Republic of Slovenia

# Annual Report 2006

HUMAN RIGHTS OMBUDSMAN

Republic of Slovenia

# Twelfth Annual Report

Ljubljana, December 2007

HUMAN RIGHTS OMBUDSMAN

# Foreword by the Human Rights Ombudsman

At the beginning of my mandate on 22 February 2007, the former Human Rights Ombudsman, Matjaž Hanžek, symbolically handed over a draft of the Annual Report of the Human Rights Ombudsman for 2006. At that time, we agreed that the report should remain entirely as prepared by colleagues during the period of his mandate and that I would not intervene in it.

I would however like to highlight the following areas of the report:

## ANNUAL REPORT 2006 – HIGHLIGHTS AS SELECTED BY THE OMBUDSMAN

### Children's rights

This is an expansive area of work, which often publicly focuses on the debate about whether a special ombudsman for children's rights is required. In reality, the realisation of children's rights is associated considerably more with the foreseen work of (regional) advocates who would be accessible to children and at the same time be autonomous and professionally qualified. Clearly, these advocates represent merely a portion of the aid the state should ensure to children.

We lack suitable legislation for ensuring the more effective arrangement of family relations and decreasing domestic violence. Foster parents should also be given the opportunity to become the custodians of a child, and their position in their relationship to the state should be more completely addressed. The obligations of parents whose children have been removed by law should also be addressed. We believe that the existing verification of the grounds for extending the residence of children in institutions is insufficient.

We find that the state with its regulatory process protects the adult to a greater extent than the child in individual cases. We are collecting data on how the state protects those parents displaying power through the restriction of contact to the other parent, as well as to expert workers, judges, authorised persons, experts, etc. The burden of all such irregularities is borne by the child. The state must thus obligate the competent minister and professionals to move away from unfruitful determination of competences towards cooperation in the resolution of cases, earmarking funds for this end. Greater affiliation and more effective participation of institutions and professionals must be attained through legislation.

### Education

The relationship between teachers and pupils is most often criticized in education, especially in elementary and secondary education. Also alarming is the too rapid modification of legislation and inappropriate notification of all involved in the foreseen changes.

### Health

In the process of preparing the announced laws (on mental health, patient rights and medication), we caution of the excessive delays and insufficient or aggravated participation of the public in the preparation of such documents.

### Rights of national groups

In addition to Italian, Hungarian and Roma groups, representatives of the German-speaking population and members of the former Yugoslavia's ethnic communities are also striving for their rights.

### Labour law

The obligations of employers with regard to the active protection against harassment (not only sexual but also other forms thereof) of employees in the workplace and more suitable regularisation of questions involving the employment of disabled persons must be defined by law.

### Justice

In addition to the Ombudsman's ongoing cautioning of judicial delays, we at this time particularly caution of the overpopulation of prison facilities and the execution of police custody and the associated deterioration of living conditions in detention centres and prisons. The living conditions of detainees and convicts are difficult as are the working conditions of prison guards and other professional staff. The staff of such institutions are heavily overburdened, a fact which also affects security conditions.

The decision of the European Court of Human Rights in the case of Matko vs. Slovenia (2 November 2006) reproaches Slovenia for abusive treatment by the police. This case gives a lesson particularly in the negligent, superficial and incomprehensibly uninterested treatment by the state prosecutor and judges in the selection and assessment of evidence so as to decisively determine the actual situation.

### Judicial psychiatry

The appropriate implementation of security measures regarding psychiatric treatment and protection in health institutions is not enabled since Slovenia does not yet possess a forensic psychiatric hospital. Conditions for the suitable implementation of measures of mandatory psychiatric treatment do not exist in ordinary psychiatric hospitals and neither does psychiatric treatment of persons serving time in prison or detention. The current procedures of the Justice and Health Ministries provide little hope that this problem will be resolved in the long-term.

### Police

The police must ensure the right to autonomous investigations in cases of alleged torture or inhuman or degrading treatment by law enforcement agencies. Similarly, we feel that the police should more carefully listen to the individual alleging a threat from another person. The police should not wait for an attack on a victim, for even in its preventative role it is bound to take prompt and effective action.

### Erased persons

The decision of the Constitutional Court U_I-246/02-28 of 3 April 2003 has not yet been enforced. This is an unacceptable situation and causes damage to erased persons in Slovenia as a state governed by the rule of law. Complaints from erased persons continue to arrive at the address of the Human Rights Ombudsman.

### International agreements on social security

The number of complaints from citizens of Bosnia and Herzegovina who unsuccessfully validated their rights at the Pension and Disability Insurance Institute of Slovenia stemming from pensionable service attained in Slovenia increased in 2006. Their demands were rejected since no valid agreement on social security existed between the two countries. Since these regard older, ill and disabled former insurants who had paid contributions to the Slovenian Pension Fund for a considerable number of years, the undue delay in the procedure is unacceptable.

### Discrimination

The number of cases regarding discrimination increased as did the preventative action of the Human Rights Ombudsman through the implementation of the project *Let's Face Discrimination*. The latter should contribute to a decrease in discrimination. A special report will be prepared regarding the state of the project.

### Environment and spatial planning

Complainants turned to the Human Rights Ombudsman most frequently due to the irresponsibility of the National Environment and Spatial Planning Inspectorate and dissatisfaction with its work and decisions. An especially burning problem was the acknowledgement of the status of the accessory participants in the inspection procedure.

## VISION OF WORK OF THE HUMAN RIGHTS OMBUDSMAN

**Violence** is an occurrence which at least in the first portion of my mandate will represent the focus point of my work. I desire thereby to contribute to highlighting this occurrence from various angles of view, especially the view that the concealment of and conviction that violence in our society is not a serious problem. This does not merely regard domestic violence, but violence in all areas of our lives, thus also in schools, the workplace, traffic, at parties and even in sports. The occurrence of the aforementioned must be examined thoroughly and monitored until serious efforts are made for its decrease. It should be thoroughly investigated among vulnerable groups, namely children, the elderly, women and the handicapped, and on the basis of findings from studies, appropriate legislation should be prepared.

In the past four months, I became acquainted with numerous cases in which the **rights of children, the elderly, patients and the handicapped** had been violated. Each case is a story in itself where the person is deeply affected, inciting him/her to the search for a solution. One such solution is the idea of joint

**advocacy** which could be organised in the form of regional offices so as to be accessible to all the aforementioned. What is important is that such advocacy be autonomous, thus independent and possess a high level of expertise - which among other things means that it must possess stable financing for its work. A pilot project for child advocacy will be carried out in 2008. If the state also enabled pilot projects for aid to the elderly, patients and the handicapped, the matter would become even more transparent and useful in the preparation of legislation.

I have also become increasingly more acquainted with the violated rights of individuals in the **judicial system**. On one hand, these regard court delays which I hope will decrease considerably in the upcoming years. On the other hand, these also regard more important but at the same time, extremely subtle issues. From discussions with complainants, I have been establishing that the trust in our judicial system has swayed for a number of reasons. For example, with almost unlimited appeals, the effects of court work is practically destroyed (with regard to property matters) or in the wait of a final judgment, irreparable consequences occur (regarding child custody, treatment of sexual misuse).

A special story is associated with **the erased**, not only regarding the recognition of their status, but even more so their incapacity to arrange their lives or important matters connected to their existence. The fact that we hear of this situation rarely, unfortunately means that they have lost strength, funds and hope to resolve their problems. The decision of the Constitutional Court must be enforced quickly as possible.

The authority and work of the Human Rights Ombudsman are defined by law, thus it is possible to only implement changes within the foreseen methods of work. Thereby, sufficient possibilities exist for a **thorough consideration of complaints**, the analysis thereof and for measures which can be carried out in response (for example, the more active role of the Ombudsman in submitting requests for the review of the constitutionality and legality of regulations, and submission of constitutional complaints with the Constitutional Court). The reasons for the slight decline in the number of complaints for a number of years (as also observed by European ombudsmen) must be determined. Based on the consideration of cases, a great number of things have undoubtedly improved, especially in cases where the complainants were healthy adult persons. However, a large grey area remains regarding the violation of human rights of children, the elderly, the ill and the handicapped. The aforementioned are for various reasons unable to prepare complaints therefore other ways for determining violations of human rights occurring in these groups of the population must be sought. The introduction of advocates could represent one such solution.

The Human Rights Ombudsman will continue to actively participate in the improvement and **preparation of legislation**, especially in areas related to the protection of human rights. The situation shows that the participation of interested publics in the legislative process must be regularised by law.

**Raising public awareness** (or the awareness of specific groups of the population) regarding the protection of human rights is the constant task of the Human Rights Ombudsman, a task which is realised via a number of channels: through annual reports, special reports, newsletters, other materials (written, oral, Internet), public appearances and guest appearances at various institutions (schools, institutes) and

groups. It would be sensible in the future that habilitated colleagues of the Human Rights Ombudsman also be included in full-time study programmes at faculties qualifying their students for work with people.

I see **cooperation with state institutions** as one of my key tasks. Although the Ombudsman must monitor their operations, I feel that it would be equally beneficial to exchange opinions (for example at sessions of the commissions and committees of the National Assembly and National Council, at the meetings of ministers) and organise joint action at professional conferences.

The Human Rights Ombudsman's cooperation with **non-governmental organisations** has a long tradition which I will continue and expand during my mandate, particularly with those operating in areas I see as beneficial (children, the elderly, the ill and the handicapped).

Pursuant to the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Human Rights Ombudsman of the Republic of Slovenia is additionally authorised to **carry out supervision** over institutions in which movement is restricted (prisons, detention centres, detention rooms, psychiatric hospitals, retirement homes and special institutes). Supervision is also being performed according to a timetable.

Regarding the internal organisation of work, greater emphasis will be placed on teamwork (the formation of teams, less strict classifications by area), introduction and use of the CAF model of excellence, preparation of defined projects and cooperation with external professionals and experts. Several changes are also foreseen regarding cooperation with the media.

There are also several open **dilemmas** for this six-year mandate. Among the first is the question of how to maintain the Human Rights Ombudsman's autonomy and independence. This regards the preservation of autonomy when nominating candidates for deputies (as agreed upon with parliamentary groups and other interested parties) and also the question of financial resources – both for the work of the Ombudsman and for salaries which in my opinion were unjustifiably decreased with the adoption of the Salary System in the Public Sector Act. I believe that this does not involve any significant savings to taxpayers (for this only regards a maximum of four deputies), but simply that the status and power of the Human Rights Ombudsman of the Republic of Slovenia and its deputies has decreased. A similar question arises alongside the suggestions of the Ombudsman for individual areas (children, patients, viewers, etc.) where the level of realisation of rights could be improved in another way.

An important question is also when and how the Ombudsman should respond to politically sensitive topics. These are many times associated with the realisation or violation of human rights. Whenever my colleagues and I assess that violations have occurred or human rights are threatened, I will take action in connection to this. This is the method of work which I carried out in the first months of my mandate and which I intend to also follow in the future.

**Dr. Zdenka Čebašek-Travnik**
Human Rights Ombudsman

# Introduction

The twelve years of existence of the Institution is a reliable sign that it has successfully established itself in society. Even more so if the nature of its work is by definition "vexatious": the Constitution and the legislation frame its work as the supervision of authority. There is no authority which could resist the temptation to either expand its power to areas in which it has no competence or avoid work which it must perform. Occasionally, this is done consciously, while frequently, it is merely a consequence of the negligent or indifferent work of an individual official. Whatever the reason, the consequences are felt by citizens who from the perspective of authority are frequently only insignificant players within the immense objectives and tasks set by politicians. And the Human Rights Ombudsman is that player within the organisation of power for whom those "insignificant" players are of central concern. In his eyes, the roles in society are inverted: the central position is assigned to the individual, his/her rights and his/her welfare. The work originating from such an inverted role reliably leads to conflicts with authority. The nature of these conflicts, how they are resolved and how they echo in society is primarily dependent on the political culture of authority: how it acknowledges the supervisory role of individual institutions and to what extent it is willing to change its attitude. Unfortunately, we too often observe that the political culture in Slovenia, at least regarding the acceptance of supervisory institutions is quite low.

The twelve years of existence of this institution also means the end of the second mandate of the Human Rights Ombudsman. Both periods, although differing somewhat in appearance, represented a uniform path to the institution's development into an important co-actor in the social processes in Slovenia. During the mandate of the first Ombudsman, Ivan Bizjak, the institution was established, its scope of work defined and its organisation set up on solid foundations so that in the second mandate period, we needed only to reinforce and continue the planned work. Not only in the organisational and technical sense, but also in the contextual sense. This is evident if we merely read about the Ombudsman's positions on several problems which were covered in the first reports a decade ago and still remain open: erased persons, mental health and integration of the Roma people. I can say that in the twelve years of its work, the Institution displayed a continuous path to reinforcing its significance in society and in the organisation of the state. In the last six years, we did what we could and knew how to, learning from actual situations, although perhaps we would have done some things differently if we had had the knowledge then which we obtained through time. However, that is the price one must pay.

Nevertheless, I can state that the Human Rights Ombudsman institution has met the expectations of people, especially the Slovenian population. Thus I am convinced that this twelfth report does not merely conclude an era, but also lays down a new path, contents and manner of resolving problems regarding human rights in Slovenia.

**Matjaž Hanžek**
Human Rights Ombudsman

# Contents

# 01 Assessment of the situation

The second mandate of the Human Rights Ombudsman concluded with the report on the state of human rights in Slovenia for the year 2006, thus at least a few words should be directed at the problems which have been recurring for quite some time. The state is gradually changing the system; however, several problems were unjustifiably dragged out through practically both mandates. Here, we should particularly emphasise one of the greatest problems faced by Slovenian society, a problem which has also crossed state borders, one which international institutions for the protection of human rights have also been dealing with: erased persons. Already in the Ombudsman's first annual report of 1995, we stated the following:

*"Practically all criticize the implementation of the transition to the status of aliens which was carried out through the erasing of permanent citizens from the register without notification and the frequent brutal seizure or destruction of personal documents (identity cards, passports, driver's licenses) without carrying out the proper procedure or any act published or at least suitable explanation and instructions issued. As a rule, the termination of the employment relationship followed.*

*Complaints are being received regarding procedures for the issue of permanent and temporary residence permits, in which many fail to understand why they needed to arrange matters regarding residence at the address they had been living at for a decade. They feel it unfair to have found themselves in a less favourable situation than aliens with permanent residence permits in Slovenia issued pursuant to previous legislation, which, pursuant to the Law on Aliens, allowed them to maintain this status even following Slovenia's independence. As a result of their loss of employment, they cannot prove they possess adequate means of sustenance, without the evidence of which they cannot acquire a residence permit.*

*Those who are unable to acquire documents from "their" native countries face a special problem for they are not considered citizens in their countries, which due to war or other reasons did not issue documents to certain groups of persons. They cannot arrange such matters in person since due to the deprivation of their Slovenian documents they cannot travel abroad. They find it illogical to persevere for a foreign passport at any price if the previous one was issued in Slovenia, and if this regards a person who feels no affiliation with a foreign country, and are especially agitated that the fictitious permanent address in the foreign country needs to be visible in their passports. The same applies for certificates regarding the non-conviction of a criminal offence from a region where the applicant never lived."*

From this excerpt, we can perceive the atrocity of the situation the erased found themselves in. Even then, their treatment by the Slovenian authorities was labelled as "brutal" by the Ombudsman. Instead of humane settlement of the problem (e.g. the issuing of temporary identity cards as implemented by less cruel western countries), they simply destroyed the documents of some, placing them in an irresolvable position of going in a circle. The Ombudsman had already condemned such violation of human rights in 1995, twice demanding from the Constitutional Court the settlement thereof pursuant to law and the Constitution, with international human rights institutions (Council of Europe's Commissioner for Human Rights, ECRI, etc.) also condemning such action; however, in 2006, politics still resisted the only legal solution: observance of the decision of the Constitutional Court.

A similar situation also exists regarding several other problems: integration of the Roma people and legislation on mental health and domestic violence. Many cases exist which are unjustifiably drawn out over a number of years, without real will for their resolution although the solutions would often be quite simple if only political will existed. As an illustration, let us state that the National Assembly upon their deliberation of the Report of the Human Rights Ombudsman for the Year 2005 rejected the recommendations for the regularisation of the status of the erased and integration of Roma communities.

Such violations of human rights continued into the year 2006. A statement made by Miha Brejc, member of the European Parliament and significant official of a governmental party, regarding the arrangement of the golf course in the cultural and naturally protected area of Lipica displays the relationship governing politics has to democracy, the rule of law and human rights. In response to the conflict in which experts desired to prevent the intervention which would negatively change the identity and intended use of the protected estate of Lipica Stud Farm and politics which desired to construct a golf course at the cost of the environment, he stated that civil servants do not exist to think with their heads but to act as required by the profession so as to carry out decisions made by the Government. "It would be wise if those in Slovenia gradually understood that if the Government decides something, this is a decision of the Government and civil servants are obliged to think of how to realise the decision and not to act in opposition to it. If they desire to polemise with the Government, they should run at the elections and acquire a mandate!" It is true that civil servants must realise the Government's decisions, but not in opposition to the law and Constitution. This conflict ended with the loss of employment of the expert who insisted with the findings of the profession. Similar conflicts also arose in other areas where the executive branch of the Government desired to subordinate other branches of power, professional and research institutions, the media and the civil society. Thus last year, we monitored a number of conflicts in which the executive branch of Government did not recognise the autonomy of several other institutions. Among them, we can mention the disputes between the Government and President of the Republic in connection with the President's work abroad and his autonomy in the nomination of candidates for various functions within the state. A similar dispute arose between the Prime Minister and Human Rights Ombudsman who had notified the Council of Europe's Commissioner for Human Rights about the unacceptable and illegal actions of the police and Minister of the Interior regarding the violent displacement of a Roma family from their home. Incidents between the executive branch of power and journalists due to the politics' desire to subordinate the media occurred continuously, as a result of changes to the legislation, replacement of the members of management boards and the like. Pressure is being implemented on the Constitutional Court, which several politicians have continuously and unreasonably accused of partiality, thus undermining its authority. In state administrative offices, we are noting increased pressure on employees and unexplained replacements, especially of persons who are not favoured by the new Government. Another attempt at preventing supervision can be recognized in the attempt to terminate the anti-corruption commission, which would be replaced by a commission in the National Assembly, whereby its members would assume supervision over themselves. Here we should specifically mention the practice of the non-execution of decisions of the Constitutional Court with executive and legislative branches frequently criticising its decisions instead

of executing them as is the practice of the rule of law. Such action throws a bad light on the functioning of a democratic rule of law, decreases the authority of all branches and results in distrust and fear among its citizens.

Furthermore, non-compliance with the Constitutional Court is reflected in the evasion from executing its decisions. Thus, at the end of 2006, there were **13** decisions which had not been executed in comparison to five in 2004 and ten in 2005. There are two among them which the Ombudsman has been cautioning about unsuccessfully for a number of years: the law on mental health and the law on erased persons. Regarding the former, politics is evading its annual promise to prepare and adopt a law which would regulate the area of mental health at the end of each current year, however one is never prepared. It would probably not be redundant to repeat the report from the year 2003: "For the sixth year running now, the National Assembly has not found the time or inclination to set in law the area of mental health; it would appear that political prestige is more important than help for marginalised people." At the time, we wrote that only the number of years had changed from the previous year, namely to seven. This year, we can unfortunately already 'celebrate' the tenth anniversary. Although the Constitutional Court had required from the National Assembly to remedy this shortcoming by the middle of 2004, it however still has not done so to date.

An even more deviant relationship to the Constitutional Court, rule of law and observance of human rights can be seen in the (non)resolution of the problem of the erased. While the executive and legislative branches pretend to be seeking a solution regarding mental health and several other pressing problems (domestic violence, representation of the child, etc.), drawing them out infinitely with reasons or without them, they reject all legal solutions in connection to the erased without explanation. Furthermore, the last year's statement of the Minister of the Interior even points to the fact that they would like to "resolve" the problem of the erased by denying it entirely. Such a pretence of ignorance is one of the most serious violations of human rights in Slovenia for which the immediate resolution pursuant to the decisions of the Constitutional Court was frequently required by various international institutions, which additionally points to the unacceptable attitude of Slovenian authorities to the rule of law and human rights. This is particularly unacceptable as the adoption of a fundamental law on the erased would not have any greater material consequences for the country, even though this should not be permitted as an excuse; non-compliance with the rule of law is always more expensive in the end. Not only from a material aspect but even more so as a loss of the respect and credibility of the state. As we have not found any rational explanation for such behaviour, the only plausible reason seems to be that governing politics continues to persevere in the irrational promises given to its voters during the elections for the National Assembly in 2004.

In that period, the opposition parties mobilised people through the ongoing creation of "emergency" situations and, particularly, resistance to the resolution of problems of various minorities. Let us not forget the various referendums held: on the erased, artificial insemination, construction of a mosque and similar. Particularly strong was the mobilisation of voters against erased persons in which numerous untruths and intolerant and disparaging statements were used: from the costs the regularisation of

their status would cause to the state and the taxpayers to the statements that the erased were in majority merely enemies of the state. From this originated the promises that these parties would prevent the only legal solution: observance of the decision of the Constitutional Court. These pre-election promises in addition to other irrational grounds, which most likely still exist, determine the behaviour of the currently governing politics.

Similar grounds also led to one of the greatest violations of the rule of law and human rights when state institutions subordinated themselves to the demands of the majority in Ambrus and illegally displaced the Roma Strojan family. Particularly unacceptable was the position of the Minister of the Interior who had promised demonstrators that the family would never return to its home. In this manner, he violated a number of constitutional freedoms, particularly those from Article 32 which guarantee the freedom of movement and choice of residence. The justification that the family had agreed to a (temporary) move is untrue for this decision had been coerced. This is also confirmed by the fact that during the entire time of their temporary residence in the refugee centre in Postojna, they were monitored and prevented from returning to their former home. During the period when the police prevented the family from returning to their home (for the reason of their own safety), the Municipality of Ivančna Gorica changed their temporary residence to Postojna, thus enabling the demolition of their dwellings. Although the dwellings had been constructed without a permit and illegally, the question nevertheless arises whether the demolition was indeed that urgent in the middle of winter knowing that there were several thousand similar buildings in Slovenia which were not demolished. The excuse that the buildings posed a threat to the water system also fails to convince knowing that in the same area, several settlements exist which also threaten the drinking water to the same degree if not even more so. Some ten illegal buildings also are located within these settlements which do not seem bother the authorities. Such a distinction – different treatment from the state in the case of Roma families and other non-Roma families – represents a classic case of discrimination. Here we should emphasise that punishment can be enforced only individually and only on those the court has proven to be guilty; children may not be punished for the eventual criminal offences or violations of their parents. In this case, this regards the group punishment also of children who are specially protected by the Constitution and the UN Convention on the Rights of the Child.

Here we cannot forget the bursts of intolerance against this Roma family and the Roma people in general. Even more than in these bursts of intolerance which are the result of the poor working of the rule of law in the past, and even more so of the irresponsible actions of some politicians who by expressing their hatred towards minorities amassed election votes, the problem lies in the erroneous and even illegal responses of state institutions to the bursts themselves. By this we mean the non-action and even support of the outpouring of intolerance. Upon the displacement of the Roma family and the search for a new permanent residence for them, four municipalities adopted illegal decisions prohibiting the placement of Roma people on their territories. These decisions are in any case illegal and probably even punishable for they encourage racial intolerance and discrimination. This is also evident in legal practice, for the court convicted representatives of a local community for a similar but less serious offence a few years ago. At the request of the Human Rights Ombudsman for the justification of these decisions, two

ministers replied with a lack of competence as did the Government Office for Nationalities. We now expect the state prosecutor to at least respond to the charges filed by the Peace Institute.

A similar non-reaction or delayed reaction arose in the case of the show Piramida aired on national television. The mere invitation to participate in the show, which is viewed by a great percentage of the population, extended to a politician who is known for his intolerant statements regarding minorities and particularly the Roma people, same-sex relationships, adherents of other Yugoslavian nationalities and others was incomprehensible. The management of the national television station should have taken into account a number of alleged criminal offences due to the incitation of intolerance in the past. However, all cares were thrown to the wind with the explanation that they did not involve criminal offences. Thus it is so much more incomprehensible that in this case, when the unacceptable statements were also condemned by the governing politics, the state prosecutor drew up an indictment in a matter of days. Here, the question arises why the prosecutor did not respond to one of the earlier appearances of the person in question. It is especially astonishing that a whole three quarters of the viewers supported the racist statements as appropriate!? This was merely the result of several years of nursing the public opinion whereby similar statements were not condemned and were, at the utmost, labelled as tasteless jokes. It is high time that politics realises that public opinion is also produced. Nursing intolerance with the use of several simple demographic stereotypical statements is much easier than forming a tolerant and cooperative society for which politicians as opinion makers are predominantly responsible.

We should caution here of the frequent perception held by both the population and several politicians that people deemed as problematic or politically incorrect do not possess human rights. The Ombudsman is also frequently the target of attacks, being reproached for protecting against illegal interventions the people who are supposedly criminals, traitors or somehow unworthy of his protection. We should emphasise that the task of the Human Rights Ombudsman is to protect each individual. The non-observance of the former has led to several attempts to obviate the institution or at least replace the Ombudsman. A number of methods were used: from the communication of false information on the work and private life of the Ombudsman to the misuse of parliamentary questions and accusations regarding the denunciation of the state abroad. The most disputable statements were the public ones made by the Prime Minister's Office whereby the Ombudsman was accused of unacceptably forwarding information abroad, demanding an apology by the Ombudsman to the citizens of Slovenia after notifying the Council of Europe's Commissioner for Human Rights about the unlawful conduct in connection to the removal of the Strojan family. These unjustified accusations and demands show that the executive branch of power or at least a part of it does not understand the democratic separation of powers, the role of domestic institutions in protecting justice and human rights nor the role of the international organisation of which Slovenia is also a member.

If we compare the previous year's situation with the Ombudsman's warnings in past years, especially the warnings issued in the last six years, we can observe that little change has occurred with regard to the warnings. It is true that the state is a rigid system which prevents rapid change of actions,

nevertheless there are several areas of human rights violations where the situation can rapidly be improved or at least show some improvement. Already in the Annual Report for 2001, we cautioned of civil servants' indifference towards peoples' problems, poor organisation and coordination of individual sectors and the deficiency of legislation, particularly executive acts. In the subsequent year, we added the bitter quote that "too frequently problems are resolved by utilising more energy for seeking obstacles which prevent the resolution of a problem than removing such obstacles." The Ombudsman's warnings were thereby too frequently seen as unnecessary complaining and interruptions to their work instead of being taken as an institution which aids in improving the system. This can also be seen in the non-response of several ministers to the Ombudsman's inquiries whereby we should mention particularly the Ministry of Labour, Family and Social Affairs and the Ministry of Health. We have observed that several items in public administration have improved, especially the establishment of the Ministry of Public Administration, however numerous problems still exist. This particularly applies when the urgent reconciliation of work of a number of ministries is required: we often have the feeling that some ministries are not a part of the same Government.

In the Annual Report for 2001, we wrote of a not too friendly finding, which is still valid and perhaps even more so in 2006, therefore we will repeat it: *The state exploits its power and arbitrarily changes the rules of conduct, often breaching the law itself. Its insufficiently decisive action over the protection of people from arbitrariness and its failure to punish those breaching the law causes mistrust and fear and, above all, uncertainty. In the recruitment and appointment of staff, and also in other calls for applications, we all too often observe that an important role is played in decisions by nepotism, personal acquaintance and above all the criterion of political appropriateness. Belonging to a specific party is often more important than professional expertise. This causes a negative selection, a reduction in professional standards and corruption.* This quote shows that things have not improved in some areas. It also repudiates allegations of the current leading parties and their members which accuse the Ombudsman of partiality: that he is critical of the current Government and more inclined to the previous one.

Legislation still represents a great problem, comprising not only poor laws or deficient executive acts, but also disputable adoption thereof for they too frequently fall victim to the trafficking of party interests. In the past year, we noticed several cases of preventing or hindering cooperation of the public in adopting laws, especially with regard to public discussions whereby the influence of the public and profession attempted to be restricted. Here we should mention the particularly unacceptable move of the Ministry of Culture which desired to know who had complained to the Ombudsman, reflecting not only to the lack of understanding of the Ombudsman's role but also at the lack of understanding of democracy in general.

We realise that many changes require time and cannot be validated overnight or within a year. Regarding such problems, the Ombudsman and, most likely, partially also the citizens would already be satisfied if goodwill would be displayed for improvement and a plan adopted for this purpose. Unfortunately, this does not occur often. The Government's even poorer readiness for improvement reflect problems whose solutions would not require a great deal of energy, financial resources or time,

however nothing changes. Or, the existence of problems is not even acknowledged; however, they are dragged out through the years as warnings and even as annual recommendations to the National Assembly. This includes the problem of the erased, integration of the Roma people, intolerant and hate speech particularly by politicians, the state's decision-making irrespective of the individual, domestic violence and rights of children.

Among serious problems which need to be addressed immediately and in the long-term and which are even more visible today, was the problem already mentioned in 2001, namely the question of discrimination. At that time we wrote that several groups of people, particularly marginalised groups, rarely sought the aid or protection of the Ombudsman. These groups comprise children, the Roma people, the poor and refugees. We established the cause to be inadequate acquaintance with their own rights, lack of knowledge or non-existence of complaint channels, fear of the consequences of a complaint and lack of trust in the society. So as to remedy these barriers and to ensure that all could freely seek help from competent institutions thereby being protected against the violation of rights, a specific degree of development of the democratic culture of society is required. Thus each year we have invested considerable effort into acquainting various groups of their rights and established departments for children's rights and discrimination which specifically address these groups. Special attention was directed at preventing domestic violence whereby children are the most frequent victims. At the same time, we constantly required the increased engagement of all governmental institutions, prepared a conference and a special report on this problem while the National Assembly repeated the recommendation on the urgency of adopting the law and strategies for decreasing the problem Unfortunately this law and this strategy do not exist yet. To increase the irony of the situation, the National Assembly upon their adoption of the Ombudsman's report for 2005 excluded this recommendation to the Government, diminishing the significance of this problem.

For the empowerment of other marginalised groups, a department to battle discrimination was also established in 2006 which carried out the semi-annual project *Let's Face Discrimination*. In cooperation with the Austrian Ludwig Boltzmann Institute for Human Rights and with the financial support of the European Commission, and a number of noted international experts on anti-discrimination, 17 workshops and seminars attended by over 500 people were held. Although the seminars were mainly intended for civil servants who are primarily bound to the elimination of discrimination, the majority avoided the educational seminars. Here we must mention the police as an exception, who, along with non-governmental organisations, were the only ones to take the project seriously.

This lack of awareness of the problem of discrimination and the role held by the state in its elimination is also reflected in the extent of this problem in Slovenia. Last year we namely monitored the escalation of hate or racial speech of politicians, which began intensifying prior to the 2004 election year. We should especially highlight the ignorant role of authorities bound to eradicate such criminal actions, especially the prosecutor's office – which rejected the majority of the complaints. The media also play a significant role in spreading racist speech. It seems that the majority of media realise their responsibility in establishing a tolerant society in which the human rights of each individual are respected, but

frequently however the desire for sensationalism prevails. The greatest problem remains political discourse: with some politicians not aware of their responsibility and others too often in their appearances spreading hate. We should emphasise that the definition of the criminal act involving incitement to intolerance in the Slovenian Penal Code is narrower in scope than those provided by the Constitution and international conventions.

Social discrimination is increasingly becoming problematic as reflected in poverty, homelessness and other problems associated with it. The Ombudsman is unable to directly help people in improving their socio-economic position, but we endeavour to advise complainants on how they can try to resolve their problems or at least mitigate them. Social policy is a state problem and displays the relationship leaders have to people who cannot manage and are in some way "insufficiently productive": the elderly, the disabled, the ill, women with small children and the Roma people. Thus we require a social policy which would place the goal of the active inclusion of people into society at the forefront. However, it seems more important or easier to keep marginalised groups of the population at the perimeter and prevent their inclusion into society. This was also aided by the partial tax reform, which will further increase the differences in incomes, making the poor even poorer. With this measure, the state bestowed even more money on the rich instead of using it for other purposes which would alleviate the lives of those lacking resources. Such measures are many. Increased investments into social housing would for example have a much greater effect in decreasing poverty and the effect on the economy would not be insignificant either.

The situation regarding the protection of children's rights is slowly improving, whereby the intense engagement of the Ombudsman in promoting children's rights among youth has most likely contributed greatly. Visits to schools and other juvenile facilities and treatment of the questions and problems of youth contribute to the heightened awareness of youth of the rights and obligations connected to these rights.

Sadly, we still frequently meet civil servants with poor knowledge of the United Nations Convention on the Rights of the Child and the constitutionally prescribed direct use. Sad is also the fact that the most serious violations of children's' rights are committed by their parents, abusing them during the dissolution of marriages, manipulating them to take a stand against the former spouse. Such behaviour is also customarily linked to the inappropriate procedures of social work centres and without a doubt, also the slow work of courts which continue to not observe the opinions and wishes of children to a sufficient degree.

# 02 Treatment of problems

## 2.1 CONSTITUTIONAL RIGHTS

The total number of complaints received has remained at a similar level to the previous year, although several shifts were noted. The growth in complaints from the area of freedom of conscience especially stands out particularly if we also take into account an increased number of similar cases treated at other locations. A considerable increase was also noted in the sub-area other where the contents are variegated. The growth in the number of complaints from the sub-areas of public speech and personal data protection is continuing. Complaints regarding voting rights were few despite local elections. A decline in cases was observed regarding freedom of association and access to information of public character.

### 2.1.1 Freedom of conscience

Complainants cautioned of the freedom of non-declaration of beliefs or at the possibility of a conflict of rights regarding public declarations of religious and other beliefs of third persons. When declaring religious points of view regarding sensitive societal questions which in society awaken diametric opposing viewpoints (e.g. abortions, same-sex orientation), we are noting incomprehension of the relationship between religious freedom and other rights (e.g. freedom of expression). In a number of cases, we had to also caution complainants of the meaning of protection of religious freedom. We were also warned of insults to religious feeling propagated in media releases, anti-Semitism, graffiti and expressions of hate transmitted through electronic media (also against Catholics). The Ombudsman met with numerous representatives of religious communities at various occasions, highlighting the role of various religions as important preservers and designers of social values.

Among the fundamental complaints, let us highlight the **Ministry of Education and Sport's inconsistency in issuing licenses for the implementation of confessional lessons** in public elementary schools. The minister may issue such licenses on the basis of the Organization and Financing of Education Act (ZOFVI-UPB3) at the request of the school principal and upon the condition that no other suitable premises exist in the local community. It is abnormal that we had to caution the Minister of Education and Sport of his obligation to observe the provisions of the General Administrative Procedures Act (ZUP-UPB2) when adopting decisions which required the careful weighing of all circumstances and explanations for his decisions. A decision in no way merely means an administrative organisational question; it is also a decision on the right to freedom of public declaration of religious belief. At our request the Ministry of Education and Sport in respect to the General Administrative Procedures Act also contacted the Ministry of Public Administration.

In a similar case, we found that a school had applied for a license from the Ministry of Education and Sport only following our inquiry, thus after religious education at the school had been implemented for several months. Despite our warnings and principal opinion, the Ministry of Public Administration was also in this case issued a license with a standard explanation. We feel that there is no means for checking

the reasons for the issue of such licenses. In both cases, complainants also acquainted us with circumstances which could have perhaps pointed to the disputable implementation of confessional activities in public schools.

We also treated the action of the mayor who advertised one of the religious classes on the municipal web pages, expressly asserting the unsuitability of other "untested" or "exotic" religious convictions for Slovenian society. This action also reflected characteristics of violations of the prohibition of discrimination.

### 2.1.2 Public speech ethics

Regarding the number of the questions treated, numerous complaints regarding indecent advertising promotions for an adult magazine stood out in which complainants expressed their horror at the non-observance of the protection of the interests and rights of children. Contextually, media interventions into the privacy and rights of individuals and poisoning of public discourse with hate speech stood out. The conduct of the media is especially closely watched when communicating such contents. Publishers, journalists and editors must pursuant to the Public Media Act (Zmed) observe the rules of professional ethics when (not) publishing or broadcasting media contents. Concern has arisen that the negative trends are continuing and the level of respect of professional ethical standards which are defined in the Code of Ethics of Slovenian Journalists is declining. From numerous cases handled, it is evident that journalists and editors prior to publication did not endeavour to weigh all relevant circumstances or observe the legal benefits of all involved. In two cases, after taking into account all circumstances, we filed a motion to the Journalists' Ethics Council for the review of the ethics of actions of journalists and editors. One such case will be presented in more detail in a separate heading (case no. 1 (1.2 - 3 / 2006)). We assessed the printing of a series in a tabloid involving two children, supposedly the victims of sexual misuse as reprehensible. In the articles, the children were unscrupulously used as an object of sensationalist reporting. The Journalists' Ethics Council confirmed our assessment and clearly cautioned especially of the immense responsibility of journalists and editors in publishing such contributions.

During one of the numerous public excesses of the president of one of the parliamentary parties, the Ombudsman sharply condemned the unbridled hate speech given on the TV show *Vroče*. The Ombudsman called upon the political leaders and population of Slovenia to respond to the hate attacks, incitement to intolerance and even violence otherwise we would bear the consequences of our present indifference in the future. The debates did not merely involve the expression of personal viewpoints charged with discriminatory prejudices. In the contact show, public figures turned to viewers attempting to incite similar feelings and responses.

In the show, we also noted with horror the non-critical response of the moderator who, in addition to giggling and the occasional affirmation of a political viewpoint, herself contributed several illustrations regarding the public lynching of paedophiles. Thus we addressed a request to the Journalists' Ethics

Council for assessment of the ethics of such actions and cautioned of the responsibility of the TV station's producer. We also felt that the media had propagated hate speech which the Public Media Act forbids, as it also instructs all to observe the Journalism Ethics Code. Article 23 of this Code defines that journalist must avoid racial, sexual, age-associated, religious, ethical and geographical stereotypes and stereotypes associated with sexual orientation, disability, physical appearance and social position. Discrimination based on gender, ethnic affiliation, religious and social or national groups, defamation of religious feelings and customs and the heating of conflicts between nationalities are forbidden. In our complaint to the Journalists' Ethics Council we also highlighted **our thoughts regarding the vague contents of these provisions** for they only partially summarize the prohibition of hate speech. We called upon the Journalists' Ethics Council to remove these inconsistencies and determined that the case was an important one already in terms of this key question.

In its public response, the Journalists' Ethics Council restrained from making an assessment on whether the TV show 'Vroče' had propagated hate speech, although confirming it shortly after the show being broadcasted. Following the intervention of the Journalists' Ethics Council, Article 23 of the Journalism Ethics Code was supplemented to expressly **prohibit incitement to (every form of) violence and intolerance.**

We also acquainted the state prosecutor of the excesses of the aforementioned show – which assessed the Ombudsman's initiative as a complaint, rejecting it. In its explanation it asserted that expressions of hate towards paedophiles did not fall within the area of crime under Article 300 of the Penal Code. **The state prosecutor's office did not even mention, let alone assess the allegations regarding the spreading of intolerance and the attempt at creating strife on an ethnic or national basis.** Although such action may not reflect the conscious neglect of the seriousness of the incidence, we risk concluding that the prosecutor did not even play the submitted recording.

The case triggered a hot debate in the Slovenian public on the limits of freedom of expression. We especially consider the opinion that the classification of hate speech is unclear as an item of concern. Even several representatives of the legal field have expressed concern. For these reasons, the Journalists' Ethics Council also responded that they would classify hate speech under a special article in the Code.

Although we do not find this expression in the Constitution and in legislation, we feel that **hate speech is defined in the legal order of the Republic of Slovenia**, but **perceive several shortcomings regarding mechanisms for prosecuting** such actions which Article 63 of the Constitution promulgates as unconstitutional.

Article 8 of the Public Media Act clearly prohibits the dissemination of programming contents containing incitement to racial, religious, sexual or other inequality, to violence and war and to national, racial, religious or other discrimination, and the inflaming of national, racial, religious, sexual or other hatred and intolerance. Unfortunately, violations of these prohibited items are only sanctioned as violations upon their publication in the media. In last year's report, we already cautioned of the limited scope of criminal action pursuant to Article 300 of the Penal Code. We believe the Protection of Public Order Act (ZJRM-1) has at least partially narrowed this loophole. Pursuant to Article 20 of the Protection of Public

Order Act, the police, as well as local authorities must in some cases prosecute the following actions committed with the intention of inciting national, racial, sexual, ethnic, religious or political intolerance or intolerance regarding sexual orientation as an offence: violent and audacious behaviour, indecent behaviour, damaging of official inscriptions, marks or decisions, writing or drawing on walls, fences or other publicly accessible places and the destruction of state symbols.

**Unlawful expression on the Internet** (intolerance, threats, calls for violence) continues to be of concern. The co-liability of providers of individual web pages is defined by Article 13d of the Electronic Commerce and Electronic Signature Act, however eventual omissions are not sanctioned, thus the effective observance of these obligations is entirely dependent on self-regulation and co-regulation mechanisms. It is significant that the first final criminal indictment for spreading of intolerance via web forums has finally been carried out.

### 2.1.3 Freedom of association

The majority of cases still regard disciplinary measures and the exclusion of individuals from various societies and hunting associations. We welcome the fact that the legislator responded to our concerns regarding the vagueness of safety mechanisms in such civil law matters. The Societies Act (Z Zdru-1) prescribed the **complete internal and judicial protection of all decisions of the bodies of societies** whose adoption was contrary to the law or fundamental or other general acts of the association. If the founding act does not define another body, the association's members' committee shall make a decision on complaints against disputable decisions of the bodies of the association or their representatives. Judicial protection may be requested within one year of the adoption of the final decision. A person whose application for membership in an association was rejected shall have the same right.

### 2.1.4 Right to vote

The Local Elections Act (Official Gazette of the Republic of Slovenia, no. 121 /05, ZLV-F) and the Act Amending the National Assembly Elections (Official Gazette of the Republic of Slovenia, no. 78/06, ZVDZ-B) finally remedied a number of irregularities established regarding relevant decisions of the Constitutional Court and deficiencies in the protection of voting rights which we had cautioned of in previous years. We would also like to add that the question of whether the Act on the Establishment of Voting Districts for Elections of Deputies to the National Assembly (ZDVEDZ) and National Assembly Elections Act (ZVDZ) are in accordance with the **principles of decisive influence of voters on the assignment of mandates to candidates at National Assembly elections** from the fifth paragraph of Article 80 of the Constitution still remains open. We continue to doubt the neutrality of the arrangement of the National Assembly Elections Act regarding conditions for the **participation of non-partisan candidates**. This year, we treated a similar warning regarding the contents of the Local Elections Act (ZLV-F). This **made the conditions for the participation of candidates from non-partisan lists at local elections considerably stricter**. Although we did not intervene,

the complainant assessed that our explanations of the strict criteria for the evaluation of interventions into the equality of voting rights helped to attain the revocation of provisions in the procedure before the Constitutional Court.

### 2.1.5. Protection of personal data and privacy

The number of complaints handled regarding personal data protection noticeably increased in comparison to the year before. The reasons for this are not visible, for already in the previous year supervision over this area was entirely transferred to the Commissioner for Access to Public Information or, within his scope, by state supervisors for personal data protection. One of the reasons for the increase is certainly the heightened awareness of the rights of the individual regarding personal data protection alongside several more publicly resounding matters. The majority of the complaints handled thus only required from us an explanation with instructions on which competent body the complainant could turn to and which legal resources could be used for the protection of their personality rights. In two cases we submitted the complainants' requests for resolution to the state supervisors responsible for personal data protection who following treatment, acquainted us with their findings and actions.

The complaints primarily regarded the question of the permissibility and scope of video surveillance at public places and in common spaces, excessive interventions into privacy, undue interventions into the personal data of third persons, employers possibilities of using use biometric data of employees and the like. A number of complaints as in previous year regarded sensitive medical data, namely the processing and protection thereof within the scope of the health system and the publication of personal data by the media.

Numerous complaints regarded the **misuse of personal data and interventions into privacy by the media and Internet**. The Ombudsman is not competent for cases involving violations of rights by individuals or private media, thus we endeavour to refer complainants to the use of formal and informal complaint channels for the protection of their rights. In addition to legal remedies within the scope of criminal and civil law, we also informed complainants of the possibility of complaining to the Journalists' Ethics Council which is a body of the Slovenian Association of Journalists and the Union of Slovenian Journalists. Although in our opinion, arbitration is constantly improving, this channel possesses several deficiencies regarding the achievement of judgements and scope of treatment of presumed violators, for it cannot treat the actions of those who do not appear as journalists in public. It also possesses all the characteristics and disadvantages of a peer tribunal, thus we feel (we have presented this opinion a number of times in reports) that a broader arbitration board or a media ombudsman needs to be formed in the establishment of which the representatives of the public and of the publishers would cooperate.

Only in one case did we specially forward our findings to the public. This regarded the **question of the right of state supervisors responsible for the protection of personal data to view medical documentation**. We selected this path, since pursuant to the second paragraph of Article 9 of the Human Rights Ombudsman Act (ZVarCP), the Ombudsman is competent to also treat broader questions important for the protection

of human rights and fundamental freedoms and for the legal protection of citizens of the Republic of Slovenia and because the Commissioner for Access to Public Information is also a state body which may intervene in the rights and freedoms of individuals and is thus deemed a state body which the Ombudsman may also supervise. We established that according to the Personal Data Protection Act the state supervisors for the protection of personal data possess the right to also examine the contents of personal data collections despite their degree of confidentiality; however, they must observe the principle of correlation and protect the privacy of those who are the subject of such treatment before state bodies. In the case in question involving the examination of medical files of two public persons, we assessed that the examination did not correlate with the purpose of the inspection and was excessive with regard to interventions in privacy.

### 2.1.6 Access to information of public character

In the last three annual reports, we cautioned of the non-observance of the Official Gazette of the Republic of Slovenia Act which defines the obligations of the Official Gazette to issue a register of all regulations published in the Official Gazette (thus also regulations of those local communities who publish their regulations in the Official Gazette). We repeat that it is unacceptable that the Ombudsman has had to caution of the non-observance of these legal obligations for four years running and must continue to also warn of the non-existence of mechanisms of supervision over the obligations of municipalities so as to ensure accessibility to their regulations. We emphasise that **acquaintance with the regulations of local communities** is in no way an insignificant question. The regulations of municipalities can significantly also affect the rights of persons living outside such municipalities.

### 2.1.7 Other matters regarding constitutional rights

**Cooperation of citizens in procedures for adopting regulations**

We received a complaint regarding the surmised violation of rights of public discussion involving a draft law prepared by the Ministry of Culture. According to the complainant, the Ministry of Culture prescribed an insufficiently short deadline for public discussion at the same time limiting comments only to those indicated by the "article and its narrower parts and the proposed text with explanations or comments" announcing that it would otherwise not take them into consideration.

The institute of public debate or participation of civil society in the procedure of preparing regulations is a democratic standard which is becoming consistently more important in contemporary democratic countries. These processes are also encouraged by the European Union within the scope of striving for a preliminary analysis of the effects of regulations (Regulatory Impact Assessments (RIAs)).

We are finding that in Slovenia, the manner of public participation in the procedure of preparing regulations before state bodies and even in the legislative procedure is not regularised by a special law although the right to participate in the management of public matters is defined as a special human right in Article 44 of the Constitution of the Republic of Slovenia. This right is regulated only partially and incompletely.

The institute of public debate is merely indirectly regulated by individual regulations or even internal acts. Acquaintance with draft regulations is facilitated by the Decree on Communication and Re-use of Information of Public Character. A draft law or other act of the National Assembly, or a draft Government decree must be published on the World Wide Web upon its adoption by a Government working body at the latest. The amendment to the Rules of Procedure of the Government of the Republic of Slovenia requires that the **proposer in its covering letter also ensure consultations with representatives of civil society within the scope of assessing the effects of the proposed decision.** The manner of such consultation is not specially regulated anywhere. The proposer of the materials is responsible for the meeting of such assurances, however possible violations are not sanctioned. The specified assurance is only presented in the provision of the third paragraph of Article 5 of Public Administration Act (ZDU-1) pursuant to which the administration must allow third persons to forward comments and criticism regarding its work and treat such comments and criticism, and reply to them in due time. Pursuant to the National Assembly of Slovenia's Rules of Procedure, the responsible working body of the National Assembly must be acquainted with all recommendations, initiatives and questions addressed to it by civil society.

We deemed the complaint regarding the Ministry of Culture's restriction of the forwarding of comments to be justified. We assessed that the restriction of comments only to those prepared in accordance with nomothetic rules is not in accordance with contemporary trends and also the current, although deficiently regularised participation of the public in managing public matters. Such treatment by the Ministry of Culture excessively limits the participation of citizens in the regulatory preparation process. One cannot expect the required skill of nomothetic design of text from citizens and their associations.

We sent the Ministry of Culture our opinion that the **participation of the public in procedures of preparing regulations needed to be arranged in its entirety with the appropriate law**.

The Ministry of Culture's response was in one part positive, for it responded that they had extended the period for accepting comments and would also observe comments which were not "in a faultless nomothetic form" if only "the proposed content could be understood". We assessed as completely unacceptable the Ministry of Culture's request that we inform them of whose complaint we decided to begin the procedure which in their opinion was "unfounded". This request points to the complete incomprehension of the role of the Ombudsman and democratic standards. The first paragraph of Article 8 of the Human Rights Ombudsman Act expressly defines that procedures with the Ombudsman are confidential. The confidentiality of procedures and trust between the Ombudsman and complainants is one of the key elements of work of each ombudsman, thus data on complainants are never disclosed without their previous consent, especially to state bodies. In no case are the names of those turning to the Ombudsman to research surmised irregularities or deficiencies in the work of state bodies disclosed.

Following these complaints, we once again caution that those turning to various state bodies due to actual or surmised irregularities should be better protected by law in Slovenia. The preparation of a law involving the **protection of whistleblowers** has already been proposed by the working body of the National Assembly, however we have not as yet observed any concrete drafts.

## 2.2 DISCRIMINATION

The number of cases has jumped dramatically. Even more cases from other areas (the majority regarding constitutional rights and labour law matters) arose alongside 46 such matters pertaining to discrimination and hate speech. The considerable growth in cases (index: 270) can be attributed to the effects of proactive activities, namely promotion, awareness building and education.

We are meeting with allegations of discrimination on various levels defined by the Constitution of the Republic of Slovenia and European Community Law. Ethnic origins prevail, followed by (religious) convictions balanced by sexual orientation, disability, gender, medical condition, age and social position. We highlight public discourse (in media, politics, Internet) among the areas of social life in which we have noticed a rise in complaints on surmised discrimination. These are followed by employment and labour law matters comprising nearly one fifth of all cases. The most apparent and frequent form of discrimination is by far verbal violence (both oral and written). This regards both the manifestation of incitement and spreading of intolerance and hate (directed towards particular social groups) and harassment (directed towards specific persons).

A predominant portion of the complaints regarded the private sector, thus we gave complainants legal advice or aid for more effective protection of their rights. We determined that this Ombudsman's activity is also extraordinarily important for (with the exception or consultations with the Labour Inspectorate and initial free legal advice) these tasks are not implemented by any state body, not even the Advocate for Equal Opportunities.

**An area of concern is the situation regarding access to goods and services and the provision of housing.**

Directive no. 2000/43/EC prohibits racial and ethnic discrimination in the provision of housing. Although the Implementation of the Principle of Equal Treatment Act does not specifically cover this area, one can deem that this prohibition contains and belongs within the scope of regimes covering the provision of goods and services. According to the Implementation of the Principle of Equal Treatment Act, inspection procedures ensure authoritative measures by the state against violations regarding prohibited discrimination. We are finding that inspection bodies in individual cases are rejecting their direct competencies. These refer to the non-existence of an opinion of the Advocate which should be a process prerequisite for the introduction of the procedure. Already in the Annual Report for 2005, we provided a preventative warning regarding the unacceptability of such interpretation of the Implementation of the Principle of Equal Treatment Act. Vague delimitation of the competencies of inspectorates and the delay in introducing procedures are in the case of access to market goods and services intolerable.

### 2.2.1 National and ethnic minorities

Cases stand out in terms of context and scope involving the **Roma community and members of ethnic communities of other republics of the former Yugoslavia.** The numerous communications of complainants reflect the characteristic expressions of negative or, unfortunately, generally propagated and deeply rooted stereotypes of Roma people.

The dangerous playing with the emotions and irrational fears of people which in the form of criminalisation and practice of discrimination against the Roma community finally had the floor pulled out from under it following the events associated with the **forced removal of the Roma Strojan family**.

Residents of the Roma settlement (the Strojan family) in Ambrus had to escape in fear of their lives from their homes into the forest due to increased pressure from other residents. The reason was an attack by a resident (of non-Roma descent) of this settlement on a villager who suffered serious bodily injury. In such circumstances, the local citizens' assembly of Ambrus adopted a decision whereby the Roma family could never return home. The citizens' assembly addressed a request to state bodies for the removal of the family to a "safer and more ecologically appropriate location" and "threatened" that the residents would otherwise not vote at the elections till further notice (right before the second round of elections for mayor). They also stated that otherwise the people would take the "law into their own hands". The complication which arose quickly became a resounding media event.

Representatives of the local community in apology for their actions stated that the residents of the Roma settlement, which they frequently labelled as merely "Roma", were delinquents, anti-social tyrants and criminals, and supposedly unjustifiably partook in excessive social aid and possessed too many children. Here they did not even attempt to identify the alleged perpetrators of individual criminal offences and misdemeanours. This reflects the typical attribution of collective responsibility to an entire ethnic group or criminal family comprising mostly of women and minors. Expressions of characteristics, and sadly deeply engrained prejudices evolved into an open expression of intolerance and threat of violence if the Roma people did not leave. Unknown perpetrators set fire to one of the buildings and a car in the settlement during the night. Despite all this, the family returned after a few days which strongly stirred up the residents. Following a night of threatening protest consisting of 500 people who continuously expressed their dissatisfaction during the spontaneous protest in the direct vicinity of the settlement, an "agreement" was reached on Saturday night in the presence of 200 police and the Minister of the Interior that the family would be moved the following day to an abandoned military barracks 60 km away which had no water and electricity. The state non-critically and directly supported the removal of the family from their homes and property, bowing to the pressure of the crowd. Representatives of the Government, following sharp and publicly expressed criticism of the Ombudsman – began to label his action as the "pouring oil on fire" and even openly justified the demands of the local community such as the statement that the family namely lived in illegally constructed buildings (whereby at least 70 inspection procedures regarding illegal construction in this municipality are underway).

Measures by the police were in our opinion utilised explicitly asymmetrically. The police issued members of the family orders to pay fines for camping illegally in the forest, accompanied them upon their leaving their homes (as if they were a source of danger) but did not however decidedly intervene to make the enraged crowd disperse in critical moments although they were undoubtedly witness to the violations of numerous provisions of the Protection of Public Order Act (ZJRM-1) and the Public Gatherings Act (ZJZ-UPB2), namely numerous incitement to intolerance, discord and even violence and the unannounced and illegal protest which obviously considerably threatened the security of persons and their property. The police allowed the crowd of several hundred people to light a bonfire during the night without any repercussions in front of the Roma dwellings and shout and call for their immediate removal. Hereby the prima facie reflects the symptoms of the omission of the use of available legal measures for ensuring public order and peace.

The above presents a serious suspicion of the violation of the following rights (protected by the Constitution, EKČP, SDČP and MPPDP): personal dignity and safety, freedom of movement and freedom in the choice of residence, peaceful enjoyment of privacy, respect for family life and home and peaceful enjoyment of one's own property. We feel that a justified suspicion regarding direct discrimination towards the members of a family in the enjoyment of the aforementioned rights on the basis of ethnic origin of the victims and (prior) convictions exists. We believe that not even Article 2 of the Convention on the Rights of the Child (KOP) was observed which clearly requires that state signatories ensure each child the rights arising from the Convention without any sort of distinction, regardless of the position of the child, its parents or legal guardian. With the adoption of all appropriate measures, they must ensure the protection of children against all forms of distinction or punishment due to the position, work, expression of opinions or convictions of their parents, legal guardians or family members.

Fortunately, no other similar event can be found regarding the actions of the local community, police and Ministry of the Interior. Would the police have acted in the same manner if this had involved an "intrusive" family of Slovenian origin? We can state with certainty that this would not have occurred if had not involved a Roma family whose individual members had already been convicted of several criminal offences. Only a day prior to the "agreement" on the family's removal, the Minister of Education and Sport and the Minister of the Interior publicly labelled the local community's demand as unacceptable and illegal. Already the following day, the Minister of the Interior on behalf of the state consented to the immediate resolution of the conflict. We feel that the change in the position and political resolution of problems only occurred due to specific circumstances (political situation, treatment by the police and Minister of the Interior) and the expressed comprehensive (physical, material, organisational and political) supremacy of the group of people over the Roma family. In a similar case involving the prevention of the removal of Roma family described in the Ombudsman's Annual Report for 1998, the response of prosecuting bodies was considerably different.

Upon the assessment of the treatment of competent bodies, the question of direct discrimination on the basis of ethnic origin or race and (previous) convictions pursuant to the first paragraph of Article 14 of the Constitution and the violation of the protection of equal rights according to Article 22 of the

Constitution is justifiably raised. Here we especially emphasise that the effect of disputable handling suffices for a decision on discrimination and that the motives of all involved (residents, local community and Ministry of the Interior) are hereby insignificant (e.g. desire to ensure the safety and "improved living conditions", attempt at remedying a "misunderstanding"). It is unimportant whether the Roma family lived in buildings constructed contrary to spatial planning acts. The results of our query showed "ecological reasons" (supposedly the threat to the water source) to be irrelevant as reflected by the results of the periodic measurements of the quality of water. Even more, there are at least three settlements in the direct vicinity of the area in question and even a dumpsite, however in recent years not even a complaint to the environmental inspectorate was lodged.

Until now, despite enquiries and a broad public discussion on the events, the suspicion of discrimination was not overturned. Particularly verbose were the statements of state representatives which initially labelled the demands of the local community as illegal and untenable and actively participated in resolution of the situation, but gradually began, following the events, to repeat "such a manner of resolving problems cannot be a model".

The Ombudsman later also treated the allegations of forced detention and supervision of the family in the abandoned buildings in Postojna and the prevention of their return to their homes, however this is still an undergoing treatment. Of great concern is also the broader response to the state's intention to help the family find a new home. Residents, through road blocks, prevented the family from returning to their home and opposed their settlement into their surroundings. Of even greater concern were the expressions of intolerance which influenced the decisions of several municipalities which even demanded that such decisions be executed by state bodies. The Municipality of Ivančna Gorica adopted a decision that the displaced family was undesired in their municipality: a location for the resettlement of the family due to protecting the calm lives of the "majority of the population" and the expressed promise of the Minister of the Interior could not longer be sought there. With similar decisions, the possible resettlement of the family on their territories was also opposed by the Municipalities of Kočevje, Škofljica, Želimlje and the residents' assembly of the residential community of Sostro. The Municipality of Ig even adopted a principle position that due to nature protection reasons, "no suitable locations for the establishment of any sort of Roma settlement" existed. Such decisions reflect the serious misuse of bodies of local government. These events open up an important broader question regarding legal security. We especially caution of the general effect and consequences of the state's conduct. We are concerned that state bodies, especially with their omissions, have become co—responsible for the situation which has arisen. Since no spontaneous response from state bodies was forthcoming, we called on them to take action a number of times. The Government Office for Local Self-Government concluded that it did not possess competence while the Ministry of Public Administration turned the matter over to the Government Office for Nationalities. The response of the state upon such events is of key importance both because of the need for a permanent condemning of all acts of racism and ethnic hate as well as the preservation of the hope of all minorities in the capability of authorities to protect them. On the other hand, one can deem that the state itself legitimises incitement to hatred and intolerance and even violence towards the Roma people.

We received three complaints in connection with the **rights of indigenous Italian and Hungarian ethnic groups**, which opened up two relevant questions. The first regards a complaint for more effective care of children involving the services of a speech therapist with a command of the Hungarian and Slovenian languages. The remaining two complaints highlight the question of discrimination or harassment in the workplace.

### 2.2.2 Equal opportunity – by gender

We carefully monitored a **case of alleged sexual harassment** of two female soldiers **in the Slovenian military**. The case was treated by the internal commission of the Ministry of Defence and two parliamentary committees. Even a half year after the event, the Advocate od Equal Opportunities had not yet issued an opinion. We feel that such cases possess an immense general and preventative significance due to their public repercussions. Thus the rapid and decisive response of competent authorities – regardless of the result of the procedure – can strongly influence the general awareness of the significance and strictness of the prohibition of sexual harassment. Following the matter, the Ministry of Defence issued **instructions** which should aid in the prevention of harassment and a **statement reflecting zero tolerance** for such types of actions. Such a practice should be followed by all employers already prior to a violation occurring. Thus, employees should be clearly presented their rights and obligations, and the obligations of the employer should be defined (preventative measures, consequences in the case of a violation). Such a code of good practice, known in comparative practice (one of the models is also summarised in the booklet issued by the Office for Equal Opportunities (UEM)), can mean an important tool in practice. They are the tools of the victim and represent protection for the employer, for in the case of a court dispute it usually relieves the employer of his/her obligations if he/she can prove that the instructions were observed.

### 2.2.3 Other cases of discrimination

Directive 2000/78/EC prescribes **that with regard to employment and employment conditions, states shall define the general obligations of all employers, ensure reasonable adaptations to the workplace for disabled persons.** The obligation requires the removal of all obstacles which represent indirect discrimination or prevent disabled persons from equal participation in the labour market. The Vocational Rehabilitation and Employment of Disabled Persons Act (ZZRZI) only by appearance and incompletely summarises the obligation of reasonable adaptation of workplaces for disabled persons. The law regarding the general obligation to employ the disabled only applies to employers who employ more than 20 persons. Such an arrangement is at the same time broader than defined by the aforementioned Directive (for it is absolute: employment quota or financial burden), and at the same time too narrow. The law does not define clearly enough that smaller employers (according to some assessments there are around 100,000 in Slovenia) are also obliged to prevent

indirect discrimination against disabled persons in employment by ensuring a reasonable adaptation of the workplace. Since the existing arrangement fails to define this clearly enough, it is in our opinion contrary to the obligations defined in Directive 2000/78/EC.

**The rejected candidate does not have the right to view the tender documentation and acts of the employer** regarding the selection of candidates**.** According to the Civil Servants Act (ZJU), the aforementioned are only available in the case of employment with state bodies and local self-government authorities. The viewing of data on the professional qualifications of the selected candidate of those holding public authorisations can as a rule be acquired pursuant to the Act on the Access to Information of Public Character (ZDIJZ). This right is available to all (not only the person in question), however access to the contents is essentially narrower: one cannot acquire data on the gender, age or name of a candidate which could for example, reflect the ethnic origin of the selected candidate. This route is long if the alleged violator opposes access to the information.

We feel that the burden of proving discrimination regarding private employers and holders of public authorisations is difficult and in fact, almost impossible for rejected candidates. T**hus we suggested that the Ministry of Labour, Family and Social Affairs (MDDSZ) prepare an amendment to the Employment Relationship Act (ZDR) and include the right to view employer tender documentation and acts regarding the selection of candidates.**

Among the cases, we also describe a treated case of discrimination in the advertising of a job vacancy (cases 10.3-1/2006 and 10.3-2/2006).

**The use of one's own language in procedures before the European Court of Human Rights and translation of the judgements of this court into the Slovenian language**

A complainant notified us of the unsuitable practice of the use of one's own language in a procedure before the European Court of Human Rights. With regard to his case, he desired a translation of the judgment of the European Court of Human Rights into his own language so as to prepare his request for a hearing before the Grand Chamber of the Court. The secretariat of the European Court of Human Rights responded that according to the rules of procedure of the court, the official languages were only English and French and as a rule, they only issued judgements in one of the two languages. The complainant feels that the Republic of Slovenia should ensure the translations of decisions by the European Court of Human Rights to Slovenian and the translations of the requests for hearings before the Grand Chamber of the Court to one of the official languages.

The Ombudsman expanded the complaint with the question of translations of judgments by the European Court of Human Rights to the Slovenian language. Based on our inquiries, the Ministry of Foreign Affairs, together with the Ministry of Justice responded that the constitutional provision on the right of use of one's own language did not apply for the European Court of Human Rights and that the European Court of Human Rights only used English and French as its official languages. In cases launched against the Republic of Slovenia, state bodies are not obliged to translate the decisions of the European Court of Human Rights into the Slovenian language. In the past, the Ministry of Justice translated

decisions of the European Court of Human Rights for a wider area of human rights so as to improve the quality of protection of human rights and fundamental freedoms before the courts in the Republic of Slovenia. These translations are of an informative and educational nature. The translation of all judgements of the European Court of Human Rights is not possible or reasonable according to the Ministry of Justice for many judgements, such as the violation of rights to a trial within a reasonable period of time, only serve as models.

The responses of the ministries are legally correct, however they do not resolve all the problems of possible and current complainants before the European Court of Human Rights, who do not utilise one of the official languages of the Court. We feel that the state could do more, especially with regard to ensuring the accessibility of case-law of the European Court of Human Rights in the Slovenian language, directly or through non-governmental organisations.

## 2.3 RESTRICTION OF PERSONAL LIBERTY

### 2.3.1 Detainees and prisoners serving time in prison or detention

**Tasks and authorisations involving state preventative mechanisms granted to the Ombudsman**

On 29 September 2006, Slovenia ratified the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The Act ratifying the Optional Protocol came into force on 1 January 2007 and specifies the Human Rights Ombudsman as the (only) state preventative mechanism. The Ombudsman implements tasks and authorisations in cooperation with domestic non-governmental and humanitarian organisations involved in the protection of human rights or fundamental freedoms.

**Adoption of the amended European legal order**

On 11 January, the Council of Europe's Committee of Ministers adopted the recommendation Rec. (2006) 2 on European Prison Rules. It would be appropriate **to translate** the adopted European Prison Rules **to Slovenian** as soon as possible so as they be accessible to the professional and broader publics, especially to persons employed in correctional institutions and prisoners.

**Visit of the European Committee for the Prevention of Torture**

At the beginning of February 2006, representatives of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Slovenia on their third regular visit. In the second half of the year, the European Committee sent its report on the visit to the Slovenian Government. Since the report contains findings as well as recommendations for modifications and improvements which also have a wider and preventative effect, it would be wise for the Government to adopt the decision to request a **public presentation of the report**.

**The uniformity of inclusion of the day of house arrest as equal to the day of detention and the day of imprisonment is not inconsistent with the Constitution.**

In 2004, the Ombudsman filed a renewed request for the constitutional review of the fourth paragraph of Article 49 of the Penal Code, as to whether it defined that the day of house arrest was included in the pronounced sentence and identical to the day of detention and day of imprisonment.

Upon the renewed request for a constitutional review, the Constitutional Court issued its decision on 2 February 2006, no. U-I 192/04-16. The Decision stated that the fourth paragraph of Article 49 of the Penal Code was contrary to the Constitution. The Constitutional Court thus did not observe the demands of the Ombudsman. The fact remains that underlying in recommendations of prisoners is precisely the exchange of prison for house arrest. Accommodation and general living conditions in prisons are frequently unsuitable with too many prisoners in overcrowded cells. Already these basic circumstances are difficult to compare to house arrest which (as a rule) is carried out in the residence of the person in question. The restrictions of prisoners are considerably greater than those of house arrest. Uniformity in the inclusion of detention and house arrest thus also encourages the defendant to draw out the criminal procedure so as to serve as much of the sentence under house arrest.

**Delays in the issue of implementing regulations**

If legally prescribed conditions are issued, the court sentences the perpetrator to mandatory treatment for alcoholism and drug addiction as a safety measure. In his annual reports, the Ombudsman regularly warns of the problems encountered in the implementation of the safety measure of mandatory treatment. Aid in implementing the safety measure would be the adoption of all implementing regulations from this area. Thus Article 148 of the Enforcement of Penal Sentences Act binds the Ministry of Health to **specify healthcare institutions** in which the safety measures of compulsory psychiatric treatment and healthcare in a healthcare institute, compulsory psychiatric treatment for persons after release and compulsory treatment for alcoholics and drug addicts can be carried out. Pursuant to Article 150 of the same law, the Minister of Health is bound with the consent of the Minister of Justice to issue more **detailed regulations** on the execution of safety measures. Unfortunately, the Minister of Health has not yet specified either the healthcare institutes nor issued a regulation (rules) on the implementation of safety measures to date. **The deadline for the publication of an implementing regulation expired on 9 April 2001 with the delay extending into the seventh year**

We (again) recommended that the Minister of Health finally publish this regulation and also specify the prescribed healthcare institutions according to Article 148 of the Enforcement of Penal Sentences Act. In reply, the Minister explained that a decision on the specification of these institutions according to the new law had not yet been issued also due to the several years of seeking an agreement on the establishment of a forensics hospital where persons for whom a court has pronounced such a safety measure would be referred. Considering the non-issue of an implementing regulation on the implementation of safety measures, the Minister clarified that a working group for the preparation of this regulation had already been appointed in 2000. The group did not conclude its work due to differences in expert opinions regarding the system of treating persons who had committed a criminal offence under the influence of alcohol or drugs. Draft rules had been prepared at the time, but were never concluded so as to enter into force.

In December 2006 the Minister for Health assured us that he would immediately appoint a (new) working group which would begin working on the expert bases for the preparation of rules on implementing the safety measure of compulsory treatment which would regulate the implementation of all types of safety measures pronounced during a criminal procedure.

**Increasing overpopulation causing poorer living conditions**

In 2006 we visited and examined in detail the ZPKZ Koper correctional facility and the Nova Gorica and Radovljica departments of the ZPKZ Ljubljana correctional facility, and the Celje Prison and Juvenile Correctional Home. During the inspection visits we also visited several correctional facilities so as to talk to prisoners about the treatment of individual complaints. As in each year, we again received numerous written complaints from prisoners and their relatives. Regular forms of contact as well as calls by prisoners to the toll-free number of the Ombudsman remain rare.

The essence of the complaints of prisoners was the increasing crowdedness of the correctional facilities and the associated worsening of living conditions in general in detention and prison. We also established that the number of prisoners was increasing during our inspections and visits to correctional institutions.

The Ombudsman had frequently warned of the issue of overcrowding and the associated problems and possible solutions in the past (for example Annual Reports 1999 and 2003). The growth in the number of prisoners and the associated overcrowding cannot be merely the problem of the correctional institutions themselves. Here we need to once again point out the recommendations of the Council of Europe's Committee of Ministers no. R (99) 22 regarding the overcrowding of prisons and increasing number of prisoners. Just as the amended European Prison Rules, this recommendation also emphasised that the **deprivation of liberty is an extreme measure** which should be specified and used only if due to the seriousness of the criminal offence another sanction would obviously be inappropriate.

The **construction of prisons** and thus the acquisition of capacities according to comparable experience from other countries cannot bring long-term solutions. Increased use of **alternative penal sanctions** in (court) practice could contribute to the decrease and elimination of overcrowding of correctional institutions. The same applies for measures which shorten the length of the actual serving of prison sentences, such as **release on parole**. Here we need to once again emphasise that criminal policy does not simply involve the **suppression of crime** through repression, but particularly the establishment of suitable **measures for its prevention**.

### 2.3.2 Persons with mental disorders

The long years of battle with the law which should regularise the area of mental health continued in 2006. The law which should arrange the area of mental health should have been adopted years ago pursuant to the decision of the Constitutional Court. We cautioned of the lack of statutory arrangement in the Ombudsman's annual reports for the current statutory arrangement is far from a complete one as is necessary in a democratic country governed by the rule of law for such a sensitive area as the protection of persons with mental health problems.

### 2.3.3 Aliens illegally residing in slovenia and asylum seekers

**Aliens' Centre in Veliki otok pri Postojni**

1. 6. The Aliens' Centre branch II in Prosenjakovci was shut down in 2006. Thus only the Aliens' Centre in Veliki otok pri Postojni is available to aliens in Slovenia. Renovation work there has concluded and the capacity of the Centre (220 people) is evidently sufficient for now, for prior to our visit in April 2006, the Centre was occupied on average by 40 or 50 aliens and 83 at the most, and slightly over 100 aliens in 2005.

We did not hear of any allegations of **ill-treatment** by the staff in discussions with aliens upon our visit, a fact which should be commended. There were only several complaints that individual policeman in discussions with aliens had used words which they deemed demeaning and insulting. Thus all the personnel of the Centre should be reminded on a regular basis of their obligation to treat aliens appropriately (also on the verbal level) and that each such irregularity would be suitably and decisively sanctioned.

**Conditions** in the renovated Centre are quite good. The Centre enables aliens a high level of living in spacious, ventilated and bright bedrooms. The rooms are kept unlocked at all time and the aliens have permanent access to the common areas which enables mutual contact and socialising. Thus they can freely move about and gather within individual wards but are locked in within these wards.

A deficiency we observed was that there were no **organised activities**. Aliens are locked in wards 23 hours a day. Although they can freely move within a ward, which also includes the possibility of socialising and establishing mutual contact, they cannot ward off **idleness and boredom** without some types of organised activities. Thus it is not surprising that tension, outbursts, violence and general dissatisfaction among the locked-in aliens arise.

The Ombudsman had already in the past recommended that the Centre ensure aliens at **least two hours in the fresh air daily**. During our visit, the aforementioned was limited to an hour or even less. Even minors did not have much more opportunity to take in fresh air. Thus we can only encourage the management to exploit the interior and especially exterior playgrounds for the aliens as soon as possible and to the greatest extent. Sports and other recreational activities should be organised. By assuring more activities, especially outside in the fresh air, the Centre **could rank as one of the most contemporary establishments, in line with other** (and also richer) **countries of the European Union**.

**Amendments and supplementation of asylum legislation**

The Act Amending the Asylum Act (ZAzil-D) highlighted the year 2006 in the area of asylum and was met with considerable response by the professional and interested publics. In the Annual Report for 2005 we provided several highlights associated with the Ombudsman's intervention that the amendment and supplementation of the Asylum Act must ensure a fundamental guarantee process that the entire procedure connected with the request for asylum is in accordance with the international obligations of Slovenia. Only some of the recommendations of the Ombudsman were observed in the adoption of the new Act Amending the Asylum Act.

**Favourable conditions in the Asylum Home**

Accommodation and general living conditions of asylum seekers placed in the Asylum Home were favourable upon our visit in May 2006. We only observed overcrowding on particular wards (especially those for families and single men), thus asylum seekers were also temporarily accommodated in group and social areas.

**Only in extraordinary circumstances can the movement of asylum seekers be restricted**. The restriction of movement is implemented in the closed ward (Restricted Movement Ward) of the Asylum Home and also in other suitable buildings of the Ministry of the Interior (including the Aliens' Centre). Residence in the closed ward must be limited to the shortest required period of time whereby persons residing there must be ensured equal living conditions comparable to other asylum seekers to the greatest extent possible. This also includes at least two-hours in the fresh air each day and various activities including contact with the outside world.

## 2.4 JUSTICE

### 2.4.1 Court procedures

The greatest number of complaints received in 2006 (553 or 22 percent) again involved court procedures. The majority of them again involved civil procedures, inclusive of litigious, non-litigious and executive cases. Complaints due to criminal procedures are frequently connected to detention and extraordinary legal measures such as excessively long procedures in the case of filing for protection of legality. Somewhat less complaints regard labour and social disputes while complaints in the area of administrative disputes suggest that the wait for a decision is becoming increasingly longer even before the Administrative Court of first instance and not merely at the administrative department of the Supreme Court.

Although the underlying principle regards complaints against the excessive lengthiness of court judgements, many complaints were connected to the right to a fair trail with clients pointing out the right to a **quality trial**, a fair procedure and strict observance of the equality of parties which leads to correct and legal court decisions and, finally, just authoritative decisions of courts.

**Changes to legislation**

Following the judgement of the European Court of Human Rights in the case of Lukenda vs. Slovenia, in which a violation of the right to a trial within a reasonable time and right to effective legal means was established, one can observe the doubled efforts of the state for the arrangement of this area in accordance with the Convention and Constitution. As perhaps never before in recent times, we are observing comprehensive activities especially from the Ministry of Justice in preparing legislation whose aim is not only to ensure the protection of rights to a trial within a reasonable period of time but also to ensure a trial without undue delay, thus a trial within a reasonable period of time. Among the responses was the adoption of the Act on Protection of the Right to Trial without Undue Delay. This law rearranges the legal channels for the protection of rights to a trial without undue delay.

The Ombudsman of course welcomes the numerous activities directed towards increasing the capabilities of the court branch of power to decrease and remedy court arrears and ensure trials within a reasonable period of time. Of course, to the affected individual who is validating or defending his/her rights and legal interests in the procedure, the statistic on the success of a specific project for remedying arrears bears little significance. Only the effectiveness of the judicial decision in his/her concrete case counts. Thus, the Ombudsman despite a noticeable change still receives many complaints cautioning of the unacceptable years of waiting for a trial to even begin and on frequent and unnecessary arrears in the continuation of procedure. This situation makes the final objective in which in a correct and legal final court decision finally signifies the end of the court procedure seem remote.

**Increased effectiveness of the execution of judgments**

The report would not be complete without a mention of the enforcement procedure. The Ombudsman is receiving more and more complaints from this area which is not surprising for a considerable portion of court arrears are linked precisely to the execution of judgements. An amendment to the Execution of Judgments in Civil Matters and Insurance of Claims Act was adopted in connection to the aforementioned which follows the objective of increased effectiveness during the phase of execution (also in connection to the enforcement officers) already starting with the initial phase of filing a writ of execution for the execution and issue of an execution. Especially noticeable are the changes leading to the increased informatisation and centralisation of the execution procedure regarding execution on the basis of authentic documents.

### 2.4.2 Violations

No more complaints which would confirm the long duration of the procedure were received following the entry into force of the new arrangements of the procedure of violations. Complainants predominantly turned to the Ombudsman due to their non-agreement with the decisions of police as a body for violations, acquainting us with lodged appeals for court protection. Since the right to appeal is limited, we should emphasise the obligations of judges to make correct and legal decisions upon observance of all relevant allegations of the applicant for court protection.

### 2.4.3 Free legal aid

Complaints received by the Ombudsman in connection to free legal aid predominantly involve the procedure for approval and determination of free legal aid and criticism regarding attorneys who are less diligent in representing such clients than in the case of the contractual authorisation of an affected person. Thus again in 2006, we intervened with professional offices for free legal aid several times so as to ensure the quickest, most effective and correct procedure for approval and determination of free legal aid.

### 2.4.4 State prosecutor's office

As in each year, the Ombudsman again received numerous complaints from dissatisfied injured parties asserting that the prosecutor's office had rejected their criminal complaints. Thus we many times clarified the possibility of the injured party beginning prosecution themselves with the injured party acting as a prosecutor. We cannot exclude that a decision of the state prosecutor regarding the rejection of criminal complaints was incorrect and/or illegal, which could have unfavourable and also damaging consequences for the injured party. Here, we cautioned that in the event of non-success, the injured party as the prosecutor was obliged to cover the costs of the criminal procedure.

### 2.4.5 Notaries

In 2006 the Ombudsman did not receive any complaints which would represent a justified case of a notary operating contrary to regulations.

### 2.4.6 Attorneys

The Ombudsman receives many complaints each year involving the work of attorneys. Complaints as a rule allege irregularities in performing the attorney profession, also frequently alleging disappointment due to the ineffective work of disciplinary bodies of the Slovenian Bar Association.

An affected person exercising a breach of duty regarding the performance of an attorney of his/her profession must be assured an effective appeals channel. Effects of such warnings also include the recommendations of the National Assembly adopted during the treatment of the Ombudsman's annual reports. The Ministry of Justice informed us at the beginning of 2006 that they were planning an amendment and supplementation of the Attorneys Act. Thus, they intend to amend and supplement the provisions which speak of the obligations of attorneys when carrying out their profession and supervision over attorney activities performed. The ministry agrees that the law in force is deficient with regard to the disciplinary procedure. It defines a narrow circle of people who are entitled to lodge a complaint against the decision of the disciplinary commission of the first instance, for this right is only granted to persons against which a disciplinary procedure is being implemented and the disciplinary prosecutor.

The ministry also feels the decision on the intensity of cooperation with the Ombudsman is left exclusively to the bodies of the Bar Association according to the valid Attorneys Act, thus in the preparation of an amendment and supplementation of this law they will also observe the Ombudsman's comments from previous annual reports regarding this matter.

In March 2006 the Slovenian Bar Association informed the Ombudsman that it had drawn up a list of authorised persons for minors appointed pursuant to Article 65 of the Criminal Procedure Act (ZKP). We welcome their quick response in anticipation that the attorneys from the list will with additional training and specialisation contribute to the improved professional and expert representation of minor indemnified parties.

## 2.5 POLICE PROCEDURES

In 2006 the Minister of the Interior published the new Rules on Police Powers which prescribe the manner of implementing police powers and the use of compulsory measures also in light of the amendment and supplementation of the Police Act.

At the Ombudsman's recommendation and with the Act Amending the Police Act, the amended Article 37 of the Police Act defines that persons invited by the police will be refunded the actual costs of travel using the cheapest public mode of transport from their actual place of residence to the location the person is invited to and the return trip. Only with a slight surpassing of the six-month deadline, the Minister of the Interior published the Rules on the reimbursement of travel expenses for invited persons (Official Gazette of the Republic of Slovenia, no. 79/2006), which regularises the procedure for refunding and measuring travel costs for persons invited to the official premises of the police on the basis of the Police Act. Upon the Rules going into effect, the Act Amending the Police Act will also commence use of the part which defines the reimbursement of costs of invited persons. The Ombudsman has with satisfaction established that the area which he suggested required normative arrangement on the basis of a concrete case has been legally rounded up.

**Appeal procedures**

The rule of subsidiarity binds injured persons to first turn to the Ministry of the Interior or police in connection with complaints about the work of police officers. In cooperation with complainants, the Ombudsman monitors the procedure and decisions in resolving complaints especially in cases where the conciliation procedure is not successful. We need to reemphasise that for the entire appeals procedure and especially for the treatment of appeals by the senate, the procedure should not only be impartial but should also awaken the appearance of impartiality. Only in this way will the appeals channel acquire the trust of each (injured) individual. The appeals procedure is connected to the Ministry of the Interior and the police, which in itself can quickly awaken distrust that the autonomy of the persons making decisions and their impartiality are not always assured.

The rights stemming from the appeals procedure do not only pertain to the injured person (complainant) but also the police officer against whom a complaint was lodged. Even more so in the case of a complaint being assessed as well-founded, a police officer is entitled to a clear explanation from a factual, expert and legal sense. The justification of a decision regarding a complaint through clear explanations enables the police officer to learn from his/her mistakes and modify his/her erroneous behaviour. The police officer is entitled to correct and complete explanations for the complaint under consideration is about him/her. At the same time, the police officer is entitled to process guarantees which should ensure a fair procedure and also include the right to be acquainted with all allegations of the complaint, giving the officer the possibility of stating his/her position and giving his/her account.

**The right to an autonomous investigation in the case of an alleged case of torture or inhuman or degrading treatment by law enforcement agencies (police)**

The fourth paragraph of Article 15 of the Constitution guarantees the court protection of human rights and fundamental freedoms and the right to remedy the consequences of such violations. In accordance with the state's obligation to ensure the opportunity of effective and factual implementation of human rights, in its decision from 6 July 2007, no. UP- 555/03-41, UP- 827/04-26, the Constitutional Court emphasised that the provision of the Constitution was to be understood as also encompassing the right to an independent investigation of the circumstances of the event in which a person was subjected to torture or inhuman or degrading treatment by law enforcement agencies or where a person lost his life during the actions of law enforcement agencies. The Constitutional Court established a violation of the right to effective protection of rights from the fourth paragraph of Article 15 of the Constitution and right to an effective legal means pursuant to Article 13 of the European Convention on Human Rights and Fundamental Freedoms.

An even colder shower was experienced when Slovenia was involved in Strasbourg in the judgement of the European court of Human Rights regarding the case Matko vs. Slovenia. Since 2000 this has been Slovenia's second conviction involving the violation of the prohibition of torture, inhuman or degrading treatment pursuant to Article 3 of the European Convention on Human Rights and Fundamental Freedoms. This regards a (repeated) violation of an absolute and one of the most important prohibitions in the area of the protection of human rights and freedoms. The judgement of the European Court of Human Rights accuses Slovenia of rough treatment by the police and ineffective, superficial and slow investigation of the complainant's credible allegations that he was roughly treated by the police.

The Ombudsman had many times before warned that the burden of proof in a case where an individual suffers bodily injury during the period he/she is under police custody rested with the police and not on the individual to prove when, how and why the injury arose. Also the judgement in the case of Matko vs. Slovenia points to the **inverted burden of proof** whereby the state is obliged to prove that the bodily injuries arose during the police procedure as a result of legal and commensurate use of compulsory measures.

**Contents of complaints addressed to the Ombudsman**

In 2006, the majority of complaints were again connected to the carrying out of police powers whereby a growing number of complaints regard the actions of police officers when performing tasks in road traffic. Here allegations frequently state that police officers determined the actual circumstances in manifesting violations of regulations on road traffic safety incompletely and even erroneously.

**Prompt and effective action**

Complainants also turned to the Ombudsman due to various threats from other persons. In such cases, as a rule we referred complainants to the police who are obliged to respond to each case of an alleged violation or criminal offence prosecuted by official duty. Experience has shown that the police should frequently listen more carefully to individuals alleging a threat from another person due to serious threats of attacks to life and body. Many times, this could result in the prompt prevention of a damaging act prior to its tragic consequences.

Events in the second half of 2006 and especially at the end of the year associated with interventions between Roma people and other local residents have shown that police can quickly encounter problems in serious interventions when faced with a large group of protestors, civil disobedience or even illegal actions in public areas. This regards the actions of police whereby individuals and larger groups of people arbitrarily close off public roads with barricades and stop vehicles (also police vehicles) so as to prevent access to a specified region to undesired persons. In a country ruled by law, it is understood that already the legal order that individuals and crowds must observe the measures of police in ensuring the public order and peace should suffice. The police do not acquire authority by using (disproportionate) repressive measures.

**Request for an assessment of the constitutionality of police powers in establishing identities**

Article 35 of the Police Act defines that police officers may establish the identity of a person who through his/her appearance gives reason for suspicion that he/she will commit, is committing or has committed a misdemeanour or a criminal offence. The legal provision also contains other associated circumstances (behaviour, actions, loitering at a specific place and at a specific time), however it has been drawn up so as to allow an intervention already on the basis of one of the subjective circumstances without the basis of a objective and concrete suspicion.

The Ministry of the Interior did not pay heed to the Ombudsman's recommendation for a suitable amendment of Article 35 of the Police Act. It explained that based upon the rules of interpretation and professional guidelines, the valid legal text does not allow for prohibited or discriminatory decisions by police officers made at their own discretion.

Thus in 2003, the Ombudsman lodged a request with the Constitutional Court for a constitutional review of the authorisations which enable a police officer to also establish the identity of a person merely on the basis of his/her appearance. The Constitutional Court labelled the procedure for constitutional review with the decision no. U-I-152/03-13 of 23 March 2006, deciding that the first paragraph of Article 35 of the Police Act was inconsistent with the Constitution. It obligated the National Assembly to remedy the established inconsistencies within a period of one year (by 6 April 2007) and until that date, merely the appearance of a person could not constitute a reason for establishing his/her identity. In its explanation, it emphasised the principle of the rule of law which obligates the legislator to clearly define the norm or its contents. Only in this way could the arbitrary use of the law be prevented and effective supervision thereof enabled. Thus, the legislator had to define criteria which enable police officers to conclude that a specific person gives reason for suspicion that he/she will commit, is committing or has committed a misdemeanour or a criminal offence. This particularly applies when the basis of such conclusion involves the appearance of a person or his/her loitering at particular place.

The Ministry for the Interior responded very quickly to the established inconsistency with the Constitution, for the amendment and supplementation of Article 35 of the Police Act was already carried out in July 2006 with the adoption of the Act Amending the Police Act. Thus appearance no longer represents a legal basis for establishing identity with the allowed use of this police power also defined in more detail now.

**Compulsory defence during police custody**

Based on the legal standard of the greatest benefits for a child it would be correct that the police could only acquire a statement from a minor suspect (whether it regards questioning, acquiring a statement or the gathering of information) in the presence of a council and/or legal representative. The Rules on Police Powers merely define that the police officer must in the shortest time possible verbally inform the child's parents or legal representative if the person arrested is a child or minor. In the event of a conflict of interests, the competent body of social care must be informed of the arrest.

We feel that such an arrangement is lacking and contrary to the state's obligation pursuant to Article 37 of the United Nations Convention on the Rights of the Child, that each child deprived of liberty is entitled to **immediate access to legal and other appropriate aid**. It would be prudent that the law ensure the mandatory defence of a minor suspect upon his/her deprivation of liberty during the police procedure and automatically inform the closest relative who may be present at all actions, namely also when the police acquire any sort of statements associated with a suspicion of the commission of a criminal offence.

**Police detention rooms**

Following each visit to a detention room, we prepared a report on the established circumstances together with recommendations for the remedying of any deficiencies. Those addressed responded suitably to our findings and recommendations.

Following visits to police stations, we often find detention rooms to be modest and even inadequate, with **spaces reserved for police officers** also unsatisfactory. This also applies to coatrooms and spaces used by police officers for dressing and breaks, such as sanitary areas (separate toilets, possibility for showers) and for spaces which police officers use in their work (such as for work with clients). We have observed a number of times that the number of police officers surpasses the capabilities of the spaces. Although their work is predominantly carried out in the field, it is obvious that they spend a lot (too much) time also on administrative tasks in the premises of the police station. It would be prudent that the state also ensure police officers suitable work conditions inclusive of spaces for carrying out work in line with their demanding and responsible work.

## 2.6 ADMINISTRATIVE MATTERS

### 2.6.1 Aliens

The number of complaints received in this area also decreased in comparison to previous years. The contents of complaints received remain similar to those treated in the previous year. Complainants thus turned to the Ombudsman regarding problems in acquiring entry visas either for themselves or a family member, problems in fulfilling one of the conditions for the issue of individual types of residence permits (proof of the non-conviction of a crime, proof of the source of sustenance), problems in acquiring birth certificates for children, citizens of other countries of the former Yugoslavia born in Slovenia, or simply the acquisition of information regarding the possibilities for arranging the status of an alien, the granting of asylum or the employment and work of an alien. We only received one complaint regarding a lengthy procedure for issuing a temporary residence permit. The complaint was not substantiated, for the Administrative Unit decided within 14 days of receiving the complete application of the complainant whereas three months had passed since its being filed. Based on the aforementioned, we can conclude that administrative units resolve matters in an expedient way and that the effects of the adoption of the Act amending the Aliens Act regarding this area have not been negative.

We received one complaint regarding the problem of erased persons involving the enforcement of damages arising due to the deletion from the register of permanent residence and one anonymous complaint which due to the generalised allegations could not be treated concretely. This however does not mean that the decision US U-I-246/02-28 of 3 April 2003 does not need to be enforced. This should have happened long ago, however the resolution of this question remained at an impasse in 2006. We lack words to once again warn of the unacceptability of this situation and the damage caused by those responsible to Slovenia as a state governed by the rule of law.

We also treated complaints regarding the excessively long resolution of applications for the issue of a permanent residence permits pursuant to the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia (ZUSDDD). We established both complaints to be justified for the Ministry of the Interior had in one case following nine months, and in the second after more that three years, not yet made a decision on the applications for the issue of a permanent residence permit. The treatment of these complaints showed that in practice discrepancies often arise between those legal provisions which demand the issue of a decision within a specified (as a rule instructional) deadline and those which require observance of the rule of law and establishment of material facts and the efficiency of the procedure. Also for the cases treated, the Ministry of the Interior is on one hand obligated to issue a decision within two months of receiving a complete application at the latest while on the other hand, it must on the basis of the declaratory proceeding issue a correct and legal decision. Taking into account that the deadline for the issue of a decision regards an instructional deadline which does not absolutely bind the body, but is however important for the client, and the weight or importance

of the rule of law and material facts which are valid absolutely for the administrative body in making and issuing decisions, and also important for the client, we find that the rules should in this case have precedence and carry more weight.

Again, we emphasise that decision-making within instructional deadlines as defined by law does not only represent the legal work of the administrative body, but also the observance of the right to equal protection of rights from Article 22 of the Constitution, the right to decisions without undue delay from Article 23 of the Constitution and the right to legal means pursuant to Article 25 of the Constitution. The effectiveness of complaints is also ensured by their resolution within a reasonable period of time, for only this will ensure the effective fulfilment of rights.

### 2.6.2 Denationalisation

We have already established that the number of such types of complaints has decreased in recent years. In 2005 we treated 21 complaints from the area of denationalisation and in 2006 18. The number of complaints shows that the procedures of denationalisation are either concluding or in the concluding phase.

The reasons complainants turned to the Ombudsman predominantly regarded the excessive duration of denationalisation procedures, dissatisfaction with decisions, and disputes among relatives following concluded denationalisation procedures. Several complainants felt the impossibility of filing requests after the expiration of the deadline to be unjust, especially a complainant who had missed the deadline for filing the request by one day. The treated procedures are currently in various phases for we often encounter procedures in which the preliminary question of citizenship has not yet been resolved and also cases of unreasonably managed procedures (decisions made during administrative procedures which fall under court competences, imposing of inspection measures, assessments of the market prices of real estate which are the subject of restitution).

As of 30 September 2006, there were a total of 1397 denationalisation cases still unresolved at administrative units, the majority involving the restitution of agricultural land, forests and farm estates (700 cases) and the restitution of houses, apartments, commercial buildings, commercial spaces and building land (566 cases). A total of 131 cases remain unresolved involving the restitution of private enterprises. The ministries processing appeals of second instance still possessed a total of 240 cases (Ministry of Agriculture, Forestry and Food – 197, Ministry of the Environment and Spatial Planning – 33, Ministry of the Economy – 10). There are 147 cases still unresolved at district courts with 120 of them undergoing an appeals procedure.

Despite the decreased number of unresolved cases in comparison to 2005, it is obvious that the promise of fully concluded denationalisation procedures will not be realised for some time.

### 2.6.3 Taxes and customs duties

The number of complaints received decreased by 26 percent in comparison to the previous year. This indicates that several questions connected to the enforcement of amended tax legislation which we wrote about in the Annual Report for 2005 must be clarified while taxable persons received appropriate clarifications from the Tax Administration of the Republic of Slovenia (DURS) regarding other questions. A partial exception involves amendments regarding tax relief for dependent family members.

Complainants thus turned to the Ombudsman in connection with the enforcement of tax benefits (also for adult dependent family members), other forms of serving tax decisions, collection of contributions to the Slovenian Chamber of Agriculture and Forestry, payment of compensations for the use of building land and opposition to the foreseen taxes on real estate. A complainant from Bosnia and Herzegovina receiving a widow's pension in Slovenia turned to the Ombudsman with regard to the problem of double taxation for during the period of treatment of the complaint, the Republic of Slovenia did not yet have an international agreement on avoiding double taxation concluded with Bosnia and Herzegovina. We also encountered problems regarding the taxation of pensions while complainants were still turning to the Ombudsman due to excessively long appeals procedures, however fewer complaints of this type were received than in the past.
***Case no. 12*** *(5.5-37/2006)*

### 2.6.4 Other administrative matters

**Victims of war violence**

Complaints in this area have also been decreasing. Complainants predominantly turned to the Ombudsman with questions regarding the possibility of recognising the status and rights of victims of war violence, requests for the Ombudsman's help in effecting such status and dissatisfaction with the amount of monetary compensation to which a victim of war violence was entitled to, based upon recognised status.

**Material war damage**

Our warnings in the Annual Report for 2005 connected to the excessive duration of resolving appeals against decisions issued for cases pursuant to the Act about victims of war violence were heard for the Ministry of Labour, Family and Social Affairs (MDDSZ) adopted a programme for decreasing arrears in the resolution of appeals which is also being successfully implemented.

Certain progress in the resolution of the question of reimbursing material war damages was made this year. The Ministry of Justice informed us that the Inter-ministerial Commission had adopted the materials "Proposal for Partial Restitution of Material Damages to Victims of the Second World War" at its session on 6 December 2005. The Commission determined that for the partial restitution of war damages caused to individuals during the Second World War, SIT 170 billion in suitable long-term forms for the coverage of such financial burdens would be reasonable (approximately 30 percent of the assessed

and valorised value of war damages). The Ministry of Justice submitted the materials to the Government for the adoption procedure on 14 February 2006. ┬ According to the response from the Ministry of Justice, representatives of societies and individuals turning to the Inter-ministerial Commission with questions regarding the restitution of material war damages from the Second World War are regularly informed of the Commission's activities in this area. The Ministry of Justice's response and particularly the prepared material of the Inter-ministerial Commission show that the decisions of this Commission on 4 May 2005 are being realised, although not as quickly as would be desired. Thus we expect this to contribute to the more rapid implementation of all subsequent activities in the area of restitution of material war damages in the future, nevertheless one cannot predict when this question will finally be resolved.

### 2.6.5 Social activities

The number of complaints remained nearly identical to the number last year and in terms of contents no problems stood out.

A number of problems on the general level arose from complaints involving the area of care and education: the question of the contents of subordinate legislation; direct or reasonable use of the Administrative Procedures Act (ZUP) - how much and in which cases; publication of individual implementing instructions and other acts; revocation of the validity of previous regulations.

The contents of implementing regulations in several cases exceed the legal framework which often reflects a legal void. Provisions arise in implementing regulations which not only reflect the breakdown of legal norms but also restrict the realisation of rights assured by law. Problems occur if an individual implementing regulation is amended prior to a suitable base being defined by law. We have encountered cases in elementary and secondary education (enrolment into secondary schools, the school order).

Disputable is the fact that individual implementing instructions and other acts (for example the Conclusion regarding the criteria for the selection of candidates in case of limiting enrolment in programmes of secondary vocational, professional and technical schools and gymnasiums) are only published on the website of the ministry.

Decisions regarding individual cases are still a hard nut to crack for many a principal. The exception are matters which are especially (well) arranged in school regulations (appeals regarding grades and imposed educational sanctions). Other questions remain open and it is unclear how and within what deadline complaints by parents or pupils should be treated and how they should be responded to. Consistent implementation of the Administrative Procedures Act is defined for an area which ranks as one of the most demanding professionally: decisions on the placement of children with special needs. Thus one of the greatest problems regarding these procedures following the sixth year from the Placement of Children with Special Needs Act going into effect is the surpassing of deadlines defined for the submission of an expert opinion of the child and on its basis, the issue of a decision. Even

greater is the problem arising whenever children or adolescents arrive from one type and level of care or education into another (from kindergarten to elementary school, elementary school to secondary school). They arrive at the new school without a decision and thus, also without the rights belonging to them regarding their hindrance.

The greatest number of complaints was received from the area of **preschool education**. The Regulations on the Payments of Parents for Kindergarten Programmes were amended twice in the past year. The amendments and supplements imposed on 1 January considerably increased the current monthly contributions of parents of preschool children involved in agricultural activities or those who are sole proprietors. Individual provisions were prepared in April signifying a somewhat more favourable position only for parents involved in agricultural activities. The Constitutional Court will determine the conformity of the provisions with the Constitution for which numerous complaints were lodged. The new Rules became effective at the end of the year, and we foresee the number of complaints connected to payments by parents to decrease.

Regarding the aspect of human rights, the Ombudsman does not hold a special opinion regarding nutrition which would contain only a specified type of meat, meatless meals and various forms of vegetarianism. Manners or types of nutrition are not a human right which could be validated through court channels but comprise an individual right to free choice which must be observed by all others so that the individual is not forced into something he/she renounces. However, it is not the duty of kindergartens and schools to cater to individuals' special dietary preferences on the basis of their desires, beliefs and other similar personal circumstances. Their duty is limited to respecting the individual's decisions and his/her right to choose and the right to be different. If certain action (nutrition) was demanded in a kindergarten or school which would be contrary to the individual's ideological, religious or other beliefs, such an action could be classified as a violation of human rights. However, no obstacles exist in valid legislation for the preparation of various types of food. Nevertheless, personnel standards and norms should be supplemented also, for kindergartens and schools when observing the wishes of parents regarding the preparation of special meals are also limited through personnel, material and financial conditions of work defined in the regulations. Thus it is probably understandable that the guidelines and instructions of the Ministry of Education and Sport (MŠŠ) which contain only minimum exceptions (in the personnel and material sense) are strictly observed in the preparation of meals, namely merely for the preparation of special diets for a smaller number of children with health issues.

A number of complaints regarding **elementary school education** involved criticism of attitudes and mode of communications of teachers with pupils and parents. Parents complained that some teachers were often intolerant, incorrect and sometimes insulting in their communications. We advised them how to deal with the problem and what the possibilities or methods for their resolution were.

The guidance counsellor of a school turned to the Ombudsman with the questions where the borders between the rights and benefits of a child were, to what extent they should bend to parents' wishes and to what extent differences between children due to religious reasons or differing beliefs should be

allowed? The opinions of teachers regarding the aforementioned vary. A large number of pupils of various religions attend school. She described cases in which teachers and other professionals were in a dilemma of what to do: namely regarding the actions of the parents of a pupil at an event which was held at school on Shrovetide Tuesday where they picked up their child without an explanation or without notifying the teachers prior to Shrovetide, allegedly due to other religious beliefs; or whether to allow a ten-year old pupil to undergo the one-month fasting during Ramadan; how to act following the declaration of a pupil that based on her religious conviction, she would begin wearing a veil. This is a relevant problem for conflicts between individual rights regarding the freedom of thought, religion and expression in a broader sense, are becoming more frequent.

We forwarded our opinion to the guidance counsellor. Carnival was organised in schools within the scope of cultural activities foreseen in the elementary school programme, thus participation is mandatory and the absentee procedure for pupils is identical as for other subjects. Considering the decision of pupil or namely her parents to fast during the period of Ramadan, we feel such decisions should be respected even if they regard children. A discussion of the classroom teacher with parents would perhaps be appropriate is special health issues of the child were involved. The wearing of a veil is an expression of a conviction which is protected by the Constitution, at the minimum, through the freedom of conduct which can be implemented directly pursuant to the Constitution. No legal provisions exist in the Republic of Slovenia which prohibit or restrict the wearing of a veil. The wearing of veils cannot be prevented unless the veil signifies a manifestation whose consequences could lead to intolerance or the incitement to hate. Perhaps any other type of treatment of the pupil for this reason would in addition to the violation of rights denote unfair discrimination on the basis of the girl's personal circumstances (the wearing of such or other clothing).

A secondary school pupil turned to the Ombudsman with the question whether the prohibited departure from school grounds was contrary to Article 32 of the Constitution of the Republic of Slovenia. He indicated that the leaving of school during five-minute breaks was prohibited in the house rules. The school has a security service arranged with security guards physically preventing the pupils from leaving.

Disputable is the fact that the restriction of leaving school buildings is not arranged with a suitable law if this poses a problem in schools. Also in this case, the right should not be restricted in general, and could only be restricted in individual cases on the basis of generally (legally) specified conditions.
***Case no. 11*** *(5.0-16/2006)*

## 2.7 ENVIRONMENT AND SPATIAL PLANNING

The number of total complaints received markedly increased (index – 102) with the number of cases regarding interventions into the environment increasing (index – 110) and cases regarding spatial planning decreasing (index 73). The structure and problems of the treated cases did not essentially change compared to the previous year. The majority of complaints involved various local interruptions and pollution and interventions into the residential environment. Disputes between neighbours are frequent and predominantly arise due to disturbing emissions of: noise and smells. Frequent complaints were also received regarding disagreement with construction, legalisation of construction, expansion of commercial buildings and construction of simple buildings.

This year we again did not receive any complaints regarding the broader problem of environmental protection. However, this does not mean that such problems do not exist or failed to be treated. The above were associated with numerous individual cases which bothered our complainants in the specified environments. Nevertheless, such complaints are still few. The reason certainly does not lie in a lack of environmental problems and should be sought in the inadequate acquaintance with the Ombudsman's work in this area.

Pursuant to the Constitution, the state also cares for a healthy living environment. When arranging environmental management, the state delegates competences to local communities. Laws define the conditions for performing commercial and other activities while municipalities upon observing state frames, define the purpose and conditions of the use of spaces in a specified area. How qualitative the question of the use of space and thus also environmental protection will be resolved frequently depends on the decisions of local communities. Whenever the decisions of local communities predominantly follow short-term capital or business interests, such decisions can have long-term negative effects on the environment which are later difficult to remedy. This occurred in a case being treated among the selected cases: the decision of a municipality to allow the construction of an ecologically disputed asphalt base in an area unsuitable for this purpose from the viewpoint of protection of the environment and health of people and animals.

Complaints regarding spatial planning particularly involved problems connected to spatial documents. Complainants particularly disagreed with valid or foreseen spatial arrangements.

A comparably large number of complaints were tied to noise in a wider sense. These ranged from noise from public events, railway traffic, noise from shooting grounds to the annoying noise of air conditioners and firecrackers.

Several complainants also turned to the Ombudsman with regard to the noise produced by church bells. They expressed particular dissatisfaction with the fact that according to the Decree on limit values for environment noise indicators published in the Official Gazette of the Republic of Slovenia on 23

November 2005 which went into effect on 1 January 2006, the sound of church bells is no longer defined as a source of noise. The Decree on noise in the natural and living environment, previously in force, namely also classified the sound of church bells among sources of noise.

In response to the parliamentary question regarding the noise of church bells, the Government of the Republic of Slovenia explained that pursuant to EU legislation, church bells do not cause environmental noise. The ringing of church bells is thus a sound which is similar to use of other instruments and in terms of frequencies is in accordance with the tones of the musical scale which for people is neither undesired nor disturbing. According to these explanations, the sound of church bells as a rule only burden the environment for a short period of time, and since the ringing usually lasts merely several minutes, critical values are exceeded in the vicinity of churches only as an exception. In several complaints to the Ombudsman, individuals also expressed their dissatisfaction of such an explanation.

**Inspection procedures**

In the past year, complainants also turned to the Ombudsman regarding the non-response of the National Environment and Spatial Planning Inspectorate (IRSOP), dissatisfaction with its work (complainants regarding to non-action, investors regarding action) and decisions. Complainants, especially those obliged to undergo inspections are increasingly turning more to the Ombudsman in the hope that he will influence the inspection procedure, particularly that the enforcement of measures in the concrete case will be suspended or even prevented.

Based on the complaints received, it is difficult in general for us to assess the (non)effectiveness of the work of IRSOP, however the number of complaints due to non-response is decreasing from year to year, reflecting improved work and also the success of our endeavours in the past. The IRSOP with rare exceptions regularly responds to the Ombudsman. The problem of a large number of unexecuted inspection decisions remains, although the number of complaints in which complainants lament about the non-execution of inspection decision is decreasing.

**The position of complainants in inspection procedures**

In the Annual Reports of 2003 and 2004 with regard to the decision of the Constitutional Court no. Up 257/03-9 which terminated the previous administrative and court procedure which recognised the position of a party in the inspection procedure exclusively to the investor, owner or operator of the land, we warned that the inspector must treat the relevant allegations of other persons and assess whether his/her decision could affect their legal benefits and also appropriately justify his/her position.

Based on the received complaints, we have established that inspectors, contrary to previous years, decide on matters involving the acknowledgement of the status of a participant in the procedure. In the majority of treated cases, the interested parties (neighbours) are unsuccessful in proving their interest for the recognition of the status of a accessory participant. The assessment of legal interest is a complex legal question. This is also shown by a case in which the inspector rejected an applicant's request for the recognition of the status as an accessory participant in the procedure and, afterwards, based on the person's complaints, twice more made a decision regarding the same request in the renewed procedure.

Here we should mention that an appeal against the decision in which the status of a accessory participant is not recognised, suspends the execution of the decision. This is an exception to the rule whereby appeals against decisions are non-suspensive. Until a decision regarding an appeal against the decision not to recognise the status of a party is issued, the body of first instance may not decide on the main matter, for it cannot decide on the rights and legal benefits of third persons if it is established that the person is entitled to the status of a party and to the right to participate in the procedure. The decision that the status of a party or accessory participant is not recognised must thus be final for the procedure to continue, which of course upon the misuse of this institute can lead to a delay of the inspection procedure or the decision on the main matter, namely the imposition of an inspection measure.

We also encountered a case where a building inspector had handed over a decision on the discontinuation of the inspection procedure to a complainant who, as originates from the decision, has a border right as a neighbour to participate in the inspection procedure in question. The complainant who also appeared in the case as the notifier appealed against the decision on the discontinuation of the procedure.

We have established that the practice of the National Environment and Spatial Planning Inspectorate of responding to the requests of third persons (usually notifiers) with merely a written reply has improved for complaints received show that it now makes decisions on such requests using administrative acts.

In the Annual Report for 2005, we also cautioned of insufficient harmonisation and thus insufficiently effective work of state bodies in connection to a complaint which involved the problems of the barracks settlement between Koželjeva ulica and Tomačevska cesta in Ljubljana. A proposal for a joint review of all competent bodies was already filed in 2004, and at the time of drawing up the Annual Report for 2006, had not yet been implemented. We expect that with the foreseen amendment of the Inspection Act (ZIN), the inspection board will ensure a more effective and reconciled work in such and similar cases where reconciled operations of various inspectorates are necessary.

We also treated a complaint, in which the complainant acquainted us with a complaint against an employee of the National Environment and Spatial Planning Inspectorate. The National Environment and Spatial Planning Inspectorate rejected the complainant's complaint with a decision on the grounds that the institute of complaint against the employee did not represent an administrative matter. Since we felt that their proceeding had not gone in the right direction, we suggested they treat the complainant's complaint against the employee in accordance with the third paragraph of Article 5 of the State Administration Act (ZDU-1) and Article 16 of the Regulation on Administrative Operations, however the National Environment and Spatial Planning Inspectorate did not heed our suggestion.

## 2.8 COMMERCIAL PUBLIC SERVICES

The number of cases treated has on the whole remained within the same scope. Regarding **municipal services**, complainants turned to the Human Rights Ombudsman in connection to problems associated with connections to the water supply network, payment of taxes and environmental fees, differing prices of services for the discharge and cleaning of waste water, manner of charging and paying the costs of compulsory municipal commercial public services involving the collection and transport of municipal wastes, the public lighting system, irregularities regarding the performance of chimney sweep services, emissions from ski resorts, etc. With regard to **communications**, complainants complained against Telekom Slovenija because of the surmised and unjustified charging of services, difficulties in acquiring consent for construction interventions in connection to requested telephone connections, the prevention of harassing calls and indirectly the reimbursement of investments into the (former) public telecommunications network. Numerous complaints were also received regarding the obscuration of broadcasted sports programs of the TV channel HRT 2 in cable systems on the territory of the Republic of Slovenia during the World Soccer Championships. Complainants accused RTV Slovenija of the unjustified subscription fee for RTV, presentation of children's television programmes at inappropriate times, problems with the cancellation of the compulsory subscription fee due to not owning a TV set and the enforcement of the waiver for payment of the RTV fee for a disabled person. Regarding **energy**, complainants accused electric power distributors of unjustified threats involving the discontinuation of the supply of electric power and the disputed disconnection of electricity for persons in social hardship. They also alleged that the electrical power also caused them unpleasant emissions. Complainants also disagreed with the termination of remote heating activities or change in the method and distributor of remote heating and the calculation of heating costs. Regarding **traffic**, complainants objected to traffic arrangements, predominantly in connection to traffic safety and excessive emissions. They accused the authorities for management maintenance of roads of illegal, poor and deficient execution of work and irregularities regarding road maintenance and the installation of traffic signs. The disabled acquainted us with problems they encountered as road traffic participants. We also treated complaints connected to the purchase of real estate for construction of the motorway of the Republic of Slovenia and restitution for damages due to the implementation of work to this end. The majority of complaints merely required explanations and legal advice.

**Problems regarding private water supply are still a current topic**

In the Annual Report for 2004, we already warned about the problems associated with private water supplies and problems encountered by individuals desiring to connect to such networks. If co-owners or partners oppose this, the affected person must enforce his/her right through court. These problems are usually not experienced by those connecting to the public water supply network or network managed by those performing public commercial services involving the supply of drinking water to municipalities. The Ministry of Spatial Planning and Energy clarified in this case that they were aware of the matter and had begun preparation of the Operative Programme for the Supply of Drinking Water in Slovenia and preparation of the Rules on the Drinking Water Supply. The documents should also resolve the problem of the private supply of drinking water and prevent various forms of pressure or disagreement which occur particularly in village environments.

A complainant turned to us in 2006 who, despite a final building permit and the payment of municipal fees, cannot connect to the private local water supply managed by the local community. Turning to the court with the suggestion that a temporary decree on the connection be issued, the court declared that it was not competent for this matter for it regarded as the arranging of public matters. When the complainant turned to the Ministry of Spatial Planning and Energy which issued a decision that the local community specify a location for the connection to the water supply, the local community lodged an administrative dispute against the decision. The local community namely argued that the private water supply had limited capacities, thus it adopted a moratorium against the implementation of new consents and suggest other possibilities of connection to the complainant which the latter did not accept. The ministry already had a decision prepared in which it prescribed to the municipality in this area that it ensure the connection within a defined period, however it did not opt for this since it regarded the case as demanding and complex case which could not be resolved in such a manner and within such a short deadline. It felt that a solution needed to be found between the municipality, local community and complainant.

The Operative Programme for the Supply of Drinking Water in Slovenia and preparation of the Rules on the Drinking Water Supply were issued in 2006 which additionally regulate the manner of implementing such public services. The owners of private water supply systems must on their bases allow connections, however in the event of a dispute or unsettled mutual relations, the above still prescribe the court route. The Rules also foresee a multi-annual transition phase in which municipalities must ensure the fulfilment of all requirements regarding the supply of drinking water as a public service, thus the question remains whether the question our complainant brought to our attention is still relevant.

From 1993 to date, municipalities had the possibility and legal basis for assuming the management of private water supplies pursuant to the Public Utilities Act (ZGJS). They did not exploit this option in many cases. Particularly since several owners with private and economic interests (amount of the water fee, various fees and compensations) opposed this. We realise that these questions cannot be resolved in the short-run, nevertheless we feel the current situation to be unacceptable for individuals when using public commercial services, find themselves in various positions for unjustified reasons. Those desiring to connect to a private water supply and encountering opposition must utilise lengthy and expensive court procedures while those connecting to the network which are a part of public services usually don't face such problems.

## 2.9 HOUSING MATTERS

The number of complaints treated involving housing decreased by one third in comparison to 2005. Nevertheless, their contents confirm our findings from previous years, namely that the possibilities for resolving housing matters especially with regard to young families and those with less material means are not improving. Numerous complainants turned to the Ombudsman in the past year with a request for aid or mediation in the resolution of their housing and residential problems.

Many complainants who were not granted non-profit apartments for rent through public tenders expected the Human Rights Ombudsman instead of a body of instance to review the correctness and legality of the issued decisions, especially regarding disputed evaluation system of the tender. Complainants who were successful in the public tenders directly complained of the unsuitability of the granted apartments or the undefined time period regarding the granting thereof to the Human Rights Ombudsman. This especially applies to the exchange of non-profit apartments and granting of housing units.

Complainants also turned to the Human Rights Ombudsman saying they were being threatened with a judicial eviction from their apartments in which they resided or were demanded to move out by owners of rental apartments in the public and private sectors. We also treated the single complaint in connection to a caretaker's apartment within this scope. Tenants of non-profit apartments felt that the costs of the apartment were too high or that they were entitled to subsidised rent despite the negative decisions of competent bodies. They also accused landlords of insufficient care in maintaining apartments.

Complainants effected their right to purchase of military apartments according to conditions valid for privatisation of socially owned apartments and objected to the amounts of their assessed values. Complainants for whom an eviction procedure had been imposed felt these procedures to be illegal.

Tenants in denationalised apartments complained of the excessive duration of the denationalisation procedure and the associated impossibility of effecting replacement privatisation according to the Housing Act (SZ-1), with regard to compensation connected to the replacement purchases or move from the apartments due to problems with landlords who commenced immediate removal. We reported on the above in more detail in previous years.

Storey owners were predominantly bothered by too noisy neighbours. Complainants also turned to the Human Rights Ombudsman for explanations in connection to the management of multi-residential buildings, functional land, joint or special common areas in multi-residential buildings and the presence of domestic animals in such buildings.

The majority of complainants merely sought explanations and advice on the use of suitable appeals channels. In several cases, we assessed the actual and legal situation of cases and an the (ir)regularity of procedures of competent bodies only following additional enquiries.

In two cases in 2006, the Ombudsman utilised the option of implementing extraordinary interventions for the resolution of serious apartment problems of complainants. In the first case, we intervened in the Public Housing Fund of the City Municipality of Ljubljana (JSSMOL) with the suggestion that the writ of execution regarding eviction be withdrawn. We felt there were social and humanitarian reasons for such a suggestion. JSSMOL filed a suit and managed to evict the complainant in a court procedure due to non-payment of rent. The complainant had not paid rent and apartment costs for a number of years following the retirement and death of his spouse having fallen into depression for which he was also being treated. He did not participate in the court procedure nor pick up court communications. He filed a report on this with the Social Services Centre who suggested that the complainant be allowed to remain in the apartment he had lived in since birth. JSSMOL did not agree with our recommendation referring to the final judgment. They felt that the repayment of debt only gave a basis for the withdrawal of the execution in this part while the decision on the emptying and handover of the real estate remained in force.

In the second case, we intervened with the Ministry of Defence of the Republic of Slovenia requesting that they withdraw the writ of execution for the emptying of the apartment of a complainant who on the basis of the final court decision had to leave the apartment which she had exchanged for an apartment in Belgrade during the dispute period in 1992. She had ceased working as a servant of the federal bodies in Belgrade and desired to return to her native Slovenia. She exchanged the apartment with an officer of the Yugoslavian People's Army (JLA) who was leaving Slovenia. We justified the recommendation with the following arguments: that in similar cases, bodies of the Ministry of Defence of the Republic of Slovenia had approved some exchanges at the beginning of the nineties of the previous century, that the criteria for the resolution of cases regarding illegal placements in military apartments adopted by the Government of the Republic of Slovenia in 1998 in such cases do not foresee the emptying of apartments, and due to the health and social problems of the complainant and her daughters. The ministry did not agree with our recommendation for the withdrawal of the writ of execution referring to the additional criterion adopted by the Government of the Republic of Slovenia in 2001 and based upon which the execution procedure for the emptying of apartments also in cases where the debtor was not employed in the former Yugoslavian People's Army is continuing. Although we feel that the additional restrictive criteria are disputable and that our reasons justify the proposed withdrawal of execution, our continuing endeavours regarding the recommendation are no longer reasonable since the complainant has resolved her housing problem in a different manner.

The two cases show that several bodies still do not clearly understand the options granted to the Human Rights Ombudsman by the second paragraph of Article 3 of the Human Rights Ombudsman Act, namely that he can also refer to the principles of justice in his interventions. The Human Rights Ombudsman gives such a recommendation to public administration bodies in special justified cases to make an exception and enable resolution to the benefit of individuals who unknowingly and not necessarily by their own fault find themselves in a difficult situation for which a favourable outcome cannot be expected from legislation. The Ombudsman only rarely issues such recommendations for he realises that excessively wide use of interventions on the basis of the principle of justice could threaten the

legal order and the principle of equality before the law. We can only hope that authorities will in the future have more understanding for such recommendations of the Ombudsman.

**Opinion of the Ombudsman regarding wider possibilities for concluding new rental agreements with close relatives of tenants**

The Public Housing Fund of the City Municipality of Ljubljana requested our opinion regarding the recommendation on the decision on the conclusion of rental agreements so as to prevent social hardship in cases of already valid rental relationships. The decision which was to be adopted by the City Council of the City Municipality of Ljubljana enables the conclusion of new rental agreements with a close family member of the tenant of a non-profit apartment also in the case of the permanent departure of the tenant into a retirement home or sheltered housing, the removal of the tenant due to unknown reasons, the relocation of the tenant due to the establishing of a new family or upon the tenant's relocation to smaller residential spaces outside the area of residence. In such cases, the rental agreement could be concluded only with a close family member of the tenant who actually resides in the apartment and fulfils the income and property conditions for renting a non-profit apartment. Articles 109 and 110 of the Housing Act foresee the obligation of the landlord to conclude a new rental agreement only upon the death of the tenant or upon divorce. The Housing Act thus does not envisage that the landlord has to conclude a new rental agreement with a close family member of the tenant upon the tenant's relocation or departure based on other reasons. In such cases, pursuant to the restrictive interpretation of the Housing Act, a procedure for evicting users from the apartment must be carried out.

Although the Ombudsman does not issue binding legal opinions, we made an exception in this case, judging that it regarded a broader question which is important for the legal safety of citizens. We felt it best to define the duty of concluding rental agreements with a close family member of a tenant upon his/her move or departure from the apartment for other reasons in the Housing Act. Since the law does not envisage this, we feel that social, humanitarian and political reasons point to the adoption of a solution as suggested in our recommendation to the Public Housing Fund of the City Municipality of Ljubljana. In many cases, life brings with it circumstances which are not foreseen by legislation. It is not fair that close family members of a tenant must leave an apartment upon the tenant's departure if he/she did not get a divorce or die. Is the departure of a tenant to a retirement home thus some type of punishment for the family members who remain in the apartment? We also referred to the obligations of municipalities arising from the Housing Act whereby they had to safeguard the rental relationship and aid the tenant whenever they were in need. We also made reference to international documents binding the state to ensure suitable housing and decrease homelessness.

Alongside our positive opinion regarding the broadening of reasons whereby a municipality may conclude a new rental agreement with close family members, we also cautioned of the danger of using such an exception too widely or discriminately. Thus, we feel it best to define such cases in more detail by law, namely through an amendment of the Housing Act.

**Earmarked rental of apartments and their privatisation**

The Housing Act defines that a non-profit rental apartment is an apartment which is rented for a no-profit rental fee to a person entitled to rent a non-profit apartment. Whenever the non-profit rental apartment is rented by a municipality, public housing fund or non-profit apartment organisation, except for the exceptions listed in the law, the process of allocating an apartment for rent commences on the basis of a public tender. The Rules on renting non-profit apartments as an implementing act, partially narrow the legal jurisdiction for they define that the landlord must publish a tender for the rental of non-profit apartments in public media, except when it regards a landlord which was established on purpose to resolve housing questions for defined groups of the populations who may publish an internal tender for the rental of non-profit apartments.

Upon treating complaints which accused the President of the Pensioners' Organisation of arbitrarily renting an apartment of the Real Estate Fund of the Pension and Disability Insurance Institute of Slovenia (NSPIZ), he explained that in his case it regarded the rental of earmarked apartments (apartments earmarked for retirees and other elderly persons) pursuant to internal rules on the rental of apartments. Since this does not involve the rental of non-profit apartments, these are not rented on the basis of public tenders. The Ministry of Spatial Planning and Energy and the Ministry of Labour, Family and Social Affairs affirmed their position.

The Pension and Disability Insurance Community of Slovenia (SPIZ) on the day of the Housing Act going into effect became the owner of apartments and apartment houses constructed with the funds of the Community, apartments constructed specifically for retirees and apartments constructed specifically for the needs of ZZB NOV Slovenia (hereinafter: Housing Fund). Pursuant to the Pension and Disability Insurance Act of 1992, all the aforementioned apartments were assumed by the Pension and Disability Insurance Institute of Slovenia (ZPIZ), namely as the legal successor of the Pension and Disability Insurance Community of Slovenia and its expert offices. The Housing Fund comprised funds from the Pension and Disability Insurance Community of Slovenia Fund which was managed by the management board appointed by the general meeting of the Pension and Disability Insurance Institute of Slovenia. With enforcement of the Pension and Disability Insurance Act in 1999 (ZPIZ-1), the Pension and Disability Insurance Community of Slovenia Fund was transformed into the Real Estate Fund of the Pension and Disability Insurance Institute of Slovenia.

Pursuant to the Pension and Disability Insurance Act, the Real Estate Fund of the Pension and Disability Insurance Institute of Slovenia is a legal entity which was established for the purpose of managing real estate and ensuring non-profit and protected housing for retirees and other elderly persons. In addition to the Housing Fund, the share capital of the Real Estate Fund of the Pension and Disability Insurance Institute of Slovenia also consists of other real estate and proceeds from the sale of apartments and houses pursuant to the Housing Act. The Real Estate Fund of the Pension and Disability Insurance Institute of Slovenia is a legal person operating as a limited liability company holding the rights, obligations and responsibilities defined in the Pension and Disability Insurance Act and Companies Act. The provisions of the Public Funds Act are also used mutatis mutandis. Here, we must point out an

amendment of the Rules on the Rental of Apartment of the Real Estate Fund of the Pension and Disability Insurance Institute of Slovenia (9. 12. 2005) based on which the status of non-profit apartments was changed to that of earmarked apartments, while the non-profit rent was changed to a price formed freely, under certain conditions, within the value of non-profit rent. The Pension and Disability Insurance Act mentions the non-profit housing of Real Estate Fund of the Pension and Disability Insurance Institute and also defines the Rules on Allocating Non-Profit Apartments for Rent in the portion regarding internal tenders. Nevertheless in their explanations, the Ministry of Spatial Planning and Energy and the Ministry of Labour, Family and Social Affairs limit themselves exclusively to earmarked apartments. With regard to the status of Real Estate Fund of the Pension and Disability Insurance Institute, the Ministry of Spatial Planning and Energy expressly stated that the provisions of the Public Funds Act do not apply to Real Estate Fund of the Pension and Disability Insurance Institute mutatis mutandis for they are contrary to the later Pension and Disability Insurance Act (ZPIZ-1) whereby the Real Estate Fund of the Pension and Disability Insurance Institute is a commercial enterprise.

Considering the aforementioned, especially the source and manner of acquiring the resources of the Housing Fund, we believe that the allocation of Real Estate Fund of the Pension and Disability Insurance Institute's apartments should not be based merely on its internal acts but that the procedure of allocation be more transparent and subordinate to external supervision. it should also allow for the possibility of using appeal procedures for unsatisfied individuals or applicants. On the other hand, the possibility of "wild privatisation" exists regarding former social property and profitable management with this Housing Fund which could be contrary to the purpose of its establishment. We do not assert that this will actually happen, but only caution of the possibility.

## 2.10 EMPLOYMENT RELATIONSHIPS AND UNEMPLOYMENT

**Employment relationships**

As in previous years, the majority of complainants in 2006 desired the Ombudsman's intervention due to the violations of rights associated with employment. It seems, that some employers due to the ineffectiveness of control mechanisms (insufficient number of labour inspectors, the slowness of court procedures, non-institution of criminal procedures against employers, lack of a general opinion in society, that the illegality of intimidating and discriminatory treatment of employees is something which is to be dismissed) do not feel it necessary to observe labour legislation. Once again, the most frequent complaints regarded regular and even more frequently extraordinary terminations of employment contracts, various forms of mobbing by employers, irregular payment of salaries and other benefits, especially holiday allowances, the length and time schedule of working hours and the associated non-payment of overtimes, non-payment of student work, lack of hiring through a tender out of discriminatory reasons, dissatisfaction with work and the findings of the labour inspectors, unfounded deletions from records of unemployed persons, etc. They often turned to us with various questions and merely requested explanations, for example regarding annual leave in the case of long-term sick leave or maternity leave or if disabled persons could work in shifts or if the employer had correctly specified the number of days of annual leave, etc. All complaints were treated in the same manner as presented in previous reports.

An increasing number of complainants alleged various forms of discrimination in their workplaces. Based predominantly on telephone and also written complaints, we are establishing the considerable presence of mobbing which we already brought up in previous reports. The greatest problem is that complainants many times lacked proof for the acts they fell victim to. Whenever a disagreement cannot be settled within the collective, we referred complainants to the National Labour Inspectorate and to the gender equality advocate which operates within the scope of the Office for Equal Opportunities which is involved in uncovering and investigating cases of discrimination. We also explained the appropriate provisions of the Employment Relationship Act (ZDR) to them.

Also in all other cases where the Ombudsman does not possess direct competences for intervention, we referred complainants to the National Labour Inspectorate. They usually did not return, leading us to believe they were satisfied with the treatment of the inspection. Whenever complainants expressed dissatisfaction with the work of an inspector in a complaint, we addressed an inquiry to the National Labour Inspectorate. We usually found that the National Labour Inspectorate had proceeded correctly and in line with its competences, however complainants were not satisfied. Thus we welcome the positive response of the Government of the Republic of Slovenia to our warning from last year, that it would be prudent if the Employment Relationship Act was broadened to include the possibility of issuing a regulatory decision to the National Labour Inspectorate also for violations which fall under the judicial competences (e.g. omissions of payments of holiday leave allowance, reimbursement of work-related costs). The Government responded that the expansion of actions in the aforementioned cases had been additionally recommended within the scope of the amendment to the Employment Relationship Act.

***Case no. 10*** *(4.2-5/2006)*

## 2.11 PENSION AND DISABILITY INSURANCE

The cases treated in the past year were similar to those treated in the previous year whereby we can again repeat our general assessment, that individuals are too poorly acquainted with their rights and procedures for enforcing them with the Institute of Pension and Disability Insurance of Slovenia. The aforementioned should above all caution its insurants that the generally enforced 60-day deadline does not apply for decisions on rights stemming from disability insurance. If an expert opinion involving the establishment of rights from disability insurance is required, a six-month period is defined by law.

**International agreements on social security**

Already in the Annual Report for 2003, we cautioned of the frequent complaints of citizens of Bosnia and Herzegovina who had attained the predominant portion of their pensionable service through work performed in the Republic of Slovenia and had paid contributions for compulsory pension and disability insurance into the Pension and Disability Insurance Institute of Slovenia during the entire time. They could not enforce their rights from the pension and disability insurance based on their pensionable service for the period they were included in the insurance since the countries do not have an agreement on social security concluded.

The expectations that the Ombudsman's warning would accelerate the procedure for preparing and ratifying a bilateral agreement on social security with all countries of the former Yugoslavia were not realised. The number of complaints from citizens of Bosnia and Herzegovina who had unsuccessfully validated their rights at the Pension and Disability Insurance Institute of Slovenia stemming from pensionable service attained in Slovenia increased in 2006. Their demands were rejected for without an international agreement on social security in force, they cannot acquire a proportionate share of rights from the pension and disability insurance, thus they turned to the Ombudsman alleging a violation of human rights.

Since June when we requested information, the ministry has not forwarded us a response. The question remains whether a country can deem itself a well regulated state if it does not ensure that people who have paid quite a large share of their salaries (contributions) into the Slovenian pension "fund" acquire the legal rights they were insured for. Particularly contemptible is the reasoning that it is in Slovenia's interest to delay the conclusion of an international agreement on social security between the Republic of Slovenia and Republic of Bosnia and Herzegovina and other countries as much as possible. This regards elderly, ill or disabled former insurants, whose number is quickly decreasing because of death. It is extremely depraved to save funds stemming from the rights from compulsory pension and disability insurance at the cost of these people.

## 2.12 HEALTH INSURANCE AND HEALTHCARE

### 2.12.1 Health insurance

Nothing has changed in healthcare and health insurance despite the announced reform of the statutory arrangement thereof. Thus the often described problems regarding lengthy procedures prior to the appointment of doctors and medical commission to the Health Insurance Institute of Slovenia continue. Although the law defines that a decision has to be issued within eight days at the latest upon the appointed doctor receiving a recommendation from a personal physician or the medical commission receiving a complaint (against the decision of the appointed doctor), this deadline is frequently not observed. The Ministry of Health informed the Ombudsman that it was preparing the nomination of an inter-ministerial working group which would arrange a special standardised procedure for management and decision-making during the administrative procedure for enforcing the rights of health insurance. Considering the lengthy duration of decisions in appeals procedures, the ministry feels that they are the result of an increase in the number of complaints by insurants and a limited number of appointed doctors and doctors in medical commissions.

The Ombudsman had anticipated such a response but was dissatisfied with it. We namely feel that the unsatisfactory state in this area can only be arranged through the introduction of systemic measures which will ensure decisions on rights stemming from compulsory health insurance within the legal deadline.

### 2.12.2 Healthcare

The normative scope of implemented healthcare activities and accessibility of medical services in this year did not noticeably change, thus we caution of the same open questions as in previous reports. Despite the Ministry of Health's promise, the Act regulating complaint procedures and the rights of patients does not exist, although a draft law is already undergoing public discussion in which we actively participated. The ministry also has not yet prepared a draft law which would regulate the supplementary methods of treatment, although this draft has already been in public discussion.

The contents of individual initiatives of this sort do not change, for a large number still regard the **inappropriate relationship** of healthcare personnel and the **lack of awareness**. The **access to health data** of individuals has not been adopted as their right, whereby they run into obstacles also due to incorrect comprehension of the contents of these rights. Regardless of whether health documentation is really the "property" of the patient, a health institution may not simply hand over all documents to a patient, for in the event of a dispute later on, it does not possess data which could significantly affect the assessment of the suitability of treatment. Thus patients or their relatives should be given copies of individual health data, officially marking in the documentation who had access to the data and when and who received the copies.

Many complaints alleged **improper treatment** turning to the Ombudsman without submitting a complaint to the competent body. We advised complainants to first take advantage of the internal complaint procedure at the health institution or turn to the Medical Chamber of Slovenia for the Ombudsman is not competent to make an expert assessment on the appropriateness of treatment or the prescribing of medication. In cases in which complainants later acquainted us with the results of the complaint procedure, we did not establish any irregularities in the work of competent bodies which would justify our taking action.

**Equipment of the Institute of Oncology in Ljubljana**

In the first half of 2006, we received a number of initiatives from non-governmental organisations and individuals in connection to problems with the Institute of Oncology in Ljubljana. Several suggested that the Ministry of Health should bypass the law and decide on the purchase of operating tables while several also complained about the actions of individual companies who initiated appeals in connection to the public procurement procedure. At a special press conference, the Ombudsman also emphasised that complications could not be resolved outside of legally prescribed procedures. Those competent should ask themselves who was responsible for the long and obviously delayed procedure and, as needed, also suitably amend legislation if it enables the conditions for such complications. If an investment is planned correctly, the public procurement procedure can commence that much sooner so that possible complaints would not cause delays and the blame for arising complications would not be placed on the party validating its constitutional right to complaints.

The Ombudsman suggested that the Ministry of Health establish who was responsible for the delay in the implemented procedure and take suitable action. Such a demand was also justified since the Minister of Health had willingly and publicly admitted that it was unaware of the legal provision enabling decision by the National Audit Commission that the contracting authority could continue the procedure for awarding a tender despite a lodged request for an audit. This provision (second paragraph of Article 11 of the Audit of Public Procurement Procedures Act) has namely been valid since the law's going into effect on 25 September 1999. Experts involved in public procurement procedures who decide on billion euro/tolar transactions cannot fain such ignorance without suffering the consequences.

The ministry in its response explained that all procedures had been managed correctly and in accordance with legislation, thus there were no reasons for any possible established responsibilities of individuals who had prepared the public tender and expert solutions for the decisions of competent bodies. The Ombudsman is not satisfied with the response, for from the viewpoint of well-managed public matters we ask why experts do not foresee possible complications (which in this case are complaint procedures) within the time plans for the construction and delivery of certain investments and publish the public tenders enough in advance so that complaints would not threaten the normal course of construction or delivery.

**Contamination with a contagious disease at the hospital**

A complainant's wife and newborn contracted the tuberculosis virus during their stay in the hospital for a new mother infected with tuberculosis resided in the neighbouring bed. The child had already been examined in the hospital and urgent treatment lasting six months with medication for tuberculosis and vitamin B6 prescribed. Since the aforementioned medication is not included in the positive list of medication, the parents would have to pay an additional 15 to 168 thousand tolars (EUR 62.59 to 701.05) for a monthly dose.

We advised the complainant to address a concrete demand to the hospital regarding reimbursement of the costs of treatment for it was objectively responsible for the arising damage. Since all Slovenian hospitals have insurance contracts concluded for the actions of their doctors or employees, we expected that the complainant would be able to agree on the reimbursement of costs with the insurance company especially if the hospital issued its prior consent.

Regardless of the legal responsibility of the hospital, we expressed the opinion that the hospital should have ensured the treatment of the complainant's wife and son from its resources on the basis of the principle of justice for the disease appeared in its premises where patients cannot freely decide with whom and where they will spend the duration of their hospital stay.

The complainant did not contact us anymore, leading us to believe that the disputed question was satisfactorily resolved.

## 2.13 SOCIAL SECURITY

We cannot write anything new in the Annual Report for 2006, especially regarding matters which were already described in previous reports. Complaints regarding the social (material) risk of families and individuals continue to prevail. The amount of financial social aid still does not ensure sufficient means for existence; this particularly applies to single persons who frequently also have health problems. Another very visible issue are single or two-parent families with schoolchildren which are unable to ensure such conditions that during the period of schooling their children would not feel exposed and would have equal opportunities. There is also an increase in families with unemployed children who do not attend school regularly and are maintained by their parents, and for whom the latter cannot acquire financial aid. The situation of material risk is still closely associated with the unemployment of one, two or even more family members. A big problem is also the amount of non-profit rent and other operating costs which numerous families cannot manage. They are not entitled to subsidies surpassing the income threshold while the income of the family is too small to enable them to settle costs.

We treated many cases regarding problems involving material circumstances. Complainants asked us for help in ensuring their existence or acquainted us with the circumstances which proved that the aid received did not guarantee a minimum level of existence, although they were perhaps in line with legislation. We have also established that the amount of financial social aid in many cases does not enable a dignified existence, which following a longer time period, appears as one of the reasons for the increased stratification of the population. Such a situation causes discrimination and decreases the possibilities of individuals and families being included in the social occurring on an equal basis and to have equal opportunities for development and advancement and a quality life.

Here the Ombudsman is wholly powerless although we attempt to provide hope to complainants and motivate them to seek solutions. We inform the competent offices of such cases, usually social services centres, which then attempt to help. Increasingly, from the reports of social services centres, we see that they are aware that several applicants for financial social aid live in extremely poor conditions or require more funds for the resolution of problems (e.g. for the conclusion of schooling) which pursuant to valid regulations, they cannot ensure.

At any rate, we should mention the case of good practice we were acquainted with regarding the Social Services Centre Ilirska Bistrica. In the past year, the Centre commenced with a special programme for the social inclusion of women whereby women of Albanian nationality were given the opportunity to learn Slovenian, thus ensuring them increased possibilities for inclusion into society. Within the scope of the programme, participants are prepared for initial employment interviews, autonomous visits to parent-teacher meetings regarding their children and autonomous management of their matters with various state bodies. We feel that similar programmes should be introduced in all municipalities in which aliens live for this will enable them greater social integration and the realisation of all human rights.
***Case no. 4*** *(3.3.-16/2006),* ***Case no. 3*** *(3.0-24/2006, 3.0-2/2004),* ***Case no. 9*** *(3.7- 2/2006)*
***Case no. 5*** *(3.5-25/2006),* ***Case no. 6*** *(3.5-39/2006),* ***Case no. 8*** *(3.6 - 12/2006)*

## 2.14 PROTECTION OF CHILDREN'S RIGHTS

> The number of complaints stemming from children's rights has been increasing every year since we began monitoring the statistics of this area separately. We feel that the increased number of complaints cannot be ascribed to an increased number of rights violations, but to the heightened awareness of children and adults regarding the meaning of children's rights. We are less frequently encountering opinions that children possess too many rights and that they should be more aware of their obligations, while parents are increasingly to us with concrete problems in the upbringing of children. We endeavour to recommend suitable experts for these parents, many times also helping with experience gained from the Ombudsman's work. At times, we also help professional personnel of individual social services centres who not only see the Ombudsman as a supervisor of their work, but also an aide in resolving individual hardships they deal with.

In addition to the resolution of such complaints, we are also actively involved in promotional activities. More information regarding promotions and the area of children's rights can be found in the chapter 3.2 Raising awareness and promotional activities.

In the past year, we directed more attention at **foster care** and **institutional care**. Children and adolescents, who for various reasons live outside their biological families, either permanently or temporarily, are placed in such types of care and education. They come from unsuitable social and family circumstances. Some are without parents while a large number have been neglected in terms of upbringing and abandoned. These include almost 2000 youngsters up to the age of eighteen. They rarely write complaints to the Ombudsman themselves; more often, their situations are brought to us by foster parents and professional staff of institutions and sometimes even neighbours or acquaintances.

Foster care as a special form of protection of children who require care and upbringing with persons other than their parents is defined in the Marriage and Family Relations Act. The Act Concerning the Pursuit of Foster Care regulates the carrying out of such activities. This law also defines the conditions for carrying out the procedure for acquiring a foster care license and the manner of financing thereof.

According to available information, there are approximately 1300 children living in foster families. Although it seems that no special problems in this area exist, precisely this year polemic and heated discourse on whether this area is really arranged without error and whether an amendment and supplementation of legislation should be pondered was carried out. Many implementers – foster parents – are critical of the valid standards for carrying out foster care activities, cautioning of the lack of supervision and highlighting the material value of foster care. In the procedures, problems frequently regard the representation of children and the establishment and defence of their most important interests. Several foster parents have complained of the limited possibilities of permanent education and training for foster parents while others did not receive adequate expert aid and support. Foster parents should also be given the opportunity to become the custodians of a child, and their position in their relationship to the

state should be more completely addressed. Expert work with biological parents (the biological family) also needs to be strengthened for the placement of a child into foster care is merely a temporary measure and should last as short a period as possible. The expedient return of the child to his or her biological family must be the rule and not the exception.

Institutional care is regulated by school regulations as the majority of institutions fall under pedagogical-educational establishments. The Organization and Financing of Education Act arranges the conditions for performing and defines the manner of managing and financing the care and education of children, adolescents and young adults with special needs.

Visits to institutions, talks with deans and several other professional workers, the surveying of students and pupils and talks with them have reflected common problems appear at the implementation level and which have not been suitably resolved by the legislation in force. Thus, in our opinion, the conditions and reasons for state bodies intervening in the family with their measures must be re-examined. Social services centres in order to enable rapid and effective response when a child is threatened too many times use the excuse of lack of authority. On the other hand, they are reproached often enough for too rapid action and thus, the violation of parental rights. The duties of parents whose children were removed by law should be regulated in more detail. For individual duties, they should be identical to parents who cannot handover the burden of maintaining children to the state. Many parents who fully lack financial obligation to their children, desire that a child be placed in an institution and maintained there as long as possible, even when such action is not longer required. Often the modest work of competent offices with the biological parents appears as a considerable deficiency. The grounds for a child's continued residence in an institution is not examined enough. Social services centres are too quickly appeased by the successful accommodation of a child into an institution, especially if the child feels good there. Additionally, institutions frequently only contact social services centres when something is wrong. The child's opinion must be obtained for procedures involving decisions on the child's rights. This should be incorporated into regulations and the social pedagogical doctrine on the treatment of children and families. Only then will the practice change faster.

Contrary to foster care, where work with parents is predominantly left to the will and ingenuity of the social workers of social services centres, institutions continuously invite and encourage parents to participate. They organise various forms of education and training, schools for parents and self-help groups in which parents are taught among other things responsible parenting. If their endeavours possessed adequate basis in regulations and practice, alongside the active cooperation of social services centres, the objective would certainly be attained more rapidly - the return of the child or adolescent to the family who would be capable of dealing with daily problems, upbringing and socialisation functions, and the resolution of conflicts. A problem more frequently highlighted in institutions is the additional disorders of young persons, especially various pedopsychiatric disorders which are rarely diagnosed with doctors quickly prescribing various medications (especially sedatives and anti-depressants). Children are thus prone to deficient and even unsuitable treatment. Another problem highlighted in juvenile facilities was the treatment of adolescents addicted to drugs.

Youth having attained full age and having concluded training in an institution find themselves in new, seriously stressful situations. They are at a loss of where to go following discharge, if they do not have parents, or if their parents do not want them to return home. A suitable solution would be the establishment of youth homes, a topic which is rarely discussed. The youth must learn to make it on their own regardless of whether they are prepared for life or not.

A total of 10 institutions are organised in Slovenia in which children with behavioural and emotional problems may be placed: five for primary school children and five for youth aged over 14. Using a questionnaire, we asked youngsters of their opinion of life and work at the institution and about their goals and recommendations. We also received beneficial information and recommendations from discussions with the deans of the institutions from which we prepared our findings:

- **Cooperation of social services centres with families** is for the large part inadequate. An analysis of questionnaires showed children to be quite attached to their families, desiring more contact with their parents, brothers and sisters and enjoy when turning to them for required advice and support. Thus work with children can only be successful together with simultaneous work with the parents.
- **Professional help to children placed in institutions with more serious problems** (pedopsychiatric disorders, various addictions) **is inadequate**. More and more children are using a variety of anti-depressants prescribed by doctors. The inadequacy of professional qualifications of professionals working with such youth as well as with sexually abused children has been observed.
- **Integration or inclusion problems exist** for peers and also their parents frequently reject children from institutions. We assess that this is due to poor information on their being different, inadequate communication of professional workers with parents and the general appearance of decreased tolerance.
- **Cooperation of courts with the expert offices of institutions is insufficient** while long duration procedures regarding decisions on placement in an institution is unacceptable.
- **The work of authorised persons**, who often do not work in the best interests of adolescents (most of the time they only meet with them at court and do not discuss with them the committed act, but advise them to deny the act at any cost and to exploit all legal means and routes, etc.) is inappropriate.
- **Adolescents have nowhere to go after discharge**. Quite a number of adolescents have no one to aid them during the initial period following their discharge from the institution. **Cooperation of social services centres** in these cases is left to individual professional workers. The Ombudsman sees a possible solution in the design of youth groups for a defined period of time (from 6 to 12 months) and the establishment of **youth homes** for them.

Among complaints received, problems of **families in a poorer socio-economic position** by number stood out similarly to the previous year. Complainants most frequently objected to the lengthy resolution of complaints about decisions regarding rights to child supplements, supplements for large families and childcare and other rights originating from the Parental Protection and Family Benefit Act. They were critical of the behaviour of expert personnel at individual social services centres, and complained that they had not been acquainted with the rights ascribed to them by legislation sufficiently or correctly. Since the complainants in these cases could not prove their allegations, we had to inform them that we

understood their feeling that an injustice had been done, however the Ombudsman could not intervene and act without some type of material evidence. This most often regarded their word against the other's word with complainants expecting upon the Ombudsman's intervention, the expert personnel to admit their guilt, apologise to them and particularly arrange matters so as to also validate their rights during the time they were convinced, they could have validated them.

Several complaints regarded the actions of schools in cases of **peer violence**. Parents are convinced that there is a lot of violence in schools while actions by expert workers are too slow and ineffective.

Regarding **children with special needs**, the majority of complaints involved lengthy procedures for referrals and the review of the adequacy of referrals implemented through official duty. In individual cases, the right to the free conveyance of a child to a social assistance institution as referred by a decision on the referral still causes problems. Parents of blind and weak-sighted children cautioned of the problem of textbooks and other learning materials several times, alleging the lack of or insufficient amount; there are problems with equipment in regular schools these children attend, and in one case also the additional expert help could not be organised at a time that would be appropriate for the parents who have work obligations.

Problems with the reimbursement of travel costs were also encountered by the parents of an autistic pre-school child. Pursuant to a decision, the child was directed to a developmental kindergarten outside the area of residence and had to be driven to school everyday by the mother. The problem is that the right to free conveyance only belongs to the pre-school child and his/her accompanying person if he/she has been directed to a pre-school programme in an institution for the care and education of children with special needs. If the parents decide not to place their child in an institution or with a foster family, but ensure conveyance themselves, instead of the care which the state would have to pay, they are entitled to the reimbursement of travel costs for the child and the accompanying person.

More complaints involved **domestic violence.** We have covered the problem extensively in previous annual reports, particularly the Annual Report for 2005 which was also deliberated upon by the National Assembly. Parents and children are entitled to a family life; this right enables children to enjoy a safe and happy childhood, while to parents, it means the right to autonomous and responsible parenting. Whenever a family fails to ensure the child a safe and happy childhood, we cannot speak of responsible parenting and in these cases the state must quickly and effectively take action. Here it is alarming, that despite the expected and foreseen complete legal solutions already for 2005, this continues to be postponed.

### 2.14.1 Advocacy of children and adolescents

Pursuant to the Constitution of the Republic of Slovenia, children enjoy special care and concern, thus obligating the state to ensure the enforcement of their rights through appropriate measures. According to the UN Convention on the Rights of the Child and European Convention on the Exercise of Children's Rights, **the interest of the child and the treatment**

**of the child as an individual holder of rights, thus strengthening his/her position in the procedure,** must be at the forefront of procedures concerning children**.**

The Human Rights Ombudsman of the Republic of Slovenia has highlighted this issue in the Annual Reports for a number of years, however it is evident from the treatment of initiatives and monitoring the situation of children in Slovenia that unfortunately, despite several legislative changes, the attitude towards the child as a holder of rights has not significantly changed.

Thus in the **Annual Report for 1997** and afterwards in nearly all subsequent reports involving the presentation of individual cases, we among other things also cautioned of the urgency of strengthening the representation of children in cases where parents do not know how or are unable to suitably represent their interests. Despite endless warnings by both the Ombudsman and numerous experts at various conferences and round tables and several amendments to legislation, no essential changes are implemented in practice. When treating initiatives, we still encounter the need and helplessness of children as they attempt to give their opinion, but their voices are not heard or not heard early enough while they still possess their own opinion. Additionally, when questioned they do not know how much and what to say, for the pressure on them is often great. In practice, we are well aware how some adults who are important for children utilise various ways for changing a child's mind by calling attention to the child's best interests.

When seeking various possibilities for making decisions for the best interests of a child, we have observed the following:

- the child is not given enough or almost no proper information,
- the child is not included in the resolution of the problem and
- differences in the child's emotional and comprehension abilities are not observed
- although Article 12 of the Convention on the Rights of the Child ensures the child the right to his/her own views and obligates adults to give due weight to all matters relating to the child. Of course **this principle should be subordinate to observing the child's best interests**, unfortunately as we well know this is quite often not the practice.

Thus in order to strengthen the child's position in procedures, a step forward must be made – from establishing the facts to the set-up of a suitable system for child representation, which is not satisfactorily arranged in Slovenian legislation.

Thus, Articles 78, 105, 106 and 106a of the Marriage and Family Relations Act (ZZZDR) and Article 410 of the Civil Procedure Act (ZPP) guarantee the child the right to seek the help of a **trusted person** of his/her choice who will aid him/her in expressing his/her opinion. However children are rarely acquainted with this possibility (for more information see the case Trusted person).

Considering that children frequently remain merely observers of events and changes to decisions which significantly affect their futures, an initiative **working group** of experts was formed in September 2005

with the intention of strengthening the child's position where it is weak and requires support which in addition to representatives of the Ombudsman, also representatives of governmental and non-governmental organisations and representatives of children participate. The working group's intention with the **pilot project *Advocacy – Child's Voice*** is to **supply a representative** for the child whose parents for various reasons cannot or are unable to ensure him/her appropriate representation. Advocacy would aid children in actively participating in matters pertaining to them while simultaneously protecting them from misuse and bad practices. Numerous open questions arise (whether an advocate is only used in the procedure or for each case when required) which must be illuminated from all angles of view, for only in this way can we define such needs for advocacy and their manner of operation more precisely.

**We desire to define advocacy** as precisely as possible and **install it in the legislation and specify a protocol for treatment thereof**. The project has already commenced and will be implemented for 24 months at 4 regional locations.

**A step forward has thus been made with the project –** from the establishment of fact to actually strengthening the child's position in the manner which is presented on the title page of the collection of essays Advocacy – Child's voice (more at the website: http://www.varuh-rs.si).

***Case no. 15*** *(11.7-4/2006, 5.8-9/2006)*
***Case no. 16*** *(5.8-41/2006)*
***Case no. 17*** *(11.0-4/2006)*
***Case no. 18*** *(11.3-9/2006)*

## 2.15 OTHER

The problems contained in complaints which contextually do not fit within the competences of the Ombudsman and which are treated as personal problems remained nearly identical in quantity compared to the previous year.

The issues treated as personal problems cannot be compared with other areas since implemented procedures (explanations, possible implementation, advice) are not necessarily successful or do not lead to changes which complainants would see as solutions. As a rule, these regard problems for which the Ombudsman is not competent or an assessment is not possible since complaints are incomprehensible and occasionally express symptoms of mental disorder. Persons with such psychopathologies cannot understand or accept the usual reasons and explanations – that which they feel or see as a violation of rights is for them an actual violation even if it regards radiation, being followed, unexplained deaths and murders, poisoning – phenomena and events which using valid methods cannot be confirmed. In such constructions of reality, (otherwise adequate) explanations on complaints channels can aid in fortifying the disorder or stimulate the seeking of help with those (state bodies and offices) which do not even recognise such problems.

A portion of such complainants regularly (also a number of times a week) turn to the Ombudsman by telephone – treatment is difficult and usually ineffective, but it represents a huge time burden for these discussions are often long, but unfortunately usually without appropriate effect. It is true that complainants are at least temporarily appeased following such discussions, for they have a good feeling that someone at least listened to them.

**Public discussion on draft laws**

In the past year, we established that increasingly more complaints regarded draft regulations which regulate human rights published by state bodies. Representatives of civil society and individual societies are increasingly more frequently informing the Ombudsman of their views, comments and suggestions and are many times convinced that the Ombudsman can participate in the legislative procedure by submitting amendments and also legislative initiatives.

Such complaints to the Ombudsman are partially the result of non-acquaintance of his competences and partially also an expression of powerlessness felt by citizens when communicating with state bodies. Although state bodies do publish certain draft regulations, as a rule they define an extremely short period for public discussion or unreasonably restrict it in some other manner.

We encountered such a practice twice involving the Ministry of Health. We feel that such a practice belittles the public and civil society, for it formally guarantees the right to public discussion, but in actuality limits it only to discussions on normative solutions for it does not enable the contextual discussion of explanations given for individual proposed solutions.

# 03 Information on the work of the Human Rights Ombudsman

## 3.1 FORMS AND METHODS OF WORK

In Article 159 of the Slovenian Constitution, the authors defined that the rights of citizens in relation to the state were protected by the Human Rights Ombudsman. The Ombudsman is thus a constitutional category which supervises state bodies, local self-government bodies and holders of public authorisations in their relationship to individuals and groups, and operates lawfully and pursuant to the Constitution and international acts. The Human Rights Ombudsman is thus an additional means or external judicial protection for protecting the rights of individuals. It is not a part of authority but is rather a counter-authority for through its actions, it limits the latter's arbitrary intervention into human rights. It operates autonomously from authority. It protects the rights of all individuals and groups and is also the voice of the weak, namely those lacking the social power to stand up for their rights (children, the unemployed, the elderly, aliens, the disabled, etc.).

The Ombudsman supervises the work of institutions in all three branches of power (executive, legislative and judicial) and if it determines that a violation of the rights of an individual or group or relationship to them is incorrect, it issues a warning, requiring or suggesting that the deviation or violation or its consequences be remedied. The Ombudsman cannot remedy violations or irregularities in the stead of the aforementioned, nor can it pass legally binding decisions sanctioned by judicial measures.

The Ombudsman's effort to protect rights and fundamental freedoms is 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 the rectification of a specific violation while the second is intended to prevent violations from happening. In his work, he refers to the principles of legality, equity and good administration.

### 3.1.1 Communications with publics and notifications

The fundamental form of work of the Ombudsman is communication with various publics. Employees communicate with complainants and other significant publics on a daily basis to resolve the problems of complainant and in various ways, also carry out the proactive role of the institution, namely communications. All employees encounter various segments of the public in the most variegated of situations. The Ombudsman annually visits several larger Slovenian cities where he meets with people who are unable to come to Ljubljana so as to enable them to directly present their problems.

He also speaks with people regarding problems at the Office. The Ombudsman also visits prisons, psychiatric hospitals, asylum homes, aliens' centres and other institutions with restricted movement. Following every visit, the Ombudsman submits a report on what needs to be improved to enable these people their guaranteed human rights.

The Ombudsman performs his tasks in a transparent manner and keeps various target publics informed about his work (Articles 8 and 40 of the Human Rights Ombudsman Act (ZVarCP) and Articles 6 and 7 of the Human Rights Ombudsman's Rules of Procedure).

**Ombudsman's free newsletter**

Three newsletters intended for the empowerment[1] of defined target groups were published in 2006. The free newsletters can be accessed via the Ombudsman's website www.varuh-rs.si, and are available in printed form in the waiting rooms of community healthcare centres, administrative units, retirement homes, social services centres, prisons, libraries, etc. and at the headquarters of the Ombudsman. April's issue was dedicated to the rights of the two most threatened groups: children and the elderly while July's issue contained a summary of the annual report which in its most simple and shortened form is more reader-friendly means of information on the state of human rights and the Ombudsman's method of work.

December's issue, with its increased volume, covered the endeavours of the Ombudsman and various Slovenian institutions battling against discrimination. It also offers a view into the international project *Let's Face Discrimination*, which is described more fully under the heading Training and Promotional Activities. One can find cases of discrimination in the newsletter, what to do if you have been the victim of discrimination, how to recognise it, what forms of discrimination exist, and what the legal bases for battling it are.

The number of subscribers to our free newsletter is rising.

**Website**

The Ombudsman's website newly designed in 2005 has proven useful. Due to its adaptation to our target groups of users, communications are more qualitative and easier to browse through. The website was also designed to inform international publics.

The website www.varuh-rs.si also contains leaflets in the Italian and Hungarian languages, and other publications of the Ombudsman.

In 2006 we enabled the media access to **audio information** from regular monthly conferences. The conference recordings can be found under the heading Media/Press Conferences. Through the redesigned website, we also enable publics to follow the institution's work via electronic news articles. The response to the possibilities provided was immense.

**Presentation of materials and publications**

The Ombudsman published leaflets in the Hungarian and Italian languages and a leaflet for blind persons available at institutions for the blind and weak-sighted.

In October 2006 the Ombudsman published the collection of essays Advocacy – Child's Voice which is a summary of the thoughts and discussions of the April conference and a conference implemented on a Web forum in May. The free collection of essays is also available on the Ombudsman's website.

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

In January, the Ombudsman at its premises, together with the editor of the collection of essays, professor at the Faculty of Social Work, Dr. Vesna Leskošek, and a representative of the Peace Institute who published the collection of essays, Aldo Milohinč, presented the collection of essays entitled *Us and Them: Intolerance in Slovenia*. The collection is sort of the "icing on the cake" of the project *Forms of Intolerance in Slovenia* made possible by the Ombudsman and managed by Dr. Leskošek.

**Communication through the media**

The nurturing of bilateral and qualitative relationships with the media is of key importance in carrying out the Ombudsman's mission, for through their forms and methods of reporting on topics regarding human rights, they co-design our awareness of the protection of human rights and freedoms and aid in informing the public of the rights and methods of protecting them. The media regularly publishes the Ombudsman's warnings regarding violations and performs clear supervision over violations and violators while media pressure often also enables the more rapid remedying of violations.

In 2006 the Ombudsman prepared nine press conferences and appeared at various occasions.

**Cases in the media spotlight**

We described in detail under what circumstances we can publicly turn to the Ombudsman in the Annual Report for 2005 (Forms and methods of work). Cases in the public spotlight comprise approximately five percent of the Ombudsman's work. Based on the media appearance of the Ombudsman or his deputies as representatives of the institution, the pubic formed a positive or negative opinion of the institution.

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. In the twelve years of existence of the Ombudsman institution, public warnings in many cases turned out to be the only solution, moving cases forward. Such warnings often triggered public debates on specific topics which previously were seen as taboo or insignificant.

The underlying topic of 2006 comprised warnings regarding hate speech and the battle against discrimination. The other underlying warning regarded the area of data protection, freedom of expression and restrictions of liberty; third was the (non)working of a state governed by the rule of law.

We inform the public via:
– website,
– a free newsletter,
– other publications (annual reports, special reports and other publications released for specific occasions, etc.),
– promotional materials (leaflets, bookmarks, posters, etc.),
– through promotional activities, campaigns and other events (mostly using the Office's resources and sometimes in affiliation with other offices),
– personal contact between the Ombudsman and the target populations and
– 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 dissemination of information from the Ombudsman and the establishment of ideas is rising with more subscribers to the free newsletter and electronic news. The contents and areas of work of the Ombudsman is each year increasingly becoming more a subject in seminar, diploma and even master's theses. The desire to perform compulsory work placement with the Human Rights Ombudsman of the Republic of Slovenia is also increasing.

### 3.2.1 Raising awareness and promotional activities in the area of children's' rights

We continued the practice of training through direct contact with children and young adults, and so, in 2006, we visited numerous elementary, secondary and special-needs schools and participated at events with college and university students.

**Child advocacy**

In the small conference room of the National Assembly in April, in cooperation with the initiative working group for advocacy, we prepared a professional conference on the advocacy of children and minors. The Ombudsman has been finding for years that the United Nations Convention on the Rights of the Child is not being realised in the child's best interest in Slovenia. In various complex formalised procedures (e.g. before court, at social services centres, in divorce proceedings, etc.) the child is at a loss and frequently does not have the possibility of expressing its opinion, or despite the possibility, does not know how to. In civil procedures, the interests of parents often clash with the interests of the child with such a conflict of interests traumatic for the child. Bodies possessing special knowledge and managing the procedure should recognise the child's interests and confront them with the interests of the other participants in the procedure. These other participants are generally louder and possess more power than the child and the need for the child to be represented by

an advocate as the voice of the child, supporting him/her when weak, is becoming intensely more pronounced. The purpose of the conference was to exchange views and opinions regarding the system of advocacy and to establish a basis for the pilot project on advocacy, which could lead to a legally prescribed system of strengthening the child's voice, and with the help of which the child could best implement its rights. All ideas and recommendations from the conference and public Web discussion were collected and published in the collection of essays Advocacy – Child's Voice which was presented at a press conference in October 2007.

**Rights within the context of schools**

We cooperated in the implementation of the project entitled Children's Rights within the Context of Schools together with the National School for Leadership in Education. An expert employee in cooperation with a lecturer from the School, carried out workshops for headmasters, deputies and teachers of registered schools.

**Film competition (In)tolerance in Being Different**

A film competition for children and adolescents regarding the topic *(In)tolerance in Being Different* was held in September. The competition was advertised on Human Rights Day in 2005. Youth representing schools or upon their individual or group initiatives outside of school, through the creation of short films, contributed to reflections on human rights, differences and (in)tolerant co-residence in our society. Sixteen authors responded sending thirteen films. On the anniversary of the adoption of the Convention on the Rights of the Child, the Ombudsman also presented awards to all participants in the tendered film competition for youth. The young film producers were given a tour of the Viba film studio following the competition, and spoke with renowned directors about the making of professional productions.

**Personal meetings with youth**

The Human Rights Ombudsman has directed a lot of attention towards direct contact with youth and their teachers since the Department for Children's Rights was established.

While visiting various schools and juvenile facilities, in our direct contact with pupils or students and their teachers, we cover the rights which are guaranteed to children and adolescents by the Convention on the Rights of the Child and attempt to also find answers to questions regarding the realisation of these rights in school or the family. We usually present the general problem of the (non)observance of human rights to youth in the first of the two school hours, followed by an open discussion where we together establish problems, assess the actions of individuals from the viewpoint of human rights and discuss complaint procedures and channels. The response of participants has strengthened our conviction that such a form of acquainting youth and their teachers must be strengthened and deepened.

In 2006, we visited 20 elementary and secondary schools, presenting the Ombudsman's work to pupils and students. We attended a number of round tables in student organisations and participated in the implementation of workshops regarding the topic Human Rights in Schools.

In October, we continued to visit educational institutions for children and adolescents with personality and behavioural disorders. We visited institutions for secondary school pupils, spoke with pupils and asked them to fill out a survey regarding their feelings towards the institution, futures and wishes. The visits were intended for discussions with management of the institutions regarding problems they encountered.

The student organisation of the University of Primorska (ŠOUP) prepared a chat with the Human Rights Ombudsman Matjaž Hanžek in March. The Ombudsman attended similar meetings with students a number of times in 2006. He also accepted the invitation of theology students and discussed the question of human rights and freedoms with them within the scope of the subject Moral Theology.

The Ombudsman also met with pupils of a gymnasium in Slovenj Gradec and the Jože Plečnik Gymnasium in Ljubljana. He presented the basic human rights, the history of the institution, described the course of his work and responded to questions.

Another method of informing people of their rights and the rights of children are also public warnings regarding several violations. The Ombudsman continuously appeared publicly in connection to the question of protecting children's rights. Among other things, he cautioned also of the unacceptable violation of children's rights committed by their parents and the newspaper who published the parent's story and in May joined non-governmental organisations and their call to oppose the adoption of the amended Media Act due to the arrangement of protection for children and adolescents in the television broadcasting of pornography and excessive violence. More on this topic can be found under the heading Media Relations.

An advisor of the Ombudsman presented an assessment of the project entitled *My Rights* at a press conference in May, a project in which the Ombudsman also participated in 2003 and 2004. An assessment study on the realisation of children's rights with the use of learning cards and other didactic materials from the project was performed by the Educational Research Institute. The study was carried out with 208 teachers participating from 40 elementary schools. One of the findings showed that violence and hate had decreased at the schools in which the project had been carried out.

At the occasion of the anniversary of the adoption of the United Nations Convention on the Rights of the Child, the Ombudsman in a press release established that the reasons for the violation of children's rights which were especially highlighted in the annual reports were being remedied too slowly.

**Internet safety**

In 2006 the Ombudsman continued his active cooperation in the Internet safety project – *SAFE-SI*. 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 regarding the assurance of safety of cyberspace. Thus the Ombudsman actively participates in this project, bringing attention to this problem to the broader public and authorities.

On the *International Day for Internet Safety*, a representative of the Ombudsman attended a round table entitled *Care and Behaviour of Children and Adolescents on the Internet*, for the Ombudsman has been cautioning of the problem of hate speech on the Internet for quite some time. At the international level, the *International Day for Internet Safety* was marked with the so-called blogging marathon (web diaries) in which the Human Rights Ombudsman also participated, namely with the blog *Significance or Regulating Hate Speech on the Internet*, which is available on the web site:
http://blog.eun.org/insafe/2006/02/slovenija_pomen_regulacije_sov.html

**The Ombudsman as the Ambassador for Internet Safety**

The Ombudsman also attended the *12th Computer Festival*, namely a workshop for adults (*The ABCs of the Internet for Adults – I Know, How About You?*, which was prepared by the Youth Information and Counselling Centre of Slovenia in which the Human Rights Ombudsman Matjaž Hanžek and the General Director of the Jože Zrimšek Information Society participated. The two guests participated in a special quiz on the Internet and its safe use in which they showed enviable knowledge. Matjaž Hanžek was the winner and acquired the honorary title of first Ambassador of Internet Safety.

**Cooperation with the Association of Partners of Spletno oko**

The Human Rights Ombudsman also joined the Association of Partners of *Spletno oko* within the scope of his operations regarding the area of Internet safety. This is an emerging hotline for illegal Internet contents, particularly focused at hate speeches and child pornography.

### 3.2.2 Raising awareness and promotional activities in the area of anti-discrimination

**Let's Face Discrimination project**

In cooperation with the Austrian partner, the Institute for Human Rights Ludwig Boltzmann the Human Rights Ombudsman carried out the extensive project *Let's Face Discrimination*, (the strengthening of the institutional structure for the battle against discrimination), which was financed by the European Commission. A series of seminars and workshops were prepared within the scope of the project. These were intended for the training of the Ombudsman's employees and other target groups, especially representatives of state bodies and civil society who encountered questions of discrimination in their work. **Over 500 people received training within the scope of the project at 17 seminars, workshops and conferences over a six-month period.** Various professionals, including experts from the Human Rights Ombudsman, received intensive training and can now as trainers forward their acquired knowledge in the area of discrimination in the form of workshops.

We presented the key definitions and concepts of discrimination, important European guidelines in the battle against discrimination and compared the organisation and operations of several European bodies for equal treatment at a three-day seminar entitled ***European Approach to Discrimination***. We also presented the Slovenian model of the institutionalised battle against discrimination and its strengths and weaknesses.

This was followed by a series of seminars and interactive workshop directed at various target groups and dedicated to specific important areas of social life and/or forms of discrimination.

In cooperation with the police, we prepared the seminar ***Prosecuting Bodies Against Discrimination*** in which the most important element comprised activities geared at raising the awareness of participants on the significance of implementing police tasks without discrimination.

The three-day seminar entitled ***Legal Means and Sanctions*** was predominantly aimed at inspection offices which possess an especially important role in the endeavour to eliminate discrimination. Due to the lack of interest of several inspection offices, we also invited several non-governmental organisations to the seminar.

The seminar ***Access to Goods, Services and Housing*** was contextually similar but adapted to a different target group. In addition to administrative inspection offices, representatives of the Consumer Protection Office, Slovenian non-governmental consumer organisations, the Association of Apartment Tenants and several interested associations from the Chamber of Commerce and Industry of Slovenia participated in the seminar. Representatives of the largest municipal housing fund also participated.

This was followed by a two-day seminar entitled ***Upbringing and Education Against Discrimination*** whose main purpose was to acquaint participants with interactive methods which enable awareness of what discrimination is and how it effects the daily lives of individuals and groups. The seminar was also attended by representatives of the National Education Institute, Office of Youth, Pedagogic Institute, Slovenian Institute for Adult Education, the Ministry of Education and Sport, Faculty of Social Work and teachers and caretakers from elementary schools and training institutions.

Special attention was directed at the heightened question of public speech ethics. The purpose of the conference ***Words Are Actions and Speech Drives Them - Discriminatory and Hate Speech*** was to open the wider discussions on discriminatory public discourse which on one hand creates a basis for the encouragement of various forms of discrimination and on the other hand, is itself a form of discriminatory practice. Representatives of the media, various ministries and Government offices, non-governmental organisations, faculties and scientific institutions attended the conference. Public debate led to decisions that communications and the affiliation of governmental and non-governmental organisations are most important in recognising and elimination of hate speech. Only this can create a critical mass which will be able to recognise and respond to hate and discriminatory speech and thus embark on the road to becoming a more tolerant society.

A **working discussion on politically equal gender opportunities and multi-layered discrimination** was held in which representatives of the Office for Equal Opportunities, gender equality advocate and members of the Government Council on the Implementation of the Principle of Equal Treatment deliberated questions raised in connection to a horizontal approach in eliminating discrimination and the appearance of

multi-layered discrimination. We also separately touched on the question of expanding approaches and policies originating within the scope of encouraging equal gender opportunities for other groups in society which are particularly sensitive because of characteristics which represent possible bases for discrimination. Seeing that an appropriate Slovenian term does not yet exist, we would like to point out that the debate regarded policies called "diversity mainstreaming" in the European space.

We spoke of **discrimination in the workplace** with representatives of the public and private sectors separately. Participants expressed the need for greater involvement of unions and employers in eliminating discrimination in the workplace. Employer representatives unfortunately did not participate.

In cooperation with ISCOMET, we prepared a two-day conference in Maribor on **religious freedoms and discrimination of people based on religion or convictions**. Representatives of numerous religious communities operating in Slovenia and representatives of the Office for Religious Communities participated at the aforementioned conference.

At the seminar ***Ethnic and Racial Discrimination***, we presented the stories of groups of persons who are frequently bypassed and forgotten either on purpose or unintentionally. The seminar was attended by representatives of governmental, non-governmental and scientific institutions.

The seminar ***Roma People against Discrimination*** was intended to draw attention to the structural or institutional discrimination which Roma people in Slovenia have been experiencing for a number of decades and even centuries, and show that there are a number of good practices which could lead the battle against discrimination in the future. Since it is necessary that positive measures for the improvement of the Roma people's position commence being implemented in various social areas, we invited a number of important actors to the seminar, especially on the state and local levels and representatives of civil society.

Approaches, policies, strategies and projects aimed at eliminating these forms of discrimination and which can present an aid to employers, teachers and caretakers were presented at the seminar ***Discrimination on the Basis of Sexual Orientation***. The seminar was attended by representatives of the Office of Youth, Ministries of Health and Public Administration, the Institute for the Development of Social and Employment Programmes, the Pedagogic Institute and several non-governmental organisations. Despite a variegated participation, the seminar was not attended by representatives of unions and employers.

The last meeting focused on **discrimination on the basis of age and disability**. The seminar proved a good opportunity for better acquaintance with the wider problems of some groups especially vulnerable to discrimination and at the same time, as a working discussion on challenges, dilemmas, good practices and deficiencies which have been observed in preventing discrimination on the basis of disability and age. We particularly focused on open questions regarding discrimination based on disability and age, particularly in employment, in the workplace and with regard to the access to goods and

services. Non-governmental organisations were particularly invited to the seminar with whom we exchanged opinions and recommendations for improving the practice in encountering discrimination based on age and disability and established an open debate on strategies and plans for eliminating such discrimination.

We organised one more **conference seminar on the organisation and strategies of the Department for Discrimination** at the office of the Human Rights Ombudsman which focused on the vision, method of work and organisational structure of the department in the institution.

We completed the project **with a concluding conference on 8 December 2006 at the Faculty of Law and with a formal reception on Human Rights Day** at the Natural Museum of Slovenia. The achievements of the project and plans for the future were presented at the conference.

A **special issue of the Ombudsman's newsletter – *Let's Face Discrimination*** was issued within the scope of the project in the Slovenian and English languages which is also available on the Ombudsman's website www.varuh-rs.si. This edition includes tips for recognising discrimination and measures to take in the event of discrimination with all data on key institutions and available legal channels.

**Project promoting tolerance**

With the aim of active inclusion in becoming acquainted with various forms of discrimination and intolerance, which is one of the effective methods of educating people on tolerance, the Ombudsman invited students from the Faculty of Social Work. In this way, he enabled them active application of theoretical knowledge acquired at the Faculty also in practice.

The students carried out discussions with representatives of various marginalised groups while their contributions, following the concluded interviews were published on the Ombudsman's website. Through this project and the work of students and their mentors, the Ombudsman also gave a voice to those groups which in public discussion always assumed a marginal position.

**Vicious cycle of intolerance**

We also repeated the exhibition *The Vicious Cycle of Intolerance – Jara kača nestrpnosti* which is a part of the expansive project *Forms of Intolerance in Slovenia* which the Ombudsman in cooperation with external colleagues has been implementing in the past years. The exhibition was open to the public at the Carinthian Regional Museum in Slovenj Gradec.

## 3.3 RELATIONS WITH DIFFERENT PUBLICS

The Human Rights Ombudsman of Slovenia maintains daily contact with various outside publics, ranging from the widest general public to the 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. However, all work is based on quality relationships with our employees.

### 3.3.1 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.

In 2006 we received 2492 complaints and treated 2754 (inclusive of some complaints from previous years), resolving 2521. Everyday, the Ombudsman's staff conducts personal interviews with an average of ten complainants at the headquarters, while the hotline operator receives about 80 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 2006, the Ombudsman again conducted interviews outside of the Ombudsman's office 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 problems which fall within his competence. In operations in Maribor, Radovljica, Murska Sobota, Piran, Metlika and twice in Celje and Koper, the Ombudsman talked with 123 individuals.

In the past year, we visited the ZPMZ KZ Celje and ZPKZ Koper correctional facilities, the Nova Gorica department of ZPKZ Koper correctional facility and the Radovljica department of the ZPKZ Ljubljana correctional facility, the Aliens' Centre in Postojna, the Asylum Home in Ljubljana, the Detention Centre in Ljubljana at the Ljubljana Moste police station, the Dobova Border police station, the Starod Border police station, Jelšane Border police station and the Postojna, Idrija, Tolmin, Kobarid, Bovec, Ilirska Bistrica, Kočevje, Ribnica, Ravne na Koroškem, Dravograd and Radlje ob Dravi police stations.

### 3.3.2 Relations with civil society

During his mandate, the Ombudsman set his strategy for coming closer to the ordinary person. One of the forms of making the public aware of their rights is the public notification of violations and thus the launching of public debates which the Ombudsman also did in 2006. Among other things, he warned of hate speech, the unacceptability of video surveillance, the

problems of access to social housing by to the socially weak, the urgent need for accepting diversity for the societal good, thoughts on the introduction of a register of paedophiles, the unacceptability of violations of children's rights and responded to cases of discrimination. He also joined the campaign *White Ties - Men against Violence towards Women. The Strong enough to sign. How about you? campaign* initiated by the Association against Violent Communication in cooperation with Amnesty International Slovenia on International Women's Day. The campaign and its positive messages promoted non-aggression of men towards women.

The Ombudsman attended numerous meetings of various societies, organisations and associations which were on one hand a form of proactive action and on the other provided the Ombudsman with information on possible violations of rights. Informal meetings with representatives of civil society are always an opportunity for establishing contacts which can be useful in remedying violations or detecting deficiencies in the protection of human rights.

### 3.3.3 Relations with the media

The media corner in the Ombudsman's 2005 redesigned website proved extremely useful for the work of media. With special and quick access to key information journalist require in their work, we desired to alleviate their daily work. In 2006 we added an audio service to the Press Conference page on the website. Thus journalists could use the recordings when reporting on the work of the Ombudsman and topics the Ombudsman brings up, without having to attend the press conference at the Office. They can also review, archive, more precisely collect and summarise the information whenever they like. Despite this service, the Ombudsman's press conferences are always well-attended for journalists in direct contact with him always acquire information which are not necessarily topics covered at the press conferences. The Ombudsman held nine press conferences in 2006.

We are available to journalists on a daily basis (taking an average of at least four calls daily). Communications considerably increased in November and December 2006 alongside highly resounding cases from the area of human rights.

In 2006 the Ombudsman with the support of professional office for media monitoring managed to quickly respond to turbulent events associated with the protection of human rights. The quantity of media reporting on the work of the Ombudsman considerably increased at the end of the year due to the Ombudsman's response to events involving a Roma family.

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 2006. He held eight regular press conferences at the Ombudsman's headquarters in Ljubljana and seven outside his offices.

The Ombudsman prepared a conference within the scope of the project *Let's Face Discrimination* geared at public speech ethics, *Words Are Actions and Speech Drives Them - Discriminatory and Hate speech*. The conference was, among other things, also geared at the role of media in shaping discriminatory or hate speeches, or communication forms in line with ethical and moral standards. Representatives of media houses undertook an analysis of debates and hate speech at the workshop.

### 3.3.4 Relations with public authorities

The Ombudsman cooperates with public authorities, bodies of local communities and holders of public authorisations on both a preventative/promotional level and on a curative level. Suitable cooperation with state and other bodies on the curative level is reflected in the consideration of the Ombudsman's recommendations and opinions, correct responses to his projects and the preparedness of those responsible for direct discussions on problems regarding the protection of human rights.

In his supervisory role over public authorities, bodies of local communities and holders of public authorisations, the Ombudsman also carried out supervision from the aspect of designing proactive promotional activities and operational strategies. If he determined that an appropriate strategy was lacking, he encouraged those responsible through his own initiative (projects, meetings, etc.) to themselves carry out proactive programmes for raising awareness of human rights. He also met with them with the intention of preparing strategies for preventing the violation of human rights and approaches for raising awareness of rights of the employees of such bodies supervised by the Ombudsman and the wider public.

State bodies as a rule observe the Ombudsman's recommendations, opinions and findings for the resolution of problems and are prepared to carry out discussions. The Ombudsman implements pressure on some via the public with regard to eventual communication delays. Preventative discussions enable the elimination of vagueness in specific regulations and/or laws prior to their adoption and enforcement.

The Ombudsman also met with the highest representatives of all powers in 2006, with discussions outside of headquarters also giving him an opportunity to also meet with representatives of local communities.

### 3.3.5 International relations

The Regional Director of UNICEF came to Slovenia for a working visit in February 2006. During discussion with the Ombudsman and his deputy responsible for the areas of social rights and protection of children's rights, he was acquainted with the Ombudsman's endeavours for the respect of children's rights and the system of protecting children's rights in Slovenia. They also touched on the question of a separate ombudsman for children's rights with the Regional Director of UNICEF particularly interested in the protection of the rights of Roma children.

At a working visit in March, the Ombudsman welcomed the regional representative of the UN High Commissioner for Refugees (UNHCR) and colleagues, also from the Slovenian branch, which was in the closing phase due to reorganisation of UNHCR. Their discussion directed some words towards the recent amendment of the Asylum Act and attempted to determine the reasons for the governmental measures which were also in contradiction to recommendations of professionals from this area. Both parties utilised the working meeting to seek joint foundations for the future work of both institutions regarding the problem of migration (refugees, aliens, white slavery, etc.).

In May the Ombudsman met with the Minister for Human Rights and Refugees of Bosnia and Herzegovina, the Minister for Displaced Persons and Refugees and ambassador of Bosnia and Herzegovina to Slovenia and their colleagues. They discussed the unarranged position of national minorities, erased persons and the delay in negotiations for a social agreement between the countries due to the non-response of competent Slovenian ministries.

The Human Rights Ombudsman was also visited by the Attaché of the Iranian Embassy in Vienna with an initiative for the institutions of human rights to contribute to the prevention of misuse of the concept of human rights for political interests.

The Ombudsman attended the conference of the European section of the International Ombudsman Institute (IOI). The European Ombudsmen among other things also elected the new regional director at the General Meeting of the European section of IOI, for the four-year mandate of the Slovenian Ombudsman had expired. Upon the initiative of the Council of Europe's Commissioner for Human Rights, they also discussed the role of ombudsmen in decreasing the overload of the European Court of Human Rights.

We organised a discussion at the headquarters of the Ombudsman with the founders of the SOS Institute – Children, which had been established in 2006 as a non-profit organisation in the area of protection of childhood and support to couples desiring to adopt a child from abroad, for the problem of international adoptions is especially sensitive due to the possibility of covering up the trafficking of children. The Ombudsman's deputy expressed the Ombudsman Office's readiness to cooperate within the scope of its competence, offering aid in the eventual establishment of contact with institutions for the protection of human rights abroad, with which the Ombudsman has frequent contact and which could aid in the quicker resolution of eventual complications.

The Human Rights Ombudsman's deputy attended the regular annual ENOC conference in Athens in September and the Ombudswork for Children conference where discussions on the endeavours of ombudsmen to protect children's rights took place. At the ENOC conference, the deputy reported on the situation of the area of protection of children's rights in Slovenia, while discussions also took place regarding how ombudsmen endeavoured to strengthen the voice of the children and their co-participation, and to what extent European and global instruments for protecting and promoting the rights of children relied on ombudsmen.

The Human Rights Ombudsman's deputy also attended the Association for the Study of Nationalities (ASN) conference in Belgrade. The European conference was geared towards the questions of globalisation, nationalism and ethnic conflicts in the Balkans and in the wider region. A special round table was reserved for the role of ombudsmen in democratisation in this area at which the Ombudsman's deputy presented the experiences of the Ombudsman institution in Slovenia, while in the working group for the preparation of the act on equal opportunities and prevention of discrimination in the Republic of Serbia, he presented the Slovenian experience.

The deputy of the executive director of UNICEF arrived to Slovenia on a working visit in December within the scope of visits to Eastern and Central European new EU Member States. She was acquainted with the realisation of children's rights in Slovenia and met with the Ombudsman's deputy responsible also for children's rights.

Following the Ombudsman's warnings of the violation of rights regarding the Roma problem, the Commissioner of the Council of Europe's Commission for Human Rights visited Slovenia to personally examine the circumstances. At the Commissioner's request, the Ombudsman immediately met with him upon his arrival. After examining the situation the guest at a press conference said that it was unacceptable that a group of people had to leave their home and have their safety threatened because the majority of the population demanded it. He warned that the police had to handle the criminal offences of individuals in a particular community and that these offences should then be sanctioned by law. A community may not be collectively punished. Should this happen, there will also be innocents among those punished. The Government has taken many positive steps, however xenophobic occurrences in society have to be confronted, he also warned. He was also critical of the allegations made by the Government against the Human Rights Ombudsman Matjaž Hanžek. He warned that governments had to understand that ombudsmen are autonomous. Their role is to take a position for those whose human rights were violated and to also criticize authority when necessary.

Upon the occasion of the Human Rights Day, the Human Rights Ombudsman prepared a conference to mark the conclusion of the *Let's Face Discrimination* project. Those who attended were addressed by the European Ombudsman Nikiforos Diamandouros and the Northern Irish Ombudsman Tom Frawley. Diamandouros presented the role of the European Ombudsman who is elected by the European Parliament in the quest to eliminate discrimination.

At the formal reception for the anniversary of the adoption of the European Declaration of Human Rights, the European Ombudsman in his speech once against expressed support for the work and endeavours of Matjaž Hanžek and in light of the events surrounding the removal of the Roma family, emphasised that the rights of minorities had to be urgently protected. He also pointed out the autonomy of ombudsmen at this occasion, which represents the foundation for his criticism, especially in newly democratic countries.

### 3.3.6 Employees

At the end of 2006, the Human Rights Ombudsman possessed 35 employees (among them the Ombudsman and his deputy), three functionaries, twenty-two public servants and ten expert and technical employees. The public servants include fifteen servants of the 1st career level, four of the 2nd level, two of the 3rd and one of the 4th; twenty-four employees hold a university degree (among them one doctorate of sciences, three masters of sciences and one specialist), three have a college degree, three a higher education degree and five a secondary education degree. Thirty-three of the employees are employed in permanent positions while two are employed for a definite period of time.

The mandate of two deputies of the Human Rights Ombudsman expired on 8 December 2006. The Ombudsman submitted a recommendation to the National Assembly for their re-election, however the candidates did not receive the required majority. The institution of the Ombudsman thus operates with only one deputy (one deputy's mandate ceased due to retirement on 31 December 2005 and two deputy' mandates expired on 8 December 2006) which is contrary to the first paragraph of Article 15 of the Human Ombudsman Act, which defines that the Ombudsman shall have a minimum of two and maximum of four deputies, and Article 11 of the Human Rights Ombudsman's Rules of Procedure (Official Gazette of the Republic of Slovenia, nos. 63/95, 54/98, 101/2001 and 56/2005), which defines the areas of work of the Ombudsman and according to which one of the deputies is responsible each area. The provisions of the Rules of Procedure cannot be realised in practice, burdening the work of the institution of the Ombudsman. The Human Rights Ombudsman thus cannot adequately carry out the tasks defined by several special laws, e.g. the second paragraph of Article 59 of the Personal Data Protection Act whereby the protection of personal data is a separate area of the Ombudsman for which one of the deputies is responsible.

For the purpose of heightened awareness, employees have become recipients of the electronic news of the Ombudsman and receive information via notice boards, while regarding events important for the work of the Ombudsman and which the institution is involved in, the employees are also informed via formal meetings with employees.
Employees of the Ombudsman are acquainted with media reporting of topics from the area of human rights by way of key words also with the help of a clipping service, via the Slovenian Press Agency (SPA), direct access to several Internet daily and weekly newspapers and printed versions of periodicals.

The Ombudsman's employees also contribute to the preventative orientation of the institution through professional contributions and presentations, thus enabling the expansion of knowledge of human rights and awareness of them.

## 3.4 FINANCE

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 EUR 1,952,724 from the national budget for the work of the institution in 2006. Funds for salaries were set in the total amount of EUR 1,369,971 (sum total of salaries, contributions and other personal revenues and tax on salaries paid), while EUR 333,141 was earmarked for material costs and EUR 49,657 for investment expenditures; EUR 199,949 originated from EU funds within the scope of the Transitional Facility 2005, CRIS No. 2005/017-462.04 earmarked for the implementation of the Twinning project: "Strengthening the national institutional structure for the fight against discrimination". Proceeds were also obtained from the sale of national property in the amount of EUR 1,130 and compensation received in the amount of EUR 45,90.

Out of the EU funds obtained in 2006 within the scope of the Transitional Facility 2005, CRIS No. 2005/017-462.04 for the implementation of the Twinning project: "Strengthening the national institutional structure for the fight against discrimination", funds in the amount of EUR 199,858 were used. The Human Rights Ombudsman also participated in the implementation of the project with its own financial resources from the budgetary item 3095 Wages in the amount of EUR 15,527 and with funds from the budgetary item 3419 Material costs in the amount of EUR 28,263. These co-financed funds were observed within the scope of individual items (salary and material cost items).

The amount of EUR 1,247,037 was used for the payment of employee salaries and other expenditures, together with payroll taxes. Out of this sum, EUR 962,906 comprised salaries and supplements, EUR 21,711 holiday allowances, EUR 60,010 reimbursements and remunerations, EUR 13,119 rewards for work efficiency, EUR 233 payment for overtime, EUR 17,109 for other employee expenditures, EUR 159,485 for employer social security contributions and EUR 12,460 for premiums for the collective voluntary supplementary pension insurance pursuant to the Collective Supplementary Pension Insurance for Public Servants Act.

A total of EUR 433,262 was used to cover material costs. From the aforementioned sum, EUR 165,218 (the majority for the design and publication of the annual report of the Ombudsman in the Slovenian and English languages and translation of the annual and special reports, the Ombudsman's newsletter and petitions sent to the Ombudsman by petitioners in foreign languages, papers, contributions and articles) was used for office and general supplies and services, EUR 4,110 for special supplies and services, EUR 10,532 for transport costs, EUR 52,637 for energy, water, municipal services and communications, EUR 25,225 for business travel expenses, EUR 15,719 for current maintenance, EUR 38,591 for business leases and lease payments and EUR 44,112 for other operational expenditures. Payroll tax amounted to EUR 77,115.

The sum of EUR 46,165 was used for investment expenditures of which EUR 36,780 was used for the purchase of equipment, predominantly computer hardware and software and communications equipment, EUR 6,347 for office furniture and equipment and printing and copying equipment and EUR 3,037 for other equipment and installations.

## 3.5 STATISTICS

This subchapter presents statistical data about the Ombudsman's treatment of cases in the period between January 1 and December 31, 2006.

**1. Open cases in 2006:** Open cases between January 1 and December 31, 2006.
2. **Cases being handled in 2006:** In addition to *open cases* in **2006**, these include:
– *cases carried over from past periods* – outstanding matters from 2005 handled in 2006,
– *reopened cases* – cases where the handling procedure at the Ombudsman was concluded as of December 31, 2005 but owning to new substantive facts and cicumstances, their handling was continued in 2006. 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 open cases in 2005, but classified as cases being handeled in 2006.
3. **Closed cases:** This includes all cases considered in 2006 and closed by December 31, 2006

### Open cases

Table 3.5.1 presents the number of open cases in 2006 by individual area of work. For comparison purposes, historical data is shown for the period 2000-2005.

In the period between **January 1 and December 31, 2006**, there were a **total of 2,492 open cases** (as compared to 3,095 in 2000, 3,304 in 2001, 2,870 in 2002, 2,754 in 2003, 2,631 in 2004 and 2,574 in 2005), meaning a 3.2-percent decrease relative to 2005.

As in previous years, the majority of open cases in 2006 involved:
– judicial and police procedures: 654 cases, or *26.24* percent of all open cases,
– social security: 300 cases, or *13* percent of all open cases, and
– administrative matters: 322 cases, or *12.92* percent of all open cases.

It is evident from the table that the greatest increase in the number of open cases in 2006 in relation to 2005 involved discrimination, increasing namely from 17 to 46, or by *170.6* percent, and social security, increasing from 300 to 324 or by *8* percent.

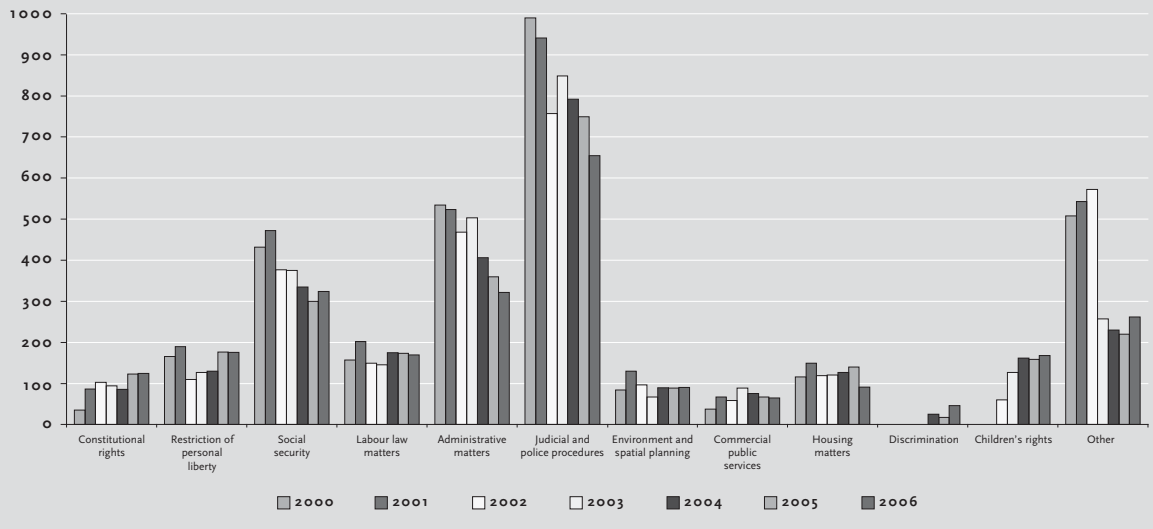
The greatest decrease in the number of open cases in 2006 in relation to 2005 was observed in the area of housing matters (35 percent decrease) and with regard to judicial and police procedures (12.7 percent decrease).

A graphic comparison of the number of open cases by individual fields of work in the period 2000-2006 is shown in Table 3.5.1.

***Table 3.5.1***

| AREA OF WORK | NUMBER OF CASES OPENED | | | | | | | | | | | | | | Index (06/05) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 2000 | | 2001 | | 2002 | | 2003 | | 2004 | | 2005 | | 2006 | | |
| | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % | |
| 1. Constitutional rights | 35 | 1.1 | 86 | 2.6 | 103 | 3.6 | 94 | 3.4 | 85 | 3.2 | 123 | 4.8 | 125 | 5.02 | **101.6** |
| 2. Restriction of personal liberty | 166 | 5.4 | 190 | 5.8 | 110 | 3.8 | 127 | 4.6 | 130 | 4.9 | 177 | 6.9 | 176 | 7.06 | **99.4** |
| 3. Social security | 432 | 14.1 | 472 | 14.3 | 377 | 13.1 | 375 | 13.6 | 335 | 12.7 | 300 | 11.7 | 324 | 13.00 | **108.0** |
| 4. Labour law cases | 157 | 5.1 | 202 | 6.1 | 150 | 5.2 | 146 | 5.3 | 175 | 6.7 | 174 | 6.8 | 170 | 6.82 | **97.7** |
| 5. Administrative matters | 534 | 17.5 | 523 | 15.8 | 468 | 16.3 | 503 | 18.3 | 406 | 15.4 | 360 | 14.0 | 322 | 12.92 | **89.4** |
| 6. Judicial and police procedures | 990 | 32.4 | 941 | 28.5 | 757 | 26.4 | 849 | 30.8 | 792 | 30.1 | 749 | 29.1 | 654 | 26.24 | **87.3** |
| 7. Environment and spatial planning | 84 | 2.7 | 130 | 3.9 | 96 | 3.3 | 67 | 2.4 | 89 | 3.4 | 88 | 3.4 | 90 | 3.61 | **102.3** |
| 8. Commercial public services | 37 | 1.2 | 67 | 2.0 | 58 | 2.0 | 88 | 3.2 | 75 | 2.9 | 67 | 2.6 | 64 | 2.57 | **95.5** |
| 9. Housing matters | 116 | 3.8 | 150 | 4.5 | 119 | 4.1 | 121 | 4.4 | 127 | 4.8 | 140 | 5.4 | 91 | 3.65 | **65.0** |
| 10. Discrimination | | | | | | | | | 25 | 1.0 | 17 | 0.7 | 46 | 1.85 | **270.6** |
| 11. Children's rights | | | | | 60 | 2.1 | 127 | 4.6 | 162 | 6.2 | 159 | 6.2 | 168 | 6.74 | **105.7** |
| 12. Other | 508 | 16.6 | 543 | 16.4 | 572 | 19.9 | 257 | 9.3 | 230 | 8.7 | 220 | 8.5 | 262 | 10.51 | **119.1** |
| TOTAL | 3,059 | 100 | 3,304 | 100 | 2,870 | 100.0 | 2,754 | 100.0 | 2,631 | 100.0 | 2,574 | 100.0 | 2,492 | 100.0 | 96.8 |

***Figure 3.5.1***



## Cases being handled

Table 3.5.2 presents data on the total number of cases being handled by the Ombudsman in 2006 by individual area of work. As we have already mentioned, cases being handled include cases opened on the basis of complaints in 2006, cases carried over for handling from 2005 and cases reopened in 2006.

The table shows that in 2006 **a total of 2,754 cases were being handled**, of which:
- 2,492 cases were opened in 2006 (*89.5* percent),
- 197 cases were carried over from 2005 (*7.1* percent), and
- 65 cases were reopened in 2006 (*3.4* percent).

The greatest number of cases being handled in 2006 comprised the areas of:
- judicial and police procedures (719 matters, or *26.11* percent),
- administrative matters (367 cases, or *13.33* percent) and
- social security (354 cases, or *12.85* percent).

A detailed presentation of the number of cases being handled in 2006 by individual area of work is given in the table below.

***Table 3.5.2***

| AREA OF WORK | NUMBER OF CASES BEING HANDLED | | | | |
|---|---|---|---|---|---|
| | Open cases in 2006 | Cases carried over from 2005 | Cases reopened in 2006 | Total cases being handled | Percentage by work area |
| 1. Constitutional rights | 125 | 10 | 4 | **139** | **5.05 %** |
| 2. Restriction of personal liberty | 176 | 19 | 6 | **201** | **7.30 %** |
| 3. Social security | 324 | 14 | 16 | **354** | **12.85 %** |
| 4. Labour law matters | 170 | 10 | 4 | **184** | **6.68 %** |
| 5. Administrative matters | 322 | 36 | 9 | **367** | **13.33 %** |
| 6. Judicial and police procedures | 654 | 59 | 6 | **719** | **26.11 %** |
| 7. Environment and spatial planning | 90 | 10 | 2 | **102** | **3.70 %** |
| 8. Commercial public services | 64 | 3 | 2 | **69** | **2.51 %** |
| 9. Housing matters | 91 | 9 | 8 | **108** | **3.92 %** |
| 10. Discrimination | 46 | 3 | 0 | **49** | **1.78 %** |
| 11. Children's rights | 168 | 17 | 6 | **191** | **6.94 %** |
| 12. Other | 262 | 7 | 2 | **271** | **9.84 %** |
| TOTAL | 2,492 | 197 | 65 | 2,754 | 100.0 % |

A comparison of the numbers of cases being handled by the Ombudsman by individual area of work in the period of 2000-2006 is presented in Table 3.5.3.

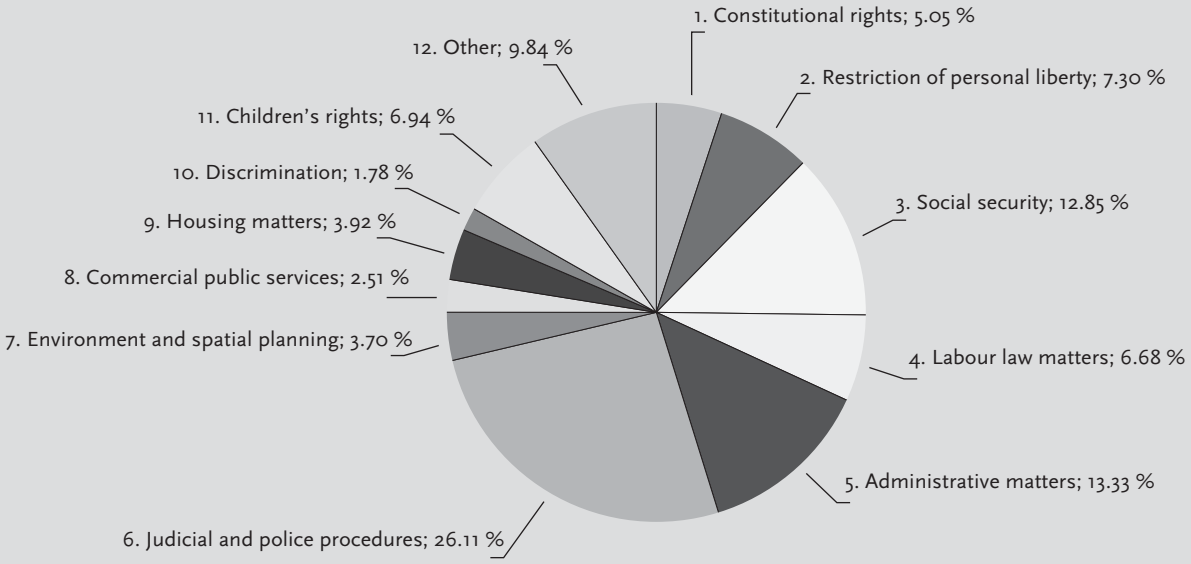
Table 3.5.3 indicates that in 2006 there were **7.1 percent fewer cases being handled** compared to 2005 (2,754 in 2006 and 2,963 in 2005). The most significant decrease in the number of cases being handled compared to 2005 was noted in the areas of:
housing matters: decreasing from 149 to 108, which is a *27.5* percent reduction, and
judicial and police procedures: decreasing from 862 to 719, which is a *16.6* percent reduction.

***Table 3.5.3***

| AREA OF WORK | CASES BEING HANDLED | | | | | | | | | | | | | | Index (06/05) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 2000 | | 2001 | | 2002 | | 2003 | | 2004 | | 2005 | | 2006 | | |
| | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % | |
| 1. Constitutional rights | 38 | 1.0 | 90 | 2.5 | 128 | 3.7 | 105 | 3.3 | 91 | 3.0 | 141 | 4.8 | 139 | 5.05 | **98.6** |
| 2. Restriction of personal liberty | 217 | 6.0 | 206 | 5.7 | 134 | 3.8 | 145 | 4.5 | 143 | 4.8 | 194 | 6.5 | 201 | 7.30 | **103.6** |
| 3. Social security | 493 | 13.6 | 549 | 15.2 | 468 | 13.4 | 451 | 14.1 | 393 | 13.1 | 339 | 11.4 | 354 | 12.85 | **104.4** |
| 4. Labour law matters | 180 | 5.0 | 213 | 5.9 | 174 | 5.0 | 166 | 5.2 | 199 | 6.7 | 197 | 6.6 | 184 | 6.68 | **93.4** |
| 5. Administrative matters | 675 | 18.6 | 591 | 16.3 | 632 | 18.1 | 613 | 19.1 | 488 | 16.3 | 435 | 14.7 | 367 | 13.33 | **84.4** |
| 6. Judicial and police procedures | 1,179 | 32.5 | 1,041 | 28.8 | 925 | 26.5 | 929 | 29.0 | 893 | 29.8 | 862 | 29.1 | 719 | 26.11 | **83.4** |
| 7. Environment and spatial planning | 108 | 3.0 | 143 | 4.0 | 118 | 3.4 | 83 | 2.6 | 98 | 3.3 | 101 | 3.4 | 102 | 3.70 | **101.0** |
| 8. Commercial public services | 45 | 1.2 | 68 | 1.9 | 69 | 2.0 | 97 | 3.0 | 82 | 2.7 | 73 | 2.5 | 69 | 2.51 | **94.5** |
| 9. Housing matters | 130 | 3.6 | 154 | 4.3 | 134 | 3.8 | 133 | 4.1 | 136 | 4.5 | 149 | 5.0 | 108 | 3.92 | **72.5** |
| 10. Discrimination | | | | | | 0.0 | | 0.0 | 27 | 0.9 | 24 | 0.8 | 49 | 1.78 | **204.2** |
| 11. Children's rights | | | | | 60 | 1.7 | 150 | 4.7 | 179 | 6.0 | 207 | 7.0 | 191 | 6.94 | **92.3** |
| 12. Other | 565 | 15.6 | 564 | 15.6 | 648 | 18.6 | 335 | 10.4 | 263 | 8.8 | 241 | 8.1 | 271 | 9.84 | **112.4** |
| TOTAL | 3,630 | 100 | 3,619 | 100 | 3,490 | 100 % | 3,207 | 100 | 2,992 | 100 | 2,963 | 100 | 2,754 | 100 | 92.9 |

Figure 3.5.2 presents the percentages of cases being handled by the Ombudsman by individual area of work in 2006.

***Figure 3.5.2***



## Status of cases being handled

1. **Closed cases:** Cases whose treatment was concluded on 31 December 2006.
2. **Cases being handled:** Cases undergoing treatment on 31 December 2006.
3. **Pending cases:** Cases on 31 December 2006 for which a response to an inquiry or other action was expected.

Table 3.5.4 shows a comparison between the statuses of cases being handled at the end of the years 2000 – 2006.

In 2006 a **total of 2,754 cases** were being handled of which **2,521 or 91.5 percent of all cases handled in 2006 were concluded** by 31 December 2006.

The remaining 233 cases or 8.5 percent remained open and consisted of:
– 118 pending cases, and
– 115 cases under resolution.

***Table 3.5.4***

| STATUS OF CASES BEING HANDLED | 2000 (status on 31. 12. 2000) | | 2001 (status on 31. 12. 2001) | | 2002 (status on 31. 12. 2002) | | 2003 (status on 31. 12. 2003) | | 2004 (status on 31. 12. 2004) | | 2005 (status on 31. 12. 2005) | | 2006 (status on 31. 12. 2006) | | Index (06/05) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % | |
| Concluded | 3,443 | 94.8 | 3,132 | 86.5 | 3,087 | 88.5 | 2,947 | 91.9 | 2,665 | 89.1 | 2,766 | 93.4 | 2,521 | 91.5 | **91.1** |
| Under resolution | 61 | 1.7 | 308 | 8.5 | 141 | 4.0 | 51 | 1.6 | 109 | 3.6 | 57 | 1.9 | 115 | 4.2 | **201.8** |
| Pending | 126 | 3.5 | 179 | 5.0 | 262 | 7.5 | 209 | 6.5 | 218 | 7.3 | 140 | 4.7 | 118 | 4.3 | **84.3** |
| TOTAL | 3,630 | 100 | 3,619 | 100 | 3,490 | 100 | 3,207 | 100 | 2,992 | 100 | 2,963 | 100 | 2,754 | 100 | 92.9 |

## Closed cases

Table 3.5.5. shows the number of closed cases by area of work in the period 2000-2006. In 2006, **2,521 cases were closed** (compared to 3,443 in 2000, 3,132 in 2001, 3,087 in 2002, 2,947 in 2003, 2,665 in 2004 and 2766 in 2005), representing an ***8.9* percent decrease in the number of cases closed** compared to 2005.

Comparing the number of cases closed (2,521) with the number of cases opened in 2006 (2,492), we noted that *1.2* percent more cases had been closed than opened in 2006.

***Table 3.5.5***

| AREA OF WORK | NUMBER OF CASES CLOSED | | | | | | | Index (06/05) |
|---|---|---|---|---|---|---|---|---|
| | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | |
| 1. Constitutional rights | 33 | 67 | 115 | 99 | 73 | 131 | 136 | **103.8** |
| 2. Restriction of personal liberty | 211 | 196 | 116 | 133 | 130 | 175 | 181 | **103.4** |
| 3. Social security | 464 | 494 | 413 | 410 | 369 | 325 | 329 | **101.2** |
| 4. Labour law matters | 179 | 192 | 156 | 140 | 177 | 187 | 168 | **89.8** |
| 5. Administrative matters | 623 | 437 | 520 | 505 | 416 | 399 | 329 | **82.5** |
| 6. Judicial and police procedures | 1,113 | 921 | 863 | 821 | 786 | 803 | 665 | **82.8** |
| 7. Environment and spatial planning | 104 | 124 | 102 | 77 | 85 | 91 | 82 | **90.1** |
| 8. Commercial public services | 43 | 58 | 59 | 84 | 79 | 70 | 68 | **97.1** |
| 9. Housing matters | 124 | 139 | 123 | 121 | 129 | 140 | 107 | **76.4** |
| 10. Discrimination | | | | | 20 | 21 | 42 | **200.0** |
| 11. Children's rights | | | 40 | 124 | 147 | 190 | 160 | **84.2** |
| 12. Other | 549 | 504 | 580 | 311 | 254 | 234 | 254 | **108.5** |
| TOTAL | 3,443 | 3,132 | 3,087 | 2,827 | 2,665 | 2,766 | 2,521 | 91.1 |

## Treatment of cases by work area

In the area of **1. Constitutional rights,** there were 139 open cases which was 1.4 percent less than in 2005, when there were 141. Complaints regarding constitutional rights comprised 5 percent of all cases treated. The sub-areas of ethics of public speech with 46 complaints (12.2 percent increase compared to 2005) and personal data protection with 37 complaints (2.6 percent decrease compared to 2005) stand out.

The number of cases being treated in the area of **2. Restriction of personal liberty** increased by 3.6 percent in 2006 as compared 2005 (from 194 to 201). An increase in the number of cases being treated was observed in the sub-areas of illegal aliens and asylum applicants (from 10 to 18) and prisoners (from 83 to 87).

The number of cases being handled in the area of **3. Social security** increased by 4.4 percent (from 339 to 354) in 2006 compared to 2005. The greatest shares among sub-areas comprised cases connected to pensions (74 cases or 20.9 percent) and disability insurance (63 cases or 17.8 percent). An increase

in the number of cases treated in comparison to previous periods was also observed in the sub-areas of social benefits and aid (from 36 to 54) and healthcare (from 40 to 50).

The number of cases being handled in the area of **4. Labour law matters** decreased by 6.6 percent in 2006 (184) compared to 2005 (197). In comparison to previous periods, a decrease in the cases from all sub-areas was noted, particularly regarding employment relationships (from 81 to 73) and unemployment (from 51 to 47).

The area **5. Administrative matters** with 367 cases being treated despite a 15.6 percent decrease compared to 2005 (435) comprised the second greatest contextually rounded off total of all cases treated by the Ombudsman in 2006. Since an increase in cases was merely seen in administrative cases (from 97 to 104 - 7.2 percent increase) the decreased number of cases of the remaining sub-areas was that much more evident. Here we should emphasise property law matters in which the number decreased from 47 to 20 or by 57.4 percent and citizenship (from 49 to 34 or a 30.6 percent decrease) in comparison to the previous period.

In 2006, the Ombudsman again treated the majority of cases in the area of **6. Judicial and police procedures** (719 cases or 26.1 percent) which include matters connected to police, pre-court, criminal and civil procedures, procedures regarding employment and social disputes, violations procedures, administrative court procedures and cases connected to attorneys and notary publics. From the index on the movement of cases being treated in 2006 as compared to 2005 (83.4 percent), it is evident that the number of cases in the aforementioned area had decreased, namely from 862 in 2005 to 719 in 2006. A decrease in the number of cases treated regarding the sub-areas of criminal procedures (from 100 to 54 or a 46 percent decrease) and attorneys and notary publics (from 25 to 18 or a 28 percent decrease) was observed while an increase in the sub-are of violation procedures (from 33 to 47 or a 42.4 percent increase) was noted. The greatest share among all cases being treated despite an 18.7 percent decrease compared to the previous period (from 450 to 366) belonged to civil procedures.

No significant changes were observed in the area **7. Environment and spatial planning** in 2006. The number of cases for the aforementioned merely increased from 101 to 102 cases. An increase in interventions into the environment was noted whereby the number of cases being treated climbed from 41 in 2005 to 48 in 2006 (17.1 increase) while the number of cases being treated regarding spatial planning decreased, namely from 50 to 37.

The decrease in the number of cases being treated in 2006 as compared to 2005 was also observed for the area **8. Commercial public services** with the number of cases falling to 69 and an index of 94.5. A greater decrease in the public utility sector (from 23 to 19) and an increase in energy (from 8 to 9) could be observed.

Regarding the area **9. Housing matters**, the number of treated cases in 2006 compared to 2005 decreased by 27.5 percent (149 in 2005 and 108 in 2006). A decrease in the number of cases regarding the housing relations (from 111 to 77) as well as in commercial housing (from 29 to 13) was also noted.

The number of cases being treated in the area of **10. Discrimination** increased by 104.2 percent in 2006 as compared 2005 (from 24 to 49).

The area **11. Children's' rights** has been an independent classification area since 2004. For the purpose of improved transparency, the aforementioned area was broken down into sub-areas in 2005 on the basis of experience. The number of complaints decreased from 207 in 2005 to 191 in 2006 (index 92.3). The greatest share in this area comprised complaints regarding contacts with parents. In 2006, 42 (index 79.2) such complaints were received in 2006. Additionally, the increase in complaints regarding the sub-area of children with special needs (from 10 to 15) should also be highlighted.

Cases which cannot be classified under key areas are classified under the area **12. Other**. In 2006, 271 such cases were treated as compared to 241 in 2005, reflecting a 12.4 percent increase.

# 04 Description of selected cases

## 1 – INSENSITIVE MISUSE OF A CHILD AS AN OBJECT OF SENSATIONALIST REPORTING

A child's foster parent and his therapist drew our attention to two disputable articles in a tabloid. Due to unbearable circumstances in the family, the child had been taken from his parents some years ago and placed into foster care. The articles were published after the competent social services centre also removed the child's sister from the parents for similar reasons. Criminal proceedings against the parents were initiated and they were charged with child sexual misuse. The articles were in the form of a series on the supposedly disputable procedures regarding the removal of the child and criminal prosecution. They summarised the parents' accusations against the prosecuting bodies, social services centre and children whose statements supposedly were not true. The personal data of children, their photographs, data on the schools the children had attended and the like were published. The suspicion of misuse was described in concrete form. The tabloid disclosed that the children had behavioural problems and that the boy was undergoing psychiatric treatment, and the religious beliefs which he had been raised with.

Such a release inadmissibly stigmatises both children and could cause them irreparable psychological harm. Although the parents (most likely also on behalf and at the cost of the children) themselves consented to the publication, this does not relieve the burden of the journalists and editors from ethic responsibility in autonomously assessing whether the statements which could harm the children should also be published. We also determined that the article did not present all responses of those involved in the accusations and failed to provide important information from the court procedure. Since the children were, due to the family tragedy, left without a representative who could effectively protect their interests we filed an initiative with the Journalists' Ethics Council.

We felt, that the journalist and editor had not attempted to weigh all relevant interests of all those affected prior to publication. Due to the alleged facts at the cost of the children, state bodies and family tragedy, the course of the pre-trial and criminal court trial and obvious possible harmful effects to the children, particularly high or professional concern should have been shown. Each person who has at least a minimum knowledge of the contents of the legal order, realises that such court procedures are, as a rule, closed to the public. Public interest for acquaintance with the course of the procedures must give way to more important values: the protection of the privacy and personal rights of the parents and the indemnified party. Thus, we expressed the suspicion that this regarded the conscious publication of shocking news originating merely in the interest of the journalist, editor or publisher of the tabloid. In our opinion, the children had been insensitively misused in both articles as objects of sensationalist reporting of an event which, for them in any case, represented a great personal tragedy.

The Journalists' Ethics Council confirmed our opinion of the non-ethical action of the editor and the journalist, however this only provides a minimum amount of moral satisfaction. Despite the Ombudsman's lack of competence and after taking into account all circumstances, we as an exception thus touched on the question of conditions for civil damage claims. We believe that these are fulfilled; at the same time we also took into account the significance of such cases for the development of the

case-law. Although we realise how difficult the burden of court procedures can be on children in their most sensitive years, nevertheless we expressed to the social services centre the opinion that reflection on the use of legal channels (against those responsible) was appropriate. The greatest interest of both children had to be assessed on the basis of all circumstances, both from the aspect of the current situation as from the perspective of time. We thus suggested the social services centre assign a suitably qualified guardian for the special case, who could perform a concerned assessment and take the appropriate action. **1.2 - 3 / 2006**

## 2 – RESIDENCE IN A CLOSED WARD WITH NO CONTACT TO THE OUTSIDE WORLD

A convict in the ZPKZ Koper correctional facility was prohibited from writing, visiting and telephoning friends, relatives and his girlfriend. All requests to this end had been denied, based on the reasoning that in such a regime he was not allowed any contact with them.

Upon the Ombudsman's intervention, the Prison Administration of the Republic of Slovenia (UIKS) examined the allegations of the complainant and met with him in person. It found that residence on a closed ward cannot constitute a reason for the institute denying the complainant contact with persons who are not close family members. It emphasised that the director of the correctional facility when deciding on visits and correspondence with persons who are not close family members must establish whether such action was in accordance with the programme's individual treatment, or whether such contact was beneficial for the convict.

UIKS also established that the restriction of contact with persons outside the facility simply because of a violation of the facility's rules were not appropriate, for suitable disciplinary and other measures were prescribed for such situations. Additionally, the complainant who had previously also resided in a closed ward at the ZPKZ Dob correctional facility had been allowed correspondence, visits and telephone calls with at least ten persons who were not close family members, among them also his girlfriend. Since the complainant had already been allowed contact with the outside world during his residence on a closed ward, there was no reason to restrict such contact at the ZPKZ Koper correctional facility.

We agreed with the UIKS's position. We welcomed the announced measures for ensuring that established deficiencies would not reoccur. **Well-founded reasons for the restriction of contact with the outside world have to be given.** Any type of restriction of such contact (e.g. punishment) would be illegal since the former is not prescribed as a sanction. Each individual restriction must also originate from the principle of proportionality. We cannot overlook that the right of a convict to maintain contact with the outside world is prevented by his social isolation.

Following his relocation from ZPKZ Koper to the Nova Gorica correctional department the complainant was once again enabled contact with persons who were not close family members, thus no need for our further intervention was required. **2.2-3/2006**

## 3 – IMPLEMENTATION OF THE ACT CONCERNING REMEDYING THE CONSEQUENCES OF WORK WITH ASBESTOS – ZOPDA

ZOPDA went into effect on 12 April 2006. Article 14 prescribes that the Minister of Health must within three months following the enforcement of the Act issue a regulation on the conditions for establishing occupational diseases due to exposure to asbestos. The minister, despite the legal obligation, failed to issue the regulation by 16 October 2006.

Pursuant to the fourth and fifth paragraphs of Article 14, the Government of the Republic of Slovenia had to appoint an inter-ministerial commission for agreement procedures on the recognition of indemnities and recognition of rights to disability pensions under more favourable conditions, and issue criteria for lowering the share of damages for commercial enterprises (fourth paragraph of Article 10 of the Act) within three months of the Act going into force. The Government has not as yet fulfilled this obligation.

It is inadmissible that in a state governed by law, the Act cannot be implemented because the required executive acts have not been promptly issued. In practice, this means that complainants, whose complaints we are treating (and other beneficiaries) cannot be granted the right to the payment of damages according to ZOPDA. Below, we describe how the aforementioned situation is affecting the rights of complainants which should be guaranteed by law.

The first complainant is 65 years old and was employed at the company Salonit Anhovo. First, he became ill with **asbestosis**. He asserted his right to a pension under more favourable conditions and indemnity pursuant to Article 12 of the Act Prohibiting Production and Trade in Asbestos Products and Restructuring the Asbestos Industry (ZPPPAI). This year he was diagnosed with a new disease – **mesothelioma of the pleura**. Since the new law ZOPDA became effective on 12 April 2006, the complainant filed a new damage claim on 26 June 2006 due to the considerable deterioration of his health state and life functions. He filed the request with the Government Commission for Agreement Procedures on the Recognition of Indemnities, which had been appointed under ZPPPAI, for no other body existed at that time. The disease was also verified in the procedure and by the body (interdisciplinary commission) as prescribed in ZPPPAI on 11 May 2006. The complainant had many times previously submitted a request to the Ministry of Justice, the headquarters of the Commission, for an accelerated treatment of his case as he was dying. The employee of the ministry who managed the Commission could not give him any concrete information regarding the deadline in which the agreement on compensation would be prepared.

Undoubtedly, this regards a disease which in Article 4 of ZOPDA is defined as an occupational disease originating from the exposure to asbestos where Article 6 defines the maximum amount of compensation which can be paid out to a patient with the aforementioned occupational disease. The Rules on the determination of occupational diseases resulting from exposure to asbestos, issued on the basis of ZPPPAI which is now used following ZOPDA until the implementation of a new executive regulation, also classified the malignant mesothelioma of the pleura an occupational disease (according to statistical

data provided by Dr. Zlata Remškar MD, patients with the same disease as the complainant live an average of 4 to 18 months after being diagnosed with the disease).

The complainant thus initiated the procedure for the payment of indemnities pursuant to ZOPDA, however this law cannot be applied in the treated case, since the Government of the Republic of Slovenia has not yet appointed the Commission for Agreement Procedures on the Recognition of Indemnities (Inter-ministerial Commission) as prescribed by law. Pursuant to Article 14 of ZOPDA, the Government of the Republic of Slovenia should have appointed this Commission by 12 July 2006 at the latest.

During treatment of the complaint, we determined that even following the issue of all executive acts, the procedure for granting compensation will be of long duration, with the persons for whom an occupational disease due to exposure to asbestos has been diagnosed in a considerably subordinated position in the communication procedure. We can even expect a greater number of cases where applicants for damage claims who are most affected due to exposure to asbestos will not live until the conclusion of the procedure. Here we should also draw attention to Article 184 of the Code of Obligations which prescribes that claims for the reimbursement of non-material damages is transferred to heirs only if so recognised through a final decision or written agreement.

The procedure for communications on damages arranged by Article 10 of ZOPDA foresees two phases: first the Inter-ministerial Commission must determine whether the claimant fulfils the conditions defined by the law (that he/she had been employed in a commercial company which worked with asbestos and that he/she worked in a position in which he/she was exposed to asbestos). If the aforementioned conditions are fulfilled, the Inter-ministerial Commission **recommends that the applicant and commercial company** in which the person was employed, conclude an agreement on the payment of indemnities. The agreement is concluded once the commercial enterprise agrees to cover 40 percent of the claims and the applicant agrees with the mutually agreed upon amount of compensation. An agreement on the payment of indemnities is the instrument permitting enforcement.

The primary person under obligation for the recognised indemnity of the claimant is the commercial enterprise which also pays out 40 percent of the agreed upon amount of indemnity while the state pays out the remaining 60 percent (with the state paying out a larger sum in exceptional cases). According to the Act, an agreement between the commercial enterprise and claimant is attained when the commercial enterprise obligates itself to pay its share of the indemnity. It is not in the interest of the Republic of Slovenia, who must pay out a larger share of damages, that an agreement on the payment of indemnities be concluded between the commercial enterprise and claimant. In this case, the claimant may file a lawsuit with the competent court in which the sued party is the commercial enterprise. If the claim is granted, the person liable for carrying out the final judgement is the commercial company and not the Republic of Slovenia.

The Act does not enable the claimant any legal means in the communication procedure for the payment indemnity itself, since according to Article 10 of the Act, the procedure is a special one and not

comparable to any known procedures in the legal arrangement of the Republic of Slovenia, thus the claimants shall be in a considerably subordinated position.

In the second case, the complainant had already at the beginning of 2004 alleged the lengthiness of the procedure for validation of the right to indemnity following the diagnosis of an occupational disease due to exposure to asbestos. The complainant was not employed in one of the commercial enterprises which were known for mainly working with asbestos and asbestos products, he was employed at the company Iskra – Magneti. He had already initiated the procedure for verification of the occupational disease due to exposure to asbestos in April 2002 before the inter-disciplinary group of experts; his occupational disease was verified on 24 March 2004. At that time, following the verification of an occupational disease due to exposure to asbestos, the documentation of the inter-disciplinary group of experts was forwarded to the Commission for agreement procedures on the recognition of indemnities to persons with an occupational disease due to asbestos. Despite numerous interventions by the Human Rights Ombudsman and other complainants, indemnity has not yet been recognised. All procedures have so far been managed pursuant to ZPPPAI.

The Ombudsman had demanded an explanation from the Commission many times on why they did not conclude the procedure in the case being treated. First (in 2005), they explained that they were waiting for an opinion on how to process the claims of claimants who had not been employed at Salonit Anhovo, for which procedure had already been set up and the company was contributing 40 percent of the indemnity to an individual claimant. Twenty cases of claimants, persons with a verified case of occupational disease due to exposure to asbestos in which the disease originated during the period of employment in organisations other than Salonit Anhovo, were treated by the Commission in 2005. Since the situations differ in these organisations (some have ceased operations and have no legal successors, other operate at a loss and the like), numerous legal questions arose whose resolutions were dependent on their treatment by the Commission. An assurance was given, that these 20 claims, which also included those of the two complainants, would be resolved in autumn 2005. As this did not happen, we again called on the Commission to clarify the reasons why the requests of the claimants who had not worked at Salonit Anhovo could not be resolved pursuant to ZPPPAI.

Finally, the Commission answered in April 2006, explaining that after 30 June 2005 an acceleration of the amendment of ZOPDA occurred which arranges the payment of indemnities in a new way; the Commission's opinion is that the adoption of the new law thus presented new circumstance which will alleviate decision-making regarding the recognition of indemnities also to employees who had not been employed at Salonit Anhovo, regardless of Article 15 which defines that regulations which were in effect until the new law's enforcement would be applied for procedures which had commenced prior to the new law going into effect. The Commission would thus treat the claims of employees who had not been employed at Salonit Anhovo in May and June 2006. Again this did not occur.

When treating these complaints, particularly the question of which regulation the complainants' (claimants') requests for the recognition of indemnity for a verified case of occupational disease due to

exposure to asbestos would be handled under, for Article 15 of ZOPDA defines that the provisions of ZPPPAI apply to procedures for agreements on indemnities which commenced prior to the enforcement of ZOPDA (12 April 2006).

Since pursuant to ZPPPAI, the president of the Commission for Agreement Procedures on the Recognition of Indemnities did not justify the decision that the claims of the complainants would be treated in accordance with new regulations, the Ombudsman cannot fathom the reason for such a decision.

With regard to the treatment of the described complaints, the Ombudsman must also draw attention to the unacceptable ignorance of the Ministry of Justice, since it is the headquarters of the Commission for Agreement Procedures on the Recognition of Indemnities according to ZPPPAI, and the Ministry of Labour, Family and Social Affairs, which is supposedly the headquarters of the Inter-ministerial Commission according to ZOPDA with regard to the Ombudsman's inquiry in connection to their treatment. Thus, for example, the response of the Ministry of Justice to the inquiry addressed by the Ombudsman on 28 December 2005 was received on 19 April 2006 while the Ministry of Labour, Family and Social Affairs has not yet responded to our inquiry of 7 July 2006.

We informed the Prime Minister of the Republic of Slovenia of the aforementioned problems and requested him to undertake the resolution of the question which in the opinion of the Human Rights Ombudsman seriously threatened the principles of a legal and social state and demanded a decisive and quick action. Sadly, the competent ministries obviously did not realise the extent of the problem we cautioned them of with the description of concrete complaints regarding the non(implementation) of the Act Concerning Remedying the Consequences of Work with Asbestos (ZOPDA). **3.0-24/2006, 3.0-2/2004**

## 4 – ABSENCE FROM WORK DUE TO CARING FOR A CHILD WITH A SERIOUS MENTAL DISORDER

The complainant and her husband care for their son, aged 21, who has a serious mental disorder; the parents were granted an extended parental right. The son is a student at the Dolfke Boštjančič Centre. In October 2005 (in 1997 for the first time), he became ill with osteosarcoma, thus the hospital amputated both legs above the knees and he underwent chemotherapy. The young man is an epileptic, seriously aggressive to himself and the surroundings and the oncology physician issued an opinion that the boy could not be alone in the hospital and that not even the medical staff were capable of caring for him in a way that would not endanger his treatment.

The complainant exercised her right to compensation for temporary absence from work due to the care of a close family member since the appointed physician had overlooked the fact that her son was over 18. When he discovered the mistake, he issued a decision that the complainant was no longer entitled to this right after a certain date. The complainant then exercised her right to compensation for sick-leave based on her personal physician's findings that due to her illness, she was temporarily unable to work. She needed several more months of compensation for the care of her child to conclude her son's treatment of osteosarcoma.

We acquainted the complainant with the contents of the provisions of Article 30 of the Health Care and Health Insurance Act (ZZVZZ) which precisely defines that this regarded the care for a child up to the age of seven or older with minor, more serious or serious mental and physical disability giving one of the parents the right to compensation due to a temporary absence from work up to 15 working days. Whenever is required due to the health state of the child, the appointed physician may by exception extend the duration of the rights to compensation, however up to a maximum of 30 working days. In extraordinary cases, the appointed doctor may extend the right to compensation for an additional six months maximum or, if it regards an especially serious deterioration of the child's health, also for a longer period, but only up to the age of 18 of the child. The complainant more or less already knew this, however she was convinced that the situation in her family was so extraordinary that it required extraordinary treatment.

On the human level, we agreed with the complainant. Thus we asked the Ministry of Health to communicate an opinion on whether in this situation, which due to it exceptionality could never be a subject of legal arrangement, it is possible to take steps in a manner which would ensure that the complainant could care for her affected child during the time of his treatment.

We were pleased with the ministry's explanation regarding a possible resolution of the situation. The ministry felt that the aforementioned provisions of ZZVZZ should be interpreted more widely, so as to take into account that the parent of the patient's parental rights had been extended due to his inability to take care of himself. Thus the ill son should be treated as a child in the procedure for establishing the eligibility of the complainant to compensation for temporary absence from work due to the care for the child. At the same time, the ministry promised that the case would be treated within the scope of prepared amendments and supplementation of ZZVZZ. The complainant informed us that she had succeeded in validating her right to compensation during the duration of her son's treatment. **3.3-16/2006**

## 5 – THE MUNICIPALITY IS NOT FULFILLING ITS OBLIGATIONS

A complainant informed us that her municipality refused to pay out a partial payment for lost income belonging to her as the home care assistant of a disabled person who had already passed away. We requested a report from the mayor and suggested that he act in accordance with legal provisions and pay her the income which was forthcoming to her. From his explanation, it was clear that they were aware of their legal obligations and that they intended to settle the amount following the adoption of the rebalanced municipal budget, namely in September 2006.

We believed that the municipality would actually pay the belated amount within the deadline they defined, however in October we found that the complainant had not yet received the money. We advised her to address the mayor in writing once more or validate her right to a final decision in an executive procedure and inform the Ombudsman thereof. The complainant informed us that she had received the money in December. **3.5-25/2006**

## 6 – OMBUDSMAN'S INTERVENTION IN ENSURING HOUSING

A young family came to the Office explaining that they had a guaranteed apartment for only another three weeks and were afraid that they would end up on the street with their a few months old baby. From the submitted documents, it was evident that on the basis of a tender on the allocation of a non-profit rental apartment, they had been placed in 4th place as the recipients of a non-profit rental apartment for the year 2006.

We assessed the case as urgent and thus called the mayor of the municipality. Following an informative discussion, the latter connected us to the secretary who was also the president of the Commission for the Allocation of Non-profit Rental Apartments. We discovered that he was aware of the problem and that a suitable non-profit apartment for immediate rent would have to be found. However, there were an insufficient number of such apartments, thus they were only resolving several urgent cases (serious disability, eviction). They do not completely follow the chronological order, however valid regulations allow this. Although currently they did not have a suitable apartment available, we received their assurance that they would do everything they could to ensure the family at least provisional housing (only until the availability of an apartment for permanent rental) for in their municipality no one, especially a family with a baby, had ever remained without a dwelling.

The Ombudsman's intervention did not represent a decision which would by-pass regulations nor the giving of unjustified precedence to individuals; we merely desired to caution those competent of the actual situation, which perhaps they were not aware of entirely. **3.5-39/2006**

## 7 – OBSERVANCE OF A CHILD'S INTERESTS WHEN ENSURING HOUSING

An initiative was sent to us by the daughter of the affected person. She described the extremely difficult conditions in which her mother and underage brother lived. Since they could not cover the rent, the woman had been without an apartment since August and lived in an abandoned house without water, electricity and heating. Because of the impossible situation, the initiator (who lived in her boyfriend's parents' house) took the 15-year-old boy (her brother) who was attending the second year of secondary school to live with her. Her mother, who received social aid and was very ill and classified as a person difficult to employ was in the hospital at the time. The boy, the initiator indicated, was very industrious in school, well-behaved and only had health problems related to asthma.

The daughter (sister) had attempted to help her mother and brother and undertook to find them an apartment, or at least a temporary dwelling. The Public Housing Fund did not display sufficient interest in the matter. Already three years previously, they had requested a non-profit rental apartment, however their application was rejected since the mother could not satisfactorily amend it in the prescribed deadline. She applied for a non-profit apartment again through this year's tender, however the procedure has not yet been concluded. We verified the above statements with the social services centre which had sent a recommendation (annex to the tender application) to the Public Housing Fund.

We immediately requested a report and explanation from the Public Housing Fund, asking in which place the woman had been placed on the precedence list (if at all so) and when could she expect the allocation of a non-profit rental apartment. We also addressed the question why they had not resolved such an urgent situation at least temporarily – through their accommodation in a temporary dwelling. We are convinced that the described living situation (lack of housing – on the street, beneficiary of financial social aid, illness, underage child undergoing schooling with serious asthma) would definitely warrant and dictate such a decision.

The director of the Public Housing Fund immediately responded to our request, informing us by phone that the woman had not been placed high up enough on the list to be able to get an apartment this year. However, on the basis of our request they reassessed all the facts and called an extraordinary session of the Commission for the Allocation of Non-profit Rental Apartments. In accordance with regulations, they decided that the established situation was such that **due to the protection of the interest of the underage child, the woman would be allotted a non-profit rental apartment**.

We thanked the director for her quick response and observance of our recommendations and informed the overjoyed mother that she could move into the new apartment with her son immediately after being discharged from the hospital. **3.6 - 7/2006**

### 8 – INTERVENTION IN THE PLACEMENT OF A MAN INTO INSTITUTIONAL CARE

The sister of afflicted man addressed a complaint to the Ombudsman in which she alleged that her 66-year-old brother lived in her weekend cabin without heating, was extremely ill, poorly mobile and could not take care of himself. They had requested that he be placed in a retirement home, however following a visit and interview, he was not accepted. The complainant felt that her brother had been unjustly denied.

We requested a report from the home and suggested that they reweigh the decision to accept the gentleman and make a decision prior to the New Year's holidays. They did so and sent us their report in which they indicated that they had revisited the gentleman at this home and immediately placed him in a room with three roommates on an extra bed. They acceded to our request, emphasising that seeing that the gentleman was an alcoholic, they would require a more consistent observance of the house rules.

Despite the special circumstances of the case, the gentleman is spending the winter in humane conditions due to our intervention. **3.6 - 12/2006**

### 9 – A MAYOR'S DISCRETION IN FULFILLING HIS LEGAL OBLIGATIONS

The complainant alleged that she had received a decision of the social services centre which granted the disabled woman the right to select a home care assistant. The person offering the aid is entitled to partial indemnity for lost income in the amount of minimum pay. The municipality would have to pay this amount,

following the deduction of taxes and contributions. The complainant indicated that the mayor did not want to realise the decision whereby she acquainted us with his reply sent to the Ministry of Labour, Family and Social Affairs. She also told us of the reply the ministry sent to the municipality. The ministry's reply indicated that the decision whereby the Celje Social Services Centre had decided to grant the woman the right to select a home care assistant had already become enforceable, namely on the date it was served to the client.

We agreed entirely with the ministry's explanation, for there was no legally justifiable reason which would allow the municipality to not fulfil the obligations defined by law and the executable decision.

We wrote to the mayor and warned him of the inadmissibility of the non-payment of the obligation referring to the circumstances that on the basis of the decision of the Constitutional Court of the Republic of Slovenia, the municipality could expect changes to the legal provisions regarding the financing of the institute of home care assistants. Since Article 99 of the Social Security Act defines that the rights of a home care assistant are financed from a municipality's budget, they could not avoid their obligations. We demanded that the municipality immediately fulfil its obligation.

The mayor did not respond to our request, not even after the following call for urgency. Nevertheless we found out a good two months later from the complainant that the mayor had fulfilled his obligation. He thus acceded to the Ombudsman's opinion, fulfilling the municipality's obligation. Contrary to the law, he did not send the Ombudsman a report even later. **3.7- 2/2006**

## 10 – DELETION FROM THE REGISTER OF UNEMPLOYED PERSONS

Due to his absence from his home, the complainant was deleted from the register of unemployed persons at the Sevnica Labour Office. After reviewing the documentation, we found that the controller had performed a control at the home address of the complainant, however the latter was out. From the protocol on the supervision of an unemployed person, it was evident that: „The client resides in a multi-residential house on the top floor. The stairs were locked and no bell existed. I knocked, however no one answered. The client was unavailable. " The protocol was only signed by the controller and not also by the person being supervised. The complainant's employment plan indicated that the unemployed person would be present at his home address everyday between 11 a.m. and 2 p.m. and by telephone at his cell phone number. The protocol on the supervision of an unemployed person clearly showed that the controller had not observed the agreement in the employment plan, for after the unemployed person did not respond to the knocking on the stairway door (not the apartment door), he did not call the supervised person on his cell phone. We felt in this case, that only an unanswered call on the cell phone could prove that the person was in actuality unavailable. Thus we sent a query to the Employment Service of Slovenia, suggesting that they re-examine the supervision procedure and decision on the deletion of the complainant from the register of unemployed persons.

In its report, the Employment Service of Slovenia clarified its decision, persevering in its justification. They explained that the complainant had not exploited the possibility of submitting an appeal against

the protocol within three days, that he had not appealed against the decision and that he had already been deleted from the register of unemployed persons due to his unavailability three times and once due to his refusing to joint the Programme for an Active Policy of Employment.

We did not continue the procedure due to the complainant's obvious lack of seriousness, however we are convinced that the implementation of concrete supervision allows doubt regarding the justification of the deletion of the complainant from the register of unemployed persons, for serious seekers of employment could also be deleted in the same manner. **4.2-5/2006**

### 11 – PROHIBITED DEPARTURE FROM SCHOOL BUILDINGS DURING BREAKS

A secondary school pupil turned to the Ombudsman with the question of whether the prohibited leaving of school grounds is contrary to Article 32 of the Constitution of the Republic of Slovenia. He indicated that the leaving of school during five-minute breaks was prohibited by the house rules. The school has a security service arranged with security guards physically preventing the pupils from leaving.

We explained to the pupil, that the Ombudsman was not competent to judge whether a provision of a regulation is contrary to the Constitution and that such an assessment lay under the jurisdiction of the Constitutional Court of the Republic of Slovenia. We communicated our opinion to him regarding the house rules which is the internal regulation of the school.

The freedom of movement in the first paragraph of Article 32 of the Constitution is defined as a human right which guarantees everyone free movement, the choice of residence and freedom to leave and return to the country whenever he/she wants. The right thus also encompasses the freedom of movement within the state, meaning that an individual can freely move about the territory of Slovenia without any sort of restriction (prior notification, permits). Thus all obligations prescribed to an individual in connection to movement, regard a limitation of the freedom of movement. The realisation and restriction of rights is defined in Articles 15 and 16 of the Constitution. The manner of realising human rights and fundamental freedoms can be prescribed by law if so defined by the Constitution or if this is imperative due to the nature of the individual right or freedom. This means, that the prohibition of free movement in schools should at least be defined by one of the school laws (Organization and Financing of Education Act, Gymnasium Act, Vocational and Technical Education Act). Also in this case, the right should not be restricted in general, but may be restricted in individual cases on the basis of generally (legally) specified conditions.

This means that the provision of the house rules of the school does not possess a direct basis in regulations. Here we should point out that it is not entirely clear whether this case represents a restriction of the freedom of movement as defined by Article 32 of the Constitution. Reasons exist for the prevention of departures from school during class (also during five-minute breaks) - to ensure the uninterrupted flow of educational activities and to maintain order.

The restrictive measure is sometimes even requested by parents who do not wish their children to visit adjacent shops or bars during class time. Perhaps the school desires to prevent the arrival of outside visitors who can in this way enter the school and cause damage. Additionally, it is not difficult to understand that teachers and school leaders would like pupils to attend class. They have obligations and responsibilities to the pupils which in addition to their profession are also imposed upon them by law. They are responsible for realising the pupils' rights, for example the right to education, safety and bodily safety and other rights. If pupils don't attend class or come to class late, teachers cannot realise their obligations, which at the minimum, reflects a violation of regulations. Departures from school during five-minute breaks are difficult to carry out without the pupils being late for the subsequent class hour. Five-minute breaks have a different objective. They exist to allow a person to relax following an intensive forty-five minutes of mental work, chat with classmates or teachers, direct thoughts elsewhere for a short time, get ready for the subsequent class subject, exchange classrooms and so on. Since human rights are limited by the rights of other people, pupils must also take this into account.

However the physical prevention of departures from school is inappropriate. In connection to this, it would be prudent that the representative of the classes or pupil community speak to the management. We suggested that they supplement the house rules so that the solution is acceptable for all. **5.0-16/2006**

## 12 – INCOME TAX ASSESSMENTS OF FOREIGN PENSIONS

A complainant turned to the Ombudsman in connection to problems associated with income tax assessments of foreign pensions. He receives a pension from the Republic of Croatia and is thus liable to the payment of tax prepayments. He would agree with this obligation if it applied to all recipients of Croatian pensions. He had discovered that tax prepayments were only paid by those recipients of Croatian pensions who at the invitation of the Tax Administration of the Republic of Slovenia (DURS) filed a tax assessment while those who had not done so had concealed receipts of payment and did not pay tax prepayments. He also established that honest citizens by filing a tax assessment had harmed themselves for those who had not done so did not pay tax prepayments and in his opinion, would not be sanctioned for these receipts could not be monitored and communications on the international level obviously were not functioning. He felt that due to the ineffectiveness of the system in this area, he was not in an identical position to those who had not filed a tax assessment.

We requested an explanation from the General Tax Office (GDU) if they had to date ever requested data or documents for tax assessments from the Republic of Croatia in complaint cases and if so, how many times on the basis of administrative help. We were interested also in how they would (and plant to in the future) ensure the exchange of data with the Republic of Croatia and other countries, so as to ensure the effective implementation of the provisions of the Personal Income Tax Act (ZDoh-1) for all taxable persons.

GDU explained that DURS exchanged information regarding the area of direct taxes with the competent bodies of other Member States of the European Union on the basis of two legal bases, namely the

Agreement on the Avoidance of Double Taxation which the Republic of Slovenia concluded with other Member State signatories and Council Directive 77/799/EEC - concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation which is included in the Tax Procedure Act (ZDavP-1).

The legal basis for implementing administrative help with the Republic of Croatia in the tax field is the Agreement between the Republic of Slovenia and Republic of Croatia on the Avoidance of Double Taxation and Prevention of Tax Evasion which was signed on 10 June 2005 and was published in the Official Gazette of the Republic of Slovenia – International Agreement no. 16/2005 (Official Gazette of the Republic of Slovenia, no. 94/05).

They explained that information exchanges were carried out in line with the provisions of Article 26 of the aforementioned agreement, for the needs of implementing the provisions of the Agreement and domestic legislation with regard to taxes of all types and descriptions. A special agreement on the implementation of the aforementioned provision does not exist, meaning that general rules apply for exchanges according to the agreement, whereby Slovenia may acquire information in three ways: upon request, spontaneously or automatically.

Since the GDU did not provide an answer to the concrete question we posed, we made a renewed inquiry. This time, GDU explained that the Agreement had gone into effect on 10 November 2005 and according to Point 2 of Article 28 in connection to taxes and that it began use of it in the month following the beginning of its validity, thus on 1 January 2006. Exchanges of information on the attained incomes of our residents in Croatia are not carried out as of yet, however in 2006 and subsequently, they would acquire data on all incomes of residents with income sources in Croatia, Austria, Switzerland, Italy and Germany for the right to a tax assessment becomes statute-barred following five years of the day a tax assessment had to be filed.

GDU realises that the effective implementation of the provisions of the Personal Income Tax Act for taxable persons who attain incomes in other countries is extremely important, thus they also acquire data in accordance with the provisions of the Tax Procedure Act. **5.5-37/2006**

## 13 – SUPERVISION OF THE WORK OF A JUDGE WAS JUSTIFIED

A complainant acquainted us with the lengthy duration of a court procedure at the Labour and Social Court in Ljubljana, case no. I Pd 3/94.

He also sent us the reply which he received based on the filed supervisory appeal from the Ministry of Justice for our information. The judge reopened the hearing after four years, however even then the procedure did not continue. Thus an essential part of the blame of the lengthy duration of the court procedure (the suit had been filed ten years ago) came precisely from the judge with the multi-annual violation of the legal deadline for the drawing up of a judgement. The president of the Higher Labour and

Social Court established deficiencies and errors in the use of the legal process and a surpassing of reasonable deadlines in managing the procedure. The action of the court in the concrete case in his opinion reflected a violation of the right to a trial without undue delay. Similarly, the legal deadlines for the fixing of a main hearing and drawing up of a court decision were not observed. The court thus did not act according to the principles of efficiency and expedience of the procedure, thus violating the right to judicial protection defined in Article 23 of the Constitution. Considering the aforementioned, the president ordered a priority resolution of the concrete case.

Irregularities, also in the complaint procedure, were the reason for the ordering of the supervision of the work of the judge. This showed numerous irregularities in a number of matters (the surpassing of the deadline for the drawing up of a judgement, renewed main hearing after several years). Particularly worrying are cases where although years have gone by since conclusion of a main hearing, a judgement had not yet been given. The judge, who was at the same time also the president of the court, should have acted sooner upon establishing that she was overburdened. With a prompt response, she could have prevented or at least mitigated the violations of the procedure and long-duration of the trial. Worrying is also the fact that supervisory mechanisms within the judicial branch of power did not observe the unusual actions of the judge sooner and take action so as to mitigate the consequences. Even more than a six-year delay in one of the cases following the conclusion of the main hearing, without a judgement being drawn up is an extreme situation which should not be allowed to occur. **6.5-35/2005**

## 14 – DISCRIMINATORY PUBLICATION OF A JOB VACANCY

We received an initiative in which complainants warned us of the discriminatory publication of a job vacancy for a "programme coordinator" for a union of societies in which the candidate required sharp sight.

We forwarded a communication to the National Labour Inspectorate (IRSD) and Office for Equal Opportunities (UEM) recommending that they treat the case within the scope of their competences and acquaint us with their findings and possible actions.

The labour inspector had performed two inspections at the employer's premises. The employer re-advertised the job vacancy between the first and second inspections – without the requirement of sharp sight. The candidates who applied to the first advertisement were notified in writing that no candidate had been selected and that the job vacancy would be published again.

The inspector issued a warning on the basis of Article 53 of the General Offences Act in connection to the action of the employer who had made sharp sight a requisite in the first publication of the job vacancy.

The Advocate of the Principle of Equality issued an opinion in which she found that the action of the union of societies in connection to the surmised discriminatory publication of a job vacancy reflected

unequal treatment due to health or disability. Since the employer re-published the job vacancy without the discriminatory requisite prior to the opinion, the Advocate did not issue a recommendation on the remedying of the established irregularity.

We labelled the actions of both bodies as correct. Worrisome is merely that the Advocate required nearly three months for the publication of an opinion. Considering the urgency of the case, it would be prudent to treat such cases in an expedient manner. **10.3-1/2006** and **10.3-2/2006**

### 15 – TEACHER VIOLENCE AGAINST CHILDREN

The complainant wrote that her child often told her of various incidents and violent events he experienced at school. Whenever she desired to clarify such events, the child was accused of unnecessary squealing. She was appalled and thought it was hypocritical. On one hand, teachers encouraged parents to increased participation but when parents wanted to speak to them of such events, they felt insulted and responded resentfully. The worst was that they took it out on children whose parents dared to fight for their rights. In their opinion, the school staff thought it unusual that a child would tell its parents what was happening at school. Later, the child was even faced with insulting comments. The complainant is convinced that in this way children lose their trust in adults, especially since these regard teachers who also educate them and instil model behaviour and values on them. In our interview with the principal, he criticised such action, nevertheless in the new school year, events are following the same pattern as the previous year. **11.7-4/2006**

Another mother acquainted us with the unusual teaching-upbringing procedures of a teacher. What bothered her the most was that the teacher treated her daughter like a number and when assessing her daughter's knowledge, the teacher was often impatient and even intolerant, not giving the child adequate time to think, let alone have the possibility to add a thought. The teacher said she did not have time for this as the educational programme was too full and did not allow for any philosophising. The complainant, as a mother and with a lot of love, is striving to raise her child into a self-confident person, however, the teacher is mocking her parenting goal. She is also disturbed by the teacher's attitude to her daughter when asking questions, often insulting her. When she talked to the teacher about this, the latter sarcastically answered that she was not being demeaning but said what she thought, without thinking how her ironic comments would be perceived by others. She said that was how she was and would not change. The complainant did not even demand this from her, but fears that her visit to the school and talk with the teacher will only make the situation worse. She is worried that her child will suffer even more, thus she turned to us for advice on what to do. **5.8-9/2006**

The writing of such contents leads one to reflect on schools, pupils, teachers and parents, although we do not know enough to make a fair assessment of the concrete situations. Regarding such contents, we could only agree with several cases of critical actions of individual teachers and sent parents our opinions, explaining the appeals possibilities and channels open to them.

Teachers' communications with children who tell their parents what is happening at school are not appropriate if they are what complainants have frequently described. This regards violence against children. Teachers communicating in this way do not understand that they have to treat children at least as well as adults. However the communications and approaches of teachers to pupils and their parents are a matter of professional ethics, personal manners and also an expression of their knowledge and experience in the field of communicating skills, and their personal characteristics. Too little is written about this in school regulations.

The Convention on the Rights of the Child emphasises respect and tolerance to children and understanding and treatment in all procedures so that they respect and maintain their dignity. It also defines that children must be protected against all forms of violence (physical, psychological and also verbal) and that the guiding rule in all activities in connection to children is the protection of their interests. The provisions of the Convention are encompassed in the Rules on Rights and Obligations of Pupils in Elementary School. A special code regarding teachers' ethics which would at least give general guidelines of professional ethics for teachers does not exist. Teachers who consciously decide on such a profession and understand it as a mission, perform teaching responsibly, meaning that they know how to communicate with children and parents suitably. The teaching profession requires sensitivity, tolerance, patience, righteousness, capability, adaptability, consideration and a number of other positive traits. Those lacking these traits are rarely open to being told so and it is even more difficult to show them the errors of their actions.

An especially demanding part of the pedagogical process from this aspect is the assessment and evaluation of knowledge of individual subjects which in addition to the teacher's experience and knowledge, can be even more so based on the teacher's personal traits, character and talent for this profession. The assessment of knowledge is an important, highly demanding and responsible part of a teacher's work. A good assessment means an award for successfully performed work and is also important with regard to the image of all involved. Finally, the assessment made by the teacher is important because of the feeling of rightfulness it conveys. The assessment of knowledge is after all always subjective and the communications with parents to a large extent left to the teachers. If a teacher is not a positive person and does not think positively, he/she will be unable to motivate or please his/her pupils. Such a teacher will not be able to seek positive characteristics and cannot even notice them since he/she doesn't take the time to do so.

We feel that one of the objectives of the school system should be to discourage any type of discrediting of an individual who can detect and is sensitive to injustice and unsuitable events in school, regardless of whom they happen to. Problems many times arise when the teacher fails to understand the affected parent's statements as a request for a change in the manner of work and approach to the child.

We advised complainants to regularly talk in detail with their children about the problems and events in school and the intention of intervening in the teacher's manner of communicating with pupils, for they need to be prepared for possible unpleasant questions or insults. Children should be indubitably

told that they are acting properly in telling their parents about the unpleasant events occurring at school. They need to be explained why the teacher's actions are wrong, unwise and immature. Nevertheless, it is also beneficial to teach children how to adapt to the demands of others at least to a certain extent, which later in life proves to be an extremely beneficial skill.

If things don't improve and the child increasingly experiences school as a nightmare, a discussion with the principal who in such cases must take action according to regulations, is unavoidable. The Organization and Financing of Education Act among other things defines the bodies of a school (principal, parents' council, school council) who must treat comments, suggestions and the complaints of parents. The last means of appeal (after all else fails) is the Education and Sport Inspectorate.
**11.7-4/2006, 5.8-9/2006**

### 16 – THE CHILD OF ALIEN PARENTS ATTENDS SCHOOL WITHOUT KNOWING SLOVENIAN

An elementary school teacher drew our attention to the problems of the child of alien parents who did not know the Slovenian language. He described the case of a pupil of Albanian nationality, who without the slightest knowledge of Slovenian following the family's arrival to Slovenia was placed into the seventh grade of elementary school. The child did not even know the Serbian language. The teachers found themselves in a predicament, for they did not know how to provide him with the learning materials in a language understandable to him. They were expected to assess him fairly at evaluation conferences and at the end of the year. Since he had attended class regularly all year, they graded him at the end of the year but gave him a number of negative marks for the boy had not amassed the minimum standard of knowledge. The teachers decided that the position of pupils – aliens is not regulated well enough and that it would be unjust to grade them for no one was capable of learning a language in a few months well enough to also understand the learning materials.

According to information forwarded to us by principals of individual schools, there are a few immigrant children attending school in Slovenia each year who are placed into the school system without the required minimum knowledge of Slovenian. The practice in schools in such cases varies. Whereas many teachers are able to be more lenient towards younger pupils in the lower grades, believing that the children will be able to remedy the deficiencies in knowledge due to language barriers later on, the scope and difficulty of the learning materials in the higher grades of elementary school is such that lenience is no longer possible. Pupils are evaluated even though they do not understand the learning materials and thus don't know them. Individual schools offer some additional hours of Slovenian language lessons, and in some places the counselling office works with such children. Many merely visit supplementary classes with individual schools convinced that the parents needed to take care of this problem or should have done so before moving to Slovenia. There are no instructions or guidelines for schools for such cases, namely what to do, how to advise parents and what they can expect from them. Thus we turned to the Ministry of Education and Sport with these questions.

Their explanations indicate that pursuant to the Organization and Financing of Education Act (ZOFVI-UPB3), children of aliens (children who are foreign citizens or who do not possess citizenship) have the right to an education under identical conditions as citizens of the Republic of Slovenia. Lessons of Slovenian language and culture must be organised for them in accordance with international agreements. Education is carried out on the basis of law so that the school adapts work methods and forms for them, including them in supplementary classes and other forms of individual and group help. The counselling office is available to them and their parents for advice. For the current school year, schools were approved somewhat more than 4100 pedagogical hours for additional individual work of professional workers with alien children. The hours are intended to overcome language problems and other active forms of help for these pupils.

We are finding that the problem is poorly arranged. The assessment of knowledge of pupils who do not know enough Slovenian to understand the materials is unjust and unreasonable. We feel that solutions are lacking which would enable the children of aliens to at least learn the basics of Slovenian in a short period of time to enable them to display their knowledge in school with regard to their capabilities and endeavours to learn. Such a solution would also standardise the actions of schools which in such cases is currently left to the ingeniousness of the individual principal and other professional workers and their sensitivity towards the protection of children's rights.

We sent our viewpoint to the Ministry of Education and Sport. Their response indicates that they approved additional hours of professional help for such children on the basis of requests from school principals. All schools were notified of this possibility through a form letter. However the Ministry of Education and Sport **agreed with our position that suitable solutions were lacking in the system**. As a result, they were thinking of widening the offer of classes of Slovenian as a foreign language for immigrants, guest workers and asylum seekers to also include classes for pupils – aliens. However this requires a certain amount of time, for learning materials must be prepared and classes organised and also financed. To this end, we will recommend the supplementation of the draft National Programme for Language Policy. Regarding the assessment and evaluation of the knowledge of pupils – aliens, they were planning the supplementation of valid norms in regulations in 2007, with which they will attempt to remedy the deficiencies of the current system whereby they will consider our recommendations. **5.8-41/2006**

## 17 – TRUSTED PERSON

Although Articles 78, 105, 106 and 106a of the Marriage and Family Relations Act and Article 410 of the Civil Procedure Act give children the right to ask for the help of a **trusted person** of their choice who could aid them in expressing their opinion, they are rarely acquainted with this option. We drew the attention of the Ministry of Labour, Family and Social Affairs to this fact. In summary the ministry's response read: "Implementation of these provisions in a way where the court sends the a social services centre a request to perform an interview with the child is erroneous and contrary to the law, for Article 410 of the Civil Procedure Act clearly defines that a child involved in a procedure is informed and also interviewed by the judge who then draws up a protocol. Within the scope of this interview, the

judge should acquaint the child that it is entitled to select a person it trusts, thereby issuing a decision on this. The intention of the proposer while preparing the proposed Act Amending the Marriage and Family Relations Act (Official Gazette of the Republic of Slovenia, no. 16/2004) was to ensure that the child be exposed and burdened by the procedure as little as possible (only once if viable), where the possibility of allowing the child to give its opinion through a person it trusts is also foreseen through material regulations. Following the enforcement of the aforementioned amended Marriage and Family Relations Act, we are finding that procedural regulations failed to define the procedure for selecting a person the child trusts precisely enough leading to the institute in question being difficult to implement. Thus we suggest that the procedure be defined in detail. Due to the aforementioned reasons and seeing that this regards a legal procedure, the social services centres, except for the preparation of an expert opinion of the entrusting of a child to care and determination of personal contacts (Articles 78, 105, 106 and 106a of the Marriage and Family Relations Act), have no other public authorisations connected to the guaranteed rights of a child to a person, the child trusts." The ministry also stated that they had pointed out the problems in implementing provisions, which regarded the guaranteeing of the aforementioned rights of children to representatives, to the District Court in Ljubljana, District State Prosecutor, the police and social work centres at an inter-ministerial meeting on 13 October 2005.

We acquainted the Family Court at the District Court in Ljubljana with the ministry's response and requested their position on these questions and the case-law. Despite our urgent request, we did not receive a response. **11.0-4/2006**

### 18 – POLICE'S REFUSAL OF HELP

A complainant acquainted us that her eight-year old daughter was taken away by the girl's grandmother and uncle against her will. They asserted that they did not intend to return the girl. She informed the competent social services centre and police station of the taking and detention of her child, requesting their help.

Despite a number of requests from the mother and the intervention of the social services centre, the relatives continued to keep the girl with them, not sending her to school. Due to numerous threats and foreseen opposition, the centre could not carry out the removal of the child without the aid of the police, who despite the request for aid in removing the child and numerous requests of the mother and her reporting of the perpetrators, refused to aid them. The police station continuously set new demands, among others the demand for a document proving whether the girl had been entrusted into the care of the mother or grandmother. The centre's explanation that the daughter had never been removed from her mother and therefore such a document did not exist was insufficient for the police.

Considering that the disputes and threats between the families escalated and that the daughter after almost a month remained with her relatives, we addressed a communication to the police station to immediately take action in line with their powers and competences. We demanded an explanation as to why they hadn't yet provided help in accordance with Article 23 of the Police Act or at least explained the reasons for their refusal of help in writing.

The police immediately responded appropriately to our communication and the daughter was returned to her mother. In their defence, the police station asserted that they had not refused help and stated the activities they had carried out during the period, although "no document on the basis of which the child had been assigned to either party had been issued by a body of social care". This explanation is extremely illogical, for it is evident from the communications of the centre, that they had acquainted the police station with the fact that the daughter had never been removed from her mother nor the mother's parental rights removed. **11.3-9/2006**

# List of abbreviations and acronyms

## A. LAWS AND OTHER LEGAL ACTS

| | |
|---|---|
| **EKČP** | European Convention on Human Rights and Fundamental Freedoms |
| **KOP** | Convention on the Rights of the Child |
| **KZ** | Penal Code of the Republic of Slovenia Slovenije |
| **PoDZ-1** | The National Assembly of Slovenia Rules of Procedure |
| **SZ** | Housing Act |
| **SZ-1** | Housing Act |
| **ZAzil** | Asylum Act |
| **ZDavP** | Tax Procedure Act |
| **ZDavP-1** | Tax Procedure Act |
| **ZDIJZ** | Act on the Access to Information of Public Character |
| **ZDoh-1** | Personal Income Tax Act |
| **ZDR** | Employment Relationship Act |
| **ZDRS** | Citizenship of the Republic of Slovenia Act |
| **ZDU - 1** | Public Administration Act |
| **ZDVDTP** | Act Concerning Social Care of Mentally and Physically Handicapped Persons |
| **ZDVEDZ-A** | Act on the Establishment of Voting Districts for Elections of Deputies to the National Assembly |
| **ZEMŽM** | Equal Opportunities for Women and Men Act |
| **ZGJS** | Public Utilities Act |
| **ZIKS-1** | Enforcement of Penal Sentences Act |
| **ZIN** | Inspection Act |
| **ZIZ** | Execution of Judgments in Civil Matters and Insurance of Claims Act |
| **ZJU** | Civil Servants Act |
| **ZJRM** | Protection of Public Order Act |
| **ZKP** | Criminal Procedure Act |
| **ZLV** | Local Elections Act |
| **ZMat** | Matura Examination Act |
| **ZMed** | Public Media Act |
| **ZN** | Notary Act |
| **ZNP** | Non-litigious Civil Procedure Act |
| **ZOFVI** | Organization and Financing of Education Act |
| **ZOPDA** | Act Concerning Remedying the Consequences of Work with Asbestos |
| **ZOIzk** | Identity Card Act |

| | |
|---|---|
| **ZOsn** | Elementary School Act |
| **ZP-1** | Minor Offences Act |
| **ZPIZ-1** | Pension and Disability Insurance Act |
| **ZPol** | Police Act |
| **ZPP** | Civil Procedure Act |
| **ZPPPAI** | Act Prohibiting Production and Trade in Asbestos Products and Restructuring the Asbestos Industry |
| **ZPPreb** | Residence Registration Act |
| **ZS** | Courts Act |
| **ZSDP** | Parental Protection and Family Benefit Act |
| **ZSS** | Judicial Service Act |
| **ZSV** | Social Security Act |
| **ZTuj-1** | Aliens Act |
| **ZUL** | Official Gazette of the Republic of Slovenia Act |
| **ZUNEO** | Implementation of the Principle of Equal Treatment Act |
| **ZUOPP** | Placement of Children with Special Needs Act |
| **ZUP** | General Administrative Procedure Act |
| **ZUS** | Administrative Disputes Act |
| **ZUSDDD** | Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia |
| **ZVarCP** | Human Rights Ombudsman Act |
| **ZVOP** | Personal Data Protection Act |
| **ZVOP-1** | Personal Data Protection Act |
| **ZVrt** | Kindergarten Act |
| **ZZRZI** | Vocational Rehabilitation and Employment of Disabled Persons Act |
| **ZZVN** | Act about victims of war violence |
| **ZZZDR** | Marriage and Familiy Relations Act |
| **ZZZPB** | Employment and Insurance Against Unemployment Act |

## B. STATE AUTHORITIES AND OTHER BODIES

| | |
|---|---|
| **CSD** | Social Services Center |
| **DKSM** | National General Matura Commission |
| **DURS** | Tax Adminstration of the Republic of Slovenia |
| **DZ** | National Assembly |
| **FDV** | Faculty of Social Sciences |
| **GDU** | General Tax Office |
| **GPU** | General Police Directorate |
| **GURS** | Surveying and Mapping Authority of the Republic of Slovenia |
| **IRSD** | National Labor Inspectorate |
| **JMSSM** | Maribor Public Inter-municipal Housing Fund |
| **IRSOP** | National Environment and Spatial Planning Inspectorate |
| **JSKD** | Public Fund for Cultural Activities |
| **IŠŠ** | National Inspectorate for Education and Sport |
| **JSSMOL** | Public Housing Fund of the City Municipality of Ljubljana |
| **KS** | Local community |
| **MDDSZ** | Ministry of Labor, 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, Spatial Planning and Energy |
| **MP** | Ministry of Justice |
| **MORS** | Ministry of Defense of the Republic of Slovenia |
| **MŠŠ** | Ministry of Education and Sport |
| **MZT** | Ministry of Science and Technology |
| **MZZ** | Ministry of Foreign Affairs |
| **NSPIZ** | Real Estate Fund of the Pension and Disability Insurance Institute of Slovenia |
| **OE** | Regional Unit |

| | |
|---|---|
| **OI** | Regional branch |
| **OŠ** | Elementary School |
| **PP** | Police Station |
| **PMP** | Police Border Station |
| **PPP** | Traffic Police Station |
| **PU** | Police Directorate |
| **RTVS** | National Broadcasting Service |
| **SKZG** | National Farm Land and Forest Fund |
| **SPIZ** | (the former) Pension and Disability Insurance Community |
| **SOD** | Slovenian Indemnity Fund |
| **SSPIZ** | Pension and Health insurance Housing 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 |
| **VZ** | Juvenile facility |
| **ZPIZ** | Institute of Pension and Disability Insurance of Slovenia |
| **ZPKZ** | Prison Service |
| **ZPMZ KZ** | Prison and Juvenile Correctional Home |
| **ZRSŠ** | National Education Institute |
| **ZRSZ** | Employment Service of Slovenia |
| **ZZZS** | Health Insurance Institute of Slovenia |

## C. MISCELLANEOUS

| | |
|---|---|
| **BiH** | Bosnia and Herzegovina |
| **CPT** | European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment |
| **ESČP** | European Court of Human Rights |
| **EU** | European Union |
| **FLRJ** | Federal People's Republic of Yugoslavia |
| **GD** | Commercial company |
| **HRT** | Croatian Radiotelevision |
| **IJZ** | Public information |
| **ISO** | International Organization for Standardization |
| **JLA** | Yugoslav People's Army |
| **YUG** | Yugoslavia |
| **LP** | Ombudsman's annual report |
| **NČR** | Journalists' Ethics Council |
| **NPZ** | National examination of knowledge |
| **OZN** | United Nations Organization |
| **RIA** | Regulatory Impact Assessment |
| **RS** | Republic of Slovenia |
| **RSK** | Expanded professional collegium of the Republic of Yugoslavia |
| **SFRJ** | Socialist Federal Republic of Yugoslavia |
| **TV** | Television |
| **UL** | Official Gazette |
| **ZDA** | United States of America |
| **ZN** | United Nations |
| **ZZB NOV** | Union of the Association of the War Veterans and the Participants of the National Liberation Struggle |

# ANNUAL REPORT 2006

Twelfth Annual Report

Published by: **The Human Rights Ombudsman of the Republic of Slovenia**
Translation: **Biro 2000**
Proofreading and copy editing: **Arven Šakti Kralj Szomi**
Design: **Alda studio**
Printed by: **Impress, d. d.**
Print run: **300 copies**

Annual and special reports by the Human Right Ombudsman
can also be viewed at the following website:
**http://www.varuh-rs.si**

**ISSN 1318 - 9255**

**The following collaborated in the preparation of this annual report:**

Bojan Brank
Polona Bobič
Nataša Bratož
Irena Burkeljca
Aleš Butala
Bojana Cvahte
Zlata Debevec
Tone Dolčič
Ana Fröhlich
Matjaž Hanžek
Mojca Hribar
France Jamnik
Martina Jenkole
Irena Kavčnik
Renata Kotar
Nataša Kuzmič
Bojana Kvas
Kristijan Lovrak
Jure Markič
Mojca Markizeti
Andreja Novak
Martina Ocepek
Živan Rejc
Jernej Rovšek
Barbara Samaluk
Marjana Simčič
Nada Skubic
Manca Šetinc
Jasna Turk
Ivan Šelih
Neva Šturm
Brigita Urh
Boštjan Vernik
Jože Vrh