Republic of Slovenia

Annual Report 2005

HUMAN RIGHTS OMBUDSMAN

Republic of Slovenia

Eleventh Annual Report

Ljubljana, June 2006

HUMAN RIGHTS OMBUDSMAN

Introduction

In the introduction to the Ninth Annual Report, I wrote: "Although events surrounding the attempts to address these issues point to considerable intolerance in our society, the will to finally overcome ignorance suggests that there is hope for improvement." I was referring to the resolution of issues related to "the erased" and the right of the Muslim religious community to a place of worship; these two issues have dragged on for more than a decade, and in 2003 it finally seemed that the society and politicians had decided to resolve it. Today, we realise that we are standing on the exact same spot where we were back then. It appears that the apparent resolve was hollow: elections have taken place in the meantime, during which various political parties used these two issues to win votes, and the solution once again slipped out of reach. These events show that political parties find it easier to win votes by exhibiting a negative attitude to the rule of law and human rights rather than by supporting them.

Unfortunately, this situation is not particular to Slovenia. European and global trends show a marked increase in intolerance towards those who are different, regardless of whether this means foreigners with different colour of skin, mother tongue, the god they worship, or if it regards "domestic" foreigners who choose to love, think, dress or live differently. Instead of the majority embracing the fact that we grow richer, bigger and stronger through diversity, and that this diversity creates a spectacular rainbow of colours, we reject its colourful beauty and escape into the bleakness of the black-and-white image of life. Not only do we in this way narrow our view of the world around us, but it makes us react to events surrounding us in the wrong way – a black-and-white reaction is all too simple in the complex world we live in.

In a democratic society, the relationship between human rights and tolerance is a two-way street: the promotion of human rights is a key element of tolerance and vice-versa; a lack of tolerance within a society also reduces the degree of protection for human rights. This thought serves as a baseline for assessment of the respect for human rights in Slovenian society: there is a lot of talk about how essential it is to protect human rights and not enough action. Often, the reason is that we are not sufficiently aware of either. Whenever we are personally affected by this issue, albeit imaginary, we react decisively and stand up for ourselves (and we are justified in doing so). However, when someone else is affected, we are either indifferent or completely oblivious to it. We must realize that these are two general concepts that no one may lay claim to: respect for human rights begins by respecting the rights of those who are different!

This report addresses a number of issues identified in the course of our endeavours to protect human rights in 2005. In most cases, these are ongoing issues from previous years; unfortunately, the state is a rigid organism and it takes a long time to change. To use a bit of sarcasm: we should thank our lucky stars! Where would we be if new violations were invented each year? Of course, we should regard this problematic without sarcasm. We all want flexibility and expediency in changing things for the better! Fortunately, some problems are being resolved despite everything. Slowly, but surely.

Matjaž Hanžek
Human Rights Ombudsman

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List of abbreviations and acronyms

A. LAWS AND OTHER LEGAL ACTS

EKČP European Convention for the Protection of Human Rights and Fundamental Freedom
Act ratifying the Convention on Human Rights and Fundamental Freedoms as amended by protocols nos. 3, 5 and 8 and amended by protocol no. 2 and its protocols nos. 1, 4, 6, 7, 9, 10 and 11 (Official Gazette of the Republic of Slovenia – International Treaties Section, no. 7/94, Official Gazette of the Republic of Slovenia, issue no. 33/94)

KOP Convention on the Rights of the Child
(Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties Section, issue no. 15/90)

KZ Penal Code of the Republic of Slovenia
(Official Gazette of the Republic of Slovenia, issue no. 63/94, 70/94, 23/99, 10/02, 40/04, official consolidated text – KZ-UPB1 – Official Gazette of the Republic of Slovenia, issue no. 95/04)

MEKUOP Act Ratifying the European Convention on the Exercise of Children's Rights
(Official Gazette of the Republic of Slovenia – International Treaties Section, issue no. 26-82/99 – Official Gazette of the Republic of Slovenia, issue no. 86/99)

OdUNDTDZ Ordinance on the Establishment and Tasks of the National Assembly Working Bodies
(Official Gazette of the Republic of Slovenia, issue no. 123/04)

PoDZ-1 National Assembly of Slovenia Rules of Procedure
(Official Gazette of the Republic of Slovenia, issue no. 35/02)

SZ Housing Act
(Official Gazette of the Republic of Slovenia, issues no. 18/91, 19/91, 13/93, 9/94, 21/94, 22/94, 29/95, 23/96, 24/96, 44/96, 23/96, 1/00, 22/00, 87/02)

SZ-1 Housing Act
(Official Gazette of the Republic of Slovenia, issues no. 69/03, 18/04)

UZITUL Constitutional Act Implementing the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia
(Official Gazette of the Republic of Slovenia, issue no. 3/91)

ZDavP Tax Procedure Act
(Official Gazette of the Republic of Slovenia, issues no. 18/96, 78/96, 87/97, 35/98, 82/98, 91/98, 1/99, 108/99, 37/01, 97/01, 105/03, 16/04, 42/04, 54/04, 109/04, 128/04)

ZDavP-1 Tax Procedure Act
(Official Gazette of the Republic of Slovenia, issues no. 54/04, 57/04, 109/04, official consolidated text – ZDavP-1-UPB1 – Official Gazette of the Republic of Slovenia, issue no. 25/05)

ZDDPO-1 Corporation Income Tax Act
(Official Gazette of the Republic of Slovenia, issues no. 40/04, 70/04, 139/04, 108/05, official consolidated text ZDDPO-1-UPB2 – Official Gazette of the Republic of Slovenia, issue no. 33/06)

ZDDV Value Added Tax Act
(Official Gazette of the Republic of Slovenia, issues no. 89/98, 17/00, 30/01, 67/02, 30/03, 101/03, 45/04, 75/04, 84/04, 114/04, 108/05, 21/06, official consolidated text – ZDDV-UPB4 – Official Gazette of the Republic of Slovenia, issue no. 21/06)

ZDIJZ Access to Public Information Act
(Official Gazette of the Republic of Slovenia, issues no. 24/03, 61/05, official consolidated text – ZDIJZ-UPB1 – Official Gazette of the Republic of Slovenia, issues no. 96/05, 109/05, 113/05, 28/06)

ZDIP Payroll Tax Act
(Official Gazette of the Republic of Slovenia, issues no. 34/96, 31/97, 109/01, 83/04, 106/05, official consolidated text – ZDIP-UPB2 – Official Gazette of the Republic of Slovenia, issue no. 21/06)

ZDoh Personal Income Tax Act
(Official Gazette of the Republic of Slovenia, issues no. 71/93, 2/94, 1/95, 2/95, 7/95, 11/95, 11/96, 14/96, 18/96, 44/96, 68/96, 10/97, 82/97, 87/97, 13/98, 1/99, 11/99, 36/99, 15/00, 13/01, 19/02, 19/03, 118/03, 18/04, 54/04)

ZDoh-1 Personal Income Tax Act
(Official Gazette of the Republic of Slovenia, issues no. 54/04, 56/04, 62/04, 63/04, 80/04, 139/04, official consolidated text – ZDoh-1-UPB1 – Official Gazette of the Republic of Slovenia, issues no. 17/05, 53/05, official consolidated text – ZDoh-1-UPB2 – Official Gazette of the Republic of Slovenia, issues no. 70/05, 115/05, official consolidated text – ZDoh-1-UPB3 – Official Gazette of the Republic of Slovenia, issue no. 21/06)

ZDLov-1 Wild Game and Hunting Act
(Official Gazette of the Republic of Slovenia, issue no. 16/04)

ZDR Employment Relationship Act
(Official Gazette of the Republic of Slovenia, issue no. 42/02)

ZDRS Citizenship of the Republic of Slovenia Act
(Official Gazette of the Republic of Slovenia, issues no. 1/91, 30/91, 38/92, 61/92, 13/94, 13/95, 29/95, 59/99, 96/02, official consolidated text – ZDRS-UPB1 – Official Gazette of the Republic of Slovenia, issue no. 7/03)

ZDru Societies Act
(Official Gazette of the Republic of Slovenia, issues no. 60/95, 49/98, 89/99, 80/04)

ZDT State Prosecutor Act
(Official Gazette of the Republic of Slovenia, issues no. 63/94, 59/99, 56/02, 105/02, 110/02, official consolidated text – ZDT-UPB1 – Official Gazette of the Republic of Slovenia, issues no. 14/03, 17/06, 20/06)

ZDU-1 Public Administration Act
(Official Gazette of the Republic of Slovenia, issues no. 52/02, 110/02, 56/03, 61/04, 123/04, 93/05, official consolidated text – ZDU-1-UPB4 – Official Gazette of the Republic of Slovenia, issue no. 113/05)

ZDVEDZ-A Act Amending the Act on the Establishment of Constituencies for Elections of Deputies to the National Assembly
(Official Gazette of the Republic of Slovenia, issue no. 80/04)

ZEMŽM Equal Opportunities for Women and Men Act
(Official Gazette of the Republic of Slovenia, issue no. 59/02)

ZGim Gimnazije Act
(Official Gazette of the Republic of Slovenia, issues no. 12/96, 59/01)

ZGO-1 Construction Act
(Official Gazette of the Republic of Slovenia, issues no. 110/02, 97/03, 41/04, 45/04, 46/04, 47/04, official consolidated text – ZGO-1-UPB1 – Official Gazette of the Republic of Slovenia, issues no. 102/04, 92/05, 93/05, 111/05)

ZGos Catering Act
(Official Gazette of the Republic of Slovenia, issues no. 1/95, 29/95, 44/96, 40/99, 36/00, 110/02, 101/05, official consolidated text – ZGos-UPB1 – Official Gazette of the Republic of Slovenia, issue no. 4/06)

ZIKS-1 Enforcement of Penal Sentences Act
(Official Gazette of the Republic of Slovenia, issues no. 22/00, 52/02, 110/02, 113/05)

ZIN Inspection Act
(Official Gazette of the Republic of Slovenia, issue no. 56/02)

ZInfP Information Commissioner Act
(Official Gazette of the Republic of Slovenia, issue no. 113/05)

ZIZ Execution of Judgments in Civil Matters and Insurance of Claims Act
(Official Gazette of the Republic of Slovenia, issues no. 51/98, 72/98, 11/99, 89/99, 11/01, 75/02, 87/02, 70/03, 16/04 official consolidated text – ZIZ-UPB1 Official Gazette of the Republic of Slovenia, issue no. 40/04)

ZJU Civil Servants Act
(Official Gazette of the Republic of Slovenia, issues no. 56/02, 110/02, 2/04, 23/05, official consolidated text – ZJU-UPB1 – Official Gazette of the Republic of Slovenia, issues no. 35/05, 62/05, 75/05, 113/05, 21/06, 23/06, official consolidated text – ZJU-UPB2 – Official Gazette of the Republic of Slovenia, issue no. 32/06)

ZJZ Public Gatherings Act
(Official Gazette of the Republic of Slovenia, issue no. 59/02)

ZKP Criminal Procedure Act
(Official Gazette of the Republic of Slovenia, issues no. 63/94, 70/94, 25/96, 39/96, 5/98, 49/98, 72/98, 6/99, 66/00, 111/01, 32/02, 110/02, 44/03, 56/03, official consolidated text – ZKP-UPB1 – Official Gazette of the Republic of Slovenia, issues no. 116/03, 43/04, 68/04, official consolidated text – ZKP-UPB2 – Official Gazette of the Republic of Slovenia, issues no. 96/04, 101/05, official consolidated text – ZKP-UPB3 – Official Gazette of the Republic of Slovenia, issue no. 8706)

ZLV Local Elections Act
(Official Gazette of the Republic of Slovenia, issues no. 72/93, 7/94, 33/94, 61/95, 70/95, 51/02, 11/03, 73/03, 54/04, 72/05, 121/05, official consolidated text – ZLV-UPB2 – Official Gazette of the Republic of Slovenia, issue no. 22/06)

ZMat Matura Examination Act
(Official Gazette of the Republic of Slovenia, issue no. 15/03)

ZMed Public Media Act
(Official Gazette of the Republic of Slovenia, issues no. 35/01, 54/02, 62/03, 73/03, 113/03, 16/04, 123/04, 96/05)

ZMEPIZ Act Regulating the Register of Insured Persons and those Entitled to Pension and Disability Benefits
(Official Gazette of the Republic of Slovenia, issue no. 81/00)

ZNP Non-litigious Civil Procedure Act
(Official Gazette of the (Socialist) Republic of Slovenia, issues no. 30/86, 20/88, 87/02, 131/03)

ZObr Defence Act
(Official Gazette of the Republic of Slovenia, issues no. 82/94, 44/97, 87/97, 13/98, 33/00, 87/01, 47/02, 67/02, 110/02, 97/03, 40/04, official consolidated text – ZObr-UPB1 – Official Gazette of the Republic of Slovenia, issues no. 103/04, 138/04)

ZOFVI Organization and Financing of Education Act
(Official Gazette of the Republic of Slovenia, issues no. 12/96, 23/96, 22/00, 64/01, 101/01, 108/02, official consolidated text – ZOFVI-UPB1 – Official Gazette of the Republic of Slovenia, issues no. 14/03, 34/03, official consolidated text – ZOFVI-UPB2 – Official Gazette of the Republic of Slovenia, issue no. 55/03, official consolidated text – ZOFVI-UPB3 – Official Gazette of the Republic of Slovenia, issues no. 115/03, 65/05, official consolidated text – ZOFVI-UPB4 – Official Gazette of the Republic of Slovenia, issue no. 98/05)

ZOUTI Restriction of the Use of Tobacco Products Act
(Official Gazette of the Republic of Slovenia, issues no. 57/96, 119/02, official consolidated text – ZOUTI-UPB1 – Official Gazette of the Republic of Slovenia, issue no. 26/2003)

ZP-1 General Offences Act
(Official Gazette of the Republic of Slovenia, issues no. 7/03, 86/04, 7/05, 34/05, 44/05, official consolidated text – UPB2 – Official Gazette of the Republic of Slovenia, issues no. 55/05, 40/06)

ZPIZ-1 Pension and Invalidity Insurance Act
(Official Gazette of the Republic of Slovenia, issues no. 106/99, 72/00, 81/00, 124/00, 52/01, 109/01, 11/02, 108/02, 110/02, 114/02, official consolidated text – ZPIZ-1-UPB1 – Official Gazette of the Republic of Slovenia, issues no. 26/03, 29/03, 63/03, 135/03, 2/04, official consolidated text – ZPIZ-1-UPB2 – Official Gazette of the Republic of Slovenia, issues no. 20/04, 25/04, 54/04, 63/04, 72/05, official consolidated text – ZPIZ-1-UPB3 – Official Gazette of the Republic of Slovenia, issue no. 104/05)

ZPKri Redressing of Injustices Act
(Official Gazette of the Republic of Slovenia, issue no. 59/96, 68/98, 61/99, 11/01, 29/01, 87/01, 47/02, 34/03, official consolidated text ZPKri-UPB1 – Official Gazette of the Republic of Slovenia, issues no. 47/03, 53/05, official consolidated text – ZPKri-UPB2 – Official Gazette of the Republic of Slovenia, issue no. 70/05)

ZPol Police Act
(Official Gazette of the Republic of Slovenia, issues no. 49/98, 66/98, 93/01, 52/02, 56/02, 26/03, 48/03, 79/03, official consolidated text – ZPol-UPB1 – Official Gazette of the Republic of Slovenia, issues no. 110/03, 43/04, 50/04, 54/04, official consolidated text – ZPol-UPB2 – Official Gazette of the Republic of Slovenia, issues no. 102/04, 53/05, 98/05, official consolidated text – ZPol-UPB5 – Official Gazette of the Republic of Slovenia, issues no. 3/06, 35/06)

ZPP Civil Procedure Act
(Official Gazette of the Republic of Slovenia, issues no. 26/99, 96/02, 110/02, official consolidated text – ZPP-UPB1 – Official Gazette of the Republic of Slovenia, issues no. 12/03, 58/03, 2/04, official consolidated text ZPP-UPB2 – Official Gazette of the Republic of Slovenia, issue no. 36/04)

ZRLI Referendum and Public Initiative Act
(Official Gazette of the Republic of Slovenia, issue no. 15/94, official consolidated text – UPB1 – Official Gazette of the Republic of Slovenia, issue no. 24/05)

ZRTVS Radiotelevizija Slovenija Act
(Official Gazette of the Republic of Slovenia, issues no. 18/94, 29/94, 73/94, 88/99, 90/99, 102/99, 113/00, 35/01, 79/01)

ZRTVS-1 Radiotelevizija Slovenija Act
(Official Gazette of the Republic of Slovenia, issues no. 96/05, 109/05)

ZSDP Parental Protection and Family Benefits Act
(Official Gazette of the Republic of Slovenia, issues no. 97/01, 7/02, 11/03, 76/03, official consolidated text – ZSDP-UPB1 – Official Gazette of the Republic of Slovenia, issues no. 110/03, 3/04)

ZSV Social Assistance Act
(Official Gazette of the Republic of Slovenia, issues no. 54/92, 56/92, 13/93, 42/94, 1/99, 41/99, 36/00, 54/00, 26/01, 6/02, 110/02, 2/04, 3/04, 7/04, official consolidated text – ZSV-UPB1 – Official Gazette of the Republic of Slovenia, issue no. 36/04)

ZTuj-1 Aliens Act
(Official Gazette of the Republic of Slovenia, issues no. 61/99, 9/01, 87/02, 96/02, official consolidated text – ZTuj-1-UPB1 – Official Gazette of the Republic of Slovenia, issues no. 108/02, 93/05, official consolidated text – UPB2 – Official Gazette of the Republic of Slovenia, issue no. 112/05)

ZUL Official Gazette of the Republic of Slovenia Act
(Official Gazette of the Republic of Slovenia, issues no. 57/96, 90/05, official consolidated text – ZUL-UPB1 – 112/05)

ZUN Act on Urban Planning and Other Forms of Land Use
(Official Gazette of the (Socialist) Republic of Slovenia, issues no. 18/84, 37/85, 26/90, 18/93, 47/93, 71/93, 29/95, 44/97, 31/00

ZUNEO Implementation of the Principle of Equal Treatment Act
(Official Gazette of the Republic of Slovenia, issue no. 50/04)

ZUOPP Placement of Children with Special Needs Act
(Official Gazette of the Republic of Slovenia, issue no. 54/00)

ZUP General Administrative Procedure Act
(Official Gazette of the Republic of Slovenia, issues no. 80/99, 70/00, 52/02, 73/04, official consolidated text – ZUP-UPB1 – Official Gazette of the Republic of Slovenia, issues no. 22/05, 119/05, official consolidated text – ZUP-UPB2 – Official Gazette of the Republic of Slovenia, issue no. 24/06)

ZUS Administrative Disputes Act
(Official Gazette of the Republic of Slovenia, issues no. 50/97, 65/97, 70/00, 92/05)

ZUDPPKZ Act on Termination of Certain General Offence Procedures and Discharge of Certain Imprisonment Sentences
(Official Gazette of the Republic of Slovenia, issue no. 35/05)

ZVarČP Human Rights Ombudsman Act
(Official Gazette of the Republic of Slovenia, issue no. 71/93, amended in 15/94, 56/02)

ZVCP-1 Road Traffic Safety Act
(Official Gazette of the Republic of Slovenia, issues no. 83/04, 35/05, 67/05, 69/05, official consolidated text – ZVCP-1-UPB2 – Official Gazette of the Republic of Slovenia, issues no. 97/05, 108/05, official consolidated text – ZVCP-1-UPB3 – Official Gazette of the Republic of Slovenia, issue no. 25/06)

ZVDZ National Assembly Elections Act
(Official Gazette of the Republic of Slovenia, issues no. 44/92, 13/93, 60/95, 14/96, 67/97, 66/00, 70/00, 11/03, 73/03)

ZVojl War Disabled Act
(Official Gazette of the Republic of Slovenia, issues no. 63/95, 62/96, 2/97, 19/97, 21/97, 75/97, 11/06)

ZVOP Personal Data Protection Act
(Official Gazette of the Republic of Slovenia, issues no. 59/99, 57/01, 59/01, 52/02, 73/04)

ZVOP-1 Personal Data Protection Act
(Official Gazette of the Republic of Slovenia, issues no. 86/04, 113/05)

ZVrt Pre-school Education Act
(Official Gazette of the Republic of Slovenia, issues no. 12/96, 44/00, 78/03, official consolidated text – ZVrt-UPB1 – Official Gazette of the Republic of Slovenia, issues no. 113/03, 72/05, official consolidated text – ZVrt-UPB2 – Official Gazette of the Republic of Slovenia, issue no. 100/05)

ZVV War Veterans Act
(Official Gazette of the Republic of Slovenia, issue no. 63/95, 108/99, 47/02, 76/03, official consolidated text – ZVV-UPB1 – Official Gazette of the Republic of Slovenia, issue no. 110/03, 38/06)

ZZPPZ Healthcare Databases Act
(Official Gazette of the Republic of Slovenia, issue no. 65/00)

ZZPrič Witness Protection Act
(Official Gazette of the Republic of Slovenia, issue no. 113/05)

ZZVN Victims of War Violence Act
(Official Gazette of the Republic of Slovenia, issues no. 63/95, 8/96, 44/96, 70/97, 39/98,43/99, 19/00, 28/00, 1/01, 64/01, 110/02, 3/03, official consolidated text – ZZVN-UPB1 – Official Gazette of the Republic of Slovenia, issues no. 18/03, 54/04, 68/05)

ZZVZZ Health Care and Health Insurance Act
(Official Gazette of the Republic of Slovenia, issues no. 9/92, 13/93, 9/96, 29/98, 77/98, 6/99, 56/99, 99/01, 42/02, 60/02, 126/03, official consolidated text – ZZVZZ-UPB1 – Official Gazette of the Republic of Slovenia, issues no. 20/04, 62/05, 76/05, official consolidated text – ZZVZZ-UPB2 – Official Gazette of the Republic of Slovenia, issues no. 100/05, 38/06)

ZZZAt Temporary Asylum Act
(Official Gazette of the Republic of Slovenia, issues no. 20/97, 84/00, 67/02, 2/04, 65/05)

ZZZDR Marriage and Family Relations Act
(Official Gazette of the (Socialist) Republic of Slovenia, issues no. 15/76, 30/86, 1/89, 14/89, RS no., 13/94, 82/94, 29/95, 26/99, 60/99, 70/00, 64/01, 110/02, 42/03, 16/04, official consolidated text – ZZZDR-UPB1 – Official Gazette of the Republic of Slovenia, issue no. 69/04)

ZZZPB Employment and Insurance against Unemployment Act
(Official Gazette of the Republic of Slovenia (old), issues no. 10/91, 17/91, 12/92, 12/93, 13/93, 71/93, 2/94, 38/94, 80/97, 69/98, 65/00, 67/02)

B. STATE AUTHORITIES AND OTHER BODIES

CSD	Social Services Centre
DKSM	National General Matura Committee
DZ	National Assembly
DURS	Tax Administration of the Republic of Slovenia
ESČP	European Court of Human Rights
GPU	General Police Directorate
GURS	Surveying and Mapping Authority of the Republic of Slovenia
IK	Invalidity Committee
IRSD	Slovenian Labour Inspectorate
IRSOP	Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning
KC	Ljubljana University Medical Centre
KS	Local Community
LD	Hunters' Association
MDDSZ	Ministry of Labour, Family and Social Affairs
MF	Ministry of Finance
MG	Ministry of the Economy
MJU	Ministry of Public Administration
MK	Ministry of Culture
MKGP	Ministry of Agriculture, Forestry and Food
MNZ	Ministry of Internal Affairs
MO	City Municipality
MOL	City of Ljubljana
MOP	Ministry of the Environment and Spatial Planning
MP	Ministry of Justice
MORS	Ministry of Defence of the Republic of Slovenia
MŠŠ	Ministry of Education and Sport
MVŠZT	Ministry of Higher Education, Science and Technology
MZ	Ministry of Health
MZZ	Ministry of Foreign Affairs
OE	Regional Unit
OŠ	Elementary School
PP	Police Station
PPP	Traffic Police Station
PU	Police Directorate
RTVS	Radio Television Slovenia
SKZG	Farmland and Forest Fund of the Republic of Slovenia
SOD	Slovenian Indemnity Fund
TIRS	Market Inspectorate of the Republic of Slovenia
UE	Administrative unit
UEM	Office for Equal Opportunities
UIKS	Prison Administration of the Republic of Slovenia

US	Constitutional Court
VČP	Human Rights Ombudsman
VO-KA	Water Supply and Sewage – Public Utility Company
ZD	Community Healthcare Centre
ZIRS	Health Inspectorate of the Republic of Slovenia
ZPIZ	Institute of Pension and Disability Insurance of Slovenia
ZPKZ	Prison Service
ZPMZ KZ	Prisons and Juvenile Correctional Facilities
ZRSZ	Employment Service of Slovenia
ZZZS	Health Insurance Institute of Slovenia

C. MISCELLANEOUS

BiH	Bosnia and Herzegovina
DDV	Value added tax
DNA	Deoxyribonucleic Acid
EMŠO	Unique Master Citizen Number
EU	European Union
FLRJ	Federal People's Republic of Yugoslavia
LP	Ombudsman's Annual Report
NATO	North Atlantic Treaty Organisation
NK	Football Club
NOV	National Liberation War
OMPRO	List of limited authorizations
UNO	United Nations Organisation
PIN	Spatial implementation plan
PTI	Vocational qualification training
PUP	Spatial planning conditions
RS	Republic of Slovenia
SFRY	Socialist Federal Republic of Yugoslavia
SIS	Schengen Information System
SIT	Slovenian Tolar
SRS	Socialist Republic of Slovenia
ŠD	Student halls of residence
TV	Television
UL	Official Gazette of the Republic of Slovenia
UNESCO	United Nations Educational, Scientific and Cultural Organization
VO	Military Committee
USA	United States of America
UN	United Nations

01 Assessment of respect for human rights and legal security in the country

The nature of human rights is such that the forms in which they are violated change little from year to year. This is because the elimination of such violations depends greatly on the changed conduct of state authorities which is a large, inflexible system where changes only happen very slowly. In terms of eliminating violations of human rights, we would like to see a faster response from all institutions involved in these violations, which means solving people's problems more quickly. In particular, we would like to see a faster response from international authorities dedicated to monitoring and reporting on the state of human rights in individual countries, since the Ombudsman's warnings do not seem to be sufficient. But since this is not the case, we must say again that this year's assessment of the respect for human rights in Slovenia is not much different from past years' assessments. One of the most pressing systemic issues is the right to trial within reasonable time, a fact which the European Court of Human Rights warned us last year by issuing several court decisions against Slovenia. Unreasonably long court proceedings are disputable not only because the individual is forced to wait many years for justice to be served, but it is often the reason that the individual does not live to see justice being served at all. Waiting for justice to be served places people in existentially difficult situations, even causing them to waive judicial protection of their rights in advance. In this context, we should mention poor laws that are often passed too quickly, without careful assessment of the possible consequences, where expert opinions are disregarded in the drafting process and partial interests are forced into the general legislative procedure. These legislative shortcomings and unreasonably long court proceedings tell lawbreakers that they are welcome to break the law since there is a low likelihood of them ever being punished.

Non-compliance with the decisions of the Constitutional Court is another pressing issue, with the number of unexecuted decisions doubling in the past year. In this context, we must highlight two issues that we have been reporting repeatedly each year: erased persons and mental health. Even disregarding ten years of appeals made by the Ombudsman about the need for regularizing the status of the erased, warnings from international institutions such as the Council of Europe's Commissioner for Human Rights and the European Commission against Racism and Intolerance (ECRI) should serve as a sufficient argument. Unfortunately, it seems that Slovenian politics are unaffected by these appeals, as this issue has dragged on far too long and it has not yet been resolved by any government. The present government does not seem to be inclined to proposing any solutions that would comply with the decision of the Constitutional Court, either. Despite years of promises, the law on mental health is still awaiting attention from politicians with enough sentiment for people with mental disabilities.

Public speech ethics and expressions of intolerance against various minorities are still an issue of which we are not sufficiently aware to change our conduct. In their race for shareholder profits, several media have had no scruples in publishing unjustified, unethical and often illegal writing divulging personal information about individuals, even children, presenting untrue or incomplete facts and judging individuals disliked by some, without providing concrete proof of their allegations. We should especially mention expressions of intolerance against various groups in political speeches made by certain politicians as a substitute for their own lack of vision. On 17 March 2005, the European Commission against Racism and Intolerance issued a special recommendation appealing to politicians to act responsibly and avoid expressions of intolerance against minorities.

The Constitution tells us that Slovenia is a state governed by the rule of law and a social state, but we quite often forget these facts. The difficult social and economic situation that people find themselves in is still quite evident and it seems that society is not concerned enough about this. In order to raise awareness about the people lost in the fog of indifference, we decided to study the issue of the homeless in 2005; they are the most extreme negative product of a society driven by personal profit. The increase in free legal aid is an additional indicator of the increasing exclusion of certain layers of the population from general society. We need to improve solidarity towards the elderly, the unemployed and all those dropping out of the race for material wealth. This includes children and child abuse, and so last year's refusal of the Ombudsman's proposal to ban corporal punishment of children by the National Assembly did not serve to improve matters.

The low level of awareness of people about what their rights are, how to protect them or available measures to remedy existing violations against them, the all-too-common indifference on the part of institutions intended to ensure that citizens are treated fairly, and special needs of certain population groups, have required special forms of the Ombudsman's involvement in the past. This was acknowledged by the National Council, which, over the past years, helped to establish a special department for children's rights and a department for the elimination of discrimination within the Ombudsman's Office. In the future, the Ombudsman's efforts in the area of human rights will undoubtedly include additional responsibilities; the first responsibility expected in 2006 is monitoring of the implementation of the UN optional protocol against torture and other cruel and inhuman treatment. All these activities extend beyond the Ombudsman's ordinary field of activity – in addition to the reactive form of involvement (examining individual claims of violations of human rights), he also takes on a proactive role, i.e. carrying out promotional activities. This is why the possibility of introducing organizational changes in the operation of the Office of the Human Rights Ombudsman on the basis of expert analyses should be examined as soon as possible.

In the area of **freedom of conscience**, we have received petitions about the unacceptability (unconstitutionality) of the provision of spiritual and religious support for those employed in the Slovenian Armed Forces. This arrangement is allegedly in contradiction to the constitutional principle of the separation of church and state. On this issue, we detected a potential conflict between the freedom of public declaration of religious belief and the freedom of non-declaration of any belief (positive and negative religious freedom), where the state must remain neutral – it must not be biased in favour of either. Although the Rules on the Organisation of Religious and Spiritual Support in the armed forces provide for spiritual support of those communities that do not employ chaplains in the army, we have identified the potential issue of ensuring equal status with regard to those who do not wish to be burdened with any kind of faith. Another source of controversy is the spiritual support of soldiers who require non-religious forms of spiritual support.

Religious freedom is still not defined by statute, a fact we have warned about in past annual reports. This is still the largest systemic problem in this field, as shown in the unequal treatment of different religious communities. This is why the Ombudsman expects that this pressing issue will be resolved on the basis of a tolerant open-forum discussion as soon as possible. We have also detected individual expressions of religious intolerance directed at specific religious communities, which indicates a low level of tolerance in society, particularly frequent in the media and the Internet.

One of the areas with the fastest growing number of reported complaints is the ethics of public speech, where the number of complaints has more than doubled. There are probably more reasons for this, among which we can include frequent warnings by the Ombudsman about the unacceptability of spreading intolerance, trial by media or incomplete or false reporting published in certain media, and the consequent increased sensitivity of the population. Part of the blame rests on the shoulders of certain media trying to increase their circulation in a market environment by publishing sensationalist stories, often crossing the limits of what is acceptable, mainly by invasion of privacy. The foremost example of this behaviour can be found in the tabloid press while other media try to follow in its footsteps with ruthless market logic. These media often claim the right of informing the public, which is not sanctioned by the Constitution as such. The Ombudsman expects the media to give better consideration to the private and the public sphere in the future. In this context, we should emphasize that it is unacceptable to use children and their tragic destinies to write sensationalist stories aimed at increasing newspaper circulations. We are also finding that children are still not adequately protected from dissemination of harmful media content.

In examining petitions alleging hate speech and incitement to intolerance, we found that the definition of this criminal act in the Penal Code is narrower in scope than those provided by the Constitution and international conventions. Only the promotion of intolerance on the basis of race, religion or nationality is classified as a criminal offence, while other forms of intolerance are not incriminated.

It is the Ombudsman's opinion that other forms of expression of intolerance deserve the same degree of criminal prosecution since there is no reason why hate speech against groups of people characterized by other characteristics should be any less harmful. In this context, we should also mention the spread of hate speech via the Internet, especially the websites of certain electronic and printed media.

Most petitions received in connection with discrimination referred to hate speeches, while fewer referred to actual acts. At this point, we should mention that there is currently no fundamental law on the Roma population, and no existing strategy of integrating the Roma into society, even though this is foreseen by the Constitution. Another open issue is the so-called "new minorities" issue, referring to members of former Yugoslav nations who remained in Slovenia after its declaration of independence, effectively becoming a minority. While the Ministry of Culture devotes some funds to cultural activities of these minorities, it is imperative that their legal status be regularized as soon as possible in order to protect their collective minority rights.

In the area of **limitation of personal liberty**, there is a marked readiness to ratify the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, whereby Slovenia will be additionally bound to respect international standards regarding treatment of persons deprived of personal liberty. The ratification of the Protocol will lead to the appointment of an independent institution which will provide additional monitoring of the Convention's implementation. This task could be performed by the Human Rights Ombudsman within the scope of his present responsibilities because the required knowledge is already in place with only additional staff and material outfitting required.

Apart from the issue of prison overpopulation, especially in detention wards, we detected activities last year that cast a doubt on the principle of equality before law in the implementation of prison sentences. Although the law provides that implementation of prison sentences may be deferred under justified special circumstances, most are enacted within eight days of final judgement. We even discovered gravely sick and elderly prisoners serving sentences in prison, who have been officially ill for years, and we questioned the sense of them staying in a correctional institution. On the other hand, we are aware of cases where famous and influential individuals have been able to stay the execution of their prison sentences for several years. In one case, the court decided to defer the serving of the prison sentence because of the defendant's claim that provisions of the penal code were violated during the trial, even though every single request for the protection of legality probably validates such violations. Therefore, it is our belief that an appeal based merely on the content of a request for the protection of legality is not a sufficient reason for a stay of the sentence. However, we presume that other circumstances not mentioned in the court decision may have affected the decision. At this point, we must stress that we are all equal before the law and that the same rules and laws must be applied to everyone when deciding on the deferment of prison sentences.

We also detected cases of **unreasonably long detention** in cases where court proceedings take too long. In one case, we lodged an appeal with the Constitutional Court, but our position was rejected. We should emphasize that the deprivation of liberty is an extreme measure which should be used for the shortest possible time. This is why it is particularly important to carefully prepare and carry out court trials in such cases.

Although we have not detected any major or systematic violations in prisons and detention centres, there are some outstanding issues that should still be addressed. These mainly involve group service of sentences in often overcrowded dormitories, customary 22-hour lock-up of prisoners in cramped cells without any kind of organized activities, and visitation of convicts where we detected different practices of individual courts regarding issuance of temporary or permanent visitation permits. We also noted a case of collective punishment. Another pressing issue is the overpopulation of prisons and especially detention centres. On the other hand, we should also mention some noted improvements: much effort has been put into redesigning premises for more humane service of prison sentences, and there have also been improvements in the provision of healthcare services.

We have noted many improvements in our inspections of **police detention rooms** due to many recent renovations. While an electronic detention database was established in 2005, there are certain shortcomings involved – it only provides information on detentions in individual units and not specific other data, such as data on the persons detained. This will need to be improved. We also noted that detainees are almost never given the option of seeking legal aid, which is a particular problem where minors are involved. The same is true of medical assistance but this has been regularized by the Police Act adopted in November.

In the area of police work, we have noted significant improvements in appeals procedures introduced by the Rules on Resolving Appeals and further amendments introduced at the end of 2005. The largest number of complaints involving police work refer to the use of police authority, particularly in road traffic, and an alleged non-response in certain crimes reported. We have noted no major systematic violations in this respect, either.

Decisions of the Constitutional Court and the European Court of Human Rights almost simultaneously confirmed what the Human Rights Ombudsman has been repeating without effect from the beginning: the right to trial within reasonable time is being methodically violated, making it a systemic problem. Apart from the finding of the violation of rights granted by the Convention in the familiar case of Lukenda v. Slovenia, the decision of the European Court of Human Rights requires Slovenia to adopt general and specific measures, including changes in legislation, to eliminate these violations. Almost at the same time, the Constitutional Court issued a decision, finding that the Administrative Disputes Act did not conform with the Constitution as it did not contain specific provisions adapted to the nature of the right to a trial without undue delay and which would allow the applicant to seek rightful satisfaction after the violation of the right to trial within the expiration of a reasonable period of time. This decision also casts a doubt on the efficiency of judicial protection of this right in cases where proceedings have not yet been completed. Efforts of the Ministry of Justice and the Slovenian government to eliminate court delays have been redoubled after the passing of these decisions; we can only hope that resolutions passed will not share the fate of similar actions in the past – e.g. Hercules Project.

We can also see that other issues in the justice department have remained the same as those in the past years. One particular issue is the ability of certain individuals to subsist; these individuals have either themselves taken on too much debt in the past years, or have recklessly, and sometimes under dubious circumstances, served as guarantors to others. We have identified a lack of statutory arrangements in cases of overindebtedness of individuals which would ensure (proportional) repayment of creditors while preserving the basic existence of the debtor and his dignity. This is why a law should be passed which would regularize the issue of repayment and relief of debt that debtors cannot afford to repay. Statutory regularization of "personal bankruptcy" by instituting a statutory procedure for debt relief is not only beneficial to the debtor but often also for the creditors, as it allows for a controlled and proportionate repayment of debt in their benefit. We have recommended the Minister of Justice to properly regularize this area by statute.

There have been no significant changes in the area of **administrative affairs** as compared to the past few years. The number of petitions continues to decrease in certain areas. These mainly involve issues arising as a consequence of national independence and the transition: denationalization, citizenship, foreigners, military laws and the redressing of injustices. Passing decisions within legally prescribed or reasonable timeframes remains a major obstacle; lengthy procedures are becoming a matter of course. Reference to the fact that instructive time limits are not legally binding does not help find solutions, because failure to respect deadlines, regardless of how we refer to them, constitute a breach of the Constitution on several counts: violation of the right to equal judicial protection, the right to trial without undue delay and the right to legal remedy.

We would like to point out the issue of unsuitable normative regulation, causing great difficulties for individuals. Laws are often adopted too hastily, without carrying out detailed analyses of the existing situation and the possible consequences, and the partial political interests in the National Assembly often modify previously acceptable solutions. In the process of

drafting and passing laws, there is too little regard for expert opinions and warnings, which often becomes evident soon after the law enters into force. This requires new amendments to the law, which, in turn, are often not well thought-out. This creates uncertainty and dissatisfaction in citizens seeking solutions and the officials implementing these laws.

In connection with the work of **inspection services**, we must once again repeat what we have been telling the relevant ministries, the government and the National Assembly for several years: the lack of coordination between the various inspectorates often results in inaction from any of them. At the Ombudsman's initiative, the National Assembly passed a recommendation in 2002, urging the government or the relevant ministries to resolve the pressing issue of unclear competence of various inspectorates in cases where a certain activity is in violation of regulations from multiple areas. However, nothing has changed since that time. Evidently, the Ombudsman is the only party that has examined this issue comprehensively and cautioned responsible parties about the actual and possible consequences.

This problem only grew worse after the introduction of the anti-bureaucratic programme to eliminate administrative barriers, intended to facilitate the establishment of new enterprises and crafts by eliminating the need for official decisions issued by administrative units that the entrepreneur satisfies the requirements. The Rules on Minimum Technical Requirements that was abolished in 2004 further aggravated the issue, as entrepreneurs may now begin performing business operations without providing proof of meeting the requirements. At the time, as in many other cases, the Ombudsman cautioned about the potential consequences, but without effect. This proves that we should not make hasty decisions in changing the legislation or pass decisions that have not been carefully examined from all angles.

The issue of **housing** is another area where problems have dragged on from year to year. The Ombudsman has been warning about these issues for years, yet nothing has changed. Because the state has left the housing issue to be solved by the market and its commercial logic, or rather it has allowed powerful individuals dictate this commercial logic, economically weaker population groups (young people, elderly people, less wealthy individuals, etc.) are finding it harder and harder to find an apartment. Even if the ever more fragmented municipalities have the will to help, they lack the funding to build apartments, especially for socially disadvantaged groups. We are also finding that fragmented municipalities are not sufficiently interested in pooling resources, since partial municipal interests seem to prevail over solidarity. We already pointed out the inadequate regularization of rent subsidies in the previous year's report, yet the situation remains unchanged. There is still the pressing issue of tenants living in denationalized apartments. The state has not shown adequate interest in resolving this issue despite warnings by the Ombudsman and certain international human rights institutions, such as for example the Council of Europe's Commissioner for Human Rights. Tenants in these apartments complain about pressure from new owners wanting to vacate the premises. Another common point of concern is poorly maintained apartments.

Unpaid compulsory **pension and disability insurance** contributions which we mentioned in last year's report are still a source of problems for individuals. This situation is further aggravated by lengthy court procedures. This applies particularly to cases where the court has decided that the termination of employment was unlawful, but the employer, charged with the payment of social contributions in arrears, had gone out of business during the court procedure. (There was one case where as much as 11 years had elapsed from the unlawful termination of employment to the final judgment.) This situation is mainly due to inadequate regulations placing the full weight of the issue on individuals who then shoulder all the consequences of actions they have no control over. It is the Ombudsman's recommendation that the relevant legislation be amended as soon as possible.

Based on petitions received by the Ombudsman in relation to **employment relationships**, we still see the large presence of unlawful conduct and other forms of pressure placed on employees, particularly from private employers. However, the Ombudsman has no direct influence in that area. We see cases of unlawful termination of employment, irregular disbursement of salaries and other forms of income, unpaid overtime, denial of annual leave, etc. Another indication of the

difficult situation of workers is the increase in the number of anonymous petitions alleging violations of labour legislation. This provides further indication of the pressures faced by the workers. We have also received several complaints about harassment and other pressures in the workplace. Because this issue is outside the scope of the Ombudsman's competence, we refer such petitions to relevant inspectors, who validate our concerns in many cases. Unfortunately, the law only allows inspectors to punish offenders for violations committed and does not allow them to order employers to pay their dues to employees, since this falls within the competence of the courts. Due to lengthy and costly court proceedings (these cases involve people who have no money at all!), very few choose to file suit to recover the sums due. This serves as an additional confirmation to certain unscrupulous employers that they are free to break the law. This is why the Ombudsman supports the recommendations proposed by the Labour Inspectorate to amend the Employment Relationship Act so as to increase the jurisdiction of inspectors by affording them the power to issue regulatory orders. In many cases, this would spare the workers from having to go through lengthy and expensive court proceedings and would reduce the workload of the courts and more effectively force employers to respect the law.

Although the department dealing with the **rights of the child** puts a lot of effort into the promotion of children's rights, children very rarely ask the Ombudsman for assistance. This is one of the reasons that we continued to visit various institutions devoted to children in order to obtain information about their problems directly. From these interviews and the petitions received from them or their parents or guardians, we have determined that while the situation is slowly improving, significant problems remain. Violence is still very present; both domestic violence and peer violence in schools. In this context, we would like to point out last year's refusal by the National Assembly of the prohibition of corporal punishment, which did not reflect positively on raising public awareness about the inappropriateness of such educational measures. Corporal punishment, no matter how mild in form, sends the message to children that this is an acceptable method of dispute resolution, which they will use later in life to resolve their own disputes. The line between harmless corporal punishment and violence can be crossed very quickly. Another pressing issue that affects children the most is that of poor and large families. There are also great problems related to the inclusion of children with special needs.

We are still noting problems related to the understanding and implementation of international conventions and state legislation, especially in cases where the child is the holder of rights. Children are still not adequately and actively involved in procedures that concern them, even though we have the adequate legal basis to provide an appropriate legal status. Despite efforts by the Ombudsman and others, non-governmental organizations in particular, to inform institutions dealing with children that children need to be involved in the decision-making processes that concern them, this rarely happens in reality.

In the area of **childcare services**, we have mostly received petitions about problems with enrolling children into childcare facilities near their homes or at least within the same municipality. Most often, local nursery schools are full and the neighbouring municipality, as a rule, charges higher fees, causing discrimination between children. We have also detected problems related to elementary school education of special needs children and young adults, and there are also problems with the integration of pupils with behavioural and discipline disorders into class communities. Other petitions received from the area of secondary and higher education were so diverse that we cannot present them under a common denominator.

02 Information on the work of the ombudsman

2.1 FORMS AND METHODS OF WORK

> The Human Rights Ombudsman is an institution independent from the state. It supervises the work of state authorities, local self-government authorities and bearers of public authority, and protects the rights of the individual in relation to these authorities. He represents a sort of counterbalance to the authorities, acting to prevent them from arbitrarily interfering with human rights.

The Ombudsman does not have the power to act in place of institutions, but to warn institutions about their (in)action or improper operation and demand that they take necessary measures to rectify them. The Ombudsman cannot make decisions in the same way that state authorities can and he cannot pass legally binding decisions sanctioned by judicial measures. Also, he has no powers over the private sector, therefore he cannot investigate violations perpetrated by private persons (e.g. private employers, commercial media, etc.).

The Human Rights Ombudsman is an additional, informal way of protecting rights, and cannot be considered a substitute for the use of legal remedies.

The Ombudsman's effort to protect rights are two-fold. On one level, he deals with individual reports of alleged violations of rights, while on the other level he acts proactively. The former means rectifying a specific violation while the second is intended to prevent violations from happening.

Proactive involvement – promotional awareness raising activities – **involves social marketing elements.** Actions, projects, campaigns, events are all designed to encourage state authorities and organizations to create new or implement existing actions and campaigns in order to reach the intended target audience (usually the one they are devoted to by default). As the supervisor over the operation of state authorities, local community authorities and bearers of public authority, the Ombudsman also monitors their efforts to inform the public about human rights issues. If the Ombudsman should determine that a particular authority has been neglecting its target groups in its proactive operations, he shall endeavour to use his own initiatives in encouraging that authority to increase its involvement.

In 2005, the Ombudsman realized a recommendation which was adopted by the National Assembly at his initiative. This involved the formation of a **specialized group to monitor all forms of discrimination and intolerance** within the Human Rights Ombudsman's Office. After obtaining an opinion from the Commission for Petitions, Human Rights and Equal Opportunities, the necessary changes were made to the Human Rights Ombudsman's Rules of Procedure in order to allow this. The Ombudsman has founded an interdisciplinary group that deals with all forms of discrimination comprehensively. This includes resolving discrimination-related petitions, as we have done in the past, carrying out studies and preparing the necessary educational and promotional strategies, aiming at reducing discrimination and intolerance in Slovenian society.

The Ombudsman **communicates with various publics** in his work. Because his fundamental responsibility is to resolve specific petitions, he receives about 3,000 of these per year (of which roughly 150 are sent by e-mail). During official hours, he endeavours to also solve people's problems outside his headquarters. Last year alone, he met with 160 people outside his offices. Almost every Tuesday, the Ombudsman has personal interviews with about seven petitioners, which amounts to about 300 personal meetings per year. The Ombudsman's staff conduct personal interviews with an average of ten petitioners at the Ombudsman's offices each day, amounting to about 2,200 contacts per year. The Ombudsman meets those deprived of liberty when he visits correctional institutions, psychiatric hospitals, asylum homes, alien centres and other institutions with restricted freedom of movement. The operator of the 080 15 30 toll-free hotline alone receives around 150 calls per day, amounting to about 3,000 telephone contacts per year.

Our public relations department deals with an average number of four journalists and members of various publics per day, amounting to about 1,600 contacts per year (considering the fact that media relations are not frequent during certain

periods in the year). Employees of the Ombudsman also meet with members of different publics at many other occasions, various events (Human Rights Day, Draught of Rights, etc.), meetings (with representatives from state authorities, non-governmental organizations, etc.), lectures, conventions, conferences, etc.

2.1.1 Transparency of work and keeping the public informed

The Ombudsman performs its tasks in a transparent manner and keeps various publics informed about its work (Articles 8 and 40 of the Human Rights Ombudsman Act (ZVarČP)), as follows:

- by sending notices to the state body or institution found to be in violation of a right or fundamental freedom, or by discussing the issue with the representative of the state body,
- by preparing annual and special reports to the National Assembly (Articles 5, 43 and 44) – the regular annual report is published in its publication Poročevalec DZ,
- by holding regular monthly press conferences,
- by issuing press releases for various publics,
- via the Ombudsman's website www.varuh-rs.si,
- by publishing the free newsletter entitled The Ombudsman – How to Protect Your Rights,
- by issuing promotional materials (general and occasion-specific), and
- through personal work with various target groups.

Free newsletter of the Ombudsman

The Ombudsman's free newsletter is published three to four times per year. It is an attempt to empower[1] target groups to which individual issues are dedicated, or it can simply serve as a way to inform the public about the situation in various areas the protection of human rights. All issues can be accessed via the Ombudsman's website www.varuh-rs.si. Three newsletters were published in 2005. The first issue presented best practices from European children's ombudsmen, active in the prevention of violence against children. This was a contribution to the international conference on violence and sexual abuse of children which took place in Ljubljana in July. The second issue summarized the contents of the Ombudsman's annual reports for the first time and presented it to the general public. The third issue was dedicated to freedom of expression, marking the celebration of Human Rights Day.

Keeping the public informed with annual and special reports

The issues presented in the abovementioned annual report are of special significance to the Ombudsman, as they are intended to take specific steps to improve the situation of human rights and are directly addressed to the competent institutions.

The summary of the annual report published in newsletter form is intended for different target groups, aimed at educating and raising awareness about pressing issues.

We include the most pressing issues in special reports and send them to the competent authorities with an appeal for action to rectify the situation. Last year, two special reports of the Ombudsman on the subjects of the erased and domestic violence were examined by competent working bodies within the National Assembly.

Website

We presented a new appearance of our website in 2005. The main goal of the redesign was to bring the content closer to the target user groups and to provide better opportunities for quality reporting and raising awareness about human rights and the ways to eliminate violations. The public's response to the new content has been very favourable.

[1] *The concept of empowerment is defined as allowing someone to take control of one's life and become as actively involved as possible in deciding and shaping it.*

The new web content and visual design on the Ombudsman's website is intended for four main target groups, namely for potential petitioners (reporting violations of their rights), the expert public (who resolve issues or can help to improve the situation of human rights), the media (because we are informing the public about the situation of human rights) and children and youth (because it is possible to prevent violation of rights through nurturing awareness of one's rights, and this process should start early in life[2]).

The website is also available to the international public, as it also provides complete information about the Ombudsman's activities in the English language, adapted for individual target groups. The content, layout and production of the website were created entirely within the Human Rights Ombudsman's Office.

Communication through the media

We also communicate relevant opinions, positions, assessments and cautions of the Ombudsman through the media. We keep in constant contact with the media, via e-mail, telephone and personal contacts. We hold monthly press conferences and we are also available to the media at various other occasions. Information communicated through the media reaches certain target groups which we cannot reach using other communication channels. They provide a wider public forum where certain issues that require our attention can be discussed, serving to raise awareness about human rights and helping to eliminate numerous violations of such rights.

2.1.2 When do we react publicly?

The Ombudsman offers opinions about individual events in various forms. The most common form is by answering the questions of the media, and consists less often of the issue of independent statements – usually in cases where a public authority was involved in a certain incident.

We normally decide to issue a public warning about a certain subject we are dealing with (not about issues that already have a high media exposure) if we determine that doing so will help bring to light and resolve other similar or identical cases.

Our public exposure practice is obviously the reason that many expect the Ombudsman to react to every statement which they find offensive or which they think should be exposed to the public. Often, the same demand will come from opposite sides of the issue, both parties claiming to be justified in their actions and that the other side is guilty of intolerance or offensive speech, etc. In truth, most often, the issue here is the lack of mutual understanding and tolerant dialogue. In this kind of situation, it is clear that both parties cannot be satisfied, which is why we try to point out the importance of mutual agreement in most cases of this kind.

In each individual case, we use our discretion when deciding on giving a public reaction to a specific incident, behaviour or statement. Our decision is based on expertise, experience and forethought, and it is only taken after all known facts have been taken into consideration and as many unknown factors as possible have been included in the analysis.

Bases for Ombudsman reaction

In reaching a decision for or against issuing a public warning, we consider the principles laid down by the law: the principles of legality, equity and good administration (Article 3). We also consider Article 9 of the Act, "allowing" the Ombudsman to deal "with more general issues relevant to the protection of human rights and fundamental freedoms and legal security of the citizens of the Republic of Slovenia". If we deem that a violation of rights has been committed in a particular matter we are dealing with, and it is our belief that putting the matter on the public forum will help to eliminate or prevent similar cases from happening in the

[2] *One of the positive examples include the results of the action entitled My Rights*

future and bring general benefit to society, we present it publicly while respecting the confidentiality of the procedure (Article 8 of the ZVarČP).

The principle of legality gives us the legal basis for a public response in the event of unlawful conduct (this includes statements by politicians, etc.).

The principle of good administration allows us to react on topics where (potential) violations of the rights of individuals originate from the relations between institutions or public bodies under the Ombudsman's supervision and the individual, and not from unlawful conduct.

The principle of equity allows us to react to issues which, in the Ombudsman's opinion, could lead to unfair conduct and consequent violation of rights, but are for various reasons not classified by statute. In this area of our work, we often receive criticism that the Ombudsman has no legal basis to react and that he should keep quiet in certain cases.

He has on several occasions exercised his right of individual freedom of expression, drawing directly on Article 39 of the Constitution which guarantees the "freedom of expression of thought, freedom of speech and public appearance, of the press and other forms of public communication and expression". He has always warned the public that he is speaking as an individual and not as Ombudsman.

The Ombudsman does not react if those competent for resolving public issues have already done so to a sufficient degree! The Ombudsman is an additional measure for protecting human rights and so we endeavour to complement social affairs and not act as a substitute for them or serve as everyman's voice without forethought.

Sometimes we do not respond to certain issues simply because we have not received any reports on these issues! Despite a good insight into the society, the Ombudsman lacks the mechanisms that would allow him to be aware of every single violation or inadmissible act of conduct. This is why he repeatedly uses various opportunities to appeal to the Slovenian population to try and inform the competent bodies and institutions about violations of rights and to endeavour to resolve these issues themselves by way of appeal and later, if unsuccessful, seek the Ombudsman's help.

In short, in each individual case, we decide whether we will make a public statement about a particular case, discuss it on the open forum, or issue a public warning.

Cases with high media exposure

We try to avoid exposing cases to the media because it often leads to a trial by media before any real discussion on the issues involved can even begin, or before they can begin to be resolved. Over the ten years of the Ombudsman's operation, the public warning has, sadly, proven to be the only effective solution, managing to send the matter forward. The public "announcement" as an extreme form of pressure is only used in about two percent of the cases while all other issues can normally be resolved through collaborative efforts.

The public debate in 2005 about certain cases with high media exposure at least led to reflection about these topics, illuminating certain topics and placing them on the scales in order to assess and evaluate them, with some of these issues even resolved.

The judicial power in the media spotlight

The Ombudsman issued a public statement warning about an **inadmissible intervention into the judicial branch of government** in reference to the incident where the NSi parliamentary group did not support the candidate for membership in the Hague Permanent Court of Arbitration because of her decision in the matter of staying the law on the closure of shops on Sundays and holidays as a justice of the Constitutional Court, which was contrary to their expectations.

In September, another case that received broad media attention involved a **detainee** whose right to personal dignity had been violated. We include more details about this in other parts of this report.

During the debate of the 2004 Annual Report, the Ombudsman and 43 members of parliament **signed a public initiative to Slovenian courts and judges** to closely adhere to the provisions of the European Convention on Human Rights and Fundamental Freedoms. This initiative was created as a result of more than 700 appeals being lodged by Slovenian citizens with the European Court of Human Rights in Strasbourg.

Speaking out on social issues

In a Labour Day speech delivered near the town of Sv. Jošt near Kranj, the Ombudsman warned about the **growing tendency to restrict the rights of employees and increase the rights of capital.** In the conclusion of his speech, he expressed his hope that the social partnership would be maintained and that trade unions would be able to coordinate their efforts even more effectively in the future, allowing them to at least preserve the current benefits, and that the state would not act as if we all lived and worked only for the benefit of individuals, but so as to improve the lives of everyone.

In the summer, he publicly warned about the **unacceptability of non-payment of contributions for social security.** He discovered that there are quite a few employers not paying pension insurance contributions for their employees, which, in the Ombudsman's opinion, harms individual employees as well as all taxpayers. He expressed the hope that the state would respect its laws and make individuals, companies and institutions comply with them, and find the appropriate mechanisms to recover the amounts due and control these payments.

At a press conference held in November, the Ombudsman also expressed his **position on the proposed government reforms and defended the right of trade unions to hold organized protests** in reply to one of the questions from the press. He opposed the presentation of reforms without argumentation, based solely on assurances. He believed that these reforms could never hope to succeed without a thorough debate on the widest public forum, founded on valid arguments. He also expressed his opinion that the currently proposed reforms only allowed for a reshuffling of power and capital within the society, and are detrimental to the little man.

In a **Human Rights Day missive,** the Ombudsman stated that the enjoyment of human rights to the full extent required more than political freedom, it also required a society where the individual was not concerned about his own existence. This does not mean subsisting on social welfare but on the fruits of one's labour. He repeated his concern that the existential fear under the current system had replaced the political fear known from the previous system, a fact he discovered 16 years ago on the basis of analyzing the differences between the political and social situation of people as he reflected on the possible directions that the development of Slovenian society might take.

In 2005, he also publicly expressed concern about **intolerance toward the poor**, which is not a new form of discrimination but has become more visible since various parties, especially since the Ombudsman has been drawing attention to it.

On hatred, intolerance and discrimination

Throughout the year, the Ombudsman has been pointing out that intolerant speech and hate speech must never become socially acceptable and that people who hold the highest political and social status and opinion makers should be especially careful in their communications. The consequences of hate speech and hostile communications can be seen in the reactions and conduct of the broader population, as evident from the petitions and letters received by the Ombudsman.

There are various social actors with the Ombudsman by their side or in the forefront pointing their figurative fingers at intolerance and hostility. The Ombudsman's warnings about unacceptable social conduct and statements made often received wide media attention, since those accused of spreading intolerance reacted vigorously, fuelling the public's attention.

At a press conference in April, the Ombudsman informed the public about the surprise of his European and international colleagues at **the intolerant speeches of Slovenian politicians, and responded strongly to the incident where a parliamentary group posted hostile appeals against the erased on the door of its parliamentary office.** The Ombudsman once again cautioned against the lack of concern for expressions of intolerance regarding the **incident of vandalism in a memorial park in the settlement of Trnovo above the city of Nova Gorica** and urged the public to condemn such conduct and exercise ethic standards in public statements, especially among politicians and individuals occupying positions of esteem and public bodies.

In April, the Ombudsman **received the EU Stop Discrimination Truck** in Ljubljana. In this manner, he once again pointed out unacceptable and dangerous indifference toward expressions of intolerance demonstrated by public institutions and their representatives. He also reminded audiences of the ECRI Declaration on the use of Racist, anti-Semitic and Xenophobic Elements in Political Discourse, adopted on the International Day for the Elimination of Racial Discrimination in the first half of 2005.

In June, he and 400 intellectuals signed the **public appeal entitled *Hate Speech Spreads across the Country from the National Assembly*** in order to point out the unacceptable statements made by a member of parliament at the expense of his female colleagues in the National Assembly following the passing of the Registration of a Same-Sex Civil Partnership Act.

At a press conference held in September, the Ombudsman presented the **issue of hate speech on his website**, a priority issue in the Human Rights Ombudsman's Office since we had received additional staff. We include more details about this in other parts of this report. Among other things, he pointed out that incitement to hatred is contradictory to the constitutional prohibition of incitement to intolerance. By mentioning a specific website containing messages with extreme negative speech against immigrants from former Yugoslavia, the Ombudsman emphasized that the freedom of speech and expression is limited by numerous international treaties, as well as Article 63 of the Slovenian Constitution.

Relations with public bodies that received high media exposure

The arbitrary conduct of the Mayor of Lenart in setting conditions for enrolment of children into the town's nursery school was automatically classified under the category of relations with public bodies with high media exposure and the Ombudsman's warnings about intolerance. The Ombudsman condemned the actions of the Mayor of Lenart, which prevented the children of unemployed parents from enrolling at nursery school with the intolerant justification that employed parents need day care services more than unemployed ones because the latter can take care of their children while they are at home. The Ombudsman decided that not only were the Mayor's actions intolerant, but the criteria for enrolment of children into nursery school in blatant contravention with the provisions of the Pre-school Education Act.

Other incidents classified under this category included the **new teaching model at Bršljin Elementary School and the bill on the Roma proposed by the Slovenian National Party;** the government characterized it as being in contradiction with Slovenian law and the conventions of the Council of Europe signed by Slovenia, and the *acquis communautaire*. The Ombudsman condemned the proposed bill as a mockery, restating that the government should prepare a comprehensive project for integrating the Roma into general society.

The Ombudsman also expressed concern on **homophobic positions and discriminatory practices** demonstrated by the Minister of Labour, Family and Social Affairs.

Numerous incidents that received wide media attention involving the **Ombudsman's special report on the erased** suggested that the authorities were in favour of resolving this issue. The Ombudsman restated that the issue should be resolved pursuant to the decision of the Constitutional Court, and that, unless it is resolved, the issue of the erased will create additional pressure on Slovenian politics from the international community.

In the context of **deliberations on the Ombudsman's special report on domestic violence** in February, members of the Slovenian parliament signed an advisory statement supporting the enforcement of more effective preventive and repressive measures against all forms of domestic violence, but they also expressed the opinion that the report misrepresents the domestic environment as a source of violence. The Ministry of Labour, Family and Social Affairs even issued a written protest against a law which would cover only one aspect of the complex issue of violence in general society which would give the impression that the family is a source and a generator of violence. Consequently, the Ministry proposed that a broader anti-violence law be passed. The Ombudsman was opposed because the family can be the most dangerous and violent environment of all, especially for women and children. He is also opposed to solving the issue of domestic violence in the context of a general law on violence, because he believes that the family deserves special attention and measures for the prevention of violence. Finally, the National Assembly reached a decision that domestic violence is a serious issue in our society and that it can only be approached comprehensively on the national level, and so it charged the government with drafting a law for its prevention.

The decision of the Minister of Public Administration to **include state functions into wage groups** attracted a lot of attention from the media. In this context, the Ombudsman also received some media attention as an independent user of the national budget or the supervisory body whose funding was cut by the executive branch of government on the basis of unclear criteria. The Human Rights Ombudsman of Slovenia pointed out that, pursuant to Article 55 of the Human Rights Ombudsman Act, his budget can only be determined by the National Assembly upon the Ombudsman's proposal. He characterized the government's actions as an attempt to restrict the independence of an institution, hindering it from performing its basic purpose, i.e. to monitor state authorities. In the Ombudsman's opinion, his institution does not belong in the same wage category as the President of the Republic of Slovenia, while disproportionate ranking within the institution – deputies are ranked nine wage categories below the Ombudsman – indicates poor knowledge of the Ombudsman's activities and the responsibilities carried by his staff.

Non-payment of social security contributions has also been included under the category of social issues and relations with public authorities receiving broad media attention.

We find that the public warnings issued by the Ombudsman about disregard for the rights of citizens by public authorities in 2005 received a great deal of media exposure, as individual cases were either met with vigorous reactions from the general public, or from the public authorities to whom the warnings of unacceptable conduct were addressed, attracting a certain amount of media attention.

Attempts to discredit the Ombudsman

We have also noted a substantial increase in the number of attempts to discredit the Ombudsman by politicians in 2005. Throughout the year, the Ombudsman received appeals to abandon his position, as well numerous criticisms about the manner in which his institution operates. Because of the lack of arguments, he was even denied speech, and was discredited on a personal level and accused of being morally corrupt.

We have noted attempts at discrediting the Ombudsman in previous years as well, however they originated from individuals who were uninformed or angry with the system, but never from the highest positions of government.

Analyses of media reports reveal that attempts at discrediting the Ombudsman were made each time he made a statement about subjects considered of special significance to the governing coalition, or each time he pointed out unacceptable statements and actions made by politicians on various occasions. Different methods were used, which we will not specify here[3].

[3] Details are available from the Head of the Public Relations Department.

Attempts at discrediting the Ombudsman were made with the intention of tarnishing the reputation[4] of the institution which serves as the foundation of the Ombudsman's authority.

The Ombudsman is to be trusted after all

Statistics on trust in the Ombudsman show that the Human Rights Ombudsman is highly trusted by the surveyed population and ranking high in trust polls overall. The trust polls rank him on par with the prime minister, the Slovenian education system and the media. Another indication of the trust he enjoys is his constant above-average ranking on a scale of 1 to 5. After minor fluctuations measured in 2002 and 2003, his trust ranking settled around an average rating of 3.20 in 2004. It has remained unchanged throughout 2005[5].

4 The reputation of the institution was covered in detail in the 2002 Annual Report (available at www.varuh-rs.si).

5 Centre of Public Opinion Research: Public Trust in the Human Rights Ombudsman. Politbarometer 2002–2006, Ljubljana, April 2006.

2.2 EDUCATIONAL AND PROMOTIONAL ACTIVITIES

We use different channels in our efforts to keep the public informed and educated about human rights through:

- our website,
- the publishing of a free newsletter,
- publications (annual reports, special reports and other publications released for specific occasions...),
- promotional materials (leaflets, bookmarks, posters...),
- the preparation of actions, campaigns and events (mostly with Office resources exclusively, sometimes through collaboration outside the Office),
- personal contact between the Ombudsman and the target populations,
- active participation at conferences, seminars, round-table discussions and other forms of public presentations of the Ombudsman's office, assessment of the state of human rights and through the provision of guidelines and methods for protecting human rights.

The content found in our printed materials are broadly disseminated and used for numerous different purposes. We have been receiving an increasing number of requests to quote contents we published in individual publications, and requests to use our contents in other publications intended for specific target groups which the Ombudsman also deals with, among others. There is an increasing number of subscribers to our free newsletter, and we are noting an increased interest in our electronic newsflashes. In 2005, there has been a marked increase in the number of requests for assistance in writing school assignments, diploma papers or Master's dissertations on the subject of human rights.

The reactions to our actions are also very encouraging. Our experts are happy to respond to invitations to training workshops on human rights.

All of this indicates a growing interest in human rights. We can only hope that actual awareness of human rights is also increasing. We are particularly happy to see that young people are open to the issue of human rights. We hope that our efforts also encourage the involvement of the human potential and that the information we disseminate becomes more than just memorized facts or (even worse!) information that has been erased from our memory.

We have continued the practice of training through direct contact with children and young adults, and so, in 2005, we visited numerous elementary, secondary and special-needs schools and participated at events with college and university students.

At the public **discussion about the European constitution and European citizenship with 150 secondary school pupils** held in April, the Ombudsman pointed out that everyone can contribute something to our common knowledge and benefit the entire community, and this is why no-one should be considered unnecessary in the European integration. He particularly highlighted Article 81 of the European Constitution prohibiting all forms of discrimination, including discrimination based on citizenship.

During the Week of the Child, he invited all the children and young adults to participate in the **competition *My Opinion – Your Opinion*.** In their essays, these young people reflected on the right to one's own opinion and on stating and listening to other people's opinions and positions, as laid down by Articles 12 and 13 of the Convention on the Rights of the Child. The winners were selected by an award committee with the Ombudsman personally presenting the awards to the winners at a ceremony held in commemoration of the Convention on the Rights of the Child on 20 November.

Education for a tolerant society

In December, the Human Rights Ombudsman prepared a **film competition for children and young adults entitled *(In)tolerance in Being Different*** [6], which reached its conclusion at the ceremony commemorating the Convention on the Rights of the Child on 20 November 2006.

In addition to this, he prepared the first **motion picture marathon of Slovenian films featuring the subject of human rights** intended for the general public, discussed the **freedom of creative expression and the restrictions and responsibility involved** with film-makers, experts and the interested public. Several experts and connoisseurs also reflected on this issue in a special issue of the free newsletter. The event created numerous collaborations in the field of human rights protection and revealed an interest in using the medium of the motion picture as a didactic tool for human rights education.

In 2005, the Ombudsman became a member of the council of 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. Incitement to intolerance and hatred on the web is a problematic issue from the aspect of human rights and is one of the main problems for ensuring the safety of cyberspace. Just as the Internet is a new venue for political (co)operation, active citizenship and development of democracy in general, it offers an opportunity to spread traditional forms of social exclusion, intolerance and discrimination. As a special technologic and communication tool, the Internet requires a great deal of involvement from a number of stakeholders (both on the national and international levels) that can help restrict hate speech and other unacceptable violations of human rights on the Internet. The Ombudsman actively participates in these kinds of projects, informing the broader public and authorities about these issues, primarily to send the clear message that spreading hate speech is just as unacceptable in cyberspace as elsewhere and the need to react to it.

College and university students were also able to learn about the **role of the Ombudsman in the elimination of intolerance and discrimination** from a speech delivered by the international human rights advisor, former chairman of the European Commission against Racism and Intolerance with the Council of Europe (ECRI) and the Swedish Ombudsman against ethnic discrimination. The now-legendary slogan "All Different, All Equal", which celebrated its tenth anniversary in 2005, was invented during his chairmanship at the ECRI.

The Ombudsman continued the implementation of the project **Forms of Intolerance in Slovenia** in 2005**.** In 2005, the shared part of the project, an exhibition entitled *The Vicious Cycle of Intolerance – Jara kača nestrpnosti* comprising the period from Slovenia's declaration of independence to the present day and presenting a collection of acts of hostility and the effect they had on the groups targeted, was put on display in Ljubljana, Maribor, Novo Mesto, Slovenske Konjice and Koper. The project was accompanied by the **collection of essays entitled *Us and Them – Intolerance in Slovenia*.** The essays included in the collection try to provide an explanation on the scientific level for the issues shown in the exhibition on the documentary level. Combined, these accounts provide a relatively comprehensive insight into the dark side of our nation. By carrying out this project, the Ombudsman held a dark mirror to Slovenian society, and so it is essential that it be followed by a portrayal of its better side. This is why the Ombudsman's future efforts will be directed mainly at identifying examples of good practices in overcoming intolerance, at promoting tolerance and at pointing out the wealth brought by diversity.

Another important aspect of this project is that it documents the forms of discrimination and intolerance and the ways to eliminate them. This complements the Ombudsman's efforts to maintain a systematic **database documenting all forms of discrimination and intolerance**, which he established in 2005. Such a systematic database will serve as a basic resource in the future work of a special taskforce charged with monitoring discrimination, carrying out studies, finding solutions for specific cases and creating strategies for eliminating various manifestations of discrimination and intolerance.

[6] *More details about the competition can be found on the Ombudsman's website: http://www.varuh-rs.si/.*

Education and empowerment

The Ombudsman's members of staff are constantly improving their knowledge and skills in order to raise and maintain awareness about one's own rights and the rights of others. Among other activities, the advisor to the Ombudsman presented the Ombudsman's view on police procedures to representatives from law enforcement agencies. On the Day of the Slovenian Judiciary, the deputy ombudsman discussed the work conditions of Slovenian judges. He also conveyed the Ombudsman's congratulations at the round-table discussion establishing the mediation institute.

In a published collection of essays from the convention with the same name held in July 2004, the deputy ombudsman charged with children's rights and social affairs presented the Ombudsman's views on the living conditions of children and young adults in hospitals. At the international conference on domestic violence, the Ombudsman joined others in their concern that there is still no law in Slovenia preventing corporal punishment in the home. At the 11th annual Days of the Social Chamber of Slovenia, the Ombudsman spoke about protecting human rights in the area of social security, while the advisor to the Ombudsman spoke about current trends of received complaints related to the rights of the child and about ways of resolving them. Another advisor to the Ombudsman outlined the protection of the rights of the elderly and presented the concept of advocacy as a suitable mechanism for informing the most vulnerable groups (elderly citizens, children, etc.) about their rights, especially from the aspect of judicial protection. The rights of the elderly were also discussed at a round-table discussion of rights, which took place in Ptuj in November.

2.3 RELATIONS WITH DIFFERENT PUBLICS

The Human Rights Ombudsman of Slovenia maintains daily contact with various outside publics, ranging from the widest group, the general public, to numerous specific groups. These groups include petitioners, state representatives, representatives of local communities, bearers of public authority, non-profit and non-governmental organizations, underprivileged and marginalized groups, and the international community. Relations with the Ombudsman's staff are an enormous factor in carrying out the institution's mission.

2.3.1 Relations with civil society

The Ombudsman continued to point out issues involving marginalized groups. We have been noting for several years now that the unemployed and the poor are being increasingly marginalized and that they are becoming the target of intolerance and hostility. Thus, they joined the traditionally marginalized groups, i.e. homosexuals, the Roma, people of colour, aliens, single mothers (in reference to the 2001 referendum on medically-assisted artificial insemination), the erased, the handicapped, people with special needs, etc.

While discussing the 2004 Annual Report, the Ombudsman again pointed out the **issue of unemployment and social hardship.** "This issue is increasing in severity because poverty is an additional source of stigmatization in a society driven by success; therefore, being poor becomes something undesirable, something ugly. But poverty in itself is a violation of human dignity, and this is why we need to be particularly alert about this issue," the Ombudsman asserted.

Because different marginalized groups face different forms of discrimination, these issues are examined by our specialists for individual areas, as well as a special taskforce charged with monitoring discrimination. Almost all of the Ombudsman's warnings about the need to protect marginalized groups have received wide media attention.

In 2005, the Ombudsman often warned about the lack of progress regarding the **issue of the Roma people.** On International Roma Day, 8 April, the Ombudsman met with the headmaster of Bršljin Elementary School and the parents of Roma and other children in the city of Novo Mesto. He expressed criticism towards the pilot project attempting to separate Roma children from other children at the abovementioned elementary school. By attending the event entitled *Stop the Violence* in Novo Mesto, the Ombudsman showed his support for the organizers' warnings about the increasing manifestations of intolerance, verbal and physical violence in Novo Mesto. These events reached a peak in July in the form of leaflets which openly incited racial hatred and included calls to violence.

The Ombudsman restated his concern about the issue of the erased on various occasions. He took a decisive stand against hate speech posted on the office door of a parliamentary party. In July, the Ombudsman's special report on the erased was finally discussed in parliament.

The Ombudsman cautioned the government that by disrespecting the decision of the Constitutional Court it was undermining its own credibility when demanding respect for the decision of the Constitutional Court regarding **Slovenian minority issues in the Austrian region of Carinthia.** We also tried to point out the issue of the Slovenian minority in the Austrian region of Carinthia at the celebration of the Human Rights Day, where we featured the film *Article 7 – Our Right* at the first Slovenian film marathon on the subject of human rights. The film provides a realistic image of the situation across Slovenia's northern border.

The Ombudsman made particular mention of the **issues of the Slovenian national minority** in Italy, in reference to the settlement of Jeremitišče near the town of Gorica.

In 2005, the Ombudsman cautioned about the **lack of regulations for collective protection of minorities not covered in the Constitution.** He pointed out the outstanding issue regarding new minorities when presenting the annual report to the Prime Minister. The Prime Minister shared the Ombudsman's opinion that new minorities were largely ignored and assured him that a certain standard would be adopted on the basis of dialogue with representatives of these minorities.

The Ombudsman warned that the statement of forfeiture of the request for asylum in the event of the **asylum seeker's** leaving the premises of the asylum home, which seekers were required to sign in order to prevent exploitation, has no legal basis and bordered on discrimination. This was something of a herald to the autumn deliberations on the proposed Act Amending the Asylum Act. In the opinion of the Ombudsman and international and non-government organizations dealing with aliens and migration policies, this Act aims to build border fortifications to ward off aliens.

In 2005, the Ombudsman often warned about the importance of **protecting the rights of the child.** He especially pointed out the issue of children appearing before the courts and the need for a systematic approach in assisting autistic children. With the *My Opinion – Your Opinion* competition, he pointed out the children's entitlement to their own opinion. He also attended numerous international events on the subject of children. The Ombudsman expressed criticism for the arbitrary decisions of the Mayor of Lenart when setting the criteria for enrolling children into nursery school and again pointed out the discriminatory criteria for obtaining educational grants for farmers' children.

We continued in our efforts to provide an adequate legal framework to tackle the issue of domestic violence. We were able to convince the Council of Europe to hold the international conference on domestic violence in Ljubljana, and we compiled the contributions from the participants in the form of a special report and sent it to the competent public bodies.

We placed a significant emphasis on the rights of the **elderly** at a public discussion about their rights. The event was organized by non-governmental organizations dealing with the quality of life for elderly citizens and took place in the Narodni Dom building in Ptuj in November. We presented the Ombudsman's protection of rights of the elderly, as well as the foundations for the protection of their rights and the ways that elderly citizens can seek help from the Ombudsman. We decided to devote the first issue of the Newsletter in 2006 to the issue of protecting the rights of the elderly.

The Ombudsman also pointed out the harassment of **tenants in denationalized apartments.** He expressed his opinion that the tenants had no available protection from the owners of the apartments. This issue is especially problematic when it involves the elderly. When meeting with the Minister of the Environment and Spatial Planning, the Ombudsman repeated his warnings about harassment of tenants, especially when the owners of the apartment desired to use the premises for commercial purposes. He voiced an appeal for increased government involvement in building social housing, and warned the Minister that unending complaints received from tenants indicate that the situation has not yet been adequately regularized.

The Ombudsman spoke about **human rights involving sexual minorities** at a round-table discussion held in the beginning of the year, and in July, condemned the violence committed against members of the Tiffany gay club. He pointed out again that unless we publicly condemn the statements of intolerance and hostility, we give them legitimacy and at the same time communicate that acts and expressions of violence and hostility committed against citizens were justified.

2.3.2 Relations with complainants

The central role of the Human Rights Ombudsman is to resolve appeals lodged by complainants. These individuals or groups turn to the Ombudsman with their problems through written initiatives or through direct personal appeals either at the Ombudsman's headquarters or at other locations.

Of the 2,574 initiatives we received in 2005, 2,377 were successfully resolved, while 327 were carried over from 2004 and resolved in 2005. Sixty-two complaints were reopened and resolved in the same year. In 2005, we examined 2,963 appeals

and resolved 2,766 (more detailed quantitative indicators of the institution's operation can be seen from the statistical data). Every day, the Ombudsman's staff conduct personal interviews with an average of ten complainants at his headquarters, and the hotline operator receives about 150 calls per day at the toll-free hotline 080 15 30, providing callers with basic information about the Ombudsman's work and instructions for lodging complaints.

In 2005, the Ombudsman and his deputies continued to conduct **interviews outside of the Ombudsman's offices**, at various locations around Slovenia. The main purpose of conducting operations outside the headquarters is to allow people from all over Slovenia to personally tell the Ombudsman about their problems, on condition that these issues fall within his competence. We conducted on-site interviews twice in Maribor and Murska Sobota, and once in Piran, Postojna and Sežana. All together, interviews with 160 individuals were carried out.

We also visited the juvenile correctional facility in Radeče and made several visits to prison facilities, namely the correctional institutes in Dob pri Mirni, Ig, Ljubljana and Maribor.

2.3.3 Relations with public authorities

In the beginning of 2005, the Ombudsman met with the ministers of the newly-appointed government, so as to establish cooperation with them in order to resolve the complaints received from concerned individuals.

At a meeting with the Minister of Justice, the Ombudsman pointed out the unacceptable attitude towards the decisions of the Constitutional Court demonstrated by the government and the National Assembly. They also discussed the urgent need for change in the notaries and attorneyship, with special emphasis on court procedures involving children. They also spoke about personal data protection and information of a public nature.

At the meeting with the Minister of Public Administration, the Ombudsman expressed his support for the establishment of the Ministry, because he had been appealing that public administration services should be integrated under a separate ministry for quite some time. Special attention was devoted to the issues of access to information of a public nature, the business conduct with customers and the issue of ensuring a proper and friendly attitude of public servants to citizens and companies who come into contact with the public administration, and administrative backlogs.

The Ombudsman and the Minister of Defence discussed issues related to illegally occupied military apartments and about the establishment of an Ombudsman for the rights of the soldier.

The Ombudsman and the Prime Minister discussed possible ways of cooperation, the Roma issue, the so-called "new minorities" issue and the Mental Health Act. During his meeting with the Prime Minister, the Ombudsman also expressed his concern about the issue of unreasonably long procedures regarding the contacts of children with their parents, about the need for a prompt solution for the issue of the erased, and about the issue involving taxes for undeveloped building land.

The Ombudsman and the Minister of Health discussed the Mental Health Act, also touching upon the possibility of establishing an ombudsman for the rights of the patient.

In his meeting with the Minister of the Environment and Spatial Planning, the Ombudsman expressed his hopes for the increased involvement of the state in building social housing. He also reminded the minister about the outstanding issue of tenants living in denationalized apartments. Special attention was devoted to tenants living in non-profit apartments, the issue of taxes for use of undeveloped building land, the position on illegal construction, the regulating of noise pollution caused by public events and the issue of private water supply systems.

The Ombudsman warned the Minister of Labour, Family and Social Affairs about the pressing issue of establishing an archive of payments of disability and pension insurance contributions.

2.3.4 Relations with the media

The recently improved website provides fast and easy access to information for members of the media, without unnecessary clicking. We have also laid the foundations for an audio service which should make journalists' jobs much easier. The media can also access the database on discrimination, intolerance and hate speech, which was established in 2005 and is constantly updated.

In 2005, the Ombudsman hired a professional media-monitoring service. The simplified media monitoring procedure allowed us a faster response to the numerous attempts at discrediting the Ombudsman which demanded our response from the reputable management perspective.

The Ombudsman's office is always available for members of the media. We communicate with an average of one thousand journalists per year at various occasions (over the telephone, personally, via e-mail etc.). The Ombudsman gave about 80 statements and interviews in 2005. He held eight regular press conferences at the Ombudsman's headquarters in Ljubljana and seven outside his offices.

As a rule, press conferences receive a great deal of media coverage, because we try to discuss topical social and political issues relating to the protection of rights and liberties, pointing out pressing issues discovered in our work, which would not or could not be concluded without a public announcement.

The Ombudsman reacted to the incident where a government spokesman issued an instruction prohibiting communication with *Mladina* weekly magazine. The Ombudsman pointed out that not only was the instruction in direct violation of two separate laws – the Public Media Act and the Access to Public Information Act (ZDIJZ) – but also interfered with fundamental human rights of citizens and other residents of Slovenia.

In 2005, the Ombudsman continued to urge caution in reporting on subjects involving children and respect for the privacy of individuals.

On World Press Freedom Day, the Deputy Ombudsman said that while pressure on journalists has been noted in Slovenia, most notably coming from the government, he firmly believed that the media would be able to preserve the autonomy status they held today.

The Ombudsman also expressed his position on the new Radiotelevizija Slovenija Act. While he did not comment on the contents of the law, he expressed criticism about the manner in which it was prepared and passed.

Developments involving the media (government measures involving the media, work of the courts in the matters of Pikalo and Smolnikar, appearance of the daily tabloid newspaper *Direkt...*) inspired us to reflect on the freedom of expression and the restriction of this freedom at the celebration of Human Rights Day, and which we will continue to reflect on in the future.

2.3.5 International relations

The Ombudsman attended several international seminars and conferences this year, also becoming actively involved with his contributions as the representative of an institution enjoying a high level of international esteem.

At the international round-table discussion, he presented his standpoints on the situation of sexual minorities. He shared the belief expressed by a Dutch member of the European Parliament that homophobia was on the rise in many EU Member Countries, and all expressed concern about the homophobic statements made by a Slovenian minister. The Ombudsman reiterated that people in positions of power needed to be especially careful when giving statements about sensitive issues – without a doubt, homophobia is one such issue.

He attended a seminar in Strasbourg, whose purpose was to provide a venue for comparing various national practices in order to identify best practices for collecting data about national or ethnic identity. During the two-day seminar, the Ombudsman also met with the European Human Rights Ombudsman.

In May, delegates from the Council of Europe's Commission for Human Rights met with the Ombudsman. The main purpose of their visit to Slovenia was to monitor the implementation of the recommendations contained in the Commissioner's 2003 Report. The delegates were particularly interested in the issue of the erased, the status and condition of the Roma people in Slovenia, the issue of restricting individuals' freedom of movement before lodging a request for asylum, and the issue of introducing an anti-discrimination policy in the Republic of Slovenia.

At the Ombudsman's invitation, the former Swedish Ombudsman against Discrimination addressed college and university students in a speech about the role of the ombudsman in eliminating intolerance and discrimination. Being an experienced judge, he also conducted a seminar in Maribor entitled *Mediation in Civil Matters*.

The deputy ombudsman attended the annual meeting of the European Network of Ombudsmen for Children (ENOC) in Warsaw, where he presented a report on the activities of the Department of Child Rights. In October, at a Regional Meeting of Ombudsmen for Children of South-East Europe in Solun, he spoke about children's right to express their opinions in schools and educational institutions.

The Ombudsman also actively participated in two international conventions on children's rights: a plenary discussion about fighting the sexual exploitation and abuse of children, immediately following another conference on preventing violence against children. In light of these events, he published a special issue of the newsletter, which contained the collected practices contributed by ombudsmen for children's rights from several countries of Europe.

The Ombudsman and his advisor attended the fifth convention of national ombudsmen of the EU (EOI) in the Netherlands, entitled *The Role of the Ombudsman in the Implementation of EU Legislation*.

As one of the four European members of the board of directors in charge of Central and Eastern Europe, the Human Rights Ombudsman met with his colleagues from the International Ombudsman Institute in November. The meeting took place in the town of St. John's in Antigua and Barbuda.

At their session on 14 September 2005, the Council of Europe's Committee of Ministers re-elected the deputy ombudsman for the Slovenian representative in the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

2.3.6 Relations with the internal public – the staff

As of 31 December 2005, the Human Rights Ombudsman employed 34 staff members (including the ombudsman and his deputies). This included six functionaries, 19 public servants, 9 expert and technical staff. Twenty-three employees hold a university degree (one PhD title and three Master of Science degrees), four employees hold a higher professional degree, two employees hold a higher educational degree, four hold a secondary school qualification (one of these is currently studying for a higher education degree) and one employee has completed an accelerated secondary school course.

In order to keep our staff better informed, we have continued our practice of publishing internal news communiqués in 2005, informing them about events and activities relevant to the work of the Ombudsman. Our staff helps to spread the information around the office by writing monthly reports. The flow of information is complemented by internal communications via email. In addition, we organize meetings with employees several times a year.

2.4 FINANCES

The Human Rights Ombudsman is an autonomous budget user, and as such, an autonomous proposer of the funds to be set aside for the work of the Human Rights Ombudsman. This position is a constituent element of the Ombudsman's independence and autonomy, which the executive branch of power is bound to respect. At the proposal of the Ombudsman, the National Assembly approved total funds of SIT 414.710 million from the national budget for the work of the institution in 2005. Expenditure for salaries were set in the total amount of SIT 325.243 million (sum total of salaries, contributions and other personal revenues and tax on salaries paid), SIT 80.063 million for material costs, SIT 8.343 million for investment expenditure, and funds in the amount of SIT 1.062 million were dedicated to the implementation of the Salary System in the Public Sector Act. These funds were increased by proceeds from the sale of national property in the amount of SIT 0.271 million and compensation received in the amount of SIT 0.350 million. Thus, the Ombudsman's total budget for 2005 amounted to SIT 415.332 million.

2.5 STATISTICS

This subchapter presents statistical data about the Ombudsman's treatment of cases in the period between 1 January and 31 December 2005.

1. **Cases opened in 2005:** Cases opened between 1 January and 31 December 2005.
2. Cases being handled in 2005: in addition to cases opened in 2005, these include:
• cases carried over from past periods – outstanding cases from 2004 handled in 2005,
• reopened cases – cases where the handling procedure of the Ombudsman was concluded as of 31 December 2004, but owing to new substantive facts and circumstances, their handling was continued in 2005. Since this involved new procedures regarding the same cases, new files were not opened in such cases. In view of this, reopened cases were not counted as cases opened in 2004, but classified as cases being handled in 2005.
3. **Closed cases:** This includes all cases considered in 2005 and closed by 31 December 2005.

Cases opened

Table 2.5.1 presents the number of cases opened in 2005 by individual area of work. For comparison purposes, historical data is shown for the period 1999–2004.

In the period between 1 January and 31 December 2005, there were a total of **2,574 cases opened** (as compared to 3,411 in 1999, 3,095 in 2000, 3,304 in 2001, 2,870 in 2002, 2,754 in 2003 and 2,631 in 2004), meaning a 2.2 percent decrease relative to 2004.

As in previous years, the majority of cases opened in 2005 involved:
- judicial and police procedures: 749 cases, or 29.1 percent of all cases opened,
- administrative matters: 360 cases, or 14.0 percent of all cases opened, and
- social security: 300 cases, or 12.7 percent of all cases opened.

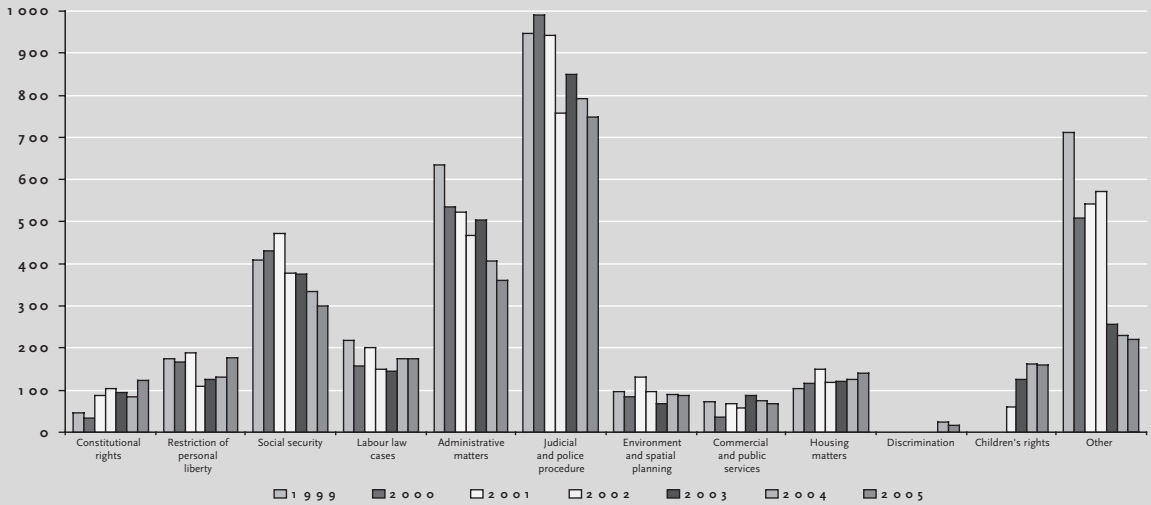
It is evident from the table that the greatest increase in the number of cases opened in 2005 in relation to 2004 involved constitutional rights, increasing from 85 to 123, or by *44.7* percent, and restrictions of personal liberty, increasing from 130 to 177, or by *36.2* percent.

The greatest decrease in cases opened in 2005 in relation to 2004 can be noted in cases of discrimination (a *32* percent decrease) and in administrative matters (a *11.3* percent decrease).

A graphic comparison of the number of cases opened by individual fields of work in the period of 1999–2005 is shown in Table 2.5.1.

AREA OF WORK	NUMBER OF CASES OPENED														Index (05/0
	1999		2000		2001		2002		2003		2004		2005		
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	
1. Constitutional rights	45	1.3	35	1.1	86	2.6	103	3.6	94	3.4	85	3.2	123	4.8	**144.7**
2. Restriction of personal liberty	174	5.1	166	5.4	190	5.8	110	3.8	127	4.6	130	4.9	177	6.9	**136.2**
3. Social security	409	12.0	432	14.1	472	14.3	377	13.1	375	13.6	335	12.7	300	11.7	**89.6**
4. Labour law cases	217	6.4	157	5.1	202	6.1	150	5.2	146	5.3	175	6.7	174	6.8	**99.4**
5. Administrative matters	635	18.6	534	17.5	523	15.8	468	16.3	503	18.3	406	15.4	360	14.0	**88.7**
6. Judicial and police procedures	946	27.7	990	32.4	941	28.5	757	26.4	849	30.8	792	30.1	749	29.1	**94.6**
7. Environment and spatial planning	97	2.8	84	2.7	130	3.9	96	3.3	67	2.4	89	3.4	88	3.4	**98.9**
8. Commercial public services	72	2.1	37	1.2	67	2.0	58	2.0	88	3.2	75	2.9	67	2.6	**89.3**
9. Housing matters	105	3.1	116	3.8	150	4.5	119	4.1	121	4.4	127	4.8	140	5.4	**110.2**
10. Discrimination											25	1.0	17	0.7	**68.0**
11. Children's rights							60	2.1	127	4.6	162	6.2	159	6.2	**98.1**
12. Other	711	20.8	508	16.6	543	16.4	572	19.9	257	9.3	230	8.7	220	8.5	**95.7**
TOTAL	3,411	100	3,059	100	3,304	100	2,870	100.0	2,754	100.0	2,631	100.0	2,574	100.0	97.8

Figure 2.5.1



Cases being handled

Table 2.5.2 presents data on the total number of cases being handled by the Ombudsman in 2005 by individual area of work. As we have already mentioned, cases being handled include cases opened on the basis of complaints in 2005, cases carried over for handling from 2004 and cases reopened in 2005.

The table shows that in 2005 **a total of 2,963 cases was being handled**, of which:

- 2,574 cases were opened in 2005 (86.9 percent),
- 327 cases were carried over from 2004 (11.0 percent), and
- 62 cases were reopened in 2005 (2.1 percent).

The largest number of cases being handled in 2005 were in the areas of:

- judicial and police procedures (862 matters or *29.1* percent),
- administrative matters (435 cases or *14.7* percent) and
- social security (339 cases or *11.4* percent).

A detailed presentation of the number of cases being handled in 2005 by individual area of work is given in the table below.

Table 2.5.2

AREA OF WORK	NUMBER OF CASES BEING HANDLED				Percentage by area of work
	Cases opened in 2005	Cases carried over from 2004	Cases reopened in 2005	Total cases being handled	
1. Constitutional rights	123	15	3	**141**	**4.8 %**
2. Restriction of personal liberty	177	13	4	**194**	**6.5 %**
3. Social security	300	24	15	**339**	**11.4 %**
4. Labour law matters	174	22	1	**197**	**6.6 %**
5. Administrative matters	360	68	7	**435**	**14.7 %**
6. Judicial and police procedures	749	99	14	**862**	**29.1 %**
7. Environment and spatial planning	88	13		**101**	**3.4 %**
8. Commercial public services	67	3	3	**73**	**2.5 %**
9. Housing matters	140	7	2	**149**	**5.0 %**
10. Discrimination	17	7		**24**	**0.8 %**
11. Children's rights	159	46	2	**207**	**7.0 %**
12. Other	220	10	11	**241**	**8.1 %**
TOTAL	2,574	327	62	2,963	100.0 %

A comparison of the numbers of cases being handled by the Ombudsman by individual area of work in the period of 1999–2005 is presented in Table 2.5.3.

Table 2.5.3 indicates that in 2005 there were **one percent fewer cases being handled** compared to 2004 (2,963 in 2005 and 2,992 in 2004). The most significant decrease in the number of cases being handled compared to 2004 was noted in the areas of:

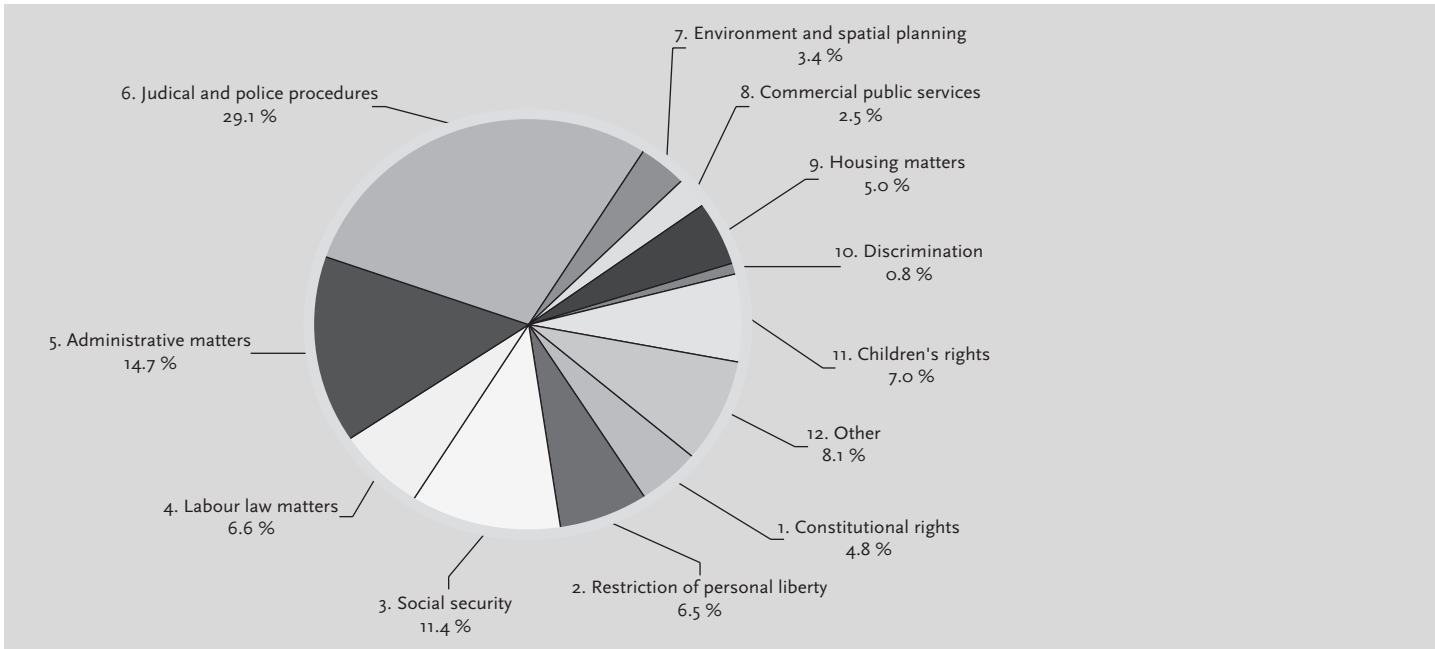
- other matters: decreasing from 335 to 263, which is a 21.5 percent reduction, and
- administrative matters: decreasing from 613 to 488, which is a 20.6 percent reduction.

Table 2.5.3

AREA OF WORK	CASES BEING HANDLED														Index (05/04)
	1999		2000		2001		2002		2003		2004		2005		
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	
1. Constitutional rights	53	1.3	38	1.0	90	2.5	128	3.7	105	3.3	91	3.0	141	4.8	**154.9**
2. Restriction of personal liberty	227	5.6	217	6.0	206	5.7	134	3.8	145	4.5	143	4.8	194	6.5	**135.7**
3. Social security	478	11.7	493	13.6	549	15.2	468	13.4	451	14.1	393	13.1	339	11.4	**86.3**
4. Labour law matters	233	5.7	180	5.0	213	5.9	174	5.0	166	5.2	199	6.7	197	6.6	**99.0**
5. Administrative matters	831	20.4	675	18.6	591	16.3	632	18.1	613	19.1	488	16.3	435	14.7	**89.1**
6. Judicial and police procedures	1,118	27.4	1,179	32.5	1,041	28.8	925	26.5	929	29.0	893	29.8	862	29.1	**96.5**
7. Environment and spatial planning	121	3.0	108	3.0	143	4.0	118	3.4	83	2.6	98	3.3	101	3.4	**103.1**
8. Commercial public services	84	2.1	45	1.2	68	1.9	69	2.0	97	3.0	82	2.7	73	2.5	**89.0**
9. Housing matters	141	3.5	130	3.6	154	4.3	134	3.8	133	4.1	136	4.5	149	5.0	**109.6**
10. Discrimination								0.0		0.0	27	0.9	24	0.8	**88.9**
11. Children's rights							60	1.7	150	4.7	179	6.0	207	7.0	**115.6**
12. Other	788	19.3	565	15.6	564	15.6	648	18.6	335	10.4	263	8.8	241	8.1	**91.6**
TOTAL	4,074	100	3,630	100	3,619	100	3,490	100 %	3,207	100	2,992	100	2,963	100	99.0

Figure 2.5.2 presents the percentages of cases being handled by the Ombudsman by individual area of work in 2005.

Figure 2.5.2



Cases closed

Table 2.5.5. shows the number of cases closed by area of work in the period 1999–2005. In 2005, **2,766 cases were closed** (compared to 3,727 in 1999, 3,443 in 2000, 3,132 in 2001, 3,087 in 2002, 2,947 in 2003 and 2,665 in 2004), representing an ***3.8* percent increase in the number of cases closed** compared to 2004.

Comparing the number of cases closed (2,766) with the number of cases opened in 2005 (2,574) we note that **in 2005 *7.5* per cent more cases were closed than opened.**

Table 2.5.5

AREA OF WORK	NUMBER OF CASES CLOSED							Index (05/04)
	1999	2000	2001	2002	2003	2004	2005	
1. Constitutional rights	50	33	67	115	99	73	131	**179.5**
2. Restriction of personal liberty	210	211	196	116	133	130	175	**134.6**
3. Social security	439	464	494	413	410	369	325	**88.1**
4. Labour law matters	216	179	192	156	140	177	187	**105.6**
5. Administrative matters	730	623	437	520	505	416	399	**95.9**
6. Judicial and police procedures	1,009	1,113	921	863	821	786	803	**102.2**
7. Environment and spatial planning	108	104	124	102	77	85	91	**107.1**
8. Commercial public services	79	43	58	59	84	79	70	**88.6**
9. Housing matters	132	124	139	123	121	129	140	**108.5**
10. Discrimination						20	21	**105.0**
11. Children's rights				40	124	147	190	**129.3**
12. Other	754	549	504	580	311	254	234	**92.1**
TOTAL	3,727	3,443	3,132	3,087	2,827	2,665	2,766	103.8

03 Selected cases

1 – QUESTIONABLE BUSINESS ETIQUETTE IN BANK

We were informed about the questionable treatment of staff by the executive management in a bank, who notified their employees about changes in the work regimen, or working conditions, by e-mail notification. The new regimen strictly defines the employees lunchtime, the place of arrival to and departure from the workplace, and also provides a special amount of break time for smokers. The complainants were particularly concerned about the instruction to keep women from wearing trousers on company premises, even on arrival and departure from work.

Since the Ombudsman has no direct competence over the employer's actions, we only sent an advisory clarification. Although the employer has the legal right and justification to endeavour to regularize working conditions, which can include a dress code or even uniform, the right to privacy still applies in the workplace. This applies even more to intrusions of privacy outside working hours or outside the workplace. As a matter of principle, such interventions should be foreseeable and well-founded. As we considered the issue, we identified a potentially unjustified intervention in the part which involves the manner and volume of exercising the right to taking a break during working hours. Another potential issue could be the issue of restricting the right to personal identity, as restrictions also apply to arrivals and departures from work, and therefore indirectly to female workers' leisure time. We already mentioned possible legal remedies and the possibility of turning the matter over to the gender equality advocate for consideration. We later found out from the media that the gender equality advocate decided that this was an example of gender discrimination against female employees of the bank. **1.0-4/2005**

2 – EXCESSIVE BURDEN OF ARCHAEOLOGICAL RESEARCH

We already mentioned in last year's report our reservations regarding the issue of imposing the excessive financial burden of archaeological research on the investor. While the Constitution places the protection of cultural heritage in the hands of the state and municipalities, it also provides, at the same time, that everyone should protect cultural heritage. The Ministry of Culture has budget funds earmarked for research of previously undiscovered archaeological heritage discovered during construction works. However, different rules apply when construction works take place on an existing archaeological site listed in the register of cultural heritage sites. One of the complaints once again informed us of the problems faced by a complainant from the Ptuj area who wanted to build a private residence.

We received a reply from the Institute for the Protection of Cultural Heritage of Slovenia telling us that all potential limitations and conditions for building works can be seen in advance from the planning information. The investor in this position must agree to all potential consequences, including the obligation to secure the funds needed for archaeological research, provided of course that this research is permissible under the cultural heritage legislation. According to the Institute, the investor pays in accordance with the *polluter pays* principle laid down by the European Convention on the Protection of the Archaeological Heritage. This principle, also evident from UNESCO's recommendations, places the burden of financing archaeological activities on investors in new development projects (who stand to make a profit from this). The Institute replied that it would certainly be reasonable and justified for the government to collect special funds to jointly and severally cover the costs involved in preserving archaeological (and other) heritage in the case of small investors in non-commercial housing projects. They cite foreign examples where funds are collected for this purpose via a special land development tax.

Placing the burden on the investor in such cases is therefore legal and even foreseen by the Constitution, however, there are no existing instruments to relieve the financial burden of the investor, regardless of the nature of the investment and its location. We also found that, in cases similar to the one presented here, such financial burdens could present an excessive intervention into the right of ownership guaranteed by Article 33 of the Slovenian Constitution and Article 1 of Protocol 1 to the European Convention on Human Rights. **1.0-7/2005**

3 – RIGHT TO OBJECTION OF CONSCIENCE NOT FORESEEN IN CHILDCARE AND EDUCATION REGULATIONS

A headmistress at a *gimnazija* secondary school informed us of the actions of a teacher who began violating his work obligations on Saturdays owing to his determination to follow religious doctrine. He was given a warning following a disciplinary hearing and in a subsequent procedure, due to repeated violations, faced the possibility of termination of his employment. He also turned to us for help.

The Matura Examination Act (ZMat) provides that certain educational obligations may be carried out on Saturdays. The Matura Examination Act also allows for the possibility to hold classes on Saturdays. Work on Saturdays therefore has a legal basis in the laws and subordinate regulations. The freedom of conscience and profession of religion and other beliefs in private and public life does not protect any action motivated by conscience.

After considering the above case, we found that the issue at hand did not involve a violation of the freedom of conscience but rather a conflict between two obligations consciously taken on by the complainant, which are fundamentally different in nature. The first is the legal obligation arising from his employment in the public sector, and the second obligation is moral in nature and stems from his religious belief. Therefore, the complainant attempted to enforce his right to an objection of conscience. The right to objection of conscience against the performance of military duty is guaranteed by the Constitution. Cases which allow an objection of conscience necessarily mean an exception in respect of legal norms. Under the Constitution, conscientious objection shall be permissible in cases provided by law where this does not limit the rights and freedoms of others.

It is our opinion that the legislator has not foreseen the possibility of conscientious objection in the abovementioned situation. While this may be regarded as a violation of the right of conscientious objection, we find that this would violate the pupils' freedom of receiving education and therefore we found no indication of a violation of the freedom of conscience in the headmistress's actions, nor did we find any indication of a violation of the right of conscientious objection. We were later informed that an agreement was reached at the *gimnazija* secondary school – the petitioner will not work on Saturdays during the year, except during Matura Exam season. **1.1-1/2005**

4 – PERSONALIZATION OF TICKETS INTRODUCED WITHOUT EXPLANATION

The Municipality of Domžale notified us that the Administrative Unit of Domžale and the Domžale Police Station abused the institute of personalizing admission tickets laid down by Article 10 of the new Public Gatherings Act (ZJZ). The Act stipulates that, in order to protect public order, life and limb and the well-being of the audience and other persons, the organizer of a sporting event involving a group sport may be required by the issued public event license to collect personal information about members of the audience attending the event at purchase. The organizer may only collect information about the name, nationality and permanent or temporary residence, and only directly from the relevant individuals. The data must be processed in accordance to the regulations laying down the provisions for personal data protection. The data can only be sent to the police to allow the execution of its responsibilities arising from the provisions of this law and applicable international treaties laying down measures for preventing violence at sporting events. The organizer is required to collect personal data for a maximum of three months, after which time he is required to obliterate them.

The Municipality has expressed doubt that the football match between the football clubs of Domžale and Maribor on 19 November 2005 presented sufficient risk to justify the exercise of admission ticket personalization. They believed that a significant risk was not determined and explained in the administrative procedure and that the measure was unjustified, considering the intervention into the constitutional rights of freedom of movement, protection of privacy and the right of public gathering and association. Personalization should only be used in exceptional cases because of significant risk posed by an individual event. They believe that events at the football match did not justify the immediate use of such measures, which caused annoyance from the local population who were required to give their personal information to the ticket salesman.

We notified the Administrative Unit of Domžale at the inquiry stage that Article 214 of the General Administrative Procedure Act stipulates that the explanation of the decision must also contain a determination of the actual situation, the evidence serving as grounds for the decision taken by the public body, the reasons for the decision and a statement of the regulations providing the legal basis for the decision. We found that the license to execute a public event is inadequate in this respect and therefore contrary to the provisions laid down by the General Administrative Procedure Act. The measure of personalizing admission tickets was introduced without a single word of explanation. In our opinion, it was particularly unacceptable that a measure interfering with fundamental constitutional rights was not duly explained. The body should have determined whether the conditions laid down by the fourth paragraph of Article 10 of the Public Gatherings Act (existence of a significant threat to public order, safety of life and limb of the participants and other persons attending the event) and provided the grounds for the execution of the measure on that basis. The absence of an explanation also prevents the execution of a test of legality and regularity of the decree and embodies a violation of the rules of procedures as laid down by the General Administrative Procedure Act, as well as a violation of the right to fair procedure guaranteed by the Constitution and Article 6 of the European Convention on Human Rights and Fundamental Freedoms.

The Administrative Unit of Domžale explained that the measure of personalizing admission tickets was requested by a representative of the Domžale Police Station because of a significant risk posed by the event. In support of his request, he referred to the incidents of hooliganism witnessed at the last championship match between these football teams, further mentioning that the football match would be attended by a number of fans from the Maribor Football Club. The spokesman of the organizer, the Domžale Football Club, protested against this request and expressed concern regarding the execution of this measure, however he signed the record of the meeting without objection. Following deliberations, the administrative body granted the request filed by the representative of the law enforcement agency and decided that additional measures for personalizing the admission tickets were necessary in order to ensure the safe execution of the sporting event. The Domžale Football Club did not file an appeal against this license. The Administrative Unit further explained that the event was attended by the head of the public order department at the Administrative Unit and found that all measures stipulated under the license were duly executed. According to him, the measure did not cause any particular grievances among the audience. The Administrative Unit of Domžale concluded that they would consider our findings and criticism relating to the execution of the procedure more carefully in the future and adhere more closely to the provisions of the General Administrative Procedure Act.

We sent our conclusions to the Administrative Unit of Domžale and the Ministry of Internal Affairs, where we repeated our criticism of the above procedure on the grounds that there were not enough legal bases given to justify the administrative decreeing the measure, with the decision containing no explanation whatsoever as to the reason for personalizing admission tickets. Because the measure has a bearing on certain fundamental constitutional rights of individuals, such as the right to the protection of privacy, this measure should be explained in minute detail, and a weighing between other constitutional rights should also be carried out. Article 10 of the Public Gatherings Act allows the collection of different types of personal data leading to our belief that the decision should have specified what information the organizer was authorized to collect. It is possible for the decree to authorize the collection of a smaller extent of the information than that afforded by the law. One of the fundamental principles of personal data protection is the principle of correlation, which requires that only such an extent of personal data may be processed as is appropriate in order to achieve the purpose for which the data is collected and processed further (Article 3 of the Personal Data Protection Act – ZVOP-1).

Because the organizer of the event did not lodge an appeal, it was impossible to decide on the legality and constitutionality of the administrative decision in a subsequent procedure. This is why we advised the Administrative Unit and the Ministry of Internal Affairs about the deficiencies involved in the enforcement of the measure of personalizing admission tickets, in the hopes that the next time this measure is executed, the requirements stipulated by the law will be adhered to more closely and the extent of restricting the rights and freedoms by personalizing admission tickets will be weighed more carefully, by carrying out a risk assessment procedure stipulated under the Public Gatherings Act. **1.3-17/2005**

5 – UNNECESSARY BURDENING OF INDIVIDUALS TO ISSUE WRITTEN CONSENT FOR PERSONAL DATA PROCESSING

A personal data manager required written consent from individuals to process sensitive personal data, despite having the necessary legal base. Intending to get better legal protection regarding the collection of personal data, he achieved the opposite effect with the complainant. The complainant was convinced that the statement selecting a personal physician, which she was required to sign for her minor child, was questionable with respect to the part where the insured person allows access to data of other persons. Therefore she decided to cover the costs of the medical services herself.

In our belief, this permission was not required, and we thus informed the Health Insurance Institute of Slovenia of this fact. The Health Insurance Institute of Slovenia has the legal basis in the Health Care and Health Insurance Act (ZZVZZ) and the Personal Data Protection Act (ZVOP-1). The Healthcare Databases Act (ZZPPZ) requires the individual's written permission only for the collection of personal information involving race, nationality or other origins, political, religious or other beliefs and sexual orientation. Pursuant to ZVOP-1, sensitive personal data may be processed without the individual's express consent, even if this is done by healthcare workers and medical staff pursuant to the law in the interest of protecting the health of the public and individuals and providing healthcare services.

The Health Insurance Institute of Slovenia did not accept our reasoning. They founded their refusal on the General Administrative Procedure Act (ZUP), which stipulates that a public official may collect medical information only if required to do so by law or by express written consent from the individual or another person to whom these data relate. The Health Insurance Institute of Slovenia believed that no explicit statutory base existed, which is the reason such written consent was required, especially in light of the special nature of this information.

We also turned to the Ministry of Justice for clarification. It confirmed our position but quoted somewhat different legal bases. They agreed that the Health Insurance Institute of Slovenia has a legal base to process these data in the ZZVZZ. Further, they based their explanation on the provisions of Items 7 and 8 of Article 13 of the ZVOP-1, which stipulate that sensitive personal data may be processed without the express consent of the individual even if this is required for enforcing or contesting a legal claim and if required by another law in order to act in the public's interest. This is also in line with the purpose of processing medical information (determining the justification of charged healthcare services and exercising the rights arising from compulsory health insurance).

We sent the opinion of the Ministry of Justice to the Health Insurance Institute of Slovenia, along with a motion to re-examine the matter. They notified us that they would omit the disputed statement from the personal physician selection form at the next change. **1.6-6/2005**

6 – DISREGARD FOR THE STATUTORY DEADLINE FOR THE ISSUANCE OF AN OFFICIAL WRITTEN COPY OF A JUDGMENT

In the criminal matter tried at the District Court in Maribor under case ref. no. K 355/2004, judgment was proclaimed on 7 July 2005, and the official written copy of the judgment was issued on 28 September 2005. In another matter reported by another complainant under case ref. no. K 217/2004 tried at the same court, judgment was passed on 10 March 2005 and the official written copy of the judgment was issued on 6 June 2005. In the matter tried at the District Court in Koper under case ref. no. K 246/03, judgment was proclaimed on 27 May 2005, but the official written copy of the judgment had not yet been issued on 11 November 2005. For this reason, the president of the court issued a decree that the presiding judge issue an official copy of the judgment by 1 December 2005.

All these cases involved criminal procedures where the defendants were placed in detention. The courts justified the delay in preparing written copies of judgments with the complexity and volume of these matters, even though the delays in preparing written copies of judgments exceeded two months. The first paragraph of Article 363 of the Criminal Procedure Act (ZKP) states that the proclaimed judgment must be prepared in writing by the fifteenth day after proclamation if the defendant is placed in detention. The courts therefore failed to respect the deadline for preparing the written copy of the judgment laid down by the ZKP. While it is true that the abovementioned deadline is instructional in nature, it is prescribed by statute. Its purpose is to ensure expedient and efficient court trials in criminal procedures. The delay in preparing and issuing the judgment extends court procedures and can only be justified in exceptional cases involving especially extensive and complex criminal matters. This delay can mean a violation of the right of personal liberty, as it extends the period of deprivation of liberty by a period of time that is not absolutely necessary for the course of the criminal procedure. This is an issue we have expressly pointed out on several occasions. **2.1-38/2005**

7 – INSPECTION OF LIVING QUARTERS CAUSING UNDUE DAMAGE

A convict of the ZPKZ Dob pri Mirni correctional facility complained about the way prison guards searched his living quarters. He claimed that the guards intentionally damaged several of his personal items, also by throwing these items on the floor.

Prison guards are authorized to search the living quarters and other areas of the correctional facility in order to ensure the safety, order, discipline and respect for house rules. The Rules on Implementation of Prison Guards' Duties and Responsibilities (Article 4) stipulate, however, that they may in no way cause damage that is in disproportion to the intent and purpose of the authorization. We asked the Prison Administration of the Republic of Slovenia to provide an explanation and suggested that all the circumstances of the reported incident involving damage to personal effects be examined in a direct interview with the convict.

The Prison Administration of the Republic of Slovenia replied that the inspection of living quarters was carried out "in accordance with applicable regulations." It was impossible to determine exactly how the inspection took place because the allegations of the convict contradicted those of the prison guards who had performed the inspection. Therefore it was also impossible to determine exactly how and when his personal effects were damaged. It was, however, established without a doubt that, after his inspection of the convict's sugar supply which produced 14 tablets, the prison guard poured sugar and coffee together in a single bag, rendering them both useless.

The convict sent a written claim for damages to the institute. In order to resolve the dispute, since the key facts were impossible to determine due to the divergent positions of those involved, the institute granted the proposed claim and paid the requested sum to the convict.

The burden of proof for the regularity and legality of prison guards' interventions lie with the state. It is obvious that the actual situation regarding the alleged damage to personal effects could not be determined with a reasonable degree of certainty. Therefore we applaud the decision of the institute to pay the requested sum to the convict in the form of damages for damaged personal effects. **2.2-25/2004**

8 – EVERY REQUEST FOR RELEASE ON PAROLE MUST BE RESOLVED BY WRITTEN DECISION WITH A SPECIFICATION OF THE GROUNDS FOR THE DECISION

The complainant lodged a request for release on parole on behalf of her partner serving a prison sentence. In her complaint, she stated that her request had not been properly decided on, as she received a letter from the parole committee dated 1 February 2005, case no. 792-09-367/04, stating that her *"partner does not yet fulfil the statutory condition of having served one-half of his prison sentence, therefore his case has not yet been presented to the committee for consideration. The committee was notified of the request but the matter will not be decided on until he has served one-half of his sentence."*

The possibility of release on parole is decided by the parole committee in accordance with the law and at the discretion of the prison warden. The committee communicates its decision by a written decree. The decision refusing the request or petition for release on parole must be duly explained. In our intervention with the Ministry of Justice, we noted that non-fulfilment of the (temporal) statutory condition for release on parole does not absolve the body deciding on the matter from issuing a written decision on each application, detailing the grounds for the decision. In this context, it should not be overlooked that it is possible in certain cases under the law to grant release on parole to a prisoner who has served only one-third of his or her sentence.

The Ministry confirmed our position and notified us that prisoners always receive a written decision from the parole committee, "either positive or negative". The decision is also served to the prisoner who does yet not fulfil the formal requirements for release on parole at the lodging of the petition. After reviewing the case file on the release on parole involving the complainant's partner, they discovered that there had been an "unfortunate error" and that neither the convict nor his partner had received a decision refusing the request for release on parole. **2.2-4/2005**

9 – DELAYED EXECUTION OF DISCIPLINARY SANCTION

The complainant, sentenced to serving prison in the ZPKZ Ljubljana correctional facility, faced disciplinary sanctions after having returned late from his personal leave. He was placed in solitary confinement. He complained that more than a month had passed since the disciplinary sanction was decided and had not yet been executed. In his opinion, delay in the execution of the disciplinary sanction extends the time until he can become eligible for outside privileges after having served solitary confinement.

We demanded an explanation from the Prison Administration of the Republic of Slovenia as to why the disciplinary sanction had not yet been carried out. After our intervention, the ZPKZ Ljubljana correctional facility explained that this delay occurred due to objective reasons. The solitary confinement cell was occupied by detainees due to overpopulation issues in the correctional facility. Later, the complainant's medical condition was presented as another obstacle for the execution of the disciplinary sanction. In this context, the ZPKZ Ljubljana correctional facility noted that the eligibility for new privileges depended on the time of breaking the house rules, not on the time of serving disciplinary sanctions.

The Prison Administration of the Republic of Slovenia confirmed the institute's explanation. At the same time, it noted that the disciplinary sanction should be carried out immediately after the decision becomes final, as this was the only way for it to realize its purpose. They also deemed it unacceptable that the convict had to file a request for the execution of the disciplinary sanction, since it was the correctional facility's responsibility to carry out the disciplinary sanction in the shortest possible time.

The regulations for imposing and executing disciplinary sanctions require expediency in carrying out the procedure. Sanctioning can only achieve its purpose if the disciplinary procedure, including the execution of the disciplinary sanction, is completed at the earliest possible juncture after the violation has been committed. We expect that this will not happen again after our warning to the UIKS and that the ZPKZ Ljubljana correctional facility will adopt the necessary measures to execute disciplinary sanction within a reasonable period of time in the future. **2.2-29/2005**

10 – THE CONVICT HAS THE RIGHT TO BE VISITED BY HIS GIRLFRIEND

A convict of the ZPMZ KZ Celje Prison and Juvenile Correctional Home lodged an appeal against the facility's decision to deny his girlfriend visitation rights. In this context, he pointed out that she was able to visit him even when he was in detention (in the ZPKZ Ljubljana correctional facility), even though she was involved in the same criminal procedure.

We demanded an explanation from the Prison Administration of the Republic of Slovenia as to why the petitioner was not allowed visits by his girlfriend. The Prison Administration of the Republic of Slovenia assumed the position that the convict has the right to visitation by his girlfriend if it is determined that they lived in a non-marital partnership. Namely, close family members, including the person with whom the convict lives in a non-marital partnership, have the right to visit the convict during his service of the prison sentence. Therefore, these visits require no permission from the prison warden. In this context, they noted that the ZPMZ KZ Celje Prison and Juvenile Correctional Facilities have the necessary legal base to require that the girlfriend's visit takes place in a special glass-partitioned room, if they deem there is a risk that an exchange of objects may take place.

In view of this position, the management of the ZPMZ KZ Celje changed its initial decision and granted the convict visitation by his girlfriend, obviously considering her a non-marital partner. **2.2-69/2005**

11 – FOURTEEN DAYS WITHOUT A CHANGE OF UNDERWEAR

In his letter to the Ombudsman, the complainant stated that he was forced to wear one T-shirt, one pair of underwear and one pair of socks for two weeks after being forcibly detained in the secure ward of the Ormož Psychiatric Hospital.

It is evident from the reply sent by the Ormož Psychiatric Hospital that the complainant had "an opportunity to use hospital clothing". Despite this, he demanded "the impossible", namely that he wear his own clothes instead of the hospital garb. He even refused to part with his clothes long enough for the hospital staff to wash them. Due to difficulties in communicating with his parents, it was impossible for him to obtain the necessary substitute clothing within a reasonable time after being admitted into the hospital.

We advised the complainant to respect the house rules and the instructions of the hospital staff and to maintain his personal hygiene and order. We warned him that by refusing hospital garb (at least while his own clothes are being washed), he was causing unsanitary conditions – for himself as well as for the whole ward. This could worsen the general situation or even cause diseases to develop in himself or in other patients. **2.3-11/2005**

12 – EXTENSION OF INVOLUNTARY HOSPITALIZATION THROUGH VIOLATION OF THE STATUTORY TIME LIMIT

The complainant was detained in the closed ward of the Idrija Psychiatric Hospital on 24 August 2005. In a confinement procedure, the Local Court in Idrija decided that the patient must continue to receive treatment in the closed ward of the Psychiatric Hospital, until 26 September 2005 at the latest. In light of this decision, Article 79 of the Non-Litigious Civil Procedure Act (ZNP) requires the hospital to recommend extension of confinement to the court no later than 15 days before the lapse of the deadline laid down in the confinement decision. Thus, the hospital should have communicated such a recommendation to the court **no later than 15 days prior to the lapse of the deadline set on 26 September 2005.** Unfortunately, the hospital violated the law by notifying the court of the extension of confinement on 26 September 2005, the deadline laid down in the initial confinement decision.

The delayed notification of extended confinement caused a delay in issuing a new confinement decision. Thus, the Local Court in Idrija issued the new confinement decision on 20 October 2005, valid until 10 December 2005. This means that the confinement period between 26 September 2005 and 19 October 2005 was **legally unjustified**, since the confinement decision cannot apply retroactively (with the exception of a 24-hour period). Under a regularly and legally executed procedure, **the court should have decided on the matter of extending psychiatric treatment of the detained patient in the closed ward before the lapse of the deadline for confinement, namely before 26 September 2005.** Because the hospital sent the notification of extended confinement on the day of the lapse of the deadline laid down by the initial confinement decision, the court was unable to decide within due time.

We intervened with the Idrija Psychiatric Hospital in order to ensure lawful treatment of the patient. In its reply, the hospital explained that, "despite intensive hospital treatment", it was necessary to keep the patient in the closed ward after 26 September 2005. The patient still exhibited "pronounced signs of mental disorder and given her behaviour, it was impossible to rule out that she posed a threat to her own life and the lives of others, or was at risk of causing significant damage." Transfer to the open ward could pose a threat to the patient. This is why they "reported her to the court again" on 26 September 2005, stating the grounds for the extension of confinement in the confinement notice. In its explanation regarding the violation of the statutory time limit, the hospital noted that "it was impossible to predict the patient's poor response to treatment within the said 15-day time limit, and it was therefore also impossible to plan further treatment on the closed ward against the patient's will." Due to her aggravated medical condition, they were bound to ensure an adequate level of safety and circumstances in order for the patient's condition to "adequately improve". In the meantime, the hospital informed us that the patient's medical condition had improved during the course of her treatment and so she was transferred to the open ward on 8 November 2005.

The Psychiatric Hospital justifies its violation of the statutory time limit for sending the recommendation to extend the patient's confinement to the court with the patient's poor response to medical treatment, which was impossible to predict in advance. However, the very nature of the patient's uncertain response to medical treatment demands that a recommendation to extend confinement be sent to the court in due time. If the patient's response to medical treatment does not indicate that it will be possible to transfer her to the open ward (or discharge her from the hospital) by the lapse of the time limit laid down by the court decision, it is imperative that the hospital recommend an extension of detention to the court at least 15 days before the lapse of the said deadline. This is the only way to ensure the court's timely decision on an extension of the patient's detention on the closed ward. Any other treatment means a deprivation of liberty without court sanction and presents a violation of the constitutional right to personal liberty. **2.3-15/2005**

13 – RESTRICTED POSSIBILITIES FOR INTERVENTION

There was an interesting and alarming case of a sick, elderly retired woman with two daughters. She lives together with her younger daughter, who is unemployed and was always considered somewhat special. Her mother's pension is the only source of income in the family. The younger daughter does not allow her sister to visit their mother nor does she allow her mother to leave the apartment; she refuses to take her mother to her physician, she ignores official summons and she refuses to open the door to their apartment. The blinds in the apartment are always drawn. Numerous attempts by the Social Services Centre, the physician, the police, the other daughter and the neighbours have all been unsuccessful. Nobody has seen or spoken to the elderly woman in months. The physician's records indicate that the lady is ill and in need of medical care. In view of all these circumstances and in view of the fact that it is impossible to establish contact with the elderly woman, there are reasonable grounds for suspicion that she was not receiving proper care. The Ombudsman informed the District State Prosecutor's Office about this situation. The State Prosecutor's Office recommended the court to order an investigation against the daughter on the suspicion of a criminal offence of unlawful imprisonment. After individual investigative procedures were carried out, the State Prosecutor's Office dismissed the crime report against the daughter because

no grounds warranting further prosecution were discovered. However, it was discovered during the proceeding that both the mother and the daughter were in need of medical aid and other assistance. This is why the State Prosecutor's Office recommended to that the Social Services Centre and the Community Healthcare Centre act within their competencies. The daughter that sought the Ombudsman's help continues her efforts to meet with her mother. Two issues remain open: how public authorities enter a private residence without a court order and "force" a family member to act in accordance with regulations and how to ensure that the other daughter can meet with her mother. **3.0-5/2005**

14 – HONORARY TRIBUNAL VIOLATES CONSTITUTIONAL RIGHTS

The Social Services Centre requested the Ombudsman's opinion and assessment on the matter where the Centre disagreed with the decision issued by the Honorary Tribunal of the Social Chamber of Slovenia. The Honorary Tribunal issued a public admonition to the Social Services Centre because of actions or omissions which had occurred ten years ago. According to the allegations of the Social Services Centre, certain fundamental rights of parties in the procedure were also violated, e.g. the right to a hearing, right to appeal, statute of limitations, etc.

The first question that we asked ourselves was whether we could even initiate the procedure. The decision of any authority competent to impose a particular sanction is in its very nature a legal act which should allow the individual's right to a legal remedy or judicial protection (Articles 25 and 23 of the Constitution). In the event of an ongoing judicial or other legal proceeding, the Ombudsman would not be able to consider the complaint, pursuant to Article 24 of the Human Rights Ombudsman Act (ZVarČP), unless on grounds of an undue delay in the procedure or obvious abuse of authority. Because the adoption of the Code of Ethics in Social Security and its supervision are not included among the tasks of public authority performed by the Social Chamber of Slovenia, the Ombudsman was unable to determine the potential abuse of authority involved in the imposition of the disciplinary sanction. He did, however, find some other irregularities.

The Rules on the Operation of the Honorary Tribunal of the Social Chamber of Slovenia were adopted at the Chamber's general assembly on 4 June 1999 and have been in force since that time, pursuant to Article 18. The Code of Ethics, which represents the main substantive law pursuant to Article 3 and violations whereof are determined by the Tribunal, was adopted on 6 June 1995 according to publicly available data (the date of its passing and coming into force are not available on the Chamber's website, and the Code has not been published in the Official Gazette of the Republic of Slovenia). It is unusual and legally unacceptable that the Honorary Tribunal used a legal act adopted six years ago to adjudicate on events which occurred almost 20 years ago. By doing so, they applied a regulation which did not exist when the alleged violations took place. It is the opinion of the Human Rights Ombudsman that the Honorary Tribunal of the Social Chamber of Slovenia has violated the fundamental constitutional rule and the fundamental principle of any procedure aiming to determine violations, namely that both the act and the sanction must be defined at the time that the alleged act was committed instead of more than ten years after the fact, as the case was in the matter at hand.

In this context, we would like to point out that the severity of the violation might in certain cases even justify retroactive consideration of past actions in light of later regulations and standards of professional or moral conduct; such consideration, however, must not result in the imposition of sanctions, much less the right to legal remedy or judicial protection.

Pursuant to Article 154 of the Slovenian Constitution, regulations must be published prior to their entry into force, and legal acts cannot have a retroactive effect (Article 155). In October 2003, the Honorary Tribunal received a written complaint to determine a violation of the Code of Ethics in Social Security. It examined the matter and issued a decision (without a specification of the date) to issue a public admonition to the Social Services Centre. In this context, it is unusual and irregular from the procedural standpoint that the brief sent by the Social Chamber of Slovenia to the complainant was marked with a number and dated 5 May 2005, yet there is no mention in the case file about the place of adjudication or composition of the Honorary Tribunal.

In order for a decision to issue a public admonition to be classified as a legal act, it would have to be formulated in accordance with the regulations of the legal profession, i.e. it should contain the necessary legal bases, operative provisions, the grounds for the decisions and the instruction on the legal remedy. While the brief sent by the Social Chamber does contain an introductory explanation and the operative provisions of the sanction, it does not contain an instruction on the legal remedy, which any legal act should (its contents unambiguously classify it as such). This violated the Social Services Centre's right to appeal, and because the second paragraph of Article 14 of the Rules expressly exclude the possibility of appeal, to judicial protection granted under the second paragraph of Article 157 of the Slovenian Constitution.

For the above reasons, the decision issued by the Honorary Tribunal cannot be deemed a legal act and so cannot be abrogated or annulled under the applicable legislation. Therefore, the Tribunal's decision is legally non-existent. In the opinion of the Human Rights Ombudsman and in light of the above, however, this voidness can only be determined by a body superior to the Tribunal, i.e. the Social Chamber of Slovenia's General Assembly. As the Chamber's highest body it is responsible for ensuring the legality of the entire organization's operation and preserving its reputation. Of course, the question of whether the Honorary Tribunal's decision has tarnished the Chamber's reputation remains open and it can only be answered by the relevant bodies of the Chamber. This was never a question for the Human Rights Ombudsman, however.

For the above reasons, the Human Rights Ombudsman did not individually assess individual allegations of the Social Services Centre involving procedural violations committed by the Tribunal. We expect that these allegations will be examined in detail by the competent bodies of the Social Chamber of Slovenia and that they will determine the need for amendments and supplements to the Rules on the Operation of the Honorary Tribunal. We sent our findings and opinion to the Social Chamber of Slovenia and they have been published in the newsletter of the Social Chamber of Slovenia (*Socialni izziv*, issue no. 23, December 2005), however, as of the time of writing this report, we have received no information regarding any decision taken in this respect. **3.0-17/2005**

15 – PHYSICIANS CANNOT FILE A MOTION TO GRANT AN ALLOWANCE FOR ASSISTANCE AND CATERING PRIOR TO THE LAPSE OF A SIX MONTH PERIOD FOLLOWING A CEREBROVASCULAR ACCIDENT

The complainant alleged that the Institute of Pension and Disability Insurance of Slovenia refused to consider the request for an allowance for assistance and catering for her mother who had recently suffered a cerebrovascular accident. The health insurance holder's physician filed a motion to grant the allowance along with the required medical documentation. The president of the Institute's Invalidity Committee dismissed his motion with the explanation that the motion for assessment for patients having suffered cerebrovascular ischemia can only be filed six months after the onset of the disease or after the rehabilitation has been completed. The president of the committee based this decision on the provision laid down in Article 20 of the Rules on Organization and Method of Operation of Invalidity Committees and other Expert Bodies of the Pension and Disability Insurance Institute of Slovenia and the decisions adopted at the symposium of the Expanded Professional Board of the Neurology Clinic and the convention of the presidents of the Invalidity Committee on 25 October 2001.

We found no legal basis for such action by the president of the Invalidity Committee, because a decision adopted at a symposium of the Expanded Professional Board of the Neurology Clinic and at a convention of the presidents of the Invalidity Committee cannot be regarded as a legal basis for deciding on the right arising from pension and disability insurance. Article 20 of the Rules states that the insurance holder's personal physician may file a motion to begin the procedure to exercise the patient's rights arising from disability insurance once he determines that the changes in the patient's medical condition cannot be fully reversed through further medical treatment and rehabilitation.

In the complainant's case, it was clearly evident from all the available medical documentation that the health insurance holder's medical condition had deteriorated so much after suffering a second cerebrovascular ischemia that she needed

full medical care and personal assistance (she was immobilized, unable to feed herself, clothe herself and take care of her personal hygiene).

In a inquiry sent to the Institute of Pension and Disability Insurance of Slovenia, we requested an explanation as to why the Institute did not decide on the motion (the president of the Invalidity Committee returned the motion to the health insurance holder's personal physician by mail). If the Institute had issued a decision on the motion, the complainant, acting on behalf of the insurance holder, would have been able to lodge an appeal or seek judicial protection upon the Institute's denial of the appeal.

In its reply, the Institute explained that they treated motions of insurance holders who suffered cerebrovascular ischemia in accordance with the standpoint of the Neurology Clinic, which states that an expert opinion cannot be given before the lapse of six months after the onset of cerebrovascular ischemia, because the condition often requires a certain time for rehabilitation. The six-month period may only be waived in cases where a neurologist believes that improvement of the medical condition cannot be expected, meaning that the condition is permanent and that it will not change despite medical rehabilitation. In this case, the Invalidity Committee must produce an expert opinion on whether the insurance holder's case justifies a need for medical care and personal assistance in order to perform basic biological needs. Personal physicians were notified of the Institute's position on this issue, and so cases like this one should only be considered in exceptional cases.

It was the Institute's opinion that the president of the Invalidity Committee had made an error in judgment when she returned the motion to the insurance holder's personal physician. The error was resolved so that the Invalidity Committee issued an expert opinion on the basis of the initial motion filed by the personal physician. After the expert opinion of the Invalidity Committee had been given, the Institute issued a decision on the allowance for care and personal assistance.

The complainant informed us that her mother was granted the right to an allowance for care and personal assistance. **3.2-25/2005**

16 – UNENFORCEABILITY OF A FINAL JUDGMENT

The complainant disagreed with the decision of the Health Insurance Institute of Slovenia refusing her request for temporary incapacity for work by reason of illness, and lodged an appeal against the Health Commission's decision with the Labour and Social Court. Despite feeling unfit for work, she returned to her place of employment, fearing her employer might terminate her employment contract otherwise. The Labour and Social Court decided that in the past year, the complainant was temporarily incapacitated for work due to her illness.

When we asked the Institute how they were going to execute the final judgment in the case at hand, they replied that the final judgment served only to establish the relevant circumstances and therefore could be executed. While we agree with the Institute from the aspect of applicable legislation, the question remains what the use is in ensuring judicial protection of rights arising from health insurance when the judgment cannot be executed in the first place.

This case clearly shows that individual areas are not regularized in a way which would enable the exercise of rights granted under the Constitution (the right to health care). The right of absence from work for reasons of health is granted under labour law, while health insurance legislation guarantees a substitute salary in the event of such absence and lays down the procedures for determining incapacity for work.

The procedures for determining incapacity for work laid down by the Health Care and Health Insurance Act and Compulsory Health Insurance Rules are defined in such a way that they can place the insurance holder in the position described above, and this is not acceptable. Even more unacceptable is the fact that the medical profession uses such diverse criteria when determining incapacity for work that, based on the same medical records submitted by the insurance

holder, the **relevant Health Insurance Institute bodies** (the appointed physician and the medical commission) decided that she was capable of work while the Court's medical expert witness had decided the opposite.

We suggested that the complainant consider the possibility of claiming restitution from the Health Insurance Institute for any damage or injury she might have suffered due to her being forced to work despite a final decision of the court establishing that she was unfit for work due to illness. In this case, the Institute's liability for damages would be determined under the relevant regulations. Unfortunately, we were not informed of the complainant's decision. **3.3-3/2005**

17 – RIGHT TO SUBSTITUTE SALARY OF A NURSING MOTHER DURING HER CHILD'S HOSPITALIZATION

The complainant was hospitalized in the paediatric ward of the Clinic for Infectious Diseases and Febrile States as a nursing mother with a one-year old child. She was hospitalized for several days, however she was only granted sick leave for the first and last day of her hospitalization. She also complained about how difficult it was for her to obtain information regarding the exercising of her rights. Whomever she asked referred her to someone else. The attending physician explained that the Compulsory Health Insurance Rules do not foresee sick leave in cases of nursing mothers because there is a premise that nursing mothers are still on maternity leave. Finally, the complainant lodged a written request with the Health Insurance Institute of Slovenia to grant sick leave for the entire duration of hospitalization.

In connection with the above, it is our finding that the rules regulating temporary absence from work, i.e. Health Care and Health Insurance Act and the Compulsory Health Insurance Rules, are unclear in this regard.

The Health Care and Health Insurance Act provides the right to substitute salary in the event of providing care for a family member, i.e. including a child aged up to seven and older, provided the conditions are met (Article 30). The provision of the first indent of Article 81 of the Act can be interpreted in a way that it is up to the health insurance holder's personal physician to determine whether they are temporarily incapable of working. However, the Act offers no explicit provisions about the rights of nursing mothers to be hospitalized together with her child, as provided under Article 40 of the Compulsory Health Insurance Rules, and no provisions about whether she is entitled to a substitute salary during this time.

The Rules grant the nursing mother of a hospitalized child the right to staying in hospital. However, the section of the Rules regulating temporary incapacity for work does not contain any provisions expressly regulating the mother's right to a substitute salary in this particular case.

In our opinion, this unclear regulation is the cause of the problems reported by our complainant. This problem would not occur if the Act (Article 30) provided the specific cause for absence (nursing a hospitalized child). Even with currently applicable regulations, we did not find any reason for the complainant's problems in exercising the right to temporary leave from work, because we did not know why breastfeeding a hospitalized child should not be considered caring for a close family member – a child.

We informed the Health Insurance Institute of Slovenia of our opinion, which in turn explained that the applicable regulations did not allow a nursing mother to exercise the right to substitute salary for the duration of her stay with a hospitalized child. In this case, the mother is only entitled to staying with the hospitalized child and to the exemption from paying the costs of food and accommodation during this time. The mother is, however, entitled to a substitute salary on the first and final day of hospitalization, for reasons of accompanying a family member to hospital and not for reasons of providing care for a family member. **3.3-8/2005**

18 – INAPPROPRIATE QUESTIONS ASKED BY APPOINTED PHYSICIAN?

The complainant reported that she was invited to attend an interview with an appointed physician at the Health Insurance Institute of Slovenia in connection with an extension of her sick leave. She lodged a complaint with the Ombudsman because she considered the physician's conduct entirely inappropriate. She allegedly told the complainant she should be ashamed that she had spent the past four years on sick leave, which was false, according to the petitioner. Then the complainant was asked about the amount of damages she had received for personal injury and damage to the car (following a car accident) and how many times she had wanted to commit suicide. She was then allegedly advised to either quit her job if she considered herself unfit for work, or commit suicide.

We notified the Health Insurance Institute of Slovenia about the complainant's allegations and recommended a thorough examination of the physician's conduct in this matter.

It was evident from the reply from the Health Insurance Institute of Slovenia that the complainant had lodged a complaint containing the same information with them also. They had already considered and replied to the complaint prior to our inquiry. The Institute explained that the complainant was invited to appear in person before the appointed physician in order to carry out the procedure to determine the existence of conditions for an extension of sick leave due to illness. After the appointed physician had explained to the patient that the conditions for her sick leave of eight hours per day no longer existed and that she could only be granted a four-hour sick leave from work per day (as evident from medical records of the neurologist and physiatrist). The complainant responded vigorously (she started to cry, scream and she threatened to commit suicide). It was the physician's opinion that this reaction was the consequence of the complainant's medical condition.

From the explanation of the appointed physician and available documentation, the Health Insurance Institute of Slovenia was unable to find evidence of mistreatment since the physician's questions related exclusively to medical complications happening as a result of the complainant's medical condition, and were required in order for the physician to assess whether an extension of sick leave was justified. When considering the complaint, the Institute also considered the fact that the complainant was aggravated during the procedure of determining temporary incapacity for work due to a different sense of self and the environment and due to her medical condition. Therefore, they sent the complainant a written apology for the nuisance. Dissatisfied with their reply and apology, she demanded a personal interview at the Institute. At the interview, she demanded that the Institute pay her a certain amount in damages, which the latter refused.

The Human Rights Ombudsman cannot determine the justification of the petition at hand on the basis of allegations made by the complainant and the Institute, since only the allegations of both sides were made available to him. There is no doubt, however, that the complainant was emotionally distressed at the appointed physician's decision that she was capable of working in a part-time capacity, because she was firmly convinced that she was incapable of work due to her illness, even on a part-time basis. The appointed physician should have been prepared for this kind of reaction and should have acted in a reassuring manner. In our opinion sent to the complainant, we stated that the apology sent by the Institute is evidence of its good faith in acknowledging her position and understanding regarding the disputed procedure before the appointed physician. This is why we advised her to accept the apology. The Ombudsman could have also demanded an apology from the Institute to the complainant for the actions of the appointed physician if it could have been unambiguously ascertained that all the allegations regarding the physician's conduct contained in the complaint were correct. However, it is not the Ombudsman's competence to decide on the potential payment of damages claimed from the Institute by the petitioner. **3.3-16/2005**

19 – RIGHT TO SMOKE IN HOSPITAL

The staff of a hospital informed us that the Restriction of the Use of Tobacco Products Act prohibits smoking on the entire premises of the medical facility, which they believe is discriminatory. In our reply, we restated our position in a similar complaint submitted by a group of teachers in an elementary school.

In the Ombudsman's opinion, the legislator's purpose was to limit the use of tobacco products by passing the Restriction of the Use of Tobacco Products Act in order to protect the health of the population. There is no doubt that this is the legislator's legitimate aim. It is even the legislator's constitutional duty to provide health care for everyone (fundamental right to health care under Article 51 of the Constitution). It is therefore legitimate that the legislator should try to minimize in advance the possibility of health complications, especially those involving severe and chronic illnesses. The high costs of medical services involved in these cases can have a severe indirect effect on the extent and quality of healthcare services for all people.

Tobacco products have long been known to have a highly detrimental effect on the health of humans and can cause severe forms of dependency. Objectively speaking, the habit is harmful for the person indulging in it as well as the general society which must shoulder the burden of resolving the consequences.

The legislative measure aims to prevent the harmful effects of using tobacco products which individuals would be subjected to if exposed to tobacco smoke. In legal terms, the law aims to protect the fundamental human right to a healthy living environment provided under Article 72 of the Constitution. We would like to add that another obvious and legitimate goal of the measure should be considered, i.e. the need to minimize the possibility of the onset of circumstances which could encourage individuals to use tobacco products. These circumstances certainly include smoking by healthcare workers, who should serve as a public example of taking good care of one's own health. Therefore, the legislative measure is curative and especially preventive in nature.

We believe that the National Assembly effectively considered all the above aspects when passing the law.

It also showed consideration for the fact that a large part of the adult population are smokers and that they understandably feel affected by attempts to restrict the use of tobacco products. The standpoint of smokers who believe that the law violates their freedom of choice of the method for overcoming daily stress is undoubtedly legitimate. Although there is no right to smoke as such, it is more or less directly contained in the protected legal status of the human being as a person. Therefore, we can establish that the complainants are claiming that the law violates their general freedom of conduct, or their right to privacy and equality before the law.

Article 15 of the Constitution lays down the general rules under which interventions in fundamental human rights are permissible. Human rights may only be restricted when explicitly permitted under the Constitution, and in certain cases interventions are also possible under the law, provided that certain conditions are met. Under the Constitution, the latter intervention is only permissible in cases where it is vital due to the nature of these rights or in order to protect the substance of other fundamental human rights. Under the Constitution, these rights are already limited by the rights of others. It is also understandable that the legislator seeks to regulate the boundaries between rights from the perspective of the need for precision and the predictability of the law. These boundaries are a matter of value judgment.

The National Assembly was therefore required to make a value judgment regarding the substance of the Restriction of the Use of Tobacco Products Act. In drawing the boundary between rights, it had to weigh all liberties protected under the Constitution. By doing so, it decided on a certain hierarchy of values and decided that protecting health is a value of higher priority. It is therefore understandable that measures to prevent use of tobacco products are stricter in educational and healthcare organizations.

Because the complainants also requested an explanation regarding possible ways of resolving this issue, we presented them with two possibilities.

The first possibility is amendment of the statute. Under Article 88 of the Constitution of the Republic of Slovenia, laws (including potential amendments or supplements thereof) may be proposed by the government, the National Council, any deputy or at least five thousand voters. In the event of a motion for amendment of the law, of course, it is by no means certain that the National Assembly will support the motion and change the law. This would only be possible by persuading the majority of the representatives in the National Assembly.

The second possibility is that the abovementioned prioritization or weighing of rights carried out by the legislator by passing the law be submitted to the Constitutional Court of the Republic of Slovenia for testing. Under the second paragraph of Article 162 of the Constitution, anyone who can demonstrate a direct legal interest may file a motion for constitutional review of a law. This means that the motion for review of the regularity of a law can be filed by anyone who can demonstrate that the regulations at hand concretely and directly intervene with his legal status.

We also advised the complainants that while the outcome of the judicial review of all the abovementioned values protected under the Constitution cannot be predicted, it is not likely (judging from comparable European regulations) that the Constitutional Court would fully annul the disputed provision and extend the general practice of using tobacco products in public areas to schools and healthcare institutions. **3.4-7/2005**

20 – ELDERLY CITIZEN DENIED ENTRY INTO A HOME FOR THE ELDERLY DUE TO BEING INFECTED WITH MRSA

The Ombudsman received a complaint from the caretaker of an elderly woman who was infected with MRSA while receiving medical treatment. The hospital wished to discharge her into home care as soon as possible but all elderly homes refused her admission on the grounds that they did not have the required facilities and equipment to treat such patients. We wrote to the Ministry of Labour, Family and Social Affairs, inquiring what institutions have the necessary facilities for such patients and where it would be possible to find an available bed for her accommodation.

The Ministry explained that "MRSA infection has no bearing on the admission of residents. However, the fact that these residents require suitable facilities and treatment should be taken into consideration." These cases most often require a certain degree of isolation, e.g. a single room. This greatly restricts the capacity of individual homes to admit such patients.

In its reply to our express inquiry, the Ministry also states that no specific list of homes able to admit patients suffering from this infection is available, because these patients should be admitted into any available home, provided that they meet the above conditions.

In light of the above, we advised the complainant to try to seek help in resolving the matter from the competent Social Services Centre. Because the complainant refused to reveal information about the hospital where the infection occurred, we were unable to act and caution about unacceptable conduct in the health institution's attempt to get rid of a patient infected while under their care. Because MRSA infections are on the rise, we included this report in the annual report as a warning to hospitals that they should not relay their responsibilities for infection onto the patient, and homes for the elderly should not simply deny admission to such candidates without reasonable cause. **3.4-8/2005**

21 – REFUSAL OF TREATMENT OWING TO HIV INFECTION

The Ombudsman received a complaint from a complainant who was refused dental treatment because he had previously informed his dentist of being infected with HIV. In addition to the reported problem, the complainant was also concerned about the way the Ombudsman would handle his personal information, as he was understandably worried that his identity would be revealed. We informed the complainant that his petition was being treated with all due care and diligence, especially with regard to the protection of his personal data. Therefore, contrary to the required practice of office operations, his letter was not entered into the computer database, and we sent him our reply by e-mail.

We informed the complainant about the procedure of the Ombudsman's involvement, which involves establishing the actual situation and obtaining the required information from the opposing party involved in the procedure or dispute. Only then can he determine any potential violations of procedure and advise the complainant accordingly. We advised him that we will need to carry out an inquiry at the dental clinic and request an explanation as to why he was denied treatment by the dentist. Under the provisions of the law, a dentist may refuse treatment of the patient, but this refusal should not be based solely on a specific diagnosis, even if such diagnosis presents an increased risk for the dentist. The complainant gave us his express permission to make inquiries with the head of the healthcare institution. We were informed that the head of the institution has been informed of the problem and has already taken action. He discussed the matter with the complainant's dentist and told her that her conduct was unacceptable. Because the dentist was about to retire, the head of the healthcare institution decided that disciplinary action would not be prudent, which we agreed with, especially since the dentist was prepared to continue treating the patient.

We notified the complainant that his problem had been solved and we advised him about options to lodge a complaint with the expert bodies of the Institute or the Medical Chamber of Slovenia, but in this event it would be difficult to protect his identity. We further advised him that he should notify his doctor about his condition, because he has a legal obligation to do so, just as the doctor has the legal obligation not to refuse him treatment on the grounds of this condition. Because we did not get a response from the complainant, we believe that the issue of treatment was successfully resolved. **3.4-9/2005**

22 – GRANTING OF A CONCESSION TO PERFORM HEALTHCARE SERVICES

The complainant reported that she had been waiting several months to be granted a concession to perform healthcare services, yet the municipality has not even responded to her request. According to her allegations, the municipality had granted the concession to certain individuals in the past, but not to her. This is why she believes she is being unjustly discriminated against by the municipality. The complainant has also lodged a complaint because of the body's silence, but the procedure has not yet been completed.

Because the Ombudsman normally does not intervene in ongoing legal proceedings, we informed the complainant of our opinion regarding the accusation of discrimination in the municipality's decision on the matter. The concession to perform a particular activity can only be obtained following a procedure laid down by the law, since this is not an individual right that anyone could demand from government authorities. This is why, pursuant to the Public Procurement Act, a public procurement procedure to award a concession in a certain area must be carried out, which will enable all interested parties fulfilling the requirements to compete for the concession and win the concession contract. Because the complainant made no mention of a public procurement procedure, we assumed that she had requested a concession that was not available in the first place. We believe that in this case, the municipality is not required to grant the request and the concession. However, it should consider the request under the General Administrative Procedure Act and resolve it within the statutory time limit, which must not exceed two months. Therefore, while we believe that the complainant was justified in her complaint against the non-response from a public body, we believe that the appellate body will not be able to reach a substantive decision in the sense of granting a concession.

Under the Health Services Act, the concession for performing basic public healthcare services can be granted by decision issued by a municipal or city administrative body responsible for healthcare, with the consent of the minister responsible for health, provided there is a need for healthcare services in a municipality or city. Therefore, if a municipality has no need for additional healthcare services under the applicable criteria for the establishment of the public healthcare service network, there is no need to grant an additional concession. Therefore, it is within the discretion of the municipality to determine the needs and issue a public tender procedure to award a concession for the provision of specific healthcare activities or services. In our opinion, it is impossible to grant a concession without carrying out this procedure, regardless of whether the individual or legal person satisfies the legal requirements to perform these activities. The municipality can reach a completely independent decision as to how it will arrange for the provision of the public service, either through a public institution or by issuing a concession to a private individual. In this context, we cannot give an assessment on past procedures for granting concessions, as we are not competent to determine the legality of individual procedures, and we do not have access to all the necessary information.

In light of the above, intervention by the Human Rights Ombudsman would only be justified with regard to the municipal body's deciding on the complainant's request, however there is an ongoing appeal procedure, therefore the law does not allow the Ombudsman to interfere. We invited the complainant to inform us of the decision of the appellate body or of any delay in the issuance of the decision, however no response was received. **3.4-17/2005**

23 – RIGHT OF A STUDENT WITHOUT A STUDENT STATUS TO CHOOSE A PERSONAL PHYSICIAN

The complainant has chosen a personal dentist in the student health centre, but does not currently hold a student status (he has not enrolled this year). He got a toothache one weekend and so he visited the on-call dentist at the student health centre. Upon removing his filling, the dentist established that the tooth had been infected and inserted medication. After the weekend ended, the patient tried to make an appointment with his chosen personal dentist in order to continue dental treatment. His doctor refused to treat the patient on the grounds that he did not hold a student status; he was also advised to find another dentist. The complainant tried to find another dentist but they were not registering new patients until autumn, while the waiting period was three months following registration.

In our opinion, the personal dentist's conduct was contrary to healthcare and health insurance regulations, and we sent the health centre written notification about this issue.

The Health Care and Health Insurance Act provides that the health insurance holder is free to choose the doctor and healthcare institution where he shall exercise his rights arising from his health insurance pursuant to this Act, including the right to choosing a personal dentist. The manner of exercising the right of free choice of a physician (or dentist) and healthcare institution is also laid down by the Compulsory Health Insurance Rules, in which we found no legal basis for refusing the health insurance holder's right to a personal dentist on the grounds that he did not hold student status. Since, as a rule, the Human Rights Ombudsman does not interpret regulations, we asked the Health Insurance Institute of Slovenia for its opinion on whether the personal dentist at the student health centre was justified in refusing treatment to a health insurance holder simply on the grounds that he does not hold student status.

Even before the Health Insurance Institute of Slovenia confirmed the Ombudsman's position that the dentist's actions had no legal base under applicable law, the managing director of the student health centre notified us that they had already informed the complainant to make an appointment with his chosen dentist as soon as possible so as to resume dental treatment. **3.4-19/2005**

24 – SERVING OF A DECISION ON THE APPOINTMENT OF A LEGAL GUARDIAN IN A PARTICULAR MATTER

The Ombudsman received a report from a complainant claiming that a Social Services Centre had violated his mother's rights by issuing a decision appointing her a legal guardian in a particular matter, yet never serving her with it, instead serving it to the appointed legal guardian (the complainant's brother). The brother had already executed the decision and placed his mother in a home for the elderly in order to ensure institutional care for her. The complainant also claimed that his mother had lodged an appeal against this decision by the time he was made aware of it, yet the Ministry of Labour, Family and Social Affairs had not yet made its decision, despite the lapse of the statutory time limit prescribed by the General Administrative Procedure Act.

Upon considering the matter, we determined that a violation of the right to appeal may be involved, and so we asked the competent Social Services Centre to clarify the specifics of the case and explain its general practice of serving decisions appointing guardians in particular matters. The question that came to mind was whether, by serving only the appointed guardian (who is only a potential guardian since the decision is not yet final), the individual's legal capacity was restricted even before the decision became final. We were also interested how the constitutional right to appeal and to judicial protection was ensured in this case since the individual had not been notified of a decision that directly infringed on her legal interests and legal status.

In response to our inquiry, the Social Services Centre described the specific reasons for the decision about the guardian, explaining that the psychiatrist had determined that the mother was no longer capable of living independently and that she required constant care. These reasons had also been given in the decision. The Social Services Centre and the Ministry of Labour, Family and Social Affairs further replied that no appeals had been noted in their records. Because the complainant also sent us a photocopy of a certified mail receipt proving that the letter has been sent, we asked the Social Services Centre again to determine where the appeal might have ended up since the return receipt clearly reveals that a letter had been sent to the Social Services Centre. Only after this repeated intervention, did the Centre locate the complainant's appeal. It had not been filed in the administrative case file which contained the decision appointing a legal guardian in a particular matter, but had been kept in a separate folder in the care of one of the expert workers.

In a phone conversation, we advised the Centre's expert worker that the issue needed to be resolved in a lawful manner, i.e. by ensuring proper service of the decision to the parties involved and by deciding on the appeal lodged against this decision. However, the complainant sought assistance from the Ombudsman again because he did not understand why the decision served to his mother contained a finality clause, while at the same time the legal instruction stated her right to lodge an appeal. A further inquiry revealed that the Centre had already served a copy of a previously issued decision from which they had forgotten to remove the finality clause. We determined that this reply did not instil confidence in the law in the party involved in the procedure, nor did it demonstrate proper administrative conduct expected from a public authority.

The Centre also informed us that it had acted in compliance with Article 242 of the General Administrative Procedure Act and subsequently served the decision to the mother of the complainant, who had not lodged an appeal against it. The Centre also issued a decision on correcting the error involving the statement of enforceability on the decision.

It is the Ombudsman's opinion that the Social Services Centre acted inappropriately in the complainant's case since government bodies, or public authorities, must maintain proper records on incoming mail and must, at a moment's notice, know what stage of the administrative procedure a particular case is in. In this particular example, the appeal had been (properly) lodged with the Centre all along, yet incorrectly entered and kept on record.

We also communicated our findings to the Social Services Centre, which assured us that it would improve its professional conduct in the future.

Because the complainant insisted that his appeal be decided on by the Ministry, we explained that the Social Services Centre had eliminated the procedural errors he rightfully complained about, as required under the law. Therefore, there is no further reason for a second-instance body – the Ministry of Labour, Family and Social Affairs – to consider the matter, since the appeal was actually decided on as indicated. **3.4-27/2005**

25 – RIGHT OF SISTERS TO MAINTAIN CONTACT

This complaint involves the prevention of contacts between two elderly sisters. One of them lives with her daughter and son-in-law, who is preventing the sisters from staying in contact. At our initiative, the Social Services Centre attempted to act within its competence, but the son-in-law refused to allow the Centre's expert workers to enter the premises. This happened again after the police made an attempt to advise them against such conduct. One of the sisters had already initiated legal action, but the court has still not requested an opinion from the Social Services Centre. One of the Social Services Centre's expert workers continued trying to resolve the matter despite these obstacles and eventually managed to enter the premises while the son-in-law was away. Talking to the elderly lady, she determined that her mental condition had deteriorated to the point where she no longer understood the meaning of the questions posed, answering *yes* in reply to all of them. Therefore, it was impossible to say with any amount of certainty whether or not she actually desired to be in contact with her sister. Although the visit showed that the lady was well taken care of, the question remains how to ensure the sisters' right to meet at the end of their lives' journey. **3.5-26/2005**

26 – INCONSISTENCIES INVOLVED IN THE MINISTRY OF LABOUR, FAMILY AND SOCIAL AFFAIRS' TERMINATION OF A CONCESSION AGREEMENT

We considered a petition regarding the uncertainty caused by a notice sent by the Ministry of Labour, Family and Social Affairs in a matter involving the revocation of a concession to perform job agency services for secondary school and university students. In the abovementioned notice, the Ministry states that the concessionaire had failed to meet his financial obligations arising from the concession agreement despite multiple appeals and that he was conducting business operations at a location where this is not permitted. A violation of the Rules on Conditions for Performing Activities of Employment Agencies (Official Gazette of the Republic of Slovenia, issue no. 48/99) was also established by the Labour Inspectorate during the course of the inspection procedure. The notice suggests that the concessionaire's concession has been fully revoked, and a deadline had been set for the termination of business operations, and one of the key entitlements granted under the concession was prohibited – the ability to issue work referrals to secondary school and university students. According to the Rules (and the provisions of the concession agreement), these are consequences that apply to the time period following the date of termination of the concession. Because the concession to perform work agency services for secondary school and university students is based on a valid concession agreement, the termination of the concession has the technical and legal character of a termination notice. Despite the express statement that the Ministry "fully revokes the concessionaire's concession", the notice also states that the concession agreement remains in force until the date corresponding to its normal expiration date. Therefore, the notice was unclear and, more importantly, it was impossible to determine the actual date of revocation of the concession. In terms of content, the expression of will did not properly correspond to the expressed intent of the one-sided termination of the agreement. Therefore it can be assumed that the purpose of the notice extended beyond the expression of the will that the concession agreement would not be extended (or that it would be terminated following the lapse of the deadline which corresponds to its normal expiration). Evidently, the intent of the Ministry was to alter the substance of the concession relationship.

The concessionaire was unable to clearly determine his legal status from the notice about the revocation of the concession. On the one hand, the concession was fully revoked (the concession relationship expired) while on the other hand, the concession agreement remained in force. If the concession were revoked, a time limit for the termination of business

operations should have been set. If the concession agreement were to stay in force (or if the concession were revoked after the expiration of the agreement), there would be no apparent grounds to prohibit the essential element of the concessionaire's entitlement to perform his concession activities. The Ministry informed us that they later "deviated somewhat from the initial notice and moved the time limit for termination of business activities specified in the initial notice," but this raises additional concerns.

Therefore, not only is the conflicting information in the notice questionable in terms of content, it is also incompatible with the principles of the rule of law which demand transparency and predictability of the effects of legal acts. We notified the Ministry of Labour, Family and Social Affairs of our opinion that there is no legal base in the case at hand for the granter of the concession to arbitrarily change the substance of the concession relationship via a notice revoking the concession. Such notice cannot serve to arbitrarily change the substance of the concession agreement, since the Rules provide that its nature is only to convey a one-sided expression of the will to terminate the concession relationship (i.e. concession agreement). Based on available data, we could not determine if and to what degree such actions by the Ministry of Labour, Family and Social Affairs affected the company's actual business operations, however the existence of such influence cannot be ruled out.

In the second part of the same petition, we considered the actions of the Labour Inspectorate. During the inspection procedure, an oral injunction was issued, prohibiting the company from conducting business at the disputed location. The minutes of the inspection procedure state that a decision will be issued in the event of non-compliance with the injunction. The decision under the provisions of the General Administration Procedure Act was not issued even after the same irregularities were discovered a second time. The company's legal representative or agent was not present during the inspection procedures.

We notified the Ministry of Labour, Family and Social Affairs that, pursuant to the Inspection Act, the inspector should urge the company's legal representative to provide an explanation of the discovered facts and circumstances within a specified time period. It is also unclear why the measures imposed should be considered urgent and non-postponable, in which case the oral injunction would be justified. We also believed that the inspector should have issued a written decision on the established irregularities and imposed measures. Only such conduct would have allowed the concession holder the opportunity to effectively use the legal remedies available to him. **4.0-11/2004**

27 – UNLAWFUL EMPLOYMENT IN A PUBLIC INSTITUTE

The complainant spent twelve years working in a public institute on the basis of a copyright contract. Between 1 January and 6 February 2005, he even performed work without any kind of contract whatsoever. After a month of undeclared work, they offered him a subcontracting contract, but, like 17 of his co-workers, he refused to sign it. As a result, he was notified by telephone that he had been placed on a list of 18 workers who may no longer enter the premises of the institute.

We requested a report by the National Labour Inspectorate, which found several irregularities during its inspection procedures. The Inspectorate imposed fines against the employer for interfering with the inspection procedures, and issued a minor offence decision for engaging in undeclared employment and signing subcontracting agreements contrary to regulations. Of all the workers performing work for the employer without a legal basis, only one signed an employment contract. Business cooperation contracts were signed with four workers, and the remaining workers no longer work for the employer. These individuals have lodged lawsuits with the competent court; the court decided in favour of eight of the workers, but the employer appealed against the decision of the court. **4.0-2/2005**

28 – OBSERVANCE OF THE DECISION ON REDUCED WORK HOURS FOR REASONS OF PARENTHOOD

The petitioner complained that her employer – a public institute – did not comply with the issued decision about reduced work hours which she invoked as a parent under the first paragraph of Article 48 of the Parental Protection and Family Benefits Act. She is required to work six hours per day or thirty hours per week, but her employers demand more. She stated that she was not informed of the possibility of extension of her working hours and that she is being required to work on-call on Saturdays, Sundays and holidays.

In her reply to our inquiry, the institute's managing director emphasized that, due to the uneven distribution of work hours, the legally prescribed pool of work hours is determined on a trimestrial basis, and adjusted on an annual basis. Any eventual amount of work hours performed in excess of the plan is set off in the subsequent trimester by allowing absence from the workplace. The same arrangement applies to all workers, including the petitioner, who used the excess hours carried over from December and January, in February. The employee had been informed about the reasons for extended work hours and agreed to those terms. In relation to on-call work, she explained that on-call work is currently not yet performed at the institute. The issue is that the business hours span between 6:00 and 22:00 every day of the week, due to the specific nature of their work. The demand for these kinds of services in Ljubljana is high, but the institute is unable to meet it due to staffing issues. This is why work activities need to be organized through an uneven distribution of hours, even at times which may sometimes be inconvenient for the employees.

After examining additional documentation, we notified the managing director about certain inadequacies we had found in the issued decision reducing work hours, which needed to be addressed. We explained that, while the work hours may be distributed unevenly due to the nature or in the interest of organizing work activities under the Employment Relationship Act, the decision involved in the matter at hand should have also considered the statutory provisions protecting parenthood. Written consent from the employee should be obtained in order to extend her work hours. The managing director's reply did not reveal the degree to which the agreement for extended work hours had been reached with the employee, nor the manner in which such an agreement was expressed. We recommended that the issued decision be revised and properly adhered to, particularly regarding the provision which set the employee's monthly salary at the amount of hours of work actually performed instead of compensation.

We advised the complainant to try and reach an agreement with the institute's management. Failing that, we referred her to the competent inspectorate. We also informed the managing director of our counsel. **4.1-10/2005**

29 – VIOLATION OF EMPLOYMENT RIGHTS IN A DISABILITY ENTERPRISE

After our intervention and consequent supervision by the National Labour Inspectorate, the conditions and relations in a disability enterprise changed significantly. Complaints filed by petitioners involving issues of work safety and health and violation of rights arising from their employment were well-founded. In order to eliminate these irregularities, the inspector issued two regulatory orders to the employer and subsequently determined during supervision that the employer has already begun to eliminate the irregularities involving work safety and health. The inspector also issued a regulatory order requiring the rectification of irregularities established in the area of work relationships. She demanded that the effective work time should include the time involved in the necessary preparations for work, changing clothes, bathing and handover of work tasks. **4.1-39/2005**

30 – RIGHT OF AN UNEMPLOYED PERSON TO VIEW HER CASE FILE AND TO RECEIVE EDUCATION

The complainant claimed that the Employment Service of Slovenia prevented her from viewing certain information contained in her case file (e.g. a memo) and refused her application to be included in an active employment policy programme (*Program 10,000+*). She appealed against this decision.

After our intervention, the Employment Service of Slovenia immediately allowed the complainant to view the relevant documents. Her appeal was also resolved very quickly (in her favour). The complainant enrolled in an education programme in the academic year 2005/2006. **4.2- 37/2005**

31 – EXCESSIVE EXTRA WORK HOURS IN CORRECTIONAL INSTITUTIONS

The president of the Prison Service Labour Union complained that prison guards have been having to work excessive hours of overtime for several years. An individual employee must put in as much as 400 hours of extra work per year in addition to his full work hours. The complainant compared this overtime distribution to slavery, especially in light of the fact that the employer allegedly threatened to terminate the employment agreement with those refusing to work overtime.

In its reply to our inquiry, the Prison Administration of the Republic of Slovenia explained that most cases of overtime are due to the increased needs for escorting prisoners to courts and external medical facilities. Only limited advance planning is possible with these activities, since they are dependent on the number and structure of prisoners, the courts' summons, the complexity of individual procedures (it is impossible to estimate with certainty how long an individual escort duty will take), the health of the prisoners and the physician's decisions to carry out various medical examinations and order hospitalizations of prisoners in outside medical institutions. Overtime is only assigned to consenting prison guards. In its response, the Prison Administration of the Republic of Slovenia also pointed out that it has been voicing its concerns to the Ministry of Justice and other authorities about the lack of prison guards in light of the constantly increasing volume of work, about the fact that the guards are overworked and that this is a violation of labour laws. The volume of overtime per employee is decreasing, which is the result of employing additional employees in the previous year. In order to comprehensively address this subject, a minimum of 70 additional members of staff would need to be employed and the Enforcement of Penal Sentences Act would need to be amended so as to provide a legal base for flexible assignment of work time. The implementation of these measures is planned for 2005.

We do not agree that the government authority has violated regulations and we acknowledge the reasons given by the government body as justified, since they are the cause for exceeding the volume of overtime work per employee prescribed by statute. In this regard, we can only advise the competent authorities to do everything within their power to rectify the irregular situation involving overtime allocation, especially if the recommended measures are not implemented. **4.3-12/2005**

32 – MILITARY REPRESENTATIVE OF THE REPUBLIC OF SLOVENIA WITH THE EU WITHOUT A DIPLOMATIC TITLE

The complainant, a military representative of the Republic of Slovenia in the EU, did not hold a diplomatic title. As a result, he was unable to use his identity card in the host country, required to open a personal bank account, register a car, exercise the right to healthcare allowance, etc. He turned to the Human Rights Ombudsman because this status was assured by the contract on the performance of work responsibilities abroad, which he signed with the Ministry of Defence of the Republic of Slovenia. The Ministry failed to ensure the fulfilment of the contractual provision pursuant to the applicable Agreement on the Appointment of Military Envoys signed between the Ministry of Defence and the Ministry of Foreign Affairs in 1993.

The Ministry of Defence signed a contract on the performance of work responsibilities abroad (i.e. an employment contract) with the complainant on the basis of a decision issued by the Ministry of Foreign Affairs dated 16 February 2005, whereby the complainant was appointed to the position of Deputy Military Representative at the Permanent Representation of the Republic of Slovenia to the EU in Brussels, for the period between 1 March 2005 and 1 June 2008.

In response to our inquiry as to why the decision was issued appointing the complainant to work at a foreign representation when diplomatic status could not be granted to him, the Ministry of Foreign Affairs explained that the provisions of the Agreement only regulate the status of military attachés, i.e. military persons accredited to individual countries. They do not regulate the status of military persons accredited to international organizations abroad. These military persons are not military attachés. Regulation of the status of military person accredited to an international organization depends mainly on the agreement between the international organization and the country where this organization is based, and not only on the recommendation by the referring country. With regard to the appointment of military envoys at foreign representations of the Republic of Slovenia, the Ministry of Defence adopted the Regulation on Military Representatives (1994), which stipulates that military envoys can only persons fulfilling the general conditions for diplomatic service laid down by the Foreign Affairs Act may be appointed. The applicable law lays down the conditions for conferring the diplomatic title, namely: a university degree, state public administration examination, diplomatic examination and relevant work experience in international relations. The complainant does not hold a university degree.

In its reply, the Ministry of Foreign Affairs further pointed out that the Agreement is largely irrelevant as it was written 12 years ago, and a new has not yet been concluded due to opposing views between the two ministries, although negotiations have been taking place since 2003. The Ministry of Foreign Affairs also stated that the Ministry of Defence had been informed on several occasions about the possibility of issuing a professional passport to military persons, since an identity card can be issued on the basis of the individual's professional status. This is relevant for certain experts performing work responsibilities from various fields of expertise at representations to international organizations, and for administrative staff.

In the opinion of the Ministry of Defence, the Ministry of Foreign Affairs is responsible for the complainant's improper legal status in connection with his work abroad. Furthermore, the Ministry pointed out that the Minister of Defence and the Minister of Foreign Affairs signed a Resolution for Appointment of Military Envoys to the Permanent Mission of the Republic of Slovenia to NATO (or other missions) dated 1 September 2000; under this Resolution, the title corresponding to the rank of colonel (held by the complainant) is the diplomatic title of "counsellor". If the Resolution were harmonized with the new legislation (Decree on Internal Organization, Posts Classification, Posts and Titles in the Bodies of Public Administration and Justice) this would make the complainant's title "Authorised Minister". The Agreement on the Concept and Operation of Slovenia's Permanent Mission to NATO (and the WEU) concluded between the Ministry of Defence and the Ministry of Foreign Affairs on 25 January 1999 also provides for the *mutatis mutandis* application of the Agreement and the Rules with regard to military persons accredited to international organizations. The Ministry of Defence also informed the Ombudsman of the fact that all senior military officers in the Slovenian Armed Forces employed at the Military Representation of the Slovenian Permanent Mission to NATO and the EU in Brussels, with the exception of the complainant and one other military person with the rank of captain, had obtained diplomatic status on the basis of the Agreement and Resolution. The Ministry of Defence also informed the Ombudsman about its position regarding the opinion of the Ministry of Foreign Affairs that the Ministry of Defence can independently resolve the issue of the complainant's identity card on the basis of his official status as a military person. The Ministry of Defence found this opinion unacceptable because this does not enable military representatives to perform common tasks and functions in an international environment.

The responses received from the ministries, which should ensure the complainant's regular status in the Ombudsman's opinion, were evasive and not oriented towards finding a solution. The Ombudsman concluded that his intervention in

the particular case at hand is justified, since the complainant's contractual entitlement to having a proper legal status during the course of his service abroad has been violated.

This is why the Ombudsman suggested to the ministries that they regularize the complainant's status in a manner which will enable him to live the expected lifestyle during his work abroad for an international organization on behalf of the Republic of Slovenia. At the same time, the ministries should cooperate more closely and strive to properly regularize the appointment of military representatives of the Republic of Slovenia in representations to international organizations abroad; this regularization should enable equal treatment of persons in obtaining diplomatic status. The Ministry of Defence informed the Ombudsman that it had regularized the complainant's status in the manner he was guaranteed when he was assigned to the Foreign Service, and that the Ministry is taking steps to sign the appropriate legal act with the Ministry of Foreign Affairs as soon as possible, in order to regularize the broader issue in question. **4.3-26/2005**

33 – UNPROFESSIONAL AND NON-OBJECTIVE WORK OF A TRAFFIC POLICE STATION CHIEF

In an anonymous complaint received from one of the traffic police stations, the complainants alleged that they had been notifying the competent authorities for an extended amount of time about violations of labour laws and other specific regulations dealing with the work of the police. According to the complainants, these violations were the result of unprofessional and non-objective conduct of the chief of the traffic police station. The complaint was sent anonymously for fear of possible consequences similar to those unjustly suffered by one of the complainants' colleagues in the past. Certain personal connections which apparently prevented any action from being taken against the police station chief allegedly grew even deeper, encouraging him to repeat procedures and measures deemed unacceptable by the complainants.

We sent an inquiry to the police, which informed us that, even prior to our request, it had already taken several measures, intended to assist the resolution of conflicts at the Traffic Police Station, and warned the chief about the slip-ups in his performance of management duties. After prolonged and strict supervision, they determined that the poor relations between the management and the police officers were preventing the professional performance of work and achievement of objectives. The police chief was then temporarily transferred to another position with another officer who enjoyed the respect and support of his colleagues replacing him. The Police is also in the process of preparing a comprehensive proposal of temporary police placements which will reflect the present needs and promote the doctrines of fair treatment of employees. The Police also responded to our information about the potential case of corruption involving a police officer, informing us that it is currently investigating the circumstances of the suspected criminal offence. **4.3-29/2005**

34 – ENTRY OF DATA INTO THE SCHENGEN INFORMATION SYSTEM

The complainant lost possession of his passport in May 2000. The cancellation of the passport was published in the Official Gazette of the Republic of Slovenia, and a new passport was issued to him. When he tried to enter Austria, the border officials refused him entry on the grounds that his information was entered into the Schengen Information System (SIS) in Italy, valid from 23 June 2000 to 23 June 2003. He expected that he would have no further trouble after this date, but there was another incident in April 2004, when he was turned back at the airport in the Hague, sending him back to Slovenia on the same flight.

In response to our inquiry, the Ministry of Foreign Affairs informed us that the complainant had been informed in the course of his correspondence with the Ministry that all data involving Slovenian citizens had been erased from the SIS when Slovenia joined the European Union, and that records that are (or were) a requirement for entry into the SIS had been preserved in national records only. The Ministry of Foreign Affairs proposed that the complainant verify whether his

information was still in the SIS database, since the Ministry's records showed that he had not yet done so. If the data has not yet been erased, he can request that it be erased immediately. Information about the incident which caused the information to be entered into the SIS database will remain on record in appropriate databases maintained by Italian authorities, pursuant to national legislation. If the complainant's data has not yet been erased from the SIS database, the Ministry of Foreign Affairs can also intervene and officially request an explanation or erasure of the data from the relevant EU authorities. **5.0-6/2005**

35 – APPLICATION OF THE DECREE ON CRITERIA FOR ESTABLISHING COMPLIANCE WITH SPECIFIED CONDITIONS FOR ACQUIRING THE CITIZENSHIP OF THE REPUBLIC OF SLOVENIA THROUGH NATURALISATION IN THE PROCEDURE OF ISSUING A PERMANENT RESIDENCE PERMIT

The complainant has requested the extension of residence permits for his family members. The Administrative Unit did not grant his request and decided that his family members had to exit the territory of the Republic of Slovenia within 15 days following delivery of the decision. The complainant lodged an appeal against this decision.

Upon considering the case, we found that the Administrative Unit applied the Decree on Criteria for Establishing Compliance with Specified Conditions for Acquiring the Citizenship of the Republic of Slovenia through Naturalization when deciding on the complainant's requests for extension of his family members' residence permits and determining whether a complainant meets the condition of having sufficient available means for supporting these family members (Decree, Official Gazette of the Republic of Slovenia, issue no. 47/94).

We advised the Ministry of Internal Affairs about the common position of the Administrative the Constitutional Court's case-law, which shows that direct application of the Decree in cases involving the issuance of residence permits constitutes an obvious misapplication of substantive law, and therefore an intervention into the right to equal protection of rights granted under Article 22 of the Constitution. Pursuant to Articles 7 and 25 of the Human Rights Ombudsman Act, we proposed that the Ministry of Internal Affairs weigh all the circumstances when considering the complainant's case and take into account the above position regarding the application of the Decree in cases involving the issuance of residence permits.

The Ministry of Internal Affairs informed us that it had granted the appeal since it found that the first instance authority incompletely determined the actual situation and misapplied the substantive law. The Ministry did not act in line with our recommendation. In their response, they explained that the criteria laid down by the Aliens Act (ZTuj-1-UPB) and applied to establish compliance with the condition of having sufficient financial means to support others is identical or similar to those contained in the Decree. For the same reasons mentioned in the 1996 Annual Report, as well as in subsequent annual reports, we disagree with this explanation. **5.1-7/2005**

36 – EXCESSIVELY SLOW PROCEDURE TO OBTAIN CITIZENSHIP UNDER ARTICLE 14 OF THE CITIZENSHIP OF THE REPUBLIC OF SLOVENIA ACT

On 12 February 2003, the Ministry of Internal Affairs refused the complainant's request to grant citizenship to her son (who was still a minor at the time the petition was lodged). The complainant contested the decision by initiating an administrative dispute. The Administrative Court decided in her favour with a judgment dated 16 June 2004. Because the Ministry of Internal Affairs has still not decided about the matter in a repeat procedure, the complainant petitioned the Ombudsman to intervene.

In reply to our inquiry, the Ministry of Internal Affairs explained that it had acknowledged the opinion and position of the Administrative Court expressed in the judgment dated 16 June 2004 and that it had reopened the procedure for granting the complainant's son Slovenian citizenship. At the court's instruction, it is re-evaluating his actual residence in Slovenia.

In its statement of the grounds for the judgment, the Administrative Court called attention to the issue of the application of substantive law, i.e. the issue of whether, in considering its decision (passed in 2003), the Ministry of Internal Affairs should have applied the substantive law (the second paragraph of Article 14 of the Citizenship of the Republic of Slovenia Act) in force at the time of the complainant's lodging of the request, i.e. on 9 September 2002, or whether it should have applied the substantive law in force when her request was decided on, i.e. on 12 February 2003, when her son was already of legal age. The court pointed out that this issue was especially important since the provision of the second paragraph of Article 14 of the Act was amended after the complainant had lodged the request to grant Slovenian citizenship to her minor son, but prior to the decision being issued by the Ministry of Internal Affairs (ZDRS-Č, Official Gazette of the Republic of Slovenia, issue no. 96/2002 dated 14 November 2002). The position adopted by the Administrative Court was that, in this particular case, with regard to the provisions laid down by Article 222 of the General Procedure Act and Article 8 of the Constitution in connection with Article 3 of the Convention on the Rights of the Child, the Ministry of Internal Affairs should have, without delay or at least within the instructive 30-day period following receipt of the complete request dated 9 September 2002, decided on the complainant's request, issued the decision and served it to the complainant, within the shortest time possible but no later than 9 October 2002, since all the legally relevant actual circumstances needed to pass a decision were evident from the evidence which the complainant had attached to the request. Furthermore, according to the Court's opinion, the Ministry of Internal Affairs cannot rightfully invoke the principle of legality (the first paragraph of Article 6 of the General Administrative Procedure Act), which is applied by administrative bodies in accordance with the actual situation established at the time of issuance of the decision. The Court decided that the breach of the provisions of the Constitution, the Convention on the Rights of the Child and the first paragraph of Article 222 of the General Administrative Procedure Act resulted in the infringement of the rights of the complainant's son, as he became of legal age during the course of the procedure, before the request for granting him Slovenian citizenship was decided on. According to the Court's judgment based on the relevant administrative case-law, the rights of the child, which were not considered by the Ministry of Internal Affairs, take priority over the principle of legality. **5.1-12/2005**

37 – EXCESSIVELY LONG PROCEDURE OF DECIDING ON AN APPEAL AGAINST A DECISION REFUSING THE ISSUANCE OF A PERMANENT RESIDENCE PERMIT

The complainant turned to the Ombudsman because of an excessively long procedure of deciding on his appeal lodged with the Ministry of Internal Affairs against a decision issued by the Administrative Unit, denying his request to obtain a permanent residence permit pursuant to the second paragraph of Article 41 of the Aliens Act (ZTuj-1-UPB1). In the administrative procedure, the Administrative Unit established that the complainant was not fulfilling his statutory obligation as the parent of a minor child, which is why he was not entitled to the permanent residence permit under the second paragraph of Article 41 of the Aliens Act granted to a close family member of a Slovenian citizen. The Administrative Unit sent the appeal to the Ministry of Internal Affairs for consideration on 22 December 2004.

The Ministry of Internal Affairs explained that they had considered the complainant's appeal and decided in his favour. It was established that the complainant was not given the opportunity in the initial procedure to make a full statement of facts and circumstances which the decision draws upon, which constitutes a violation of Article 146 of the General Administrative Procedures Act. The Ministry instructed the Administrative Unit that it should consider the fact that a temporary residence permit had already been issued to the complainant on the same basis, that his parent status is undisputed and that his parental right had not been terminated when determining whether or not they would consider him a close family member of a Slovenian citizen in the repeat procedure.

Although the complainant was successful in his appeal, the fact should not be overlooked that he had to wait for a decision on his appeal for almost five months, which was the amount of time it took for the Ministry of Internal Affairs to issue a decision after it was delivered. **5.2-44/2004**

38 – REFUSAL OF ENTRY INTO THE COUNTRY

We considered a complaint sent by the Croatian Ombudsman in connection with violations allegedly committed by Slovenian authorities refusing a Croatian citizen entry into the territory of the Republic of Slovenia. The core protest of the complaint was that border police officers failed to explain the grounds for refusing the Croatian citizen's entry. He was given a Refusal of Entry form, stating the letter G as the reason for his refusal – a person against whom a notice for refusal of entry into the SIS has been issued or against whom the measure of refusal of entry was entered into state records.... – while the notes stated that the grounds for refusal is an international bulletin.

The Ministry of Internal Affairs explained that on 30 April 2004, the Council of the European Union (Council of the EU) had adopted a common position on extending the measures to support efficient implementation of the authority of the International Criminal Tribunal for Yugoslavia, whereby all member states must do everything in their power to prevent specified natural persons from entering or transiting over their national territory. The resolution includes a detailed list of persons to whom this measure applies. On 28 June 2004, the Council of the EU adopted a resolution with a new list of persons to whom the measure applies. The Croatian citizen's name was on that list. For this reason, he was entered into the wanted persons database and as a result, was refused entry into the Republic of Slovenia.

Article 4 of the common position of the Council of the EU stipulates that the list is valid for a period of 12 months, and can be extended or changed. Since the common position was not extended after the lapse of the time limit, the relevant Police authority lifted the measure prohibiting the Croatian citizen's entry into the Republic of Slovenia from the wanted persons database.

The Ministry of Internal Affairs discovered that during a border control procedure carried out on 17 June 2005, the border police officers checked the Croatian citizen's personal details against Police operative records as well. When doing so, they failed to notice that the measure prohibiting his entry into the Republic of Slovenia had been lifted and prevented him from entering the country on the basis of mistaken information.

According to the Ministry, this information clearly points to misconduct by police officials. Their actions cannot even be justified by the fact that this case presented a certain innovation with regard to the implementation of measures decreed by competent EU bodies (i.e. the Council of the EU) and executed by competent member state authorities. They assured us that they will endeavour to prevent any future errors of this nature.

With regard to the actual procedure of refusing an individual's entry into the country, we found that the technical part of the procedure had been carried out properly. Pursuant to Article 8 of the Instructions on Refusal of Entry to an Alien, Conditions for Issuing Visas at the Border, Conditions for Issuing Visas for Humanitarian Reasons, and regarding the Procedure of Repealing a Visa (Instructions, Official Gazette of the Republic of Slovenia, issue no. 2/2001), the refusal of entry to an alien is articulated orally and noted in the alien's passport.

In April 2005, the portion of the Schengen Common Manual dealing with the refusal of entry to an alien of a third country was amended. The refusal of entry to an alien is noted in the alien's passport by stamping it with the border crossing's arrival stamp and crossing out the stamp with an X using indelible black ink. On the right side of the stamp, a letter is added, marking the reason for refusing entry into the country, as required by the Refusal of Entry form. Since the Schengen Common Manual is a legally binding document, this method of marking refusals of entry must be used in the Republic of Slovenia.

After studying the claims contained in the complaint and the explanation sent by the Ministry of Internal Affairs in reply to our inquiry, the Croatian Ombudsman's complaint was deemed well-founded since the border police officers' conduct was inappropriate, as confirmed by the Ministry of Internal Affairs. **5.2-34/2005**

39 – REQUEST OF A TENANT RESIDING IN A NATIONALIZED APARTMENT TO BE CONSIDERED AS A PARTY IN DENATIONALIZATION PROCEEDINGS

In a written communication dated 10 November 2004, the complainant requested to be considered as a party in denationalization proceedings which included the apartment where he resided as a tenant with his family. Allegedly, this situation placed him and his family in a position of constant uncertainty regarding their living conditions and prevented them from definitively regularizing their status. In 1998, the complainant lodged a motion for the reimbursement of investments made in the nationalized apartment.

The Administrative Unit of Ljubljana, Ljubljana-Centre Branch, replied to the complainant's motion with a brief dated 18 January 2005. The explanation stated that a request for denationalization of property had been lodged on 12 November 1990. The process of denationalization had not yet been initiated because the former owner's nationality had not yet been formally and finally established. The complainant's request to be considered as a party in the proceeding would be decided on as soon as the conditions for initiating the denationalization proceeding were fulfilled, following which he would be notified. By repeat motion to consider the matter dated 14 January 2005, the complainant again unsuccessfully requested a decision on the initially lodged motion.

Article 125 of the General Procedure Act (ZUP/86) stipulates that the administrative procedure is initiated as soon as a competent body performs any action in connection therewith. As evident from the reply of the Administrative Unit regarding the matter at hand, a decision about the nationality of the denationalization beneficiary was issued on 24 January 2004, but the decision had not yet become final. The Administrative Unit evidently treated the citizenship issue as a precedent question. Of course, this does not imply that the procedure has not been initiated, since the establishment of the denationalization beneficiary's citizenship constitutes a part of the procedure to establish facts. Notwithstanding the fact that the denationalization procedure was obviously suspended until the decision on the beneficiary's nationality became final, there is no reason preventing the administrative body from deciding on the complainant's request, as the resolution of the precedent question will have no bearing on the decision on whether the complainant is entitled to act as a party in the procedure in order to protect his rights and legal benefits.

In light of the above, we proposed to the Administrative Unit that the complainant's request be considered as a party in the denationalization proceedings be decided on as soon as possible, and asked to be notified of its decision. Our intervention was successful, with the Administrative Unit deciding on the complainant's request, issuing a decision granting his status as a party in the denationalization proceedings, specifically in the part involving reimbursement of investments made into the nationalized apartment. **5.3-2/2005**

40 – DENATIONALIZATION CLAIM NOT YET TAKEN UNDER CONSIDERATION

The complainant turned to the Ombudsman because of the excessively slow denationalization proceedings managed by the Administrative Unit of Ljubljana, Ljubljana-Šiška Branch. Among other things, our inquiry revealed that the part of the claim referring to movable property had not yet been considered by the administrative body. On 18 May 1995, the Administrative Unit received a request for denationalization of movable property, which was turned over to it by the Administrative Unit of Kranj. They explained that the request would be considered in the context of issuing compensation in the form of Slovenian Indemnity Fund (SOD) bonds, after the decisions on returning real estate in kind or indemnification

in the form of replacement land had become final. This will reveal the extent of property which cannot be returned in kind or in the form of replacement lands, after which the administrative body will decide on compensation in the form of bonds. We informed the Administrative Unit of our doubt that the decision on compensation for nationalized real property would have any effect or bearing on compensation for nationalized movable property. Even drawing on the principle of the economical use of resources would hardly be relevant in light of the fact that the administrative body had not even begun the considerations on the claim for the movable property. We suggested that they begin considering the claim as soon as possible, then determine the general situation regarding the issue and determine the likelihood for a potential collective decision on indemnities in the form of SOD bonds, in keeping with the economical procedure principle.

The administrative body also acted inappropriately in the property part involving real property (return of farmland). It appointed a construction expert to prepare an appraisal report on the value of the farmland as of 18 August 1997. After examining the case file and preparing a report for the SOD, the public official who took the case in 2002 for evaluation found that the report was incomplete and therefore asked the expert to supplement it. The appointed expert did this on 27 September 2004. According to the explanation received from the Administrative Unit, the administrative body would inform the likely payee (i.e. SOD) about this part of the claim and continue the procedure (i.e. setting a date for an oral hearing, preparing a report under Article 65, issuing a decision). In light of the fact that no reason was given for the supplemented expert report dated 27 September 2004 never being sent to the SOD, nor the reason why the procedure had been suspended since that time, we wanted the Administrative Unit to either explain these reasons or resume the procedure in the shortest possible time, in the absence of such reasons.

In its reply, the Administrative Unit informed us that they would consider our proposal regarding the return of the movable property and appraise the value of the nationalized movable property. They assured us that a hearing on the movable property would be set in September. In relation to the appraisal report involving the farmland, they informed us that the public official had examined the appraisal report and prepared and sent a notice to the payee (SOD) on 26 August 2005. **5.3-8/2005**

41 – HOLIDAY ALLOWANCE COUNTED TOWARDS THE CALCULATION OF PERSONAL INCOME TAX NOT YET PAID

The complainant had been employed as an insurance agent for several years. In the claim, the complainant described how his employer pays out personal income to his employees, including the disputed holiday allowance. The employer transfers the amount of the holiday allowance and documents it, then reduces the amount in subsequent months by reducing the salary by the appropriate amount. The complainant informed the tax authority about this in his actual personal income tax return and in his appeal against the decision on the assessment of personal income tax. The purpose of his appeal was also to point out the need for stricter supervision of the employer's business practices.

After we informed the Tax Office about the fact that the holiday allowance was unusually high and that this alone should warrant verification of the data, we received confirmation that they had received the report and that investigations were underway. The complainant succeeded in his appeal and he received the excess amount of personal income tax paid. **5.5-72/2004**

42 – DISADVANTAGED BECAUSE HIS HEALTHCARE BENEFITS WERE DISBURSED AFTER THE NEW YEAR

The complainant requested to be granted the right to professional rehabilitation and healthcare benefits under the War Disabled Act (ZVojI). Because of the extremely slow procedure, the Administrative Unit did not issue the decision on the right to healthcare benefits, which he is entitled to since 1 September 2004, until 26 November 2004. The disbursement of the healthcare benefits he was entitled to was not carried out until 3 January 2005 and was 176.919,00 tolars lower than

the amount he would have been entitled to if the healthcare benefits had been disbursed at the end of the year. The amount of healthcare benefits was lower because of the personal income tax he was required to pay under the Personal Income Tax (Zdoh-1), which classifies this type of income as taxable, had already entered into force at the time when the healthcare benefits were disbursed.

In light of the fact that the decision granting the petitioner's right to healthcare benefits should have become final in December of 2004, we inquired with the Administrative Unit about the reasons for the delay in the disbursement of the amount into the complainant bank account. They explained that healthcare benefits and other revenues under the War Disabled Act are disbursed to eligible persons on the first workday of the month. The disbursements are made by the Ministry of Labour, Family and Social Affairs after it receives the details on eligible persons.

This is yet another case where the individual is placed at a disadvantage because public authorities disrespect statutory time limits for issuing decisions. **5.5-3/2005**

43 – TAX EXECUTION CARRIED OUT WITHOUT AN EXISTING EXECUTORY TITLE

The complainant properly lodged an appeal against a payment order issued because of a traffic misdemeanour. Although the matter was turned over to the misdemeanours judge because of the appeal and there was no executory title, he received notice from the Tax Administration of the Republic of Slovenia about non-payment of the fine, with a warning to pay the amount immediately.

It was discovered that an administrative error had occurred when data was being entered into records by an employee of the Ministry of Internal Affairs. She had failed to record the date that the appeal was lodged and the fact that the matter had been turned over to a misdemeanours judge. The deputy chief of the police station apologized to the complainant, and the procedure with the Tax Administration of the Republic of Slovenia was terminated. **5.5-26/2005**

44 – CONSEQUENCES OF CHANGES TO A SPATIAL PLANNING DOCUMENT PASSED UNDER THE ORDINARY REGULATION ADOPTING PROCEDURE IN THE MUNICIPAL COUNCIL

The complainant informed the Ombudsman that the Administrative Unit of Slovenj Gradec had authorized the construction of a Veterinary Facility in an area where only the construction of low-density residential apartments, sports facilities and public infrastructure was permitted. In order to regularize the situation, the City Municipality of Slovenj Gradec changed the Spatial Planning Document for this area under the guise of technical changes, effectively changing the intended purpose of the area to so-called "central activities".

The procedure was carried out so that the Administrative Unit issued a general construction permit on 19 June 2002, authorizing the investor to build a new commercial-residential building development which included a veterinary clinic, a shop, a loft apartment and several office spaces. The complainant lodged an appeal against the decision. The Administrative Unit replaced the disputed decision with a new decision dated 28 August 2002. The complainant lodged an appeal against this decision also. The Ministry of the Environment and Spatial Planning revoked the decision dated 28 August 2002. It also revoked the decision dated 19 June 2002 and ordered a repeat procedure because the first instance authority had failed to comply with the new Decree on Spatial Planning Conditions, because the area planning documentation was not harmonized with the decree, and because the decision did not take into consideration the expert assessment of the effects on the environment involved in the abovementioned building development.

In the repeat procedure, the Administrative Unit issued a decision dated 20 March 2003, permitting the investor to construct the intended building project. The complainant lodged another appeal and the Ministry of Spatial Planning and

Energy refused the appeal. The complainant then filed a lawsuit with the Administrative Court. Holding a final construction permit, the investor began works on the building development. On 11 August 2003, the complainant lodged a motion for constitutional review of the Decree with the Constitutional Court. In decision no. U-I-175/03-9 dated 7 April 2005, the Constitutional Court of the Republic of Slovenia revoked the second paragraph of Article 7 of the Decree. It found that the technical changes adopted by the municipality, which constituted a change of spatial planning conditions, had been adopted under the ordinary procedure for adopting regulations in the municipal council, and not under the procedure foreseen for the adoption of spatial planning documents under Articles 37 through 39 of the Act on Urban Planning and Other Forms of Land Use (ZUN). The contested decree even changed the purpose of land use, since the complainant's land and the land of the planned veterinary clinic was previously in a low-density residential area, and the Decree placed it in a central activities area.

The Administrative Court judged in favour of the plaintiff on 17 May 2005, and it revoked the decision issued by the Ministry of the Environment and Spatial Planning dated 13 June 2005 and ordered a repeat procedure on the matter. In a decision dated 26 July 2005, the Ministry of the Environment and Spatial Planning revoked the decision dated 20 March 2003, and refused the investor's request for issuance. This decision by the Administrative Court and the Ministry of the Environment and Spatial Planning was based on the established fact that the revocation of the second paragraph of Article 7 of the Decree had already been in force while the decision was being considered. In light of these circumstances, the general construction permit can no longer be based on the abovementioned Decree.

The plaintiff informed the Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning (IRSOP) of the decisions of the Constitutional Court, Administrative Court and the Ministry of the Environment and Spatial Planning. The IRSOP explained that the investor was in possession of a valid operating permit for the disputed building development. In light of this fact, there are no grounds for initiating a building inspection or for pursuing the procedure further through them. They also explained that the building inspector had already issued a decision under Article 152 of the Construction Act (ZGO-1) for the building development in question in 2003, because the investor had begun construction works before the building permit became final. With the decision of the Ministry of the Environment and Spatial Planning dated 13 June 2003 refusing the appeal against the building permit, the permit became final and executable. The investor was within his right to begin construction. He subsequently obtained a valid operating permit. Therefore, there were no more grounds to pursue the building inspection procedure.

On 9 December 2005, the complainant lodged a motion with the Administrative Unit to repeat the procedure of issuing an operating permit. The Administrative Unit dismissed the motion on the grounds that it was lodged by an ineligible petitioner.

According to the opinion of the Ministry of the Environment and Spatial Planning obtained by the complainant, the operating permit issued for the disputed building development could have been annulled *ab initio* and the request for such a permit refused when/if the decision of the Ministry of the Environment and Spatial Planning dated 26 July 2005 had become final. At that time a motion could have been lodged *ex officio* or by an eligible party to reopen the procedure resulting in the issuance of an operating permit, where it would be possible to annul the said permit *ab initio* and refuse the request for its issuance. **5.7-94/2003**

45 – EXCESSIVELY SLOW PROCEDURE OF PROCESSING APPEALS

The complainant sought help from the Ombudsman regarding the excessively slow course of processing his appeal against the decision of the Administrative Unit of Murska Sobota dated 11 July 2002. The appeal was dated 25 July 2002, yet it had not been decided on at the time the complaint was lodged with the Human Rights Ombudsman, namely 21 February 2005.

The Ministry of the Environment and Spatial Planning informed us that the appeal had not been turned over to them. In a communication dated 23 February 2005, the Ministry urged the Administrative Unit to either immediately pass the matter over to them for competent evaluation, or decide on the appeal within the provisions of Articles 240 and 244 of the General Administrative Procedure Act and notify the appellate body of its decision.

We inquired with the Administrative Unit about the reasons why the appeal had not yet been resolved, or to tell us why the matter had not been turned over to the appellate authority for competent consideration. Furthermore, we proposed that they immediately act in accordance with the instructions from the memorandum of the Ministry of the Environment and Spatial Planning dated 23 February 2005 and inform us of future developments regarding the matter.

The Administrative Unit informed us that the complete case file and the complainant's appeal had been sent to the Ministry of the Environment and Spatial Planning on 23 March 2005 for competent consideration, but failed to list the reasons why the appeal had not been decided on or why the matter had not been given to the Ministry of the Environment and Spatial Planning for consideration. We inquired about the appeal with the Ministry of the Environment and Spatial Planning. They explained that the appeal had been sent back to the investor for further clarifications, but they had not yet received an answer. On 14 July 2005, they urged the complainant to supplement his appeal and he requested to view the case file on 22 July 2005. Because the Ministry had not issued a decision despite our intervention, we had to intervene two additional times. On 29 August 2005, the complainant was allowed to view the case file at the Ministry of the Environment and Spatial Planning, and on 1 September 2005 the Ministry decided on the appeal. Thus, our interventions helped to finally resolve the appeal after three years. **5.7-11/2005**

46 – CONTENTIOUS EDUCATIONAL SANCTION

For our information, the parents of an 8th grade pupil of elementary school sent us a copy of a complaint against an educational sanction imposed on their son. The complaint was addressed to the school headmaster and to the Education and Sport Inspectorate. In their complaint, the parents informed us that a strict admonition was pronounced against their son by the homeroom teacher for disrespecting the teacher's instructions and causing danger to life and limb. According to the pupil's account of the event, the children had been given permission to break school rules, and therefore the parents believed there was no reason to pronounce the educational sanction. That day, the pupils had an hour of spare time and they stayed in the school's classroom located in the attic. They were under the supervision of the art class teacher. Recklessness led to a pupil throwing his schoolmate's pencil case through the roof window and several pupils were allowed by the teacher to crawl out onto the roof of the school building to get it back. As they were about to come back in, the teacher closed the roof window. Eventually, someone opened the window and they were able to come back in.

A week after the incident, the homeroom teacher phoned the parents to come to a meeting regarding the delivery of the imposed educational sanction. The distraught parents had a serious discussion with their child and realized through their conversation that the sanction was not justified since the pupil was allowed to crawl out through the roof window by the teacher, who was present at the time. In their opinion, their child was not responsible for the violation of school rules, and therefore they demanded that the educational sanction be annulled.

The headmaster appointed a committee which considered the parents' complaint. Although the committee confirmed the imposed sanction, its conclusion also contained a recommendation to the homeroom teacher to erase the sanction from the record prior to the normal time once she deems that the educational effect had been achieved.

On the basis of the responses to our inquiries and other obtained documents, we told the complainants that it was possible that the school principal had not adequately examined all the circumstances of the incident and that he had placed too much faith in the homeroom teacher's account of events. Another contentious issue was the statement signed by the pupil in the school administration office in the presence of the principal and school secretaries, stating that he had not obtained the teacher's permission to crawl out onto the roof. The statement of the grounds for the conclusion adopted by the committee that considered the parents' appeal against the imposed sanction reveals that the principal had had a discussion with the art class teacher and advised her how to approach similar situations in the future. It appears that he was aware that she had acted inappropriately and that she had not handled the situation as she should have.

In an extraordinary inspection procedure, the Inspectorate found multiple deficiencies and irregularities providing sufficient grounds for annulment of the imposed educational sanction. However, after studying all the merits of the case, it decided to advise the school to expunge the admonition. Furthermore, certain measures were enacted to ensure the school would eliminate the deficiencies and inconsistencies in the procedures of imposing legal sanctions. **5.8-11/2005**

47 – DIFFICULT SITUATION FACED BY A YOUNG DAUGHTER OF DIVORCED PARENTS

The complainant informed the Ombudsman of her granddaughter's distress as a child of divorced parents. She wrote that it was not her granddaughter's fault that she had to live in difficult conditions. Her life was made harder by regulations making it impossible for her to exercise rights which common sense dictates she should rightfully be entitled to.

The granddaughter is currently finishing a secondary school of economics and she wishes to continue her studies. Her father had not been taking care of her after the divorce in 1987, and so it was entirely up to her mother to raise her daughter. Her mother started a new family in 1996 and the daughter from her first marriage then moved in with her grandmother. Until she turned of legal age, her permanent residence was registered at her mother's address, and since that time she has had her permanent residence registered with her grandmother. Even after finishing elementary school, she tried to exercise her right to a study grant since her father had not been meeting his obligations despite a court decision setting the amount of child alimony. However, her application for the grant had been rejected. In evaluating her eligibility, they considered her mother's and her stepfather's income, which exceeded the income threshold per family member. In 2004, the granddaughter applied for child benefits and she applied for a grant again. In invoking her right to child benefits, she was faced with a problematic provision in the regulations stipulating that a child over 18 years of age living in a separate household from their parents may only invoke the right to child benefits if they live in an independent single household, where they must provide proof of adequate living conditions in a single household. They resolved this issue by signing a residential lease agreement for her free accommodation with the complainant and a separate agreement establishing a single household with a shared kitchen and bathroom. The application for the grant was refused, even though the stepfather is not taking care of his stepdaughter, the child alimony from her father is non-executable and her mother is only paying her daughter 35.000,00 tolars on the basis of a child alimony agreement.

The decision of the Employment Service of Slovenia refusing the appeal against the decision issued by the competent regional service stated that she was not entitled to the grant since income per family member could not be determined despite certain evidence the appellant had provided in testimony of her circumstances. In the statement of the grounds, they wrote that the right of children arising from their parents' obligation to support them cannot be relinquished. In this context, it is impossible to conclude a child support agreement (i.e. settlement) involving a pecuniary amount which does

not ensure the child's subsistence. The agreed amount of monthly child support being paid by her mother was not determined pursuant to the Marriage and Family Relations Act (ZZZDR) because parents have an obligation to support their children and care for their education and professional training in line with their skills, goals and desires. The amount of child support was not determined in line with the beneficiary's needs and financial ability, and the agreed amount does not cover her living costs.

We explained to the complainant that the provisions of the Rules on Awarding of Scholarships made it impossible to consider the actual situation (that the child support money from her father was unrecoverable, that the stepfather was not taking care of his stepdaughter and that his mother was paying only the agreed upon amount). We advised her to attach all the required proof in her future applications, and that she should submit other relevant documents in evidence of her extraordinary situation. In order to alleviate her financial situation, we advised her to consider other options of social aid with the assistance from the competent Social Services Centre and the school which the granddaughter frequents (subsidized school meals, monthly bus pass, possibility of free text book borrowing). **5.8-14/2005**

48 – ARBITRARY DECISIONS REGARDING THE USE OF TEXTBOOKS

A complainant pointed out an alleged case of unequal treatment of elementary school children. He wrote that responsibility for this situation lies with teachers and the government, since imprudent regulations permit irregularities in the use of textbooks in elementary schools. In his opinion, children's rights were being violated since many pupils had no textbooks or other study materials available for individual school subjects. In fact, teachers could make entirely arbitrary decisions to not use any textbooks for teaching a particular subject during the school year because there were no regulations requiring them to choose a textbook for each subject from a list of approved study materials. This way, pupils from certain schools used multiple textbooks and study materials in a particular subject, while other schools used none at all in teaching the same subject. Furthermore, no school's textbook funds had the entire range of valid textbooks and study materials available, and therefore pupils couldn't borrow them even if they wanted to. In conclusion, the complainant expressed his hope that we would prepare a concrete proposal which would prevent teachers and headmasters from making arbitrary decisions regarding which and how many textbooks pupils could be used.

According to regulations, the choice of textbooks and didactic materials is within the discretion of teachers and the school's management. This seems appropriate since the teacher may decide which textbook or didactic aid to use in order to achieve his teaching objectives as much as possible. However, it is a question of doctrine whether each subject should use at least one textbook or didactic aid from a list of approved or valid materials. Regulations and instructions do not provide a straightforward answer to this question. Furthermore, the teacher's choice of textbook from a list of approved materials each year depends on the practical and financial situation of the parents. The textbook problematic is important since textbooks have a significant effect on developing the pupils' skills. In our opinion, the teacher's choice of textbook should be based exclusively on their quality. However, in order to prepare an annual expert comparative analysis, the teacher would need at least the entire range of available textbooks, the criteria for analysis, and sufficient time. Therefore, we could hardly say that teachers' choice depends on the quality criterion.

Despite the Ombudsman's request for the Ministry to send concrete data on the study materials used and data on the actual use of textbooks and didactic aids, we received no such information. They explained that the Ministry encouraged publishers to publish more textbooks for individual subjects. With a broader range of study materials at his disposal, the teacher can choose the materials which will help him achieve his teaching goals in an easier, faster and more efficient manner. The Ministry does not think it problematic that certain teachers choose none of the available textbooks, as long as (and if) they are achieving their teaching goals. In their opinion, there are adequate control and supervision mechanisms in place to ensure this.

We notified the complainant that we would agree with the Ministry's position if all control mechanisms worked ideally. As a pedagogue, the headmaster has an overview of all the decisions taken by teacher groups and individual teachers, and should carefully review decisions not to use textbooks in classes or decisions to use multiple textbooks for teaching an individual subject. Claiming violations of children's rights and unequal treatment of children seems somewhat exaggerated since the Ombudsman is not aware of any specific written statement by a teacher or headmaster prohibiting the use of textbooks or didactic aids in classes or for home revision. **5.8-20/2005**

49 – WHAT IS THE REASON FOR THE EXCESSIVELY SLOW DECISION PROCEDURE HANDLED BY A DEPUTY DISCIPLINARY PROSECUTOR?

On 3 July 2003, the complainant sent a complaint against a lawyer to the Slovenian Bar association. In reply, he received only a notice that the matter had been turned over to the Bar's disciplinary prosecutor on 18 August 2003.

We contacted the Bar on 21 January 2004. In reply to our intervention, they explained that they were having trouble with the deputy disciplinary prosecutor's processing the complaint. Therefore, we contacted him directly. After multiple requests on our part for him to explain the matter at hand, he assured us that he had sent his decision to the Bar in November 2004. However, on 11 February 2005, we received the Bar's reply that they had "still not received anything" from the disciplinary prosecutor and that they would "immediately remind him again". Again, we contacted the disciplinary prosecutor and requested a report on the reasons for the slow processing of the complaint lodged against a lawyer. On 25 April 2005, we received a reply from the Bar. It sent us the decision issued by the deputy disciplinary prosecutor under case no. 762/03 dated 13 April 2005, dismissing the complaint. The Bar provided no additional explanation about their consideration of the matter and any potential sanctions against the disciplinary prosecutor due to his slow processing of the complaint.

The disciplinary prosecutor took almost twelve months to issue a decision on the complaint. We received no explanation from the Bar about the reasons for their slow processing of the complaint. There is also no indication of any apology from the Bar to the complainant regarding the slow processing of his complaint. In our opinion, the Bar's silence and the fact that they only notified us about their decision instead of providing answers for the slow processing is an indication that the Bar is aware of irregular conduct on its part and that it can find no reasonable excuse for the actions of the disciplinary prosecutor. **6.0-72/2003**

50 – CONFISCATION OF A DOG THAT WAS USED AS PAYMENT FOR THE PURCHASE OF NARCOTICS

The police officers of Ajdovščina Police Station confiscated the complainant's dog in 2002. In his complaint to the Ombudsman, he claimed that there were no grounds for such confiscation. He demanded that his dog be returned into his care.

The police are authorized to confiscate items in their work operations. If certain statutory conditions are met, they may also confiscate items as required under the provisions of criminal law, or items which may be used as evidence in criminal proceedings. Confiscated items must be returned to their owner as soon as the statutory grounds for confiscation expire. We sent an inquiry to the police, requesting an explanation of the legal and actual grounds for the confiscation of the complainant's dog and the location of the confiscated animal.

The police confirmed that the police officers of Ajdovščina Police Station had indeed confiscated the complainant's dog and returned it to its previous owner. Prior to the fact, the previous owner had made a report at the Nova Gorica Police Station about the theft of his dog and indicated the complainant as the perpetrator. The Police charged the complainant with the unlawful manufacture and trade in narcotics and larceny, with a statement of grounds which was not based on the collected information regarding the crime.

It was only after the Ombudsman's intervention that it was established that the charges of theft of the dog had been filed without reasonable grounds for suspicion. Nova Gorica Police Station had information at its disposal on the basis of which they should have charged the informer accusing the petitioner of theft of his dog with providing false information of a crime. The police also discovered that the dog had been the subject of an illegal transaction, since the complainant received it as payment for a certain amount of illicit narcotics. The transaction was recorded in a written "contract" and given by the complainant to a police officer of Ajdovščina Police Station in 2002 during the procedure of collecting information regarding the reported theft of the dog. This fact had been omitted from the charges filed against the complainant. The charge sheet even claimed that the complainant had approached the owner and "... forcefully took the dog from the owner's hands, taking it away." Furthermore, the "purchase contract" for the dog was not included in the charge sheet sent by the police to the prosecutor's office.

The Minister of Internal Affairs assured us that proper measures had been taken with regard to the irresponsible, casual and careless work of police officers from Nova Gorica Police Station. Thus, charges were filed against the informer on the grounds of his having provided false information of a crime.

The police had no actual grounds to confiscate the dog. However, because the legal transaction also involved an illicit narcotic drug, effectively making it an illicit transaction, so there was no legal base for further action by the Ombudsman, especially regarding the return of the dog and payment of damages.

We also found that the Ministry's response to the complainant's appeal did not warrant further action by the Ombudsman. **6.1-2/2005**

51 – SECOND CONSIDERATION OF AN APPEAL THAT HAD ALREADY BEEN DISMISSED

In April 2005, the complainant reported the crime of burglary and the theft of an oak barrel. Two police officers responded to the report and one of them assured the complainant that he would be informed about the development of the investigation. Because he received no information about the investigation even after several months, he filed a complaint and requested information about the investigation procedure. Grosuplje Police Station considered the appeal in accordance with Article 28 of the Police Act and the Rules on Resolving Appeals. The complainant did not respond to an invitation to an interview, after which he received a decision stating that the complaint procedure had been concluded because it was filed by an unentitled person.

We intervened with the Ministry of Internal Affairs and demanded a statement of the legal and actual grounds for the decision stating that the complaint had been filed by an unentitled person, since the complainant clearly claimed to be the owner of the stolen wine barrel. Furthermore, we requested a report on the actions and results involved in the police investigation of the crime reported to Grosuplje Police Station by the complainant.

The Ministry of Internal Affairs explained that Grosuplje Police Station had reviewed the complainant's allegations. The complainant was also invited to a complaint hearing conducted by the representative of the head of the organizational unit of Grosuplje Police Station. However, he did not respond to the invitation and provided no reasons for his absence. Therefore, Grosuplje Police Station passed the matter on to the competent organizational unit of the Ministry of Internal Affairs. Upon review, the organizational unit initially established that the complainant was not entitled to lodge the complaint, since the formal victim of the crime was his grandmother, as the owner of the burgled premises. Consequently, Grosuplje Police Station issued a decision to conclude the complaint procedure.

Upon our intervention, the police and Other Security Tasks Directorate of the Ministry of Internal Affairs reviewed the documentation. It found that while the complainant was not the formal victim of the crime he reported, there was no doubt about his eligibility to file a complaint, since the complaint applied to the procedure which the police officers conducted on the basis of his report. Therefore, his complaint was re-examined at a senate hearing. **6.1-71/2005**

52 – INTERVENTION BY THE POLICE IN ORDER TO PREVENT THE DEATH OF SHEEP

The complainant filed a complaint regarding the conduct of two police officers of Šentilj Police Station, claiming that they illegitimately entered ("broke into") the pantry of his outbuilding on 28 February 2004. After considering the complaint, the appeals senate of the Ministry of Internal Affairs decided that it was valid only in the part regarding the police officers' conduct upon receiving the report of a crime and collecting information after they had been informed of the crime.

The complainant claimed that he incurred damages as a result of the police officers' actions. He demanded compensation by lodging a damage claim, which was refused by the Ministry of Internal Affairs. In its statement of the grounds for refusal, the Ministry also referred to the finding by the State Prosecutor in his dismissal of the charge sheet, stating that the two police officers had acted out of necessity to prevent the death of sheep. In the Ministry's opinion, the police officers "acted properly under the circumstances." They entered the outbuilding and removed the wooden barrier of the barn because they believed that the sheep would have died otherwise.

Even after reviewing the documentation sent by the complainant himself, we doubted that the police officers had "acted properly under the circumstances". The documented information suggested that the belief that the sheep's lives were in danger was unjustified. Therefore, we requested that the police state the grounds on which the officers had established the presence of a direct threat to the sheep (their imminent death). Furthermore, we pointed out that the police officers should have attempted to make contact (even by telephone) with the owner, as this would only have comprised a matter of minutes or several hours at the most. The police officers' conviction that the sheep had not been properly fed since no one had been seen around the outbuilding for several days was also suspect, as animal can be fed using other methods.

Therefore, we are not convinced that the police officers' actions were professional, regardless of the fact that they were obviously well-intentioned at the time. While protecting people's property does fall within the scope of police responsibilities, the actions of police officers should be carefully considered in order to avoid causing unnecessary damage, or even greater damage than that which would potentially occur without intervention.

The Police explained that the officers were sent to the location to investigate the suspected crime of cruelty to animals under Article 342 of the Penal Code. They collected the necessary information and took action on that basis. They wrote (only) an official note about their findings on the scene of the incident. Šentilj Police Office failed to charge the petitioner within the prescribed time, nor did it issue a report. It sent the report to the Sate Prosecutor's Office on 13 March 2005, after our intervention.

Because only an ordinary report was sent to the State Prosecutor, the collected information obviously did not provide adequate grounds for charges to be brought against the complainant. This constitutes an admission by the police that no crime had been committed. The police officers' intervention to save the sheep was therefore unnecessary. Obviously, the police officers had acted on the basis hasty and wrong conclusions, without consulting the owner. The Police Administration of Maribor even admitted that the owner had incurred "indirect material damage (ruined hay)" as a result of police intervention, and recommended that the damage to the ruined hay and the removed barrier be appraised by a licensed appraiser. The police therefore confirmed the grounds for a damage claim. In a further intervention on our part, we proposed that the Ministry of Internal Affairs contact the complainant, reopen his damage claim and compensate him for the damages in the event that all the conditions for granting the claim were met.

Unfortunately, our intervention only resulted in a reply from the legal department of the Ministry of Internal Affairs refusing the claim because it was "based on a general claim of causing ... damage which has not been properly demonstrated". The claim was therefore refused on the grounds that the amount of damages had not been proven. We recommended that the complainant supplement his claim so as to state the amount of actual and collateral damage caused as a result of the police officers' actions. The burden of proving the amount of damages incurred falls on the injured party. **6.2-26/2004**

53 – THE DUTY TO DELIVER CONFISCATED ITEMS APPLIES TO PROSECUTORS AS WELL

In May 2004, the police confiscated several coins from the complainant at an antiques market (i.e. flea market), which were found to originate from an ancient historical period (roman antiquity). At the same time, the complainant was charged with the crime of unlawful export and import of items of special cultural and historical significance or outstanding natural features under Article 222/1 and 2 of the Penal Code.

The District State Prosecutor's Office in Ljubljana dismissed the charges and issued a decision that **the confiscated items be returned** to the complainant**.** The decision on returning the confiscated items contained a **legal caution** informing the complainant that he could collect those items from the National Museum within 30 days, whereupon they would be placed in storage with the said Museum.

The Ombudsman has been pointing out for many years that the return of confiscated items involves the confiscator's duty to deliver the items to the injured party (*prinosnina*), not the injured party's duty to collect these items (*iskovina*). The Criminal Procedure Act lays down the **duty to deliver confiscated items**, but not the right of the owner or holder of the items to collect the items at the confiscator's location. Therefore, the notice to collect confiscated items sent to the complainant by the State Prosecutor's Office should have **informed the beneficiary about his right to demand** that the confiscated items be returned to him at the state's expense. This legal instruction is essential for the actual possibility of exercising the right to have confiscated items returned. In our opinion addressed to the District State Prosecutor's Office in Ljubljana, we pointed out that sending a notice advising the beneficiary to collect the confiscated items did not constitute adequate information (about the legal remedy) for the owner or holder of these items, as required under Article 224 of the Criminal Procedure Act.

Furthermore, we were surprised by the second part of the legal caution stating that the items would be placed in the keeping of the National Museum following the lapse of the 30-day period. This could be interpreted in such a way that the owner of the confiscated items could lose the right to retrieve the confiscated items or even that his property rights to these items could expire.

We requested a clarification of the legal base for such legal caution. In response to our inquiry, the acting chief of the District State Prosecutor's Office in Ljubljana informed us that the Ljubljana State Prosecutor's Office, like all other State Prosecutor's Offices in Slovenia returned confiscated items by advising beneficiaries to collect them. To the best of her knowledge, the courts followed the same procedure once a criminal proceeding is concluded. Thus, she passed on the Ombudsman's letter to the president of the District Court in Ljubljana and the Supreme State Prosecutor's Office for them to assume a position on this issue.

The Supreme State Prosecutor's Office sent the Ombudsman a courtesy copy of its reply to the District State Prosecutor's Office in Ljubljana. The response states that it is true that certain State Prosecutor's Offices and courts operate on the principle of the beneficiary's collection of confiscated items. However, the committee of the general crime department of the Supreme State Prosecutor's Office adopted a legal opinion in 2003, under which it provides that the confiscator is required to deliver the items back to the beneficiary, not vice-versa. The beneficiary must be informed of the delivery of

confiscated items and allowed the option of collecting the items himself. **If, however, he demands that the item be delivered to him, this must be done at the expense of the body returning the item.**

Because it is unclear from the Supreme State Prosecutor's Office's case file if and when this legal opinion had been circulated among all State Prosecutors' offices, the Supreme State Prosecutor's Office has now circulated it to all of them for their information. Furthermore, it ordered the District State Prosecutor to fully comply with the above opinion (including the wording of the legal caution) in resolving the complainant's case.

We believe that the Ombudsman's intervention was finally successful and that State Prosecutor's Offices will comply with the statutory provision involving their duty to deliver confiscated items to the beneficiary and that they will adapt their conduct and legal cautions accordingly. **6.2-39/2004**

54 – HATE SPEECH PUBLISHED ON THE WEB

The Ombudsman received an anonymous complaint regarding a website featuring numerous extremely negative messages aimed at a specific group of people – inhabitants of Slovenia.

Even a cursory look at the web site shows numerous examples of provocation, incitement and propagation of ideas which violate the constitutional prohibition of incitement to discrimination and intolerance under Article 63 of the Constitution. The abovementioned Article of the Constitution declares any incitement to national, racial, religious or other discrimination, and the inflaming of national, racial, religious or other hatred and intolerance as unconstitutional. Any form of incitement to violence is also unconstitutional. This kind of conduct is also prohibited by numerous international conventions on human rights, including the European Convention on Human Rights and Fundamental Freedoms and the UN Pact on Civil and Political Rights.

We sent a copy of the complaint to the District State Prosecutor's Office in Ljubljana for their edification and further action, since Article 300 of the Penal Code defines the criminal offence of inciting hatred, strife or intolerance. The acts which constitute this criminal offence are the actual incitement of hatred, strife or intolerance on the basis of nationality, race or religion, and dissemination of ideas of the superiority of one race over another.

Neither the Ombudsman nor the authors or operators of the website in question are aware of the identity of the authors of these messages. Similarly, the geographic origin of the website and its contents are unknown, but it is evident that these messages are being created in our present environment. The information held by the Ombudsman is therefore incomplete. We recommended that the competent State Prosecutor's Office take the matter into consideration, specifically on the suspected criminal offence under Article 300 or any other Article of the Penal Code.

In her reply, the chief of the District State Prosecutor's Office in Ljubljana informed us that they considered the information about the website as a report of a crime committed by an unknown perpetrator, believing that there were sufficient grounds for suspicion that the crime of inciting hatred, strife or intolerance based on violation of the principle of equality under the first paragraph of Article 300 of the Penal Code had been committed. They turned the matter over to the police in order to perform the necessary investigative acts to track down the perpetrator of the criminal offence. **6.2-16/2005**

55 – JUDGEMENT DRAWN UP IN WRITING AFTER MORE THAN SIX MONTHS

In a criminal matter at the Local Court in Ljubljana under case. no. III K 197/2003, a judgment was pronounced on 13 July 2004, and drawn up in writing and dispatched only on 17 January 2005. The president of the court was informed about the delay in the drawing up of the pronounced judgment only due to our intervention. The judge informed her about the delay (verbally) only on 27 December 2004, but did not mention when the judgment had been pronounced. At the same

time the judge assured the president that the judgment would be drawn up at the latest by the end of 2004. She also wrote this in a report dated 27 December 2004, which the president demanded as a result of our intervention. She excused the delay stating the size and complexity of the matter.

After the Ombudsman's intervention, the president of the court also held a discussion with the judge on 17 January 2005. The judge admitted to making the mistake and assured her that it would not happen again. She explained that she dealt with cases involving domestic violence, "in which the evidentiary procedures are very long and much more psychologically demanding on a judge than dealing with other criminal offences". In 2004 she also presided over several high-profile cases, in addition to which, she was overburdened and did not have the opportunity to work outside of working hours. She was aware that these were not sufficient reasons for such a major delay in the drawing up of a judgment. She promised that a verbal warning would be sufficient and that it would never happen again.

As a consequence of the established delay, the president of the court ordered a review of the timeliness of drawing up court judgments in all the cases which that judge had presided over in 2004. Official monitoring of the work of the judge was also ordered, which included 141 matters in which the judge had adjudicated between 2003 and 2004. The review revealed that a decision had not yet been issued in four cases and that the time limit for drawing up a judgment had been violated in 14 cases (of which five violations were justified). Therefore, the Personnel Council of the Higher Court in Ljubljana was sent a recommendation to prepare an evaluation of this judge's judicial service.

A pronounced judgment must be drawn up in writing within fifteen days of its pronouncement if the defendant is in custody, and within thirty days in other cases. If the judgment is not drawn up within that time limit, **the president of the panel must inform the president of the court why this was not done**. **The president of the court must take appropriate action so that the judgment is drawn up as soon as possible** (first paragraph of Article 363 of the Criminal Procedure Act).

The time limit for the drawing up a judgment in writing is an instructive but nevertheless, statutory time limit. Violation of the prescribed time limit for drawing up a judgment constitutes a violation of the law. Judges are bound to uphold the law. We expect this matter will have repercussions such that similar conduct will not be repeated and that if such circumstances are established, appropriate measures will be instigated against the judge. **6.3-85/2004**

56 – THE RIGHT TO PERSONAL LIBERTY PUT TO THE TEST

On 23 June 2005, with the consent of the defendant and detainee involved, the Ombudsman lodged a constitutional complaint against the decision of the Higher Court of Maribor dated 13 June 2005, case no. I Kp 194/2005-3 and the decision dated 15 June 2005, case no. I Kp 194/2005-49. These decisions refused the motions to release the complainant from detention. At the time, **the complainant had already spent over 37 months in detention**. The detention may (only) be imposed for the shortest amount of time possible.

On 13 December 2004, the District Court in Maribor found the defendant guilty of the charges brought against her and sentenced her to 30 years of prison service. It also ordered her to be taken into custody on the grounds that she was a flight risk, pending finality of the judgment or onset of the prison service.

Via her attorneys, the defendant lodged an appeal against the guilty sentence with the competent appellate authority, the Higher Court in Maribor, on **8 March 2005.** The second paragraph of Article 396 of the Criminal Procedure Act requires the Court of Appeal to send its decision and case files to the Court of First Instance no later than within three months of receipt if the defendant is in custody. The **statutory three-month period lapsed on 8 June 2005.** Immediately after the lapse of the time limit for the issuance of an appeals decision and its return to the Court of First Instance along with the case file, the defendant and her attorneys lodged a motion to release her from detention. With the contested decisions, the

Higher Court in Maribor refused the motion on the grounds that the violation of the right to trial within a reasonable time could (only) be invoked in the event of a significant violation of such time limit, "which could not be yet be said in the case at hand". Furthermore, the Court of Appeal stated that it would endeavour "to resolve the matter within a reasonable amount of time".

After the lapse of the time limit, the **Ombudsman also intervened** with the Higher Court in Maribor. The president of the court informed him that the **appeals panel would likely be convened in the first half of September 2005.** "A whole range of procedural actions regarding the case in question" was stated as the reason for this time frame.

Thus, the Higher Court in Maribor set the date for the consideration of the appeal which was (at least) double the three-month statutory time limit. Even the court holiday cannot excuse this delay in drawing up the decision on the appeal, since detention matters are considered urgent under the law, **requiring that these matters be decided on even during court holidays**.

Under Article 19 of the Constitution, everyone has the right to personal liberty. The deprivation of liberty is only **permissible in such cases and under such procedures as provided by the law.** The deprivation of liberty is only possible in exceptional cases where all the conditions laid down by the Constitution and the law are met. The Criminal Procedure Act sets the time for drawing up a decision on an appeal at a maximum of three months. Although this is an instructional time limit (the preclusive time limit is technically impossible with respect to the court), it is still a **statutory time limit which the courts (and judges) are bound to uphold.** Under Article 125 of the Constitution, the courts are bound to uphold the Constitution and the law in performing their judicial function.

We pointed out that the complainant's **detention was taking an unreasonably long time**, considering the time taken after processing of the contested decisions and the date that was set for the appeals decision. Under the third paragraph of Article 5 of the European Convention on Human Rights and Fundamental Freedoms, everyone arrested or detained has the right to be brought promptly before a judge or to be released. The legislator had set the reasonable time for issuance of **decisions on appeals involving cases of detention at a maximum of three months.** The sanction foreseen in the case of violation of the time limit for trial within reasonable time and the consequent extension of detention is the defendant's release.

In the complainant's case, we determined that the excessively long detention, extended further with the contested decisions, constituted **a lasting restriction of her right to personal liberty**. Non-compliance with the procedure which the Constitution and the law requires also from the courts of second instance, led the Ombudsman to believe that the complainant's **right to personal liberty had been violated** by the contested decisions. In the lodged constitutional complaint, the Ombudsman proposed that the Constitutional Court alter the contested decisions so as to fully grant the motions lodged by the defendant and her attorneys and **release her from detention.**

On 11 October 2005, the Constitutional Court decided not to consider the constitutional complaint on the grounds that it was obviously unfounded. The Constitutional Court interpreted the lodged constitutional complaint **only** as contesting the detention from 8 March 2005, when the Higher Court in Maribor had received the case file from the Court of First Instance for competent consideration, to the issuance of the contested decisions, i.e. 13 – 16 June 2005. In this regard, it is the Constitutional Court's decision that, considering the nature of the case in question, the Higher Court in Maribor cannot yet be accused of acting without due care and of being the cause of the unreasonably long duration of the complainant's detention within this timeframe. The Ombudsman's claims that the complainant's right arising from the first paragraph of Article 23 in connection with the first paragraph of Article 19 of the Constitution had been violated are therefore unfounded.

The Ombudsman respects the decision of the Constitutional Court, although we lodged the constitutional complaint regarding the violation of the complainant's right to personal liberty fully convinced that it clearly referred to **the entire duration of detention**, and not merely to the time of the appellate decision proceedings.

The Constitutional Court therefore dismissed the arguments offered by the Ombudsman. However, a week after the event, the Higher Court in Maribor **released the detainee**, even though it had not yet reached a decision about the appeal against the criminal sentence. **6.3-32/2005**

57 – DECISION TO EXCLUDE THE PUBLIC FROM A TRIAL WAS PASSED TOO LATE

In the criminal procedure, the main hearing is public. This is guaranteed under Article 24 of the Constitution guaranteeing the public nature of court proceedings. The purpose of the public nature of court proceedings is to ensure a lawful and fair trial, enabling supervision of the judicial branch of government. Of course, the principle of the public nature of court proceedings is subject to several exceptions. Therefore, the panel of judges may at any time **exclude the public from the main hearing in its entirety or in part** *ex officio* or at the request of the parties involved in the procedure, or if this is necessary in order to protect the personal or family life of the defendant or the victim.

Exclusion of the public from a trial means that details of the main hearing may not be disclosed. If the public is excluded, third parties may not be present at the main trial (i.e. the general public), and thus also **excludes journalists and coverage of the trial** in the media**.** The judicial panel must adopt a special decision on this, otherwise the trial is considered public. The decision on the exclusion of the public must be announced publicly.

We examined a case where we determined that the court senate should have passed a decision to exclude the public from the trial. This measure would have been justified in the interest of protecting the personal and family life of the complainant. The media reports, which the complainant described as a trial by the media, pointed to the need for excluding the public from the trial. This would be in accordance with the duty of the judicial branch of government to guarantee **respect for human personality and dignity in criminal procedures** (both for the defendant and her family).

Instead, media coverage at the very beginning of the trial was insulting to human personality and dignity. Sensationalist coverage of a personal tragedy (the death of a child) which was at the core of criminal trial is not in line with the aim and purpose of a public trial. The judicial panel should have carefully and diligently weighed all the circumstances of the case, including the conduct of the defendant at the trial, and adopted a decision on whether or not to exclude the public from the trial.

The judicial senate is also **required to exclude the public from a trial *ex officio*** if it finds that one of the statutory conditions exists. The senate's failure to issue such a decision resulted in media reporting that had nothing in common with the principle of the public nature of the main hearing in criminal cases. Later, the judicial panel also saw the light and excluded the public from the trial, but the damage had already been done. **6.3-41/2005**

58 – UNLAWFUL WITHDRAWAL OF FREE LEGAL AID

In 2003, the District Court in Maribor granted the complainant's request for extraordinary free legal aid regarding the writing of applications and representation in court proceedings before the Local Court in Maribor. In 2005, the same court relieved the appointed attorney and proceeded as if free legal aid had not been granted to the complainant, pursuant to the eleventh paragraph of Article 30 of the Free Legal Aid Act. As a result of the decision that the complainant was not eligible to receive free legal aid, she was required to repay 376.456,10 tolars plus default interest for the free legal aid she had received. This decision was based on the position **that the newly appointed attorney was also relieved of duty on part of the party eligible to receive legal aid.** Allegedly, the complainant expressed distrust for the appointed lawyers and displeasure with their work and representation before the court.

The complainant **initiated an administrative dispute** against the decision of the District Court in Maribor withdrawing her right to free legal aid and demanded reimbursement of the amounts paid for legal representation services.

Pursuant to Article 25 of the Human Rights Ombudsman Act, the Ombudsman may communicate to each body his opinion, from the aspect of protecting human rights and fundamental freedoms, about the case he is investigating, irrespective of the type or stage of proceedings which are being conducted by the respective body. On this basis, we intervened **as a friend of the court** in the complainant's administrative dispute, because we believed that the judgment of the Administrative Court could also infringe on the right to access to the court, the right to efficient judicial protection, and the right to fair trial.

The purpose of free legal aid provided under the statute is to enable socially underprivileged persons to exercise their rights to judicial protection according to the principle of equality. The decision withdrawing free legal aid *de facto* terminates the complainant's ability to enjoy efficient judicial protection and quality representation by a legally qualified professional – an attorney. To the Ombudsman's knowledge, the complainant's circumstances indicate that she cannot afford the costs of representation in judicial proceedings. The withdrawal of free legal aid and the obligation to repay the amount of free legal aid already received place the complainant on the social margin and subsistence threshold, effectively eliminating her every hope of effective protection of her rights and legal interests.

The Ombudsman realizes that the complainant may be a demanding client and that she is (unfairly) critical of the work of attorneys (and the police, prosecutors and courts). She is not always happy with the work and interventions by the Ombudsman, but this is no reason for the state to refuse assistance to her, considering her social circumstances, because this could put her in a position of complete lawlessness. Furthermore, we pointed out that the complainant's criticism of the system of justice had been valid on several past occasions. We quoted an example where the District State Prosecutor initially dismissed her criminal charges involving a case of alleged arbitrary tampering with her apartment in Maribor where she had lived many years. After intervention by the Ombudsman, the complainant filed charges. We also quoted a civil suit involving a case of trespass to property, where the complainant had invoked judicial protection of her apartment, claiming that the defendant had arbitrarily and unlawfully evicted her from the premises on 8 September 2000, even though she had lived there for many decades as a holder of occupancy rights. According to the information available to the Ombudsman and considering the limited amount of adversary action involved in the trespass suit, the court could have decided on the matter at the initial trial hearing, under the principle of efficient judicial procedure. During the five-year course of judicial proceedings, the Ombudsman intervened multiple times because he was unconvinced by the court's response claiming that the matter was under "continual consideration".

It is not right that free legal aid is denied to those who need it the most. This is why we found the decision withdrawing free legal aid to be in contravention with the purpose and aims of the Free Legal Aid Act, as well as unjust.

The decision of the District Court in Maribor states only the reasons, within the complainant's sphere of responsibility, which prevent the appointed lawyer from properly performing her duties. However, they **fail to list the reason** which the attorney herself quoted in her motion to be released from duty. She claims that an individual employed in her law office **is well acquainted with the opposing party** and that she is also familiar with the disputed matter. This circumstance indicates that the attorney actually initiated her release from duty **(also) due to reasons for which the complainant cannot be held accountable.** Stating this as the reason for release from duty could be interpreted as the appointed attorney's desire to terminate her representation of the complainant, either for reasons of dissatisfaction expressed by the latter, or due to other circumstances which discourage the attorney from further legal representation of the complainant.

Therefore, we recommended that the Administrative Court carefully weigh all the circumstances involved in the case, and we asked it to send us a copy of the judgment issued in the procedure for our records. In reply to the complainant's

administrative lawsuit and the Ombudsman's intervention, the Maribor branch of the Administrative Court of the Republic of Slovenia responded by issuing a judgment in favour of the complainant, effectively revoking the contested decision of the District Court in Maribor *ab initio* in the part obliging the complainant to repay the costs of free legal aid received. The body charged with the administration of free legal aid will have to appoint another lawyer to the complainant on the basis of the previously granted extraordinary free legal aid. **6.4-212/2004**

59 – WORK LEFT UNDONE AND THE JUDGE'S PROFESSIONAL ADVANCEMENT

At a probate hearing held at the Local Court in Ljubljana, a judge issued a decision dated 12 January 2004 suspending the hearing and stating that a partial decree of distribution of property and the referral to initiate civil action would subsequently be issued in writing. On multiple later occasions, the heirs requested the anticipated written decisions and asked for a faster procedure. Because they received no response, they turned to the Ombudsman for assistance.

In response to our intervention, the president and vice-president of the Local Court confirmed that the probate judge had neglected to write either of the anticipated decisions by 12 August 2004, which was the date when she left the Local Court to continue her career as a District Court judge. Evidently, seven months were not sufficient time for the judge to fulfil her obligations. During this time, she also used 25 days of annual vacation, even though the Judicial Service Act requires judges to use their annual vacation time so as not to interfere with their performance of judicial service.

According to the letter received from the Local Court, the agreement between the president of the Local Court in Ljubljana and the president of the District Court in Ljubljana stated that the judge would continue her service at the Local Court until 1 September 2004, during which time she would "close any outstanding cases". The complainant's probate case was at least one such outstanding case that was left open, a fact established only after the case file was reassigned to another judge after 24 November 2004. Formal reasons required the newly-appointed judge to set a new date for the probate hearing. This resulted in further and unnecessary legal costs for the heirs, in addition to more than a year's delay in court proceedings.

The vice-president of the Local Court explained that they had not performed a review of outstanding cases since they were "convinced that no such review was necessary". It is expected that anyone appointed as a judge is a morally mature person who realizes the importance of his function and the responsibility it involves.

We requested a report from the Local Court on the measures taken as a result of the found violation. The president informed us that no procedures could be initiated against the judge since she was no longer in their employ.

Therefore, we turned to the District Court in Ljubljana, where the judge is currently employed. We expressed our opinion that she had neglected her judicial duties in the probate procedure, resulting in undue suspension and repetition of procedural actions that had already been performed. We also believed that the judge's promotion to the District Court and the fact that she no longer performs judicial service at the Local Court is not sufficient reason for her not to be held responsible for her handling of the probate case.

In a subsequent reply, the president of the District Court informed us that the judge's neglect of her judicial duties was not conscious but rather a consequence of being overburdened due to handling numerous cases and managing the department. Therefore her judicial duties were not neglected intentionally. The judge's personal file contains no record of any justified supervisory complaints. She regrets her error and is prepared to reimburse any expenses the parties may have incurred in connection with the undue delay in the procedure. Following the opinion of the president of the Higher Court, the president of the District Court **issued a verbal warning to the judge**. Furthermore, he ordered the entire documentation regarding the matter be entered on the judge's personal file since it is of significance for future evaluation of her judicial service.

Since the president of the District Court informed us that the judge regretted her error and that **she was prepared to compensate the injured parties for damages incurred**, we consider the verbal warning as suitable sanction. However, we believe that the simple fact that she was overloaded with work cannot serve as a justifiable reason for non-issuance of the anticipated referral to initiate civil action. **A judge performing his responsibilities diligently should not afford himself this kind of unnecessary negligence. 6.4-399/2004**

60 – THE EXCESSIVELY SLOW PROCEDURE CAUSES DAMAGE TO BOTH THE CREDITOR AND THE DEBTOR

The complainant informed the Ombudsman about an excessively slow procedure involving execution of child support for a minor, filed under case no. I 2003/06146 with the Local Court in Ljubljana. The motion for execution was lodged on 25 July 2000.

The decision process involving a motion for execution and the subsequent appeal against the execution order took more than a year in each instance. At the debtor's appeal, the decision dismissing his appeal was overturned and the matter was returned to the court for retrial. It took the Court of First Instance 22 months to decide on the appeal a second time. It issued a decision on 3 February 2005. Five months later, the court contacted the debtor, inquiring whether his motion was to be considered as an appeal against the decision dated 3 February 2005, after which the case file was again turned over to the Higher Court.

We pointed out to the court that the principle of promptness is especially important in the executive procedure, as the law itself requires it. The principle of promptness is especially important in cases involving execution of child support to the benefit of a minor child (the principle of acting in the child's benefit). These kinds of executions take priority status.

The court allowed the execution of the debtor's salary, and sent his employer a writ of execution banning disbursement to the debtor. Because the writ of execution is still not final even after four years, the creditor has not yet received payment. The funds withheld by the employer are being kept in a separate account and are not generating interest. The outstanding part of the obligation, however, is increasing over time due to statutory default interest. **6.4-98/2005**

61 – A CREDITOR WHO BUYS HOUSES AT AUCTIONS IS EXEMPT FROM PAYING THE COSTS OF EXECUTION PROCEEDINGS

The complainants were debtors in an execution proceeding involving the eviction and delivery of a residential house. The execution carried out before the Local Court in Domžale was at the enactment stage, since the eviction had already been set.

For the Ombudsman's information, the complainants sent him a courtesy copy of the motion sent to the court to stop the execution. One interesting circumstance was that the creditor was exempt from payment of the costs of the execution procedure, which is a right enjoyed by poor people, even though she had simultaneously bought real property of significant value at an auction. The court exempted her from payment of the costs of the procedure due to her extremely poor material circumstances and her lack of any means of subsistence. Based on this finding and the court decision, the complainants pointed out a decision issued by the same court during the same time period, stating that the creditor purchased real estate at a public auction at the price of 40,208.351 tolars. As the highest bidder, the court awarded her the real property that was the subject of the auction.

In our intervention with the court, we expressed our doubt that the constitutional principles of the rule of law and the social state can be interpreted in such a way as to waive payment of execution costs in the case of a person attending public auctions with the aim of buying or even reselling real property. Furthermore, this same person had evidently also

bought the residential house that was the subject of the execution to evict the complainant and deliver the residential home to the new owner.

The court may exempt a party from paying the costs of the procedure (including the payment of the security deposit) only if the relevant statutory conditions exist. Therefore, Article 172 of the Civil Procedure Act provides that **the court may revoke the decision to waive payment of costs during the procedure** if it finds that the party can afford to pay the costs itself.

Because the creditor had been exempt from paying the costs of the execution procedure, she was also exempt from paying the security deposit. The security deposit is an expense involved in the executory procedure, aimed at ensuring the smooth and uninterrupted execution of the procedure. The sanction foreseen for non-payment of security money is termination of the execution.

The creditor had already sold the house to another buyer. The debtors pointed out that the creditor did not pay the security deposit because she has no personal interest in the execution. She did not inform the court performing the execution of her (new) address, which prevented the court from serving her with court writs and her (non)cooperation in the execution proceedings. Therefore, the execution is taking place without any kind of involvement or interest on the part of the creditor, and the debtors are facing threat of eviction from the residential house, i.e. their apartment. The only reason the eviction can even take place is because the security deposit had been paid by the court, even though the creditor holds no personal interest in the matter and her whereabouts are unknown.

Acting as a friend of the court, we advised the court about the circumstances indicating that the motion filed by the complainants as debtors in the execution procedure warrants diligent and careful consideration in light of all the circumstances surrounding the case. We requested clarification on whether the creditor's purchase (or even her repeated practice of purchasing real estate) as the highest bidder at the public auction had any effect on her exemption from payment of the costs of the procedure, including payment of the security deposit in the execution procedure in question.

In reply to our question, the court explained that it had exempted the creditor from payment of the costs on the basis of a decision issued by the Social Services Centre, Ljubljana-Šiška Branch, which demonstrated that the creditor was unemployed, without means of subsistence, and, as such, entitled to income support benefit. The court also informed us that the sale of the real estate at the public auction with the bidding price of 40,208.351 tolars was annulled because the court had refused the creditor's motion to extend the deadline for payment of the purchase money. In its reply to our inquiry, the court also pointed out that the buyers purchasing real estate at public auctions are more or less the same people. Furthermore, the court confirms that someone buying real estate at public auctions cannot reasonably be exempt from payment of the costs involved in the procedure. Therefore, the court acknowledged the Ombudsman's intervention and ordered the executor to suspend the execution procedure pending review of the decision regarding the costs of the procedure. If a check of the creditor's material circumstances should reveal that there are no grounds for exemption from payment of the costs of the procedure, this would result in the termination of the execution proceedings. **6.4-219/2005**

62 – COSTS OF COURT TRANSLATION WERE ALMOST AS HIGH AS THE COST OF THE CLAIM

In a civil matter, the District Court in Novo Mesto admitted the submitted evidence and appointed the Medical School in Zagreb as a court expert of the medical profession. The court ordered that a part of the case file be translated into the Croatian language in order for it to prepare its expert opinion. The court approved the court interpreter's fee in the gross amount of 1,610.928,00 tolars.

The complainant filed a lawsuit for non-property damages incurred as a result of the allegedly unprofessional medical treatment. If she is unsuccessful in her claim, she will need to pay the costs of the procedure. The costs of the translation fees are almost the same as the cost of the claim (2,100.000 tolars), and the current total costs of the procedure already significantly exceed the amount.

The court's reply suggests that the judge had not consulted the court expert prior to issuing the order for his appointment. It may have been prudent if the judge had consulted the court expert prior to the actual appointment of the Medical School in Zagreb in the procedure, and asked the translator whether he was willing to accept the task (and who was going to prepare the medical report and opinion). The judge should also have consulted the court about what documents needed to be translated from Slovenian to Croatian in order to prepare the expert opinion. It should also have determined whether the documents needed to be translated at all (due to language skills and similarities between the two languages) and to what extent. The court is bound to uphold the principle of economical use of resources in procedures. Therefore it should be in the court's interest to finish the procedure as soon as possible and at the lowest cost possible. **6.4-296/2005**

63 – HOW CAN A COURT BE SURE THAT COURT FEES HAVE BEEN PAID?

Under the third paragraph of Article 6 of the Court Fees Act, the court fees are payable in cash by the liable person to the suspense account for court fees. The receipt of payment of tax must be attached to the application for which the court fee was paid. The payment order sent to the liable party by the court contains a clear statement that the payer must send the original receipt of payment of the court tax affixed to the back of the payment order. In his letter to the Ombudsman, the complainant wonders why the payer (i.e. the party in the procedure) should be required to send a payment receipt to be entered into the case file held.

We contacted the Ministry of Justice and pointed out that other bills, e.g. electrical, water supply and other services, are paid in a similar fashion, with payment orders, yet those do not require the submission of a proof of payment. The creditor can obtain information about whether a payment transaction has been completed from the payment transactions provider. Perhaps, in the age of information technology, the court could also obtain payment transaction data on the basis of such a statement from the payment transactions provider via the provided reference number and case file number.

In its reply, the Ministry explains that the record keeper in charge of proper duty stamping of court writs can only be sure that these duties have been duly paid if proof of payment of the court fees is provided, in accordance with the Court Fees Act and the Court Rules. It is evident from the Ministry's reply that the court fees constitute a budgetary income, and are collected in a separate court fees account which only the Ministry of Finance has access to. The courts do not have access to this account and receive no daily bank statements. The Ministry also states that the reference number on the payment order cannot serve to determine the case for which the court fee was paid.

The Ministry concluded its reply by stating that modernizing the system of paying court fees is a complex project which will require a cooperative effort from different ministries. This could be interpreted as a sign of readiness that payment of court fees would be modernized in the future, making it more client-friendly. For now, however, clients must affix the proof of payment of the court fee to the reverse of the payment order and deliver it to the court within the set time limit. Failure to do so can result in adverse consequences: liability to pay the costs of notice, penalty fees or even forced recovery. **6.5-43/2004**

64 – THE COURT HAS BEEN WAITING FOR AN EXPERT OPINION FOR FIFTEEN MONTHS

The complainant informed us of a court proceeding before the Labour Court in Koper, Department of Nova Gorica, case no. Pd 60/2003. The last trial hearing was on 14 November 2003, at which point a court expert of the psychiatric profession was appointed.

According to the court, they have still not received an opinion from the court expert (even after fifteen months). The first court expert informed the court that she did not deal with the subject matter involved in the expert opinion. At her recommendation, the court appointed another court expert and set a two-month time limit for the expert opinion. The court expert received the court order on 29 January 2004. Since then, the court has requested preparation of an opinion as many as five times. The court expert claimed he was overloaded with work and assured the court that the opinion would be finished soon. Because he had failed to prepare an opinion, the court relieved him of the entrusted task and appointed a third court expert in January 2005, who collected the case file five days later. In the court's opinion, this indicates that he had begun performing his expert tasks.

In this particular case, the procedure was delayed by almost a year as a result of the court expert's inaction. We asked the court to clarify what disciplinary sanctions had been imposed on the court expert who violated the set time limit and neglected to respond to the court's notice. It is unclear from the court's response whether any stricter measures than the unsuccessful notices had been taken to ensure the timely preparation of opinions in the future and to prevent further similar conduct by the court expert.

Article 253 of the Civil Procedure Act requires that the court set a time limit for the court expert to prepare his expert report and opinion. The set date requires the court expert to perform his obligation in a timely manner. At the same time, it provides the court an opportunity to impose sanctions against the court expert in the event of his violation of this time period. These sanctions are provided under the Civil Procedure Act (imposing fines of up to 300.000 tolars on the court expert, as well as demanding compensation for failure to prepare the expert opinion) and the Courts Act (recommendation by the president of the court to relieve the court expert from duty in the event of his failure to perform his duties in a regular and dutiful manner). **6.5-3/2005**

65 – WITHDRAWAL OF MOTIONS TO INITIATE MISDEMEANOURS PROCEEDINGS

The Traffic Police Station and Žalec Police Station filed a motion to initiate misdemeanours proceedings involving a misdemeanour under the third paragraph of Article 127 of the Road Traffic Safety Act, accusing him of driving a vehicle without a valid driver's license on 10 September 2004. The complainant denied having driven a car that day or having been subjected to a police inspection. He especially complained about police accusations that he did not hold a valid driving license, since he had obtained one on 8 September 2004.

Following our intervention, the Celje Police Directorate found that the complainant had actually passed his driving test and obtained a valid driving license. They explained that the complainant had told the police officers during the investigation that he did not hold a driving license. Because the police officers were familiar with the complainant from previous procedures (where it was established that he had, in fact, driven a vehicle without a valid driving license), they checked his information in a prior offences computer application (LISK), but failed to check the application which reveals driver license information (RISK). Because the police officers had uncritically believed the complainant's testimony, they filed a motion to initiate misdemeanour proceedings against him on the charge of his driving a vehicle without a valid driving license. After establishing that the complainant did indeed hold a valid driving license, the police stations withdrew the motions to initiate misdemeanours proceedings and took the necessary steps to correct the relevant records.

The General Police Directorate judged the conduct of the police officers involved as careless and shoddy. Furthermore, it recommended that the Celje Police Directorate take necessary action to prevent further irregularities of this nature. We agreed with the assessment and actions taken by the General Police Administration. In our opinion, the police officers should only have acted against the complainant, who had obviously intentionally lied during the police procedure, once they established with certainty that he had not obtained a valid driving license. The motion to initiate misdemeanour proceedings can only be based once the decisive indications of a misdemeanour are carefully and completely established, and not on prior knowledge of the perpetrator or his prior contacts with the police. **6.6-23/2004**

66 – NOTIFICATION REGARDING THE DECISION ON THE EXPIRATION OF THE STATUTE OF LIMITATIONS SENT ONLY AFTER THE OMBUDSMAN'S INTERVENTION

The decision of the misdemeanours judge in Ljubljana dated 28 May 2002, case no. P-13692/01-16, overturned a misdemeanour decision under ref. no. P-13692/01-16 dated 18 July 2001, whereby the petitioner's driving license had been revoked. The explanation of the decision annulling the first instance body's decision stated that the entire case file would be turned over to the Misdemeanours Senate of the Republic of Slovenia upon its becoming final. The Senate would then decide on the appeal contesting the decision on the misdemeanour. The complainant informed us that the matter had still not been resolved as of August 2005, and that he needed his driving license.

The Local Court in Ljubljana informed the Ombudsman that the case file in the complainant's matter was sent to the Misdemeanours Senate of the Republic of Slovenia on 6 August 2002. The Senate convened on 17 August 2003 and changed the first instances body's decision by terminating the procedure on the grounds that the statute of limitations had expired. The case file was returned to the first instance authority on 28 November 2003. The court also informed us that "*in 2003, it was not the practice of misdemeanours judges to send appellate bodies' decisions to the parties involved if the decision to terminate proceedings was issued on the grounds of expiration of the statute of limitations..., these decisions were only sent at the express request of the defendants or parties in these proceedings, because the costs involved in the delivery of these issues were too high, owing to the difficulties related to the serving of these decisions. At the Human Rights Ombudsman's request, these decisions are now being sent to the parties.*" An order annulling the revocation of the complainant's driving license was also sent to the administrative unit where the former had left his driving license, but he was not informed of this fact.

Under Article 167 of the Minor Offences Act, a misdemeanour decision terminating the procedure must be issued upon the lapse of the statute of limitations. The provisions of this article can only be interpreted as meaning that the issuance of the decision is compulsory. The law does not provide any exceptions relieving misdemeanours judges of this duty.

One of the purposes of issuing a written order terminating the procedure is to inform the defendant that the misdemeanour procedure is concluded. The right to legal remedy (i.e. the right to an appeal) includes the complainant's right to be notified of the decision on the appeal. If the statute of limitation expires during the process of deciding on the appeal, the defendant has the right to be notified about this and about the fact that the procedure against him has been terminated. The defendant is often uninformed about the statute of limitation and therefore has no knowledge about its expiration. He is still expecting a decision from the appellate body, which has not arrived. We have already pointed out this irregular practice in the 2004 Annual Report.

At the Ombudsman's intervention, the complainant finally received a written order on the termination of the proceedings in September 2005. Unfortunately, it was only then that he was able to reclaim his driver's license, since he had not been aware of the order annulling the revocation of his driver's license until after the Ombudsman's intervention. **6.6-24/2005**

67 – COMMITMENT UNTIL FINE AND COSTS ARE PAID IS NOT A REPLACEMENT FOR PAYMENT OF FINE

Evidently, the practical application of the Minor Offences Act (ZP-1) often involves misinterpretation of its provisions. We received a complaint from a penologist from one of the correctional institutions. He mentioned the case of a perpetrator of a misdemeanour who had failed to pay a fine of 30.000 tolars and was therefore confined pending payment of the fine. He had expected that the confinement would (only) last three days.

Commitment until fine and costs are paid is a newly established institute in misdemeanour law. It should be interpreted as a measure for compelling the offender to pay the fine imposed against him. In this case, the reduction of the fine in the amount of 10.000 tolars per day of confinement does not apply, since the convicted offender of the misdemeanour is not "paying off" the sum of the fine owed through his confinement. The aim of the threat of commitment until fine and costs are paid and such commitment itself is to break the offender's resistance and ensure his payment of the fine without the need for forced debt recovery.

We agreed with the complainant that the court is bound to **carefully consider all the circumstances surrounding the case** when deciding whether to impose the sanction of commitment until the fine and costs are paid, which includes the offender's social circumstances and his reasons for non-payment of the fine imposed on him. There should be no automatism involved in the imposing of commitment until the fine and costs are paid. The legislator has placed this decision in the hands of the judges, not the misdemeanours body which issued the decision requiring payment of the fine. Of course, the fine can be paid at any time during the offender's confinement, as evident from the fourth paragraph of Article 19 of ZP-1 which stipulates that commitment until fine and costs are paid lasts **until such time as the offender pays the fine.** Payment of the fine during confinement results in immediate release.

There is no doubt that court practice is still trying to find the correct ways to uphold the rule of law and social state in imposing and enforcing this measure. In this regard, we are pleased with the complainant's response and the reservations he expressed, because he has first-hand experience with enforcement of the commitment until fine and costs are paid, and is well acquainted with the problems connected to it.

Another fact worth pointing out is that the offender of a misdemeanour has the opportunity to propose that he be exempt from payment of the fine in return for his performing certain services for the general benefit of society or the local community. In this case, the offender is not confined and the fine is not forcefully recovered. Convicted offenders of misdemeanours should be informed of these options in due time.

The concept of commitment until fines and costs are paid is to **increase payment discipline of convicted offenders** of misdemeanours, since the previous system was proven to be completely inefficient and much too costly in comparison to the results. **6.6-30/2005**

68 – TWO PERSONS LIABLE TO PAYING RTV LICENSE FEE ON THE SAME RECEIVER

The complainant became liable to pay the RTV license fee on the basis of the legal assumption that he owned a radio or television receiver as a registered payer of electricity on the public power grid. He gave the legally prescribed declaration in order for this license fee to be waived. He informed Radio Television Slovenia of his new address, where he was officially registered as a temporary resident and for which he held a valid rent agreement with the owner, who has lived abroad for an extended period of time. Radio Television Slovenia charged the RTV license fee at this address both to the tenant and the owner of the house.

Radio Television Slovenia explained that in cases like this, "it is assumed that the person filing the declaration of non-residence at a certain address has transferred the receiver(s) to his current resident address." In our opinion, Radio Television Slovenia has no legal base to make such an assumption. Most importantly, such actions taken without consulting the liable party do not properly take into account the particulars of the individual case, making it difficult for the liable party to exercise his rights. This was evident in the case in question, as the complainant unsuccessfully contested the above assumption. On the basis of unclear and incomplete establishment of actual circumstances involved in the case, Radio Television Slovenia provided instructions to the complainant on how to avoid paying the RTV license fee, which later proved to be false since they were not adapted to his particular case.

Because of the disputable assumption regarding the complainant's transfer of receivers, the incomplete establishment of the actual situation and provision of incorrect instructions for his exemption from paying the RTV license fee in the matter at hand, it is our opinion that part of the responsibility for this situation lies with Radio Television Slovenia. We proposed that, regardless of the appeal procedure, the case be reopened and decided by more precisely establishing the actual situation. Radio Television Slovenia refused our proposal and turned the matter over to the second instance body. Pending its decision, the complainant was still required to pay RTV license fees. In light of the above, it is our opinion that there was no reason to burden the appellate body with this matter, and so the complainant, being the weaker party, incurred the unwarranted expenses of continued proceedings. **8.2-25/2004**

69 – LACK OF COOPERATION FROM MUNICIPALITIES IN CONNECTION WITH THE EXCHANGE OF NON-PROFIT RENTAL APARTMENTS

The complainant's non-profit rental apartment is located within the Municipality of Gornja Radgona. It is owned, however, by the Municipality of Sveti Jurij ob Ščavnici, which obtained the premises in 1999 on the basis of an agreement on the distribution of assets of the former Municipality of Gornja Radgona. The complainant – an inhabitant of the Municipality of Gornja Radgona – has been trying many years, without success, to trade his current apartment for a smaller and less expensive one, since it represents an excessive financial burden for him. His debt kept increasing and debt recovery procedures had already been initiated against him. The complainant was eligible to receive subsidized rent from the Municipality of Gornja Radgona. Following a change of pertinent regulations, the Municipality denied his request for subsidized rent in 2005. He was granted financial aid in the form of a lump sum.

The Municipality of Gornja Radgona explained that it can only grant the exchange of apartments that it owns. The Municipality of Sveti Jurij ob Ščavnici told us that only persons registered within its territory may request the assignment of a different apartment in exchange for their present one. In our opinion, this position of the Municipality of Sveti Jurij ob Ščavnici is incorrect, especially because the Municipality of Gornja Radgona has more non-profit rental apartments available. We pointed out to the Municipality that the tenant's local residence had no bearing on the exchange of apartments and that inter-municipal issues should not be to the detriment of their housing fund's beneficiaries, regardless of which municipality individual apartments are located in. Therefore, we believed that pertinent case of exchanging apartments was fully within the authority of the Municipality of Sveti Jurij ob Ščavnici. We urged the Municipality to issue a decision on the complainant's request to exchange the non-profit apartment for a different one, under the applicable general administration procedure.

The complainant informed us that the Municipality of Sveti Jurij ob Ščavnici did not act in line with our recommendation. What's more, it sold the apartment where he resided to a private owner without first attempting to resolve his situation. Despite his many years of trying to find a solution to his social and existential problems, the Municipality only served to increase his social and existential crisis by doing so. **9.1-33/2005**

70 – THE POTENTIALLY UNCONSTITUTIONAL RADIOTELEVIZIJA SLOVENIJA ACT

A lawyer informed us about her client's attempts to become exempt from paying the RTV license fee. The complainant's client has a minor daughter who has been granted disability status under the Act Concerning Social Care of Mentally and Physically Handicapped Persons. The TV receiver belongs to her daughter. The Radiotelevizija Slovenija Act grants exemption from payment of the license fees to persons who exhibit a certain degree of physical disability, hold disability status and those having the right to personal assistance allowance. In the complainant's opinion, these provisions were questionable since they discriminated against special needs persons who have held disability status since youth. In their case, the Institute of Pension and Disability Insurance of Slovenia cannot evaluate the degree of physical disability, because such persons are not fit for employment, and social services centres are not competent to make such decisions. This raises the question of indirect discrimination, since these persons have no way of demonstrating the degree of their physical disability. This question is valid, especially considering the practice of proving the degree of physical disability. In the case in question, the affected disability status and the personal assistance allowance were granted on the basis of a moderate degree of mental disability with apparent behavioural disorders. Therefore, we found that the question of indirect discrimination was not essential in this matter. We asked ourselves whether the Radiotelevizija Slovenija Act might discriminate against people whose disability status was granted on the basis of their mental capacities versus those who hold such status on the basis of physical disability. In light of the fact that the complainant was a lawyer, we did not deal in detail with the potential unconstitutionality of the Radiotelevizija Slovenija Act. We advised her to lodge a constitutional complaint or try to change the legislation politically. We also informed her about the Government Council on the Implementation of the Principle of Equal Treatment, which is competent under the Implementation of the Principle of Equal Treatment Act to monitor, evaluate and assess the situation of individual social groups from the perspective of implementing the principle of equal treatment, and to provide the government with proposals, initiatives and recommendations for adoption of regulations and measures required to implement this principle. We found that the solution provided under the new Radiotelevizija Slovenija Act (ZRTVS-1) was identical in terms of substance. **10.0-3/2005**

71 – PROBLEMS WITH THE ROMA PEOPLE

A representative of a village community and several villagers informed us of the problems they had with violent and disruptive Roma people occupying an apartment free of charge. According to the testimony of one of the injured parties, several Roma individuals had stopped him on the road, pulled him out of his vehicle and destroyed his car. According to his allegations, the police responded to this situation inappropriately.

We asked the police about the measures taken and about the general security situation in the village in question. We inferred from their explanation that the locals are disgruntled with members of a family who associate with members of the Roma community. Individual members of this family had been involved in multiple criminal offences and misdemeanours in the past. The villagers consider the abovementioned family the same as the Roma people because of their lifestyle, even though they have no such origins. In that specific incident, the police responded to an anonymous report of a disturbance of public order and peace. At the scene of the disturbance, they caught a Roma minor while the other offenders of Roma origin managed to escape. The police then filed charges on the grounds of disturbance of public order and peace. The injured complainant was then stopped and harassed by a group of minors, after which they began hitting his car with their hands. It was established that the complainant suffered no bodily harm in the incident and did not seek medical care and there was no material damage done to the car. The complainant never even reported the incident to the police; this was done by an anonymous caller. He also requested that the police not enter him as a witness in the procedure. The police found that incidents between the local villagers and the Roma people have been increasing recently. The cause for this is the disruptive lifestyle of members of the Roma community (untidy environment, improper keeping of domestic animals, disturbing public order and peace, opportunistic theft of clothing, etc.) and the locals' belief that the

Roma people are enjoying excessive social benefits and aids due to their numerous families, even though they do not meet minimal social standards. In spite of the above, these occasional incidents cannot be considered a conflict between nationalities according to the Police Directorate.

We were unable to find any violations or irregularities committed by the police with regard to the above incident. By sending anonymous reports of incidents and by refusing to become involved in police procedures aimed at the prosecution of perpetrators, the villagers cannot effectively protect their rights. By the very nature of the matter, they cannot be informed about the details of the investigation of individual incident reports. Therefore, allegations of police inaction were obviously unfounded. We informed the complainants about our opinion that the Roma issue cannot be resolved using security measures alone. Furthermore, indiscriminate labelling of an entire ethnic community as being responsible for these incidents cannot help in eliminating the existing disputes and tensions, which is something that all local inhabitants and bearers of various public authority should strive towards. **10.1-1/2005**

72 – CONTESTING FATHERHOOD

The Human Rights Ombudsman was approached by a father desiring to verify his biological relation to his daughter. He admitted to being the father years ago, and is also listed as the father in the official register.

Establishing and contesting parenthood is regulated by the Marriage and Family Relations Act. Because the child was born out of wedlock, the complainant was required to give an explicit statement of fatherhood, and the mother was required to give her consent. He is therefore considered the father of the child until this legal premise is contested under a procedure prescribed by statute. The child enjoys special protection under the law, and so the conditions for contesting fatherhood are relatively strict. The law sets special statutes of limitation within which fatherhood may be contested in court, which varies for the mother, the father and the child. On the basis of the complainant's allegations, we determined that the statute of limitations had expired in his particular case, because the law suit should have been filed within five years of the child's birth. The statute of limitations which applies to the mother had also expired. Therefore, the only way to contest fatherhood is if legal action is initiated by the child, whose statute of limitations expires five years after her turning of legal age. However, the complainant expressly stated that he did not wish to burden his daughter with this procedure.

We further explained to the complainant that he could make the necessary arrangements with the mother and the child and carry out a DNA test to determine biological parenthood, performed by the Institute of Forensic Medicine at the Faculty of Medicine in Ljubljana. Complete with the expert opinion, the cost of such a test is 250.000 tolars. It is possible to determine his fatherhood to the margin of almost one-hundred percent certainty through this analysis, however, this expert opinion does not automatically change the fatherhood status. This could be achieved by initiating legal action against the child (which should be represented by a legal guardian until the age of 18 under the law). **11.0-25/2005**

73 – OUTRAGE OF THE SOCIAL SERVICES CENTRE WITH THE INTERPRETATION OF ITS REPORTS

The complainant wanted to know in whose best interest the Court of Second Instance was acting, since it placed a child in her mother's care after five years of processing the decision on child custody, despite numerous warnings, including those from the Social Services Centre, and evidence that the mother was a danger to the girl. The Higher Court, which had explicitly stated in the initial annulment decision that the opinion of the Social Services Centre should have been taken into consideration, misquoted it as positive in the subsequent retrial involving confirmation of the Court of First Instance judgment. This is also evident from the outraged response sent by the Social Services Centre, which states that the mother had not permitted social workers any contact with the daughter and herself prior to the issuance of the judgment.

Furthermore, they deny having written in their report that the girl be placed in her mother's care. On the contrary, the Social Services Centre explicitly states that they fully expected the girl to be put in her father's care, in light of their reports and the expert opinion provided. **11.1-35/2003**

74 – CONSEQUENCES OF COMMUNICATION WITHOUT THE CHILD'S VOICE

A fifteen year old complainant sought the Ombudsman's assistance in establishing contact with his mother. He alleged that he had moved in with his father after having had an argument with her in 2003. New conflicts arose and six months ago, they lost contact completely. Contacts with his sister and brother who still live with the mother are also deteriorating. He told the Social Services Centre about this problem on several occasions and requested their assistance in re-establishing contact with his family members. Despite multiple attempts, the Centre was unable to oblige. The complainant believes that the main problem regarding this matter lies in the fact that no one had considered his opinion and desires, nor the opinions or desires of his siblings. In an interview with the Ombudsman, he claimed that his opinion, on the rare occasions that someone actually listened to it, was always ignored and the opinions of adults always prevailed over his own. He could accept that his mother had abandoned him. Instead of taking action with consideration to his opinion, the state allowed adults to discuss this matter without consulting him. He asked the Ombudsman for assistance in protecting his rights granted under the Convention on the Rights of the Child. He also requested that an interview be arranged with his mother, in the presence of the Human Rights Ombudsman, hoping he will be given the opportunity to talk to his mother instead of merely listening to adults.

His testimony and the reports of the Social Services Centre reveal that he would never be able to clarify certain inconsistencies which keep making his relationship with his mother ever more complex, with the help of the Centre. The Centre claims that the mother has refused further interviews at the Centre. She proposed that he call her and that they would arrange a meeting.

We informed the mother of his distress and desire to arrange the meeting at the Ombudsman's offices. She immediately agreed to this. Thus, they were able to clear up quite a few things that had happened after the incident two years previously. It was clear from the meeting that they had never discussed the resentment and issues existing between them. Once they had cleared up these issues and told each other about the pain, anxiety and fears they felt, their conversation became much more relaxed. They realized that quite a few resentments between them were due to a lack of dialogue. They realized that their discussions too often revolved around other people's problems (i.e. the father's, brother's and sister's), whereas those issues should be approached differently. They agreed on the manner of their future communication and further contacts, which they would arrange separately.

They called back a month later, separately. They were both enthusiastic about the progress they were making, about their restored communication and their mutual reunion. **11.1-27/2005**

75 – CHILD BENEFITS – DECISION ON APPEAL FINALLY ISSUED AFTER FIVE YEARS

The complainant pointed out the problem of the extremely slow process of resolving her appeal to the decision on termination of her right to receive child benefits for her daughter. She lodged an appeal to a decision issued by the Social Services Centre in 2002, but the Ministry of Labour, Family and Social Affairs had still not decided on it after almost five years, and so she asked for our assistance in the matter.

After the complaint was supplemented, we sent the first inquiry to the Ministry of Labour, Family and Social Affairs on 5 April 2005. Because we did not receive a reply within the set deadline, we repeated our appeal to the competent authorities to decide on the appeal on 26 May 2005. We did this again on 13 June 2005 and 7 October 2005. The Ombudsman

also exhausted all other options available to him under the Human Rights Ombudsman Act, from intervention with the Minister to informing the public at a press conference. The decision on the appeal was issued on 5 December 2005.

The exceedingly slow process of deciding is impermissible and unlawful, and we received no explanation in this regard. Considering the fact that no sanctions are foreseen under the law for the delay or violation of the prescribed time limit for issuance of the decision, because the statutory time limit is instructional in nature and requires public bodies to take action, giving them the power to supervise and intervene as necessary in cases of unjustified delays caused by the administrative body, we were only able to advise the complainant about the options available to her prior to the issuance of the decision. However, issuing decisions within the instructional time limits prescribed by law means more than simply the lawful work of the administrative body, it also affects the right to equal protection of rights granted under Article 22 of the Constitution, which was not respected in the case at hand. **11.2-8/2005**

76 – CONSIDERATION FOR THE OPINION OF A LITTLE GIRL FOLLOWING THE DEATH OF HER PARENTS

The Ombudsman was contacted by the grandparents of their ten year old granddaughter who had lost her parents in a traffic accident. She had lived with them since the tragedy, because of the close family ties that existed between them even prior to this event. They had lived together for some time, and later kept in almost daily contact. The little girl is very attached to her grandparents and their son (her uncle), which alleviated the tragic loss of her parents at least to a small extent. They believe that they had always taken good care of her, which is confirmed by the fact that the parents had often left the child in her grandparents' care prior to their death. Their mutual bond and familiarity is very welcome under the present circumstances, as it provides a degree of stability under the new circumstances. They wish to protect their granddaughter from additional traumatic situations and are therefore surprised by the insistence of the Social Services Centre to place her in her uncle's care (on the mother's side), even though she had never had close ties with his family. The complainants expressed concern that any change would cause irreparable damage for the little girl under the circumstances, and they asked the Ombudsman to intervene and assure that her own opinion be taken into consideration.

The little girl also requested the Ombudsman assistance in this matter in a separate petition. In her letter to the Ombudsman, she wrote about the loss of her parents and asked him to help her stay with her grandmother and grandfather, since she had lived with them for the first five years of her life and often stayed with them later. She writes that she does not wish to be placed in her uncle's care, as she had never stayed with him nor spent the holidays with his family. While her parents were away, she would always stay with her grandmother and grandfather.

We informed the Social Services Centre of their claims. We proposed that the Centre carefully study the matter and consider all the circumstances of significance in determining what is in the ten year old girl's best interest. Furthermore, we urged them to consider her wishes to the greatest extent possible and send us a report with an emphasis on the explanation as to why the girl's staying with her grandparents would not be in her best interest. We initiated contact with the girl, her grandparents and the Centre on several occasions.

The girl was always very reasonable at the interviews. She was concerned and called us several times. During interviews, she always clearly stated her opinions and provided sound arguments. She is convinced that this would have been in accordance with her parents' wishes, as they would always leave her in the care of her grandmother and grandfather when they were away and during holidays, and never with her uncle. Her parents knew that that her grandparents loved her very much and that they had time for her. She proposed that the Centre grant them a one-year trial period, after which she could always be placed in her uncle's care if something were to go wrong. Her proposal was sent to the Centre. We recommended that they help the little girl by actively involving her in the process of finding an appropriate solution.

After several months of studying the matter, following completion of the procedure determining the circumstances of the case, the Social Services Centre decided that the girl should remain in the care of her grandmother and grandfather while the uncle would be appointed as the child's legal guardian. The little girl was overjoyed to be allowed to remain with her grandparents. She thanked the Ombudsman's office for their assistance and actions on her behalf, and expressed a wish to remain in contact. **11.3-16/2005**

77 – UNEQUAL TREATMENT OF SECONDARY SCHOOL PUPILS WITH SPECIAL NEEDS

We received a letter from a headmistress of a secondary school in connection with the provision of education to secondary school pupils with special needs. She pointed out two problems: firstly, the quotas for the number of pupils enrolled in vocational qualification training classes, since a lowering of the quota has not been foreseen for these curricula; and secondly, the (lack of) guidance for pupils with special needs enrolling in study programmes geared towards obtaining technical or vocational secondary education degrees after finishing elementary vocational training. We requested an explanation of the matter from the Ministry of Education and Sport.

In response to the question regarding the quota for the number of pupils enrolled in vocational qualification training classes, vocational courses, Matura exam courses, the competent persons informed us that no lowering of the quota has been foreseen. The secondary school pupils had already obtained their first vocation, and they could enrol in further educational programmes without adaptation. They held a similar position on the issue of guidance for young people with reduced intellectual capacities. Pursuant to Article 10 of the Rules on the Organization and Methods of Work of Commissions for the Placement of Children with Special Needs and on the Criteria for Determining the Type and Degree of Disadvantages, Impairments and Disabilities of Children with Special Needs, educational programmes with adapted methodology and additional professional assistance are only available for children who are blind and visually impaired, deaf and hard of hearing, and for children with linguistic disorders, mobility impairments and borderline reduced intellectual capacities, children with deficiencies in certain areas of study and children with personality and behavioural disorders. Children with mild, moderate, pronounced and severe mental disorders may not enrol in these programmes.

This opinion is based on applicable regulations and is disputable from the perspective of ensuring and protecting the right to education, which is protected as a fundamental human right under various international treaties, for example Article 26 of the Universal Declaration of Human Rights, Article 2 of Protocol 1 to the European Convention on Human Rights and Article 28 of the Convention on the Rights of the Child. The right to education comprises all levels of education, not only the elementary school level. The first paragraph of Article 28 of the Convention on the Rights of the Child requires signatory states to provide children with compulsory elementary education free of charge, encourage the development of different forms of secondary education, including general and vocational education, and make higher education accessible to all on the basis of capacity by every appropriate means. Because the state is bound to ensure equal opportunities for all, it must create equal opportunities in education, acquisition of knowledge and information. Because reduced pupil quotas, adapted methodology and additional expert guidance for young people with mild mental disorders would actually constitute the only effective positive measure to balance out their deficiencies, impediments or disorders, the current solutions provided under applicable regulations are discriminatory. This situation places a group of children with special needs in a discriminatory position, since there are certain positive measures available to other groups of children, enabling them to obtain educational degrees on a higher level than the elementary education level (e.g. technical aids for the blind and the deaf, or sign language interpreting for the deaf, provided under the Act on the Use of Slovenian Sign Language). We informed the complainant and the Ministry of Education and Sport about our opinion, but we have yet to receive a reply. **11.4-7/2005**

78 – THE PROBLEM OF BRŠLJIN ELEMENTARY SCHOOL

In a telephone conversation at the end of January, the headmaster of Bršljin Elementary School informed the Ombudsman about the growing intolerance of inhabitants of the school's district aimed at members of the Roma community. Parents of children of Slovenian nationality began to voice their protests against educating Roma children at this school, on account of their number being too great. Statistics show that in the school year of 2004/2005, 624 were enrolled in the elementary school, of which 84 were of Roma nationality. In the beginning of March, the Ombudsman had a telephone conversation with a representative of the Roma community, who informed him of preparations being made for public protests. The parents of Slovenian children in the Local Community of Bučna decided that they would no longer send their children to school while it was frequented by so many Roma children. The headmaster informed the competent municipal authorities and the Ministry of Education and Sport, which decided to become involved in the situation. In a short time, a proposal of the implementation model of education was prepared in cooperation with the school and was immediately put into practice. Because of different public interpretations of the educational model, we requested that the Minister provide a clarification regarding the planned solutions from the perspective of applicable law, since it was unclear in which classes, with what school subjects, and in what manner the educational process would be implemented. It was also unclear when the conditions for its implementation would be ensured and what the anticipated time frame for the proposed solution was. Furthermore, the Ombudsman advised the Minister about the provisions of the regulations on the basis of which, separation of pupils into different study groups would be carried out. In this context, he argued that the formation of study groups different from the basic homeroom study groups can only be implemented on the basis of results achieved in study examinations, which means that study performance is the only applicable criterion – however, the wishes of the pupil and the active advisory role of the school and the parents should also be taken into consideration. If special study groups are created on the basis of personal circumstances, this constitutes a violation of the Constitution.

We also made inquiries at the school. The answers were somewhat vague and ambiguous, failing to provide an appropriate explanation, therefore the Ombudsman decided to hold a press conference to present the issue to the public. The media were sent the materials which contained two key considerations:

1. We believe that there is no legal base to hold classes in the manner described in the media.
2. On the basis of available data, we can establish that the proposed Implementation Model of Education at Bršljin Elementary School is not in line with applicable regulations, as it does not meet the required conditions regarding the subject matter and the manner of its adoption.

In April 2005, we received a courtesy copy of a letter sent to the Minister by highly esteemed higher educators and education experts, informing him that the implemented model is in contravention of professional standards and in violation of the law. In response, we pointed out certain facts that the competent authorities should not ignore when considering their decisions. Several expert studies dealing with the education of Roma children have been prepared in the past, one of which was the Strategy for Education of Roma in the Republic of Slovenia, adopted by the relevant councils of experts in May and June of 2004: The National Council of Experts for General Education, the Council of Experts for Adult Education and the Council of Experts for Vocational and Professional Education. The strategy provides a good basis for preparing and adopting a national action plan. In light of the pressing issue, we requested a progress update on the action plan and its expert solution, complete with a specification of implementers and deadlines for individual activities. This would constitute the practical operation of the strategy.

In the second half of May, the Minister explained that he had appointed a special committee with the task of preparing and monitoring the implementation of the action plan. He also secured the funding required for the committee's work and the launch of the programme. The abovementioned committee's task was to monitor the implementation of the Strategy for Education of Roma in the Republic of Slovenia and report its findings to the Ministry on a continuous basis.

We made additional inquiries at the school after the start of the school year 2005/2006. Our aim was to get an evaluation of how the educational model introduced in the preceding year affected the educational process.

In its reply to our inquiry, the school pointed out that the Proposal of the Implementation Model of Education at Bršljin Elementary School was a fundamental document providing the entire basis of work and life in the school. This model, whose purpose was to increase overall study performance of pupils through effective educational activities, was launched in the school year 2005/2006 as an innovation project. In terms of content, the model introduces teaching methods and activities designed to achieve optimal development of each individual pupil. In the practical sense, it provides expert assistance for individual pupils or groups, and supplemental study activities for pupils who require special attention. The school devoted special attention to providing additional expert training for teachers and other expert workers, with a special emphasis on the constant and repeated analysis of the problems appearing in the communication between expert workers and the pupils and their parents. The project is under appropriate expert supervision and is being implemented in cooperation with an external consultant. We found no apparent signs of segregation of Roma children on the basis of their ethnic origin at the school. However, a number of critical remarks have been noted with regard to the slow response times of competent authorities, both on the national and local levels. The policy of the Strategy for Education of Roma in the Republic of Slovenia is not being fully implemented. According to the school, responsibility for some of these problems lies with the Roma community, since their greatest problem is their attitude toward education. This involves truancy by Roma pupils, often resulting in insufficient knowledge and command of the subject matter and difficulties in these pupils catching up. According to the school's assessments, the reasons for the pupils' truancy vary. One of the reasons is a greater incidence of disease among these children due to poor sanitary circumstances in their settlements. They believe that the competent services (healthcare and social services) should better coordinate their efforts on the field and take necessary action. Another problem is the enrolment of Roma children in nursery school, which would involve a systematic effort to comprehensively integrate the Roma people into the social and educational environment. In the school's opinion, this would be the only way for children from Roma and Slovenian ethnic backgrounds to become familiar with each other's cultures and languages at a very early stage. It would also help Roma children to learn the language spoken by the majority population, which would significantly facilitate integration in elementary school and gradually improve the attitude of the Roma community towards education and the school system in general. Another problem lies in ensuring the systematization of a sufficient number of Roma assistants so that they can become involved in the educational process. At the moment, there are no candidates in the Roma community with at least completed secondary school education able to obtain the necessary pedagogic knowledge and skills to become involved in the educational process and activities through additional training. Currently, there are two Roma assistants employed at the school. One is employed as a pupil progress advisor, and the other is employed as a family liaison consultant tasked with communications between the Roma settlement and the school. **11.5-1/2005**

79 – POOR TREATMENT OF A PUPIL BY A TEACHER

At the start of a school lesson, a physical incident between two pupils (a girl and a boy) attending the 8th year of elementary school erupted over the seating order. The teacher present, their homeroom teacher, intervened. The teacher's intervention resulted in minor bodily injury to the young girl, although this was not apparent immediately after the event of that morning. The girl's parents described the teacher's actions as inappropriate and violent. They reported her to the police on the same day and demanded that the headmistress initiate disciplinary action against the offending teacher.

The complainant (the mother of the injured girl) sent us a courtesy copy of the complaint which she had addressed to the elementary school council. She expected that the council would consider the complaint and resolve it by unambiguously condemning violence in the school. They turned to this body because the headmistress had not initiated proper sanctions against the teacher based on her unprofessional conduct. She explained to the parents that disciplinary procedures no longer existed and that there was nothing she could do.

The parents also sent the complaint to the Ministry of Education and Sport and the Inspectorate of the Republic of Slovenia for Education and Sport. The parents reported the teacher to the police for the physical and verbal violence she had inflicted on their daughter.

After the parents' complaint, a school meeting was called with the parents and 8th grade pupils, and the first item on the agenda was the crime report against the homeroom teacher. Soon after the meeting started, there was a clash of opinions between the affected parents and parents of other children, which led to a verbal dispute and a subsequent physical conflict, which required police intervention.

We urged the competent authority, the Inspectorate of the Republic of Slovenia for Education and Sport, to send us a report on their findings and actions taken regarding this issue. We also demanded a full report on adopted measures from school representatives.

Upon receiving the reply from the Inspectorate, we decided that their response was prompt and proper. The Inspectorate concluded the procedure a good two months after the complaint had been lodged. In an extraordinary inspection procedure, measures and deadlines were set for the elimination of found violations of regulations, and the headmistress was required to prepare a full report for the Inspectorate.

We found several errors in the response and actions taken by the school, as described by the headmistress. In the dispute between the pupils, the teacher was required to take action and separate the youngsters in order to prevent potential physical violence between them. Apparently, she used too much force in her intervention, causing injury to the young girl. It is unfortunate that the teacher had not detected the tension caused by the seating order at an earlier juncture, even though the dispute had started as early as the start of the school year, and it had been brought to her attention. It was inappropriate that the school did not act on the pupils' violation of their duties and disturbance of school order in accordance with the provisions of the Rules on Duties and Obligations of Pupils in Elementary School, which foresees special educational sanctions. It was inappropriate to call a school meeting with parents and children, where the first item on the agenda involved the discussion of the parents' criminal report against the teacher and where the rest of the school agenda would be considered in the second part of the meeting, which never came. In light of the proposed agenda, a heated discussion could have reasonably been expected about a matter that was completely unrelated to topical school issues. The calling of the school meeting was therefore unacceptable. The persons presiding over the meeting (the homeroom teacher and the headmistress) acted irresponsibly by allowing the incident to happen between the parents of other pupils and the injured pupil's parents, so that police intervention was required. This reflects poorly on the school as an educational institution. We informed the headmistress about our findings. **11.7-8/2004**

80 – DISCRIMINATORY LAW ON PARENTAL PROTECTION AND FAMILY BENEFITS?

The complainant proposed that we check the provisions of the Parental Protection and Family Benefits Act and take necessary action because the Act discriminated against the fathers of children born prior to its coming into force. The alleged discrimination lies in the fact that the Act does not grant equal rights to all fathers but only to those who had children after its coming into force.

Although the complaint was obviously unsubstantiated, because discriminatory treatment could not be established on the basis of new legislation, we explained to the complainant that discrimination in terms of the law was not always negative and prohibited. It is only prohibited when it treats identical cases differently. In the specific case, the Act introduced new rights which were not foreseen under the previous legislation or provided for in a different manner. The fundamental rule in law is that any regulation applies from the day of its coming into force onward. It can also have an effect on relations still undergoing decision procedures on the day of the regulation's coming into force, which is usually explicitly specified

in these regulations. If the legislator deems it appropriate, a law may grant rights retroactively, however this must be specifically provided for in the law, or else the state authorities bound to uphold the law under the Constitution, would never be able to know to what extent the law grants individual rights. This situation would result in arbitrary decision and *de facto* discrimination of citizens.

The Parental Protection and Family Benefits Act came into force on 1 January 2002. Since that date, all newly born children and their parents enjoy the rights specifically granted under the Act. These rights apply equally to all eligible persons in the same position, i.e. for all men who became fathers after 1 January 2002. There is no discrimination involved here because the law applies equally for everyone. It does not, however, have an effect on rights prior to the time of its coming into force. By the very nature of things, each new regulation constitutes a milestone, or a breaking point up until which the old regulation applies and after which the new one comes into force. It is left to the legislator's discretion to decide which rights to assign to which group of beneficiaries. In this context, we should mention that we would face identical issues even if we tried to regulate the rights for the time prior to the regulation's coming into force: where is the limit and what is the criterion for the granting of the right – is it the child's age or the very fact of fatherhood?

For the above reasons, the Human Rights Ombudsman disagrees with the claim that the provisions of the Parental Protection and Family Benefits Act are discriminatory. Furthermore, we explained to the complainant that he was entitled to lodging a constitutional complaint with the Constitutional Court of the Republic of Slovenia to assess the constitutionality of this Act. We have yet to receive feedback about further action taken by the complainant or about his (dis)satisfaction with our response. **0.1-7/2005**

81 – RIGHT OF CHILDREN TO A VEGETARIAN DIET IN SCHOOL

The president of a non-governmental organization asked the Ombudsman to state his position on meat-free diets and various forms of vegetarianism, especially with regard to rights of the child. In our reply to the complainant, we responded that one's choice of diet is not a human right which should be enforced in court, but rather a personal choice which all others should respect by not forcing the person in question to indulge in a diet which he or she personally rejects. However, it is not the duty of all social subjects 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 their right to choose and the right to be different. Only if an individual subject demanded certain action (in this case a specific diet) which was contrary to the individual's personal, religious or other beliefs could this be classified as a violation of human rights.

With regard to children's rights, we should point out the provision of Article 14 of the Convention on the Rights of the Child, under which signatory states shall respect the right of the child to freedom of thought, conscience and religion, where parents have the right and duty to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child. With consideration to this principle, we believe that parents should heed the advice of professional nutritionists about maintaining the child's balanced diet which will ensure proper development and growth. We leave the question of whether a vegetarian diet meets these criteria to the nutritionists.

We also received a petition for the Ombudsman to propose a change of legislation regulating children's nutrition in elementary and secondary schools in the sense that the right to a vegetarian and vegan diet is specified separately. We did not accept the petition because we believed that there is nothing to prevent this kind of diet under the applicable law. All three laws which deal with this issue (Article 57 of the Elementary School Act, Article 37 of the Gimnazije Act and Article 59 of the Vocational Education Act) only require the schools to provide at least one meal per day for all pupils and students. The meagre legal wording, almost identical in all three laws, states that the actual fulfilment of the requirement is left to individual schools, which are also bound to respect the needs and desires of children and youngsters in this regard,

pursuant to the Convention on the Rights of the Child. We have no knowledge of how schools fulfil the statutory requirements in practice. However, we believe that schools are required to provide meals adapted to the child's wishes and needs under the above laws themselves, and therefore we see no need to supplement any subordinate regulations. Any specification of norms poses the danger of non-regularization of certain issues, which can constitute a violation of rights in and of itself. Limiting the norm only to vegetarian and vegan diets (as proposed by the complainant) could result in *de facto* discrimination of children who wanted their diets to be adapted due to their cultural, religious or other circumstances. Therefore we believe that it would be more appropriate to include a norm in the rules as executive regulations, which would require the school to adapt the nutrition of all pupils to their wishes, which would be in line with the expert guidelines regarding a healthy diet, of course. **0.4-2/2005**

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