



HUMAN  
RIGHTS  
OMBUDSMAN

THIRTEENTH  
REGULAR  
ANNUAL  
REPORT  
OF THE HUMAN  
RIGHTS  
OMBUDSMAN  
OF THE REPUBLIC  
OF SLOVENIA  
FOR THE YEAR 2007

ABBREVIATED VERSION

*Ljubljana, November 2008*



# Thirteenth regular Annual report of the Human Rights Ombudsman of the Republic of Slovenia for the year 2007

## ABBREVIATED VERSION

### Published by:

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**Editor:** Liana Kalčina

**Translation:** Biro 2000 d.o.o

**Design and layout:** Identiteta, d.o.o.

**Print:** Impress, d. d.

**Print run:** 700 copies

Ljubljana, November 2008

ISSN 1580-0954

Annual and special reports by the Human Rights Ombudsman are also published on the website

<http://www.varuh-rs.si/>

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## FOREWORD BY THE OMBUDSMAN



Foto: Robert Balen, Večer

In the abbreviated English language version of the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2007, we have summarised the main conclusions, recommendations and some statistical data. The complete report which I submitted to the President of the National Assembly of the Republic of Slovenia in September 2008 has a volume of 283 pages and is available only in the Slovenian language.

Soon after the beginning of my mandate in 2007, I presented my priority tasks based on my vision of protecting human rights. In addition to the central, contextual part of protection of human rights and fundamental freedoms, I dedicated special attention to the most threatened and vulnerable groups of people, which in my opinion includes children, the elderly, the disabled and handicapped and individuals who are disadvantaged in any way. I also focused on violence, poverty and environmental protection. Thus, I defined priorities needed to be duly coordinated with other current initiatives and issues, especially tasks related to the implementation of the Constitutional Court's decisions, cooperation in procedures of adopting legislation, preparations for implementing tasks of the national preventative mechanism according to the Optional Protocol to the Convention against Torture

and other Cruel, Inhuman or Degrading Treatment or Punishment, and participation in specific sessions of committees for petitions, human rights and equal opportunities, as well as certain other committees of the National Assembly of the Republic of Slovenia.

However, the Ombudsman's key activity remains the treatment of complaints by individuals. The number of new complaints in 2007 increased to 2,769, which is more than 11 percent higher compared to 2006, representing the first increase after five years of a decreasing trend. The total number of all treated cases (a case is a complaint which is classified and accepted into treatment) increased to 3,085 cases, which is an increase of 12 percent compared to 2006. This publication presents some information about the areas and the scope of work regarding complaints. 79 cases were treated at the Ombudsman's own initiative, based on media reports and other observations. The complainants were individuals, various associations, non-governmental organisations and other interested parties. Among the areas where an increase of complaints was noted, the second and third placed are two of the areas included among the priorities, namely children's rights and social security.

The Ombudsman's proactive activities in 2006 and early 2007 were most intensively focused on the area of preventing discrimination, while in the continuation of 2007, the focus was directed towards children's rights, protection of the environment, social security and social welfare. In 2007, we prepared the project Advocacy – Child's Voice and the conference Environment and Human Rights. Due to an increased volume of cases in the area of poverty, we began preparing the conference Poverty and Human Rights. Increased awareness was certainly partly a result of the Ombudsman's operations out of office. These included monthly visits to various locations where we, in cooperation with mayors and in venues provided by them, organised interviews with complainants. Each of these visits began with a thirty minute discussion with the mayor and

his co-workers, followed by interviews with complainants. The visits were concluded with a press conference for the local media.

The Ombudsman is obligated to act according to the principles of the rule of law and must observe regulations. However, questions arise everywhere around the world whether legally correct actions necessarily mean justice and are in the interest of the Human Rights Ombudsman. These questions necessarily lead us to Article 3 of the Human Rights Ombudsman Act which already in 1993 provided that in his work the Ombudsman must act according to the Constitution and international legal acts on human rights and fundamental freedoms and can support his arguments with principle the of justice and good administration. We will have to study the use of this principle in protecting human rights in Slovenia in the near future, for the use of justice and good administration in addition to mediation could contribute to remedying disagreements, increase the contentment of people and relieve the burden of the judicial system. The promotion of justice and good administration is one of the central themes of discussions of many European Ombudsmen who are also concerned with the issue of effectiveness of their own work and their influence on the general level of observance of human rights in the country. We intend to monitor the implementation of the Ombudsman's recommendations in Slovenia more systematically as well.

I am also studying how to achieve changes for the benefit of observing of human rights and what role the Ombudsman should play in achieving them. Formal routes are defined with proposals, opinions and recommendations to state bodies, local-self government bodies and bearers of public authority, and with the Ombudsman's Annual Reports to the National Assembly. Upon reading and considering the Ombudsman's conclusions and the report on the responses of the Government, the National Assembly adopts recommendations to the Government on how to remedy systemic deficiencies in regulations and activities of public administration bodies, highlighted in the Ombudsman's report. This process helped improve the situation in some areas, such as police procedures, personal data protection, accessibility of public information and activities of numerous administrative, especially supervisory state bodies, as well as changes to regulations and action regarding discrimination, family violence, patient's rights and mobbing. The processes also included activities of the Roma community, implementation of certain police procedures, methods of adopting legislation, establishing the Public Guarantee and Maintenance Fund, Code of Conduct and Ethical Standards for Public Officials, etc.

I believe that the report on the activities of the Ombudsman is a good formal connection between the Ombudsman and his demands for remedying violations on the one hand and the legislative and executive powers on the other, which can efficiently, with systemic solutions also remedy violations. From this aspect, the Ombudsman can be understood as assisting the National Assembly in the implementation of its constitutional role of control over the executive branch, especially at levels where the National Assembly does not have direct competences.

I find that certain Ombudsman's cautions remain ignored and calls for resolving issues are being opposed by the authorities (the problem of the erased, the issue of minorities not included in the Constitution). The number of unimplemented Constitutional Court's decisions is especially worrisome, because this not only results in the persistence of an unconstitutional situation which influences the degree of observance of human rights and the rule of law, but also explicitly, and perhaps even deliberately undermines the authority of the Constitutional Court. If we also take into account the (deliberate?) undermining of the authority of the Ombudsman and some other institutions (such as the Court of Auditors of the Republic of Slovenia, Commission for the Prevention of Corruption), we can expect a lowering of standards in the observance of human rights in Slovenia. The increasing number of complaints could be understood as confirmation of such a thesis.

In addition to the formal routes for achieving changes, as the Ombudswoman I also have available informal means, my personal style of communication and my social network, through which I, in my own distinctive way, carry out informal forms of activities for observance of higher standards of implementing human rights. I often personally meet with officials and public servants, representatives of the civil society and

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non-governmental organisations, partake in conferences and public events, and stay in daily contact and cooperate with the media. I respond to politically difficult topics, such as the erased, the minorities, the Roma issue and other current issues regarding the protection of human rights in Slovenia.

The role of the media in the protection of human rights is a complex one. In addition to cautioning about violations of human rights and calling for remedying of problems, the media sometimes also violate rights, especially when in cases of ethically sensitive topics. Therefore, the Ombudsman is sometimes faced with the situation of having to criticise the media, although he has no formal competence to do so (the Ombudsman's competences are limited to state-owned media, in this case only to RTV Slovenia).

The next subject which I cannot and am not allowed to overlook as the Ombudswoman is the issue of respect for human values, such as maintaining human dignity, mutual respect, trust, honesty, non-violence, willingness to help the vulnerable, and participation in ensuring better quality for everyone. I followed the responses to my statements regarding values with interest. They were mostly positive, but in some media they were often derogatory – both to me as the Ombudswoman and to the institution I am heading. This concerns me for journalists and media (including Web media) doubtlessly influence the observance of fundamental values in this manner of reporting, undermining their strength and also risk having to suffer consequences due to changed values.

We are criticised for writing about similar (same) issues year after year. This criticism should primarily be addressed to those state bodies who again failed to resolve these issues in 2007. Thus, in the report for 2007, we again write about the issues of ignoring the Constitutional Court's decisions, proposals providing unsuitable solutions for remedying the issue of the erased, court arrears, remedying of injustices, etc. With regard to the erased, we repeat that to Slovenia, a country with the rule of law, it is shameful that their situation cannot be resolved by complying with the decision of the Constitutional Court. We insist on our position that a constitutional act is not necessary for this issue. Court arrears are another subject this report cannot avoid. We are constantly being warned about them by the decisions of the European Court of Human Rights.

It is important that the Ombudsman have good experts or advisors available who are able to argument when and how a violation occurred. The main strengths of the Ombudsman as an institution and the Ombudswoman as an individual are the powers of (legal) argument serving to achieve a fair and just solution of the problem treated, and not the strengths of executive power, politics or capital. The Ombudsman must retain independence and autonomous work of the institution from both, the financial and the personnel aspect. This is stressed by the International Ombudsman Institute as well. Independence is therefore a primary characteristic of the institution of Ombudsman, alongside objectivity of investigations and confidentiality of procedure. In 2007, the National Assembly of the Republic of Slovenia adopted the Salary System in the Public Sector Act which, without argumentation and material reasons, classified the function of the Human Rights Ombudsman, his Deputy and General Secretary to lower salary categories. The Human Rights Ombudsman is a specific institution which does not belong to the executive, judicial nor legislative branch of power. In my opinion, implementation of the Salary System in the Public Sector Act will in our institution most likely create a situation which will threaten effective implementation of tasks defined in by the Constitution and legislation, for with lower salaries for the officials, the salaries of experts employed in the institution will also be reduced. I insist that the independence of this body must be ensured also with suitable financial compensation for all employees.

To an individual addressing the Ombudsman, credibility of the latter is of key importance and credibility can only be achieved with consistent independent action which is a condition for determining and remedying irregularities.

The Ombudsman's work in the next period is facing great challenges related to the choice of priorities and manner of operation. In the future, I will certainly continue to focus my work on children's rights and the assurance of better conditions for enforcing the rights of vulnerable groups of people, especially the disabled,

the handicapped, the elderly, the poor and victims of violence. Reducing all forms of violence also remains my priority task, for we need to implement adopted legislative norms (Family Violence Act). Furthermore, all forms of physical punishment of children must be forbidden by law. I will intensively participate in resolving issues related to environmental protection, reducing poverty and remedying court arrears. I will closely monitor the implementation of the Patients Rights Act, Mental health Act and the new Penal Code as well as conditions in prisons and other institutions where freedom of movement is restricted.

In 2008, we will celebrate a few anniversaries, including the 60th anniversary of the Universal Declaration of Human Rights and the 15th anniversary of the adoption of the Human Rights Ombudsman Act. These will be opportunities to summarise what we have learned from our and others' experiences in protecting human rights and in developing the rule of law.

**Dr. Zdenka Čebašek - Travnik**



## 2

## THE CONTENT OF THE WORK AND REVIEW OF THE PROBLEMS

### 2.1. Constitutional rights

AREA OF WORK	Cases handled 2006	Cases handled 2007	Index (07/06)
<b>1. CONSTITUTIONAL RIGHTS</b>	<b>139</b>	<b>105</b>	<b>75.5</b>
1.1 Freedom of Conscience	4	10	250.0
1.2 Ethics of public speech	46	23	50.0
1.3 Assembly and association	6	6	100.0
1.4 Security services	0	2	–
1.5 Right to Vote	6	3	50.0
1.6 Personal data protection	37	37	100.0
1.7 Access to public information	6	1	16.7
1.8 Other	34	23	67.6

The number of complaints in the area of constitutional rights decreased by a quarter in 2007, mainly in the areas of ethics of public speech and access to information of public nature. The decrease can be correlated to the increase of cases in the area of discrimination for many complaints can be classified under one of these statistical areas. ■

#### PARTICIPATION OF THE PROFESSIONAL AND OTHER INTERESTED PUBLICS IN THE ADOPTION OF REGULATIONS

The participation of the public, professionals and the civil society is currently only partly regulated with specific executive and internal acts. It is not regulated with a specific regulation although it is the Ombudsman's opinion that this right is related to the constitutional right of participation in the management of public matters (Article 44) and the right to petition (Article 45). Regulations are usually drafted in closed circles and in a non-transparent manner. ■



#### Ombudsman's proposals and recommendations

*The Ombudsman recommends that the Government implement in practice its existing support of citizens' participation in procedures for adopting regulations. The cooperation of the public in the adoption of regulations should be regulated with a special act which should specify the participants, the time for the debate, the manner of transmitting comments and, above all, the obligation of the bodies responsible for these debates to present their opinions on the received comments and proposals.*

*The Ministries preparing important regulations should organise public debates, publish the regulation proposals on their websites at an early stage and invite professional institutions, non-governmental organisations and other civil associations to submit comments, and in cooperation with them, assess the effects of the proposed solutions.*

## PUBLIC SPEECH ETHICS

Each year, the Ombudsman receives a few complaints from individuals who were affected by the publication of their names or other information based on which they could be identified publicly. These complaints relate to allegations of committing criminal acts or to the publications of investigative findings of pre-trial criminal procedures. The media favour sensationalism which can increase publication volumes and are prepared to smear individuals with accusations during the pre-trial criminal procedure when often not even reasonable grounds for the suspicion of criminal acts exist.



### **Ombudsman's proposals and recommendations**

*The Ombudsman cautions that media publications should take into account the constitutional principles of presumption of innocence, protection of privacy and personality rights of individuals. An individual has limited possibilities for clearing a tarnished reputation if the accusations or assumptions turn out to be unfounded. Damages awarded by the court, if and when prolonged procedures before it are concluded, are evidently too low to deter the media from sensationalism.*

*The media which most frequently interfere with privacy rights should also comply with decisions of the Journalists' Ethics Council as the joint self-regulative body of the Slovenian Association of Journalists and the Union of Slovenian Journalists.*

*The journalists' associations should form more effective mechanisms for impartial treatment of ethical issues of the journalistic profession, or perhaps develop new ones, for self-regulation is clearly not effective enough.*

Despite several public warnings by the Ombudsman regarding the unacceptability of sensationalistic disclosure of children's privacy and family tragedies in media reports as well as clear and unambiguous warnings by the Journalists' Ethics Council, these violations continue and are multiplying. We submitted several complaints for the review of the ethics of conduct of several reporters and editors responsible for these publications to the Journalists' Ethics Council. The Council found that editors and journalists of the national television service had in some cases violated the Code of Ethics of Slovenian Journalists. ■



### **Ombudsman's proposals and recommendations**

*The Ombudsman repeatedly cautions the State to consistently fulfil its obligations and to fully implement protection of child rights according to the Convention on the Rights of the Child with all available measures and ensure that no child is exposed to arbitrary and illegal interference with their life, family, home or correspondence, or to illegal attacks on their dignity and reputation.*

*In cases of suspected sexual abuse and violence or cases where a child is separated from his or her parents, journalists and editors must carefully weigh the circumstances and the interests of all parties involved and opt for publication only when it will benefit the child's interests.*

*Media reporting on children should be regulated systemically, preferably with the Public Media Act. The law should regulate the institution of the Children's Rights Advocate.*

2

## HATE SPEECH IN PUBLIC, THE MEDIA AND ON WEB PORTALS, AND THE RESPONSIBILITY OF WEB FORUM PROVIDERS

In 2007, we were informed again of the presence of hate speech, hostility and intolerance to various groups and individuals in the public domain as well as private and public media. Our attention was also called to a reality show transmitted by a commercial television station where the participants were exposed to humiliating treatment, acted offensively towards each other and expressed intolerance towards certain nationalities. ■

We received several complaints informing us of hostility, intolerance and a derogatory attitude towards individuals and groups on the World Wide Web, especially on Web forums, chat rooms and other forms of communication accessible through the Web portals of private and public media and other private Web pages. The Ombudsman found that no case law or administrative practices regarding this area existed in Slovenia and that the powers of the Market Inspectorate of the Republic of Slovenia were somewhat unclear. ■



### **Ombudsman's proposals and recommendations**

*An effective implementation of mechanisms for the legal protection of injured natural or legal persons should be developed according to the regulations, including the corresponding powers for the Inspectorate.*

*The development of a manner for monitoring Web forum providers as hosting services providers is absolutely necessary, as well as actions pursuant to the Electronic Commerce Market Act in cases where service providers, upon having become aware of the illegality, fail to immediately remove or prevent access to problematic information.*

*Based on the legislation, including the Implementation of the Principle of Equal Treatment Act, the Market Inspectorate should closely review cases of suspected discrimination and propose the commencement of offence procedures to the responsible body.*

*The Ombudsman proposes that Article 300 of the Penal Code be amended to define the incrimination of hate speech more appropriately and in line with the Constitution.*

## PAEDOPHILE REGISTRY

In 2007, there was an ongoing debate in the media, a part of the expert public and in the National Assembly regarding the request for establishing a paedophile registry aimed at preventing employment of perpetrators of these crimes in positions connected to children and adolescents. ■



### **Ombudsman's proposals and recommendations**

*It would be justified to require non-conviction certificates for criminal offences against the sexual inviolability of children for certain professions prior to employment and to regulate this obligation with a law defining the scope of processing and protecting such information and the prevention of possible misuse of such information.*

*The creation of a registry of persons accused of paedophilia should be regulated with a law following a review of the (unused) possibilities provided by the existing legislation.*

*The Ombudsman opposes the possibility of information from criminal records being publicly accessible without restrictions, or even published. This would endanger the victims of these offences and increase the possibility of error or misuse of information, and of citizens taking justice into their own hands instead of leaving it to the State and the bodies responsible.*

#### REEDOM OF EXPRESSION AND FREEDOM OF THE MEDIA

The Ombudsman was informed of the negative situation of journalists and media who were exposed to various types of pressure. Journalists highlighted issues of freedom of expression in the media and their own problems regarding labour law. In a special statement, the Ombudsman expressed concern regarding events in certain Slovenian media which could pose a threat to the legal role of journalists and the media. ■

The Public Media Act does not address specific issues adequately (conflicts between the editorial board and the publisher/broadcaster, legal protection of journalists in cases of ethical objection, etc.). ■



#### **Ombudsman's proposals and recommendations**

*Systemic conditions for ensuring freedom of expression and the autonomous work of the media and journalists need to be reinforced for they need to be free of fear of having to suffer negative material or social consequences because of the messages they express.*

#### PROTECTION OF PERSONAL INFORMATION AND PRIVACY

We find that there has been an increase in cases of suspected interventions of employers in the personal information and privacy of employees: unjustified processing of health information, interventions in electronic mail and the privacy of correspondence and suspected unnecessary and unjustified invasion of privacy by means of video surveillance and the use of private investigators. The exchange of personal information between individual state authorities cooperating in expert teams in the area of social issues is also disputable for it eliminates the ability to track information which has possibly been gathered for other purposes. Non-governmental organisations and civil society associations which participate in such teams are not bound to secrecy. ■



#### **Ombudsman's proposals and recommendations**

*The Ombudsman recommends consistent implementation of the achieved legal standards for preventing unconstitutional, illegal and unjustified interventions in the privacy and dignity of individuals. This area can be improved by wider implementation of the means of appeal, effective monitoring mechanisms and consistent establishment of a system for tracking the processing of information from various personal databases.*

## EXAMPLES

1. *Based on the address of the sender on the mailed envelope, third persons can make assumptions regarding the recipient's health*

A community health care centre was sending mail to patients with the name of the outpatient clinic as the sender of the letter visible on the envelope. The institution received our opinion that by sending mail in such a manner third persons were able to make assumptions regarding the health

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of the recipients. The community health care centre accepted our recommendation and undertook to send its mail to patients with only the general name of the institution visible.

### *2. Handling of documents from psychiatric institutions*

Based on a few reports in the media and a public question by a member of the National Assembly regarding the alleged destruction of documents in the University Psychiatric Hospital in Ljubljana, the Ombudsman became involved in the debate on the issues of protection, security, archiving and access to documentary and archived materials of psychiatric institutions. The Ombudsman did not interfere with procedures before responsible authorities which had not been completed at the time; nevertheless, the Ombudsman stressed certain systemic issues regarding the manner of handling of documents from psychiatric institutions related to individuals' right to privacy and protection of personal information. The Ombudsman addressed a special letter to the Minister of Health proposing statutory regulation of the issue.

### *3. A police station forwarded information about a suspect in a pre-trial criminal procedure to his hunters' association*

The complainant claimed that the police station on its own initiative issued a letter to the hunters' association to which he belonged informing them that a house search had been performed at his residence and reporting the confiscated hunting and other weapons and ammunition forbidden by the law. The police station explained that the hunters' association had requested in writing information regarding the alleged confiscation of the complainant's weapons and that the police station replied according to the Decree on Administrative Operations which provides that all letters need to be replied to within 15 days of receipt. We did not agree with their explanation. We found that the hunters' association had been forwarded information regarding the grounds for the house search, indicating the objects confiscated and the type of criminal offence subject to the criminal charges against the complainant. The Ombudsman concluded that there were no legal grounds for such contents in the reply from the police station and that their handling of the matter was not legal. Their actions violated the complainant's rights and violated his privacy. The Ministry of the Interior agreed with our conclusion and opinion. They decided to take suitable action against the responsible persons at the police station. State supervisors for personal data protection from the Commissioner for Access to Public Information also performed an inspection.

## 2.2. Restriction of personal liberty

AREA OF WORK	Cases handled 2006	Cases handled 2007	Index (07/06)
<b>2. RESTRICTION OF PERSONAL LIBERTY</b>	<b>201</b>	<b>180</b>	<b>89.6</b>
2.1 Detainees	58	39	67.2
2.2 Convicts	87	102	117.2
2.3 Psychiatric hospitals	21	17	81.0
2.4 Person in social welfare institution	2	7	350.0
2.5 Halls for pupils	1	1	100.0
2.6 Illegal foreigners in asylum seekers	18	7	38.9
2.7 Person in police detention	7	0	–
2.8 Other	8	7	87.5

### DETAINEES AND PRISONERS SERVING A SENTENCE OF IMPRISONMENT

In addition to treating complaints of imprisoned persons, the Ombudsman performs regular and special visits to prison facilities. The key characteristic of the Slovenian prison facilities in 2007 was the recurrent overpopulation problem. Furthermore, no significant improvement of spatial and living conditions for the imprisoned persons was detected. The overpopulation does not result only in spatial constraints and poor living conditions, it also influences the well-being of everyone, including the prison facility personnel. ■

The conditions detected during visits to some prison facilities and which due to overpopulation were worrisome, indicating torture or inhuman and humiliating treatment of imprisoned persons constituted a violation of Article 3 of the Convention on Human Rights and Fundamental Freedoms. We also highlight the inability of some institutions to provide work and other organised activities for imprisoned persons, especially detainees. ■

Serving a prison sentence in a space smaller than the statutory 7 m<sup>2</sup> (in some prisons the actual size is only 3.5 m<sup>2</sup>) is unacceptable and constitutes a violation of the law. The Ombudsman believes that building new prison facilities alone will not provide a lasting solution. ■



#### **Ombudsman's proposals and recommendations**

*Increased use of alternative penal sanctions in (court) practice could contribute to the decrease of overpopulation of prison facilities.*

*Adequate spatial conditions need to be ensured for all convicts serving the sentence of imprisonment, including those serving their sentences in institutions built before the enforcement of the current spatial standards.*

The Ombudsman emphasises that the living conditions in some Slovenian prisons are good and all imprisoned persons confirmed the correct and respectful behaviour and actions of the prison personnel, including prison guards, during the Ombudsman's visits (e.g. prison in Murska Sobota, the Rogoza open ward of the prison in Maribor). ■

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Each year, the Human Rights Ombudsman of the Republic of Slovenia also receives a few complaints from imprisoned persons alleging unjustified use of measures of constraint by prison guards. ■



#### **Ombudsman's proposals and recommendations**

*The possibility of (limited) use of mobile phones in prison facilities should be reassessed with the aim of enabling easier communication of imprisoned persons with the outside world.*

We conclude that prison institutions continue to face a shortage of adequate work force, resulting in overburdened employees, which could influence the stability of security conditions in prison institutions. ■



#### **Ombudsman's proposals and recommendations**

*The Ombudsman proposes a detailed analysis of the adequacy of human resources in prisons and adoption of measures to employ an adequate number of prison guards as well as health care and other personnel.*

*Persons serving prison sentences should have the right to request a review of the regularity and legality of enforced interventions in every case of interference with their rights.*

The legislator granted convicts the status of insured persons which means they benefit from compulsory health insurance according to the regulations regarding health care and health care insurance. Unfortunately, this legal provision has yet to be fully implemented in practice. ■



#### **Ombudsman's proposals and recommendations**

*The Ombudsman cautions again of the obligation of prison institutions to ensure immediate medical examination of any imprisoned persons suffering physical injury due to the use of measures of constraint (even if they do not request it themselves).*

*The Ombudsman recommends that the medical examination of an imprisoned person needs be performed in the absence of prison guards.*

*According to the law, the responsible health care institutions must ensure health care services and treatment for convicts as well as adequate personnel to perform health care services in prison institutions. The practice of prison guards issuing medications to convicts must be abolished for they lack appropriate training.*

*Persons serving the sentence of imprisonment must be duly informed of their rights and obligations, including their legally guaranteed rights or derogation from rights (e.g. derogation from the right to compulsory pension insurance).*

We treated a case of a convict who was referred to a psychiatric clinic where he was denied admission with the explanation that until further notice, convicts could not be admitted since the presence of a prison guard in a psychiatric hospital ward would have a negative effect on the treatment of the convict and other patients. ■



### **Ombudsman's proposals and recommendations**

*The Ombudsman cautions again of the necessity to establish a forensic psychiatric hospital.*

*The Ombudsman proposes a review of the possibility of organising effective help for former convicts for a limited duration after the served sentence and of monitoring persons released on parole.*

## **PERSONS WITH MENTAL DISORDERS**

In 2007, the Ombudsman treated 17 complaints from the area of mental health, primarily cases of involuntary hospitalisation in health care institutions where persons were deprived of the freedom of movement due to a mental disorder or illness. ■



### **Ombudsman's proposals and recommendations**

*The Ombudsman insisted on the timely adoption of the Mental Health Act which would regulate issues concerning the position of persons with mental disorders in a comprehensive manner.*

We visited several psychiatric institutions and social welfare institutions and noted certain deficiencies as well as violations of the legislation or executive acts. The Ombudsman is pleased to conclude that most institutions accepted many comments and proposals contained in the reports from previous visits. ■

Psychiatric clinics use a special notice (form) to notify (via fax) the local courts of cases of involuntary hospitalisation. We found that these forms did not comply with the prescribed contents for they did not contain information regarding the mental health of the person confined nor who had referred them to the health organisation. We also found that certain clinics did not always uphold the (statutory) 48 hour time limitation within which they were obligated to notify courts of confinement and did not document the time of sending the notice to the court. ■

In some clinics, psychiatric patients admitted to the closed ward needed to sign a statement confirming they agreed with confinement and treatment. Based on this statement, the clinic regards the hospitalisation as voluntary. Furthermore, the patients were informed only verbally that they were able to withdraw the statement. ■



### **Ombudsman's proposals and recommendations**

*The Ombudsman insists that the written statement on voluntary confinement and treatment should include information that the patient is entitled to withdraw their statement at any time.*

A review of randomly selected examples of documenting special security measures in admittance wards revealed inconsistent and incomplete records of controlling interventions used (records without the name of the doctor who prescribed the intervention, type of intervention, prescribing or discontinuing restraint (strapping the patient to their bed), monitoring of the intervention, etc.). ■

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### **Ombudsman's proposals and recommendations**

*The Ombudsman recommends consistent observance of recommendations and guidelines on the use of special protective measures in psychiatry and making available written instructions for their implementation, supplemented with detailed instructions by the institution.*

*The Ombudsman proposes that psychiatric clinics ensure careful, precise and transparent completion of forms concerning the use of special protective measures for this is the only way to ensure they are effectively controlled. The Ombudsman insists that all time limitations provided by the Non-litigious Civil Procedure Act need to be observed.*

*The Ombudsman proposes that the text of the consent be formulated in such a manner to explicitly indicate that not (only) the guardian, but also the patient agrees with confinement in the closed ward.*

*A guardian's or representative's consent is not sufficient for admittance to the closed ward of the institution since involuntary admittance to the closed ward constitutes interference with personality rights.*

Psychiatric hospitals informed the Ombudsman of the problems of securing so-called forensic patients for prison guards were disturbing to other patients. Furthermore, hospitals do not have the appropriate facilities for this type of treatment. ■



### **Ombudsman's proposals and recommendations**

*The Ombudsman insists on ensuring suitable facilities for forensic patients (patients with prescribed compulsory treatment) and ensuring their security.*

*The Ombudsman concludes that locking rooms in social welfare institutions is an unsuitable means for (forcing) stimulating residents to perform physical activity.*

*The placing of patients in calming rooms must be recorded in a special log containing exact information on who was placed in the room, the time between the start and conclusion of the intervention, who prescribed or authorised the intervention, on what grounds, and what took place during the intervention (including any injuries).*

## **ALIENS ILLEGALLY RESIDING IN SLOVENIA AND ASYLUM SEEKERS**

In 2007, we continued our visits of the Aliens' Centre in Veliki otok pri Postojni. We found that aliens are provided with good material, accommodation, living and health conditions and that their spiritual needs are attended to. However, certain provisions of the Asylum Act, General Administrative Procedure Act, General Offences Act, etc. are not observed strictly enough. ■

A deficiency we observed again was that there were no organised activities. Aliens are locked in their wards, except during their time outdoors. ■



### **Ombudsman's proposals and recommendations**

*The ombudsman recommends that asylum procedures be conducted more efficiently with greater focus on the special position of asylum seekers who found themselves in distress in a foreign country. The procedure must provide access to necessary protection to those asylum seekers who truly need it and also limit the possibility of abuse thereof.*

*Minutes serving as records of the course and actions performed in a procedure should contain the appropriate legal information regarding the asylum seekers' right to file a lawsuit with the Administrative Court.*

*The Ombudsman recommends consistent enforcement of the provision that asylum seekers must be informed about the asylum procedure, including their rights and obligations in the procedure.*

*An official written copy of the decision on the restriction of movement must without exception be delivered to the asylum seeker within 48 hours of issue of an oral injunction.*

The Human Rights Ombudsman submitted a proposal to the Office of the State Prosecutor General for the assessment of the adequacy of the order issued by the Local Court in Ljubljana regarding a decision on the location of stay of aliens. The Supreme Court held that until the finality of judgement, the decision on the location of stay was a substantive decision for it interfered with the personal freedom of an individual (alien) and emphasised that a decision on the matter could only be issued in the form of a judgement or decree of the court. Only a decision so issued enables the exercising of the constitutional right to complaint. ■

## **EXAMPLES**

### **4. A detainee is entitled to treatment outside the prison institution**

A detainee from the Ljubljana Prison complained he was being denied his right to treatment. He claimed he had several health problems which required treatment outside the institution. Following a kidney stone attack, the prison doctor did not refer the complainant to a specialist "because the examination was not urgent; referral to a specialist for a non-urgent examination of a detainee required the permission of the court /.../". The Prison Administration of the Republic of Slovenia agreed with our opinion that a prison doctor's opinion on the necessity of treatment was sufficient for referring a detainee to hospital treatment outside the prison institution or to a specialist clinic and that there was no need for the complainant to request permission from the competent court for treatment outside the prison institution.

### **5. Only an attorney can be appointed as a legal representative**

A detainee from the Celje Prison noted in his complaint that based on compulsory defence in a case before the Local Court in Celje a person who was not an attorney was appointed as his legal representative. We established his complaint to be justified. The law provides that in cases of compulsory defence only an attorney can be appointed as a legal representative. The Local Court made certain that the complainant was appointed an attorney as his legal representative as soon as the Court President's Office was notified.

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## 6. Unbearable living conditions for imprisoned persons in the Ljubljana Prison

A group of people imprisoned at the Ljubljana Prison turned to the Ombudsman to complain about unbearable living conditions, primarily in detention. Allegedly, up to six people were confined in a 20 m<sup>2</sup> room. They also stated that juvenile detainees were confined together with adults and also with persons addicted to illicit drugs and persons who were ill. The Prison Administration of the Republic of Slovenia confirmed the overpopulation of living and other spaces which at times exceeded 200 percent. For several years the Ombudsman has been unsuccessful in cautioning that different conditions need to be ensured for detained persons.

## 7. No record of visible injuries of a convict

A convict serving his sentence in the Koper Prison wrote a complaint to the Ombudsman stating that a prison guard had used physical force against him without any cause. He requested to be examined by a doctor but the head prison guard did not allow it. When he later requested to see a doctor again he was sent to solitary confinement. Following an inquiry, the Ombudsman was informed that the convict was physically resisting the guard who was performing his official duties and that the guard had used physical force to prevent the convict from ingesting a larger quantity of pills.

## 8. Completely unsuitable calming room

As a part of regular visits to public welfare institutions, the Human Rights Ombudsman of the Republic of Slovenia visited the social welfare institution in Dutovlje. During the inspection of the facility we visited a calming room which was completely unsuitable for performing special security interventions. In a 3x2 m basement room the floor is covered with cold, hard and slippery floor tiles, which is unsuitable flooring for such a room. Some of the tiles were even loose. Drain pipes visible beneath the ceiling added to the discomfort of entering the room. The walls of the room were covered with panels only a few millimetres thick and approximately two meters high, however the material is not soft enough to prevent injury if a person would hit the wall. Above the entrance there were also electrical wires which a taller person would be able to reach if they jumped. The room is not ventilated nor equipped with video surveillance or a call bell. The institution was cautioned about the deficiency of the calming room mainly because of the risks for possible self-injury it contains.

## OPTIONAL PROTOCOL

### Implementation of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

The Act ratifying the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment came into force in January 2007. By ratifying the protocol, Slovenia undertook to establish an independent national preventative mechanism against torture. According to Article 17 of the Protocol, the Human Rights Ombudsman of the Republic of Slovenia was appointed the responsible institution, and with it several selected non-governmental organisations, registered in the Republic of Slovenia, as well as organisations which were granted the status of charitable organisation. ■

Following the adoption of the Act in 2007, the Ombudsman initiated preparatory activities regarding implementation of competences and tasks of the national preventative mechanism. In October 2007, the Ombudsman published a call for tenders for the selection of non-governmental organisations which will participate in the implementation competences and tasks of performing control at locations of deprivation of liberty and control of treatment of persons deprived of liberty. Both applicants were selected, namely the Peace Institute, a non-governmental organisation, and the Legal Information Centre for Non-governmental Organisations. The selected organisations concluded a

Cooperation Agreement with the Ombudsman, detailing the contractual relationship between the parties. ■

Experts of the state national mechanism must be appropriately qualified and possess the appropriate professional knowledge. To this end, the Ombudsman organised a meeting 2007 with the representatives of organisations cooperating in the project, where we acquainted them with the methods of our previous work in the area, including the course of visits to various institutions. We invited them to participate as observers in the inspections of prisons, other locations for persons deprived of liberty and other institutions with restricted freedom of movement, performed based on the provisions of the Human Rights Ombudsman Act. ■

According to information known to us, Slovenia is the only country where the Ombudsman in the role of a state authority cooperates with non-governmental organisations in implementing the competences and tasks of the national preventative mechanism. Thus, this form of cooperation is of great interest to other countries. ■

## 2

## 2.3. Social security

AREA OF WORK	Cases handled 2006	Cases handled 2007	Index (07/06)
<b>3. SOCIAL SECURITY</b>	<b>354</b>	<b>472</b>	<b>133.3</b>
3.1 Personal insurance	74	98	132.4
3.2 Disability insurance	63	77	122.2
3.3 Health insurance	54	56	103.7
3.4 Health care	50	72	144.0
3.5 Social benefits and aid	54	69	127.8
3.6 Social services	15	28	186.7
3.7 Institutional care	11	26	236.4
3.8 Other	33	46	139.4

## Pension and disability insurance

In 2007, we treated 98 complaints in the area of pension insurance which represents a 32.4 percent increase compared to the previous year. In the area of invalidity insurance we treated 77 complaints, representing a 22.2 percent increase. ■

The issue of failure to meet statutory time limitations for decisions in administrative matters remains current. The Ombudsman concludes that administrative decisions rejecting applications for granting specific rights from pension and disability insurance were not accompanied by sufficient clarifications. The mere stating of the legal grounds for the decisions is often difficult to understand for clients. Thus, the client is unable to contest the decisions or is unsure on which grounds to file an appeal, which means that the incomplete decision violates the client's right to use legal means. ■

In 2007, the Ombudsman treated several complaints which regarded decisions of the Pension and Disability Insurance Institute of Slovenia rejecting applications for granting the right to payment of widow's pensions to all widows whose husbands had retired in accordance with regulations on military insurees. The Institute based its decisions on the provisions of paragraph 4 of Article 123 of the Pension and Disability Insurance Act. The Ombudsman was not able to treat these complaints in a substantive manner. We suggested judicial protection of the rights from pension and disability insurance to individual complainants. Several injured complainants lodged motions for constitutional review of the relevant provision of the Pension and Disability Insurance Act. ■

The Ombudsman treated several complaints regarding enforcement of specific rights from pension and disability insurance (the right to pension support, the right to guaranteed widow's pension and the right to benefits from invalidity insurance). The complainants claimed unequal treatment regarding enforcement of rights from pension and disability insurance, for their rights in the area were not regularised in the same way as pensions and benefits. This mainly concerned the right to pension support, the right to guaranteed widow's pension and the right to benefits from invalidity insurance which were in use until 31 December 2002. Upon treating the complaints, it became clear that the complainants were not familiar with the new legislative regularisation therefore we acquainted them with it. The Ombudsman succeeded with the recommendation that the Pension and Disability Insurance Institute of Slovenia should ensure the provision of better information to

persons entitled to benefits from pension and disability insurance regarding alignment of pensions and other benefits. ■



### **Ombudsman's proposals and recommendations**

*The Ombudsman recommends that the Pension and Disability Insurance Institute of Slovenia inform beneficiaries in a timely, correct and current manner regarding the change to amounts of individual benefits and regarding the reason for non-alignment of specific benefits. The Ombudsman feels that publishing information on the Institute's website is insufficient, for this form of notification is inaccessible to most beneficiaries.*

The Ombudsman treated a complaint in which the complainant stated that the Pension and Disability Insurance Institute of Slovenia had failed to make a decision within the statutory time limit regarding an appeal lodged against a decision of the first-instance body rejecting the application for granting her the right to severance pay. We concluded that the procedure was conducted very deficiently, but even more deficient were the decisions issued in the procedure. The Ombudsman is not competent for controlling specific administrative procedures, neither can we judge the legality of issued decisions. However, we are obligated to detect incorrect actions of administrative bodies if such actions could constitute violations of an individual's rights. The Ombudsman inquired from the Pension and Disability Insurance Institute of Slovenia what actions they would take to prevent such deficient decisions and incompetent conducting of administrative procedures in the future. ■

The Institute assured us in their reply that the Regional Unit of the Institute, where the procedure was handled, had adopted a decision that in addition to expert employees who are handling procedures, controllers and department head's must also ensure the correctness of individual decisions and notices issued in administrative procedures. In issuing negative decisions, they would focus more on the correct grounds for the decisions and explain clearly, expertly and with appropriate legal grounds the reasons for decisions denying the right to benefits from pension and disability insurance. ■

## **EXAMPLES**

### *9. Four years for a new decision by the first-instance body*

The Ombudsman received a complainant's statements and documents which clearly showed that the Pension and Disability Insurance Institute of Slovenia had issued a decision to the complainant in 2003, granting his appeal and deciding the case be returned to the first-instance body for reconsideration. Until his complaint to the Ombudsman 2007, the complainant had not received a new decision of the first-instance body.

We requested an explanation of this procedure from the Institute. They informed us that the complainant was classified as having a 1st category disability based on an expert opinion of the Disability Commission. However, the decision had not been issued for the question of the duration of his pension and insurance period had not been resolved yet. To be granted the invalidity pension the claimant would have to fulfil the requirement of 1/3 of the complete term of employment (from the age of 20 years to the time of establishing the disability) with paid pension insurance contributions. The complainant had worked in Germany and France and had spent some time in Dob Prison, therefore determination of the pension and insurance period was lengthy. Regardless, the Ombudsman felt that four years was too long a period to establish these facts. The Institute did not clarify the reasons for the prolonged procedure beyond the stated need to determine the pension and insurance period. We later established that the complainant had himself (in 2002) submitted documents proving his employment in the appeals procedure and the German social security

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institution had in September 2004 sent information regarding the complainant's insurance period in Germany.

We believed that no justifiable reasons for the excessively long procedure at the Pension and Disability Insurance Institute of Slovenia existed, therefore we explained to the complainant that while we would not try to determine the responsibility of Institute, we would include their incorrect handling of the case in the Annual Report for 2007 which the Ombudsman submits to the National Assembly for review. Such criticism of a state body usually contributes to making certain something similar would not happen again in the future.

## Healthcare and health insurance

Many topics from the area of enforcing rights and violations of rights in the areas of health care insurance and health care in general resonated in the public; however, this was not reflected in the number of such complaints. Perhaps the reason could be found in the fact that patients are increasingly aware of the official routes and are also using them. In the area of health care, patients and their relatives had great expectations about the proposed Patients Rights Act and Mental Health Act, although they were not adopted by the National Assembly in 2007. ■

Analysis of the complaints addressed to the Ombudsman in the area of health care indicates that there are very few cases regarding errors in treatment or negligent treatment which are otherwise treated in criminal and civil court procedures. We mainly treat cases which could be prevented or immediately resolved through a more appropriate attitude of the employees towards the patient, who in his distress requires particularly as much information as possible. The Ombudsman believes that much of the discontent with the system of health care could be remedied within the framework of the existing legislation and through better organisation. ■

The Ombudsman played an active role in the discussion on the drafts of the Patients Rights Act and Mental Health Act, cooperating with the submitter of the drafts, and later participating in the legislative procedure in the discussion within the competent working bodies of the National Assembly. ■

## PATIENTS RIGHTS ACT

The Ombudsman frequently cautioned that the rights in the area of health care were not adequately regularised and that the procedure for their implementation was not consistent and transparent. These issues were supposed to be addressed with the new Patients Rights Act. In the debate on the proposed legislative solutions, the issue of representing patients in procedures of enforcing their rights was of particular importance. The proposal to establish a special patients' rights ombudsman was not adopted. We had serious reservations regarding the proposed solutions. We cautioned about the undefined nature of the new institution, especially from the aspect of constitutional competences. Furthermore, we believed that establishing a new supervisory body, the patients' rights ombudsman would not guarantee more consistent or effective protection of rights, especially if the rights themselves had not been defined. Supervision does not require an ombudsman for these tasks can be performed by state bodies. ■

The Ombudsman concluded that the Patients' Rights Advocate, introduced by the law would fulfil all requirements, for he would have legislative authorisation to involve himself in procedures and represent individuals in enforcing their rights, while a special ombudsman would not be able to do that due to constitutional and legal reasons. In addition to the above, the Act provides routes of appeal which are key to the legal protection of individuals, for they know in advance where and what sort of a complaint they can submit and when they can expect a decision on the alleged violation of rights to be made. If the foreseen appeals bodies fail to make decisions according to the law, the

individual will still have the chance of sending a complaint to the Human Rights Ombudsman who, within her competences will be able to control the work of the Patients' Rights Advocate. ■

## MENTAL HEALTH ACT

The Ombudsman has several times expressed the opinion that the new law should above all regularise the unresolved issues of treatment without the patient's consent, thereby implementing on the Constitutional Court's decisions, which has remained unimplemented for several years, indicating the inappropriate attitude of the executive branch of power towards the rule of law. The proposed solutions of the Mental Health Act changed with each new draft in 2007. The Ombudsman felt that since the professional public and civil society presented different proposals which could not be unified, the Ministry of Health should have pressed for a compromise which would at least minimally meet the expectations of the various publics. ■

## HEALTH INSURANCE – WAITING PERIODS

The Ombudsman cautions of several similar complaints in which the complainants alleged that they were already scheduled for a surgical procedure which was then cancelled with the explanation that the Health Insurance Institute of Slovenia did not ensure the funds for the procedure. The Ombudsman inquired about the reasons the hospital had ordered procedures for more patients than the number of planned operations with approved payment, but we did not receive a reply. The Compulsory Health Insurance Rules provide that an insured person is entitled to be informed about the waiting period for a procedure they need or when this procedure will be performed when they first visit the institution performing the procedure.



### **Ombudsman's proposals and recommendations**

*The Ombudsman recommends consistent implementation of the Compulsory Health Insurance Rules and providing patients with information regarding actual waiting periods for the procedure.*

## EXAMPLES

### 10. Flu vaccination for all chronic patients?

One of the complainants claimed that injustices occurred to a specific category of chronic patients regarding flu vaccinations. He stated that all chronic patients between ages 18 and 65 are entitled to a free preventative flu vaccination, but not also patients outside this age range. Some chronic patients therefore suffered damages, but most of all, they were not treated equally.

The Ombudsman established that free preventative flu vaccinations of chronic patients aged between 18 and 65 is not a direct right provided by the compulsory health insurance; it is based on the programme for prevention of incidence of disease, adopted by the Health Insurance Institute of Slovenia based on the legislation. The Ombudsman inquired why the Institute did not include all chronic patients into the programme for preventing incidence of disease, due to professional reasons or was it merely a matter of ensuring sufficient funds. If the reasons were not professional, the Ombudsman's concerns regarding unequal treatment of all chronic patients, regardless of age, were justified. In their reply, the Institute explained that medical professionals would prefer to vaccinate all chronic patients without payment, but the limited funds did not permit it. The Ombudsman would support efforts to include chronic patients outside the age range.

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The Ombudsman dedicates special attention to protecting human rights in the area of social security and criticises the inadequacy of efforts to ensure all people the same opportunities and conditions for personal development and social security. We assess such conditions to be a violation of human rights. ■



#### **Ombudsman's proposals and recommendations**

*The State should provide conditions for preventing social problems through appropriate policies in the areas of taxes, employment and work, healthcare, education, family and housing policies, and other areas.*

*The Ombudsman recommends that all state institutions, the civil society and individuals dedicate greater attention and funds to preventative social activities.*

## Social welfare

### SOCIAL BENEFITS AND AID

The Ombudsman concludes that received complaints reveal growing hardship, illnesses, powerlessness, disappointment and often even despair. It is particularly worrisome that people are losing hope and trust and cannot see a way out of their current situation. The Ombudsman feels that with the growing social gap, the group of people who are poor and in need of aid is also growing. We are noticing a negative and discriminatory attitude towards people who do not have the knowledge or ability to take care of themselves. ■

We conclude the amount of financial social aid is not sufficient for survival, let alone decent living during a period of unemployment (only EUR 205.57 per adult in 2007). If the period of receiving aid is prolonged, the problems grow. This is especially valid for persons living alone, particularly elderly persons, persons with health problems and families with schoolchildren. ■

Another increasing problem are the growing non-profit apartment rents and higher operational costs. Some families are not entitled to subsidies because their income exceeds the threshold, but they are unable to cover all costs which is sometimes followed by eviction, and that only deepens the crisis. ■

Problems are also evident in enforcing the right to extraordinary financial social aid for here very few cases of aid are granted for a longer period of time, although legislation does provide such possibility. ■



#### **Ombudsman's proposals and recommendations**

*The Ombudsman demands formulation of more objective criteria for granting financial social aid, increasing the amounts and most of all reassessing the so-called threshold of poverty and the criteria for determining it.*

### SOCIAL WELFARE SERVICES

In this report, the Ombudsman stresses the significance of social welfare services, especially effective social first aid. Social welfare workers should know how to recognise distress and problems of a person, who wrought with fear and insecure comes seeking aid. They must explain to them the possibilities for resolving their problems and inform them of the procedures and obligations arising from their resolution. ■



### **Ombudsman's proposals and recommendations**

*Social welfare service providers should dedicate more attention to providing comprehensive and accessible information to all possible users. This demands professionalism, knowledge, courtesy and dedication.*

The Ombudsman cautions that expert workers of social welfare centres are overburdened with administrative work imposed by the State, not leaving enough time for thorough and effective work with their clients. ■



### **Ombudsman's proposals and recommendations**

*The Ombudsman recommends utmost rationality when assigning new administrative tasks to social welfare centres. We also recommend more effective connection and cooperation between state and government institutions to enable the provision of comprehensive, timely, inter-departmentally coordinated and professionally well-founded aid to everyone who needs it or requests it.*

The Ombudsman concludes that the service of home aid is developing in the right direction. From the aspect of protecting rights of individuals, it is necessary that everyone who wants to stay in their home environment is enabled to do so for as long as possible. ■

The Ombudsman cautions about the hardship of families who are taking care of their ill and weak relatives (mostly elderly persons, often immobile and suffering from dementia). Social welfare centres inform us that they are unable to provide home aid to everybody who needs it. They also inform us that it is impossible to observe the Rules on Standards and Norms of Social Services which provide that each service provider may aid only five persons in need of home aid. ■



### **Ombudsman's proposals and recommendations**

*The Ombudsman calls upon the competent state institutions and local communities to cooperate in ensuring conditions for the operation of a wide network of suitable and trained providers of home aid services and encourages the development of voluntary and charity organisations.*

*The Ombudsman emphasises that only cooperation between experts and the civil society can ensure effective home aid for persons wishing to stay at home. As many users as possible should be entitled to free aid, or the expenses should be distributed in a fair manner.*

*The Ombudsman recommends that social welfare centres make better use of the institute of caretaker in a special case provided by the Marriage and Family Relations Act.*

*The Ombudsman continuously calls upon the authorities to prepare a law on long-term care and insurance for long-term care.*

## **INSTITUTIONAL CARE**

Institutional care is one of the important forms of human rights protection in cases when a person is incapable of independent life due to age, illness or other circumstances and the family is unable to ensure stay, nutrition, protection, care and supply. The Ombudsman cautions about the necessity of strengthening the network of safe houses, maternity homes, admission points, crisis centres,

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counselling services, residential communities, centres for independent living for the disabled and handicapped, and other organisations. ■

We also caution about the problem of insufficient capacities for inclusion in occupational activity centres. A 35 percent rate of inclusion of persons with mental or physical disorders is foreseen by 2010. This rate has already been achieved in some regions. Are the remaining 65 percent appropriately taken care of? ■



#### **Ombudsman's proposals and recommendations**

*The Ombudsman cautions about the necessity of observing the provisions of Article 52 of the Constitution of the Republic of Slovenia, which provides that persons with physical or mental disorders are entitled to education and training for an active role in society.*

*The Ombudsman recommends creation of programmes which will help persons with physical or mental disorders stay in their home environments, not supported solely by their families.*

### PROTECTION OF ELDERLY HUMAN RIGHTS

In addition to regular treatment of complaints addressed to us by the elderly, and the standard practice of regular annual control of institutions performing social welfare services, the Ombudsman was also actively involved in cautioning society and demanding more appropriate programmes for solving problems which arise as a consequence of the ageing of the population. ■

The Ombudsman concludes that the elderly are often treated as a burden rather than beneficial to the community, as a risk to the system of social protection and as a factor which increases the costs of health care and social services. ■

Our discussions with the Slovenian Federation of Pensioners Organisations and the Association of Social Institutions of Slovenia revealed that the elderly wish to play an active role in the preparation of several projects and in the creation of strategies and legislation concerning them. ■



#### **Ombudsman's proposals and recommendations**

*The State and politicians must actively involve the elderly in decisions which concern them and their representatives and enable them cooperation and participation in the creation of a better future for all three generations, as well as provide possibilities for them to pursue education, be informed and actively decide on their situation and enforcement of their rights.*

### INSTITUTIONAL CARE FOR ADULTS

The fundamental problem of the service of institutional care remains its inaccessibility. The data show that the capacities are not nearly meeting the demand. According to some data, approximately 14,000 elderly persons are waiting to be accepted to elderly homes and the demand for these services will continue to grow rapidly according to demographic data. ■



### **Ombudsman's proposals and recommendations**

*The Ombudsman agrees with the idea of the elderly staying in their home environment for as long as possible (with the necessary aid for course). At the same time, the Ombudsman insists that the State ensure a sufficient number of beds in elderly homes. **Long waiting lists for elderly homes are unacceptable from the aspect of protection of human rights.***

Every year, the Ombudsman visits a few public institutions and elderly homes, as well as residents of other social welfare institutions. The Ombudsman concludes that the conditions in most of them are suitable, while some are in need of partial renovation, but still comply with standards. There is a problem with insufficient staff which is a consequence of the applicable but obviously inadequate quotas. The Ombudsman feels that deficient standards constitute a violation of the right to personal dignity and safety. ■



### **Ombudsman's proposals and recommendations**

*The Ombudsman recommends a reassessment of the applicable quotas for employees in adult care institutions and quotas for performing services in healthcare and social welfare institutions.*

*The Ombudsman demands that the residents of social welfare institutions be guaranteed appropriate standards of medical, nursing, orthopaedic and other aids necessary as elements of quality care and supply which must be guaranteed to the residents by the State.*

With respect to incontinence aids, we would like to caution about the problems of their removal. The decision of the Ministry of Environment and Spatial Planning, stating that appropriate removal of this waste must be ensured and can only be performed by a company with a concession, would result in uncontrollable costs for institutions. ■

The Ombudsman cautions of the problem of restricting movement to persons suffering from dementia who are in locked wards without their consent, with limited movement and personal freedom without a court order that would allow employees such a measure. The Ombudsman concludes that the allegation of the courts that cases of restricted movement in elderly homes do not constitute procedures for detaining persons in psychiatric health care institutions is untrue. In the International Classification of Diseases (ICD-10), dementia is classified under organic, including symptomatic, mental disorders. ■



### **Ombudsman's proposals and recommendations**

*The Ombudsman recommends adopting a systemic solution of the problem of limiting freedom to persons suffering from dementia in elderly homes and other social institutions in a manner that will not violate the right to freedom of movement and will not allow misuse, and will appropriately provide for the security of these persons.*

## **INSUFFICIENT AVAILABILITY OF NURSING HOSPITALS**

The availability of nursing hospitals and nursing wards in hospitals is another pressing issue. The Ombudsman concludes that the hospitals often avoid observing the Directive on ensuring health care and social care treatment in case of discharge from hospital and pressure the relatives with the discharge although the relatives are unable so care for the patient appropriately. ■

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### **Ombudsman's proposals and recommendations**

*The Ombudsman believes that the State should ensure adequate nursing wards in hospitals and strictly observe the Directive on ensuring health care and social care treatment in case of discharge from hospital.*

## NON-OBSERVANCE OF THE DECISIONS OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF SLOVENIA

The Ombudsman cautions again about the provision regarding personnel quotas in providing care for adults with mental health problems, mental health disorders and sensory and motor problems, defined in Article 7 of the Rules on Standards and Norms of Social Services, which are contrary to the Constitution of the Republic of Slovenia (Constitutional Court Decision U-I-192/05). The Ministry of Labour, Family and Social Affairs explained to the Ombudsman that it was endeavouring to prepare new Rules, but the complexity of the issue is prolonging their completion. ■



### **Ombudsman's proposals and recommendations**

*The Ombudsman cautions about failure to observe a decision of the Constitutional Court and assesses such actions as unacceptable.*

## POVERTY

The Ombudsman notes an increase of complaints in which the complainants state hardship and financial distress. The Ombudsman concludes that they are living in situations characteristic of poverty. It is especially worrisome that there is an increase in the number of working people who are poor despite employment, for their income is insufficient for a dignified life. Pensions are also problematic for they often do not ensure a dignified old age. In order to address the issue of poverty in a comprehensive manner, the Ombudsman decided to organise the Poverty and Human Rights discussion in May 2008. Conclusions of the discussion will be presented in the Ombudsman's Annual Report for 2008. ■

## VIOLENCE

The Ombudsman concludes that Slovenian society has not yet reached a consensus regarding the definition of violence and the means for preventing it. The Ombudsman welcomes the adoption of the Family Violence Act and concludes that the submitter of the Act also observed several of the Ombudsman's proposals, including the recommendation of advocacy for all victims of family violence, provision of safe residence in cases of violence upon divorce and other proposals. ■



### **Ombudsman's proposals and recommendations**

*The Ombudsman recommends that the competent ministries promptly prepare executive acts and protocols necessary for the implementation of the provisions of the Family Violence Act.*

## GAMBLING ACTIVITIES

Regarding gambling activities, the Ombudsman adopted conclusions and opinions and wrote that gambling cannot be regarded as a human right protected by the Constitution of the Republic of Slovenia and the Convention on Human Rights and Fundamental Freedoms. We also concluded

that the performed research confirmed that a certain share of persons gambling develop a mental illness called pathological gambling which is similar to addictions and has severe consequences for the mental, economic and social welfare of the player and their family. Gambling especially affects children for they are unable to understand its actual consequences. ■



#### **Ombudsman's proposals and recommendations**

*The Ombudsman cautions that the growth of the gambling industry in Slovenia in the absence of serious economic, environmental, sociologic, psychological and epidemiological studies is a hazardous behaviour which could threaten human rights (right to a healthy environment, to freedom and safety, to respect for private and family life, to participation of resident in the regulation of common issues, etc.). The growth of the gambling industry is also threatening the enforcement of specific children's rights.*

*The Ombudsman call upon state bodies to clearly and unambiguously express their opinions on the issue of gambling, thereby accepting responsibility for all expected consequences.*

### HOMELESSNESS

The Ombudsman cautions again about the growing problem of homelessness and inadequate interest of the State and Local Self-government for its prevention. ■



#### **Ombudsman's proposals and recommendations**

*The Ombudsman recommends coordinated action by the State, regions and municipalities for preventing and remedying homelessness and improving relief to people incapable of a different life.*

### PERSONAL PROBLEMS

The number of cases treated as personal problems increased by 100 percent in 2007. Most of them are not within the Ombudsman's competence, for example complaints from persons with mental problems or disorders which cause them to feel persecuted, followed, monitored, poisoned, etc. expected the Ombudsman to prevent persecution, call off monitoring, investigate who is poisoning them, etc. The Ombudsman has repeatedly cautioned of the urgency to adopt the Mental Health Act which will regulate all important issues concerning persons with such problems. ■

## EXAMPLES

### 11. *Negligence, carelessness or something else?*

At her own initiative, the Ombudsman started a treatment related to the report of the investigative journalism TV programme Preverjeno (POP TV). Watching the programme, we were shocked, as it presented complete ineffectiveness of the Social Services Centre in Murska Sobota. A man, obviously a person with special needs, lived in an utterly inappropriate space (basement) without any identity documents, health care and health insurance, financial support, etc. He survived only with the aid of friendly neighbours.

We demanded from the Social Services Centre to immediately visit this man and act in accordance with their competences. The Centre acted on our demand, arranging emergency financial aid and

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regular financial aid of a functional nature, a warm meal, laundry washing, a proposal to withdraw his legal capacity, an agreement with the mayor to renovate his nearly collapsed house, an agreement with RC regarding the basic furniture, etc. It is unforgivable that this has not happened before. The Centre must monitor the lives of people who are incapable of taking care of themselves appropriately. In this case, they had information about the man but almost forgot about him.

#### *12. Effective help for a single mother - pensioner*

The complainant is a pensioner in a divorce process and has an adolescent daughter still attending school. She receives a low pension; the income does not suffice for a dignified life for two people. She and her daughter were supposed to move but they were facing problems with being granted a non-profit rent apartment. Her extremely poor financial status was reflected in psychosomatic problems.

We performed an inquiry at the Lendava Social Services Centre and suggested they investigate the possibility of emergency financial social aid for a longer period of time and write a recommendation to the Housing Fund of the Pension and Disability Insurance Institute. The Social Services Centre accepted our opinion and suggestions. The woman signed a contract for the allocation of a non-profit rent apartment and the Social Security Centre granted her emergency financial social aid in the same month. She was informed about the possibility of enforcing the right to subsidised rent and with the means of enforcing the right to pension support. We are pleased that the life situation of the woman and her daughter, a student, has improved and that we have contributed to it.

#### *13. Material distress due to illness*

The complainant turned to the Ombudsman for assistance and advice on how to survive on EUR 369 of invalidity pension and EUR 5 of income support. She lives with her son, a last-year secondary school student receiving a state scholarship. She receives a modest maintenance for the son from her former husband. After 18 years of work as a nurse, she fell ill and became a 1st category disabled worker. The Social Services Centre informed us that they were well acquainted with the family situation of the complainant. She is a financially disadvantaged person but her modest income together with her son's income (maintenance and scholarship) exceeds the income threshold for entitlement to regular financial social aid according to the Social Assistance Act. Unfortunately the Ombudsman could not help the complainant in the way she expected. We advised the complainant where and which forms of social aid she could apply for. The Ombudsman advocates new assessment of the so-called poverty threshold as well as the criteria for determining it. Such measures for allocating social aid should be formed that would prove successful also for people whose income is on the granting threshold.

#### *14. Insufficient capacity of elderly homes*

We received a desperate letter from a daughter whose mother had been hospitalized for a month due to a fractured hip and failing function of her vital organs. She was completely incapable of independent life, her relatives were not able to care for her due to their working status and the gravity of her condition, and institutional care was not possible (overpopulated elderly homes). The hospital wanted to dismiss her into home care and the desperate relatives turned for help to the Ombudsman.

The Ombudsman does not have the authority to intervene in the placement of individuals into institutional care. By mediating, we would actually violate the rights of other people waiting and intervene in the waiting list that the institution is obligated to establish. We could however inform the complainant about the possibilities available to her which obviously nobody had informed her of. Among other things, we informed her of the patient's right to prolonged hospital treatment. We explained that a patient whose medical condition does not allow for an independent life even with ensured health care and social treatment at home cannot be dismissed from a hospital unless direct

transfer into institutional care is ensured. The complainant immediately contacted the competent services and started to enforce the rights guaranteed by regulations for such cases. In this case, the Ombudsman expresses criticism towards the competent institutions and persons, who could relive the burden for the relatives in such cases, offer them information about the possibilities available to them and help them exercise their rights.

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## 2.4. Employment relationships

AREA OF WORK	Cases handled 2006	Cases handled 2007	Index (07/06)
<b>4. EMPLOYMENT RELATIONSHIPS</b>	<b>184</b>	<b>220</b>	<b>119.6</b>
4.1 Employment relationship	73	86	117.8
4.2 Unemployment	47	30	63.8
4.3 Workers in state bodies	46	73	158.7
4.4 Scholarships	3	9	300.0
4.5 Other	16	22	137.5

The number of complaints treated in the area of employment relationships increased by almost 18 percent compared to the previous years. We are noticing that the work environment conditions for employees are not very friendly or encouraging. Job insecurity continues to grow. We receive many anonymous complaints in which complainants express fear that their employer would learn about them. ■

## PSYCHOLOGICAL VIOLENCE IN THE WORKPLACE

For several years, the Ombudsman has been receiving individual complaints regarding psychological violence in the workplace (mobbing). We believe the number is increasing. In our replies to the complainants, we often specifically cautioned about the unacceptability of such actions and explained that the Ombudsman legal competences are limited to treatment of cases concerning violations of human rights and fundamental freedoms, performed by state bodies, local self-government bodies and bearers of public authority. If the employer is a commercial enterprise, the Ombudsman has no competence therefore we cannot help the complainants directly in their relationships with their employer. ■

We informed the complainants about the changes to the Act Amending the Employment Relationship Act (November 2007), which provides prohibition of sexual and other harassment and mobbing in the work place which constitutes discrimination according the provisions of the Act. In our replies, we informed the complainants that if in a dispute the employee stated facts which justified the assumption that the employer's actions were contrary to the Employment Relationship Act, the burden of proof rested on the employer. In case of failing to ensure protection from sexual and other harassment or mobbing, the employer is liable for damages to the employee according to the general principles of civil law. We advised the complainants to turn to the competent unit of the Labour Inspectorate of the Republic of Slovenia and inform us if they felt the inspection had not been performed correctly. In such a case, we can assess if grounds for the Ombudsman's intervention with the Inspectorate exist. According to the procedure provided by the Employment Relationship Act, the employee is entitled to request extraordinary termination of employment contract. ■



### **Ombudsman's proposals and recommendations**

*The Ombudsman feels that the amendment of the Employment Relationship Act prohibiting all forms of sexual and other harassment and mobbing in the workplace is positive, for these acts now constitute discrimination according to the Act.*

*The Ombudsman recommends better cooperation between institutions responsible for preventing unacceptable actions in the work environment, more education and increasing the awareness of individuals and society, as well as consistency in sanctioning occurrences of mobbing in the workplace.*

## **WORK CONDITIONS AT THE INSPECTORATE**

The Ombudsman cautions of the unsuitable conditions for work of the labour inspectorates. We conclude that the Labour Inspectorate of the Republic of Slovenia is faced with several problems which are obstructing and sometimes even preventing the efficiency of their work. According to our data, there were a total of 82 inspectors employed in all three areas of work in May 2008 which is insufficient for the efficient control of 160,700 subjects. It does not ensure adequate legally security of employees and obstructs detection and prevention of many violations of workers' rights both in the public and the private sectors. We also cautioned of the inadequate financial conditions for their work. ■

The Ombudsman concludes that the Labour Inspectorate and the Ministry of Labour, Family and Social Affairs have different opinions on the same legislation and the competences of the Labour Inspectorate (in determining the existence of an employment relationship, unlawfulness of an employment contract, etc.). ■



### **Ombudsman's proposals and recommendations**

*The Ministry of Labour, Family and Social Affairs should consider the possibility of employing additional labour inspectors and ensure appropriate financial conditions for their work. They should unify their views on the competences in procedures of determining the existence of an employment relationship, unlawfulness of an employment contract, etc. with the Labour Inspectorate of the Republic of Slovenia.*

## **EMPLOYMENT OF JOURNALISTS**

An initiative by the Section of Independent Journalists at the Union of Slovene Journalists acquainted us with the difficult situation of seemingly independent journalists who are actually in employment relationships without concluded employment contracts and are working as independent journalists without the social security guaranteed by a full-time employment relationship. In our reply, we expressed our support for the efforts of the Union. Unfortunately, an increasing trend of concluding civil law contracts instead of employment contracts is noticeable in the entire private sector, not just in journalism. We advised the complainants that, following the enforcement of changes and amendments to the Employment Relationship Act, they should address the Labour Inspectorate of the Republic of Slovenia with specific cases, while the journalists themselves should obtain a decision on the existence of an employment relationship before the competent labour courts. ■

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## RIGHTS DURING PROFESSIONAL REHABILITATION

During the treatment of a complainant we were faced with the question whether an employee exercising their right to professional rehabilitation based on invalidity insurance is entitled to holiday allowance according to the regulations on employment relationships or to the right to annual allowance according to the regulations on pension and invalidity insurance. We asked the Ministry of Labour, Family and Social Affairs for their interpretation and they explained that during professional rehabilitation an employee remains in an employment relationship with their employer and is entitled to annual leave and to holiday allowance at the expense of the employer. ■

## EMPLOYEES OF STATE BODIES

In 2007, we treated 73 complaints by employees of state bodies which represents an almost 60 percent increase compared to 2006. ■

We received several requests for mediation in transfers of police officers to posts closer to their places of residence. Upon the Ombudsman's inquiry regarding the possibility of transfer, the Ministry of the Interior explained that due to personnel problems of individual police stations a transfer of employees was only possible based on open posts. We conclude that the conditions for work are not very favourable for the employees and are contrary to labour legislation regarding rights and the obligation to ensure rest. High costs of reimbursement of expenses for travel to work are contrary to the principle of efficient management. ■

We received several complaints from employees of child development units of community health care centres regarding the disputable provisions of the Collective Labour Agreement for Health Care and Social Welfare Services and Collective Labour Agreement for Nursing Care which provide that based on mental stress employees are granted additional annual leave for full-time work with persons with mental illnesses and mental disabilities in hospitals and other institutions, but not also in development units of community health care centres. We informed the complainants that the Ombudsman was unable to influence the content and the interpretation of the Collective Labour Agreement; it can only be changed or amended by the parties to the Agreement with an annex to the Collective Labour Agreement. We advised them to turn to the National Expert Council for Psychiatry for professional support. ■

We treated a complaint in which a complainant stated that the Police Act was discriminatory for persons who had exercised the right to conscientious objection were not able to conclude employment contracts for performing police tasks, while the Defence Act permits employment in the defence area under certain conditions. The Ministry of the Interior did not comply with our view that a citizen who had exercised his right to conscientious objection and had later waived this right should be able to enter employment with the Police. It was their opinion that the provision was so precisely formulated that it did not allow a broader or different interpretation. They did however state that they would consider the Ombudsman's recommendation in detail in the next process of drafting amendments to the Police Act. ■

The Army, Defence and Protection Trade Union reported on violations of the labour law and other problems of the employees of the Slovenian Armed Forces. In a meeting with the Ombudsman, they also alleged problems in relationships in military structures, violations of labour law rights, sexual harassment problems, mobbing and repeated violations of the right to dignity of two female members of the permanent forces of the Slovenian Armed Forces, discriminatory attitude towards specific female soldiers, problems related to routes for enforcing the rights of soldiers and problems which occur in the chain of command. The Trade Union had been cautioning about the problems for a long time but has detected no positive effect. The Ministry of Defence informed us in their reply to our inquiry that they would investigate the actual situation in specific units of the Slovenian Armed

Forces, verify the Trade Union's allegations and inform us about the any actions and activities the Ministry would implement to ensure equal opportunities in the Slovenian Armed Forces. ■  
At the end of 2007, the Ombudsman held a meeting with the Minister in which he informed him about the problems encountered in employing soldiers, and about the observance of zero tolerance to sexual and all other forms of violence, harassment, etc. In February 2008, we received a comprehensive report from the Ministry containing their actions and observance of zero tolerance to unwanted behaviour. We believe that the responsiveness of the responsible persons in the Slovenian Armed Forces in such situations has improved. ■

## UNEMPLOYMENT

In 2007, we detected a 40 percent decrease in the number of complaints addressed to us by unemployed persons. The Ombudsman is not convinced that the data on the registered unemployment rate actually include all unemployed persons seeking employment. We believe that keeping separate records of different categories of unemployed persons (employment seekers, unemployable persons, persons with low employability, persons acquiring an education) which are not summed up eventually obscure the actual picture and portray a more optimistic situation and a lower unemployment rate than is actually true. ■



### **Ombudsman's proposals and recommendations**

*The Ombudsman recommends keeping transparent and unambiguous records which will present the actual unemployment rate in Slovenia, for only accurate data can serve as grounds for preparing effective strategies and programmes for battling poverty and for ensuring employment related social security which is a fundamental right of any person fit for work.*

The Ombudsman received seven complaints from students and participants of adult education programmes regarding deletion from the records of unemployed persons. The Ombudsman concludes that even before the implementation of changes to the Employment and Insurance Against Unemployment Act, part time students were entitled to be entered in unemployment records although the statuses of student and unemployed persons were mutually exclusive. However, employment counsellors were obviously directed to keep part time students in the records and even offered advice and encouraged them regarding studies and promised financial aid with scholarship fees. Now, these students are left without both scholarship fees and unemployment status. Upon implementation of the acts amending the Employment and Insurance Against Unemployment Act, they were deleted from registers of unemployed persons. In the Ombudsman's opinion this was used to seemingly reduce the unemployment rate in the Republic of Slovenia. ■



### **Ombudsman's proposals and recommendations**

*The Ombudsman recommends implementation of systemic measures that are more just and will encourage those individuals who are seeking better employment opportunities through studies. The State should not force secondary and higher education students and participants of adult education programmes to improve their social situations by performing temporary and occasional work through student employment brokerage services.*

*The Ombudsman recommends changing the system which favours employment seekers sitting at home awaiting employment, while active seekers who are attempting to improve their possibilities by pursuing education (and are usually taking loans to do so) are punished through deletion from unemployment registers.*

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## SCHOLARSHIPS

The Ombudsman received a few complaints regarding scholarships. They contained criticism of the Rules on Awarding of Scholarships regarding the set income per family member limit which was too high according to the complainants. The complainants feel that it is particularly unreasonable to deny applications for state scholarships based on exceeding the limit by only a few tens of euros. The case of a young mother, a student who had to repay the scholarship in full and with interest due to graduation delayed by a few months is indicative of the administrative manner of decision making. ■

## EXAMPLES

### *15. Disagreement between the management and the employees of the University Medical Centre Ljubljana*

The Ombudsman received a complaint from doctors at one of the wards of the University Medical Centre in Ljubljana regarding unresolved issues with the management and the Business Director of the Surgical Service. The complaint alleged the unbearable and mainly organisational situation due to which doctors were leaving the Medical Centre to work in similar services at other institutions. The complainants requested several times to meet with the General Manager which never occurred despite different promises. Instead of correct cooperation and improvement of the situation, they received verbal abuse from the Business Director of the Surgical Service. They sent a complaint to the General Manager, but she failed to reply within ten months.

The General Manager replied to the Ombudsman stating she had acted on the complaint on the day she had received it. She found that the Business Director of the Surgical Services had indeed reported on the possibilities for rationalisation and that she might have lacked sensitivity in her communication with the employees. She stated that the reasons for the Business Director's reaction might have been in due to overburdening and that she was otherwise a diligent and competent worker performing her duties responsibly. The Management had paid a visit to the department and spoke to them about their views on the issues and tried to find constructive solutions with the trade union representative.

We were not satisfied with the reply from the Medical Centre. The injured doctors denied the Management's claim that they had been informed about actions being performed regarding the complaint and that the talks with the trade union representative had not been constructive. They informed us that the Management's visit to the department occurred only after the Ombudsman's intervention and in an incorrect manner, for they were informed of it only twenty minutes in advance which made it impossible for the senior members of the department to attend due to previous obligations. Furthermore, an explicit request for the postponement of the meeting by the department had had been rejected. We wrote another letter to the Management of the Medical Centre expressing our belief that there was no justification for incorrect communication of the Management with the employees, in which the borders of dignity had been crossed. We firmly rejected their opinion that such problems needed to be handled internally and insisted the Management send us their position on the situation and explain how they were planning to ensure it would not be repeated in the future.

The General Manager informed us that immediately after receiving our second letter she attended the morning briefings at the department. We received a copy of the minutes of the morning meeting, indicating that following a successful discussion, both parties agreed the matter had been resolved.

## 2.5. Administrative matters

AREA OF WORK	Cases handled 2006	Cases handled 2007	Index (07/06)
<b>5. ADMINISTRATIVE MATTERS</b>	<b>367</b>	<b>353</b>	<b>96.2</b>
5.1 Citizenship	34	28	82.4
5.2 Foreigners	36	38	105.6
5.3 Denationalisation	24	21	87.5
5.4 Property cases	20	29	145.0
5.5 Taxes	58	63	108.6
5.6 Customs	3	2	66.7
5.7 Administrative procedures	104	89	85.6
5.8 Public activities	67	63	94.0
5.9 Other	20	20	100.0

### CITIZENSHIP

Complainants from the republics of the former Socialist Federal Republic of Yugoslavia who were born and had resided in Slovenia but had departed after 1991 or 1992 asked for information regarding the possibilities and conditions for obtaining Slovenian citizenship. They often incorrectly assumed that by having been born and having resided in Slovenia they were entitled to obtain Slovenian citizenship under more favourable conditions. In these cases we informed the complainants of the requirements they needed to fulfil to obtain Slovenian citizenship and explained to them that the Human Rights Ombudsman of the Republic of Slovenia had no authority to waive requirements provided by the law for obtaining a specific right or for establishing legal relations. ■

Complainants addressed the Ombudsman regarding the excessively long procedures for obtaining Slovenian citizenship. Treatment of these cases revealed that in most cases the reasons for the excessive length of these procedures were primarily on their side, except in one case where the procedure was prolonged by the Ministry of the Interior which failed to make a decision on the application within the statutory time limit. ■



#### **Ombudsman's opinion**

*The Ombudsman believes that according to the principle of efficiency it would be sensible for the public official conducting the procedure of obtaining citizenship to review all evidence during the phase of verifying their adequacy and invite the client to amend the application with the remaining required documents, also taking account of the time frame in which the otherwise adequate documents (evidence of the actual situation) would no longer be adequate.*

### ALIENS

Complainants addressed the Ombudsman primarily due to denied applications for temporary residence permits for aliens, family members of Slovenian citizens and with regard to questions regarding the possibilities and requirements for obtaining entry visas and disagreement with the denial of issuance of the requested visas. ■

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In 2007, we monitored the adoption of the International Protection Act. The Act introduces a more restrictive asylum system with lower standards and a narrower scope of legal means available to asylum seekers, with free legal aid limited only to procedures before the Administrative or Supreme Court. The position of asylum seekers is further worsened by the changes brought on by the harmonisation and unification of the *acquis* of the European Union. We have published the Ombudsman's opinion on the protection of asylum seekers and on the protection of their rights on our website. ■

This report again includes events regarding resolution of the issue of erased persons. In October 2007, the Government of the Republic of Slovenia confirmed a draft of the Constitutional Act on Amending the Constitutional Act Implementing the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia, thus reviving the public debate regarding the solution of the issue of erased persons. The decision for resolving the issue of erased persons with a constitutional act indicates intent to avoid the 1999 and 2003 decisions of the Constitutional Court regarding erased persons. Additionally, the draft defines a number of additional requirements for returning to erased persons what was taken from them illegally, thus retroactively covering unconstitutional and illegal actions of state bodies immediately after Slovenia's declaration of independence. The draft of the constitutional act also excludes the right to compensation for material and immaterial damages which is contrary to Article 26 of the Constitution of the Republic of Slovenia, according to which every person is entitled to compensation for damages incurred by unlawful actions of state authorities. The Act provides treatment of erased persons which is completely different from what is applicable to all other persons in Slovenia, thereby placing them in an unequal position without justifiable cause. ■



#### **Ombudsman's opinion**

*The text of the Act as it was written by the Government of the Republic of Slovenia indicates that they are obviously not searching for a way to realise and implement the decision by the Constitutional Court of the Republic of Slovenia, but for a way not to. The proposed Act will not be something our country could be proud of. The established unconstitutionality and illegality should be promptly remedied in a way that would withstand review not only by the Constitutional Court but also by the European Court of Human Rights.*

#### **DENATIONALISATION**

Complainants addressed The Ombudsman because of excessively long denationalisation procedures and disagreement with the decisions of State and other bodies. They mainly expressed discontent with regard to the allocation of substitute land. Despite endeavours by the Government, Ministries and Administrative Units, measures adopted for the expedience of denationalisation procedures and plans of first-instance bodies to have no unresolved matters at the first instance as of 31 December 2007, it was established that a total of **1371 denationalisation procedures remain uncompleted.** ■



### **Ombudsman's conclusions and recommendations**

*The Ombudsman concludes that despite all measures adopted, the completion of denationalisation is not progressing according to plan. We believe that there is no justification for such excessive length of denationalisation.*

*The decisions made by the Government, specifically that appellant bodies should make substantive rulings and return cases to first-instance bodies only as an exception and make decisions on all appeals within the time limit of two months, should be enacted. However, they are not fully realised in practice.*

*The Ombudsman expresses doubt that a possible special act on the completion of the procedure of returning nationalised property would contribute to the completion of denationalisation. There is a risk that the responsible bodies would make decisions pressured by time (within the statutory time limit), thereby incurring new injustices.*

## **TAXES AND CUSTOMS DUTIES**

The number of complaints in 2007 increased by approximately 9 percent compared to 2006. We believe that the increase in the number of cases is an indication of the general situation in the society. Many complainants turned to the Ombudsman in the hope we would be able to help them resolve financial problems or achieve possible tax write-offs or at least phased payment of tax debt. ■

Complainants described severe social hardships of families and individuals due to incurred tax debts which were additionally increased with interest. Regarding this matter, the Ombudsman reviewed the question of possible application of the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act in the part regulating personal bankruptcy. ■

In 2007, we again encountered cases of serious violations and failure to meet statutory time limitations for formulating decisions on complaints. The number of these cases is high mainly due to the excessive length of appeals procedures regarding personal income tax. We also treated complaints based on individuals' disagreement with the scheduled personal income taxes. ■



### **Ombudsman's opinion**

*The Ombudsman cannot accept the explanation of the Tax Administration of the Republic of Slovenia that due to the large number of appeals against decisions on the assessment of personal income tax and lack of personnel it is impossible to observe the statutory time limitation for issuing a decision on the appeal. We have cautioned about this problem in our previous annual reports.*

*In our opinion, it is necessary to harmonise regulations providing that persons with disabilities be exempt from paying taxes for motor vehicles and regulations which provide exemption from payment of the annual road use charges. The intent of these exemptions is clear: to make the purchase of vehicles easier for disabled persons, thus alleviating their lives.*

## **PROPERTY LAW CASES**

Many complainants expressed complaints regarding performed geodetic measurements and land registration. Since these cases mainly regarded matters distant in time and already final,

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the Ombudsman was unable to help despite evident irregularities. We even received a complaint regarding a case more than 30 years old. ■

Many citizens complained about the actions of municipalities which avoided paying damages for interfering with privately owned real estate property explaining the lack of budgeted funds for such purpose. Last year, we also continued to receive complaints that some authorities, mostly municipalities had not replied to letters received. After our intervention, most of the complainants received replies. ■

Several complaints regarded hope that the Ombudsman would get actively involved in the process of finding a substantive solution for matters of arranging property law matters between neighbours. We carefully reviewed all received complaints. We asked state bodies and municipalities for explanations in cases where the actual situation was unclear. ■



#### **Ombudsman's opinion**

*With our interventions, legal advice and explanations we tried to help in reaching settlements and amicable resolutions of disputes in the matters of property law. The Ombudsman feels that many such disputes could be resolved through mediation, a voluntary extrajudicial procedure for resolving disputed matters. Therefore, we also inform the complainants of this option.*

### OTHER ADMINISTRATIVE MATTERS

Last year, the Human Rights Ombudsman of the Republic of Slovenia continued to receive complaints regarding the excessive length of procedures or inability to obtain the status of war veteran or status of victim of war violence. ■



#### **Ombudsman's proposal and recommendation**

*The Ombudsman cautions that procedures for the recognition of the status and rights according to the so-called war laws are too slow. State bodies need to increase their efforts to expedite and correctly conduct all procedures despite the complexity and the time remoteness of cases.*

We reviewed the issue of forced mobilisation of Slovenians to the German army. They were included into the Victims of War Violence Act after several years of effort. However, they are not entitled to monthly annuity and are endeavouring for the adopting of an amending act that would recognise their right. The act would also implement the decision of the Constitutional Court of the Republic of Slovenia concluding that the relevant Act is contrary to the Constitution of the Republic of Slovenia for it provides the status of victims of war violence only to civilians who were exposed to violent acts of the occupation forces and excludes those who were exposed to violent acts of the Partisan forces. ■



#### **Ombudsman's opinion**

*The Ombudsman concludes that the solution of the issue of Slovenians who were mobilised to the German army by force is a complex matter, the regularisation of which will require a broader, mainly political consensus. The Ombudsman cautions that the National Assembly of the Republic of Slovenia did not resolve the issue due to differences of opinion. Thus, another decision of the Constitutional Court of the Republic of Slovenia remains unimplemented.*

Complainants addressed the Ombudsman with the reasonable concern that the procedure for deciding the amount of damages to entitled persons according to the Redressing of Injustices Act will be prolonged indefinitely. There was again no progress whatsoever in the process of resolving the issue of restitution of material war damages in 2007. The Ombudsman concludes that the recommendations of the National Assembly of the Republic of Slovenia regarding the treatment of this issue, adopted during the review of the 11th Ombudsman's Annual Report for 2005 and 12th Ombudsman's Annual Report for 2006 have not been implemented yet because the Government of the Republic of Slovenia has not yet formulated an opinion regarding restitution of damages caused by the occupation forces during the Second World War. ■



#### **Ombudsman's opinion**

*The Ombudsman feels that it is irresponsible and unjust that the State does not provide an arrangement for restitution of material war damages suffered by deportees, persons suffering material damages and persons who were mobilised by force to the German army during the Second World War.*

### SOCIAL ACTIVITIES

The Human Right Ombudsman of the Republic of Slovenia reacted to the proposed amendment of the Organisation and Financing of Education Act. The proposed changes would cause the personal information of both victims of criminal offences against sexual integrity – children, adolescents and other participants in the court procedure – as well as convicted persons to be revealed, and would constitute interference with the rights to privacy and to protection of personal data. The Ombudsman submitted proposals for reviewing the correctness of the proposed changes to the Ministry of Education and Sport. ■

The Ombudsman also finds that schools often conclude temporary employment contracts for ten months, and suspended employment during the two months of summer vacations. This means that employees are not entitled to unemployment benefits for the two months not employed, and are entitled to shorter leave and lower holiday allowance. The two months of suspended employment (school holidays) influence their term of employment and pensionable service. ■

We also treated complaints regarding school rules in secondary schools, primarily the problem of locking school premises. The school house rules prohibit the leaving of school during breaks. Some schools hire private security which physically prevents the students from leaving. ■



#### **Ombudsman's opinion**

*The Ombudsman feels that restrictions on the leaving school premises should be regulated by the law equally for everyone, whereby the right to leave should not be prohibited in general, but only in specific cases and according to legally provided conditions.*

The Ombudsman treated the problem of the so-called initiation of first year secondary school students. One of the complainants claimed that the situation first year students were exposed to was humiliating, violent, inappropriate and indecent. Such treatment of adolescents constitutes a violation of their rights, especially the right to dignity. ■

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### **Ombudsman's opinion**

*The Ombudsman feels that school management should focus more on the issue of initiation of first year students in the future. They should consider the appropriateness of the event together with the students and ensure that the event is not problematic and that none of the participants or passers-by are injured in any way and that the possibility of torture, humiliating treatment and inappropriate punishment of students is prevented early enough.*

Complaints in the area of **higher education** contained problems of students due to the abolishment of dual degree study programmes performed in cooperation between two faculties. The problems were mainly caused by the reform of the higher education studies, which started after 2003. ■



### **Ombudsman's opinion**

*The Ombudsman feels that the Higher Education Act should provide equal rights to education and completion of studies to all students under the same conditions and not only to those advancing regularly.*

In 2007, the Ombudsman received several complaints regarding harassment, discriminatory and unbecoming conduct of an individual professor towards a student. After the Ombudsman's intervention the problems in relations between students and professors were handled with more diligence and responsibility, and according to assurances from faculty management, acceptable agreements were reached. ■



### **Ombudsman's opinion**

*It is our opinion that the management of certain faculties is not serious enough in handling complaints regarding alleged harassment of students.*

We treated complaints by employees of educational institutions. Among the complaints of employees of faculties, the problems of those endeavouring to obtain the title of Assistant Professor stood out. We concluded that these procedures were extremely prolonged, sometimes lasting several years, and that the result was also influenced by unclear provisions of the Criteria for Appointment to Titles of Teachers, Researchers and Associates in Higher Education. ■



### **Ombudsman's opinion**

*The Ombudsman feels that there is no effective legal means for the protection of an individual's rights when their candidacy for a title in a higher education institution is rejected, therefore we decided to lodge a request with the Constitutional Court for a review of the constitutionality and legality of regulations preventing such actions.*

The Ombudsman concludes that the number of complaints in the area of mobbing and harassment in the work place is increasing not only in education, but in the entire public sector, and we also received complaints from the private sector. ■

The Ombudsman received a complaint from a cultural and artistic society which was denied membership in the Association of Cultural Societies. The reason for the denial was the allegedly inadequately prepared programme of activities of the cultural society. ■



### **Ombudsman's opinion**

*The Ombudsman concludes that a problem exists in controlling the actions of associations as private persons according to civil law. Control over the establishment of associations and their internal acts is performed by the Ministry of the Interior, while financial operations of associations are within the competence of the Tax Administration. The Ombudsman recommends regularisation of control in such a way that members of associations will not only have long court paths available. This issue is especially problematic with associations established with the purpose of aiding the ill and the disabled.*

## EXAMPLES

### *16. Excessive duration of resolving appeals*

A complainant turned to the Human Rights Ombudsman of the Republic of Slovenia for help due to an excessively long denationalisation process. He lodged an appeal against a decision by the Ljubljana Administrative Unit. The Ministry of Environment and Spatial Planning and Ministry of Agriculture, Forestry and Food claimed that the appeal had not been turned over to them for competent consideration. The procedure revealed that the Ministry of Agriculture, Forestry and Food had made a decision on the appeal on 21 November 2006, which was erroneously sent to the Ministry of Environment and Spatial Planning along with other documentation.

The submitted documentation also revealed that the Administrative Unit had turned over the appeal, lodged against the denationalisation decision by the complainant on 14 March 2005 to the Ministry of Environment and Spatial Planning no sooner than on 25 May 2006. We requested explanations for the reasons that had caused the appeal to be turned over for competent consideration after a year. The Administrative Unit explained that at the time the procedure was conducted by an external contractor whose contract expired in December 2005 and who obviously overlooked the lodged appeal due to negligence. They ascribed this error to the fact that officers conducting denationalisation procedures at the time were treating an unproportionate number of denationalisation claims. To prevent errors, they gathered all denationalisation procedures treated by the Unit's branches until that time in a single location. The Administrative Unit wrote in their explanation that they regretted the error. The Ombudsman's intervention was successful for following our mediation, decisions on the appeals lodged were made and the circumstances for the delay in turning over the appeals for competent consideration were explained. The Ministry of Agriculture, Forestry and Food immediately corrected the error, changed the date on the already written decision from 21 November 2006 and served it to the beneficiary.

### *17. Vegetarian food for a child in kindergarten*

The mother of a three-year-old child asked for our aid in ensuring quality vegetarian meals in the kindergarten. She believed that the public kindergarten was obligated to respect the wishes and request of parents regarding the preparation of food. The Ombudsman feels that manners or types of nutrition are not a human right which could be validated through court channels but comprise an individual's right to free choice which must be observed by all others so that the individual is not forced into something they renounce. However, it is not the duty of kindergartens and schools to cater to individuals' special dietary preferences on the basis of their desires, beliefs and other similar personal circumstances. Their duty is limited to respecting the individual's decisions and his/her right to choose and the right to be different.

We informed the kindergarten of the Ombudsman's opinion that adapting nutrition – at least increasing the quantity of the vegetarian part of the meal – should not be problematic and that, in

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the spirit of good cooperation with all parents and observance of the individual's right to choose, they should be able to adapt the child's individual meals accordingly. The kindergarten responded to our recommendations. The kindergarten director informed us that food was prepared according to the guidelines of healthy nutrition in educational institutions and that they are able to provide meatless meals for children on a daily basis. However, they were not aware of the problem of the complainant for the parents did not contact them first. Thus, it would certainly be appropriate that parents were informed of the possibilities of adapting nutrition according to the dietary needs of the child when enrolling a child in kindergarten.

#### 18. *Passing the matura exam*

The Human Rights Ombudsman received a complaint from a specialist doctor who described the problems of an adolescent he was treating. The student had completed the written part of the matura exam in the spring examination period, but was unable to complete the oral part due to illness. The state National General Matura Commission decided that the young man must repeat the written part of the matura exam for the rules did not foresee and define such a case.

The President of the National General Matura Commission explained in his reply that the implementation of general matura offered mechanisms provided by the legislation and rules for an individual to successfully complete general matura in special circumstances and with justifiable reasons. However, the law did not provide partial performance of an exam in two different examination periods. Regardless, the President was of the opinion that the student had not exploited all possibilities. The President of the Commission agreed with the Ombudsman's proposal that it was time to reassess solutions for extraordinary cases and circumstances which befall adolescents through no fault of their own. It is perhaps hard to understand the distress of a person who fell ill at a time when this absolutely should not have happened. However, it is unusual that while an adult who falls ill is able to take sick leave and his work duties either wait for him or are assigned to other workers, a young person is unable to do this without expressively negative consequences.

## 2.6. Justice and police procedures

AREA OF WORK	Cases handled 2006	Cases handled 2007	Index (07/06)
<b>6. JUSTICE AND POLICE PROCEDURES</b>	<b>719</b>	<b>734</b>	<b>102.1</b>
6.1 Police procedures	112	116	103.6
6.2 Pre-trial procedures	38	24	63.2
6.3 Criminal procedures	54	69	127.8
6.4 Civil procedures	366	341	93.2
6.5 Labour and social court procedures	40	35	87.5
6.6 Misdemeanours	47	62	131.9
6.7 Administrative judicial procedure	10	11	110.0
6.8 Attorneyship and Notariat	18	19	105.6
6.9 Other	34	57	167.6

### Justice

#### COURT PROCEDURES

Like in any of the years since the establishment of the Human Rights Ombudsman of the Republic of Slovenia, the majority of complaints received were related to court procedures. Although the court statistics for the first half of 2007 indicated a decrease in the number of unresolved cases, the majority of complaints received were still related to the excessively long court procedures. ■

The Ombudsman's main criticism regards the prolonged decisions in many court procedures. The Republic of Slovenia has been called before the European Court of Human Rights more than 200 times (mostly due to the violation of the right to a trial within a reasonable time) while an additional 800 cases are still pending in Strasbourg. In 2007, the State Attorney's Office of the Republic of Slovenia paid EUR 1,383,685.56 in damages due to the violation of the right to a trial within a reasonable time. In 2008, an increase of more than 50 percent is expected, which means that damages could reach two million euros. ■

A prolonged procedure cannot be regarded as a victim-friendly action. Complainants caution that the value of immovable property decreases during prolonged procedures, property starts to deteriorate, or that complainants as heirs are prevented from disposing of financial assets in the descendants' accounts. ■



#### **Ombudsman's proposal and recommendation**

*The Ombudsman emphasises expeditiveness to be one of the key conditions for efficient judicial protection. A party in a procedure seeking protection of their rights before the court is not concerned with systemic obstacles (personnel and other problems of the courts) that cause prolonged court procedures. They reasonably expect the State and the Court to act in a manner so as not to violate important human rights, such as the right to judicial protection.*

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*The Ombudsman welcomes all activities of the court branch of power to decrease and remedy court arrears and ensure trials within a reasonable period of time. We also welcome the endeavours of the Ministry of Justice to implement additional measures, including the supplementation and amendment of legislation to improve court efficiency in accordance with the project of remedying court arrears.*

*Preparation and adoption of measures for remedying court arrears by the Ministry of Justice must always be based on the principles of constitutionality, legality and respect for human rights and fundamental freedoms. This is also true of the planned changes to the legislation in the area of criminal proceedings. Criminal law is one of the pillars of statehood. All interventions in the fundamental institutes of criminal law must therefore be carefully considered. Furthermore, a wide public debate must be ensured and a consensus achieved within the expert field for all key changes.*

*The State must enable normal work to the judiciary and ensure with appropriate mechanisms that the autonomy of judges does not result in their lack of responsibility.*

*The Ombudsman emphasises that based on the Constitution and the law, the defendant is granted several legal guarantees to ensure lawful and fair proceedings and to prevent the conviction of an innocent person. At the same time, the legal order must also guarantee effective protection to a victim of a criminal act, primarily through a prompt and fair judgement on the alleged criminal act.*

Complainants often expressed discontent with repeated rescission of trial court decisions by the appellate court. Such court procedures do not affirm the party's trust in the court's competent performance of work. Rescinded decisions of appellate courts often reveal that the first-instance procedure did not carefully consider all circumstances important to the decision, contributing to the excessive length of the procedure. ■



#### **Ombudsman's proposal and recommendation**

*Procedural rules should limit appeals to the court concerning rescinded decisions of trial courts and provide them with more possibilities for remedying irregularities or deficiencies found in the procedure before the trial court.*

The Ombudsman concludes that clients are increasingly aware of alternative methods of resolving disputes and are also increasingly seeking this possibility. ■



#### **Ombudsman's proposal and recommendation**

*The Ombudsman encourages increased use of amicable settlement of disputes, also in courts where this possibility is currently not available to clients, and proposes immediate regularisation of mediation procedures.*

In 2007, complainants continued to inform us about their dissatisfaction with the work of court experts. They highlighted examples of opinions by experts from the medical profession who too often perform their work mainly based on medical documentation without examining the complainants in person. The irregularities in the work of experts are confirmed by the number of procedures for giving a discharge handled by the Ministry of Justice, which discharged five experts in 2007, from

the fields of construction, forensics and motor vehicles. The experts usually fail to complete their work within the time limit, causing delays in the formulation of expert opinions. ■



#### **Ombudsman's proposal and recommendation**

*The Ombudsman insists that the responsible authorities provide appropriate conditions ensuring that the court experts perform their work with full professional and moral responsibility and within the defined time limit, without violating professional standards in preparing expert opinions and appraisals.*

The number of complaints regarding property execution procedures continued to grow in 2007. Most complainants sought the Ombudsman's help only when they had run out of all options for the use of legal means, often just before the notified eviction date, or in a financial crisis due to the burden of their debt. ■

The priority tasks of local courts include procedures of execution of maintenance; however, this does not guarantee prompt and effective collection of the financial obligations of the debtor. ■



#### **Ombudsman's proposal and recommendation**

*The possibilities of amending or supplementing the legislation need to be reviewed to improve promptness and especially the effectiveness of maintenance collection (the current mechanisms of maintenance execution are deficient) and to guarantee the right to compensation of unpaid maintenance in an amount comparable to the set amount of maintenance, and to enable actual recovery of the living costs to the beneficiary of maintenance.*

The Ombudsman received individual complaints regarding house searches ordered by the court where the grounds for the court's decisions were not sufficiently explained and were based (only) on the recommendation of the Police. ■



#### **Ombudsman's proposal and recommendation**

*The Ombudsman emphasises that it is reasonable to expect that in the case of a house search the court would give sufficient attention to the explanation of the order allowing such an action. The explanation of the order must be complete and, as any other interference with a constitutional right, is permissible only when all conditions, including those provided by the Constitution, have been met; it also has to be proportional to the goal pursued.*

One of the treated complaints revealed that the court did not possess the information that the complainant was in detention and therefore in state custody. Consequently, she was served the judgement of the Higher Court in Koper in November 2006, although the decision on her appeal was made on 7 July 2005. According to the court's report, the discussing judge "learned from a newspaper report that the Local Court was conducting a new criminal procedure against the convicted person /.../". The many expenses and especially time used for determining the complainant's address were unnecessary. ■

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### **Ombudsman's proposal and recommendation**

*We have submitted a recommendation to the Ministry of Justice for adopting measures for the establishment and use of a register of imprisoned persons for the purposes of the court, i.e. immediate access of the courts to the electronic register of imprisoned persons.*

## OFFENCES

Although the number of complaints in this area increased compared to 2006, their contents do not vary from those of previous years. Most complaints expressed disagreement with the decisions on offences issued by offence authorities, especially those regarding offences according to the Road Traffic Safety Act. Cases where complainants were sanctioned with revocation of the driver's licence stand out. ■

In treating these cases we found that the payment order issued by the Police only contained summaries of statements of the witness and the offender, and it did not contain a description of the offence nor the conclusions of the authorised officer. ■



### **Ombudsman's proposal and recommendation**

*The Ombudsman concludes that an offence authority's authorised person may issue a payment order only if, based on direct detection or on detection with the help of technical means and devices, the authority itself determines the offence and the offender. Statements from witnesses or complaints informing the Police of an offence are not sufficient in this case.*

Based on treated individual cases of persons who had committed offences, we found that an accumulation of compliance detentions have been taking place, i.e. serving of a new compliance detention immediately after completion of the previous one, in cases where a prison institution received two or more orders for the execution of a compliance detention for the same person. We also found an inconsistency in the practices of the courts in issuing requests for the execution of compliance detention which was contrary to regulations. ■



### **Ombudsman's proposal and recommendation**

*The Ombudsman agrees with the opinion of the Ministry of Justice that the ordering of compliance detention for persons who are unable to pay fines is irregular for it means that compliance detention loses its intended purpose by becoming a sanction.*

## OFFICE OF THE PROSECUTOR

Some of the initiatives treated by the Ombudsman regarded the work of the Office of the State Prosecutor, mainly because of plaintiffs' discontent with the dismissal of charges. Thus, we explained to the complainants that the decision on the criminal report is made by the responsible prosecutor who is obligated to carefully review claims of the report, circumstances, facts and evidence on which it is based. Several complaints regarded delays in the work of State Attorney Offices. ■

Based on a request from the Ombudsman, the Office of the State Prosecutor General confirmed that there were actual differences in interpretations of Article 200 of the Penal Code in cases concerning the actions of a parent who was entrusted with the care of a child with an executive court order.

These are cases where the perpetrator of a criminal act is a person who was entrusted with the care of a child and refuses to hand over the child during times set for personal contact to the other parent possessing the right to personal contact. ■



#### **Ombudsman's proposal and recommendation**

*The Ombudsman concludes that different interpretations of the legislation and the resulting differences in its implementation can reasonably cause individuals to distrust the rule of law awakening concern regarding discriminatory treatment of criminal offenders according to their gender. The Ombudsman also advised the Office of the State Prosecutor General about this issue and received a thankful replay for her caution.*

## ATTORNEYS

In 2007, we also received several complaints regarding the work of attorneys. Complainants claimed unprofessional work of attorneys, lack of attorneys' cooperation with the client, (un)transparency of the relationship of authorisation, failure to meet a time limit for filing legal means, unperformed services entrusted to them, failure to issue receipt of payment, unjustified service charges contrary to set lawyers' fees, lack of due care in the work of attorneys representing clients based on a decision on free legal aid. ■

Many complaints claimed slowness, lack of interest and inefficiency of the Slovenian Bar Association and its disciplinary bodies in treating clients' requests for the introduction of disciplinary procedures against lawyers. ■

Complainants often inform us of the inability to find an attorney to represent them in a court procedure, especially when they are dissatisfied with their current representation and try to authorise a different attorney to represent them. ■



#### **Ombudsman's proposal and recommendation**

*The Ombudsman cautions that an attorney is obligated to act diligently, fairly, with due care and according to the principles of attorney professional ethics when representing a client. Threats, insults and lies are inappropriate means of protecting the interests of the represented party and constitute a breach of the attorneys' principles of ethical conduct.*

*An injured person must be guaranteed an effective means of appeal for attorneys are liable for damages and have disciplinary and even criminal responsibility in performing their profession.*

*Throughout the years of the institution's work, the Ombudsman has been cautioning about the inefficiency of the Slovenian Bar Association's disciplinary bodies, highlighting that complaints against attorneys are treated only by the attorneys themselves. The Ombudsman insists that a different approach of the disciplinary bodies must be established to ensure prompt, efficient and objective decisions, or that their composition be changed in a manner that would protect public interest in accordance with the role of attorneys in a democratic state ruled by law, if the Bar Association and the attorneys are unable or unwilling to ensure that.*

At the beginning of 2008, the Ministry of Justice forwarded to us a draft of the Act Amending the Attorneys Act which provides that the Human Rights Ombudsman be included in the procedure of appointing members or representatives of disciplinary bodies. ■

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### **Ombudsman's proposal and recommendation**

*The Ombudsman cautions that its constitutional function is to protect the human rights and fundamental freedoms of individuals in their relationship to state bodies, local community bodies and bearers of public authority. This is a "sui generis" institution which does not belong to the executive, judicial nor legislative branch of power. The proposed solutions relating to the Ombudsman fall outside the scope of the constitutional framework of her work for it is impossible to expand her scope of work to bodies or individuals not included in Article 159 of the Constitution of the Republic of Slovenia.*

The relationship between an attorney and his client is in its nature unequal for the client who is unfamiliar with the law and in need of help is in an inferior and dependent position. Such a position allows the attorney to set conditions under which he is prepared to assume representation. Thus, the agreement of the amount of payment is not always subject to the will of the injured person as the person giving authorisation. ■



### **Ombudsman's proposal and recommendation**

*The Ombudsman proposes setting an upper limit to attorneys' fees for work performed.*

The Ombudsman often treats complaints regarding attorneys, appointed through official duty and at the expense of the State, who are not performing tasks entrusted to them with due diligence, which can sometimes constitute a violation of the defendant's right to defence. ■



### **Ombudsman's proposal and recommendation**

*The Ombudsman cautioned the complainants and recommended application of the Penal Code provision stating that the president of the court may, upon the defendant's request or with his approval, relieve a legal representative who is not performing his duty. The court must notify the Bar Association of relieving the legal representative. The Bar Association can adopt other measures against the relieved attorney according to its authorisations.*

## EXAMPLES

### *19. Will the division of an immobile asset take another eleven years?*

The complainant sought help with the Human Rights Ombudsman of the Republic of Slovenia because of a prolonged civil proceeding before the Local Court in Ljubljana. She claimed that, due to a procedure which had been going on for eleven years and had not (yet) resolved the dispute, her and her son's health were ruined. They had been exposed to obstructions and intimidation by the co-owners of the real estate asset subject of the prolonged procedure before the court.

The complainant filed a supervisory appeal which was denied by the vice president of the local court. He concluded that the case was handled "continuously and within objective personnel and spatial capabilities". He also addressed criticism regarding the excessive length of the court procedure to the complainant for not advancing payment for the expert she had herself proposed.

Upon reviewing the documentation we concluded that the procedure was indeed prolonged also due to the inactivity and late appeals of the parties. Such actions of the parties can prolong a procedure by several months even if the work of the court is performed with due diligence. However, this

procedure had been going on for eleven years. Thus, we understood the distress of the complainant and her anger due to the court's response to the supervisory appeal regarding the excessive length of the process stating that the "case was not a matter of priority". She was correct in her conclusion that her constitutional right to a trial without undue delay had been violated.

#### *20. Even a decision regarding extraordinary judicial review must be formulated within a reasonable time*

On 2 October 1999, the complainant filed a motion with the Local Court in Koper to reopen a procedure. After seven and a half years a decision on the motion had not been made. We performed an inquiry with the Local Court. The reply stated that the judge had made a decision on the motion on 22 June 2007, denying it on grounds of formality for the complainant had not submitted evidence of any grounds for reopening the procedure. The complainant did not explain the new facts learned nor did he submit the evidence he had been unable to present before the final decision in the procedure.

The court ruled on reopening the procedure only after the Ombudsman's intervention and almost eight years after the motion for extraordinary judicial review had been filed. The prolonged decision regarding extraordinary judicial review is all the more incomprehensible since not even the formal conditions for filing the motion had been met, according to the Court's decision. If the State provides a party in a specific case with the possibility of (extraordinary) judicial review, it must also ensure that the individual is guaranteed a decision on the means of appeal within a reasonable time.

#### *21. When an expert violates a set time limit by more than a year*

In 2003, the complainant filed an action for compensation with the Local Court in Celje. She highlighted that the excessive length of the procedure was partly due to the expert who took a year to formulate an opinion.

The court explained to us that the time limit set to the medical expert for the formulation of an opinion had been 30 days. In their reply to the Human Rights Ombudsman of the Republic of Slovenia, the court concluded that the expert had prolonged the case "for a year with the delay of his work". However, the court believed that they possessed no effective means of disciplinary action against court experts.

The Ombudsman disagreed with the court's opinion and explained our position to the complainant. The court is able to notify the Ministry of Justice regarding failure to meet a time limit, based on which the Ministry can initiate proceedings to relieve a court expert or appraiser from duty. The fact that court experts fail to meet time limitations is confirmed by the fact that the Ministry of Justice has relieved several experts of their duty due to their failure of meeting a time limit for producing an expert opinion.

#### *22. A complaint needs to be read carefully*

A complainant informed us of an agreement he signed with his attorney. In the agreement, the attorney admitted to committing an error in his representation of the client and undertook to perform certain activities for the client's benefit. Since the attorney did not fulfil his obligation, the complainant wrote a "complaint of a criminal act of an attorney" to the Slovenian Bar Association. We contacted the Bar Association who informed us that they had instructed the complainant on where and how to file a complaint of a criminal act of an attorney. They did not initiate a disciplinary procedure against the attorney based on the agreement concluded between the complainant and the attorney.

We concluded that the Bar Association did not read the complainant's complaint carefully. Thus, we submitted our opinion to the Bar Association that a concluded agreement between an attorney and his client does not provide grounds for not initiating a procedure to determine disciplinary

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responsibility of the attorney. On the contrary, action by the Bar Association is all the more necessary since the attorney's conduct could reveal an error in representation and incorrect further actions for remedying damaging consequences (also to property) which the complainant has suffered.

## Police

In 2007, we treated 116 complaints regarding police procedures and continued our visits to police stations. We sent a report on the situation established during each visit and recommendations for remedying deficiencies to the visited police station and to the Ministry of the Interior, which responded to our conclusions and recommendations. ■

The Human Rights Ombudsman regularly informs individuals, who believe that a police officer's actions or omissions violated their rights or freedoms, of the possibility of submitting a complaint to the Ministry of the Interior or to the Police according to Article 28 of the Police Act within 30 days of noticing a violation. Only if this possibility for appeal does not meet the complainant's expectations is a complaint addressed to the Ombudsman possible. However, the Ombudsman can only monitor and not replace the possibilities for appeal provided within the system. Nevertheless, in 2007 we continued to review all complaints which regarded incorrect actions by the Police and which in our opinion demanded our attention due to specific circumstances. ■

Most complaints again regarded police procedures in performing road traffic tasks and exercising police powers; some complainants alleged unlawful or unjustified use of measures of constraint, while the number of complaints regarding omissions of actions the Police are obligated to perform also increased. ■

Police officers must often make quick decisions and even decisions without full knowledge of the actual situation. This can complicate the decision regarding which powers are appropriate to use. Inexperience, hasty decisions in the use of police powers and incorrect choice of measures can quickly cause a breach of the principle of proportionality or excessive use of police powers. Therefore, efficient control of the Police and implementation of its powers are necessary. ■



### **Ombudsman's proposal and recommendation**

*The Ombudsman cautions that protection of human rights and fundamental freedoms requires an effective police, but also observance of proportionality as one of the fundamental principles of the law and of protection of human rights. Limitations of human rights are permissible only within the scope necessary for achieving the purpose based on which the right is being limited.*

The aim of the internal appeal process is to make decisions regarding the complainant's allegations. The decisions must be based on correctly and fully established facts resulting from a specific procedure performed by a police officer or officers. Based on an analysis of the cases, the Ombudsman concludes that some decisions by the Police's appellate bodies and the Ministry of the Interior do not enjoy the Ombudsman's complete trust. ■



### **Ombudsman's proposal and recommendation**

*The Ombudsman cautions that an appellant is not required to prove justification of his or her claims. The Rules on Resolving of Appeals contain normative provisions for several possible measures for determining the facts of the situation based on a decision regarding which the appeal is made. The burden of proof and all necessary measures to explain the contents of the appeal rest on the Police or the Ministry of the Interior, i.e. on the State.*

*The Ombudsman recommends that all appeal procedures be handled with a higher degree of diligence, correctness and comprehensive treatment of each case of appeal, especially in cases involving conflicting statements by the appellant, witness and police officers.*

*The Ombudsman emphasises the importance and the responsibility of the work of appellate panels who need to make fair and trustworthy decisions regarding the justification of an appeal, for the appeals procedure does not provide a legal means against a decision on the submitted appeal.*

The appeals procedure defined in the Police Act is concluded with the appellate panel's decision on the justification of the appeal. The appellate panel's decision on the appeal is final. If the appellate panel concludes that an appeal is justified this unmistakably means that the actions of the police officer, subject of the appeal were incorrect or illegal. ■



### **Ombudsman's proposal and recommendation**

*The Ombudsman recommends that in case the Police or the Ministry of the Interior find an appeal to be justified, they should include the measures implemented in their notice to the appellant, e.g. initiating a disciplinary procedure, pressing charges, additional qualification and training. The conclusions from handled appeals can serve as excellent guidelines for improving police work and determining and remedying causes of complaints.*

The Ombudsman found the actions of a police officer incorrect in a case where the officer explained to a detained person that they were entitled only to urgent medical aid during detention and asked them about the cause of the problem. Since the detainee refused to answer and no longer requested help the Police concluded the need for (urgent) medical aid did not exist. ■



### **Ombudsman's proposal and recommendation**

*The Ombudsman emphasises that a detained person is entitled to medical aid (not only urgent) and the Police are obligated to ensure it to the detainee. Any request for a doctor must therefore be forwarded to medical personnel and only they can assess the urgency and scope of the medical intervention, for police officers lack the appropriate qualification. The Ministry of the Interior ensured us that the General Police Directorate would caution all police officers regarding implementation of these provisions to make sure similar cases are not repeated.*

Based on a complaint from the Roma family Strojan regarding the Police restricting their movement, we visited the Police Directorate in Postojna in January 2007. We were acquainted with individual entries in the event log of the Operation and Communication Centre of the Police Directorate related to the time when the Strojan family was residing in Postojna. We were surprised with the contents of the log, especially a detail which enabled us to conclude that individual members of the Roma family had been under surveillance for several days and that their movement had been restricted. Some of the entries could be interpreted as using special methods and resources (covert surveillance and

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registering). The Police explained that no covert actions, methods, resources or any other security and preventative or investigative police powers or actions had been used.

We suggested to the Office of the State Prosecutor General a review of the documentation of the Police Directorate in Postojna and requested their assessment of the actions of the Police, and of the possibility that a criminal act might have been committed. The State Prosecutor's Office informed us that they found no grounds to suspect that the Police had been performing covert measures or violating human rights in any other way. We agreed with the State Prosecutor's opinion that the grounds for suspicion of a criminal act did not exist. However, we did not agree with their opinion that the Police had not violated human rights. We believe that the Police did not have any legal grounds for the activities performed in this case, specifically performing organised, focused and long-term surveillance, following, monitoring and registering individual members of the Strojan family. ■



#### **Ombudsman's proposal and recommendation**

*The Human Rights Ombudsman supports the use of police powers to ensure effective execution of tasks entrusted to the Police in a democratic state ruled by law. However, any limitations of human rights are permissible only in the scope and according to conditions provided by the legislation. Police actions must be in accordance with constitutionally guaranteed human rights and freedoms for the use of police power could turn into serious and systematic violation of human rights and fundamental freedoms. Special methods and resources or any other specific covert investigative methods and restrictions of movement can only be used according to conditions provided by the law.*

After the removal of a part of the Strojan family from the temporary location in 2007, the public media focused on police actions again. The Human Rights Ombudsman received a courtesy copy of charges filed by the representative of injured members of the Strojan family against unidentified police officers for the criminal act of violation of equality. The Ministry of the Interior confirmed that police officers had actually prevented some of the Strojan family members access to the area of the Roma camps based on an assessment by the Police that their presence in the area could worsen the security situation and endanger the family members' lives and assets as well as the lives and assets of others. Several times, the Police also prevented access to the area to groups of local residents who were conducting unannounced protests, expressing intent to disturb public order and peace and endanger others' safety and assets and provoking fights.

Control points and control locations in the area of selectively restricted access, the presence of a larger number of police officers at these points, the halting of persons and verification of their identity according to the criteria of "non-daily presence" in the area and the manner of verifying their identities indicate that the Police had restricted freedom of movement in the area of the Roma camp in Dečja vas near Ambrus even when not exercising powers according Article 39 of the Police Act, thus exercising powers without legal grounds. However, the Ombudsman did not find these police measures to be in any way discriminatory or that the Police were violating the principle of equal treatment. ■



#### **Ombudsman's proposal and recommendation**

*The Ombudsman cautions that the Police are allowed to verify the identity of persons only on grounds exhaustively provided by Article 35 of the Police Act, which means that statutory grounds for verifying identity must be present. Verification of identity contrary to these grounds or with other intent would constitute an illegal action by the Police.*

In 2007, we received only a few complaints regarding the use of measures by private security personnel. However, this does not mean that such unlawful interference with human rights and fundamental freedoms did not occur. This is a problematic activity, regulated and controlled by the State with its bodies. Security personnel performing tasks of private security are allowed to use force. Any use of restrictive measures, including physical force, constitutes an interference with constitutionally guaranteed human rights. ■



#### **Ombudsman's proposal and recommendation**

*The Ombudsman recommends the precise articulation and unambiguity of legal provisions regulating the areas of private security and work of security personnel.*

*The Ombudsman cautions of the necessity of proper qualification of security personnel for their tasks.*

*The State must ensure more efficient control of the private security industry because security personnel are authorised to use force. Such control must include the legality, regularity and professionalism of activities performed by private security services with special emphasis on measures used to interfere with the physical and mental integrity of individuals or used to limit their movement or even freedom.*

*The Ombudsman cautions that the Police's passive responses and omission of action against security guards acting outside of the law does not create trust with persons injured and with the public that the State is ensuring observance of human rights and fundamental freedoms.*

*Inspection control of the activity of private security is performed by an inspectorate within the Ministry of the Interior. To ensure efficiency of its work the inspectorate should be guaranteed appropriate conditions for work, including an adequate number of inspectors performing inspection control.*

Deficiencies in performing control over the execution of tasks of private security, especially the different interpretations of the law regarding the possibility of temporary licence revocation resurfaced (again) following a tragedy in front of one of the bars in Ljubljana. Following this event, the Government of the Republic of Slovenia established that the legal regularisation of private security was deficient, unsuitable and in need of immediate corrections and amendments of the law. Based on this, the Government proposed adoption of the Act Amending the Private Security Act, which was adopted in the session of the National Assembly of the Republic of Slovenia on 29 October 2007. In the interest of increased security of people, the new act provides stricter and more defined requirements for obtaining a licence for performing the activity of private security, defines the conditions for revoking a licence in more detail, authorises the inspection body to temporarily prevent access to premises where an event without the appropriate security is taking place and introduces the liability of the client of security services. The Act explicitly provides that the Ministry of the Interior can temporarily revoke the licence if its owner has violated certain provisions of the Act and security standards once or several times in the last year and if the procedures had not yet reached a final decision. ■

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### **Ombudsman's proposal and recommendation**

*The Ombudsman emphasises that changes and amendments of the Personal Security Act alone will not guarantee the remedying irregularities, the Act must also be consistently implemented. The Ombudsman will continue to follow particularly the implementation of the State's control in this area to ensure there is not a discrepancy between the norm and the actual situation in practice.*

## EXAMPLES

### *23. Police confiscated a motor vehicle without authorisation*

The Ombudsman treated a case where the Police confiscated a personal vehicle owned by the complainant on the grounds (as explained by the Ministry of the Interior) that the complainant was a multiple offender of road traffic regulations due to driving without a valid driver's licence and the confiscation of the vehicle was a necessary action to ensure observance of the legally binding norms. According to the Minor Offences Act, objects can be confiscated in legally defined cases before the court issues judgement. This provision of the Act can also be interpreted as that authorised persons of offence bodies may only confiscate objects if such (special) authorisation is contained in the provision which defines the offence. The Act itself does not provide any such authorisation for the Police. Such an interpretation was also confirmed by the Ministry of the Interior which commented that the confiscation of an object is a procedural measure which does not constitute a sanction or any other repressive measure. They emphasised that it was not possible to agree with the opinion of the Police that in this specific case, namely that the measure of confiscating the vehicle was necessary due to repeated serious offences and that other measures were unsuccessful in achieving observance of legally binding norms.

The Ministry of Transport agrees with the opinion of the Ministry of Justice that the legislation should include an additional sanction of confiscation of objects in cases of repeated or continued offences. Since the Road Traffic Safety Act does not provide such a measure, confiscation can be executed only based on an order by the judge conducting the offence procedure.

The Ministry of Transport which is responsible for road traffic prepared a draft of changes and amendments to the Road Traffic Safety Act introducing the possibility of seizure of a motor vehicle used by the offender when committing a major offence and that the seizure can be performed by a police officer if the prescribed conditions are met. This amendment of the Act will provide the Police with authorisation to confiscate objects. Therefore, conditions for police confiscation of the vehicle were not met in the treated case for only a judge conducting the offence procedure could issue such an order. The Ministry of the Interior has already notified (its) offence bodies of the Ombudsman's conclusions and cautioned of the regularity of carrying out procedures and the obligation of obtaining an order prior to the confiscation of vehicles or other objects, when the direct authorisation for confiscation of objects is not provided for by the material regulation.

## 2.7. Environment and spatial planning

AREA OF WORK	Cases handled 2006	Cases handled 2007	Index (07/06)
<b>7. ENVIRONMENT AND SPATIAL PLANNING</b>	<b>102</b>	<b>123</b>	<b>120.6</b>
7.1 Environmental encroachments	48	44	91.7
7.2 Spatial planning	37	36	97.3
7.3 Other	17	43	252.9

The number of complaints treated in the area of environment and spatial planning in 2007 increased by almost 11 percent compared to the previous year. We believe that this result stems from an increased awareness of the public in this area. We received letters from several groups of citizens organised in civil initiatives who informed us of problems in their local environments. The complainants addressed us about the smell caused by a business activity and by incineration of waste, air pollution, and also excessive and disturbing noise from various sources: shooting ranges, catering establishments, church bells and loud disturbances by neighbours. ■

In 2007, we again received several comments and complaints by individuals disagreeing with spatial acts and the adopted or proposed spatial plans. ■



### **Ombudsman's recommendation**

*The Ombudsman recommends that the adopting of spatial plan documents at all levels should involve the interested public to a greater degree. Just as the Ombudsman cautions of the necessity of participation of the public in the adoption of laws and other regulations at the state level, special attention needs to be directed towards transparency and openness to accepting opinions, initiatives and proposals from individuals and the civil society regarding municipal acts in the process of being adopted.*

### **SMELL**

Through the treatment of these complaints, we concluded that the legislation was deficient. The Rules on initial measurements and operational monitoring of the emission of substances into the atmosphere from stationary pollution sources and on the conditions for their implementation provides only the procedure of determining emissions from intensive plants for granivore breeding. The rules provide no emission measurements for other breeding plants and farms which cause many problems in practice, of which we were often informed by complainants. ■



### **Ombudsman's recommendation**

*The Ombudsman recommends adopting regulations providing the obligation of omissions measurement for smaller granivore breeding facilities.*

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## DECISIONS ON ACTIVITIES AFFECTING THE ENVIRONMENT

The complaints received indicate that the public, organised in various forms of civil initiatives, and individuals are very aware of their right to live in a healthy living environment. According to the Aarhus Convention, non-governmental organisations supporting environmental protection have sufficient interest to be included in procedures of deciding on activities affecting the environment as accessory participants. ■

The Ombudsman concludes that the Environmental Protection Act provides strict conditions which need to be fulfilled in order for an organisation to obtain the status of a non-governmental environmental organisation, based on which it can participate in procedures of deciding on activities affecting the environment. This is confirmed by the example of BirdLife Slovenia which submitted an application for the recognition of the status of an accessory participant in the procedure of issuing environmental consent for the wind power plant Volovja reber in 2004. It took three years for the organisation to receive the status of a party in the procedure. The Environmental Agency of the Republic of Slovenia rejected the organisation's right to participate in the procedure by way of decision. ■

### RIGHT TO OBTAIN ENVIRONMENTAL DATA

Individuals, environmental associations and non-governmental organisations are faced with problems every time they try to obtain environmental data not possessed by the Environmental Agency of the Republic of Slovenia, with a private enterprise refusing to reveal or provide such data. The Commissioner for Access to Public Information possesses no powers over the private sector and no legal grounds to intervene in these cases. At the consultation organised by the Ombudsman, Environment and Human Rights, a proposal was formed that the Commissioner for Access to Public Information also be granted powers in the area of obtaining environmental data from the private sector. ■

In order to explain the circumstances, the private company Lafarge Cement from Trbovlje invited the Ombudsman to inspect the entire production line, as well as implementation of measurements, measurement results and data processing. The company proposed that the Ombudsman appoint a responsible person who will have access to the plant's control room at any time. This would entail the Ombudsman appointing an expert authorised to review measurements at any time. The Ombudsman is currently considering this offer. ■

### IMPLEMENTATION AND CONTROL OF THE QUALITY OF CONTINUOUS ATMOSPHERIC MEASUREMENTS (MONITORING)

The implementation of monitoring – following and monitoring the environment with systematic measurements or other methods – and related procedures are provided by the Environmental Protection Act. It is performed by an authorised person. The regulations provide in detail the conditions for obtaining an authorisation which among other things includes the appropriate accreditation. Based on our treatment of the complaints received, we are able to conclude that these regulations are deficient. According to the Environmental Agency of the Republic of Slovenia no one from Slovenia or abroad has submitted an application for obtaining an authorisation for the performance of continuous measurements and no person is accredited for the area. Thus, the organisations obligated to perform continuous measurement are faced with the problem of finding an authorised person. The Ombudsman submitted an opinion to the Environmental Agency and to the Ministry of the Environment and Spatial Planning (for the first time in 2005), specifically regarding the aspect of exercising the right to a healthy and clean living environment. The Ministry formulated a position on the Ombudsman's comments and recommendations; however it disagreed with most of them. ■



#### **Ombudsman's recommendation**

*The Ombudsman recommends making necessary amendments to the legislation and improving regulations on obtaining an authorisation to perform continuous measurements. This will require the acquisition of calibrated equipment and their installation at the measurement source according to regulations. The measurement results must be appropriately registered, in accordance with the relevant protocols and requirements.*

### INSPECTION PROCEDURES

Complainants addressed the Ombudsman regarding the National Environment and Spatial Planning Inspectorate's failure to reply. They expressed discontent with their omissions of action and complained about their work. The Ombudsman concludes that the communication and the coordination between the National Inspectorate and the Environmental Agency of the Republic of Slovenia are deficient. ■

We also received a few complaints regarding the excessive length of inspection procedures. The inspectorate reconsidered the case submitted to us by the complainants and agreed with our opinion, and issued a decision to the investor to immediately stop construction work and remove the structure within 60 days. The subject of the inspection removed the structure. The Ombudsman's intervention was successful. ■

Based on the treatment of complaints, we concluded that the National Environment and Spatial Planning Inspectorate had personnel issues due to an inadequate number of employees. They claimed the number of complaints of illegality and irregularity was too high for them to be able to respond to them all. They were faced with problems due to unenforced inspection decisions and failure to meet process time limitations. ■



#### **Ombudsman's recommendation**

*The Minister of the Environment and Spatial Planning should provide the National Environment and Spatial Planning Inspectorate with better conditions, including personnel for performing the inspection tasks and improvement of the current situation.*

Based on the treatment of complaints in the area of the work of inspections, we encountered problems regarding the work of construction inspectors who were obligated to promptly submit to the court the decisions based on which an inspection action was decided. The court has a statutory duty to enter into the land register a notation of the orders and interdictions contained in a decision and the established burdens. This is not performed in cases where the person under obligation according to the inspection decision is not the same as the owner according to the land register. According to the explanations from the National Environment and Spatial Planning Inspectorate, the court refuses to enter a notation in such cases. The legal provisions of Article 159 of the Construction Act are not effective in such cases and allow abuse, such as the sale of illegally constructed or noncompliant buildings. ■



#### **Ombudsman's recommendation**

*The Ombudsman recommends providing regularisation that would enable implementation in practice of the provisions of Article 159 of the Construction Act, providing the implementation of interdictions and orders of the inspection decision.*

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## EXAMPLES

### *24. Uncoordinated work of inspection authorities*

A complainant addressed the Human Rights Ombudsman of the Republic of Slovenia regarding the noise caused by the shooting of clay pigeons at a shooting grounds near his home which is managed by a shooting association. The police explained they had no authority in the matter. Based on a complaint submitted by the complainant, the environmental inspector explained that environmental noise emission measurements were performed on the shooting association's activities and that they did not indicate values higher than those provided by statutory norms. The association is obligated to obtain an environmental protection permit by 31 December 2009. The permit will contain statutory conditions for operation and activity of the source of the noise. In order to clarify the situation in this case, we addressed an inquiry to the Ministry of the Interior. They informed us that the shooting association had not submitted an application to the Ministry for issuing a permit to perform activities according to the Firearms Act. Based on this explanation, we recommended to the Internal Affairs Inspectorate of the Republic of Slovenia that it investigate the matter according to their powers. Following an inspection control performed of the activities of the shooting association, the Inspectorate informed us that the suspicion of the shooting association's performing the activities of a public shooting grounds had not been confirmed. Furthermore, it was established that the shooting was performed only within the scope of the shooting association and the competition systems of the Shooting Union of Slovenia and that the Rules of the shooting association were sufficient for the performance of this activity.

Regarding the legality of the construction of the grounds for shooting clay pigeons, we received a reply from the National Environment and Spatial Planning Inspectorate stating that the building inspector had issued a decision on illegal construction according to the Construction Act to the investor, the shooting association, in 2007.

The Ombudsman's intervention was successful for it was obvious that based on it, the responsible bodies had investigated the matter within the scope of their powers and acted accordingly. On the one hand, it is understandable that each inspectorate has their own responsibilities, but on the other, it is difficult to comprehend that there are still cases where it is possible to perform an activity in a facility without a building permit.

### *25. Fourteen years to make a decision on an appeal*

A complainant turned to the Human Rights Ombudsman of the Republic of Slovenia regarding farm land allegedly taken away and replaced by substitute land in a land reparcellation and amelioration procedure without justification. She informed us of the decision by the Ministry Agriculture, Forestry and Food of the Republic of Slovenia, dated 23 May 2007, based on which her appeal lodged against the decision made by the Domžale Municipality was denied. The decision by the Ministry Agriculture, Forestry and Food of the Republic of Slovenia also denied the proposal for issuing an interim decision.

We sent an inquiry to the Ministry requesting they introduce the chronological order of the appeals process, from the day the appeal had been lodged, 9 April 1993, and to the day of issuing the decision, 23 May 2007.

The Ministry explained that due to constant personnel problems in the area of land reparcellation, several persons had handled the appeal, each of them leaving the Ministry before the final decision on the appeal. In 2007, a new employee took charge of the matter. The Ministry additionally

explained that the “previous procedures were aimed at resolving the matter by granting the appeal, which in itself was not problematic.”

Clearly, the Ombudsman cannot agree with such an explanation.

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## 2.8. Commercial public services

AREA OF WORK	Cases handled 2006	Cases handled 2007	Index (07/06)
<b>8. COMMERCIAL PUBLIC SERVICES</b>	<b>69</b>	<b>107</b>	<b>155.1</b>
8.1 Minicipal services	19	30	157.9
8.2 Communications	16	32	200.0
8.3 Power	9	9	100.0
8.4 Transport	22	28	127.3
8.5 Concessions	0	0	–
8.6 Other	3	8	–

In 2007, we treated 55,1 percent more complaints in the area of commercial public services than in 2006. ■

## COMMUNICATION

The majority of complainants addressed the Ombudsman regarding the payment of subscription charges for the public radio and television service. They accused Radio Television Slovenia (RTVS) of charging unjustified service charges, charging persons living abroad and difficulty in establishing the payment of debt incurred by unpaid subscription charges for the services of RTVS. A few individuals requested the Ombudsman's intervention due to the Ministry of Culture's failure to make decisions on appeals regarding RTVS service charges within the statutory time limitation. The Ministry of Culture responded to the Ombudsman's inquiries only after interventions from the Government and the Ministry of Public Administration. They justified the excessive length of resolving appeals with legislative changes made in 1999 and personnel problems. ■

Several complainants' inquiries regarded alleged wiretapping. We assumed that the cause of these complaints was due to the infamous case of SOVA (Slovene Intelligence and Security Agency) which received a lot of media attention. The communication service providers responded to our inquiry, saying that individuals rarely contacted their services and that the suspicions of wiretapping were mainly due to technical errors. We also received a few complaints regarding investments in the public telecommunication network, problems with the delivery of posted packages and disputable high charges for telephone conversations. ■

## PUBLIC UTILITY SECTOR

In the area of the public utility sector, we would like to highlight cemetery and funeral services. We treated problems of family members regarding family graves and complaints regarding disputable relations between renters and owners of graves. We concluded that the legislation in this area is deficient for it permits independent and therefore relatively inconsistent regularisation to individual municipalities. ■



### **Ombudsman's recommendation**

*The Ombudsman submitted our opinion, recommendations and conclusions to the Ministry of the Environment and Spatial Planning to be considered in the preparation of amendments and changes to the Cemetery and Funeral Services Act.*

## **SUPPLY OF DRINKING WATER**

The Ombudsman has several times in annual reports cautioned of the problem of the supply of drinking water. The issue remains unresolved. Although municipalities are obligated by the Environmental Protection Act to ensure the supply of drinking water as a part of the necessary municipal public utility service, this legislative dictate is not followed by executive acts. The Rules on supply of drinking water define areas of municipalities where the supply of drinking water must be ensured with the activities of public utility services, and areas where the supply of drinking water is left to individuals. ■

Complainants complained about problems when trying to connect a real estate property to the water supply network. Most such complaints ended with our explanations. ■

## **TRAFFIC**

The majority of received inquiries regarded changes to the traffic arrangements in the Ljubljana city municipality. Most expressed disagreement with the new traffic arrangements and with the closing of a part of the city to traffic. They alleged the following violations: restricted access to and stopping in front of their homes, no prior notification regarding the plans to change traffic arrangements, obstructed access for doctors and other emergency services. We established that the required legal acts had been issued for the maintenance and blocking of traffic. Furthermore, the new traffic arrangement which closed a part of the old city centre was adopted with a decision by the City Municipality of Ljubljana. ■

A few initiatives regarded status and ownership of roads and the necessary harmonisation of cadastre and land register records. We highlight a case where an individual is still the owner of the land which is in reality a public road. The individual obstructed other users of the public road for according to the land register he was still the owner of the land on which the road was built. The complaints usually ended with the Ombudsman's recommendation to the owners of the public roads (municipalities, the State), to ensure the measurement of roads and pay restitution to the owners of the relevant land according to the land register. ■

We also received a complaint regarding the noise caused by the proximity of a motorway and complaints by disabled persons regarding notices issued by city wardens due to stopping and parking in parking spaces designated for disabled persons. Some of the complaints were justified, but most of them only required our legal opinion and explanation. Similarly to other areas of the Ombudsman's work, we find that there has been an increase in the number of complaints in the area of commercial public services that are caused by social hardship, poor financial situation and poverty. ■

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## EXAMPLES

### *26. Problem with urns sent from the USA without accompanying documentation*

The complainant turned to the Human Rights Ombudsman of the Republic of Slovenia asking for help in obtaining documentation necessary to take delivery of her late brother's and his late wife's urns at the local post office. The urns were sent from the USA by heirs without documentation necessary for burial in Slovenia. Her attorney advised her not to take delivery of the urns without accompanying documentation, while the post office had already notified her that they would not be able to hold the parcel much longer. The complainant's brother who had emigrated to the USA expressed in his will the wish to be buried in the family grave in Šofja Loka. The complainant did not have a copy of the will and was unable to establish contact with the heirs and the executor of the will in the USA despite persistent effort. She turned to the Consul General at the Consulate General of the Republic of Slovenia in Cleveland, however not even his efforts helped obtain the address of the executioner of the will in the USA. The complainant mainly wanted the Ombudsman to intervene with the Ministry of Foreign Affairs. We explained the Ombudsman's competences and expressed doubt that the consulate in the USA was obligated to obtain the requested information or influence a citizen of the USA regarding the execution of the will. Regardless, we established contact with the consular department at the Ministry of Foreign Affairs, informed them of the complainant's problem and proposed they do everything in their power to enable her to obtain the contacts and documents necessary to carry out her brother's will.

We were later informed by the complainant that our intervention with the consular department at the Ministry of Foreign Affairs was successful, for she had received a copy of the will and copies of heirs' documents from the official register in the USA enabling her to fulfil her brother's will to be buried in his hometown. The complainant expressed her gratitude for the successful intervention to the Ombudsman and to the consular department at the Ministry of Foreign Affairs.

### *27. Prolonged decisions on appeals regarding RTV subscriptions*

We received several complaints regarding prolonged processes of the Ministry of Culture deciding on appeals against compulsory subscription charges for radio and television services. The complainants claimed that the Ministry was unable to make decisions on submitted appeals even after several years. Based on our letter of request and following an intervention by the Office of the Prime Minister, we received an explanation that the arrears had started after the change of legislation at the end of 1999 due to the legal presumption that any legal or natural person registered as a consumer or payer of electrical energy from the public electricity supply is automatically regarded as an owner of a television or radio receiver. Due to limited human resources, the resolution of these appeals had been handled by a single public officer until December 2006. They had received an average of 100 appeals per month. They had adjusted to the situation and were working intensively on remedying the arrears. Our criticism regarding derogation from the order of reviewing the appeals was rejected with the explanation that two teams were handling them. One was handling older appeals according to the date of receipt, while the other team was handling appeals received by the Ministry in the current year. They also stated that arrears appeals against decisions on compulsory payment of subscription charges for RTV services were mostly remedied in 2007. They would completely remedy the arrears in 2008.

We regarded all complaints as justified. Although the Ministry explained all circumstances and problems dealt with in the handling of appeals, we believed that arrears were not justifiable from the aspect of protection of human rights, specifically the right to a decision within a reasonable time. We welcome the Government programme of remedying arrears and hope that the Ministry will observe it in accordance with their guarantees.

## 2.9. Housing matters

AREA OF WORK	Cases handled 2006	Cases handled 2007	Index (07/06)
9. HOUSING MATTERS	108	100	92.6
9.1 Housing circumstances	77	60	77.9
9.2 Housing industry	13	20	153.8
9.3 Other	18	20	111.1

The State has left the housing issues to be solved by the market and its commercial logic almost entirely. Young families and socially vulnerable persons have very poor chances of resolving their housing matters. According to the legislation, they are supposed to be aided by municipalities which refer to deficient legislation and lack of funds when explaining their implementation of tasks regarding housing. ■

According to the Local Self-Government Act, municipalities have the authority and the obligation to create conditions for the construction of housing and for increasing the availability of rentable social housing. The situation of young families is rather hopeless for they are at the mercy of the unregulated market, municipalities and perhaps help from their families. Housing problems of young, elderly and unemployed persons are clearly problems of the State and often related to problems regarding the ability to support oneself. The hopelessness of such cases is additionally worsened by the deficient legislation that the Ombudsman has already cautioned about in previous reports. ■



### **Ombudsman's proposal and recommendation**

*The Ombudsman feels that the legislation should clearly and unambiguously define the active role of municipalities in finding housing solutions for their residents.*

We received many initiatives from individuals who were expecting the Ombudsman would be able to help them with finding an apartment or another type of residential space. Complainant expressed great discontent with the bodies responsible for help with housing and other social issues. They turned to the Ombudsman as their last possibility of resolving their living issues. We tried to help people in distress by intervening with bodies and institutions by offering explanations, mediations and proposals of lawful and fair treatment of individuals. ■

### CALL FOR TENDERS FOR GRANTING NON-PROFIT APARTMENTS

Several complainants addressed the Ombudsman regarding the granting of non-profit rent apartments. The municipalities are obligated to publish a call for tenders for granting these apartments once a year. However, there are cases these calls for tenders are not published for several years and individuals do not know when a call for tenders will be published. While the State has transferred the task of ensuring housing to municipalities almost entirely, it did not provide any mechanisms for improved the resolution of housing issues. ■

We noticed that some municipalities were renting non-profit apartments in various calls for tenders separately according to the category of applicants and that in some of them, they had published that

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the payment of participation and security deposits offered advantages in the process of granting an apartment. Thus, the municipalities failed to observe the Housing Act which provides that the renter is entitled to prescribe payment of participation and security deposits only for a half of the apartments, subject to a single call for tenders. ■



#### **Ombudsman's proposal and recommendation**

*The Ombudsman feels that the real solution for resolving housing issues would be an act providing that municipalities are obligated to publish compulsory calls for tenders for granting non-profit apartments without the condition of participation and safety deposits. These calls for tenders should be published annually with an obligation that the renter may require participation or safety deposits only for a half of the apartments, subject to a single call for tenders.*

The complainants also complained about the provision of the Rules on renting non-profit apartments which denies the right to participate to persons who have been granted state-owned apartments in the period before the enforcement of the Housing Act in 1991 and had their right to the apartment revoked by a court decision and persons whose rental contracts, concluded after 1991, were terminated by a court decision due to culpability. The financial situation of the holder of occupancy rights or tenant also constitutes justification for revocation of occupancy rights or termination of a rental contract. This leads to the conclusion that the State is unwilling to help persons who have experienced financial problems before and is using their past problems as justification for depriving them of the right to participate in a call for tenders for non-profit apartments. ■



#### **Ombudsman's proposal and recommendation**

*The Ministry of Environment and Spatial Planning should review the justification and the fairness of Article 7 of the Rules on renting non-profit apartments and adopt a more appropriate solution which would contribute resolving housing problems rather than increasing them.*

### SEARCH FOR HOUSING SOLUTIONS FOR THE MOST SOCIALLY DISADVANTAGED – LIVING UNITS

We received several complaints from individuals who, due to social hardship or a series of unfortunate events, found themselves on the street, without a roof over their head. We tried to help them and in doing so found out that the constitutional principle of Slovenia being a social state was in practice realised quite poorly. Specifically, the Housing Act explicitly obligates anyone to ensure a defined number of living units for individuals who do not have other options for resolving their housing problems. Some municipalities do not have living units; where they do have them, they are all occupied and beneficiaries have to wait for several years for them. ■



#### **Ombudsman's proposal and recommendation**

*The Ombudsman feels that the law should clearly define the role, responsibility and obligation of the municipality to ensure an appropriate number of living units dedicated to temporary solutions of housing problems of socially disadvantaged individuals. We submitted this initiative to the Ministry of the Environment and Spatial Planning.*

## SUBSIDISED RENT

In the Annual Report for 2005, the Ombudsman had already cautioned about the problem of subsidised rent. The Ombudsman was addressed by complainants living in various commercial apartments claiming they were in an unequal position compared to tenants of non-profit apartments who are entitled to subsidised rent provided they meet income conditions. Rent subsidies for commercial apartment depend on the willingness and budget funds of municipalities. ■



### **Ombudsman's proposal and recommendation**

*The Ombudsman highlights that the State is obligated by the Constitution to create opportunities for citizens to obtain appropriate housing. Therefore, the burden of responsibility for aiding those tenants who are unable to cover the costs of rented apartments should rest on the State. Rent subsidies must depend on the tenant and his social situation rather than on the type of apartment as they do currently.*

## OTHER HOUSING MATTERS

We received a few complaints from tenants in denationalised apartments who informed us of problems with purchasing and maintaining a rented apartment in the procedure of denationalisation. Owners of apartments complained about the management of multi-residential buildings, specifically the management of the reserve fund. The Ombudsman has been cautioning about the need to change the Housing Act for several years. However, the State again failed to demonstrate sufficient concern and readiness for improving the national housing situation in 2007, and its responses to initiatives are too slow. ■

## EXAMPLES

### *28. Provision of living units – responsibility of the municipality?*

A complainant, her daughter, son and nephew were evicted with a court order from the Črnelo mansion house in Turnše. They temporarily took shelter in the mansion's stairway. The complainant unsuccessfully asked the Domžale Municipality to help them with their housing problem. The Municipality explained they did not possess living units and the complainant did not meet the criteria for extraordinary granting of a non-profit apartment.

We submitted the Domžale Municipality our opinion that their housing fund should contain living units for temporarily resolving housing needs of socially disadvantaged persons. The non-existence of living units in the Municipality is unacceptable in the Ombudsman's opinion. The Domžale Municipality replied with their opinion that no legal regulation required they had to ensure living units. They claimed that regardless of this fact, their social policy in the area of housing was run correctly and fairly for all residents who had unresolved housing problems due to which they were socially disadvantaged. They handled each case individually. They did so in the case of the complainant who has already been granted a small apartment, however, based not on the Housing Act but on the Decree on physical assets of the state, regions and municipalities.

### *29. Seeking the responsible authority in the case of the Strojan family*

In response to the adverse reaction of the residents of Ambrus to the possibility of the Strojan family continuing to reside in the area of the local community, the Municipal Council of the Ivančna Gorica

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Municipality on 14 November 2006 adopted among other things a decision that the location for the family should no longer be sought within their municipality and that the government commission must find a suitable and complete solution elsewhere. To our letter of request, the Ivančna Gorica Municipality responded only with partial and advisory clarifications and did not reply to our invitation to amend their response.

The Ombudsman concluded that the decisions of the Municipal Council were contrary to the Constitution and the legislation regulating the right to choose a place of residence. In December 2006, we cautioned the Mayor of Ivančna Gorica that the Constitution of the Republic of Slovenia guarantees to everyone the “right to freedom of movement and to choose his place of residence” and requested from him to withhold implementation of the Municipal Council’s decision, and suggested a repeated review of the case. The Mayor did not respond to our letter.

Based on the fact that the state authorities were intensively searching for a more suitable location for the Strojjan family in other municipalities, we established that the residents of areas, to which the official and unofficial possible new locations belonged, were opposing the choices in public rallies and protests. Due to the residents’ opposition to the possibility of the Roma family settling in their territory, municipalities adopted unconstitutional decisions. In December 2006, we sent letters to the municipalities Grosuplje, Ig, Škofljica and Kočevje and to the local communities Ambrus and Želimlje, and the Ljubljana local community of Sostro, requesting they send us the relevant decisions adopted. Based on the documentation received, we called upon the mayors of the municipalities to withhold the decisions of the municipal councils, to make new decisions and to inform the competent ministry of the illegality of the municipal councils’ decisions. The Kočevje Municipality agreed to change the disputable decision and changed the decision on firm opposition to the Strojjan family settling there. However, they only replaced it with a milder form: “The Kočevje Municipality is burdened with resolving Roma issues in the existing Roma settlements within its territory, therefore it cannot resolve the Roma issue of the Ivančna Gorica Municipality, neither temporarily nor permanently.”

We also cautioned the Ministry of Public Administration regarding the disputability of the adopted decisions and requested notification regarding their conclusions or possible actions based on the disputable decisions. The Ministry transferred the responsibility for resolution and further handling of the case to the Government Office of the Republic of Slovenia for Nationalities. The Office was not competent for the case and transferred the case to the competent Ministry of the Interior and Ministry of the Environment and Spatial Planning. The Ministry of the Interior explained that the Police as a pre-trial criminal procedure body cannot assess the legality of the decisions of municipal councils. It can only establish whether or not elements for criminal prosecution are present in a specific case. They did not find any. The Government Office for Local Self-Government and Regional Policy explained, among other things, that the decisions of the Municipal Council of the Ivančna Gorica Municipality did not constitute grounds for implementing measures of control of legality of municipal bodies, for the Municipal Council had not adopted a general or specific act with legal consequences in this case. Furthermore, no grounds for premature dissolution of the Municipal Council existed. On 27 September 2007, the Ombudsman met with the Mayor of Ivančna Gorica Municipality who explained that the Municipal Council had adopted the disputable decisions under pressure and that he was aware of their unconstitutionality and illegality.

Since there is an obvious dispute in this matter regarding the competence for reviewing the legality of work on the part of the public sector to which municipalities belong, we sent two letters of request, to the Ministry of Public Administration and the Ministry of the Environment and Spatial Planning, and received two different opinions. The case is still being handled. The Roma family Strojjan is currently staying near Ljubljana. However, they haven’t been granted permanent residence for reasons unknown to the Ombudsman. This case continues to be treated by the Ombudsman.

## 2.10. Discrimination

AREA OF WORK	Cases handled 2006	Cases handled 2007	Index (07/06)
<b>10. DISCRIMINATION</b>	<b>49</b>	<b>57</b>	<b>116.3</b>
10.1 Minority rights	14	10	71.4
10.2 Equal opportunities	0	1	–
10.3 Employment equal opportunities	4	3	–
10.4 Other	31	43	138.7

The number of cases treated in the area of discrimination increased slightly in 2007. Many complaints stating alleged discriminatory treatment were related to labour law and social areas. It is worrisome that only a small number of cases involving victims of violations of prohibition of discrimination protecting their interests with appropriate procedures were publicly known. ■

The State, and particularly the Government and the National Assembly on its behalf, did not do everything in their power or even everything they were obligated to do to ensure that the prohibition of discrimination was observed in the legislation of the Republic of Slovenia and that discrimination was sincerely remedied and legal and political conditions for its prevention created. ■

In the preparation of legislative changes and amendments to the Implementation of the Principle of Equal Treatment Act, the legislator ignored the Ombudsman's opinions regarding the (in) effectiveness of statutory and already implemented mechanisms for legal protection of victims of discrimination in court and administrative procedures. The changes were prepared without prior analyses and assessments of the situation. ■

Certain areas (access to the goods market, public services and housing) inevitably leave an impression that the system of protection has merely remained on paper and that the responsible state authorities are purposely and systematically avoiding action. ■

The institution of the Advocate for Equal Opportunities is not sufficiently effective. Their process of reviewing complaints for the treatment of cases of alleged violations of the prohibition of discrimination is unreasonably long. This raises the question whether it is acceptable that this body should be dependent on the Government and other bodies of the executive branch. It has been noted that the Advocate does not have sufficient powers to ensure prohibition of discrimination. ■



### **Ombudsman's proposal and recommendation**

*The legislation should define certain obligations held by individual bodies governed by public law more precisely to ensure the conditions for effective prevention and remedying of discrimination.*

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*The State should form a comprehensive system for monitoring discrimination (relevant data gathering, analyses and research of the causes for the current condition) as well as clear strategies and measures for remedying systemic causes which could lead to discrimination, and a system for effective coordination of the work of the responsible bodies.*

*A national programme of measures for reducing all forms of discrimination should be formed, including actions for raising awareness, promotion and education of the expert publics and target groups.*

## NATIONAL AND ETHNIC MINORITIES

The complaints are rare and their number is reducing. We received no written complaints informing us of the problems of the Italian or Hungarian minorities in Slovenia in 2007. In the first year of her mandate, the Ombudswoman met with several representatives of national and ethnic groups. On several occasions, she also spoke with representatives of the diplomatic corps in Slovenia regarding the situation of the minorities. She met with representatives of the German ethnic group in Slovenia who informed her of the insufficient level of protection of the German ethnic group and expressed their hope to be recognised at the State level, thus asserting not only their individual but also their collective rights and enabling them to maintain their culture and language. ■

The National Assembly and the Government did form a position regarding the claims for recognising the status of other minorities living in Slovenia. Both received these initiatives several times; however, it seems that they are avoiding this issue by not preparing a reply to the German ethnic group or to the Bosnian Cultural Association in Slovenia. Thus, they are violating the right to petition granted by Article 45 of the Constitution. The State is obligated to form opinions regarding such initiatives. The Ombudsman does not intend to judge the justification of these claims for status or special rights – only emphasising that the State has already received cautions from the international community, especially from the monitoring mechanisms of the European Council and the UN. ■

The Ombudsman assesses that such drastic differentiation between the level of protection of individual minorities in the country is problematic, especially the difference between the two minorities recognised by the Constitution and other minorities in Slovenia whose protection is neither defined nor guaranteed by the Constitution. ■



### **Ombudsman's proposal and recommendation**

*The National Assembly and the Government should form opinions regarding initiatives for adopting additional measures for protecting minorities not specifically defined in the Constitution and adopt additional measures for creating and ensuring favourable conditions for the promotion, development and maintaining of the ethnic and national identities of all minorities, and enable the members thereof to develop their culture, language, tradition, etc.*

## REGULARISATION OF THE POSITION OF THE ROMA COMMUNITY

In 2007, the adoption of the Roma Community Act was essential from the aspect of regularisation of the position and the area of special rights of the Slovenian Roma community. Among other things, the Act defines the responsibilities of state and local government bodies for its implementation and provides participation of representatives of the Roma community in implementing their statutory rights and obligations. ■

The legislator's definition of the representation of Roma societies in the Council of Roma Communities of the Republic of Slovenia was questionable, therefore the Ombudsman, acting on the complaint from the affected complainants, presented its opinion before the Constitutional Court of the Republic of Slovenia as a friend of the court. The legislator ignored the fact that the Roma community in Slovenia was a heterogeneous interest group and that the processes of freedom of public and political association were exceptionally dynamic. With the Act Amending Local Self-Government Act the legislator adopted a constitutionally contentious authorisation to the government to autonomously regulate conditions and criteria for representatives of the Roma communities in the Local Community Councils. ■



#### **Ombudsman's proposal and recommendation**

*The Ombudsman cautions of the legal obligation of the Government and self-governing local communities to cooperate with the Council of Roma Communities of the Republic of Slovenia in the preparation of programmes for improving the position of the Roma community implemented by the responsible Ministries, State bodies and bodies of self-governing local Communities.*

### REASONABLE ACCOMMODATION FOR PERSONS WITH DISABILITIES

The Ombudsman treated several complaints regarding discrimination of disabled persons attempting to enjoy their rights. Due to the unclear and deficient legislation we needed to explain in detail the obligation of providing reasonable accommodation to the responsible bodies. Unfortunately, we often noted a lack of understanding. ■

The concept of reasonable accommodation for persons with disabilities has been inappropriately transposed into our legislation and does not even comply with all the requirements of the Directive 2000/78/EC. ■



#### **Ombudsman's proposal and recommendation**

*The legislator should adopt additional measures for remedying all forms of discrimination even in cases when persons with disabilities are not provided a reasonable accommodation of procedures, criteria and practices to grant them equality of life.*

*Refraining from discrimination is not enough; it has to be actively prevented and remedied. The Ombudsman especially cautions of the special responsibility of the state bodies and bodies of self-governing local communities.*

### DIFFICULT POSITION OF DEAFBLIND PERSONS

Dilemmas regarding the entitlement of persons who are deaf and blind in specific situations arise daily. Answers are often not found even in the legislative provisions regulating special rights of the blind and the visually impaired nor in those regulating special rights of the deaf and the hearing impaired. The general prohibition of discrimination is one of the most important legal grounds for asserting their rights and remedying obstacles. ■

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### **Ombudsman's proposal and recommendation**

*The Government and the legislator should ensure better legal protection of deafblind persons within the Equalisation of Opportunities for Persons with Disabilities Act which is currently being prepared.*

*The State should adopt reasonable measures which will contribute to the implementation of the UN Convention on the Rights of Persons with Disabilities, specifically for complete accessibility of the physical, social, economic and cultural environments; accessibility of the (built) environment; transport, information, communication and all public services; personal assistance services for independent living; provision of various technical aids for increasing personal mobility; and a choice of adjusted forms of communication with public bodies available to persons with disabilities (sign language, language aids, Braille transcription; there is an explicit mention of alternative forms of communication, etc.).*

## NON-OBSERVANCE OF THE DECISIONS OF THE CONSTITUTIONAL COURT

Efficiency of remedying and preventing all forms of discrimination in conditions where not even the State itself remedies the violations determined by the decisions of the Constitutional Court is certain to fail. ■

The Ombudsman cautioned government and state bodies regarding the inadequate response to forms of discrimination of a systemic nature several times. In 2007, we unsuccessfully cautioned the Ministry of Labour, Family and Social Affairs regarding two decisions of the Constitutional Court finding that provisions of the Pension and Disability Insurance Act and of the Rules on Standards and Norms of Social Services were unconstitutional and discriminatory. These decisions are not yet observed despite the lapse of the statutory time limit. ■

We find that such conduct by the State, in this case a Ministry responsible for constitutional and lawful implementation of sectoral legislation, is unacceptable and undermines the principle of legitimate expectation. ■



### **Ombudsman's proposal and recommendation**

*The Ombudsman insists on observance of the decisions of the Constitutional Court of the Republic of Slovenia and on suitable and timely responses of government and state bodies to the forms of discrimination originating from the system.*

## EXAMPLES

### *30. Persons in wheelchairs are prevented from following sessions of the National Assembly in person*

With a complaint addressed to the Human Rights Ombudsman of the Republic of Slovenia we were informed that the balcony of the plenary hall of the National Assembly where the interested public can follow the sessions did not accommodate access for persons with disabilities. In their reply, the National Assembly explained that a ramp had been installed as a temporary solution for access of persons with disabilities to the balcony of the plenary hall. Technical and construction possibilities of installing a lift platform will be assessed in the shortest time possible to provide a lasting and more suitable solution for accommodating access of persons with disabilities and equal protection of rights. We find the response of the National Assembly appropriate.

### *31. The right to use Braille writing in a court procedure*

The Ombudsman cautioned several times of the position of blind persons in court procedures where they did not have the right to use Braille. The complainant informed us that regardless of his complaint against discrimination in the court procedure he was unsuccessful in requesting a Braille transcription of the case-file. The court rejected his request arguing that he had the help of an attorney. The Civil Procedure Act does not provide the right of blind persons to use Braille, except at their own expense. However, according to the Slovenian Sign Language Act a deaf person is entitled to use Slovenian sign language in procedures before the court. We cautioned that the positions of both groups of persons with disabilities were comparable in essence and therefore different treatment of blind persons compared to deaf persons was unreasonable. Based on our argumentation, the complainant submitted a request for constitutional review of the Civil Procedure Act for in our opinion his problems were also of a systemic nature. The Ombudsman communicated with the complainant in Braille and partly via e-mail.

### *32. The right to follow pre-election debates on RTV Slovenia in sign language*

One of the associations of deaf and hearing impaired persons cautioned RTV Slovenia of the deficiencies in providing TV programmes for deaf and hearing impaired persons and of their need to follow public events with the help of a Slovenian sign language interpreter. They stressed the necessity of presenting content in sign language in programmes reporting from the National Assembly and reports on the presidential elections and election campaigns. In the past, the national television service provided for interpreters which helped them follow programmes. However, this practice was discontinued. The Ombudsman's intervention with RTV Slovenia was unsuccessful for we did not receive a response from the management body of the national television service. Therefore, we are continuing public pressure.

## 2

## 2.II. Protection of children's rights

AREA OF WORK	Cases handled 2006	Cases handled 2007	Index (07/06)
<b>11. PROTECTION OF CHILDREN'S RIGHTS</b>	<b>191</b>	<b>274</b>	<b>143.5</b>
11.1 Contact with parents	42	83	197.6
11.2 Maintenances, Child benefits, Governance with child property	31	26	83.9
11.3 Foster placement, Custody, Institutional care	31	35	112.9
11.4 Children with special needs	15	22	146.7
11.5 Minority children and groups of children at risk	3	6	200.0
11.6 Violence against children - domestic violence	17	9	52.9
11.7 Violence against children - other	4	21	525.0
11.8 Other	48	72	150.0

The number of cases treated in the area of children's rights increased by 44 percent in 2007. This was probably also influenced by the fact that the Ombudswoman defined the protection of children's rights as her priority task. The Ombudswoman participated in numerous roundtables, workshops, seminars, conferences and consultations on issues related to the enforcement of children's rights, thereby contributing to improved awareness of the importance of resolving specific forms of violations of children's rights, as well as discussions on broader issues. Through direct contact with children and adolescents during our visits to schools, we recognised the needs and interests of adolescents as well as specific cases of violations of children's rights. ■

## FAMILY RELATIONSHIPS

The Ombudsman concludes that the State is not implementing the Convention on the Rights of the Child in a manner suiting children. Court procedures for awarding custody for children are excessively long, sometimes even longer than seven years. Judges sometimes want to hear a third or even a fourth expert answering the same questions. Experts usually do not complete their duties within the statutory time limit and individual clients do not cooperate with them when they believe it would not benefit them. A lengthy procedure in which an interim decision on contact between the child and his parents is issued does not remedy the child's uncertainty as to who will be his guardian and where his home will be. ■

**Ombudsman's proposal and recommendation**

*The Ombudsman recommends setting up family court departments to enable prompt and efficient procedures involving children.*

The Family Code which was supposed to implement key novelties in the area of children's rights and ensure that courts would decide about them, was withdrawn from further procedure by the Government for (publicly) unknown reasons, although it was said to be a reconciled effort of several ministries and the expert public. ■



#### **Ombudsman's proposal and recommendation**

*The Ombudsman recommends the Government organise an appropriate expert debate on the draft of the Family Code as soon as possible, thereby ensuring a consensus before the end of the following year.*

The Ombudsman recommends the Government organise an appropriate expert debate on the draft of the Family Code as soon as possible, thereby ensuring a consensus before the end of the following year. ■



#### **Ombudsman's proposal and recommendation**

*The Ombudsman recommends to the Social Chamber of Slovenia the preparation and implementation of such programmes of permanent professional education and training of Social Services Centres' professional staff that will significantly contribute to the improvement of the quality of professional work and professional relations of employees towards users of their services. Thereby special attention has to be paid to a form of communication which will not evoke feelings of unequal treatment in clients.*

### HEALTH CARE FOR CHILDREN

The Ombudsman has repeatedly cautioned about the problems incurred when one of the parents wants to accompany their child during hospital treatment. ■



#### **Ombudsman's proposal and recommendation**

*The Ombudsman recommends prompt implementation of legislative provisions enabling children under the age of 5 the right to be accompanied by their parents during their hospital treatment.*

We were cautioned about the issue of provision of speech therapy for children in ethnically mixed areas in their mother tongue. Children of Hungarian and Italian nationalities have the right to a speech therapy carried out by speech therapists with knowledge of their mother tongue. In the specific case, the health centre employed a speech therapist with knowledge of Hungarian after our intervention, thus solving the problem. ■



#### **Ombudsman's proposal and recommendation**

*The Ombudsman recommends adopting appropriate measures for ensuring an adequate number of speech therapists speaking and conducting their professional work in ethnically mixed areas in the Italian or Hungarian languages.*

A non-governmental organisation and a complainant cautioned us about unresolved issues in the draft law on infectious diseases related to the compulsory vaccination of children. They claimed vaccination was an invasion of their privacy and endangered their right to health care. In 2004, the Constitutional Court concluded that this legal obligation is not contrary to the Constitution, for compulsory vaccination does not violate children's rights. The Ombudsman concludes that the authors of the new law duly took into consideration the decision of the Constitutional Court and allowed for a possibility of non-vaccination from health or personal reasons.

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In this matter, the Ombudsman received a caution that children's rights were violated with the activities of a non-governmental organisation organising workshops where they persuaded participants of the danger of vaccinating children and endeavoured for its abolition. The Ombudsman judged that the society's endeavour for abolition of compulsory vaccination did not violate children's rights and was a part of the democratic order which can contribute to the improvement of individual normative solutions and encourages professional debates and argumentation. ■

### VIOLENCE IN SCHOOLS

The Ombudsman received more initiatives related to the issue of violence among peers at schools compared to the previous years. Slovenia does not have an elaborated methodology of observing violent behaviour at schools, so it is not possible to affirm that such violence is in increase or decrease. ■

Upon treating the complaints, the Ombudsman estimated that violent acts often proved to be reactions of students with emotional and behaviour problems who despite professional help could not cope with school requirements. We treated a few cases where children's parents demanded that the school to remove a specific child from the class. Their requests were successful in all cases. ■



#### **Ombudsman's proposal and recommendation**

*The Ombudsman believes that cases of violent behaviour of individual students should be dealt with in an interdisciplinary manner and that a coordinated approach and action of various institutions (Social Services Centre, schools, children's clinics, counselling centres and others) should be ensured.*

*The Ombudsman recommends the Government of the Republic of Slovenia form an appropriate methodology for collecting data on violence among adolescents and towards them.*

### CHILDREN OF MINORITIES AND THREATENED GROUPS

The Ombudsman estimates that the conditions for more appropriate education of Roma children are being provided too slowly. Problems are related to a lack of kindergartens in their environment, adequately educated and trained Roma assistants and systemisation of their positions of employment. ■

The Ombudsman treated the issue of busking and mendicancy, which had not been noted in such large scope in previous years. The Ombudsman believes this issue should be addressed by governmental and non-governmental organisations which would be able to act efficiently, promptly and concretely, and especially offer aid to families with children. This is a broader issue which European institutions should engage in as well, and adopt measures to reduce children mendicancy. ■

### CHILDREN WITH SPECIAL NEEDS

The Ombudsman concluded that the most frequent problems arising in the area of children with special needs are related to the issues of comprehensive and systemically organised early treatment of all groups of children with special needs: a systematic special pedagogic and not only medical treatment of the blind and visually impaired and deaf and hearing impaired children; a different scope of additional professional help to individual groups of children with special needs; providing only standard medical and technical aids, and not the most effective ones; financing additional

services and equipment; providing suitable textbooks; educating professional staff (typhlopedagogy); providing conditions for realising the entitlement of some children to an assistant and additional teacher or coordinator (also to the blind and visually impaired) and an interpreter to deaf children. ■



#### **Ombudsman's proposal and recommendation**

*The Ombudsman believes with respect to the enforcement of the rights of children with special needs it is necessary to implement the principle of reasonable accommodation, i.e. the requirement of necessary, adequate and proportional accommodation necessary to remedy obstacles in the way of equal and full enjoyment of all rights by the child.*

*A reasonable accommodation should be provided according to the impaired child's choice (or choice of their parents or trustees) and in each case, considered with respect to the child's needs based on their impairment.*

The complaints in this area were also related to the procedures of placement of children with special needs. In 2007, amendments to the Placement of Children with Special Needs Act, which transferred placement procedures to the National Education Institute were adopted. This resulted in a delay in the organisation and work of the new placement committees, for it could not begin work before the second half of the year. Therefore, some children (especially those who changed school and children with long-term diseases) were denied adequate professional treatment for a while. ■

The Ombudsman concludes that some problems related to a free transport of children have been placed into special programmes implemented in social welfare institutions by means of a decision have still not been resolved. It depends on the type of institution (educational or social welfare) whether or not school-age children have the right to free transport. ■



#### **Ombudsman's proposal and recommendation**

*The Ombudsman again demands remedying systemic obstacles preventing the implementation of the right to free transport to children with special needs based on the institution they were placed in with a decision of a government body.*

### **ADMINISTRATION OF CHILD'S ASSETS**

In 2007, we again treated a few complaints by parents facing problems with the administration of a child's assets. We were cautioned about the issue of government control over the administration of a child's assets, expensive administrative fees for applications for financial transactions in a child's bank account, treated by the Social Services Centre, as well as the long duration of these procedures. ■



#### **Ombudsman's proposal and recommendation**

*The Ombudsman finds the legal provisions deficient, defining that in case of disposal or encumbrance of a child's property, the approval of the Social Services Centre is necessary. The law should define more precisely that such approval by the Centre is necessary only in the case of the disposal of greater amounts of property, in which case the disposal is not possible, because it would compromise the child's social security.*

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## EXAMPLES

### 33. *Children changing schools in cases of disagreement by one of the parents*

At the beginning of the 2007/2008 school year, a few indignant parents addressed the Ombudsman, claiming that schools act arbitrarily in cases of children changing schools. One of them was a mother of two adolescent girls who decided to transfer her daughters to a school near her temporary place of residence. The father disagreed and proposed a discussion between parents at the home school. They agreed that the child's best interests should be resolved before the court. Regardless, the home school respected the mother's wishes and approved the transfer.

The Ombudsman was surprised by the school's action, which exceeded its powers, quoting the incorrect interpretation of legal and executive acts in the name of the children's interest. We informed the Ministry of Education and Sport about the issue and recommended they prevent further arbitrary actions of some schools. In their reply, the Ministry explained that regulations in the area of primary school education do not obligate schools to verify whether the parents agree in child registration or transfer processes. They believed that a school should, if cautioned that one of the parents disagreed with the child's registration or transfer, act according to the provisions of the Marriage and Family Relations Act (Article 113), defining that parents perform their parental duty in agreement and with consideration of the child's interest. If they are unable to reach an agreement, the Social Services Centre should aid them in doing so. The Ministry further concluded that schools faced a dilemma there is a disagreement between divorced parents, regardless of the provisions. The Ombudsman recommends that the new Family Code precisely define the implementation of the care for the child in those cases where parents are separated and disagree about the child's interests, for this decision cannot be left to professional workers of an individual school.

### 34. *Placing orphans with foster families*

Several media published various information, including personal data, on two orphaned adolescents living in a foster family. The actions of the Social Services Centre and the Ombudsman's passivity were criticised. A so-called civil initiative addressed the Ombudsman claiming that the actions of the Social Services Centre of abducting the children with the help of the police and placing them with a foster family constituted a violation of the children's rights.

We visited the primary school attended by the children, the local police station and the Social Services Centre. We did not judge the adequacy of the procedures for we are not competent to do so. We wanted to assess whether in the procedure where the children were taken from school, their rights were violated and whether any irregularities had occurred in the process. Due to the exceptional media attention, we informed the public about our opinion and conclusions in a press conference. The Ombudsman concluded that the Centre's actions were performed according to the legislation and in the children's best interest and that there were no irregularities in the actions of the employees of the school. The police station was cautioned about the suspicion the criminal offence of negligence of an adolescent and uncivil treatment. A police officer (in plain-clothes) and the head of the police district (in uniform) visited the primary school to investigate. They were accompanied by three employees of the Social Services Centre and following a discussion, took the children, who did not resist, to the crisis centre for children where they were interviewed. The police procedure was thereby concluded.

We understood the concern of the neighbours and local residents for the fate of both children, so we recommended that the Social Services Centre adequately inform them how their welfare was secured. The Ombudsman did not establish violations on part of the state bodies, but did establish a violation of the children's rights to privacy by the media through non-authorised publishing of their personal data. We forwarded the Ombudsman's opinion that the right of the public to information

should not prevail over the child's right to privacy to the Journalists' Ethics Council and to the responsible editors of the media. Since the Ombudsman concluded that the controversial publishing of personal information involved signs of a criminal offence, we informed the State Prosecutor's Office. The Ombudsman recommended that media reporting on children be regulated systemically, preferably with the Public Media Act.

## 2

## 2.12. Other

AREA OF WORK	Cases handled 2006	Cases handled 2007	Index (07/06)
<b>12. OTHER</b>	<b>271</b>	<b>360</b>	<b>132.8</b>
12.1 Legislative initiatives	14	18	128.6
12.2 Poprava krivic	9	16	177.8
12.3 Personal problems	36	60	166.7
12.4 Explanations	117	109	93.2
12.5 For information	70	141	201.4
12.6 Anonymously applicants	25	16	64.0
12.7 Ombudsman	0	0	–

The problems contained in complaints which contextually do not fit within the competences of the Ombudsman and which are treated as personal problems increased by 32.8 percent.



The building in which the office of the Human Rights Ombudsman is located

## 3

# ABOUT THE OMBUDSMAN'S WORK

## Ombudsman's role

According to the Human Rights Ombudsman Act, the Ombudsman's work is conducted according to the constitutional provisions and international legal acts on human rights and fundamental freedoms. The Ombudsman protects human rights and fundamental freedoms only in relations with state bodies, local self-government bodies and bearers of public authority. He does not treat cases regarding violations of rights or freedoms by natural or legal persons. In his work, he can refer to the principles of justice and good administration. The Ombudsman investigates cases of unlawful or incorrect actions by state bodies and intervenes when the competent institutions are not performing their work. More on the institute of the Ombudsman: Human Rights Ombudsman Act appendix

## Trust in the institution of the ombudsman

The Public Opinion and Mass Communication Research Centre at the Faculty of Social Sciences conducted a survey between 4 and 6 June 2007, which concluded that citizens expressed the highest degree of trust in the newly introduced currency euro (64 percent), followed by the Bank of Slovenia (56 percent) and the Slovenian Armed Forces (45 percent). The fifth spot in the list of trust was shared by the Human Rights Ombudsman and the current President of the Republic of Slovenia.

## 3.1. Public relations

The Ombudsman's influence is informal and without the competence to make decisions based on authority. The Ombudsman does not apply the argument of power; he applies the power of argument. He present his arguments through various forms of public relations. ■

### Forms and methods of public relations:

- Daily communication and provision of information regarding procedures of treatment of complaints against the work of authorities,
- personal meetings between the Ombudswoman and representatives of publics,
- active participation in conferences, seminars, roundtables, consultations, etc.,
- via the Ombudsman's website [www.varuh-rs.si](http://www.varuh-rs.si),
- communication through the media,
- free newsletters,
- other publications (annual reports, special reports, other publications released for specific occasions, etc.),
- information materials (leaflets, bookmarks, posters, promotional spots, etc.),
- various projects and events,
- active assistance with work on seminars and diploma and masters' papers.

### RELATIONS WITH COMPLAINANTS

Every day, the Ombudsman's staff conduct personal interviews with an average of 10 complainants, and the hotline operator receives about 100 calls daily at the toll-free hotline 080 15 30, while the Ombudsman's number 01 475 00 50 receives an average of 60 calls daily. Both telephone numbers are used for providing callers with basic information about the Ombudsman's work and instructions

for lodging complaints. The Human Rights Ombudswoman introduced her own method of work in the regular weekly telephone conversations with the complainants. ■

The Ombudswoman continues the practice of conducting interviews outside the office at various locations around Slovenia. The main purpose of conducting operations outside the office is to familiarise people with the institution of the Human Rights Ombudsman and allow them personal contact with the Ombudswoman without unnecessary travel to Ljubljana. In 2007, she visited Bohinjska Bistrica, Celje, Jesenice, Koper, Krško, Maribor and Murska Sobota. She spoke with 140 individuals during her operations outside the office. ■

In 2007, we received 36 complaints from detainees, 90 complaints from convicts and visited prison institutions, police stations and the Aliens Centre in Postojna. ■

#### TREATMENT OF COMPLAINTS

The Ombudsman usually starts the procedure based on a written complaint, signed and accompanied by the personal information of the complainant and circumstances, facts and evidence on which it is based. According to the law, the complainant is obligated to provide information on the legal means used, if any. A complaint can be lodged by several injured persons or a civil initiative group. There are no formal requirements for lodging a complaint, and assistance by an attorney is not necessary. Despite these legislative requirements, the Ombudsman also receives complaints submitted via electronic mail, personally or via telephone, and offers initial replies and instructions. With his work methods (toll free telephone number, personal interviews, operations outside the office, openness of the office), the Ombudsman endeavours to be accessible to anyone in need of his assistance.

The Ombudsman can initiate a procedure on his own initiative in cases of regulatory inconsistency or void, unavailability of effective routes of appeal, or in cases of negligent, cursory or ineffective work of state bodies.

#### RELATIONS WITH CIVIL SOCIETY

The Ombudswoman is aware of the importance of the civil society as a source of information on the violations of human rights and a source of complaints, and is aware of the institution's active role in enforcing and improving awareness about human rights. She organises regular monthly meetings with non-governmental organisations at the Ombudsman's office. In 2007, she met with representatives of Legebitra and DIH (non-governmental organisations working in the area of rights of the gay community), societies and civil associations in the area of mental health, care for the blind and visually impaired, deaf and hearing impaired, the handicapped and other groups working under the umbrella organisation of the disabled, and also with representatives from non-governmental organisations and civil initiative working in the area of environmental protection and representatives of minority groups. ■

#### RELATIONS WITH STATE BODIES, LOCAL SELF-GOVERNMENT BODIES AND OTHER BEARERS OF PUBLIC AUTHORITY

##### COOPERATION WITH REPRESENTATIVES OF LOCAL COMMUNITIES

The Ombudswoman meets representatives of local communities mainly when performing operations outside the office and during other occasions (roundtables, ceremonies, conferences, meetings, discussions, etc.). The Ombudsman also receives written information from mayors regarding open issues they believe should be treated by the Ombudsman or written requests for opinions regarding matters they are handling. ■

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COOPERATION WITH GOVERNMENT REPRESENTATIVES

Immediately after her appointment, the Ombudswoman met with the ministers competent for areas materially related to the scope of the Ombudsman's work. The initial meetings achieved agreements on the manner of mutual communication and cooperation, and the matters of most pressing issues:

- **with the Minister of Labour, Family and Social Affairs:** prevention of family violence, protection of children's rights, social issues and other topics;
- **with the Minister of Education and Sport:** cooperation in the implementation of two joint projects, specifically the so-called contact classrooms in which the students would be able to participate in changes to school legislation, and in the research of violence in schools and reduction thereof;
- **with the Minister of Public Administration:** remedying arrears in the area of administrative procedures, measures for more efficient work of inspection bodies, better inclusion of the public in the process of preparing legislation and the unacceptability of the intervention in the independence of the institution of the Ombudsman brought on by the new wage system.
- **with the Minister of Health:** open issues in the preparation of the Patients Rights Act, systemic regularisation of the area of alternative medicine, long-term care and the Ombudswoman's reservations and comments regarding the Mental health Act;
- **with the Minister of Justice:** unacceptable excessive length of procedures in cases involving children, non-regularised area of forensic psychiatry, overpopulation of prison facilities and their human resources problems, necessity of control over the work of the attorney profession and court experts, and measures for ensuring active participation of the interested publics in legislative procedures;
- **with the Minister of Culture:** possibilities for improving the legislative protection of the privacy of children in the media, the situation regarding the protection of rights of the audiences of Radio Television Slovenia, self-regulatory mechanisms of the media, access of the so-called new minorities to funds for cultural purposes, the situation at the Slovene National Theatre in Maribor and at the Slovenian Film Fund, and participation of the public in legislative procedures;
- **with the Minister of Defence:** unresolved issues in the area of labour law relationships, mobbing, sexual harassment and discrimination;
- **with the Minister of the Interior:** necessity of observing decisions of the Constitutional Court of the Republic of Slovenia in resolving the problem of the erased, activities of security services, employment relationships in the Police and complaints against the work of police officers, and strengthening of cooperation in the area of fighting violence at all levels;
- **with the Director of the Government Office for Equal Opportunities:** cooperation in the training of judges with the aim of achieving the appropriate sensitivity in decisions on guardianship of children and for ensuring equal treatment to fathers;
- **with the Director of Government Office for Nationalities:** necessity of reviewing applications by ethnic communities living in Slovenia who have requested regularisation of their status.

In 2007, we established a good relationship with the Ministry of Labour, Family and Social Affairs who as a rule duly submitted requested answers and informed us of new legislative projects. The Ombudsman was not satisfied with the cooperation of the Ministry of Health which fails to reply to inquiries, forcing the Ombudsman to request answers repeatedly. ■

We also treated the issue of independence of the institution of the Advocate of Equality at the Government Office for Equal Opportunities. We cautioned several times that the status of the Advocate, who is a government officer, is contrary to the EU Directive which requires the autonomy of such an institution. ■

#### *RELATIONS WITH REPRESENTATIVES OF OTHER BODIES AND INSTITUTIONS*

- The Ombudswoman met with the President of the Republic of Slovenia, the now late Janez Drnovšek, and the President of the National Assembly when presenting the Annual Report for 2006. She presented the report to the Members of the National Assembly.
- The Ombudswoman met with the President of the National Council and participated in discussions organised by the National Council in 2007. She met with the Members of the National Council in June and presented her work plans to them, specifically highlighting issues regarding the prevention of violence.
- During treatment of individual cases, the Ombudswoman often met with representatives of Social Services Centres, Police and other bodies involved in the procedures.
- On Human Rights Day, 10 December, the Ombudswoman held a traditional reception at Vila Podrožnik for higher representatives of authorities, universities and science institutions, religious organisations, non-governmental organisations for the area of human rights protection in Slovenia and accredited diplomatic representatives of other countries.

#### RELATIONS WITH THE MEDIA

The Ombudsman's key principles in his relations with the media are accessibility, availability and responsiveness. We establish mutual communication with the media. With the help of the media, the Ombudsman informs the public of his conclusions regarding activities of the State in the area of the protection of human rights and increases awareness of people regarding their rights. The Ombudswoman organises regular and ad-hoc press conferences and press conferences during operations outside the office. ■

In 2007, the Ombudswoman gave several interviews and prepared several statements at various occasions. She and her co-workers were always available for journalist questions regarding certain topics from the area of human rights. ■

See chapter Constitutional rights for more on protecting the freedom of the media and media violations of human rights.

#### INTERNATIONAL RELATIONS

The Ombudsman's activities in 2007 in the area of international cooperation were directed primarily towards cooperation with Ombudsmen of South Eastern European countries. The Ombudsmen actively participated in numerous conferences and meetings. Our experiences and positions are particularly interesting to representatives of human rights protection institutions in other former Yugoslavian countries. The Ombudsman organised a three-day visit of a delegation of Macedonian Ombudsman's representatives to Slovenia. ■

The Ombudswoman and her co-workers attended the following conferences and meetings in 2007: **Athens** – tenth joint roundtable of European Ombudsmen, National Human Rights Institutions (NHRI) and the European Council's Commissioner for Human Rights; **Strasbourg** – meeting of national Ombudsmen of European Union members and candidates for accession; first meeting of contact persons of national human rights structures; **Belgrade** – meeting with the Serbian

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colleague, representatives of the National Assembly and students, professors and parents at one of the secondary schools in Belgrade; **Novi Sad** – thematic meeting of the Network of Ombudspersons for Children of SE Europe; **Barcelona** – conference of the European Network of Ombudspersons for Children (ENOC); **Budva** – conference of Children’s Rights Ombudspersons of SE Europe; **Everan** – international conference on experiences in cooperation between Ombudspersons and constitutional courts in the area of protecting human rights and the rule of law; **Belfast** – meeting of the communicators of national human rights institutions and representatives from Ombudspersons; **Rabat** – conference of Ombudspersons of Mediterranean countries; **Banja Luka** – roundtable of Ombudspersons of SE Europe. ■

Among various forms of cooperation we would especially like to highlight participation in the annual meeting between the European Commission against Racism and Intolerance (ECRI) and national bodies for fighting racism and intolerance in Strasbourg, organised by the European Council. ■

In 2007, the Ombudswoman was visited by several ambassadors and representatives of international organisations with the aim of obtaining additional information on individual issues of implementing human rights in Slovenia. Bilateral meetings were attended by Ambassadors of the USA, Bosnia and Herzegovina, Netherlands, Denmark, Russian Federation, Montenegro, France and the Deputy Ambassador of Germany. ■

## 3.2. Ombudsman's projects

The Ombudsman's project works focused on acquiring comprehensive knowledge in cooperation with governmental and non-governmental organisations and representatives from the civil society. The projects were aimed at forming proposals for different and more effective treatment of human rights violations.

### SAFE-SI AND SPLETNO OKO (WEB EYE)

In 2007, the Ombudsman actively participated in the SAFE-SI project ([www.safe.si](http://www.safe.si)), an organization whose main purpose is to ensure Internet safety for children and young adults, increase the level of awareness in the target groups of parents and teachers, and find a comprehensive approach to ensuring internet safety. The Ombudsman also participated in the Partners' Council of the Spletno oko project. This is a report centre for Internet content which started operating in 2007. They receive anonymous reports of child pornography and hate speech on its website [www.spletno-oko.si](http://www.spletno-oko.si).

### LEGAL CLINIC

In cooperation with the Faculty of Law at the University in Ljubljana, the Ombudsman, in the role of an advisory organisation, has organised legal counselling for refugees and aliens for the sixth year in a row.

### THE ENVIRONMENT AND HUMAN RIGHTS CONFERENCE

In cooperation with Umanotera, the Slovenian Foundation for Sustainable Development, the Ombudsman prepared a single-day conference, entitled Environment and Human Rights. The aim of the conference was to improve the provision of information to the civil society active in the area of environmental protection regarding the possibilities of enforcing the rights and active participation of the public in processes regarding environment and space.

We also published a special edition of the Ombudsman's Environment and Human Rights newsletter.

### DEVELOPMENT AND IMPLEMENTATION OF THE COMMON ASSESSMENT NETWORK IN PUBLIC ADMINISTRATION IN 2007

In 2007, we also participated in a project of the Faculty of Administration: Development and Implementation of the Common Assessment Network (CAF). The key aim of the Ombudsman's participation in the project was to prepare a plan for improving administrative work according to specific criteria and based on the results, experience and knowledge obtained through self-assessment according to the CAF model.

### ADVOCACY – CHILD'S VOICE

In 2007, the Ombudsman also continued the Advocacy – Child's Voice pilot project, aimed at implementing a system of accessible and qualified advocates for children and adolescents (advocate network), and strengthening the child's voice and his position in all matters concerning him, whereby the child's interest (before the courts, with the Police, in Social Services Centres) would specifically be pursued in cases where the parents are incapable or unable to cooperate for the child's best interests. With this pilot project, the Ombudsman intends, in cooperation with non-governmental and governmental organisations, to obtain practical answers to unresolved issues and thus lay a foundation for the regularisation of the Advocate and for defining an action protocol

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for including the programme of Children's Rights Advocate in the formal and legal system and in practice as an independent institution with a network of advocates across Slovenia.

#### INCREASING AWARENESS AND EDUCATION IN THE AREA OF FIGHTING DISCRIMINATION

In 2007, the Ombudsman also continued to increase anti-discrimination awareness and education for various groups, especially secondary and higher education students, volunteers at the Legal Clinic at the Legal Information Centre for Non-governmental Organisations, disabled workers, counsellors at the Employment Service of Slovenia and police officers at Police Directorates. The aim of the workshops was to train participants in detecting discrimination, recognising the mechanisms and forms of discrimination and react accordingly or in cooperation with others or their clients. In the first half of 2007, representatives of the Ombudsman participated as experts in the EU Twinning project in Hungary. Within the framework of cooperation with Ombudsmen of other countries, the Ombudsman participated in a two-day training of employees of the Kosovo Ombudsman in Priština.

### 3.3. Employees

As of 31 December 2007, the Ombudsman employed 40 persons (including the Ombudswoman and two Deputies), of which 22 were public servants, 10 professional-technical employees, and 4 employed temporarily (two of which were trainees). ■

### 3.4. Finances

Upon the Ombudsman's proposal, the National Assembly of the Republic of Slovenia earmarked EUR 1,879,502 from the state budget for the work of the institution in 2007. Expenditure amounted to EUR 1,806,148 in 2007. These funds were allotted in the following manner: EUR 1,313,930 for employees' wages; EUR 324,949 for operating costs; EUR 113,150 for investments; EUR 29,471 for completing the project CRIS No. 2005/017-462.04 – Twinning: strengthening the national institutional structure for the fight against discrimination; and EUR 24,648 for performing tasks of implementation of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The remainder was returned to the State and EU budgets for the CRIS No 2005/017-462.04 – Twinning project required less funds than those granted.

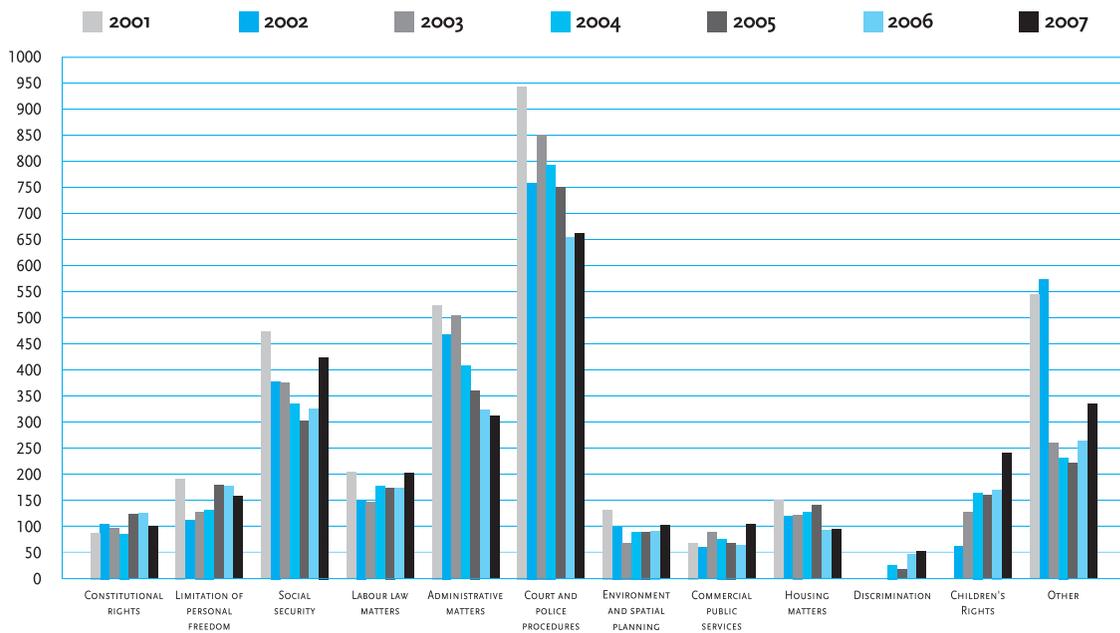
### 3.5. Statistics

#### OPEN CASES

Between 1 January and 31 December 2007, 2,769 cases were opened which represents an 11.11 percent increase in volume.

Most new complaints were received directly from individuals and most in written form (2,439 or 88 percent), 59 during operations out of office, 15 over the telephone, 20 from official notes and 17 as transferred from other state bodies. Seventy-nine cases (2.8 percent) were opened at the Ombudsman's own initiative, one of them as a broader issue. The Ombudsman also received 16 anonymous complaints. In 2007, the largest number of open cases regarded the areas of judicial and police procedures (661 or 23.9 percent), social security (424 or 15.3 percent) while the remaining open cases totalled 334 or 12.1 of all open cases.

Figure: Comparison of cases according to areas of work of the Human Rights Ombudsman in the 2001-2007 period.



## CASES TREATED

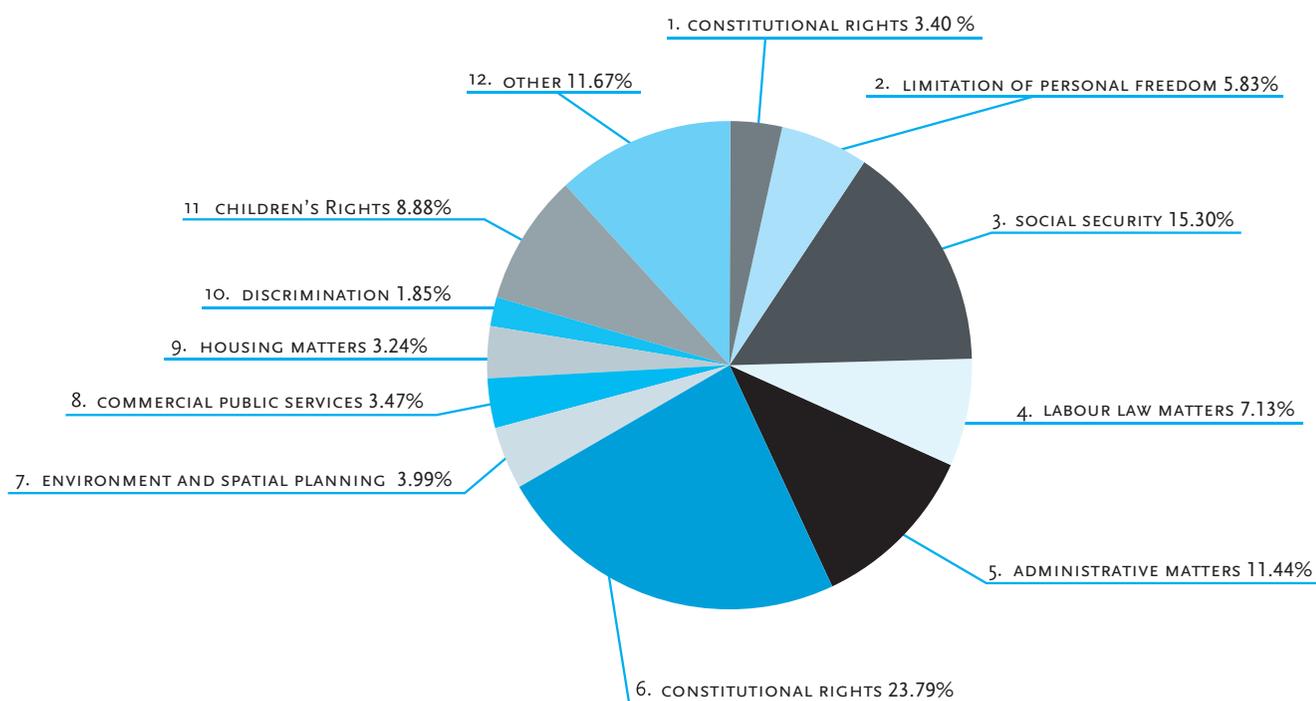
The following table demonstrates that **3,085 cases were treated in 2007, which is a 12 percent increase over 2006**. Most treated cases were from court and police procedures (734 cases or 23.79 percent), social security (472 cases or 15.3 percent) and other cases (360 cases or 11.67). The number of treated cases as compared to 2006 most significantly increased in the areas of commercial public services (from 69 to 107, or 55.1 percent), children's rights (from 191 to 274, or 43.5 percent) and social security (from 354 to 372, or 33.3 percent).

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**Table:** Comparison of the numbers of cases treated by the Ombudsman by area of work in the period of 2001-2007.

AREA OF WORK	CASES TREATED														Index (07/06)
	2001		2002		2003		2004		2005		2006		2007		
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	
1. Constitutional rights	90	2.5 %	128	3.7 %	105	3.3 %	91	3.0 %	141	4.8 %	139	5.05%	105	3.40%	75.5
2. Restriction of personal liberty	206	5.7 %	134	3.8 %	145	4.5 %	143	4.8 %	194	6.5 %	201	7.30%	180	5.83%	89.6
3. Social security	549	15.2 %	468	13.4 %	451	14.1 %	393	13.1 %	339	11.4 %	354	1.85%	472	15.30%	133.3
4. Labour law matters	213	5.9 %	174	5.0 %	166	5.2 %	199	6.7 %	197	6.6 %	184	6.68%	220	7.13%	119.6
5. Administrative matters	591	16.3 %	632	18.1 %	613	19.1 %	488	16.3 %	435	14.7 %	367	13.33%	353	11.44%	96.2
6. Judicial and police procedures	1041	28.8 %	925	26.5 %	929	29.0 %	893	29.8 %	862	29.1 %	719	26.11%	734	23.79%	102.1
7. Environment and spatial planning	143	4.0 %	118	3.4 %	83	2.6 %	98	3.3 %	101	3.4 %	102	3.70%	123	3.99%	120.6
8. Commercial public services	68	1.9 %	69	2.0 %	97	3.0 %	82	2.7 %	73	2.5 %	69	2.51%	107	3.47%	155.1
9. Housing matters	154	4.3 %	134	3.8 %	133	4.1 %	136	4.5 %	149	5.0 %	108	3.92%	100	3.24%	92.6
10. Discrimination							27	0.9 %	24	0.8 %	49	1.78%	57	1.85%	116.3
11. Children's rights			60	1.7 %	150	4.7 %	179	6.0 %	207	7.0 %	191	6.94%	274	8.88%	143.5
12. Other	564	15.6 %	648	18.6 %	335	10.4 %	263	8.8 %	241	8.1 %	271	9.84%	360	11.67%	132.8
<b>SKUPAJ</b>	<b>3,619</b>	<b>100 %</b>	<b>3,490</b>	<b>100 %</b>	<b>3,207</b>	<b>100 %</b>	<b>2,992</b>	<b>100 %</b>	<b>2,963</b>	<b>100 %</b>	<b>2,754</b>	<b>100 %</b>	<b>3,085</b>	<b>100 %</b>	<b>112.0</b>

Figure: Percentages of cases treated by the Human Rights Ombudsman of the Republic of Slovenia according to individual areas of work in 2007.



## CLOSED CASES

In 2007, 2,652 cases were closed, which is an increase of 5.2 percent compared to 2006.

Table: Classification of closed cases according to justification

JUSTIFICATION OF CASES	CLOSED CASES				Index (07/06)
	2006		2007		
	Number	Percentage	Number	Percentage	
1. Justified cases	287	11.4	318	12.0	110.8
2. Partly justified	249	9.9	240	9.0	96.4
3. Unjustified cases	361	14.3	397	15.0	110.0
4. Not meeting conditions for treatment	1201	47.6	1281	48.3	106.7
5. Not within the Ombudsman's competence	423	16.8	416	15.7	98.3
<b>TOTAL</b>	<b>2,521</b>	<b>100.0</b>	<b>2,652</b>	<b>100.0</b>	<b>105.2</b>

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Table below demonstrates that the majority of cases closed in 2007 were from the following areas:

- Labour, Family and Social Affairs (712 cases, or 26.8 percent);
- Justice (691 cases, or 26.1 percent);
- Environment and Spatial Planning (253 cases, or 9.5 percent); and
- Interior (251 cases, or 9.5 percent).

*Table: Closed cases treated by the Human Rights Ombudsman of the Republic of Slovenia in 2006 and 2007 according to sector.*

MINISTRY	ZAKLJUČENE ZADEVE				Indeks (07/06)
	2006		2007		
	Število	Delež	Število	Delež	
1. Labour, Family and Social Affairs	574	22.77	712	26.9	124.0
2. Finance	63	2.50	78	2.9	123.8
3. Economy	72	2.86	62	2.3	86.1
4. Public Administration	11	0.44	24	0.9	218.2
5. Agriculture, Forestry and Food	13	0.52	12	0.5	92.3
6. Culture	51	2.02	55	2.1	107.8
7. Interior	250	9.92	251	9.5	100.4
8. Defence	16	0.63	8	0.3	50.0
9. Environment and spatial planning	246	9.76	253	9.5	102.9
10. Justice	748	29.67	691	26.1	92.4
11. Transport	24	0.95	29	1.1	120.8
12. Education and Sport	98	3.89	89	3.4	90.8
13. Higher Education, Science and Technology	10	0.40	17	0.6	170.0
14. Health	137	5.43	165	6.2	120.4
15. Foreign Affairs	5	0.20	5	0.2	100.0
16. Government Offices	7	0.28	7	0.3	100.0
17. Local self-government	28	1.11	16	0.6	57.1
18. Other	168	6.66	178	6.7	106.0
<b>TOTAL</b>	<b>2,521</b>	<b>100.00</b>	<b>2,652</b>	<b>100.0</b>	<b>105.2</b>