SZ-1	Housing Act
ZAID	Architecture and Civil Engineering Act
ZASP	Copyright and Related Rights Act
ZBan-1	Banking Act
ZBan-1L	Act Amending the Banking Act
ZBPP	Legal Aid Act
ZCes-1	Roads Act
ZČmIS	Transnational Provision of Services Act
ZD	Inheritance Act
ZD-C	Act Amending the Inheritance Act
ZDavP-2	Tax Procedure Act
ZDD-1	Private Detective Services Act
ZDIJZ	Public Information Access Act
ZDimS	Chimney Sweeping Services Act
ZDoh-2	Personal Income Tax Act
ZDPN-2	Real Property Transaction Tax Act
ZDPra	State Attorney Act
ZDR-1	Employment Relationships Act
ZDru-1	Societies Act
ZDT-1	State Prosecution Service Act
ZDU-1	State Administration Act
ZDVTDP	Act on Social Care of Persons with Mental and Physical Impairments
ZDZdr	Mental Health Act
ZFPPIPP	Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act

ZGD-1	Companies Act
ZGJS	Services of General Economic Interest Act
ZGPro	Construction Products Act
ZID-1A	Act Amending the Labour Inspection Act
ZIKS-1	Enforcement of Penal Sentences Act ZIMI Equalisation of Opportunities for Persons with Disabilities Act ZIN Inspection Act
ZInvO	Disabled Persons Organizations Act
ZIZ	Enforcement and Security Act
ZIZ-L	Act Amending the Enforcement and Security Act
ZJN-3A	Act Amending the Public Procurement Act
ZJRM-1	Protection of Public Order Act
ZJRS	Public Use of the Slovene Language Act
ZKP	Criminal Procedure Act
ZKP-N	Act Amending the Criminal Procedure Act
ZLS	Local Self-Government Act
ZLV	Local Elections Act ZMatR Civil Register Act Zmed The Mass Media Act
ZMV	Motor Vehicles Act
ZMZ-1	International Protection Act
ZN	Notariat Act
ZN-C	Act Amending the Notariat Act
ZN-E	Act Amending the Notariat Act
ZNPPol	Police Tasks and Powers Act
ZOA	Personal Assistance Act
ZODPol	Organisation and Work of the Police Act
ZOdv	Attorneys Act
ZON	Nature Conservation Act
ZOsn	Basic School Act
ZOFVI	Organisation and Financing of Education Act
ZP-1	Minor Offences Act
ZPIZ-2	Pension and Disability Insurance Act
ZPIZ-2E	Act Amending the Pension and Disability Insurance Act
ZPCP-2	Road Transport Act
ZPKrv-1	Blood Supply Act
ZPP	Contentious Civil Procedure Act
ZPPDej	Funeral and Cemetery Services Act
ZPPDID	Stay of Proceedings against Members of Struck-Off Companies Act
ZPND	Domestic Violence Prevention Act
ZPPreb	Residence Registration Act
ZPUOOD	Act on Proceedings for the Enforcement of the Liability of Company Members for the Obligations of Struck-off Companies or their Release from Liability

ZPZ	Civil Union Act
ZRIPS	Same-Sex Civil Partnership Registration Act
ZRLI	Referendum and Popular Initiative Act
ZRomS-1	Roma Community in the Republic of Slovenia Act
ZS	Courts Act
ZSICT	Court Experts, Certified Appraisers and Court Interpreters Act
ZSKZDČEU-1	Cooperation in Criminal Matters with the Member States of the European Union Act
ZSPJS	Public Sector Salary System Act
ZSS	Judicial Service Act
ZSta-1	Standardisation Act
ZSV	Social Assistance Act
ZSVI	Social Inclusion of Disabled Persons Act
ZSVarPre	Social Assistance Payments Act
ZŠpo-1	Sports Act
ZŠtip-1	Scholarship Act
ZTuj-2	Foreigners Act
ZUJF	Fiscal Balance Act
ZUOPP	Placement of Children with Special Needs Act
ZUP	General Administrative Procedure Act
ZUPJS	Exercise of Rights from Public Funds Act
ZUrep-2	Spatial Planning Act
ZUSDDD	Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia
ZUstS	Constitutional Court Act
ZUTD-1	Labour Market Regulation Act
ZVarCP-B	Act Amending the Human Rights Ombudsman Act
ZVarCP-UPB2	Human Rights Ombudsman Act - Official Consolidated Text
ZVarD	Act ZVis Higher Education Act
ZVO-1	Environmental Protection Act
ZVOP-1	Personal Data Protection Act
ZVPot	Consumer Protection Act
ZVPSBNO	Protection of Right to Trial without Undue Delay Act
ZZDej	Health Services Act
ZZRZI	Vocational Rehabilitation and Employment of Persons with Disabilities Act
ZZSDT-B	Act Amending the Employment, Self-employment and Work of Foreigners Act
ZZVZZ	Health Care and Health Insurance Act
ZZZDR	Marriage and Family Relations Act

OTHER ABBREVIATIONS AND ACRONYMS

AAG	Alpe Adria Green
AC	Aliens Centre
AKOS	Communications Networks and Services Agency of the Republic of Slovenia AOM Association of Mediterranean Ombudsmen APT Association for the Prevention of Torture
APZ	Active employment policy
ARSO	Slovenian Environment Agency
BIH	Bosnia and Herzegovina
BPP	Brezplačna pravna pomoč
CDU	Christian Democratic Union
CINIP	Civil Initiative of illegally deleted companies
CIRIUS	Centre for Education and Rehabilitation of Physically Handicapped Children and Adolescents
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CSG	Centre for Hearing and Speech
CUDV	Education, Work and Care Centre
CRO	Central Register of Last Wills and Testaments
CRONSEE	Children's Rights Ombudspersons' Network in South and Eastern Europe
DeZRS	Detective Chamber of the Republic of Slovenia
EC	European Commission
ECRI	European Commission against Racism and Intolerance
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ENNHRI	European Network of National Human Rights Institutions (European Network of National Human Rights Institutions)
ENOC	European Network of Ombudspersons for Children
EOM	European Network of Ombudsmen
ERA	The Academy of European Law
ECtHR	European Court of Human Rights
ESC	European Social Charter
EU	European Union
EUR	Euro, single currency of the European Union
FRA	Fundamental Rights Agency
FURS	Financial Administration of the Republic of Slovenia
GANHRI	Global Alliance of National Human Rights Institutions
INPEA	International Network of the Prevention of elder abuse
INSPIIS	Information system for inspection bodies

IOI	International Ombudsman Institute
IC	Information Commissioner
PSP	Port service providers
IRSD	Labour Inspectorate of the Republic of Slovenia
IRSOP	Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning
IRSPEP	Transport, Energy and Spatial Planning Inspectorate of the Republic of Slovenia
IB	Inspection Board
IŠŠ	Inspectorate of the Republic of Slovenia for Education and Sport
IUS	info Online portal with legal information. It is intended for searching and reading information on Slovenian and European legislation and case law
CRC	Convention on the Rights of the Child
LO ZB	Local organisation of the Association of the National Liberation Movement
CSSP	Convention relating to the Status of Stateless Persons
CRS	Convention on the Reduction of Statelessness
LGBTI+	Lesbian, gay, bisexual, transgender, intersex and other sexuality, sex and gender diverse people
AP	Annual Report
MDDSZ	Ministry of Labour, Family, Social Affairs and Equal Opportunities
MGRT	Ministry of Economic Development and Technology
ECECR	European Convention on the Exercise of Children's Rights
MF	Ministry of Finance
MI	Ministry of Infrastructure
MIZŠ	Ministry of Education, Science and Sport
MJU	Ministry of Public Administration
MK	Ministry of Culture
MKO	Ministry of Agriculture and the Environment
MKGP	Ministry of Agriculture, Forestry and Food
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities
MO	Ministry of Defence
MO	Municipality
ILO	International Labour Organisation
MOL	Municipality of Ljubljana
MONM	Municipality of Novo mesto MNZ Ministry of the Interior MOP Ministry of the Environment and Spatial Planning
MORS	Ministry of Defence RS MP Ministry of Justice MZ Ministry of Health
MzI	Ministry of Infrastructure

MZZ	Ministry of Foreign Affairs
NA RS	National Assembly of the Republic of Slovenia
NHRI	National Human Rights Institutions
NIO SB	National Institute of Children's Heart Diseases
NIJZ	National Institute of Public Health
FC	Football club
NEC	National Electoral Commission
NC RS	National Council of the Republic of Slovenia
NC VM	National Commission for Vocational Matura NC GM National Commission for General Matura DOOR Association for Children, Fatherhood and Truth DRSV Slovenian Water Agency
NOB	National liberation
NPM Obs	Observatory of national preventive mechanisms against torture
NPM	National Preventive Mechanism
NGO	Non-governmental organisation
NZS	Chamber of Notaries of Slovenia
NZS	Football Association of Slovenia
ODIHR OSCE	Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights
DSPO	District State Prosecutor's Office
LC	Local court
OCC	Operation and Communication Centre
OPCAT	Optional Protocol to the UN Convention against Torture
SSW	Special supervision ward
PS	Primary school
OSCE	Organisation for Security and Co-operation in Europe
UN	United Nations
OZS	Bar Association of Slovenia
PGD	Basic design
PIC	Legal Information Centre for NGOs
PKL	Ljubljana University Psychiatric Hospital
PS	Police station
PSVZ	Special social care institution
PD	Police directorate
SPM	Special protection measures
ProSoc	Society Society for project implementation and social entrepreneurship development
PZI	Detailed design
RH	Retirement home
RS	Republic of Slovenia

RSK	Expanded Professional Board of Psychiatry
RTV	Radio and television
SCSD	Association of Centres for Social Work
SDOS	Trade Union of State Bodies of Slovenia SDS Slovenian Democratic Party SDV State Security Service
SEE NPM	South-East Europe NPM Network
SFRY	Socialist Federal Republic of Yugoslavia
SILA IWCL	International Women's Club
SKP PU	Criminal Police Directorate of the General Police Directorate
SKUP	Community of Private Institutes SLG Slovene People's Theatre SLS Slovenian People's Party
SNOPS	Service for the Supervision of Court Administration
SOJ	Public Relations Office
SOVA	Slovene Intelligence and Security Agency
SPT	The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
SSZS	Association of Social Welfare Institutions of Slovenia.
SV	Slovenian Armed Forces
SVZ	Social care institution
SWC	Social Work Centre
UE	Administrative unit
UIKS	Prison Administration of the Republic of Slovenia
UKC	University Medical Centre
OG	Official Gazette
UNHCR	United Nations High Commission for Refugees
UOIM	Government Office for the Support and Integration of Migrants
UPK	University psychiatric hospital UPRSAdministrative Court of the Republic of Slovenia
URS	Constitution of the Republic of Slovenia
URSIKS	Prison Administration of the Republic of Slovenia
UUP	Decree on administrative operations
UVHVVR	Administration for Food Safety, Veterinary Sector and Plant Protection
OMBUDSMAN	Human Rights Ombudsman of the Republic of Slovenia
HRO	Human Rights Ombudsman
VDC	Occupational activity centre VIZ Educational institution VS Supreme Court
VS RS	Supreme Court of the Republic of Slovenia
VVZ	Guidance, care and employment
UN	United Nations
ZDUS	Slovenian Federation of Pensioners' Associations

ZIPOM	Centre for Advocacy and Information on the Rights of Children and Youth within the Slovenian Association of Friends of Youth (ZPMS)
ZIRS	Health Inspectorate of the Republic of Slovenia
ZOTKS	Association for Technical Culture of Slovenia
MC	Medical certificate
ZPIZ	Pension and Disability Insurance Institute of the Republic of Slovenia
ZPMS	Slovenian Association of Friends of Youth
ZPKZ	Prison
ZPMKZ	Juvenile prison
ZRC SAZU	Research Centre of the Slovenian Academy of Sciences and Arts
ZRSZ	Employment Service of Slovenia ZUDV Institute for Education, Work and Care
ZZZS	Health Insurance Institute of the Republic of Slovenia
WHO	World Health Organization

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