REPUBLIC OF SLOVENIA

HUMAN RIGHTS OMBUDSMAN

Annual report 2000

The Sixth Annual Report
Abbreviated version

Ljubljana, June 2001

Republic of Slovenia
Human Rights Ombudsman

Annual Report 2000
(The Sixth Annual Report - Abbreviated version)

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CONTENTS

Page

Human rights and human vision have a common vision and a common goal - to ensure freedom, prosperity and dignity for all people:

- Protection against discrimination on the grounds of gender, race, nationality or faith;
- Protection against want; people must enjoy a decent standard of living;
- The possibility for the individual to develop and exploit his potentials;
- Protection from fear; from threats to personal safety, torture, arbitrary imprisonment and other violent acts;
- Protection against injustice and violations of laws;
- Freedom of thought and speech, cooperation in decision-making and association;
- The possibility of decent work without exploitation.

(Source: HDR 2000)

Introduction

The report of the Human Rights Ombudsman for 2000 is the sixth report of this institution and the first report to be signed by the second ombudsman. It concludes the final year of work of the first Human Rights Ombudsman. The structure of the report is essentially the same as last year. The decision to retain this structure for this year's report is an acknowledgement of the work of the previous ombudsman, who was responsible for establishing the institution of Human Rights Ombudsman in Slovenia. Any new approaches in addressing violations of human rights will be a task for the future.

Unfortunately the problems and violations of human rights noted in this year's report are in the main the same as those to which we drew attention last year: the length of time taken to resolve administrative and judicial matters, slowness in passing laws important for the protection of human rights or amending laws inconsistent with the Constitution, the failure to respect legal deadlines and slowness in adopting non-statutory regulations, the failure to implement laws already in force, etc. This indicates irresponsible behaviour by the holders of authority, who are too little aware that slowness or negligence in their work ends up affecting people directly, increases social hardship, reduces the possibilities for tackling poverty and reduces confidence in the State. The State and its institutions are too little aware of this fact.

The first chapter of this year's report contains an assessment of the respecting of human rights and legal security in Slovenia and presents in a condensed form the most important problems we have observed. These are described in more detail in the second (central) chapter ('Issues Dealt With'). The third chapter contains data on the work of the ombudsman, while the fourth chapter offers brief descriptions of individual cases of interest both to experts and the general public.

We expect the Report to be taken seriously by the public and hope that it will contribute to eliminating those actions of state bodies, institutions and individuals which constitute violations of human rights. Without respect for these rights we cannot talk about a progressive, developed democratic society in which people enjoy a high quality of life.

1. Assessment of the respecting of human rights and legal security

In this report we do not provide or repeat an overall assessment of the respecting of human rights and fundamental freedoms and legal security in Slovenia. An assessment of this kind was provided by the first Human Rights Ombudsman in the 1999 Annual Report, and to a large extent still applies. We therefore intend merely to supplement it briefly with certain changes and emphases on the basis of our work and events in 2000.
Once again we are able to state that in terms of the intensity and frequency of cases of violations of human rights, systematic violations of human rights on the part of state bodies do not occur in Slovenia. This assessment, however, is belied by the backlogs of unresolved administrative and judicial matters at state bodies, unless measures to remove these backlogs produce results in the foreseeable future.

Legislation

None of the laws important for the protection of human rights whose immediate adoption we urged in the last report were passed in 2000 (the Compensation for the Victims of War and Post-War Violence Fund Act was passed by the National Assembly at the beginning of 2001). On the other hand some laws to which the Human Rights Ombudsman has already been drawing attention for a number of years were passed. The most important of these is the Enforcement of Criminal Sanctions Act

Once again we must emphasise that the process of amending laws with regard to which the Constitutional Court has identified non-conformity with the Constitution is too slow. The principle of a state based on the rule of law and the consistent respecting of the principle of the division of authority demand that that unconstitutionalities identified by a Constitutional Court ruling be removed within the set timeframe. The responsibility for failing to respect the decision of the Constitutional Court is also borne in this regard by the Government, which is obliged to propose legal regulation for the removal of unlawfulness established by a Constitutional Court ruling in good time. In some cases the deadline set by the Constitutional Court for the removal of an identified unconstitutionality or unlawful provision is exceeded by several years (for example the deadline set for the harmonisation of Article 10 of the Income Tax with the Constitution).

Another cause for concern is the fact that laws already in force are not being implemented. The Execution of Judgements in Civil Matters and Enforcement of Claims Act entered into force on 15

October 1998 but enforcement officers did not commence execution and enforcement on its basis until 14 April 2000. The non-statutory regulations for the implementation of the Act were issued after a delay of several months, and there were also delays in other preparations, including the appointment of enforcement officers.

Failure to respect legal deadlines and slowness in adopting non-statutory regulations is becoming an increasingly common practice - as though the State had reconciled itself to exceeding the deadlines within which non-statutory regulations are supposed to be prepared and issued. And slowness in adopting non-statutory acts is not the only area where criticism is due: too little care is often devoted to the preparation of their texts.

Within the sphere of legislation the expected procedures for adopting statutes which would mean a realisation of the strategic plan for the reform of public administration have failed to materialise. According to the Government Programme for 2001 significant changes can be counted on this year.

The adoption of the constitutional statute on the amendment of Article 80 of the Constitution and significant inadequacies in procedures relating to the exercising of the right to vote, to which we have been drawing attention for a number of years, require the adoption as soon as possible of an act amending the National Assembly Elections Act.

Openness and transparency in the work of State bodies

In a modern democratic state based on the rule of law the work of state bodies should be public, open and transparent, and the possibility of access to data and information of a public nature should be guaranteed by statute. This last right is guaranteed by Article 39 of the Constitution but it is worrying to see that this right, classed as a fundamental human right, cannot be exercised without a special law - and the law governing the exercising of this constitutional right has not yet been passed. The Classified Information Act, which is currently before parliament, will alongside the Protection of Personal Data Act merely be the regulation which gives a legal basis to the refusal of access to certain data held by public administration bodies. By taking into account the principle that all data not restricted by statute is accessible, it will possible, on the basis of a law regulating the procedure for providing information on demand to individuals and bodies outside the public administration, to realise the active part of this constitutional right.

The passive part of this constitutional right includes all those activities of public administration bodies by means of which these bodies inform the public about their work, about the exercising of rights in their field, and about plans and regulations which already apply or are being prepared. There has been noticeable progress in this area since the publication of our report (1998 Annual Report), especially as regards the accessibility of regulations, judgements and other information about the work of public administration bodies via internet. The introduction of an e-business strategy in public administration and the setting up of a central portal for public administration bodies will contribute significantly to bringing the administration closer to individuals, and will at the same time reveal weaknesses in this area.

The public nature of work is also particularly important in the area of environmental protection, since publicly accessible data on polluters is the first step towards changing conditions. For this reason the establishment of appropriate registers of polluters and accessibility to environmental pollution data are very important. A further important step, alongside changes to the regulations and practice of public administration bodies in this area, is ratification of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention).

Procedures of bodies responsible for law and order

Overcrowding in prisons and premises used for detention is becoming an increasingly serious problem. The number of prisoners in Slovenia as a percentage of the total population is still one of the lowest in Europe, but this is small consolation for those crammed into overcrowded cells without serious hope of their situation changing much in the near future.

In relation to police proceedings many complaints relate to the use of forcible measures: physical force and, in particular, means of securement (handcuffs). Petitions point to the fairly frequent use of handcuffs, which leads us to suspect that the principle of proportionality is perhaps not always respected in full. This also applies to the restriction of liberty (apprehension, conveyance to the police station, up-to-24-hour detention). The judgement issued on 28 November 2000 by the Eu-

ropean Court of Human Rights in the case of Rehbock v. Slovenia expressed a lack of confidence in the police in the identification and assessment of the use of police powers.

There are an increasing number of cases of people taking matters into their own hands. The forcible eviction of a tenant from a dwelling with the help of various commercial companies and individual contractors rather than going through the courts is by no means an uncommon occurrence. This type of action is not permitted in a state based on the rule of law other in the case of exceptions explicitly laid down by statute. The State is bound to ensure effective prevention of arbitrariness on the part of creditors taking matters into their own hands and bypassing the competent authorities. Petitions show that in such cases the police often respond too slowly and do not take the necessary measures.

Judicial authority

An increasing number of measures are in place which the State hopes will increase the effectiveness of judicial protection. The recently-adopted amending statute to the Courts Act makes it easier to supervise the work of a judge, while the Act Amending the Case Schedule is also aimed at speeding up judicial procedures. However despite all the efforts of the State, many courts are still faced by a large number of unresolved matters and this will undoubtedly continue to affect the speed and efficiency of judicial decision-making for the next few years.

A large and currently unmanageable workload also faces administrative offences judges. New systemic legislation in the area of administrative offices has still not been passed. The Act Amending the Administrative Offences Act is merely a makeshift remedy and cannot address the inefficiency of penal law in the area of administrative offences.

Public administration

In the area of the work of the public administration, the main problem for the individual or 'customer' remains the slowness of decision-making in administrative proceedings. Given that the deadlines for resolving administrative matters are stipulated by law, the failure of administrative and other bodies to respect them is unlawful (and constitutes one of the elements of liability for damages). Particularly in cases where the same backlogs are carried forward from one year to the next, year after year, it is difficult to understand why the 'jam' is not removed by means of special activity and cases then dealt with promptly as they arrive. We have been able to identity partial changes for the better in the settlement of appeals against income tax rulings at the Central Tax Office, and against rulings relating to the rights of unemployed persons at the Ministry of Labour, the Family and Social Affairs. There has, however, been no change in the sphere of denationalisation. Problems in the sphere of immigration have worsened owing to an exceptionally large increase in the number of cases for which the competent bodies were not sufficiently prepared.

Ineffective complaints in health care

In the sphere of health care activities numerous petitioners complain, not without reason, that allegations of mistakes by medical practitioners are not dealt with effectively in complaints procedures within individual medical centres, at the Chamber of Medicine of Slovenia or at the Ministry of Health. None of the ombudsman's efforts and warnings to date have yet borne fruit. A special body, even if it is the Human Rights Ombudsman (or a special ombudsman?), cannot be a substitute for speedy and effective complaints procedures which are also fair to the complainants. The ombudsman can only supervise; he cannot take the place of complaints procedures within a specific activity.

2. Issues dealt with

This chapter presents in detail the issues that we deal with - both the wider issues and some of the more interesting individual cases. The problems deriving from the applications we have dealt with this year are divided into areas of the ombudsman's work. The descriptions of specific problems are accompanied by our proposals, opinions and recommendations for their solution.

In the individual sub-chapters of this chapter, each of which covers a specific area of the ombudsman's work, we begin by quoting a comparison of the number of cases received in 2000 with the number received the previous year or in previous years, and listing problems which have reappeared. Problems to which we have already drawn attention in earlier reports and which are still not yet finally resolved are generally not described again.

2.1. Basic constitutional rights

The number of cases classified as relating to constitutional rights in 2000 has fallen. We reserve this category for various types of application involving questions of violations of any of the fundamental constitutional rights. This however does not mean that such cases are not also dealt with within the framework of other areas of our classification. The most significant drop in relation to the previous year is in the number of cases received relating to the protection of personal data and media ethics, in other words the publication of the personal details of individuals in relation to criminal offences of various types. Both the small number of cases received in this area and close analysis of the content of the cases dealt with indicate that serious or systematic violations of fundamental human constitutional rights do not occur in Slovenia. Below we list some of the more important and notable cases we have dealt with in this group.

2.1.1. Elections and electoral legislation

Monitoring elections for the National Assembly

Duty services at the office of the Human Rights Ombudsman on election days or national referendum days have already become a tradition. This service, advertised via the public media, includes a free telephone hotline which permits voters to obtain any information or explanations they might require, or to submit an application for us to deal with within the framework of the ombudsman's powers.

The elections for the National Assembly on 15 October 2000 were no exception: our duty service received 70 calls from members of the public. As in previous years, the majority of the callers wanted explanations regarding the conducting of the elections or wished to draw our attention to alle-

ged violations of electoral legislation. Almost half of the calls related to the actual method of voting or expressing the will of voters, the work of electoral committees, entries in the electoral roll and similar issues. Everyone who called with questions of this type, as well as receiving explanations and the information they required, was directed to the competent electoral bodies or administrative units. Approximately a quarter of the callers contacted us in connection with alleged violations of the official end of campaigning. We directed them to the Ministry of the Interior, which was also operating a duty service and which is responsible for the continuation of the procedure on the basis of the Electoral Campaign Act (ZVolK).

The duty service received more complaints than in past years in relation to the (non-)delivery of invitations to elections and imperfections in electoral rolls. However there were fewer complaints than in previous years relating to the exercising of the right to vote at home or the right to a postal vote. Evidently at these elections voters were already used to 'parallel elections', or the attitude of pollsters was more suitable, since this time there were no complaints about 'parallel elections'.

Once again we judged that the election was conducted lawfully and correctly and that there were no serious violations of electoral legislation which could have influenced the outcome.

Chances of election of independent candidates significantly reduced after the adoption of a constitutional amendment

At the beginning of September 2000 we received an application from a citizen who had stood as an independent candidate at the elections for the National Assembly with the support of voters in the 7th electoral unit. In his application he claimed that since the adoption of the Constitutional Act on the Amendment of Article 80 of the Constitution of the Republic of Slovenia (Ur. l. RS, No. 66/00) his chances of election had been significantly reduced. With the new provision in Article 80 of the Constitution the four-per-cent vote threshold for entry to the National Assembly also applies to independent candidates, who may however only stand one electoral unit. The applicant believed that he was thus in a worse position than the candidates of the same political party, who can appear on candidate lists in several electoral units. The applicant wished us to intervene so as to make it possible for him to have equal representation at the elections at the level of the country as a whole - either by allowing him the possibility to stand in all electoral units, or ruling that the result or threshold for entry to the National Assembly is only to be taken into account within the framework of one electoral unit.

After making inquiries we found that since the adoption of the constitutional act, which for the 2000 elections directly encroaches upon the provisions of the Elections for the National Assembly Act (ZVDZ), the chances of election of independent candidates are in fact significantly worse. An independent candidate would have to win in just one electoral unit at least four per cent of the votes cast in the whole country, while the votes for list candidates from the same party, who can stand in all electoral units, are added together across the entire country. With the changes to voting rules in 2000, the chances of election of independent candidates are thus at least three times worse than under the previous regulation in the ZVDZ.

We proposed to the applicant that he send an application to the Constitutional Court of the Republic of Slovenia for a review of Article 48 of the ZVDZ which provides that anyone can stand in just one voting unit. The Constitutional Court cannot review the provisions of a constitutional act. We also communicated to the applicant our opinion that the changes resulting from the constitutional act had strongly encroached upon the chances of election of independent candidates. These changes are questionable from the point of view of the constitutionally guaranteed right to suffrage, under which every citizen has the right to vote and to be elected (second paragraph of Article 43 of the Constitution of the Republic of Slovenia). Bearing this in mind, in our opinion the chances of election of independent candidates in comparison with candidates appearing on party lists have worsened disproportionately.

We should point out that the question will need to be regulated in the ZVDZ and harmonised with the provisions of the Constitutional Act on the Amendment of Article 80 of the Constitution of the Republic of Slovenia. This could be done by enabling candidate lists of independent candidates, so that they can stand in more than one electoral unit like the list candidates of political parties; otherwise the provisions on independent candidates should be deleted from the ZVDZ, since their chances of election have become purely theoretical. We believe that the possibility of standing as an independent candidate should not remain on the statute books as a mere 'adornment' of electoral legislation.

Inadequacies of electoral legislation still not remedied

Ever since 1996, when we first monitored elections for the National Assembly, the ombudsman has been drawing attention to certain inadequacies of electoral legislation. Not even the unconstitutionalities identified by the Constitutional Court have been remedied by statute: attempts are still being made to remedy them through the direct application of the decisions of the Constitutional Court or by means of the instructions of the Republic Electoral Commission. These are additional reasons which indicate the necessity of the adoption of changes and additions to the ZVDZ and other electoral laws at the earliest opportunity.

The ombudsman has pointed out two main areas which need to be regulated in the electoral law. The first relates to the possibility of exercising the active right to vote of citizens abroad. This is mainly a question of an appropriate extending of deadlines for electoral functions which would also be adapted for citizens voting abroad, and a permanent register of voters living abroad. The law would also have to envisage and regulate voting procedure at Slovenia's diplomatic/consular missions in other countries.

The second area, to which we have been drawing attention for several years, relates to the possibility of voting by post. The third paragraph of Article 81 of the ZVDZ only envisages a postal vote for residents of old people's homes and voters undergoing treatment in hospitals. At every election the problem occurs of how to ensure postal votes for those qualified voters who are not in old people's homes but who on election day are being cared for by relatives in a place other than their place of permanent residence. We are in favour of all patients and persons in care being in the same position with regard to the possibility of voting by post. In practice the statutory possibility of voting by post has spread to other categories of voters by virtue of instructions or the practice of electoral bodies. Thus for example those entitled to a postal vote included persons in custody, though they are not mentioned by the statute. With the changes and additions to the ZVDZ it will therefore be necessary to remove the current unfair differentiation with regard to voters entitled to exercise the right to a postal vote.

In 2000 we also identified inadequacies in the ZVolK. An applicant drew our attention to the contentious conduct of the council of the locality of Ravne in the municipality of Šoštanj, which supported a certain mayoral candidate with the signatures of council members. The applicant turned to the municipal electoral commission which forwarded his complaint to the district public prosecutor's office. His information was however dismissed because the public prosecutor's office could not find statutory definitions of the criminal offence of violation of the free decision of voters under Article 162/1 of the Penal Code (KZ). The case was also dealt with by the MNZ, which found that there were no indications of violations of the ZVolK in the conduct of the local council. The ministry did however feel that the matter should be looked into by the municipal council from the point of view of whether it involved the deliberate use of funds from the municipal budget. Article 2b of the Act Amending the ZVolK provides that an electoral campaign is not permitted in the premises of or using the funds of state or municipal bodies or other entities of public law.

We ourselves replied to the applicant that the conduct of the local council would have to be dealt with and assessed above all by the municipal council for the purpose of establishing any illegal use of municipal funds and assessing the conduct of the members of the local council. Although Article 2b of the ZVolK explicitly provides that electoral campaigns and invitations to elections are not permitted on the premises of or with the funds of, inter alia, municipal bodies, the criminal provisions of this law do not penalise an electoral campaign using the funds of entities of public law. It is thus not clear whether the legislature overlooked the penalising of such conduct or whether it was considered less dangerous than another violation which does carry a penalty, the organising of meetings in the premises of entities of public law. We feel that when amendments are made to the ZVolK it would be appropriate to deal with and remedy this inconsistency in the criminal provisions of the ZVolK.

The difficulties in the realisation of the constitutional right to a statutory referendum and the implementation of the Referendum and Popular Initiative Act (ZRLI) are known. We ourselves would just like to draw attention to one problem, to which our attention was drawn by an applicant during the collection of signatures in support of a later, confirmatory, statutory referendum on changes to the Act on the Government. The applicant was unable to obtain a referendum support form either at his local administrative unit or at the bookshop to which he was directed by staff at the administrative unit.

In reply to our inquiry the MNZ explained that pursuant to Article 13 of the ZRLI it had prescribed the referendum support form and supplied administrative units with a computer program enabling registers of support to be kept. In previous campaigns the forms were provided by the organisers or initiators of the collection of signatures. This was also the position of the Secretariat of the National Assembly for Legislation. Since however the ZRLI is not sufficiently clear on the question of who is supposed to ensure that a sufficient number of forms are provided, the MNZ, following consultation with legal experts, decided to instruct administrative units from 30 November 2000 to provide a sufficient number of photocopies of referendum support forms and make them available at signature collection points. We feel that this question should be more clearly regulated by the ZRLI itself.

2.1.2. Media ethics

Every year the ombudsman receives a number of applicants from individuals distressed by the publication in the media of their full names or other details by which they can be identified, most commonly in connection with alleged criminal offences. Although the ombudsman has no direct powers in relation to journalists and the media, we have frequently pointed out that in this connection it is necessary in pre-trial proceedings to respect the constitutional principles of presumption of innocence, and the protection of the privacy and personal rights of individuals.

In cases where we detect no responsibility on the part of state bodies or the bodies responsible for detection and prosecution in the reporting of the personal details of the individuals concerned, we advise applicants to assert their rights in judicial proceedings. Although a defamatory charge or allegation of criminal offence can be punishable under the KZ, in our opinion a civil damages action is more appropriate. This is a route which is beginning to be taken by an increasing number of individuals involved in such cases. Some of the more notable cases from this area show that when there is a conflict between two constitutional principles, i.e. the presumption of innocence and freedom of expression, the courts generally tend to give precedence to the latter. This is also right, since freedom of expression is one of the most important human and civil rights, but nevertheless in many cases the question of restoring the lost reputation and personal dignity who have undergone 'trial by media' remains an open one. It appears that there are no effective routes by which their lost reputation can be restored when later proceedings before the courts show that the charges which provoked a wide media response were unfounded. When the courts give precedence to freedom of expression, the unethical behaviour of the media and journalists is not penalised, since no effective internal or external supervisory mechanisms have been established to assess the conduct of journalists and media. This is then a 'grey area' between illegal and correct behaviour - behaviour which is not illegal but which is not completely correct either. Such behaviour is usually considered by the 'honour tribunals' of journalists' societies (in past years we have found that in Slovenia these are not effective), or by special media ombudsmen.

2.1.3. The police acted more effectively after our proposals of more careful treatment of acts of violence which are clearly racially motivated

We received an application from the International Friendship Club drawing our attention to an incident which occurred in Ljubljana at the beginning of February 2000 when a group of ten skinheads assaulted two black persons. We responded immediately to this application and after supplementing it we held a conversation with the persons concerned, at which they informed us of several cases of violent acts in which most of the victims have been black members of society.

Because we considered the matter to be a serious one, we requested the MNZ for information on all the circumstances of this incident and similar incidents which they have dealt with recently in the area of the city of Ljubljana. The General Director of the Police told us that the police had not yet identified the skinheads who carried out a physical assault on 4 February 2000, nor the aggressors in a similar case in September 1999.

We were not satisfied with the response from the director of police and therefore expressed the hope that the police would continue its activities to identify the perpetrators of this act against inhabitants of Slovenia who are of foreign ethnic origin. We felt that only timely and decisive action can prevent a possible escalation of such phenomena. On the basis of our conversation with the victims and with representatives of the International Friendship Club we rightly concluded that the groups of skinheads who gather in front of known bars in Ljubljana often terrorise their fellow citizens, in particular members of ethnic minorities, and even distribute leaflets calling for intolerance towards them. A copy of such a leaflet was even published in a weekly magazine in that period. We also pointed out that in the case of violence directed at members of other races or ethnic groups, it is not only a matter of a criminal offence against the person or property but can also be

incitement to ethnic, racial or religious hatred, discord or intolerance. We therefore expressed our expectation that the police will continue their efforts to find the perpetrators.

We later learned that the police had found the perpetrators of the February attack on the two black persons in Trubarjeva street in Ljubljana.

2.1.4. Access to information of a public nature

In the 1998 report we published a well-received report on access to information of a public nature in the Republic of Slovenia. As well as carrying out analysis on the basis of constitutional law and comparative analysis of the questions of the openness and transparency of the work of state bodies and the possibilities of access to data and information of a public nature, we made some extremely concrete proposals in specific areas. With regard to the obligation of state bodies to provide information of a public nature on demand, we proposed that the Government should at the earliest opportunity prepare a law regulating the method of exercising the right to obtain information of a public nature on the basis of the second paragraph of Article 39 of the Constitution. We also proposed the adoption of a special law on the definition and protection of secrecy in state bodies; that a study be made of the possibility of setting up of a special body to look after the implementation of rights established by statute (outside the courts); and that irrespective of the adoption of a special law, bodies of the public administration should enable access to information of a public nature in their field and adopt their own rules on the procedure to be followed when information of a public nature is requested. We also made proposals which should enable greater openness and transparency of the work of state bodies, especially with the possibilities offered by new information technology. We were critical of the fact that in Slovenia there is still no free access via the internet to all regulations in force and a register of regulations in force. We proposed that the government legislation service and the official gazette (Uradni list Republike Slovenije) should provide free access to a register of regulations in force on their websites, and that a method of gradually providing free access to the full texts of regulations in force in the Republic of Slovenia should be defined, along with the body responsible for this.

Although the National Assembly (in point 9 of the resolutions) and the National Council (in point 1 of the resolutions) fully supported the ombudsman's proposals, many of them have still to be put into practice. For example a law regulating the method of exercising the constitutional right to obtain information of a public nature has still not been prepared. On the other hand a classified information bill, which however only relates to a part of the rights provided by the second paragraph of Article 39 of the Constitution of the Republic of Slovenia, is currently in legislative procedure. The Classified Information Act will in accordance with the Constitution specify what information can be defined as secret, and on this basis access to this information can be denied in a legal manner. This however is just one of the possible grounds for refusing access to information. Other grounds are defined by regulations on the protection of personal data, regulations on business confidentiality, and other regulations which can also define the grounds on which unauthorised persons can be denied access to information of a public nature. The question of the adoption of a law regulating the 'passive right' to access to information of a public nature, i.e. the obligation of a source of information to respond to a special demand for specific information, remains open. In the 1998 report we noted that this is perhaps the only constitutional right whose method of implementation is not regulated by statute, although its implementation is impossible without special statutory regulation. The constitutional provision requires that the cases in which it is possible to deny access to information of a public nature be defined by statute. Statute must also regulate the way in which legal interest in the acquisition of information is to be established.

Although at first glance it appears that many of our proposals have not been formally put into practice, they have nevertheless had a powerful effect on the behaviour and practice of state bodies in this area. We note with satisfaction that the implementation of the active right of access to information of a public nature has improved markedly. The openness and transparency of the work of state bodies have improved, particularly through the publication of an increasing amount of information of interest to citizens on the internet. An increasing number of state bodies are using their websites to publish the full texts of statutes and other regulations covering the rights and obligations of citizens relating to their areas of activity; the number of administrative units offering information and even services in the new ways offered by information technology is also increasing. With this in mind, the new national 'e-administration' portal, which offers citizens and others a large amount of useful information and services, is a very promising development.

We also note that our criticisms of the practice whereby the judgements of courts (which are state bodies) were only available via a commercial provider of legal information have been effective. Following the publication of our report both the Constitutional Court and the Supreme Court have enabled free access to court practice in their respective areas on their websites.

2.1.5. Access to information on the environment

An increasing number of applicants are turning to the ombudsman because they are not receiving requested information on environmental pollution in the areas where they live. This shows, among other things, that citizens are increasingly conscious of the dangers brought by uncontrolled and long-term pollution of the environment.

In the 1997 report we looked closely at the issue of access to environmental information - something very important for the asserting of rights in this area and an issue to which great attention is also devoted by the international community. We proposed that the National Assembly should ratify the 'Aarhus Convention', prepared under the wing of the UN, at the earliest opportunity. We also proposed that state bodies and local government bodies should enable access to environmental information on the basis of the provisions of the Environmental Protection Act (ZVO) and that even before formal ratification of the Aarhus Convention they should observe its provisions in practice, where regulations in Slovenia do not enable effective access to environmental information.

We have stated on a number of occasions that even the miserly provisions of the ZVO are not being implemented. Article 14 of the Act provides that information on the environment is public, but does not define environmental information with sufficient precision. The second paragraph of this article defines the procedure for obtaining and communicating information on the environment to interested parties. Pursuant to the Act, state bodies, local government bodies, public services and statutory authorities must keep the public informed and provide requested information to interested individuals and organisations within a month of receiving the request, at a price which may not be greater than the material costs of forwarding the information. According to the information provided to us by applicants and certain non-governmental organisations, these legal provisions are not being implemented in practice. The provision of the third paragraph of Article 14 of the ZVO, under which all persons who in the pursuit of business activities create a burden on the environment in any way or form are obliged to provide the public with data about the burden on the environment via the competent service of the local community, is not being implemented in full. Because local government bodies are not usually in possession of data on the emissions produced by individual polluters, the public does not have the possibility of obtaining data on, for example, the industrial pollution of water, despite the fact that this right is guaranteed by the ZVO. The inadequacy of legal regulation of this area is also revealed in the fact that competent bodies do not have instructions as to how to act in specific cases or how to resolve possible collisions between the provisions of the ZVO and other regulations defining the secrecy of data, and the fact that the question of the subsidiary use of the ZUP in the resolving of disputes in this area has not yet been resolved either in regulations or in practice. Other difficulties occur in practice as the result of insufficient training and the fact that officials are too occupied with other work to deal with requests for information on environmental pollution from interested individuals or NGOs.

These difficulties prove how important it is that the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention) be ratified as soon as possible.

2.2. Restrictions of personal freedom

2.2.1. Persons in custody and persons serving prison sentences

In 2000 we carried out more detailed inspections of the penal institutions at Maribor and Dob (January 2001), the penal institution departments at Nova Gorica, Novo Mesto and Murska Sobota, and the juvenile penal institution and penal institution at Celje. We also made several visits to convicts and other persons in custody in various penal institutions around Slovenia. We spoke in person with 193 prisoners and received 140 written applications, which means that in one way or another 333 prisoners applied to the ombudsman in 2000. The confidence of this section of the population is also apparent from the numerous telephone calls we receive, while it is not uncommon for us to receive visits from convicts using their leave of absence from prison to come and talk to someone at the ombudsman's office.

In the field of custody and imprisonment, prison overcrowding is now becoming an almost unmanageable problem. The number of prisoners is growing every year. Since 1996 their number has increased by more than half - although Slovenia is still among the countries with the lowest ratio of persons in custody to total population. This however is poor consolation for those crammed into overcrowded cells without a serious hope of their situation changing significantly in the near future. In previous reports, notably the 1999 Annual Report, we have drawn attention in great detail to the critical nature of the situation - overcrowding means that in many prisons the enforcement of custody and sentence-serving regimes are stricter.

Of course the problem of overcrowding cannot be resolved simply by building new prisons. Above all greater weight needs to be given to the fundamental principle that the deprivation of liberty is an extreme measure which should only be prescribed and used if an alternative measure would clearly be unsuitable because of the gravity of the criminal offence.

The Criminal Procedure Act (ZKP) introduced, by means of the 1998 amending statute, more lenient measures (in comparison to custody) to ensure the presence of the defendant, to eliminate the danger of repetition, and to carry out criminal proceedings successfully. In choosing what measure to use, the court must take into account the fact that a harsher measure should not be used if the same purpose can be achieved by a more lenient one. House arrest could at least partially take the burden off those premises in penal institutions reserved for holding people in custody. The applications we have received show that the implementation of house arrest perhaps needs more precise regulation. Neither are certain negative reactions from the public to notorious escapes from house arrest particularly encouraging for the broad application of this measure which could contribute to reducing the number of persons in custody. The problems of lack of space suffered by persons in custody could undoubtedly also be avoided by speedier trials in custody matters. Overcrowding in prisons is felt more by those detained in custody than by convicted prisoners: as a rule the former are locked in detention cells for 22 hours a day.

Article 161a of the ZKP provides for the institution of settlement when it is possible by means of an agreement between suspects and injured parties to avoid criminal proceedings for criminal offences for which a fine or prison sentence of up to three years is prescribed. Here the public prosecutor is assigned the role of initiator of this procedure. With the consent of the injured party the public prosecutor may under Article 162 of the ZKP defer the prosecution of a criminal offence for which a fine or prison sentence of up to three years is prescribed if the suspect is prepared to act according to the instructions of the public prosecutor and fulfil specified tasks through which the harmful consequences of the criminal offence are reduced or removed. The settlement procedure and the use of conditional deferment of prosecution could also contribute to reducing the number of short prison sentences handed down. In dealing with applications to date we have not yet encountered the substitute penalty offered as a possibility by the fourth paragraph of Article 107 of the KZ, where the court substitutes a prison sentence of up to three months with work on behalf of humanitarian organisations or a local community. There is no doubt that greater use in judicial practice of the possibilities of alternative criminal sentences provided by statute could make an important contribution to reducing or eliminating overcrowding in prisons. This would also be cheaper for the state, while prisoners would be able to enjoy better living conditions in penal institutions.

Humaneness in serving a prison sentence

Prison walls, no matter how high, must not be an obstacle to the advantages and benefits that humankind enjoys in the third millennium. Long periods in prison carry with them the danger of depersonalisation, since a person in custody is deprived of many opportunities to express himself. If life in prison does not also take into account the interests of convicts, then a prison sentence is merely society's revenge, and among the convicts themselves merely provokes opposition, dissatisfaction and even hatred. The purpose of punishment cannot be overlooked in the enforcement of a prison sentence. Thus throughout history there has been an adaptation of the punishment of criminals to human dignity. The suffering often associated with prison life reminds us that there is still much that can be done in this area. Various measures are involved: from those designed to prevent criminal activity and control it effectively so that its harmful influence is reduced, to those designed to enable the perpetrators of criminal offences an encouraging return to society. Every move in this direction is a further step towards ensuring a safer and more pleasant society.

The deprivation of liberty is a form of punishment as old as human history. Living conditions (both in terms of space and material) are suitable in the majority of penal institutions but we are still (or again) identifying living conditions which do not befit human dignity. Prisons are increasingly over-

crowded. In such conditions the deprivation of liberty can even cause more problems than it solves. Overcrowding combined with poor living conditions quickly nullifies every attempt at education, training and social rehabilitation during the periods of deprivation of liberty in general.

Respect for an individual's personality and dignity while he is deprived of his liberty and during the enforcement of a sentence binds the state to provide work and other useful activities for persons in custody which prevent the humiliating effects of inactivity. In this connection it is worth repeating the importance of training and education which make it easier for the convict to return to the labour market after serving his sentence. Neither should psychological assistance be overlooked, for this can help persons in custody address personal distresses, difficulties, and problems.

New legal regulation of the enforcement of a sentence of imprisonment

The new Act on Enforcement of Penal Sentences (ZIKS-1) entered into force on 9 April 2000. This Act regulates the enforcement of the criminal sanctions defined by regulations in the area of punitive law in Slovenia. Greatest attention is devoted to the penalty of imprisonment.

The constitutionally and statutorily guaranteed rights of a convict may only be denied or limited to the extent necessary for the enforcement of the penal sentence. This aspect of the principle of legality is also observed by the ZIKS-1, Article 4 of which provides that during the enforcement of penal sentences the convict shall be guaranteed all the rights of citizens of the Republic of Slovenia with the exception of those of which he is expressly deprived or which are expressly limited by statute. This fundamental principle of the enforcement of penal sentences must serve as a guiding principle in all activities of penal institutions in relation to convicts serving their sentences.

Another welcome new element of the ZIKS-1 is that it is the first domestic regulation to define torture (Article 10). This action by the legislature is a new contribution towards the realisation of the obligations deriving from the UN Convention on torture and other forms of cruel, inhumane or humiliating treatment or punishment. Pursuant to this Convention, the KZ guarantees judicial protection in the case of torture or other form of cruel, inhumane or humiliating treatment. Judicial protection in this area is regulated in more detail by Article 83 of the ZIKS-1. Thus a convict who considers that he has been exposed to torture or other cruel forms of inhuman or humiliating treatment may request judicial protection by means of a petition. The penal institution is obliged to send a copy of this petition to the competent public prosecutor. The responses to our first inquiries about the manner of enforcing this statutorily regulated judicial protection give the impression that there may, at least at the beginning, be some lack of clarity, perhaps even as regards what court is competent to adjudicate, and in what type of proceedings.

The ZIKS-1 requires the adoption of numerous executive regulations which must be adopted within one year at the latest of the entering into force of the Act, i.e. by 9 April 2001. The most important of these - the Regulations on the Enforcement of the Penalty of Imprisonment (PIKZ) - has already been issued and is in force since 18 November 2000. The legal regulation of the enforcement of the penalty of imprisonment will be complete when penal institutions have brought their house rules into line with the provisions of the ZIKS-1 and the executive regulations. The six-month deadline for bringing house rules into line is, under Article 264 of the ZIKS-1, tied to the issuing of the PIKZ, such that it expires on 10 May 2001. We have already stressed on a number of occasions that for the benefit of convicts who do not understand Slovene there is a need to translate house rules into an internationally-known language or into the languages of the countries of origin of a substantial number of convicts.

The ZIKS-1 also contains an echo of the ombudsman's warnings relating to the enforcement of penal sentences, and in particular the penalty of imprisonment. Thus the text of the act contains the provision that written communications between a convict and state bodies shall be delivered in sealed envelopes (Article 17), a new regulation of payment for convicts' work (Article 54), the provision that convicts must be able to make telephone calls (Article 75), giving privileges to convicts while taking into account the victim of the criminal offence/injured party (Article 77), defining disciplinary proceedings in law (Article 87) and the new provision that following the expiry of a penalty of a ban from driving a motor vehicle, the person on whose driving licence this penalty was recorded may request to be issued with a new driving licence (sixth paragraph of Article 124). There are also several provisions in the PIKZ which are in part the consequence of the ombudsman's interventions and proposals in relation to actual cases dealt with (e.g. the provisions of Articles 9/3, 19/1, 23, 54/4, 55/3, 65/2, 79/1, 110 and 121).

Review of constitutionality of Article 213.b of the ZKP and Article 50 of the Rules on the Enforcement of Custody

The first sentence of the fourth paragraph of Article 213.b of the ZKP provides that a person in custody may correspond with or have other contacts with persons outside the institution with the knowledge of and under the supervision of the examining judge conducting the investigation. Pursuant to this statutory provision, the first paragraph of Article 50 of the Rules on the Enforcement of Custody (Ur. l. RS, No. 36/99 - hereinafter: the Rules) contains the provision that the institution shall hand over to the competent court all written communications sent by the detainee or addressed to him.

A special place among human rights and fundamental freedoms is taken by the constitutional provisions protecting the human being's personal dignity, personal rights and privacy. Article 37 of the Constitution guarantees the privacy of mail and other means of communication. Under the second paragraph of Article 37 of the Constitution, only statute may prescribe that on the basis of a court decision and for a fixed period the protection of the privacy of mail and other means of communication and the inviolability of individual privacy may be set aside where this is deemed necessary for the institution or continuance of criminal offence proceedings or for national security. As well as a (definite and unambiguous) regulation by statute, the Constitution demands a court decision that the protection of the privacy of mail and other means of communication shall be set aside for a fixed period.

The first sentence of the fourth paragraph of Article 213.b of the ZKP defines 'knowledge and supervision' of the detainee's correspondence (handing written correspondence to the court, opening, reading, etc.) without the requirement of a court decision or a limited period of duration of this encroachment. The encroachment in the form of the knowledge and supervision of the examining judge is statutorily regulated for all persons in custody, without exceptions or selection of any kind. All correspondence of a person in custody is automatically subjected to the knowledge and supervision of the examining judge without the court assessing the necessity of such a measure or making a decision with regard to the actual circumstances of the individual detainee and the reasons for custody. The position that the loss or restriction of human rights and fundamental freedoms is inseparably connected to the mere fact of deprivation of liberty is in conflict with the state governed by the rule of law and the requirement of Article 37 of the Constitution, and also with Article 8 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR). The right to respect of correspondence is of a particular importance to a person deprived of his liberty. Apart from visits, correspondence is often the only form of contact that the person in custody has with the outside world. The existing statutory regulation does not satisfy the constitutional demand that an encroachment on the protection of the privacy of correspondence should have a time limit and be urgently necessary or unavoidable for the institution or continuation of criminal proceedings.

The requirement of a judicial decision obliges the court to issue a decision containing an explanation of why it is necessary for the institution or continuation of criminal proceedings that in the case in question the protection of the privacy of mail should be set aside for a fixed period. The issuing of a written court decision, explained in every essential point in a manner concrete enough to enable later review, also guarantees the individual the right to a legal remedy.

We therefore consider that the first sentence of the first paragraph of Article 213.b of the ZKP and the first paragraph of Article 50 of the Rules are in conflict with Article 37 of the Constitution. Statutes, executive regulations and other general acts must be in accordance with the Constitution.

The Human Rights Ombudsman therefore proposes, in a filed request for a review of constitutionality, that the Constitutional Court reviews the constitutionality of the first sentence of the fourth paragraph of Article 213.b of the ZKP and the first paragraph of Article 50 of the Rules and abrogates them with deferred effect.

Living premises and the communal serving of a prison sentence

The premises in which convicts are housed must conform to medical, hygienic and treatment requirements. The second paragraph of Article 42 of the ZIKS-1 provides that convicts shall as a rule be allocated a single room. In conflict with statute, however, communal serving of a prison sentence is still the rule in practice. The great majority of convicts sleep in bedrooms containing several beds. The few single bedrooms are generally reserved for convicts for whom special circumstances require this type of accommodation. It is only rarely possible to take into account a convict's wish to sleep in a single room.

The statutory provision that convicts' bedrooms should have a maximum of eight beds is not always observed in practice either. Given the increasing number of persons in custody there are an

increasing number of cases where even up to 14 convicts sleep in the same bedroom. This at least we were able to discover during our visit to the Dob Penal Institution. Article 27 of the PIKZ provides that there must be at 9 m^2 of surface area for every convict in a single room and at least 7 m^2 of surface area per convict in rooms containing more than one bed. Given the transitory provision of Article 138 of the PIKS these norms are used in the construction of new facilities or as far as possible in the adaptation of existing institutions. However the official capacities of penal institutions are defined taking into account a surface area of 7 m^2 per convict. In the bedrooms at Dob prison with a surface area of 60 m^2 there should therefore be a maximum of eight convicts. Since however up to fourteen convicts sleep in these communal bedrooms, each convict only has 4.3 m^2 of area. This is already a number which is far from the ideal set out in the regulation and is a cause for concern. In a communal bedroom there is only one toilet and one urinal, one shower and two washbasins available for 14 convicts. Convicts have emphasised that, particularly during the morning 'rush hour' it is not always possible for them to answer the call of nature in peace, or without a long wait. A number of convicts too large for the capacity of the room can mean that the bedroom is unsuitable not only because of its size but also that it is not sufficiently light, dry and airy. Convicts complain in particular about the poor air during the night. If communal bedrooms are overcrowded, it is therefore necessary to ensure more consistently than in other cases the respecting of the ban on smoking in areas where not explicitly permitted. Convicts who are non-smokers have the right not to be exposed against their will to the harmful influences of cigarette smoke.

The praiseworthy norms about the minimum bedroom surface area per convict mean little or nothing if practice is actually completely different. The capacity of Dob prison is 289 convicts, allowing 7 m^2 for each. When we visited the prison it contained 375 convicts - 29.75 per cent more than the official capacity. We also noted overcrowding during visits to most other penal institutions. The Murska Sobota department of the Maribor Penal Institution, for example has a capacity of 40; at the time of our visit there were as many 60 prisoners - which means that the capacity of the institution was exceeded by 50 per cent. Particularly alarming here is the fact that the Murska Sobota department does not have a day room intended for communal living, socialisation and recreation. The problems of space are so acute that there is not even a sickroom, despite the fact that the first paragraph of Article 60 of the ZIKS-1 stipulates that every penal institution must have a sickroom. Aside from staying in their overcrowded rooms the only possibility open to prisoners is the exercise yard - which, despite our drawing attention to this defect during previous visits, does not have a roof which would enable prisoners to remain outside even during bad weather.

Overcrowding was also evident during our visit to the Novo Mesto department of the Ljubljana Penal Institution: though the capacity of the institution is 41 beds, 46 persons were in custody at the time of our visit. The lack of space was felt particularly acutely by ***detainees: there were 29 of them although there is only room in the detention cells for 18 persons. For this reason three prisoners were living in the sickroom, which of course is only meant for sick persons.

Poor opportunities for recreation for persons in custody

The majority of institutions have premises dedicated to recreation, such as fitness rooms for example. These are generally only accessible to convicts and not to detainees. We were pleasantly surprised during our visit to the Novo Mesto department of the Ljubljana Penal Institution, where detainees are allowed to use the recreation room twice a week.

Most often detainees are only allowed two hours' exercise in the open air inside a yard surrounded by a high fence. The yard is usually intended for walking, and only in rare cases for sports (particularly ballgames). In Maribor, Celje, Novo Mesto and Murska Sobota the yards do not have roofs which would allow persons in custody to walk or at least stay in the fresh air on rainy days or during bad weather. Particularly for detainees, for whom spending time outside is the only possibility they have of leaving the detention cell, it is especially important that they can stay outside even during bad weather. During our visit to the Maribor Penal Institution, on a rainy day, we observed that some detainees were not prepared to renounce their exercise in the fresh air even at the cost of getting soaked by the rain. Thus we can merely repeat the recommendation that penal institutions and the departments thereof provide roofing over a part of the exercise area at the earliest opportunity and thus guarantee the right to a minimum of two hours in the fresh air even during bad weather.

A particular cause for concern is the Nova Gorica department of the Koper Penal Institution, which does not have a proper recreation room for persons in custody. All that is available to detainees

and convicts in the closed section is an exercise area measuring roughly 30 m^2 surrounded by a concrete wall 4.3 metres high. There is no greenery in the exercise yard, merely a concrete floor surrounded by high walls. The area gives the impression of being closed, since approximately 60 per cent of it is covered by a roof, partly in the form of a metal net. Sunlight only reaches the area during the summer months and perhaps at midday. The right to exercise in the fresh air is limited to a small area of concrete, high walls and a miserly view of the sky.

Detainees in the Nova Gorica department as a rule spend 22 hours a day closed in spartan cells below ground level and their two-hour exercise period is spent in an unpleasant yard which does not enable any contact with nature. Given the fact that detainees are deprived of their liberty for ten months and more, we consider such conditions, particularly when the deprivation of liberty lasts for a longer period, to be humiliating and inhumane. We therefore proposed immediate measures to allow persons in custody better conditions for recreation and outdoor exercise. An exercise area such as that at the Nova Gorica department means that the purpose of the statutory provision on the right of persons in custody to outdoor exercise is a failure.

For better supervision of the health care of persons in custody

A common thread of the complaints of persons in custody are allegations of inadequate and insufficiently careful medical treatment. Despite the existence of a contract with the regional health centre, the doctor often fails to appear and does not come to the institution on the agreed day. During our visit to the Celje Penal Institution we discovered that the doctor had not made an appearance for three successive weeks and that the health centre had not provided a replacement doctor during this period. In such a situation the institution should have taken all reasonable measures to ensure that the contracting partner (the health centre) met its obligations.

Complaints that the doctor has merely examined a convict ‘at a distance’ and without proper interest in his health are not uncommon. Because this a matter of a confidential doctor-patient relationship, such accusations are difficult to check. We have pointed out however that persons in custody have the right to receive medical attention under the same conditions and in the same way as other people, and that their constitutional and statutory rights must be respected. They need to be guaranteed the same access to medical services and the same quality of medical services, particularly services from the area of basic health care activities.

Given the difficulties experienced by penal institutions in providing medical, dental and psychiatric care, it is worth repeating the proposal that the health care of persons in custody, which is provided in accordance with general regulations on health care, should be under the regular and permanent supervision of the competent bodies of the Ministry of Health and the Chamber of Medicine of Slovenia. It should be provided directly within the framework of the public health care network and not on the basis of contracts with individual doctors or health care institutions. The number of complaints gives the impression that the level of health care of persons deprived of their liberty is lower than that afforded to other people.

Incidence of tuberculosis among persons in custody

Overcrowding, especially when combined with poor and unhygienic living conditions, means that penal institutions are fertile soil for illnesses. During our visit to Dob prison we learnt that five cases of tuberculosis had been detected among convicts. Tuberculosis is a communicable disease transmitted by droplet infection. Poorly ventilated closed rooms where the access of sunlight is restricted or even impossible are particularly suitable for the transmission of the disease. The barred windows high up by the ceiling in many penal institutions only allow modest ventilation and only a little sunlight can enter. Detainees and also convicts are compelled to spend a considerable part of the day in closed and overcrowded premises. Intravenous drug use and the sexual activity which can be present in penal institutions increase the danger of infection with HIV. Debility resulting from illness reduces the body’s natural resistance. The prison population generally falls among the least healthy and poorer members of society. All these circumstances, linked with living conditions in overcrowded penal institutions, contribute to a greater incidence of tuberculosis among persons in custody.

Naturally the fact that a few cases of tuberculosis have been identified does not mean that we can talk about an epidemic. However the mere appearance of the disease demands that increased attention is paid to the effective prevention and treatment of tuberculosis. Fear of infection and disease is present among many persons in custody. In cases of communal sentence-serving convicts point out that they came to the penal institution to serve a sentence, and not to be infected or fall ill with a dangerous communicable disease.

Repetition of immuno-chemical urine tests

A convict serving a sentence of imprisonment did not agree with the result of a urine test for the presence of drugs in his body. He linked the positive result of the test to the assertion that during a two-day leave of absence from the institution he had eaten a cake containing poppy seeds. He requested a repeat test at a medical institution but his request was not approved.

In dealing with his application we requested an opinion from the Clinical Mental Health Department of the Ljubljana Psychiatric Clinic. They explained that immuno-chemical urine tests give information but are not incontestable proof that a specific drug has been taken. Thus the test can be positive for opiates even if the person under investigation has eaten poppy seeds (e.g. cakes, biscuits or rolls containing poppy seeds). The test can also reveal the presence of opiates as a result of taking certain medicines which contain opiates, but the person under investigation is warned of this in advance. The psychiatric clinic never takes into account the result of the test alone; the clinical impression is also important. When a positive result means a penalty for the person under investigation with serious consequences, the clinic proposes the confirmation of the test in a reference laboratory.

A positive result of a urine test can have serious consequences for a convict serving a sentence of imprisonment: for example a stricter punishment regime, the loss of privileges previously obtained, fewer possibilities for a conditional release, etc. We therefore proposed to the UIKS that it study the possibility of a repeat (additional) analysis of urine tests in doubtful, exceptional cases, when the existing test shows the presence of psychoactive substances but the convict denies having taken illegal substances.

The UIKS pointed out in its reply that the confirmation of the result of a urine test by means of a subsequent examination at the Institute of Forensic Medicine is an extremely expensive process and less appropriate in penal institutions. It is usual for persons in custody to deny a positive test result and without exception to request further analysis. On the basis of our intervention the UIKS opted for a compromise solution whereby immuno-chemical urine tests will be repeated in exceptional cases at the penal institution itself by taking a new urine sample from the person under investigation.

2.2.2. Persons with mental disorders

Even in 2000 the state failed to settle its debt in the legislative area in relation to persons with mental health difficulties. The ombudsman's warnings and efforts over several years to get the National Assembly to adopt a law regulating the area of mental health, including the rights of mental patients, are unfortunately still without a final result. It is not right that this law, which when it enters into force will fill a number of legal vacuums, should have to wait so long to arrive on the deputies' benches. It is a law whose adoption and implementation are accompanied by great expectations, since the subject of its regulation will be the method of realising and also restricting human rights and fundamental freedoms. Given the inadequate legal regulation, the action of Idrija Psychiatric Hospital in drawing up an extensive charter on patients' rights deserves praise.

In 2000 we received 24 applications from persons with mental disorders. During the course of the year we visited the Idrija Psychiatric Clinic and several social care institutions housing persons in conditions of restricted liberty. We notice that the gradual renovations of psychiatric hospitals is reducing their capacities. A consequence of the changes is a greater number of chronically-ill persons who are now accommodated in the protection and care wards of various social care institutions. These institutions do not as a rule observe the applicable legal regulation covering detention procedures. It is thus more the exception than the rule that cases where the patient is placed in a closed or semi-open ward against his will are referred to the court for court supervision of detention.

Old people's homes are primarily intended for the elderly but residents also include younger persons with special needs for whom there are no other possibilities of accommodation. Younger people are often unable to satisfy their needs and interests in old people's homes. As a result they cannot get accustomed to this environment and are therefore dissatisfied. For young people who need institutional care it would be more appropriate to provide a suitable form of care adapted to their needs and interests which would preserve and stimulate their other capabilities and as far as possible enable them to continue to lead a full life. Old people's homes would be provided for the accommodation of those people for whom they are chiefly intended.

Human rights for persons with mental disorders too

The Constitution guarantees equal human rights and fundamental freedoms for all, irrespective of any personal circumstance, and therefore irrespective of physical or mental illness. Persons with mental health problems may not be placed in a disadvantaged, inferior position as a result of this circumstance. The state is obliged to adopt all reasonable measures to ensure that this group of

citizens is guaranteed a life befitting a human being. Persons with mental disorders have the same right to respect for human personality and dignity as other members of society. They also have the same right to privacy, their own life style and respect for their decisions, taking into account various stages in their mental health.

The state is bound to see to the better quality of life of these persons. Here it is important that a person with mental disorders retains the possibility of making their own decisions, or at least collaborating in the decision-making process, and of freedom of choice. Greater integration into society enables such a person a full life and helps him to avoid isolation, aimlessness and marginalisation from the life of society. The opposite circumstances can quickly lead to inhumane or humiliating treatment. At the same time it is necessary to provide social security for every individual with the right to a standard of living which guarantees health and wellbeing for him and his family.

The common thread of the Human Rights Ombudsman warnings is that the institutional care of persons with mental health difficulties may only be an extreme, ultimate measure when no other possibilities remain. We are finding that chronic patients in particular still do not have proper possibilities for rehabilitation, while society 'dumps' them in old people's homes and other social care institutions. Some, the luckier ones, live in the shelter of their families, although these families are generally left to their own inventiveness and resourcefulness and often do not receive appropriate professional, material and financial assistance from the state.

In important role in the care of persons with mental health difficulties is played by non-governmental organisations - often with scant resources and without appropriate support. Assistance in surmounting the problem of homelessness is also provided in residential communities. This is particularly important in the case of persons who have no family to help them and take care of them after their discharge from psychiatric hospital so that it would not be necessary to place them in a social care institution.

An increasingly stressful life, long-term unemployment, the break-up of family and social ties with the loss of social security and a transition to social isolation are states which increase the psychological sensitivity of the individual. It is no surprise that the number of mental disorders is increasing. An emphasis on state care does not mean discrimination, since because of their dependence and even infirmity these persons are often in an inferior position. As well as medical treatment, which must not be limited merely to medication, these people must be provided with appropriate social services, including the right to care in the case of unemployment and incapacity to work. Above all the measures of the state must be of a kind that help persons with mental disorders retain their self-confidence and enable them to return to normal life. Social and psychological rehabilitation should be a necessity and a continuation of psychiatric treatment. Only in this way will it be possible to prevent the social status of these people remaining at the lowest level - something which currently happens all too frequently.

The principle of equal opportunities with the right to difference

The normalisation of life, connected with the principle of equal opportunities can for a person with mental disorders only be achieved through rehabilitation which enables training, education and employment under adapted conditions. If circumstances permit, it is also necessary to provide such a person with the possibility of inclusion in normal employment without discrimination because of his mental disorder or the stigma which accompanies it. In comparison with unemployment in general there is a clear disproportion shown by the percentage of unemployment among persons discharged from psychiatric hospitals. There are frequent complaints that employment offices do not have adapted programmes aimed at this group of people. Many people with mental disorders are not capable of taking part in training programmes for daily eight-hour work. Training for less demanding work adapted to physical and mental capabilities would permit many people with mental disorders to return to a more active life. Mental health or even partial disability do not necessarily hinder the use of other unaffected functions. The principle of equal opportunities also means the right to be different.

Most frequently persons with mental disorders are helped by their relatives. These however face financial difficulties and the problem of how to survive with a burden of protection and care, which often demands all their capabilities. As well as material assistance the families of such persons should receive assistance in the form of education and counselling. Many parents express concern about what will happen when they are no longer able to care for their handicapped child. Meanwhile persons with mental disorders themselves do not want to be dependent all their lives on outsi-

de help. Through training for an independent life and work appropriate to their state of health, they - justifiably - want to at least contribute to a return to a normal life, autonomy and independence. They too have the right to their own life, and the state is obliged because of their special position to help them in an all-embracing manner so that they are able to live a life comparable to that of those of their peers whom nature has blessed with more fortune in the area of mental health.

Notifying the court of non-voluntary hospitalisation

Psychiatric hospitals must notify the nearest county court of every case of nonvoluntary hospitalisation. Voluntary hospitalisation in a closed ward is not reported since the detention procedure is only intended for the hospitalisation of a person detained against his will. The detention procedure is not only mandatory when a patient explicitly opposes detention or when his disagreement arises from his conclusive actions; the hospital must also notify the court of detention if professional judgements of a person's mental health suggest that he is incapable of expressing his will, if the person being detained is a minor, and if the person being detained has been deprived of contractual capacity. The hospital must always send notification of detention when there is no legally recognised consent to treatment in a closed ward.

Patients who are hospitalised against their will are also found in open wards. If the hospital does not report this type of hospitalisation to the court, the judicial supervision which is otherwise prescribed for detention for treatment without the consent of the person concerned is made impossible. During our visit to the Idrija Psychiatric Hospital the director explained that the open ward contains those patients who can be trusted not to escape even though they are in the hospital against their will. In practice this evidently means that those being treated in the open ward without their consent are those patients for whom a mere prohibition is sufficient to prevent them from leaving the hospital. Although these patients are not being treated in the closed ward, they are actually detained against their will or at least without their legally recognised consent.

The purpose of the statutory regulation of the procedure of detaining persons in psychiatric health care organisations includes the guaranteeing of the right to judicial supervision of the legality of deprivation of liberty during the detention of the person concerned against his will. If a patient, even though he is in the open ward, is not free in terms of the decision to leave the hospital whenever he wishes and to refuse treatment, then this is a position which at the very least is very similar to the detention of a patient in the closed ward against his will: nonvoluntary hospitalisation occurs on the basis of a decision by psychiatrists alone. This however is in conflict with the statutorily guaranteed right of the detained person to judicial supervision of hospitalisation and treatment against his will.

Article 71 of the Non-Litigious Civil Procedure Act (ZNP) only talks about the detention procedure in connection with the closed ward since it envisages that nonvoluntary hospitalisation and treatment only take place in this type of ward. It is right that nonvoluntary patients should also be placed in open wards if this means a pleasanter environment for them, but even for this type of hospitalisation we propose the procedure provided by statute for the detention of a patient for treatment in a closed ward against his will. In the procedure of treatment in closed and open wards it is worth making every effort to win the patient's cooperation in order to obtain permission for a medical intervention. Of the various measures available, the one selected should be the one which encroaches least on the physical and mental integrity of the patient, which least limits his personal freedom and has fewest side effects.

Prevention of inhumane and humiliating treatment

Even a patient with a mental illness has in the highest measure the same rights as all other human beings. Both in the legislative procedure and in the implementation of the regulations in force, special emphasis must be placed on the importance of respecting the personal rights and human dignity of persons with mental disorders. In particular, special attention must be paid to enforcing the prohibition of the torture, maltreatment and inhumane or humiliating treatment of a patient placed in a medical or social care institution.

Treatment and care of a patient includes a wide circle of rehabilitative and therapeutic activities, including access to occupational therapy, group therapy, art, music, sport, etc. A patient in institutional care must have constant access to a suitably equipped relaxation and recreation room. He must be guaranteed the possibility of exercise in the open air - on a daily basis. Ideally education and appropriate work would also be available.

Unfortunately it happens that the fundamental contents of effective psychosocial rehabilitative treatment are undeveloped or even nonexistent, with the result that medicament-based treatment

plays the decisive role. Such a situation may also be the consequence of a lack of suitably trained staff, proper equipment and premises.

Of course medication-based treatment is often an essential component of treatment. Here it must be ensured that a regular supply of prescribed medicines is guaranteed. The patient's state of health must be regularly checked, as must the use of medicines prescribed by a doctor. This should mean that the patient receives only those medicines that are truly necessary for his health, and only for such time as is necessary, and that the decision to discharge him from the hospital or transfer him to a less restricting environment is taken in good time.

Cases of conscious, wilful maltreatment of patients in institutional care are as a rule unknown in Slovenia. Careful supervision of institution staff is important for protection against such treatment. Motivation and commitment are important but can be jeopardised if there are too few employees and if only limited resources are available. Working with patients is a demanding business for all categories of staff in an institution: for those involved in health care and for those involved in social care. Given the challenges they face at work, suitable education and professional training - as well as careful selection - is especially important. The experienced gained at work must be built on by means of continuous professional education and advanced study, including learning about the rights and freedoms of the patients with whom they work.

Many institutions, particularly social care institutions, are faced with staff shortages. This means less care and nursing for patients, and thus a lower level of services. Old age brings decreased independence, decreased mobility and incontinence, and also with mental changes, all of which demand more and more frequent care. Numerous institutions lack sufficient employees to enable their bedridden charges at least occasionally to spend time outdoors, in nature.

A staff presence which means that the patient is protected from other persons housed in the institution who could injure or otherwise harm him must be guaranteed (including during the night and during holidays). Additional safety measures are necessary for particularly sensitive groups. Thus for example children with mental problems must not be placed in wards with handicapped adults.

In social care institutions continuous quality health care is not always provided. In many institutions a doctor is not always present: a doctor is generally only present in the morning. It is therefore no surprise that there are cases where the doctor prescribed treatment by telephone without even seeing the patient (at the time). In such cases the decision on treatment is actually left to nurses, a factor which can affect the question of health care services.

Managing violent and excited patients is above all the responsibility of medical personnel. Any assistance from security services must be under the guidance and supervision of medical personnel. A clear message must be given that all forms of physical or mental maltreatment are unacceptable and that those suspected of such a violation will be strictly dealt with. The performance of therapeutic functions (treatment) must not be pushed aside, into the background, for the sake of ensuring safety and order in the institution.

The use of specific forms of restraint may sometimes be necessary in psychiatric institutions or social care institutions. In this connection special care is required to ensure that no abuse or maltreatment occurs. The basic guiding principle in the management of violent and excited persons must be that if at all possible they are calmed down without the use of restraining devices: through conversation and oral instructions. In the case of the use of force, priority is given to physical force (manual control) over the use of other, less humane and more humiliating restraining devices. This also reduces the risk of physical injury.

The use of devices to restrict liberty and movement, such as various types of attachment by means of straps (particularly to a bed), straitjackets and beds with netting, are only justified in exceptional circumstances. Their use is permitted as an extreme measure if other pleasanter and less encumbering measures are unavailable. Such a measure may be only be adopted and prescribed in the interest of the person concerned and not to make things more comfortable for staff, and much less as a means of punishment. As a rule the measure must be necessary for treatment, and therefore there must be a medical indication. This requires that every form of restraint, no matter how humane in the judgement of the person ordering it (for example a finger on the hand if immobilisation of the hand is necessary), is ordered for the shortest time necessary and under appropria-

te regular supervision. Rightly, such a measure should only be adopted on the explicit order of a doctor or at least with his consent. Every use of restraining devices must be recorded in a special register set up for this purpose, and also in the patient's personal file. The entry must contain the time that the measure is implemented, the reasons for the measure, the name of the doctor or person who ordered or approved the measure, and a report on any injuries received by the patient during the implementation of the measure. Such a register enables the easier control of the use of such measures, which are undoubtedly unpleasant for the person concerned.

The use of beds with netting in psychiatry is in the opinion of the European Committee for the Prevention of Torture (CPT) humiliating and denies human dignity. Likewise the isolation of 'unmanageable' persons is as a rule unacceptable. Modern psychiatry avoids the isolation of a patient and at the same time stresses the importance of appropriate human contact.

Decent living conditions

The European Committee for the Prevention of Torture has developed standards of the basic material conditions which must be met for the prevention of torture and maltreatment of persons detained against their will in psychiatric hospitals and social care institutions. These standards are also advocated and enforced by the Human Rights Ombudsman. Unsuitable living conditions can in exceptional cases also mean inhumane and humiliating treatment. Material conditions must be stimulating and favourable for the course of treatment and patient wellbeing in general: a 'positive therapeutic environment' must be established. This is important not only for patients but also for the personnel working in the institution.

The quality of living conditions is to a considerable extent, though not exclusively, dependent on the funds available. The human factor, such as the care and efforts of the institution staff for good interpersonal relations, friendliness, the comfort of patients and cleanliness, can contribute very greatly to the good feeling of all, and this despite limited financial resources. Of course there are certain fundamental necessities of life which must also be provided in an institution: these include suitable accommodation, heating, food, clothes and appropriate treatment.

A 'positive therapeutic environment' requires sufficient living space for each patient, suitable lighting, heating and ventilation of the living space, regular maintenance of the building, rooms and equipment in a sufficiently usable condition, and consideration of the hygienic needs in the institution.

It is worth encouraging an approach whereby patients who so wish may stay in their bedrooms during the day, so that they are not obliged to associate with others in communal rooms. Psychiatric treatment does not generally require patients to be (permanently) in bed, and thus patients can spend the greater part of the day out of bed. The practice whereby patients are dressed in pyjamas or nightshirts 24 hours a day (sometimes without socks or suitable footwear) thus does not contribute to strengthening a person's personality and self-confidence. Individuality in clothing is part of the therapeutic process.

Special attention should be paid to the equipment and arrangement of the hospital room and communal social premises, which through a stimulating appearance contributes to making the environment more pleasant. Ideally each patient should have a bedside table and a wardrobe, or at least a locker where he can store personal effects such as photographs, books, etc. The mere fact that the patient has a place in the institution intended for him alone, which he can arrange and decorate according to his own wishes and taste, gives rise to a feeling of security, domesticity and independence.

Larger bedrooms do not allow privacy and mean poorer living conditions. Accommodation in a smaller group has a decisive influence on preserving the individual's dignity and reestablishing self-respect and contributes to the psychological and social rehabilitation of the patient. Smaller groups make it easier to assign the individual to a suitable group for therapeutic purposes. Large communal bedrooms give fewer possibilities for the patient to equip the room in which he lives with his own possessions and to decorate it and organise it according to his own taste, since he is restricted by the presence of other patients.

Toilet/washing facilities must allow the user at least some privacy. Glass doors on toilets or bathrooms which enable supervision and mean that toilet/washing facilities can be seen into from outside (from the corridor) and cannot be locked may make work easier for staff but are not particularly pleasant for the user. Regarding toilet/washing facilities the needs of older persons and

disabled persons should also be taken into account: a toilet or washbasin which cannot be used in the sitting position are not suitable for these persons. Particular attention must be devoted to the equipment which enables appropriate care (including personal hygiene) for bedridden persons.

With the rise in the standard of living patients in institutions are rightly becoming increasingly demanding. A room with its own bathroom (bath or shower) is the ideal solution. The simple fact of having to share a toilet and bathroom with others is unpleasant for many people. The situation is even worse when it is necessary to go out into the corridor to get to a communal toilet or bathroom, and when the number of users is greater than the capacity of the toilet/bathroom facilities available in a particular ward or on a particular floor of the institution.

Food is a special aspect of living conditions important for the dignity and sense of wellbeing of the patient. It must be suitable both in terms of quantity and quality. Neither should the way food is prepared and served be overlooked. It must be served in an appropriate way, and cooked food in particular must be at a suitable temporary. The conditions in which patients eat must be such as not to offend human dignity. Eating food using cutlery and sitting at the table is a constituent part of the psychosocial rehabilitation programme. In the supply of food and its serving, patients' special needs must be taken into account.

2.3. Justice

2.3.1. Judicial proceedings

In 2000 the Human Rights Ombudsman received 904 applications relating to judicial proceedings, which represents an increase of more than 4 per cent on 1999 and almost 30 per cent of the total intake of applications. Of all the applications received by the ombudsman, by far the most relate to court procedures. The largest share of these relate to civil proceedings: we received 537 applications relating to civil procedures, non-litigious civil procedures and execution proceedings Most applications mention the lengthiness of judicial proceedings.

Courts in Slovenia concluded 2000 with 533,225 unsettled cases. Thus for the second consecutive year court statistics show a smaller number of unsettled cases. A reduction of 5.5 per cent in comparison to the previous year cannot mean that the problem has been solved, but it does point to an encouraging trend which in the long term promises faster judicial protection.

There are an increasing number of measures through which the state wishes to speed up and thus increase the effectiveness of judicial protection. The National Assembly has adopted a wide-ranging amending statute to the Courts Act whose aim is to speed up judicial proceedings and ensure better supervision when a party feels that the court is taking an unjustifiably long time to settle a case. In the past the ombudsman has already drawn attention to the inefficiency of the supervisory complaint under Article 72 of the Courts Act (ZS). With the changes and additions to this act, which entered into force in April 2000, greater possibility of supervision of the work of the judge is provided. This is an encouraging promise of greater effectiveness of the supervisory complaint, which should ensure more rapid judicial proceedings. In the future it will be necessary to prevent the minister of justice having to beg the court president for a reply, as we have noted in dealing with a supervisory complaint in a case of the Piran County Court. Two urgent letters were necessary for the minister to receive a reply from the court after five months.

Likewise, while stressing the importance of a permanent mandate for judges, the ombudsman drew attention to the inadequate statutory regulation of disciplinary responsibility and disciplinary proceedings against a judge. In September 2000 the government brought before the National Assembly a draft law on changes and additions to the Judicial Service Act whose purpose is to ensure the efficient conducting of disciplinary proceedings against a judge in those cases where this is appropriate and necessary.

Speeding up judicial proceedings is also the purpose of the changes and additions to the Court Rules, which define a court backlog and specifies the way in which the judge and court president should act in order that the reasons for court backlogs can be identified and appropriate measures adopted. Practice will show whether exceeding the 18-month limit from reception of a case to handing down a first-instance decision in criminal, civil and non-litigious civil cases and the 6-month limit from the reception of a case at a second-instance court to the handing down of an ap-

peal decision in criminal and civil cases only has a meaning in statistical reporting or whether it will also have the effect of increasing the speed of judicial decision-making. By way of illustration it is worth drawing attention to the second paragraph of Article 286 of the ZKP, which provides that the president of the senate must set a date for the main hearing within at most two months of receiving the bill of indictment, and to the second paragraph of Article 235 of the ZKP, which provides that the judge must call the main hearing within a month of receiving an indictment proposal or private suit. The effect of these two statutory provisions, which should guarantee rapid judicial protection in criminal proceedings, is in practice still negligible.

More expensive execution of judgements procedure

The Execution of Judgements in Civil Procedures and Insurance of Claims Act (ZIZ) entered into force on 15 October 1998. Within three months of its entering into force, executive acts should have been issued so that the actions of execution of judgements and insurance of claims could begin to be done by executors. The fundamental executive act which also more precisely prescribed the conduct of executors during execution (Rules on Performing the Service of Executor - Ur. l. RS, No. 32/99) was issued by the minister several months late. Other preparations, including the appointment of executors, were also delayed. In accordance with the Decree on the Commencement of the Activity of Execution of Judgements and Insurance of Claims by Executors (Ur. l. RS, No. 32/00) executors only began their work on 14 April 2000. This transitional period, which was considerably longer than anticipated by the legislature, certainly did not contribute to speeding up the processes of execution of judgements and insurance of claims.

The direct actions of execution of judgements and insurance of claims, which were previously carried out by court executors employed by the courts, are under the new regulation of the ZIZ carried out by executors appointed by the minister of justice on the basis of an invitation for applications. The executor is appointed for the area covered by a county court, but executors have not been appointed in the areas of every county court in Slovenia. Thus for example there is no executor based in the area of the Idrija County Court, which increases the cost of execution of judgements because of transport costs (mileage) and also perhaps by subsistence allowance resulting from the executor's absence from the area of the county court to which he is appointed.

Under the Executive Procedure Act of the former SFRY, which ceased to be applied in the Republic of Slovenia when the ZIZ entered into force, executive regulations were not necessary for the execution of judgements to be carried out. The ZIZ however requires the passing of several executive acts, of which the Rules on Performing the Service of Executor, with its 139 articles, is particularly extensive. The new statutory regulation of judicial execution of judgements and insurance of claims is therefore less transparent and probably also more complex. More administration is involved, since now the executor is involved in the procedure as well as the court and the parties to the case. Attention is being drawn to the complexity of the new regulation of the procedure not only by parties to proceedings but also by executors and the courts. It is no surprise that the minister of justice, though the 'Rules on performing the service of execution of judgements are sufficiently precise', has also issued special instructions with recommendations relating to the work of executors in carrying out the direct actions of execution of judgements and insurance of claims. Clearly because of the fear of too much 'free private initiative', executors have to write a report on practically every action they carry out and send it to the court. Failure by the court to respond in time can affect the speed and thus the effectiveness of the execution of judgement.

The greatest number of criticisms of the new regulation of execution of judgements relate to executor costs. The executor is entitled to payment for his work and to reimbursement of expenses. In the court order on the appointment of an executor the court also sets the level of advance which the creditor must pay in order to have the execution of judgement carried out. If the creditor does not pay the advance within the fixed time-limit, the court halts the execution of judgement. The court sets a minimum advance equivalent to 150 per cent of the price of the seizure service and other services relating to seizure, while there is no upper limit for the advance. Ljubljana County Court usually sets an advance at a level of 300 per cent - 100 per cent for seizure, 100 per cent for sale and 100 per cent for other expenses. The executor is entitled to a payment of 25 per cent of the price of services even if the seizure is unsuccessful for reasons caused by the debtor or creditor or because the items concerned are not seizable. We have received quite a number of applications complaining that creditors have not paid an advance because they considered the level of the advance demanded to be disproportionate to the claim being enforced.

In a social state access to court must not be prejudiced for economic reasons, and this also applies to the execution of judgements. In particular this applies to the collection of lawful maintenance. A creditor who is a minor must not suffer the consequences if for economic reasons he cannot afford to pay the advance for the executor's expenses. A good example in this connection is the case of an execution procedure for the collection of lawful maintenance in the amount of SIT 13,439 a month: Celje County Court set the advance at SIT 36,000, which is almost three times the monthly maintenance amount. In another case Ljubljana County Court reported to us that in maintenance cases in which seizure has to be carried out, the average advance is SIT 90,000.

Under Article 11 of the Rules on the Tariff for Payment of the Work of Executors and the Reimbursement of Expenses Relating to their Work (Ur. l. RS, No. 32/000), the court may order that the creditor pays the advance in instalments. According to information at the ombudsman's disposal, courts do not make use of this possibility very often. From the explanation sent to us by Ljubljana County Court it is possible to conclude that the court only decides on the payment in instalments of an advance at the proposal of a party to the case, and never ex officio. Neither is the court obliged to advise a juvenile creditor or his statutory representative that he may propose the payment of the advance in instalments. Therefore anyone who does not know the content of the executive act and does not know that he may propose the payment of the advance in instalments does not share in the possibility of the court deciding on this.

The ZIZ does not regulate the case of a creditor being unable to pay an advance for the executor's expenses. Since the provisions of the Civil Procedure Act (ZPP) on exemption from the costs of a procedure are mutatis mutandis applied in the procedure of execution of judgement and insurance of claims, it could be considered that this also covers exemption from payment of an advance on an executor's expenses. However we have discovered that county courts are very restrained in this area. Several applicants have sent us court orders which do not approve a proposal of exemption from payment of an advance on executor's expenses even in cases where the creditor in the procedure of collecting statutory maintenance is a minor (a child). The problem related to the decision on exemption from payment of an advance on executor's expenses is mainly of a financial nature. If the party is completely exempted from payment of the costs of the procedure, the advance on executor's expenses is paid from court funds. But county courts do not have (sufficient) funds to pay advances on executor's expenses, even in execution of judgement and insurance of claims procedures for the repayment of financial claims deriving from statutory maintenance.

The first findings on the use of the new system of execution of judgement and insurance of claims show that perhaps not all the details have been sufficiently weighed up. The adoption and implementation of the ZIZ was accompanied by great expectations that the new regulation would guarantee a rapid and effective execution and insurance procedure. However at least for the time being the most noticeable reaction is to the high advances on executors' expenses. Although it is difficult to give an assessment on the basis of the few months of practice since the executors began work, circumstances nevertheless give the impression that certain changes are going to be necessary in the legislation and other regulations governing this area.

A fair procedure and a just court decision

Every year the ombudsman receives a certain number of applications alleging an unfair procedure and an incorrect, unlawful and unjust court decision. In such cases applications most frequently place the blame for failure on the bias of the court. Judges are accused of acquaintance with the opposing party and its lawyer, corruption, or merely insufficient expertise and disinterest for a proper and lawful decision in the dispute. In some cases where these allegations have been concretised, we have examined accusations of biased judgement and here drawn attention to the respecting of the principle of the equal protection of rights in proceedings before a court. As a rule we have recommended applicants to assert accusations of this type using the legal remedies enabled by the regulations for individual types of procedure. This also applies to legal relationships regulated by a final court decision which can only be annulled, abrogated or changed in cases and under procedure specified by statute.

Though a speedy trial is important, it is often more important for a party to proceedings that the decision taken is correct and lawful. From the point of view of the party it can also be understood that the overturning of a first-instance court decision in appellate procedure and the subsequent returning of the matter for judgement at a court of first instance does not necessarily contribute to the good name of the court, especially if the overturning of the decision is the consequence of insufficiently conscientious and careful work by the first-instance judge. In the court decisions sent

to us by applicants we often find an inadequate explanation. The grounds relating to the decisive facts are not exhaustively stated, or are unclear and do not deal with all the circumstances important for the decision to which the applicant as a party to proceedings drew attention during proceedings. In a specific case the only fair solution or legal decision is one arrived at after carefully considering the various possibilities and after thorough evaluation of all circumstances. For this reason a fundamental part of an equitable decision is exhaustive (not long or long-winded) argumentation which proves that various arguments have been considered.[1]

Applications which express a critical attitude to court decision-making give the impression that solutions are not always the ones that the judge himself and one or other party to proceedings would accept as being the most equitable. The judge must be impartial, i.e. independent in relation to the parties to proceedings. He must guarantee the parties a fair procedure for taking evidence and a fair hearing. He must decide in accordance with his conscience and his interpretation of the facts, taking into account the prevailing understanding of legal regulations. The decision must contain clear grounds, in a language which is comprehensible to the parties. Only with quality court decision making can a party to a fair procedure expect an equitable court decision.

A trial within a reasonable period

1. The consequence of a larger number of settled cases at courts of first instance is also clearly longer waiting for an appeal decision. The expected time for the settling of a civil case is approximately a year and a half at Maribor Higher Court and more than a year at Ljubljana Higher Court.

2. In the 1998 Annual Report we emphasised that the Supreme Court should give priority to requests for protection of legality lodged in criminal proceedings by convicts serving a sentence of imprisonment. They have to wait two years and more for a decision on the request they have filed. Waiting for a decision, when convicts have perhaps already served a considerable part of their prison sentence, reduces the meaning of this extraordinary legal remedy. It is true that the third paragraph of Article 422 of the ZKP provides that a court of first instance may with regard to the content of a request for protection of legality order that the execution of a final decision is deferred or interrupted, but in practice there are practically no such cases. Perhaps because the majority of requests lodged are unfounded. However it should not be overlooked that convicts who lodge a request for protection of legality are right to expect a decision within a reasonable time when this could have some importance for the serving of a sentence of imprisonment. Protracted decision-making on filed requests thus causes dissatisfaction among convicts, and also unrest and nervousness, which does not make conditions easier in penal institutions.

3. In 2000 the civil division of the Ljubljana County Court moved to a new location, which was the reason for an additional hold-up in its regular and current business. Although the move itself only took three days, as the court president explained, ‘each judge needed some time to reorganise his files (each judge has around 700) and create conditions for himself at the new location’. Thus a more than three-month delay in the drawing up of a judgement in writing was explained by the move of the civil department to a new location. At the same time the court president was of the opinion that ‘it is a lesser evil if a judge is late in writing a judgement than if he writes an insufficiently considered and inadequate explanation because he is pressed for time’. In a five-year-old maintenance dispute we received the explanation that the judge had not been able to fix the hearing because ‘she would not have been able to say in what room the hearing would take place before it was known when the move was going to happen’. The move was planned for April 2000 although it actually took place in the summer, during the court vacation.

4. In execution proceedings the court must proceed quickly. In the execution case under reference number I 744/91 of the Šentjur County Court, the debtor lodged an objection to the execution order on 5 February 1992. However he had to wait until 12 August 1999 for the order ruling on his objection to be issued - in other words more than seven and a half years. Meanwhile three judges took turns to deal with the case: sick leave, maternity leave, transfer of a judge, settling other civil and non-litigious civil cases were the reasons for the explanation of the court president that the length of the procedure was ‘the consequence of objective problems of the insufficient staffing of this court in past years or the constant alternation of judges’.

[1] *Dr Janez Kranjc, ‘Slovenski pravnik na začetku tretjega tisočletja’, from the opening paper at Dnevi slovenskih pravnikov, Pravna praksa No. 29-30/2000*

The explanation relating to execution proceedings under reference number IV I 1369/93 of Maribor County Court was rather amusing: the court had 'tried to carry out seizure via an executor' but the executor was unsuccessful 'since he was prevented by the wife of the debtor'. The court in fact overlooked the statutory power enjoyed by the person carrying out the procedure to remove a person obstructing execution, and depending on the circumstances of the case to request assistance from the competent administrative affairs body.

5. Again and again we are finding that standstills occur in judicial proceedings as a result of inefficient work in the courts in relation to court experts. Sometimes courts set experts unrealistic deadlines for the drawing up of expert opinions, and it is therefore not surprising that these deadlines are exceeded. It is a different matter, of course, when the court takes into account the difficulty of a case but despite this the expert fails to carry out the work entrusted to him within the time limit given. We have even dealt with a case where not only did the expert fail to do the work entrusted to him, he failed to return the file to the court despite being sent several urgent letters. Thus the case came to a standstill, since without the file the court could not continue the proceedings. We find that as a rule courts are not using the possibilities offered by the ZPP for the disciplining of experts. A judge can fine an expert up to SIT 300,000, while the minister of justice can dismiss a court expert who does not perform his functions regularly and conscientiously.

   In proceedings under reference number VI P 1356/93 we recommended to Ljubljana County Court that it should propose the dismissal of an expert who through her conduct caused a major delay in the proceedings. The court president replied that faced with the threat of being reported to the Ministry of Justice the expert 'nevertheless reacted and drew up an expert opinion.' At the same time she stated that she would propose the dismissal of the expert the next time this expert was more than a month late in drawing up an expert opinion without an excuse.

Breaching the statutory deadline for writing a judgement in a social dispute

An applicant complained that the Labour and Social Court in Ljubljana completed the main hearing in his social dispute (reference number Ps 1216/94) on 28 September 1999, but that the court decision was not handed to him until 24 February 2000. The third paragraph of Article 321 of the ZPP provides that the judgement must be drawn up in writing and handed to parties within 30 days of the conclusion of the main hearing. The applicant had to wait almost five months to be handed the court decision, which means an exceeding of the statutory deadline several times over.

In reply to our inquiries the court answered that the 30-day deadline for the serving of a court decision is an instructive deadline. It is true that it is a deadline whose expiry does not have the consequence of preclusion, since the court can still carry on procedural activity despite the delay. However the important thing is that it is a statutory deadline set by the ZPP and that breaching this deadline simultaneously means violating this statute. A statutory deadline cannot be extended. Thus, citing the volume of material in the file and the fact that there were ten defendants (the court dismissed the case against nine of them) cannot be justifiable grounds for a delay. Also unimportant is the statement that after receiving an urgent letter from the applicant the court 'drew up the verdict without delay', since the issuing of a court decision and serving it on the party concerned do not require either a proposal or an urgent letter from the party concerned. Sufficient attention is drawn to this obligation of the judge by the procedural regulation itself and the deadline stipulated by law.

Particularly concern for regular and current court decision-making is prompted by the fact stated in the court's reply that every judge at the social department of the Labour and Social Court in Ljubljana has approximately 700 cases pending. It is not surprising that the consequences of such over-burdening of judges are mainly suffered by parties, when they have to wait a long time for a decision in proceedings which can have an important influence on their social position.

More judges for faster justice?

Despite all the state's efforts for faster and more efficient court business many courts in Slovenia are still faced by a large number of unsettled cases which undoubtedly will not be settled within deadlines even in the next few years, and which the change of court rules does not consider a court backlog.

The responses of court presidents to our inquiries show that the duration of judicial procedures is also linked to difficulties in the area of judicial and court administration, and in particular with the shortage of judges. At the end of November 2000 only 52 of the 66 judge's positions at Ljubljana County Court were occupied. Because five judges were on maternity leave, less than 70 per cent

of the positions were actually filled. Thus we cannot be surprised that the first date fixed for the main hearing in proceedings relating to an action filed in 1994 was not until September 2000 and that an action filed in 1995 will probably not come up before the end of 2001. In January 2001 the president of Sežana County Court reported to us that only two of the four judge's positions at the court were filled. A third judge, 'taking into account the duration of the appointment procedure, cannot be expected within six months; funds have not been provided for a fourth judge'. The president of Jesenice County Court reports major staffing difficulties. Some years ago there was a period in which only one of the five judge's positions at this court was occupied. There are currently three or four judges working at the court and the court president considers that 'we will never get rid of the case backlog … since for various reasons we cannot even cope with the influx of cases, no matter how hard we try!' At Murska Sobota County Court the judge has over 600 cases pending, while under judicial council criteria the expected extent of a judge's work is 200 cases. Ajdovščina County Court used the shortage of judges to explain why a non-litigious civil proceedings proposal lodged in 1999 will probably come up after four and a half years, i.e. after June 2003.

The above review naturally does not aim to be exhaustive. It is merely an illustration which confirms that there are also reserves in the area of judicial and court administration. The first provides the general conditions for the successful exercising of judicial authority, including staffing conditions, while the second provides conditions for its regular and efficient implementation.

The right to a trial without undue delay under Article 23 of the Constitution and the right to a trial within a reasonable time under Article 6 of the ECHR bind the state to regulate the judicial system in such a way that it conforms to the demands set, including the obligation of a trial within a reasonable time. The lengthiness of proceedings, when a court only begins to hear a case after four or more years, can in no way be blamed on the plaintiff or proposer. In such cases the reasons for the delay and the wait at the very beginning of proceedings lie exclusively with the state. We have already emphasised several times that an individual seeking protection of his right or legally protected interest before court is not interested in staffing problems and other difficulties of the court which mean that a decision will not be made within a reasonable period. He rightly expects the state to act in such a way that a fundamental human right as important as the right to judicial protection will not be violated. Excessive backlogs in judicial decision-making represent a major danger, in particular with regard to respect for the rule of law.

Still no Free Legal Aid Act

Article 2 of the Constitution states that 'Slovenia is a state governed by the rule of law and is a social state'. The right to judicial protection includes the right to access to court. The state is bound to provide the possibility of actual and effective exercise of the right to judicial protection to everyone, irrespective of his financial status and social status. Circumstances of a financial or social nature may not be an obstacle to the realisation of rights guaranteed by the Constitution, including the right to judicial protection. It is not enough for this right to be acknowledged theoretically, its actual and effective exercise must be guaranteed. The right to equality before the law and the prohibition of discrimination require that the level of court costs should not be an insurmountable obstacle to access to the court for an individual whose financial status is poor.

In August 2000 the government established the text of the free legal aid bill and sent it before the National Assembly. Before this, in October 1999, a member of parliament had tabled a bill on the substitutional settlement of disputes and free legal aid which covered the same or similar areas. Because the legislative procedure for this bill is not yet complete, the president of the National Assembly has held back the government's free legal aid bill. At the same time it is clear that the first bill has become bogged down in parliament. It is the state's obligation to rectify this situation as soon as possible so that an act can be adopted which will establish a full and effective system for providing free legal aid for individuals who lack sufficient material resources.

Given the state's delay in providing free legal aid, the rules adopted in November 2000 by the City Council of the City of Ljubljana on the provision of free legal aid for citizens of Ljubljana is particularly welcome. This is a model which would be worth following in other local communities.

A judge waited for the lapse of the right to prosecute before writing a judgement

Particular discontent to injured parties is caused by lengthy criminal proceedings, especially when the right to prosecute lapses. Requests and urgent letters from injured parties to speed up the procedure and have it dealt with in proper time are in many cases in vain and meet no response. Particularly worth mentioning is the surprising and worrying conduct of a judge at Slovenska Bistrica County Court, who in criminal case reference number K 18/96, despite other possibility,

acted in such a way that the right to prosecute lapsed during the period in which he should have written the judgement.

Slovenska Bistrica County Court received the charge in the applicant's case on 1 March 1996. In it the prosecutor accused the two defendants of the criminal offence of jointly causing minor bodily injury on 21 February 1994. Because the court did not try the case, the applicant, as the injured party, repeatedly proposed the speeding up of the procedure. On 8 April 1997 he received the reply from the president of Slovenska Bistrica County Court that by the summer of 1997 the court would have resolved its staffing difficulties and that this would enable his 'indeed already rather old case' to be dealt with. This assurance came to nothing and in the middle of 1998 the applicant requested the intervention of the ombudsman. The court then explained the delay in trying the case by citing staffing and other difficulties. It reported that the judge who had taken on the case on 1 August 1997 expected to call the trial in September 1998. This assurance also came to nothing. The applicant pointed out that the trial had not been called by March 1999. The court president explained this by citing the excessive workload of the judge and explained that the trial had been called for 15 April 1999.

At the end of 1999 the applicant informed us that by then the trial had already been called five times but had never taken place because of the non-appearance of the defendants. Later, when the court had managed to ensure the presence of the defendants, the procedure came to a standstill again because of a repeated request for the exclusion of the judge. This the trial was called again, this time for 26 January 2000, when less than a month remained before the absolute limitation of criminal prosecution. On that occasion the court decided on the matter and handed down a judgement. But instead of the judge quickly writing up the judgement and seeing that it was served in good time, which would still have been able to prevent limitation, he merely issued an order on the halting of proceedings, on the grounds that '… before this judgement could be drawn up the absolute limitation of the criminal case in question came into effect…'. Thus the judgement was never written, since the judge did not fulfil his obligation. The criminal proceedings ended with the formal statement that criminal prosecution was no longer admissible because on 21 February 2000 six years had elapsed since the alleged committing of the criminal offence. There is no doubt that the defendants must have been very content with this outcome, and the injured party considerably less so, since it has left him a bitter aftertaste and the feeling that the state has let him down and failed to protect him as the victim of a criminal offence.

Court decision with mistake

With a judgement on 11 November 1997, reference number K 84/95, Celje County Court found the applicant guilty and pronounced the conditional sentence that the determined sentence of seven months' imprisonment would be pronounced if within eight months he failed to pay the injured parties the pecuniary claims awarded. The operative part of the judgement states that the defendant is liable to pay one of the injured parties 'DM 6000 in tolar equivalent on the day of payment together with interest from 23 April 1992 to the day of payment'. Such a decision on a pecuniary claim is not sufficiently definite and precise. Since it is not clear whether the awarded interest is calculated from the amount in the foreign currency, from the tolar equivalent of the foreign currency, or perhaps even in some other (combined) manner, various interpretations of the extent of the convicted party's liabilities are possible.

When a criminal court decides on a pecuniary claim, this is an 'adhesion procedure' where a civil procedure is joined to a criminal procedure. In an adhesion procedure the court also decides by means of a criminal judgement on the damages claim. For the injured party this is a favourable arrangement, since he does not have to pay court fees, as is almost always the case in civil procedures. Of course for (compulsory) execution only a court decision stating the precise extent of the debtor's liabilities is appropriate. Given the conditional sentence handed down, it is even more important for the convicted party that he can see from the operative part of the judgement exactly what the liabilities are he must meet so that the conditional sentence is not revoked.

The applicant did not pay the awarded pecuniary claims. As part of his defence for this he used the insufficiently exact and precise operative part of the decision on the pecuniary claim, alleging that he had not paid his liabilities because he was unable to understand how much he was actually obliged to pay under the final criminal judgement. It should be acknowledged that an allegation of this type by the applicant is not entirely without basis. At the same time, as a result of non-fulfilment of the additional condition that he pay the pecuniary claims, he is threatened with revocation of the conditional sentence. In a state governed by the rule of law it is difficult to connect

the revoking of a conditional sentence with the failure to fulfil the operative part of a judicial decision which is less than entirely intelligible to the convicted party. Nevertheless the court informed us that the applicant is threatened by revocation of the conditional sentence 'for the payment of all unpaid statutory default interest.'

We consider that a convicted person should not suffer harmful consequences if the extent of his liability stated in the operative part of a criminal judgement is not sufficiently clear and intelligible. Therefore in our intervention we stressed that the judge must be conscientious and careful in his work when fixing the content of the operative part of the judgement. In a state governed by the rule of law we cannot accept the position that the 'possible ambiguity' of a decision on a pecuniary claim is the business of the parties to judicial proceedings who 'had the possibility of appealing against this and remedy all ambiguities'. Such a response from the court president overlook the fact that appeal is the right not the obligation of a party to criminal proceedings. In fixing the content of the operative part of a court decision a judge cannot and must not rely on the additional supervision of the correctness and legality of an issued decision which can take place with the lodging of an appeal. Probably the (additional) proposal of the court president that the convicted party and the injured party 'themselves agree on the level of the claim or the liability of one to the other' is not exactly useful. Such agreement is superfluous and unnecessary since the court has already decided on the relationship in dispute (the damages claim) with the authority of the judicial branch of authority.

A final criminal judgement of which the operative part on a pecuniary claim is insufficiently clear does not strengthen the reputation of the judiciary. An operative part of a judgement of this kind is particularly worrying if it means for the convict the risk of revocation of a conditional sentence because of failure to meet liabilities stipulated by the conditional sentence. The case in question shows that such difficulties can occur if the judge is not sufficiently conscientious and careful when formulating the operative part of a court decision. We feel that the mistake identified in the judgement handed down in the criminal proceedings against the applicant relates to one of the aspects of the right to judicial protection under Article 23 of the Constitution or the right to a fair trial under Article 6 of the ECHR.

2.3.2. The Public Prosecutor's Office

Do public prosecutors need greater powers in relation to the police?

On 27 October 1997 the Office of the Criminal Investigation Service of the Internal Affairs Administration Ljubljana sent the District Public Prosecutor's Office in Ljubljana a crime report filed in 1996. On 17 March 1998, after studying the case, the public prosecutor sent the same criminal investigation service office a request for completion of the filed crime report. Because he received no reply, the sent several urgent letters to the criminal investigation service administration: one in 1998, two in 1999 and one in 2000. Thus the public prosecutor has urged settlement of the matter four times. Meanwhile the criminal investigation police is its fourth year of 'completing' the crime report. The four urgent letters were clearly ineffective and unsuccessful. As a result, the applicant, who claims to be the victim of a criminal offence committed by the persons who are the subject of the report, is now in his fourth year of waiting for a decision from the public prosecutor on the filed crime report.

If the data in a crime report does not provide a sufficient basis for a decision, the public prosecutor may request internal affairs bodies to collect the necessary information and carry out other measures in order to detect the criminal offence and the perpetrator. The second paragraph of Article 161 of the ZKP talks explicitly in this connection about the 'request' of a public prosecutor, which means that the criminal investigation police are obliged at least to collect the necessary information and take other measures within a reasonable time and to notify the public prosecutor of their findings. Only in this way is it possible for a public prosecutor to take the necessary steps in relation to detecting criminal offences for which the perpetrator is prosecuted ex officio, the tracking down of the perpetrator, and the direction of pre-trial procedures.

The fact that the public prosecutor has to send four urgent letters without receiving an appropriate reply from the criminal investigation service points to a contemptuous attitude towards the public prosecution service, and also towards the injured party, who understandably is already losing faith in the state governed by the rule of law. We therefore asked the District Public Prosecutor's Office in Ljubljana to explain whether a public prosecutor, when requesting completion of a crime report, sets the internal affairs body a deadline in which to reply. Public prosecutors are not expressly empowered by statute to set the criminal investigation police a deadline for the fulfilment of a demand. Such an entitlement is however indicated by the mere text and intention of the sta-

tutory provision which authorises a public prosecutor to quickly and effectively collect all necessary information with the help of internal affairs bodies so that he can decide whether he should request an investigation. Thus a public prosecutor may at any time request internal affairs bodies to inform him what steps they have taken; they, on the other hand, are obliged to reply to him without delay (second paragraph of Article 161 of the ZKP).

A rapid response to a demand for completion and effective work by the criminal investigation police in general have a significant influence, at least indirectly, on the work of the public prosecutor's office and the courts. A pre-trial procedure which is in its fourth year of waiting for the criminal investigation police to reply to the demand of a public prosecutor, is a fairly poor promise that the state protects the victim by imposing a criminal sentence on the perpetrator of a criminal offence.

The response of the District Public Prosecutor's Office in Ljubljana derives from the view that the ZKP and other regulations do not contain a provision on the basis of which the prosecutor's office could set internal affairs bodies compulsory deadlines within which to carry out the tasks requested. Despite this the prosecutor's office does sets deadlines within which it expects replies and completions of reports or criminal information. This deadlines however are not set by date: requests from the prosecutor's office usually ask the criminal investigation police to complete the information in the shortest time possible. Such setting of deadlines is not contained in every request for completion of information, but mainly when it is necessary to collect specific information or carry out other measures permitting the institution of criminal proceedings in good time. The prosecutor' office checks by means of urgent letters at appropriate intervals what steps internal affairs bodies have taken in relation to the completions of information requested.

The number of urgent letters necessary in order for a public prosecutor to receive the requested completion of a report or criminal information from internal affairs bodies indicates the ineffectiveness of the power that the public prosecutor has in this respect under the current regulation of the second paragraph of Article 161 of the ZKP. More effective would be a regulation expressly authorising the public prosecutor to set a deadline within which internal affairs bodies must respond to a request necessary information and carry out measures in order to detect a criminal offence and the perpetrator thereof. A further contribution to greater effectiveness would be the possibility of a disciplinary sanction against an authorised officer in the case of an unjustified delay and breach of deadline for the completion of a report or criminal information.

We consider that the legal system should provide the possibility of measures so that the office of the criminal investigation service complies with a request from a public prosecutor within the set deadline, or at least within a reasonable time frame. For this reason we proposed to the minister of justice that the ZKP, perhaps Article 161 thereof, be appropriately amended by the addition of an explicit authorisation for public prosecutors to set internal affairs bodies a deadline within which they are obliged to respond to their requests.

The minister sent our proposal to the Public Prosecutor's Office of the Republic of Slovenia to obtain an opinion. The General Public Prosecutor assessed the proposal as 'very well-founded' and at the same time proposed that the last sentence of the second paragraph of Article 161 of the ZKP be amended by the addition of a provision on a deadline. The minister reported that the proposed addition to the provision of this article with our substantiation and in the wording proposed by the Public Prosecutor's Office would be assigned to the working group for the preparation of changes and additions to the ZKP with the recommendation that it be taken into account during the preparation of the bill.

Notice to the applicant of an application addressed to a public prosecutor

On 11 August 1998 an applicant reported a 'prohibited use of land' to the District Public Prosecutor's Office in Ljubljana. The public prosecutor who dealt with the case assessed that there was no basis for prosecution. She ordered the file to placed in the archive since she considered the applicant's case to be finally settled. She did not however notify the applicant who had filed the report of this decision, taken on 28 December 1998. It is therefore no surprise that in May 2000 the latter complained to the Human Rights Ombudsman that the public prosecutor's office had not taken action.

In response to our intervention the manager of the District Public Prosecutor's Office in Ljubljana explained that in the case such as the applicant's the decision to inform (a party) in writing is left to the judgement of the public prosecutor dealing with the case. In any case the applicant could

have obtained information on the case at the public prosecutor's office 'within the framework of the prosecution office's duty service for customers'.

The state exists for citizens and not vice versa. State bodies and state officials, including functionaries, must when on duty and in their work respect the rights of the individual. Thus a state body is bound to explain every decision to an applicant, including the grounds for the decision. In the case of lack of jurisdiction of state bodies, the applicant must be given a suitable explanation of this circumstance and directed to the competent body. This derives from the principle of a state governed by the rule of law and the social state, since the individual often with good reason does not know his way around in the labyrinth of regulations and state bodies.

An applicant may not even be entirely familiar with the powers of the public prosecutor's office cannot be aware of the practice whereby it depends (merely) on the judgement of a public prosecutor whether the applicant will or will not be informed of a decision. If nothing else simple courtesy requires that the applicant receive an appropriate reply from the state body to which he addressed his application (even if mistakenly), and within a reasonable period of time.

In an opinion addressed to the general public prosecutor of the Republic of Slovenia we expressed our belief that a public prosecutor should reply to every reasonable application with which an applicant exercises his rights or legally protected interests, irrespective of whether his believe that it is a case which comes under the jurisdiction of the public prosecutor's office is erroneous. We proposed that the general public prosecutor should review the practice which permits the archiving of a finished case without informing the person who began the procedure through his application. At the same time we asked for a position on whether it might not be appropriate to amend, by means of a suitable provision on replying to received applications, the regulation governing the work of public prosecutor's offices.

The general public prosecutor followed our proposal, acquainting all managers of public prosecutor's offices with it and recommending that they discuss the matter and adopt decisions which will contribute to improving the situation in this area.

Careful establishing of the circumstances of whether the police lawfully used physical force

During the Human Rights Ombudsman's visit to Koper Penal Institution a detainee complained that on 20 May 1999 police officers from Koper Police Station who were bringing him into custody unjustly used physical force against him. He alleges that at the entrance a police officer hit him in the face, neck and shoulder with his fist, and that when he fell to the ground he kicked him and choked him. He alleges a further physical attack at other door leading into the closed section of the penal institution.

During our visit to the institution we obtained an official note of the statement of a warder who witnessed the incident. In a statement given seven days after the incident the warder wrote that the police officer 'reacted very aggressively' to the applicant spitting at him 'by giving him a shove which made him fall to the ground and dragging him away from the door; the police officer kicked the detainee several times and placed his shoe on his neck.' The warder later added the statement in which he confirmed that the police officer had kicked the detainee. The prison doctor found that the during this incident the detainee had received abrasions on both knees, on the left hand on the outer side of his fingers, on the right shoulder, on the right side of the face, on the left and front of the neck, and a 'suffusion' on the right side of the face. These are injuries which can confirm the detainee's allegations.

We proposed to the MNZ that the detainee's case be carefully investigated, above all from the point of view of the justifiability of the use of forcible means. The detainee's complaint to the police has not received an appropriate reply.

In the procedure which followed a police inspector held two interviews the warder who was an eyewitness to the incident. The police's official note on the first interview states that three months after the incident the guard 'no longer remembers the incident well', but that 'the detainee suddenly found himself on the ground, where the police officer is supposed to have 'pushed him with his foot in the region of the neck'. In relation to the second interview two months later the police's official note states that the warder had a 'poor view' and saw that 'the police officer was swinging his legs but he could not define this as deliberate kicks'. The official note also states that in his first statement after the incident, 'when citing the aggressive reaction of the police officer and the

kicks, the warder did not mean literally, or that the police officer literally placed his shoe on the detainee's neck.' The allegations made by the warder in his first statement, given immediately after the incident, are thus 'actually more personal conclusions on the basis of an inadequately perceived (seen) details in the context of the incident as a whole'.

Given the evidence thus collected, the Koper Police Administration determined that the suspicion of a criminal offence was unfounded and that there was therefore no basis for filing criminal information against the police officer. Neither did the police identify circumstances which would warrant the institution of disciplinary proceedings. It considered that in the use of physical force the police officer had acted lawfully and professionally. In response to our doubts about the findings and conclusions the police explained that 'it had done everything within the framework of its powers and instructions to clarify the case'.

The applicant also sent a written application called a 'complaint/denunciation to the District Public Prosecutor's Office in Koper. However the public prosecutor did not treat the received application as a denunciation. Therefore when deciding that in the conduct of the police officer there were no signs of the criminal offence of violating human dignity through the abuse of an official position and official rights under Article 270 of the KZ, he did not advise the applicant of his right to initiate a prosecution himself. In response to our intervention the manager of the District Public Prosecutor's Office in Koper pointed out that the signed statement of the warder on the incident in question differed in essential circumstances from his two statements to the police inspector. Ignoring these two notes completely would mean that the public prosecutor's office did not believe the inspector who recorded the statements.

In our reply to the manager of the public prosecutor's office we emphasised that the purpose of our intervention was not that the public prosecutor would 'completely ignore' the police inspector's notes on his interview with the warder. Neither is it a question of 'not believing' the inspector who recorded the statements of the eyewitness to the event. We believe however that critical judgement is necessary for every piece of evidence, including the report of the police inspector on his interview with the guard. It is not impossible that a police inspector could have an interest in recording the statement of a witness in such a way as not to incriminate too much another member of the police. By this of course we are not giving a negative value judgement of the record of the statement in the case in question. We do wish however to draw attention to the fact that even this piece of evidence requires conscientious and careful judgement, including comparison with other documents and evidence. The report of the police inspector was made later, at a time already somewhat removed from the incident. The person whose statement is recorded did not see the record of his statement, nor did he read it or sign it. At the same time there are two statements in the collected material which the warder confirmed with his signature. At least one of these was given directly after the incident, which is not a negligible consideration when assessing the authenticity and importance of evidence. The more time passes since an incident took place, the more likelihood there is that a later statement is less reliable for this reason. At the same time there are also more possibilities for influencing a witness to the incident.

There is no doubt that exceeding of police powers does occur. Including, or particularly, in relation to persons like the applicant, in relation to whom the public prosecutor cites a large number of requests for investigation and filed charges. We believe that even the denunciation of the applicant is entitled to conscientious and careful treatment, irrespective of the possibility, to which the public prosecutor drew attention, that its only purpose is to 'eliminate the police officers' who deal with his conduct.

A police officer only has the right to use physical force when performing police functions and taking into account the principle of proportionality. He does not have the right to use physical force, for example as revenge and as punishment because a detainee spits at him. We thus proposed to the district public prosecutor's office that it deal with the applicant's denunciation again, taking careful account of all the material available in the matter. The public prosecutor's office later reported simply that it would not institute criminal proceedings against the police officer but that it had informed the applicant that he can himself initiate a criminal prosecution.

2.3.3. Violations proceedings

In 2000 we received 36 applications dealing with violations proceedings. Once again this year we were able to see that violations judges are faced by an enormous amount of work which under the given conditions is effectively unmanageable. Perhaps this is a reason why violations judges issue decisions on violations in summary proceedings although the conditions required by Article 159 of

the ZP are not always met. This at least we were able to make out on the basis of some applications relating to this. The number of cases coming before violations judges could be reduced by the implementation of the provisions of Articles 241a and 241b of the ZP, which allow an authorised official to issue the perpetrator of a violation with a warning instead of filing a proposal for the institution of violation proceedings or issuing an on-the-spot fine. An authorised official issues a warning of the violation committed is of petty importance and if he considers a warning to be a sufficient measure given the importance of the act. This new possibility, introduced by the Act Amending the General Offences Act (Ur. l. RS, No. 31/00), will begin to be applied on the day that a government decree containing detailed provisions on the methods and forms for the issuing of warnings, keeping records, and setting up and keeping prescribed common uniform records enters into force. Although the act does not set a deadline for the issuing of this executive regulation, it should be issued as soon as possible.

Senate of the Republic of Slovenia for Violations cannot cope with the increasing influx of cases

In response to our inquiries about the time taken to deal with cases, the Senate of the Republic of Slovenia for Violations reports that the influx of appellate matters in the last two years has more than doubled though the number of judges and administrative personnel has remained the same. The Senate judges have so much work that for a long time it has been impossible to manage the great influx of cases. There are 17 judge's positions at the Senate, although in 2000 three positions were vacant for a long time. As a result of staffing difficulties, an increased influx of cases and the increasing difficulty of cases, the position is worsening from year to year. Thus it is no surprise that in many cases violations proceedings fall under the statute of limitations even while being dealt with at the Senate. Judges at the Violations Senate settled 10,676 cases in 2000, of which as many as 5,810 limitation decisions were issued. The backlog of unsettled cases increases from year to year and in an increasing number of cases violations proceedings fall under the statute of limitations.

The solution is clearly not to be found in yet more changes and additions to the ZP. The area of violations badly needs new systemic regulation, and judicial competence should only be provided when the protection of human rights requires a criminal law hearing.

2.3.4. Attorneys-at-law

Every year we receive several hundred applications connected in one way or another with the work of attorneys-at-law. The great majority of lawyers respond quickly and correctly to our inquiries and requests for explanations. Without such cooperation the work of the ombudsman would be much more difficult, since contact (whether written or telephonic) is often the most effective route to the information which we need, particularly in the case of decisions on applications in the field of justice.

Ineffective disciplinary commission of the Chamber of Attorneys

Praise is due to the efficient responses from the management of the Chamber of Attorneys of Slovenia - the president and the management board. However the work of the first-instance disciplinary commission at the Chamber, which conducts proceedings and decides in disciplinary cases against an attorney, except in cases where this competence is entrusted to the disciplinary court, is still a cause for concern.

It appears that cases before the disciplinary commission do not move, as though there were no real desire to arrive at a decision in disciplinary proceedings against an attorney. This can lead to the lapse of the right to prosecute for a disciplinary violation, and more importantly causes mistrust among parties and the users of attorneys' services. These rightly expect the professional organisation of attorneys to act quickly and effectively and in this way protect the reputation of attorneyship and Slovene attorneys and at the same time give satisfaction to the person concerned.

It is a matter of urgency that the Chamber of Attorneys speeds up disciplinary proceedings and ensures the effective work of disciplinary bodies, particularly the first-instance disciplinary commission. The Chamber of Attorneys is itself finding that violations of attorney's ethics and the charging of services contrary to the attorneys' price list are increasingly frequent. The disciplinary bodies of the Chamber of Attorneys thus have plenty of work, something also confirmed by the numerous applications to the ombudsman which allege slowness, lack of interest and inefficiency on the part of the Chamber of Attorneys in dealing with reports or proposals from parties to institute disciplinary proceedings against an attorney.

The management of the Chamber of Attorneys informed us that in 2000 the disciplinary bodies had been reconstituted and that rules for their work had been adopted. Thus in December 2000 the Chamber assured us that the disciplinary bodies had 'now begun to work intensively on their

cases'. We expect shortly to receive a response to this assurance from applicants who are impatiently waiting precisely this conduct from the disciplinary bodies of the Chamber.

Prison for a lawyer?

In the 1997 Annual Report we mentioned a case where a public prosecutor had presented an indictment accusing an attorney of the criminal offence of breach of trust under Article 220 of the KZ. On 29 November 1993 an insurance company paid an attorney the sum of SIT 1,448,899.94 for his client. The attorney retained the money instead of handing it over to his client. The unjustified retention of pecuniary funds which an attorney has received on behalf of a client is also a serious infringement of duty in the practice of law.

The court in this case determined priority treatment for the criminal case against the attorney. Despite this decision, however, a lengthy deadlock occurred because the court was not able to ensure the defendant's presence for the successful implementation of criminal proceedings. In this connection the injured party as applicant drew attention to what for him was an incomprehensible circumstance: that the defendant could not be located for criminal proceedings but simultaneously was still representing parties in proceedings before other courts as counsel. The non-trial panel rejected the proposal of the president of the panel to order custody on the grounds that in deciding on custody it must always be taken into account whether it is possible to ensure a defendant's presence by means of a more lenient measure if the same purpose can also be achieved in this way. The court several times ordered the forced production of the defendant but no production order was executed. The police explained that the defendant was not to be found at either of the two addresses given to the police by the court. Because the production orders were unsuccessful the court requested the police to look for the defendant and to report his address. Later the court nevertheless succeeded in serving a summons to trial on the defendant and in October 2000 sentenced him to ten months' imprisonment. The judgement is not yet final but for the time being the injured party is satisfied and hopes that he will perhaps get the money paid on his behalf by the insurance company back in 1993.

2.3.5. Notaries

Informing the disciplinary prosecutor of the receipt of a complaint about a notary

The disciplinary prosecutor of the Chamber of Notaries of Slovenia requests under Article 119 of the Notaries Act the institution of disciplinary proceedings if he is informed of facts and evidence on the basis of which it is reasonable to suppose that a notary or notary candidate has violated the provisions of the Notaries Act or injured the reputation of notaries. Naturally the disciplinary prosecutor may request the institution of disciplinary proceedings if he is merely informed of a specific case of alleged improper conduct by a notary. We therefore requested an explanation from the Chamber of Notaries of the procedure followed when the Chamber receives a complaint about a notary.

The Chamber of Notaries explained that a complaint about the work of a notary addressed to the disciplinary prosecutor of the disciplinary body is immediately forwarded to the disciplinary prosecutor for consideration. Complaints addressed to the Chamber of Notaries on the other hand are considered by the executive committee, which decides whether they are well-founded and on this basis decides whether to propose the institution of disciplinary proceedings. If a complaint about the work of a notary is not well-founded the executive committee responds to the complainant in writing. As a rule it also advises him that if he does not agree with the assessment of the executive committee he may also submit an initiative to the disciplinary prosecutor to judge whether the conditions exist for the filing of a request to institute disciplinary proceedings.

Point 15 of Article 19 of the Statute of the Chamber of Notaries provides that the executive committee shall consider complaints relating to the work of a notary or notary candidate and propose the institution of disciplinary proceedings. We consider that this wording of the statute cannot be interpreted as meaning that the executive committee shall only inform the disciplinary prosecutor of a received complaint when simultaneously proposing the institution of disciplinary proceedings. The institution of disciplinary proceedings is in fact requested by the disciplinary prosecutor and therefore he has the main competence in this area within the framework of the Chamber, and thus also in relation to the executive committee. The disciplinary prosecutor may only act if notified of a complaint and acquainted with its assertions and evidence. We therefore proposed that the executive committee of the Chamber of Notaries should inform the disciplinary prosecutor of every complaint received about the work of a notary or notary candidate or inform the complainant that he may do this himself. Only in this way will a final decision on whether a complaint or initiative for the institution of disciplinary proceedings is well-founded by left to the competent body of the Chamber, i.e. the disciplinary prosecutor.

2.4. Police procedures

In 2000 we received 86 written applications relating to police procedures, as opposed to 78 in 1999. Thus the figure has grown by 10 per cent. Most applications concerned police powers, and also the possibilities of complaint about police procedures. Applications relating to the imposition or collection of on-the-spot fines (issuing of a payment order, payment of half the fine or objection within eight days) were relatively numerous.

In the case of allegations of unlawful conduct by police officers we request a report from the general police administration. We note that the time taken to receive a reply from the police is increasing, and that we do not always receive replies within the deadlines set. As a rule we expect a reply within 30 days, which (by agreement with the police) we consider a suitable time for the police to collect material, establish the decisive facts of the case and reply to our inquiries.

An increasing number of complaints relate to the use of coercive measures: physical force and securing devices (handcuffs). The applications point to a relatively frequent use of handcuffs, which gives the impression that the principle of proportionality is perhaps not always entirely respected. This also applies to restriction of liberty (arrest, conveyance to a police station, detention of up to 24 hours). We received an above-average number of complaints of this type in a specific period about the conduct of police officers from Ljubljana Bežigrad Police Station. Particularly in relation to the detention of a person disturbing or threatening public order, we emphasised that there is no legal basis for continued detention if the person calms down after being conveyed to the police station and thus no longer means a danger to public order. Article 43 of the Police Act (ZPol) provides that detention may last up to a maximum of 24 hours, but practice shows that most detentions ordered on the basis of this statutory provision approach the limit of the time permissible. Detention may not be used as punishment, and the statutory purpose of detention in this case is merely the reestablishing of public order.

The issuing of the Rules on Police Powers (Ur. l. RS, No. 51/00; hereinafter: the Rules) fills the legal vacuum in the area of the implementation of police powers. In the future we shall devote special attention to the Rules, which entered into force on 24 June 2000, and the implementation of police powers. The legality of its provisions and understanding of the method of implementation and use of specific police powers can be checked more effectively in practice.

Review of constitutionality and legality of Article 113 of the Rules on Police Powers

The State is prohibited everything which it is not expressly permitted. Every encroachment on human rights and fundamental freedoms by its repressive bodies is prohibited, except those which are expressly permitted. The rights and freedoms of an individual may be restricted in order to protect the rights of others.

Determining the manner of restricting rights and freedoms is left to the legislature, which must take into account the criteria set in the Constitution.

Police officers may only restrict the rights and freedoms of an individual in cases specified by the Constitution and statutes. Thus police powers may be only be regulated by statute, while the regulation of encroachment on the rights and freedoms must be definite and unambiguous (lex certa). The constitutionally protected integrity of the individual may not be sacrificed in the name of police efficiency. Narrowness of interpretation of statute is therefore essential. In a conflict with the all-powerful state and its police, the letter of the law is the only legal protection of the individual.

Article 51 of the ZPol provides that police officers may use coercive measures if there is no other way to overcome the resistance of a person who fails to obey lawful orders or is breaching public order, a person who must be arrested, conveyed or deprived of his liberty, if it is necessary to reestablish public order in the case of a serious or mass breach of the same, and in cases when police officers have to avert an attack on persons or structures which they are protecting or an attack against themselves. Article 50 of the ZPol lists securing devices among coercive measures. With the exception of the firearms under Article 52, the ZPol uniformly determines the cases in which police officers may use coercive measures when performing their functions.

In contrast to the ZPol, Article 113 of the Rules provides that a police officer may use securing devices when there are grounds to suspect that a person will resist or injure himself, or when there

are grounds to suspect that a person will carry out an attack or escape. With this provision the Rules go beyond defining the method of exercising a police power and encroaches on statutory subject matter by defining cases of permissible restrictions of rights and freedoms. The Rules satisfy themselves here with the mere existence of grounds for suspicion of resistance or attack as the basis for the use of securing devices.

The Rules (like the ZPol) do not contain an explicit definition of the term 'existence of grounds for suspicion'. The existence of grounds of suspicion may merely mean a likelihood which must however be based on specific facts, on concrete circumstances, that a person will resist or carry out an attack. Such a definition cannot have the same or stricter content than the regulation under Article 51 of the ZPol. The statutory provision does not talk about degree or type of suspicion that a person will resist or carry out an attack.

The phrase 'if there is no other way to overcome the resistance of a person' used in the ZPol already indicates the existence of resistance which must be overcome (i.e. decisively influence its appearance, continuation and degree). With the other phrase used in the legal provision, 'when (police officers) have to avert an attack', it is possible to understand a case in which an attack has already begun or is directly seriously threatened, so that it must be averted (i.e. cause a person not to do what he intends to do or to cease doing it). The ZPol only permits the use of securing devices for overcoming resistance and averting an attack. But given the insufficiently definite and unambiguous statutory provision only a narrow (restrictive) interpretation of the police power applies, which can at most contract the possible linguistic meaning of the first paragraph of Article 51 of the ZPol.

The criterion defined by the Rules for the use of securing devices is therefore less strict than the statutory criterion, since it permits the use of this type of coercive device in the case of suspicion that a person will resist or carry out an attack. The ZPol on the other hand requires resistance which police officers cannot overcome in any other way, or the statutory definition of a situation in which they have to avert an attack.

We therefore fell that Article 113 of the Rules encroaches on the area of the statute and is at the same time in conflict with Article 51 of the ZPol. Executive regulations must be in accordance with the Constitution and statutes. Since the Rules are not in accordance with the statute, they are also in conflict with the Constitution. Thus in the filed request for a review of constitutionality and legality the Human Rights Ombudsman proposes that the Constitutional Court reviews the constitutionality and legality of Article 113 of the Rules and abrogates it.

Review of constitutionality and legality of Articles 108, 109 and 110 of the General Offences Act

The Constitution guarantees the right to personal liberty. Thus under the second paragraph of Article 19 of the Constitution, no person may be deprived of his liberty except in such cases, and pursuant to such procedures, as are laid down by statute. This provision relates to every restriction (taking) of liberty. Every deprivation of liberty must be subject to the principle of legality, while the procedural safeguards laid down by the Constitution must also exist. This also applies to an encroachment upon personal liberty (such as police custody) which is in the competence of the executive branch of authority. The right of each individual to personal liberty shall be guaranteed. No person may be deprived of his liberty except in such cases, and pursuant to such procedures, as are laid down by statute. Pursuant to the third paragraph of Article 19 of the Constitution, any person deprived of his liberty must be immediately informed in his mother tongue, or in a language which he understands, of the reasons why he has been deprived of his liberty. Within the shortest possible time thereafter he must also be informed in writing of why he has been deprived of his liberty. He must be informed immediately that he is not obliged to make any statement, that he has the right to immediately obtain legal representation of his own free choice and also that the competent body must, on his demand, advise his family or friends that he has been deprived of his liberty.

An encroachment upon personal liberty is the most serious encroachment by the state upon the personal integrity of the individual permitted by the Constitution. A person detained on the basis of Articles 108 and 109 of the ZP is with regard to procedural safeguards in a worse position than a person detained on the basis of the provisions of Article 43 of the ZPol or Article 157 of the ZKP. Visits by the Human Rights Ombudsman to police stations show that police detentions are most often ordered on the basis of the provisions of the ZP.

Pursuant to the second paragraph of Article 108 of the ZP an authorised official of an internal affairs body may detain for up to twelve hours, until he sobers up, a drunk person apprehended com-

mitting a violation if there is a danger that he will continue to commit violations. The detention must be noted in a file along with the date and time that the detention was ordered. This note is signed by the official who ordered the detention (third paragraph of Article 108 of the ZP).

In the cases laid down under the second paragraph of Article 109 of the ZP an authorised official of an internal affairs body may detain the perpetrator of a violation for up to 24 hours. Under the third paragraph of Article 109 of the ZP the detention must be noted in a file along with the date and time that it was ordered. This note is signed by the official who ordered the detention, while the detainee confirms by means of his signature that he has been informed of the detention order.

The first paragraph of Article 110 of the ZP stipulates the informing of the relatives of the detained person of his detention.

The regulation of police detention under the third paragraphs of Articles 108 and 109 and the first paragraph of Article 110 of the ZP does not lay down the procedural safeguards enforced by the Constitution under the third paragraph of Article 19.

The ZP does not stipulate that a detained person must immediately be informed of the reasons why he has been deprived of his liberty, that he must be advised that he is not obliged to make any statement, and that he has the right to immediately obtain legal representation of his own free choice. This unconstitutional legal vacuum can be filled by means of analogia legis, since an essentially similar relationship is regulated by Articles 43 and 44 of the ZPol. This occurs most frequently in practice through application of the first article and tenth chapter of the Rules on Police Powers. However the principle of legality (lex certa) requires that every regulation of encroachment on liberty be regulated definitely and unambiguously. Police detention pursuant to the ZP is not regulated in the way imposed on the legislature by the Constitution.

The procedural safeguard that a detained person must immediately be informed that the competent body must, on his demand, inform his family or friends that he has been deprived of his liberty, is not regulated under Article 110 of the ZP in accordance with the Constitution: an authorised official shall inform the family that the person concerned has been deprived of his liberty unless the duration of detention, the distance of his place of residence, or other similar circumstances make this impossible.

The third paragraphs of Article 108 and 109 of the ZP are in express conflict with the procedural safeguards laid down by the third paragraph of Article 19 of the Constitution. The legal provision of Article 108 of the ZP (only) talks about noting detention in a file, which argumento a contrario means that the detained person is not issued and served any written notification or decision on his detention. This also follows from Article 70 of the Rules. The statutory regulation under Article 109 of the ZP differs only in so far as the detained person confirms by means of a signature that he has been informed of the detention order. The constitutional procedural safeguard that within the shortest possible time a detained person must also be informed in writing of the reasons why he has been deprived of his liberty is therefore not respected. Since there is no decision, the detained person does not have the possibility of filing an appeal. This is therefore a deprivation of liberty without the right to legal remedy and the possibility of court supervision.

Among the conditions laid down by the second paragraph of Article 108 of the ZP for detention until sober is drunkenness. However now criteria are specified for when a person is considered drunk and how drunkenness is established. The police explains that its officers establish drunkenness ‘on the basis of external visible indications typical of an intoxicated person’. In cases in which the Human Rights Ombudsman has intervened the police have cited the following criteria for establishing drunkenness: aggressiveness of the offender, revealed in an inclination towards physical violence directed at other people, a smell of alcohol, shouting, an uncertain/unsteady gait, failure to understand police orders and failure to act on them. In case No. 6.1-31/97 the police considered as drunk a defendant who at the police station ‘behaved inappropriately and even sang, which for a sober person is unusual given the time and place’. The police state that it places an emphasis on the ‘current mental state of the perpetrator of the violation’.

The concept of drunkenness is not clearly and precisely defined. Every regulation of an encroachment upon personal liberty must be definite and unambiguous, so as to exclude the possibility of arbitrary decision-making by a state body. Criteria determined by the use of language that is too lax

conceal the danger that the state body can interpret them too broadly or even abuse them and thus excessively and inadmissibly restrict or narrow human rights and fundamental freedoms. Definiteness of the law is an element of the state governed by the rule of law (Article 2 of the Constitution).

We therefore feel that the second and third paragraphs of Article 108, the third paragraph of Article 109 and the first paragraph of Article 110 of the ZP are in conflict with the third paragraph of Article 19 of the Constitution and with Article 2 of the Constitution. Pursuant to Article 153 of the Constitution, statutes must be in accordance with the Constitution.

The Human Rights Ombudsman therefore proposes in his request for a review of constitutionality and legality that the Constitutional Court reviews the constitutionality of the second and third paragraphs of Article 108, the third paragraph of Article 109 and the first paragraph of Article 110 of the ZP, establishes their unconstitutionality and decides that the legislature must remedy the established unconstitutionality within a set deadline.

Cooperation of representatives of the public in the procedure of settling complaints

In previous years the ombudsman has welcomed the provision of Article 28 of the ZPol pursuant to which representatives of the public can take part in the settling of a complaint where the individual feels that through the action or omission of a police officer his rights or freedoms have been violated. Although the ZPol entered into force on 18 July 1998, a legal provision on public cooperation in police supervision has not yet come into being. In November 2000, after a delay of over a year, the minister for internal affairs issued the Instruction on the Settlement of Complaints (Ur. l. RS, No. 103/00; hereinafter: the Instruction). Unfortunately the Instruction gives a restrictive interpretation of the statutory provision on the cooperation of the public in the settlement of complaints.

A representative of the public cooperates in the settlement of a complaint as part of a three-member panel. The president of the panel is the general director of the police or the director of the police administration (with their authority it may also be another police employee). Representatives of the public are appointed and dismissed at the proposal of societies, the expert public and local communities by the general director of the police and the director of the police administration. The Instruction does not say for how long they are appointed and does not specify the reasons for (premature) dismissal. Such a method of appointment and dismissal does not emphasise the independence of representatives of the public cooperating in the settlement of complaints.

Clearly a complainant can only submit a written complaint. The Instruction does not mention the possibility of putting a complaint on record orally. The representative of the public does not cooperate in the procedure of examining the complaint, in which material is collected, the decisive facts are established and a report compiled containing an assessment of the grounds for complaint. He only takes part at the session of the panel at which the complaint is considered. Like every member of the panel, the representative of the public is obliged to state his position regarding the grounds for complaint and whether they are well-founded, and regarding the draft reply to the complainant. He has the right to put questions to the rapporteur and other invited persons and to propose the taking of additional measures to establish the facts of the case. However the decision, on the basis of the established facts, circumstances and evidence, is taken by the president of the panel alone, who is also the only person competent to fix the content of the reply to the complainant. The decision of the president of the panel is final.

Practice will show whether it is perhaps unnecessary to worry that with the issuing of the Instruction an opportunity for genuinely impartial decision-making on complaints was missed. Under the Instruction the regulation of the settlement of complaints is in fact such that the material for the decision is mainly collected by the police. Likewise it is a police officer who reports at the session on the established facts and the assessment of the well-foundedness of the complaint. The opinion given by the representative of the public does not bind the president of the panel. The cooperation of the public pursuant to the Instruction thus does not mean (co-)decision-making, it merely gives the right to offer a non-binding opinion, which is closer to an advisory role.

The cooperation of representatives of the public defined by statute will only have a practical value in the settling of complaints if this method of complaint enjoys the confidence of the individual who believes that his rights or freedoms have been violated by the action or omission of a police officer.

We would like to draw particular attention to the praiseworthy provision of the Instruction that the reply to the complainant must be written and compiled within the framework of the grounds of com-

plaint. A complainant can certainly not be satisfied by a general reply containing the brief explanation that the police has examined the conduct of the police officer and found that the acted 'professionally and within the framework of his statutory powers'. A response which does not answer the individual's accusations and the alleged violations does not indicate an impartial and fair procedure. For this reason it must contain an explanation for every reasonable assertion by the complainant and a statement of the grounds substantiating the decision from the actual and legal points of view.

Our attention is drawn to the need for greater care and perhaps even objectivity in the settling of complaints by the judgement issued by the European Court of Human Rights at Strasbourg on 28 November 2000 in the matter Rehbock v. Slovenia. This judgement expresses lack of confidence in the police in establishing and assessing the exercising of police powers. In the procedure of establishing the circumstances of an alleged violation of the prohibition of inhumane treatment under Article 3 of the ECHR, the European Court did not follow the statements of the police and did not take into account the conclusions contained in the police report on the conduct of the police officers during the arrest of the complainant. This unpleasant experience can also be an incentive for truly impartial and fair decision-making in the procedure of settling complaints under Article 28 of the ZPol.

Forcible fulfilment of obligations is reserved for the state alone

Numerous applications point to an increasing number of cases of resorting to self-help. Thus the forcible vacation of a flat without going through the courts and with the assistance of various commercial companies and independent private businessmen is not uncommon.

When a debtor fails to meet an obligation to which he is bound on the basis of an executory title (court or administrative order, executable notarial protocol, etc.), compulsory execution is permitted, but here the creditor must request the intervention of the state or its bodies, usually a court. Only these are entitled to use force and in this way establish the situation deriving from the executory title. Self-help, except in the cases listed in statute (which must be interpreted restrictively) is not permitted in a state governed by the rule of law, since this can be the beginning of the end. An important sign of a well-regulated state is that self-help is prohibited within its borders. Legal means are available to resolve a property dispute, while a creditor may only assert a disputed claim in court. The state is bound to afford effective prevention of arbitrary action by self-proclaimed creditors who, by means of arguments of (physical) compulsion and executive facts, exert their will on presumed debtors and take measures of their own accord, bypassing the competent state bodies.

Applications show that the police often respond too hesitatingly and do not act although they should. We have encountered cases when police officers have allowed themselves to 'mislead' a creditor or his lawyer into thinking that a legal basis (court decision or even merely an agreement or contract) exists which justifies unilateral action in relation to an alleged debtor. Police officers probably do not have the expert training to establish the finality and executability of a court decision, and even less to 'arbitrate' during an intervention on a property dispute or a creditor-debtor relationship between two parties. Nevertheless we have even dealt with a case where the police, despite being called to intervene in time, stood aside and merely observed the action of a self-proclaimed creditor as he drilled the cylinder lock on the door of an alleged debtor's flat, because the officers considered that the creditor's documents permitted this. The police allowed the creditor's workmen to complete their work. Through their presence they even gave their action a certain legitimacy.

Article 3 of the ZPol lists among the functions of the police the protection of life, personal safety and property. Police officers are obliged at all times to prevent unlawful actions and to take action and use their statutory powers if as a result of an unlawful action there is a direct threat to life, personal safety or property. An individual rightly expects effective police intervention, especially in the case of an encroachment of a constitutionally protected right such as the inviolability of one's dwelling.

The compulsory execution of a court decision, which may even be merely an agreement concluded in the form of a written contract, the collection of debts and similar tasks for which only police or judicial bodies are empowered by statute, may not be carried out by commercial companies and independent private businessmen who hold a licence to provide private security. In this connection it is worth stressing the importance of the supervision provided by the MNZ and the Chamber of Private Security of Slovenia. Only effective supervision of the work of commercial companies and individuals carrying out private security activities can ensure legality and order in this field.

We have recommended to the general police administration that it should perhaps issue police officers with appropriate instructions and guidelines for the effective performance of functions in the area of ensuring personal safety and the protection of property. In this way the police would more effectively prevent unlawful actions and ensure the respecting of the legal system, including the right to personal dignity and personal safety.

Police (too) hasty in using handcuffs?

On 6 March 2000 a police officer from Ljubljana Center Police Station, driving a police vehicle, failed to give way to a cyclist who was riding correctly along the cycle path and who had the right of way. The cyclist was shaken by the incident and clearly also annoyed. He said something to the police officer along the lines of 'Watch how you're driving, idiot, and a police officer too!'. The police officer did not respond to this and merely indicated with this hand that the cyclist should move out of the carriageway so that he could continue on his way. The cyclist did not want to do this and so the police officer drove round him and drove off. In reply to our subsequent intervention the police explained that he did this because 'he was late for other, more important business'.

Not far away the incident had been observed by two police services. However they were not interested in the conduct of their colleague who had violated regulations on road traffic safety. They approached the cyclist because they had heard his words addressed to the police officer in the vehicle. They asked for his identity card or other document in order to establish his identity. The cyclist refused to produce a document. The police officers requested assistance from Ljubljana Center Police Station with the result that a patrol consisting of two officers arrived on the scene. Because the cyclist insisted that he would not cooperate in establishing his identity the police invited him to get into the police van. At the same time they used a securing device in the form of handcuffs. Thus the police deprived the cyclist of his liberty and conveyed him to official premises at the police station where his identity was established.

In our intervention we expressed to the police our doubt that the principle of proportionality was observed in the decision to use a securing device. The applicant's verbal response and unwillingness to cooperate in the identification procedure must surely be considered the response of an injured party to the illegal driving of the police officer in a police vehicle. However the police did not initially take any steps at all against the driver of the police vehicle. Only after the intervention of the ombudsman did the police propose violation of road traffic regulations proceedings to a violations judge. On the other hand the police acted very decisively against the cyclist provoked by the conduct of the police officer. It is true that the applicant's response was not appropriate. However there is some doubt as to whether his conduct provided a sufficient basis for such a grave encroachment upon human rights as the use of handcuffs, deprivation of liberty and conveyance to a police station in a police van.

The police did not explain the circumstances and described the action of the applicant, which, according to the police officer, 'gave good grounds to suspect resistance and finally even attack'. The established facts of the case show that the resistance only consisted in the applicant not wishing to cooperate in the establishing of his identity. There are no convincing circumstances which would indicate that it was the applicant's intention to attack with the use of a weapon, implement, other objects or physical force.

The whole story, which began with incorrect driving at perhaps even incorrectness on the part of a police officer, and ended with the use of handcuffs, the deprivation of liberty and conveyance to a police station, indicates, more than proportionality of the powers used, a display of strength to an individual who had behaved improperly in relation to police officers.

The case will also have an epilogue before the violations judge, since the police have submitted a proposal to institute proceedings against the applicant before the violations judge on the grounds of violation of the provisions of the Public Order Offences Act and the Personal Identity Card Act.

Sometimes mountains are made out of molehills.

Police officers waited six months to make a crime report

An applicant alleged that on 13 May 2000 he was the victim of aggression from two unknown persons who pursued him in a car and then beat him. He maintained that he suffered serious bodily injuries. He reported the incident to Ljubljana Vič Police Station, which did not take any action.

In view of the statements in the application we requested a report from the General Police Administration. They confirmed that the police officers had acted incorrectly since they were six months

late in compiling a crime report, despite having sufficient information on the criminal offence and the perpetrators at the time the criminal offence was reported. The crime report was only submitted after our intervention, on 28 November 2000. The Ljubljana Police Administration explained in its reply that because of the incorrectness in the procedure it had taken action against the officers concerned and at the same time had seen to it that such omissions would not occur again.

Inspection of detention premises at police stations

In the 1999 Annual Report we praised the MNZ for its response to our proposal to adopt a regulation stipulating minimum technical conditions for equipment and premises intended for police detention. Thus last year the Minister of Internal Affairs issued Norms for the Construction, Adaptation and Maintenance of Detention Premises. The Norms regulate the conditions which must be met by detention premises at police units. In 2000 Guidelines for the Implementation of Police Detention were also adopted. These define in more detail the rights of detainees and the obligations of the police.

The police assure us that in new constructions the prescribed standards are respected in full but that unfortunately there are not sufficient funds in the budget for the immediate adaptation of existing facilities. The quality of living conditions in detention premises is undoubtedly to a considerable extent dependent on the available funds. However we are convinced that much could be regulated, corrected and improved through appropriate care and effort even with relatively small resources. At the same time the ombudsman advocates specific minimal standards for the fundamental material conditions which must be met in order to prevent the torture and maltreatment of detainees, and for which the state is obliged to provide funds. Here we are thinking in particular of the standards of the European Committee for the Prevention of Torture, which guarantee the respecting of human personality and dignity during a deprivation of liberty resulting from police detention. We drew attention to these back in the 1998 Annual Report.

In 2000 the Human Rights Ombudsman carried out inspections of detention premises at police stations in Nova Gorica, Novo Mesto and Trebnje and the border police station in Šentilj, and of the detention premises used by the Novo Mesto Police Administration.

Reports on the situation identified and proposals for remedying inadequacies were sent to the police stations and the General Police Administration. The later informed us that running maintenance work which does not involve major investment costs would be carried out in the detention premises at Nova Gorica Police Station with the shortest delay possible. Appropriate adaptation of the premises will also be carried out as far as funds permit. Stronger lighting has already been installed and mattresses and bed linen provided in the detention premises we visited where this was necessary. The Novo Mesto Police Administration will carry out improvements to its detention premises in the shape of replastering and rewiring. At the detention premises at the border police station at Šentilj, where detainees are kept in custody for longer periods, the mattresses, pillows and bed linen will be replaced, as will the tables and chairs. Through appropriate adaptation of the premises detainees will be enabled direct access to running water and we will be able to flush the toilet themselves.

Inadequate official notice of arrest/detention

On being arrested a person must be informed that he has been deprived of his liberty and of the reasons for this. He must be informed immediately that he is not obliged to make any statement, that he has the right to immediately obtain legal representation of his own free choice and that the police must, on his demand, advise his family or friends that he has been deprived of his liberty. A person thus advised is given an official notice of arrest/detention to sign. By signing this notice the detained person confirms that he has been explicitly informed of his rights. However the form used by the police is inadequate, since regarding notification of family or friends it does not state that the police must explicitly draw the attention of the detained person of this right. It merely talks about the demand of the detained person that the police notify his family or friends. This content does not satisfy the provisions of Article 19 of the Constitution, Article 4 of the ZKP and Article 44 of the ZPol. A person deprived of his liberty must immediately and explicitly be advised of the right under which the competent body must on his demand inform his family or friends that he has been deprived of his liberty. A police officer is not acting in accordance with statute if during arrest/detention he merely waits for a possible demand from the detained person that the police inform his family or friends of his detention. The form is also inadequate because it does not mention the right to access to a doctor, which is an important safeguard against torture or maltreatment. A detained person has the right to access to a doctor, including the right to request to be examined by a doctor of his choice as well as by the doctor called by the police.

The police believe that there is no need for a special statement in the official notice of arrest/detention on informing the detained person about his right to have his family or friends notified, since the detained person is informed of this verbally at the moment of his arrest, as well as by means of a written notification on a special laminated card. This may of course be true, but the essential point is that by signing the official notice the detained person confirms that he has been properly advised of the right by which the police officer is obliged, on his request, to inform his family or friends that he has been deprived of his liberty. Only if the official notice contains this statement do we have reliable documentation of the fact that the detained person has actually been informed of this right. An official notice containing this element means a guarantee that in every case of arrest/detention the police will explicitly draw the attention of the detained person to this right. Merely waiting for the detained person to request that his family or friends be notified is not sufficient, and is less than what is required by the Constitution and statute.

2.5. Administrative matters

2.5.1. General

Despite our expectations no special systemic changes took place in the area of public administration in 2000. Partial amendments were made to the Government of the Republic of Slovenia Act (Ur. l. RS, Nos. 4/93 to 119/00), and indirectly to the Organisation and Area of Work of Ministries Act. The new General Administrative Procedure Act (ZUP) began to be applied. Unfortunately it had to be altered immediately because the provision on the settling of a party's liability towards the state as a condition for administrative 'services' (Article 306) was not sufficiently well thought-out. Proposals are currently being collected for changes and additions to the act, which indicates that the period of almost an entire decade which had to pass before the act could be passed was not enough to change the old Yugoslav ZUP in its entirety as required.

The 1997 strategic plan for the reform of public administration in Slovenia, whose programm atic starting points have long been known and are generally accepted, is for the most part still waiting to be implemented. The Government Programme of Work for 2001 promises decisive moves this year in the field of organisation of the public administration, the employee system and salary system in the public sphere, and also with regard to the accessibility of these services for citizens and other inhabitants of Slovenia and the attitude of civil servants towards them. In the last of these areas the Government adopted a Code of Conduct for Civil Servants (Ur. l. RS, No. 8/01) at the beginning of 2001 as a somewhat hasty and unfinished (translation?) way of taking into account the Council of Europe Recommendation. The nature of this document is not entirely clear (is it directly applied? Is it therefore a regulation or a recommendation?). A draft Regulation on the dealings of bodies of the public administration with clients has also been prepared, obviously hastily, since it is not complete and there is no legal demarcation by means of regulations to partially regulate the issues included in the decree (ZUP, regulations on clerical work).

The reason we are touching on the system of public administration is not because we think that it is directly a matter for the Human Rights Ombudsman but because of its importance for the realisation of human rights (in this field), something we covered more extensively in the 1998 Annual Report.

The number of applications received in 2000 was down by just under 16 per cent on 1999. This applies fairly equally to all subsections. An exception is the fall in the number of applications relating to denationalisation, where however the reason for this index (51) is the exceptionally high intake in 1999. We would like to believe that the reduction in the number of applications was the result of better work by administrative bodies. Some reasons can be identified (relaxation in the implementation of the 'war' laws, faster addressing of complaints at the Ministry of Labour, the Family and Social Affairs (MDDSZ) and the Central Tax Office (GDU). On the other hand too many cases show that it would be rash to conclude that there have been major positive changes, since dealing with applications in 2000 has revealed numerous violations of the ZUP, other irregularities, and inappropriate behaviour in administrative procedures.

2.5.2. Citizenship

The falling trend in the number of applications received in relation to the procedure of granting citizenship of the Republic of Slovenia, the most common type of application in the area of administrative matters in 1999, continued this year. We received eight fewer applications than last year. The reason for the fall in the number of applications is unfortunately not the consequence of clearing backlogs at the MNZ, since no application lodged pursuant to Article 40 of the Citizenship of

the Republic of Slovenia Act (ZDRS) in 1991 (!), in relation to which applicants had contacted us back in 1999, was decided on in 2000. In the cases we dealt with the MNZ gave a negative decision on the basis of the third paragraph of Article 40 of the ZDRS or because of the restriction under Point 8 of the first paragraph of Article 10 of the ZDRS (defence risk). We proposed to the Ministry - taking into account the fact that, in the cases dealt with, the Supreme Court had (for the second time) issued a ruling overturning the negative decision of the MNZ, which after two years (and in one case even after six years) had not issued a new decision despite the explicit provision of the Administrative Dispute Act (ZUS) - that it should decide as soon as possible.

Once again we stress that the practice whereby a negative decision is issued in cases where in the opinion of the relevant service an individual (former) active member of the former Yugoslav People's Army (JLA) represents a national defence risk, with concrete evidence of risk (past, present and future) generally no longer cited, is a mistaken one. We feel that during the procedure it is necessary to establish the concrete actions of the applicant for citizenship or his cooperation during the aggression against the Republic of Slovenia in 1991. The existence of current risk must also be demonstrated by concrete facts and not merely assumed, and the reasons on the basis of which the body considers, when deciding at its own discretion, that granting citizenship would mean a national defence risk in the future must be stated in the explanation of the decision, so that they can be challenged by the party concerned in administrative procedure. In the opposite case his rights to equal and fair judicial protection (deriving from Articles 22 and 23 of the Constitution) and effective legal remedy (Article 25 of the Constitution) are violated.

The reason for the fall in the number of applications received in the area of citizenship can be mainly be found in the changed citizenship policy and the more flexible addressing of citizenship applications. We have noted a significantly smaller intake of applications relating to release from existing citizenship. Applicants turned to us most frequently in relation to the regular naturalisation procedure under Article 10 of the ZDRS, either because they were not aware of the conditions which they had to meet in order to be granted citizenship in this way or because of the length of time taken by the MNZ to deal with their application. Among these applications were many where the applications did not meet one of the conditions prescribed by law for the granting of citizenship, in particular the condition of a guaranteed source of income under Point 4 of the first paragraph of Article 10 of the ZDRS. There were not infrequent cases of totally unrealistic expectations of the ombudsman influencing the decision of the MNZ or even proposing that one of the statutorily defined conditions which applicants must satisfy in order to be granted citizenship be overlooked.

There are also backlogs in dealing with requests for citizenship via extraordinary naturalisation under Article 13 of the ZDRS, particularly because of difficulties in seeking an opinion from the competent departmental body, which the MNZ is required to obtain in accordance with the provision of the second paragraph of Article 13 of the ZDRS. A clear example is the case of an applicant who is married to a Slovene citizen and has lived in Slovenia since 1989 but for whom this time is not counted as continuous residence in the Republic of Slovenia because he is a seaman and though employed by a Slovene company the ship aboard which he works sails under a foreign flag. Time spent on a shop which does not fly the Slovene flag is not counted as continuous residence in Slovenia, which is one of the conditions for being granted citizenship via ordinary naturalisation as per Article 10 of the ZDRS and naturalisation with exemptions under the second paragraph of Article 12 of the ZDRS. As a result of the circumstances described above relating to his employment or rather the specific nature of his profession, the applicant submitted his application for citizenship on the basis of Article 13 of the ZDRS.

2.5.3. Aliens

The number of applications regarding aliens fell in comparison to previous years. Among the reasons for this are undoubtedly the 1999 Aliens Act (ZTuj-1) and the Act on the Regulation of the Status of Citizens of Other Successor States of the SFRY in the Republic of Slovenia (ZUSDDD), which however does not mean that the passing of these acts resolved all the issues to which we have drawn attention in past years. Just over a year later, some urgent irregularities and difficulties in implementation have already appeared. In particular as a result of the passing of the ZUSDDD the structure of applications received has also changed. We are finding that our fear that the statutory deadline for decision-making would be exceeded was not exaggerated or unjustified. The largest number of applicants turned to us in relation to the length of procedures for dealing with requests for a permanent residence permit on the basis of the ZUSDDD. A smaller number of applications sent to the ombudsman related to missing the deadline for lodging a request under the ZUSDDD, either because the applicants did were unaware of the law itself and the dead-

line set by the law for the lodging of requests, or because having already lodged a request for a temporary residence permit (on which a decision had still to be made), they mistakenly believed that it was not necessary to lodge an application under the ZUSDDD.

Our warning about the position of those who even under the ZUSDDD will not be able to regulate their status in Slovenia despite having a genuine connection with the country, has proved to be well-founded. Constitutional Court Ruling No. U-I-295/99-13 (18 May 2000) abrogated the first three indents of Article 3 of the law under which a permanent residence permit is not issued to a person who since 25 June 1991 has more than once been convicted of public order offences with elements of violence, sentenced to a prison term of at least one year or sentenced to prison terms whose total length exceeds three years; these negative conditions are in fact stricter than the conditions under which foreign nationals who already have permanent residence can be deprived of the same. With regard to the second and third indents the annulment begins to take effect one year after the publication of the ruling in the Uradni list (16 June 2000).

In 2000 the number of illegal entries into the country increased dramatically, and with it the number of aliens unlawfully residing in the Republic of Slovenia or requesting asylum in Slovenia. Since the first information about the ever-increasing and hard to manage number of foreign nationals who did not have permission to enter the Republic of Slovenia or who evaded border checks entirely, we have begun to monitor more carefully the issues of asylum and the deportation of aliens. Thus when visiting the Centre for the Removal of Aliens (COT) and the Asylum Centre (AD) at Celovška 166 in Ljubljana on 11 May 2000, we also held talks with representatives of the MNZ (from the asylum section within the office for administrative internal affairs and from the police administration). At that time 106 asylum seekers were housed at the AD, whose official capacity is 46 beds. At the end of April the COT in Ljubljana, which has a capacity of 150 beds, was housing 433 foreign nationals. At that time we were already with the assessment of the health and sanitary inspectorate that grounds exist for the ordering of the closure of the facility in Ljubljana. We agreed with the competent state bodies and encouraged them to look at the possibility of finding other premises or additional premises. In this connection we obtained the explanation that they had already studied around 60 different locations but that local communities everywhere objected.

In the autumn of 2000 the media began to show greater interest in the intolerable conditions suffered by foreign nationals housed in the building at Celovška 166 in Ljubljana. In our contacts with the competent bodies, particularly the MNZ, we were able to ascertain that the state is aware that the conditions in which foreign nationals are accommodated at the AD and the COT are beneath human dignity. Thus several responsible officials have visited Celovška 166, including the Minister of the Interior at the beginning of 2001.

Because we considered that the attention of state bodies and the public was mainly directed towards conditions at Celovška 166 in Ljubljana, on 18 October 2000 we visited the Prosenjakovci branch of the COT. We carried out a detailed inspection of this branch and compiled a report containing our findings and proposals for improvements to the situation. We devoted special attention during the visit to establishing the material conditions in the accommodation of foreign nationals. We took as our starting point the constitutional norm which guarantees respect for human personality and human dignity even in the case of deprivation of liberty. With the same aim of examining and if necessary improving the treatment of foreign nationals who have entered the Republic of Slovenia illegally, we made an unannounced visit to the border police station at Šentilj on 11 December 2000. We devoted most attention to the execution of police detention and the premises used by the police for this purpose. In this case too, we made several proposals for the improvement of conditions by means of a special report.

We also monitor state measures relating to addressing the problems of the treatment of foreign nationals in the area of the adopting of regulations. Thus the second half of 2000 saw the issuing of the Instruction on the procedure and method for dealing with foreign nationals entering the Republic of Slovenia and wishing to lodge a request for asylum, and on the acceptance, content and treatment of submitted asylum requests or recorded statements (Ur. l. RS, No. 65/00), and the Regulations on special rules on the residence and movement of aliens in the Centre for the Deportation of Aliens and the conditions and procedure for the use of more lenient measures (Ur. l. RS, No. 97/00). In December 2000 the National Assembly passed the Act Amending the Asylum Act (Ur. l. RS, No. 124/00) and the Government adopted measures for the better pro-

tection of the national border, which nevertheless shows that the state too is aware of the intolerability of the existing the situation and the urgent need to take more effective measures.

On 19 January 2001 we met the European Union's evaluation mission in Slovenia. One of the reasons for this meeting was a discussion of the issues of asylum and the removal of aliens. We used the opportunity to draw attention to the intolerable living conditions at the AD and COT. We stressed that this is a problem which does not only concern Slovenia but also the countries of the European Union, where the majority of the aliens are bound. We warned that without immediate and sufficient help from the European Union and its member states it was impossible to expect Slovenia, with its limited resources (both financial and in terms of manpower), to be able to control and provide for the growing number of illegal immigrants and asylum seekers. We believe that our meeting and conversation with the European Union evaluation mission in Slovenia was an important step towards resolving the problem of the conditions we encounter in the overcrowded AD and COT.

We believe that Slovenia must play a responsible role in this field, something which also applies to local communities. Slovenia is made up of local communities and the fact remains that the AD and the COT must be located in one of them, notwithstanding the possible opposition of the local inhabitants and their political representatives. Slovenia and its inhabitants must, as a part of Europe, also accept their obligations and be aware of their responsibility for respectful and humane treatment, even in relation to people who have entered our country uninvited and illegally. Respecting human dignity is guaranteed in the case of illegal immigrants and illegal seekers by providing appropriate accommodation in a suitable location. A location in the centre of a city may be inappropriate, particularly when it is a building which is clearly not big enough for the number of people whom it is intended to accommodate. These persons need to be provided with suitable premises for the temporary accommodation, and conditions must be provided which ensure that none of them is exposed to inhuman or humiliating treatment. Slovenia must be a social state based on the rule of law even in relation to this group of people, who have perhaps been forced by unbearable conditions at home to make a risky journey in the hope of a better life.

In his reply the minister of the interior explained that the spatial problems of the AD and the COT and the poor living conditions resulting from overpopulation, and the difficulties involved in carrying out closer police supervision in accordance with Article 57 of the ZTuj-1 have already been analysed several times at the MNZ and for considerable time they have been intensively seeking solutions for moving one institution to another location. Because of the nature of the problem, resolving it takes time. A final solution on the new location has not yet been adopted. The task of regulating conditions in this area has been added to the action plan for the area of justice and internal affairs. The main emphasis is on increasing capacities, since only in this way can we ensure the separation of the two categories of aliens (who are currently housed at the same location), and the respecting of international standards for the accommodation of asylum seekers and aliens awaiting deportation, and at the same time provide basic working conditions for the staff.

In the 1999 Annual Report we described certain loopholes relating to procedures for issuing visas and denying entry to foreign nationals. The clarification of these questions with the MNZ ended with the ministry's reply dated 22 June 2000 in which they assured us that the Instruction on denying entry to a forei gn national, conditions for issuing a visa at border crossing points, conditions for issuing a visa on humanitarian grounds and the method of cancelling a visa, which will regulate in more detail the issue of refusing entry to foreigners, was in its final phase of preparation (the Instruction is published in Ur. l. RS, No. 2/01). The grounds for refusing entry to a foreigner under Article 9 of the ZTuj-1 are stated in special detail. In the preparation of the instruction particular account was taken of the standards for effecting border control which are implemented in the countries of the European Union on the basis of the documents adopted under the Schengen Agreement. The grounds on which entry can be denied to a foreign national for reasons of public order and peace are defined in particular detail. The denial of entry to a foreign national is now regulated in detail by the new ZTuj-1. For this reason there is actually no longer a need to apply the provisions of Article 22 of the Supervision of the National Border Act.

With regard to our warning about the problem of denying a foreign national entry into the country despite a visa already having been issued, and the fact that failure to meet the conditions for the granting of a visa should as a rule be established when deciding whether to issue the visa, the ministry stressed that the body which issues visas actually checks whether the relevant conditions are met. This body is usually a diplomatic/consular mission. However in practice cases occur whe-

re during border checks the police are able to establish facts which were not known when the visa was issued (or during examination of the conditions for the issuing of a visa at the diplomatic/consular mission). Most frequently it is found that the foreign national is not entering the country for the reasons stated when applying for the visa, or in the case of transit it is found that the foreign national does not meet the conditions for entry into the third state. This happens most frequently when the diplomatic mission fails to check all conditions or the authenticity of submitted documentation on the basis of which the foreign national proves his purpose for entering the country, when issuing a visa. Given that a suitable computer link-up between Slovenia's diplomatic/consular missions and bodies in Slovenia is already under construction, checking conditions for the issuing of visas will be able to be more complete.

The effects of the ZUSDDD will - via issued permanent residence permits - also be seen in the area of employing foreign workers. We note that some of our warnings have been taken into account, since under the new Employment of Foreign Nationals Act which entered into force in 10 August 2000, the refusal of citizenship under the second and third paragraphs of Article 40 of the ZDRS is no longer an obstacle to the issuing of a work permit. All foreign nationals in possession of a permanent residence permit will be able to request a personal work permit for an indefinite period.

Despite the fall in the number of applications received relating to the issuing of temporary residence permits, we note that there are still delays in processing requests at the first instance. Neither are appeals against decisions in these matters being addressed within the legal deadline.

In past years we have several times drawn attention to individual aspects of the regulation of the status of temporary refugees. Ultimately we advocated the position that in accordance with an initiative from non-governmental organisations a permanent solution should be sought for the status of those refugees, mostly from Bosnia-Herzegovina, who have already been living in Slovenia for a longer period as persons granted temporary asylum. Constitutional Court Ruling No. U-I-200/00-6 abrogated Article 30 of the Temporary Asylum Act and abolished the Decree on the Obtaining of Temporary Asylum for Citizens of Bosnia-Herzegovina since the Court found that the authorisation empowering the Government to decide by decree which citizens of Bosnia-Herzegovina may obtain temporary asylum, under what procedure and for how long, was at variance with the Constitution. This is another reason why the status of this - still quite large - group of people should be regulated in full as soon as possible.

2.5.4. Denationalisation

In 2000 we received 71 new applications relating to denationalisation - a fall of almost fifty per cent on 1999, which was an exception al year owing to the fact that the applications we received included responses to a questionnaire from the Association of Owners of Expropriated Property, but at the same time about the same or slightly higher than in all other years since the institution was founded. This figure shows that the difficulties in the implementation of the Denationalisation Act (ZDen) have not yet lessened at all. However in the second half of the year the 'central' bodies showed greater activity aimed at speeding up and completing denationalisation processes. To this end the Government adopted a series of resolutions on 31 August 2000 at the proposal of the Denationalisation Office and the Ministry of Justice. Several meetings were also organised and attended by all those working in the field of denationalisation.

The government's resolutions mean certain organisational, procedural, personnel and financial measures for the more effective implementation of the ZDen. Several of these would not even be necessary if the state functioned properly (active participation of the Indemnity Fund and the State Attorney's Office in procedures, work by state representatives in the Farmland and Forests Fund, final rulings of second-instance bodies when addressing appeals, computer training for new administrative workers, carrying out the functions of the Denationalisation Office). At the meetings mentioned above, in addition to discussing various difficulties in the implementation of the ZDen, measures were agreed or reported which should have long ago been implemented (providing instructions and more important judicial rulings to first-instance administrative bodies, an internal instruction on the conduct of state attorneys in denationalisation procedures, instructions for making uniform the procedure for establishing citizenship as a preliminary question in denationalisation, etc.).

On 23 November 2000 the Government adopted the fifteenth report on the implementation of the ZDen. Unfortunately this is merely a statistical report and - like the majority of earlier reports - it does not contain an analysis of the reasons why the implementation of denationalisation is so slow. The information that by 30 June 2000 decisions had only been made on something over 52

per cent of claimed property is frightening. This however is relativised by two other facts: that for the 35,590 claims lodged with administrative bodies, 32,866 decisions (13,752 of them partial) were issued, and that a huge number of applications are still incomplete. Of course with the correct application of the provisions of the ZUP on dealing with an incomplete application, many of these would have been resolved long ago.

The figure for the percentage of appeals (15.8 per cent) does not according to our estimate deviate significantly from the percentage generally found with more demanding administrative matters. The success rate (38.3 per cent) however shows that there are more open questions, grey areas and dilemmas in the area of denationalisation than in other areas, particularly if we take into account the fact that these procedures are usually conducted by administrative workers with above-average training or by external contractors.

As an example of unnecessary complications in implementing the ZDen we might mention the problems of returning replacement agricultural land, something about which we have received several applications. Although the intention of the legislature when it altered Article 27 of the ZDen (Ur. l. RS, No. 65/98) was fairly clear, the courts and the state attorney's office have interpreted the amended provision in a way that makes the allocation of replacement land only possible in cases where though it is possible to return nationalised land in kind to the claimant, the two parties agree on another piece of land. For this reason a compulsory interpretation of the first paragraph of Article 27 of the ZDen was necessary, and this came about after a considerable delay. Through this interpretation it was found that the Farmland and Forests Fund (SKZG) was liable to return replacement farmland (even) in cases where it is not possible to return nationalised farmland and forests to the claimant in kind. After this the SKZG adopted internal instructions for the allocation of replacement land, but as far as we know the relevant procedures were still not in place by the end of the year.

In dealing with individual applications we came across cases of unsuitably run procedures, unjustified delays, and errors which we have described in previous reports. There were also some new features: that the process of deciding on a subordinate claim did not begin after a final ruling on the first claim, that the owner of a building was not included in the process of denationalisation of the parcel on which the building stood, that a procedure was halted by a written order (instead of a decree), and that a procedure was 'stopped' (rather than interrupted) by a decree in order to harmonise the land register situation with the actual situation. Our interventions, which were along the lines of clearing up ambiguities, removing obstacles, and in short speeding up the procedure, were in most cases accepted in an appropriate way by the competent bodies.

Establishing the citizenship of a denationalisation claimant

Back in the 1998 Annual Report we criticised the length of time taken to address a preliminary question - establishing the citizenship of a denationalisation claimant. In 2000 we encountered a special case of conduct which contributes to the length of these procedures.

The ZUP defines precisely the possibilities available to a party whose application has not been dealt with within the legal deadline by an administrative body at the first or second instance ('silence' of the body). Given the lack of response from the MNZ (failure to address his appeal against a negative decision on the establishing of citizenship), our applicant began an administrative dispute. When we inquired why the ministry had not ruled on the appeal we were given the explanation that the appeal procedure had not been begun because the reply to the suit and the administrative files had been passed on to the Administrative Court.

We were unable to agree with this explanation. If the explanation was supposed to mean that it was not possible to rule on the appeal because the files were at the Administrative Court, we reminded them that in 1999 in cooperation with the Office for the Organisation and Development of Administration and the Administrative Court we had settled that this circumstance should not be an obstacle to the conducting of administrative procedures which could or should be conducted.

If however the explanation derives from the position that it is now the Administrative Court's move and that the MNZ can calmly wait for its decision, we warned them of the questionableness of such conduct. Article 37 of the ZUS stipulates that an official body must report to the court at which the administrative dispute has been brought if in the case of silence from the official body it has later issued an administrative act. This means that the bringing of a suit is not an obstacle to the administrative body interrupting its 'silence' and issuing a ruling; on the contrary: in accordance with the spirit and principles of the ZUP a suit should be accepted as a warning and an

incentive to do this immediately or as soon as possible, and not to temporarily 'settle' the case by sending the files to the court. We warned that in the case of our applicant the matter in question was a decision on a preliminary question. If it takes so long to resolve this issue, it is difficult to imagine just how long it will take to reach a decision in the denationalisation procedure.

2.5.5. Taxes and contributions

The applications we received this year, slightly fewer than in the previous year, reveal the following main problems:

- inability to pay tax debt because of social hardship;
- the consequences of forcible recovery of debt by blocking the taxpayer's giro account, which makes it impossible for him to continue his business;
- disagreement with the provisions of the Income Tax Act (ZDoh) with regard to tax reliefs for maintained family members and taxation on the basis of cadastral income;
- addressing of appeals still not sufficiently up to date;
- length of time taken to address applications for the write-off, partial write-off, postponement or payment by instalment of tax debts which leads to an increase in late-payment interest;
- disagreement with the decision of the competent body on an application for the write-off, partial write-off, postponement or payment by instalment of tax debt, related to the lack of clarity of the criteria for the decision;
- issues regarding the criteria, competences and the procedure in general for deciding on applications for the write-off, partial write-off, postponement or payment by instalment of debt arising from unpaid contributions for compulsory health insurance and (more frequently) compulsory pension and disability insurance.

Because of tax liabilities, where the decisive share is often the (excessively?) high late payment interest, many taxpayers clearly find themselves in economic difficulties and, not infrequently, in social hardship. Some of these difficulties were alleviated by the Act on the Manner of Settling Overdue Unpaid Tax Debts (Ur. l. RS, No. 1/00) which allowed tax debtors meeting certain conditions to pay by instalment or a reduction of their liabilities in exchange for immediate payment of the entire debt. It is impossible to assess whether all those eligible were appropriately informed of these possibilities as per Article 17 of the Act - naturally we drew it to the attention of those applying to us in the period when it was possible to propose this method of settling tax debt - or whether they made full use of them.

We note that the share of applications relating to the inappropriate management of the tax procedure has fallen slightly. This applies in particular with regard to the time in which appeals against first-instance decisions are addressed. This shows that at the Central Tax Office a step has been taken towards the goal that appeals should be ruled on within the statutory deadline, which we wrote about back in the 1999 Annual Report. We expect that with the implementation of the programme of reform and modernisation of the Tax Administration, which should be accomplished over the next few years, the general situation will further improve. Among other things simpler and more transparent methods of communication between units of the Tax Administration and taxpayers should be ensured, while taxpayers should also be constantly provided with up-to-date information about the individual types of their tax liabilities, interest, payments, rebates, compromises (Article 95 of the Tax Procedure Act - ZDavP) etc.

The finding about a smaller number of applications and the conclusion of better management of procedures do not however apply to decisions on the write-off, partial write-off, postponement or payment by instalment of tax debt, which we discuss elsewhere. Neither does this finding apply to the management of procedures for the forcible recovery of tax debt. Even the decrees ordering such recovery are usually inadequate. The general practice whereby the list of other liabilities is appended to the decree (as a constituent part) rather than included in the text of the decree with all the elements required by the ZDavP does not seem to be suitable. Usually the type of liability and the amounts of the principal and interest owed are visible from such a list, but not the enforcement title from which the stated debt derives, nor a statement of when it became enforceable. Similarly it is not clear from what principal and for what period late payment interest is calculated and at what rate, for which reason it is not possible to judge whether the amount claimed is correct.

An increase of tax liability because of circumstances affecting the tax body

In response to a request for tax relief, the tax body issued a taxpayer with a decision on the payment by instalment of his tax debt. The decision was issued seven months after the taxpayer requested this possibility, set out under Article 89 or 90 of the ZDavP. On 9 February 2000, after the last instalment of the stated debt had been paid, the tax body sent the taxpayer notifi-

cation that he was obliged to pay a further SIT 432,004 on the grounds that the original amount of SIT 4,284,254 had increased to SIT 4,670,132. The increase in the date was supposed to mean late payment interest accrued from the date of the lodging of the application (12 January 1999) to the date that the decision on payment by instalment was issued on 2 August 1999. The applicant did not agree with this statement by the tax body and therefore did not pay the difference. On 17 March 2000 the tax body therefore issued a resolution on the forcible recovery of the debt from the funds on the debtor's giro account, against which he appealed.

We requested from the GDU an explanation of the chronological circumstances involved in the addressing of applications of this type, their position regarding the charging of late payment interest for the period after the expiry of the statutory deadline for dealing with the taxpayer's application up to the date of issue of the decision on payment by instalment of the tax debt, and also their position on the question of whether it would not be necessary to include in the decision the entire tax debt, i.e. including the interest from the last balance of the debt before the lodging of the request up until the issuing of a decision, or until the expiry of the statutory deadline for this.

The GDU replied that it had been established on the basis of information from tax offices that applications for the write-off, partial write-off and payment by instalment of tax debt should be dealt with within the prescribed deadline, i.e. within 30 days of receiving the application from the taxpayer, and in some cases after the expiry of this deadline if the application needs to be supplemented by data or evidence. In the case of incomplete applications tax offices invite taxpayers to supplement their application or to submit additional evidence; in some cases tax payers only supplement their applications after several invitations to do so. Regarding invitations to taxpayers to supplement their applications, tax offices also draw attention to the problems of serving these invitations on taxpayers because of absence, or to cases where taxpayers fail to respond to invitations and the process must therefore be repeated several times. In some cases examinations by the inspectorate need to be carried out and opinions and data need to obtained from the competent bodies and institutions. The fact should also be taken into account that in certain periods the influx of cases is significantly higher, for example during the period when income tax assessments are issued and when resolutions on the forcible recovery of tax debt are issued.

With regard to the calculation of late payment interest for the period after the expiry of the statutory deadline the GDU, on the basis of the provisions of the ZDavP, which were recapitulated in its reply, felt that for the period from the receipt of the application to the decision of the tax body late-payment interest should be calculated since in this period payment has not yet been postponed or payment by instalment permitted. The ZDavP does not stipulate that a received application shall interrupt the charging of late-payment interest or that late-payment interest shall cease to accrue when the application is handed to the tax office. It is clear from this that late-payment interest accrues during the statutory deadline for a decision and also after the expiry of this deadline if the decision is not issued to the taxpayer within the prescribed deadline.

If interest was only calculated up to the lodging of the application, it could happen that a taxpayer is not charged late-payment interest for, say, seven months, even though the application is dealt with within the statutory deadline, while in the case of applications which take longer to deal with the taxpayer would be excused interest payment for even longer. Statute permits a postponement for a maximum of six months, or the payment of tax in a maximum of six monthly instalments, and only for this period is late-payment interest not charged.

Late-payment interest which has accrued up to the day specified in the decision for the commencement of the six-month postponement or instalment payment can also be the subject of a decision in this procedure and is included in the debt alongside the principal; it can also be the subject, on the basis of an application from a taxpayer, of a repeated procedure on allowing postponement or payment by instalment.

Since it has been shown that the direction in which our questions were fumbling in the first letter was not sufficiently clear, we once again and in more detail shed some light from our point of view on the problem of the length of time required to deal with applications from taxpayers for the write-off, partial write-off, postponement or payment by instalment of tax debt (hereinafter: tax relief), and the problem of late-payment interest which has the effect of increasing the

tax debt, and in doing so touched also on some statements or positions from the reply of the GDU.

Without a doubt the needs for an identification procedure and in particular the difficulties of the tax body resulting from the increased influx of cases do not justify exceeding the statutory deadline. If this is not realistic it must be changed.

The fact is that at least some applications for tax relief are not dealt with within the statutory deadline, which means a breach of the law by the tax bodies. The consequences of such work should not be suffered by the taxpayer, who is guilty of nothing.

In our opinion it is unfair to increase the tax liabilities of a taxpayer merely because the tax body ha s failed to decide on his request for tax relief within the statutory deadline and even in a case where the taxpayer meets the statutory conditions for tax relief, when he therefore has the right to this relief, because immediate payment of his basic tax liability would cause hardship to him and to his family.

We believe that a taxpayer has the right to tax relief on fulfilment of the statutory condition. It is unacceptable and unlawful to grant tax relief to one taxpayer and not to another in the same situation as a result of a discretionary judgement, or to grant a different extent of tax relief to two taxpayers in the same situation.

If there are no special reasons for acting otherwise, it should in our opinion be necessary as a rule when deciding on tax relief to take into account the entire tax debt, i.e. to include the late-payment interest accrued up to the date of the issuing of the decision. In this way it would not happen, as in the case of our applicant, that after a taxpayer has faithfully met his tax liability in accordance with the decision on tax relief he should then find himself liable for late-payment interest (which was or should have already been known when the decision was issued) and the whole procedure should then repeat itself (in extreme cases several times).

We proposed that the question of calculating late-payment interest after the expiry of the statutory deadline for the issuing of a decision on tax relief in cases where this relief is granted, and the issue of ruling on tax reliefs in general, should be studied in the light of the positions and arguments described, and appropriate measures taken if necessary.

We have not received a reply from the GDU.

Write-off of contributions for compulsory pension and disability insurance

As we described in the 1999 annual report, the question of the body responsible for ruling on applications from taxpayers for the write-off, partial write-off, postponement or payment by instalment of debt deriving from contributions for compulsory pension and disability insurance, and the procedure by which such a ruling is arrived at, was not resolved in 1999. With the entering into force of the new Pension and Disability Insurance Act (ZPIZ-1), the responsibility for this has belonged, since 1 January 2000, to the assembly of the Institute for Pension and Disability Insurance (ZPIZ), which decides on the basis of proposals from the administrative board. In the transitional period the criteria which apply to this type of decision in relation to contributions for compulsory health insurance were applied, mutatis mutandis, and on 31 May 2000 the assembly, on the basis of its statutory authorisation, adopted a Resolution on the criteria for the write-off, partial write-off, postponement and payment by instalment of contributions for pension and disability insurance (Ur. l. RS, No. 50/00, hereinafter: the Resolution).

We have received several applications even in relation to this new regulation. The content of these applications included dissatisfaction with a (negative) decision, the form and justification (or not) of the decision, and the length of time needed for a decision from the assembly of the ZPIZ. One of the applicants received a letter from the ZPIZ signed by the head of the contributions department which informed him that the assembly had passed the ruling that his request for the write-off of applications would not be approved since it did not meet the conditions under Article 5 of the Resolution. At the same time he was informed that it was not possible to appeal against the decision of the assembly.

In dealing with the applications a series of questions were raised and we therefore turned to the ZPIZ for more detailed explanations. Above all we wanted to clear up the issue of the type of pro-

cedure by which the assembly adopts decisions on taxpayers'applications, the possibility of participation in this procedure, the type and content of the act issued on the basis of the decision of the assembly, assuring of the right to legal remedy and the up-to-date treatment of taxpayers'applications. W e devoted special attention to dealing with applications from taxpayers/natural persons under Article 14 of the Resolution. Given the inadequacies of the previous regulation, we were interested in the position towards the addressing of applications from the period before the ZPIZ-1 entered into force, or the possibility of the write-off, partial write-off, postponement or payment by instalment of contributions from this period. We also asked for an assessment and position on the suitability of the legal regulation under which the assembly of the institute is responsible for deciding on taxpayers'applications.

With regard to our applicant we pointed out that it is hard to understand why he was informed of the assembly's decision by letter rather than by written ruling, since it follows from the nature of the matter that it is a question of ruling on the rights of insured persons in the sense of Articles 1 and 2 of the ZUP. Article 5 of the Resolution stipulates that the institute may permit the postponement, write-off or payment by instalment of overdue contributions if their recovery would cause hardship to the taxpayer or his family. The Resolution does not set out more detailed criteria which could serve as a concrete or unambiguous basis for a decision. We were therefore interested to know the deciding factor on which the institute bases its finding or decision that there is a risk of hardship to the taxpayer or his family and therefore approves the taxpayer's application for the write-off, partial write-off, postponement or payment by instalment of contributions.

We shall continue to deal with these issues.

2.5.6. Other administrative affairs

Victims of wartime aggression

The influx of applications relating to the exercise of rights in accordance with what are termed the war laws, abated somewhat in 2000, and we received 11 applications less than in the previous year. Out of the 38 applications received, the major share was still taken by those relating to the exercise of the status and rights of victims of wartime aggression. The highest number of (justified) applications were owing to the lengthy appeal procedure at the Ministry of Labour, Family and Social Affairs (MDDSZ), which resolves appeals in 14 months to two years. In all these cases they are violating the legal deadline for the issuing of decisions on appeals pursuant to Article 256 of the Administrative Procedure Act (ZUP). We dealt with these applications by intervening to speed up the process of dealing with the appeals lodged. The fact cannot be overlooked that throughout the time since the entry into force of the Victims of Wartime Aggression Act (ZZVN - 1 January 1996), the MDDSZ has failed to organise itself so that it can resolve appeals against first instance decisions within the legal deadline. We have ascertained that matters are also being resolved at administrative units with delays of up to a year.

There has a been a marked reduction in the number of applications owing to the long time taken by the review procedure according to the basic law in comparison with the ZZVN-D. This indicates that the time frame for review of first instance decisions according to the basic law has been reduced, and that the review of decisions issued pursuant to the ZZVN-D is progressing without delays, within the framework of the legally determined deadline for this. We even dealt with a case where the MDDSZ had confirmed in review the positive decision of the administrative unit the very next day.

A large number of applicants had missed the deadline for submitting claims according to the latest two versions of the Victims of Wartime Aggression Act (ZZVN-D and ZZVN-E), or else their applications had been rejected owing to the missed deadline. Many of these applications focused their complaints on the legal deadline being too short and the provision of information on the actively registered people eligible to submit claims being poor. In these cases we explained to applicants the powers of the ombudsman, and familiarised them with the consequences of missing the preclusive deadline for submitting claims, which was formalised in both of the new versions of the law. Clearly the complaints were justified, for the Constitutional Court, in decision no. U-I-14/00 of 7 December 2000 annulled Article 16 of the ZZVN-D and Article 3 of the ZZVN-E, since it established that the deadlines set for the submission of claims for recognition of the status of victim of wartime aggression were too short and therefore inappropriate, in this way running counter to the principle of a state based on the rule of law.

Correction of injustices

In this area we have ascertained a marked reduction in the number of applications received in comparison with 1999. In 2000 we received 40 applications, and in 1999 there were 210. He-

re we have observed that the reason for the high number of applications received in 1999 was the organised group sending of applications to the ombudsman from the relatives of people killed after the war. We can therefore safely say that 2000 is comparable with 1998, when we received 35 applications.

Applications were related to the payment of compensation on the basis of status acquired under the Correction of Injustices Act (ZPKri), to the excessively slow decision-making by the government commission on claims submitted by those eligible, and to questions as to how certain specific rights under the ZPKri could be exercised. Some applicants exercised the demand of relatives that the state must acquaint them with the fate of their family members. Other applicants wanted simply an explanation of the possibilities for submitting claims after 9 August 1998, in view of the fact that a proposed amendment to the ZPKri, extending the deadline for submitting claims, was in legislative procedure.

We have learned that eligible persons who have been granted the appropriate status pursuant to the ZPKri, are dissatisfied because they cannot exercise the right to compensation awarded to them through the decision. In earlier annual reports we noted the urgent need to adopt the Fund for Payment of Compensation to Victims of Wartime and Post-war Aggression Act. Only the adoption of this act would allow fulfilment of the granted right to compensation.

In 2000, in some justified cases we again intervened with the government commission to speed up the resolving of submitted claims. To those applicants who were interested in the possibility of submitting claims after 9 August 1998, we explained that they would indeed be able to establish the appropriate status through the submission of a claim, if the amendment to the ZPKri was adopted. Here we advised them to follow the legislative procedure in the National Assembly. During the writing of this report, the amendment to the act was indeed adopted, and this allows the submission of claims by those eligible, up to the end of 2001.

Civilian alternative to national military service

The number of applications connected to doing civilian national service remained firmly on the level of applications received in the preceding year. In previous years we had been approached primarily by applicants because they were not able to obtain transfers in the time frames provided by law, while in 2000 the majority of applicants wished to postpone their alternative civilian service. In addition to applications from individuals, we also dealt with an application from the representatives of one of the organisations in which the civilian alternative to military service is performed, as a result of difficulties in connection with the non-fulfilment of contractual obligations by the Ministry of Defence (MO) regarding reimbursement for the cost of persons in that organisation doing alternative civilian national service. Difficulties arose after the signing of a new contract on the conditions and obligations in connection with the performing of alternative civilian service at the Ministry of the Interior (MNZ), since this contract contains higher amounts of reimbursement for food and accommodation, pocket money and travel expenses for returning to the location of permanent residence after completion of civilian service. With the entry into force of this new contract, on 1 March 2000, the method of accounting these costs also changed. According to the applicants, the MO was late and missed the deadline for payment of accounts for reimbursement of these costs. In view of these difficulties they applied several times to both the MO and MNZ, and received the explanation that the two ministries were coordinating over whether the reimbursement of costs should also be accounted from 1 March 2000 for citizens who were conscripted to do alternative civilian service prior to that date, or whether the new accounting method should be used only for citizens who started alternative civilian service on or after 1 March 2000, that is, after the signing of the (new) contract. For this time the payment of accounts was held back.

In the answers from the two ministries we received on the basis of our enquiries, we were given to understand that the ministries had coordinated and agreed the manner of accounting the costs of persons doing alternative civilian service. The opinion of the legal departments of the two ministries is that the new contracts, made with organisations on 1 March 2000, do not contain provisions which would “interfere” with the existing contractual relationships - contracts made in 1997 - for which reason these earlier contracts did not cease to have effect after 1 March 2000. In view of this the new contracts cannot be used for relationships established prior to their validity, or prior to 1 March 2000. In accordance with the coordinated opinion the corrected accounts were then paid.

2.6. Employment and unemployment

The influx of matters concerning this area fell in comparison with 1999 (an index of 72.4). The reduction may be ascribed to the reduced influx of applications in the area of unemployment, from workers in state bodies and "other", while the number of applications received in connection with actual employment rose.

The content of applications was the same as in previous years. The majority of written applications and telephone enquiries related to the legality or otherwise of termination of employment, irregularities in employment contracts, assignment to another job, allocation of tariff classes, overtime work, irregular payment of wages and other benefits (holiday allowance, overtime, anniversary bonuses, redundancy), non-payment of contributions for social security, the setting or extending of employment for a fixed period or changing the employment to an indefinite period, the rights of disabled and older workers, the problem of illegal work, the rights of women in connection with maternity and expecting mothers, non-observance of the provisions of the Pension and Disability Insurance Act on surplus labour capacity and so forth.

We have noticed that there are an increasing number of applications where workers, primarily those employed in commercial companies, but also those in public institutes, approach the ombudsman anonymously. Their applications refer chiefly to violations of worker rights from employment, and they explain their anonymity as being through fear of the consequences if they are identified. Despite the anonymity of the applications, as a rule we inform the competent labour inspectors of their content, and the inspectors then investigate at the employers. From the inspectors' reports it follows that quite a number of times the applications were justified and action by the inspectors was necessary.

Despite the usual resolving of a specific problem, the question remains as to how to deal with the increasingly noticeable fear of workers that their pointing out of problems in some working environment will bring upon them harassment or some other improper treatment by the employers.

In general it is worth drawing attention to the applications dealing with the behaviour of superiors in the workplace. We have already drawn attention in earlier reports to harassment and the creation of unhealthy relations that are discouraging for work. It is not just that there are increasing numbers of such applications, we have also noticed that in previous years complaints related primarily to what are smaller private employers, while in 2000 these complaints have come from working environments of all types (private and state or local authorities). In view of the limited powers of the ombudsman in this area and the difficulty of proving such violations, we do not deal with these admittedly very important subjects in any detail, although we cannot avoid remarking that the legal safety of workers is diminishing for these reasons. The labour inspectors, too, have not noticed any drop in the frequency of violations in the area of employment. From the applications, and above all from the numerous telephone calls, we can surmise that improper and often harassing behaviour of employers towards employees is increasing.

Unemployment

Despite the drop in the number of unemployed people, there remain major social hardships for those who as a result of bankruptcy, forced settlement, long-term labour surpluses or other reasons remain unemployed. The active employment programmes are producing some positive results, just as the amendments and supplements to the Employment and Unemployment Insurance Act (ZZZPB) are reducing the number of applications where workers are left without income because the employer cannot pay wages (Article 19 a). One particular problem remains the employment of what are termed hard-to-employ persons (older unemployed, the disabled). The hardship of these people demands special attention. The prospects for including the unemployed in public work programmes are still inadequate.

We have noticed that in individual employment offices, after our intervention specific cases of unemployed individuals have been resolved more quickly. This indicates that the person's problem of unemployment could have been resolved earlier. We have also observed that the national employment institute is still occasionally taking advantage of the measure of a standstill in the procedure for granting the right to benefit for the period of unemployment until the resolving of the preliminary question, that is until the court decision on the legality of termination of employment, and we already made broad criticism of this in the 1999 annual report. A positive move we have noticed is the falling number of applications relating to the lengthy procedures at the employment

institute. Matters in connection with exercising rights during unemployment are being resolved with fewer delays both in the first and second instance. Neither were there any more complaints regarding the lengthy procedures at the Ministry of Labour, Family and Social Affairs.

We dealt with two applications in which the applicants asserted the unconstitutionality and illegality of regulations in the area of employment in the part where the regulations set out the duty of the unemployed person to be available for employment. The applicants were convinced that this regulation for unemployed people represents a restriction of freedom or freedom of movement, which is a violation of the Constitution. One of the applicants even sent the ombudsman an authorisation empowering him to lodge at the Constitutional Court a request for a ruling on the constitutionality and legality of the ZZZPB provisions and implementing regulations which regulate what is termed "availability" for employment of unemployed people, or their compulsory presence in a given location.

It is highly doubtful that the legally enshrined institution of "availability" would violate the constitutional right to personal freedom (Article 19 of the Constitution) or to freedom of movement (Article 32 of the Constitution).

Unemployed people are personally free and can move freely. If they do not observe the provisions on "availability", they risk losing the status of unemployed person pursuant to the ZZZPB and the pertaining rights (which are not just payment from employment institute funds).

Grants and scholarships

The number of applications relating to problems involving grants and scholarships fell in 2000. We may conclude that the reduction in applications in this area may be a result of amendments and supplements to the Rules on grants, which were made in May 2000 in consideration of our views.

We received more applications in which the applicants complained that a student had not been eligible for a grant owing to the results of a means test, although later in the academic year the family's income had been reduced considerably. Our view, which we communicated to the employment institute and also presented in the ' 99 report, sets out that they should make it possible for a new means test for grants to be held, if through retirement or non-culpable and involuntary loss of employment of a family member the total family income changed. Any other arrangement would be rigid and impractical. Our view has been taken into account in the amendments and supplements to the Rules on grants (Ur. list RS, no. 43/2000). In Article 36, which determines the conditions under which an applicant may in exceptions during the academic year submit an application for a national grant, if in the family of the candidate the income per family member falls so much as to fulfil the material condition from paragraph two of Article 56 of the ZZZPB, the wording of the second indent is amended such that it also includes those families where there has been a retirement or loss of employment of the person supporting the family, if that person has become unemployed through no fault of their own or against their will.

The above amendments and supplements to the rules also accommodated our suggestion regarding the payment of Zois scholarships for all of the envisaged time of study to those scholars who graduate early. Article 39 of the rules now provides that scholarship holders who successfully finish their studies early, will be paid the remainder of the scholarship in a lump sum at the level of the scholarship for the month in which the studies were concluded.

2.7. Pension and disability insurance

In 2000 we received 143 applications in the area of pension and disability insurance. There were slightly fewer applications in the area of pension insurance than in 1999 (index of 86), but there were more in the area of disability insurance (index of 123.2).

The reform of the system of pension and disability insurance, begun several years ago, was concluded with the new Pension and Disability Insurance Act (ZPIZ-1), which entered into force on 1 January 2000. The new law represents a compromise which has somewhat shoved to the side the original proposals for a more radical change to the system, although a number of new features were introduced which alter the rights of those insured and affect the way in which these rights may be exercised. It is almost a rule that the new provisions for pension and disability insurance are

less agreeable to the individual, something backed up by the demographic and economic changes of recent decades.

Farmer cannot retire without appropriate regulation?

An applicant asserted that since there was no relevant regulation, he could not exercise the right to a pension. He was insured as a farmer, and in May 2000 he reached 58 years of age and almost 42 years of paid-up pension contributions. Yet instead of enjoying the rights deriving from pension insurance, he had to continue paying contributions for this insurance.

Article 156 of the ZPIZ-1 provides a new condition for acquiring the right to a pension and the termination of compulsory insurance. The third paragraph of this article provides that farmers acquire the right to a pension when they rent out the farm, sell it or lease it to another. At the same time the law authorises the minister responsible for agriculture to determine the detailed conditions under which the insured person may give up a farm.

The Minister of Agriculture, Forestry and Food laid down the conditions for transfer, sale or leasing of farms in the Ordinance on the conditions for acquiring the right to a pension, which was published in the Official Journal of the Republic of Slovenia (Uradni list RS), no. 67/00 on 28 July 2000, entering into force eight days following its publication. The applicant had to wait until this implementing regulation entered into force before he could exercise his rights from pension insurance. This regulation was issued by the responsible minister almost eight months after the entry into force of the ZPIZ-1.

In response to enquiries by the ombudsman owing to the late provision of the detailed conditions for the giving up of farms, the Minister of Agriculture, Forestry and Food pointed out that the ZPIZ-1 does not specify a deadline within which implementing regulations must be issued on its basis. At the same time he stressed that the ministry was exceptionally burdened with the drafting of regulations, primarily concerning the alignment of legislation within its competence with the legislation of the European Union. The minister assured us that everything possible had been done to publish the detailed conditions for giving up farms in the shortest time, thereby enabling insurance holders to acquire the right to pensions.

It would be right and proper for implementing regulations that are essential for implementation of the ZPIZ-1 to be adopted at least at the same time as the main act. The securing and enjoyment of rights granted by law should not, in a state based on the rule of law, depend on the pressures of time for issuing implementing regulations. Neither should the non-existence of an implementing regulation prevent an insured person from exercising their rights from pension insurance, for the enjoyment of which they fulfil the legally provided conditions.

Allocation of pension under special regulations

As a result of occupational illness an applicant acquired on 20 May 2000 the right to a pension under more favourable conditions, on the basis of Article 7, paragraph three of the Act Prohibiting the Production and Trading of Asbestos Products and Providing Funds for the Transformation of Asbestos to Non-Asbestos Production (Uradni list RS, no. 56/96 up to 86/2000). He applied to the ombudsman because three months later he had still not been paid his pension and he was without any means of support. At the Pension and Disability Insurance Institute (PDII), Nova Gorica Regional Branch, he was told that they still could not issue a decision on the allocation of the pension even three months after the termination of employment, because the decision of the Government Committee for exercising rights to pensions under more favourable conditions had not specified the period of paid-up insurance. For this reason the PDII could not determine the level of contributions for securing the paid-up period. The pension would supposedly be paid when they knew the missing information and a supplement to the Committee's decision was issued.

In our assessment this position was inappropriate. The applicant has the right to a pension according to special regulations on the basis of a committee decision with legal force. For this reason the competent body must, if a final allocation owing to some preliminary question is still not possible, issue an order determining on the basis of available data the payment of a portion of the pension, in compliance with the provisions of Article 260 of the ZPIZ-1. A copy of the order is supplied to the insured person.

We communicated our view to the head of the Nova Gorica Regional Branch, but he told us that they would not be taking our view into consideration. They would issue a decision to the applicant only when all the information was known for a final allocation of pension according to special re-

gulations. With such a decision the applicant could remain for several months without any means of support.

For this reason we turned to the director of the section for insurance provision of the head office of the Institute in Ljubljana, and suggested that within the bounds of his jurisdiction he communicate appropriate instructions to the Nova Gorica Regional Branch. The director of the section for insurance provision accepted our view and suggestion, and immediately intervened with the head of the regional branch. On the very same day they issued an order for payment of a portion of the pension to the applicant. On the basis of our intervention the applicant was therefore paid a portion for the current month, and also for three months back, right from the day he acquired the right to a pension under special regulations.

Protection of personal data in procedures for granting rights from disability insurance

In the procedure for exercising rights from disability insurance the Maribor Regional Branch of the PDII noted in a rejection decision that following the completion of treatment, the insured person could renew her claim to the right on the basis of disability, whereby she would need to submit the psychiatrist's diagnosis. The decision containing this information was sent not just to the insured person and to her personal doctor, but also to the personnel department of her employer. This action was considered by the applicant to be an impermissible violation of the protection of her personal data, for in referring to the psychiatrist in its decision the institute had clearly presented her state of health and had acquainted her employer with this.

In the decision, which the PDII also furnishes to the employer, it would be possible without affecting its import to leave out the words referring to the psychiatrist's diagnosis. An explanation of the decision in the part where they explain to the insured person the possibility for renewing the procedure for granting rights f rom disability insurance would also be quite understandable without such an addendum. The note in the decision referring to the psychiatrist is also redundant because a more appropriate place for such a comment is in the diagnostic opinion of the disability committee of the first instance. The opinion of the disability committee is supplied only to the insured person and her personal doctor, and not also to the employer.

The Maribor Regional Branch of the PDII acceded to our view and at the same time assured us that it had "advised its employees that they should not refer to any specific specialist in decisions issued".

2.8. Health insurance and health care

In 2000 we received 63 applications relating to health, of which 45 were in the area of health insurance and 18 in the area of health care.

In the area of health insurance there were less applications than in 1999 (index of 70.3). Applicants again directed most of their opprobrium at the decisions of the physicians' committee of the Health Insurance Institute of Slovenia (ZZZS), particularly in respect of their decisions on the right to health resort treatment and the right to benefit in lieu of pay during temporary absence from work.

In the past, access to health resort treatment covered by health insurance was easier than it has been in the last few years. Many applicants regard the rejection of their request for health resort treatment as an encroachment on a secured right. Numerous cases of misunderstanding could be avoided through a more solicitous and fuller explanation of the physicians' committee opinions in the procedure for deciding on eligibility for exercising this right under health insurance.

Most often there is also an inadequate explanation of the opinion of the physicians' commissions in deciding on the patient's status. In procedures of decision-making on rights from health insurance it would be proper for insured persons, who are often personally convinced of being unable to work, to be given an appropriate explanation of those circumstances that were crucial to the physicians' committee decision that they are able to perform their work.

In the area of health care activities, where in comparison with the previous year the number of applications has not changed, what is virtually a common denominator is the assertion of irregularities and mistakes in treatment. In this connection, numerous applicants level the accusation, and

not without grounds, that the claimed mistakes by physicians cannot be effectively resolved in complaints procedures (within individual health care institutes, at the Chamber of Physicians of Slovenia or at the Ministry of Health). All the efforts to date and the cautions from the ombudsman, including in previous annual reports, have thus far borne no fruit. That things in this area are not pursuing their proper course is also indicated by the fact that there are increasing numbers of applications connected to the inaccessibility of health documentation. This involves health care institutes or even individual physicians not permitting patients and their relatives to access or photocopy health documentation that relates to them.

Until the health care system can offer quick, effective and - for the complainant - fair avenues for complaints, it would be ultimately hasty to think of setting up some special body (even a special human rights ombudsman) which would monitor for individuals the very important fulfilment of the right to health care. An ombudsman can monitor, but cannot replace the complaints procedure in the area of health care activities.

Refusal of access to health documentation

We have drawn attention several times, most recently in the 1999 Annual Report, to the difficulties faced by patients and those close to them in exercising the right of access to health documentation. We presented the constitutional and legal basis for the right to view health documentation in our 1999 Report, and there is therefore no need to repeat the reasoning behind this. Yet we are still receiving applications recounting how health care institutes are not ensuring the fulfilment of this constitutionally guaranteed right in the area of health care activities.

Those eligible usually request access to health documentation when they suspect that there has been a physician's mistake, unprofessional or negligent treatment. Denying the right to view health documentation actually also denies the right to make a complaint. Yet in the case of the Ljubljana Psychiatric Clinic we learned that access to health documentation was actually prevented by the very doctor who had treated the patient, and despite a view to the contrary from the professional council of the Clinic.

No health documentation so that family relations would not "crumble"

The Health Care Activities Act (ZZDej) ensures to everyone the right of access to health documentation which relates to their state of health, except where the physician assesses that this would have a harmful influence on the patient's state of health. On this basis the Ljubljana Psychiatric Clinic declined the patient's access to her health documentation on the grounds that this would harm the applicant and that her family relations would "further crumble". The hospital took the legal exception, which permits denial of access to health documentation in the event that this would adversely affect the patient's state of health, and expanded it to cover even relationships among family members. In the case of this applicant, then, the doctors clearly reserved the right to make a pretty broad interpretation of what information was suitable for the patient in respect of her psycho-physical state.

The legal limitation provided by Article 47 of the ZZDej should be interpreted restrictively, for this involves a limitation of a constitutionally guaranteed human right, of access to personal data - this being the medical documentation of the patient. Denying access to health documentation has a legal foundation only if the information contained in the health documentation would pose a serious danger to the patient's health or psychological state. Ensuring the right to be informed requires that everyone has the right to find out any data obtained regarding their health. And only in exceptions can the method of exercising this right be legally restricted for the patient's own benefit. Every denial of access to health documentation must therefore have a basis in law.

Authorisation for access to health documentation

The applicant requested the intervention of the ombudsman, because the Ljubljana Clinical Centre made the handing over of health documentation to her lawyer conditional upon the submission of a special authorisation. The view that a general authorisation would not suffice was backed up by the Clinical Centre citing the provisions of the Protection of Personal Data Act (ZVOP).

Although the ZVOP does not contain any explicit provision requiring an authorised person to have special authorisation from the individual to whom personal data relate (health documentation), we did not follow up the applicant's request for intervention.

The purpose of protecting personal data is to prevent unlawful and unjustified encroachments on personal privacy. To this end in several places the ZVOP envisages more robust protection precisely for personal data connected to the state of an individual's health. Managers of personal da-

tabases are bound to exercise special care in the dissemination of personal data. We therefore regard the request of the Clinical Centre that the lawyer submit a special authorisation as an acceptable and at times even essentially emphasised form of personal data protection. The relationship between client and lawyer in this regard does not differ from other relationships between authoriser and authorised person. In every case database managers are justified and even bound by the highest degree of care in establishing the existence of a relationship of authorisation for access to or even handing over of health documentation. If the relationship between the lawyer and the client is based on trust, then there is no fear of the request for personal authorisation representing any impediment in exercising the right of access to health documentation.

Article 8, paragraph four of the Health Care Databases Act (Ur. list RS / Official Journal of the Republic of Slovenia, no. 65/2000) contains a provision whereby the procedure for an individual citizen exercising the right of access to personal health data is determined by the minister responsible for health. In its transitional and final provisions the act does not specify the time frame within which the minister of health must issue this implementing regulation. Yet since this involves an area which can be very important for individuals, and which in practice leads to frequent problems and misunderstandings, it would be right for the procedure of exercising the right of access to personal health data to be sorted out as soon as possible and backed up by an appropriate regulation.

Chamber of Physicians complaint decision without justification

Two applicants link the death of their son on 4 November 1995 at the Maribor General Hospital to unscrupulous or unprofessional treatment. Their ordeal in the face of an ineffective response to their complaint in the procedure of internal supervision in the hospital and later with bodies of the Chamber of Physicians of Slovenia lasted right into 2000. In the complaint procedure several interventions were needed in order for the responsible bodies of the Chamber of Physicians to continue dealing with the case and deciding on the accusation of a physician's error.

At the beginning of 1999 the attorney of the Chamber informed us that he would hand over the matter to the president of the Chamber's arbitration tribunal for conclusion. On this basis the applicants received a letter from the president stating that on the request of the Chamber's attorney the arbitration tribunal had performed a preparatory procedure in which it had obtained medical documentation and an expert opinion. At the same time the president of the tribunal assured the applicants that as the plaintiffs they would be informed of the conclusion of the procedure. According to Article 80 of the Rules on the organisation and work of courts of arbitration, a written copy of the decision of such courts is also sent to the plaintiff. Yet later the applicants received no communication from the Chamber's tribunal, nor any notice of the procedure being concluded. Since this involved dealing with what had already become quite distant events, the applicants justifiably expected that the procedure would be concluded and that they should have received an explanation from the tribunal. It was only on the basis of our (renewed) intervention that the president of the arbitration tribunal informed the applicants, on 27 March 2000, of the assessment of the Chamber's attorney, that in the treatment of their son there were no professional errors or irregularities in the work of the physicians. For this reason the attorney had declined to continue with the procedure, which for the Chamber signified an end to dealing with the submitted complaint.

A thorough and fair handling of a complaint must be the primary guideline for an effective complaints procedure. The procedure must ensure proper and correct treatment and a justification of the complaint decision, giving clear reasons, even though the decision might not be favourable for the complainant. The decision of the complaint body must be in writing and properly reasoned, in other words justified with reasons in the actual, professional and legal aspects.

The response from the president of the Chamber's arbitration tribunal does not satisfy this position, since the message, which is clearly final, does not give reasons for its view and final assessment, and does not set out the reasons why the applicants' accusations of unscrupulous and unprofessional treatment are not warranted. Here the president's answer makes reference to two telephone conversations with the lawyer of the Chamber of Physicians and asserts that the lawyer acquainted the applicants precisely and broadly with the attorney's findings. The applicants confirm that they had the telephone conversations with the Chamber's lawyer, but the attorney's findings were not a subject of their conversation.

Irrespective of the content of the conversation, we believe that a telephone message cannot substitute for the duly owed written explanation regarding the submitted complaint and the procedure which in all lasted more than four years. We suggested to the Chamber of Physicians that they chan-

ge such practices in dealing with complaints such that they communicate their decisions in writing and at the same time explain them in an appropriate and, for the complainant, understandable way.

2.9. Social security

Out of 432 applications received in 2000 relating to social security, as many as 200 fell into the category of social care. While there has been a reduction in the number of applications, we have noted a marked growth in the numbers relating to social protection (index of 125). This indicates that for many people social hardship is ever more present. In this connection we should reiterate the duty binding on a state of social welfare to ensure social security for all persons who through no fault of their own do not have sufficient means to maintain themselves and who are therefore at risk.

Apart from offering advice, we referred applicants in social hardship to the competent bodies, and in particular to the Social Work Centre (CSD). In the most urgent cases we advised the CSD ourselves of established situations of risk, and proposed appropriate measures for the state to fulfil the obligations required by social solidarity on the basis of the constitutionally guaranteed right to social security.

More than a third of applications which we place in the area of social protection deal with the functioning of the state in procedures concerning relations between parents and children. A large number of such applications are also clearly a response to the findings and analysis in last year's annual report from the ombudsman regarding protection of the child's benefit in procedures concerning relations between parents and children.

Fulfilment of the right of the child to have contact with both parents is in practice not always guaranteed. Numerous applications indicate that state bodies which have the jurisdiction to decide in procedures concerning relations between parents and children often take insufficient account of the fact that impeding or preventing a child having personal contact with both parents runs counter to the benefit and long-term interests of the child. For a full and harmonious development of their personalities, children must grow up in a family environment, in an atmosphere of happiness, love and understanding. When the parents are separated, the state is bound to respect the right of the child that is separated from one or other of the parents to maintain regular personal contact and a direct relationship with both parents, except where this would be detrimental to the child.

Greater emphasis on understanding between parents

Parents should treat a child as a fully valid person. They can facilitate development of the child's own personality only by opening up for him various possibilities appropriate to age and maturity, letting the child choose and at the same time providing all the necessary support. Only in this way will the child be able to feel, respond to and experience what is going on with him, in other words becoming aware of his own feelings, aspirations and abilities. For this reason, manipulating a child in unjustified prevention of contact by the one parent with whom the child is living has irredeemable consequences for the child. Children are much more sensitive and vulnerable than adults and at the same time they are impotent in any struggle with them. In cases where a child must adapt to the parent with whom it is living, he is confused by conflicting information, dares not show his feelings and begins to suppress them, closing inside himself with feelings of guilt which in turn generate continually new traumas.

For the full and harmonious development of their personality, children should grow up in a family environment, and where this is not possible, with the cooperation of both parents. For the good of the child, the state must therefore remove any obstacles that prevent this. Success depends to a large extent on the timeliness of measures taken. When the first difficulties arise in arranging contact, only rapid action can be effective in preventing at the outset any manipulation of the child. The benefit of the child has priority over the rights of the parents. The competent authority must always base its actions on the benefit of the child, and should be doing so now under the currently valid system. Sadly experience shows that this is not always the case.

Taking into consideration the child's benefit and welfare when the break-up of a family relationship hits the child hardest, the Council of Europe's Recommendation No. R (98) 1 of the Committee of Ministers to Member States on Family Mediation (hereinafter: the recommendation) was

adopted on 21 January 1998. Mediation is an alternative method of resolving disputes between parents, when the long-term maintenance of relations and cooperation in terms of parenting is essential in caring for their shared child.

The recommendation is intended to promote the implementation of mediation as a process in which the mediator helps the parties to resolve their dispute with the aim of them achieving agreement. The mediator must be impartial and not committed to any specific ultimate result of the mediation process, while at the same time helping the parents to find grounds for agreement, although the mediator must in no way force a solution. The mediation process must be orientated towards concern for the welfare and the best interests of the child, and in this way towards encouraging the parents to focus on the needs of the child.

We propose that in particular the CSD, which has the main role according to the valid system, should make as much use as possible of mediation in cases where one of the parents prevents a child's personal contact with the other parent, despite this being to the benefit of the child. Through the help of a mediator, the parents should thus arrive at an understanding of responsible parenthood. At the same time they should recognise that they are responsible for the consequences the child might suffer if their decision is not for the good of the child.

A parent who, despite being made aware of the possible adverse consequences for the child in the event of unjustified prevention of contact, declines the procedure of mediation and continues to prevent contact, is not aware of their parental responsibility. For this reason, if a child has been formally entrusted to that parent's care, the appropriateness of the decision doing so may be brought into question.

Ineffective implementation of order prevents personal contact

The parent with whom the child lives must make it possible for the other parent to have personal contact with the child. This involves primarily the child's right to have personal contact with both parents. If the parents cannot come to an agreement, as a rule the CSD decides on personal contact. The decision binds the parent with whom the child lives to facilitate and allow personal contact with the other parent.

If the liable person does not voluntarily fulfil their obligations, on the basis of the enforceable decision ordering personal contact, enforcement is effected by legal means. Current practice deems in particular enforcement through indirect compulsion to be appropriate. In this way the administrative unit carrying out the enforcement uses a monetary fine as the means of compulsion with which to threaten the liable person. If the set deadline for fulfilment of the obligation passes without success, the monetary fine threatened by the authority is immediately claimed, while at the same time a new deadline is set for the liable person to fulfil the obligation, along with a new, higher fine. The ZUP provides that the monetary fine cannot exceed SIT 100,000, and all subsequent fines may be re-set up to this amount. The system of monetary fines does not limit the number of fines, and does not set an upper limit on the amount of all of the fines ordered.

The fine is a psychological compulsion and at the same time an economic means of influencing the liable person to fulfil their obligation from the legally binding order. The principle of expediency of enforcement measures demands that enforcement be effected in such a way and with such means as are the gentlest possible for the liable person, but which nevertheless achieve the aim of enforcement. This means that the body carrying out the enforcement must apply a monetary fine at a level which will "persuade" the liable person to fulfil their obligation. The principle of social protection of the liable person may not outweigh the need for effective enforcement.

As an economic instrument the level of the fine must be adjusted to the means and property of the liable person. A fine which has no economic impact on the liable person is unlikely to be effective. Individualisation, which takes into account all the circumstances of the case, together with the level of wealth and general social situation of the liable person, is therefore essential to decision-making in cases of enforcement to compel the liable person to facilitate and allow contact between the child and the other parent not living with the child. A disproportionate consideration of the principle of social protection of the liable person can render impossible the aim of enforcement. The body carrying out enforcement must also take into account the benefit of the other party in the enforcement procedure, that is the beneficiary of the order. A state based on the rule of law requires effective enforcement. This applies particularly to relations involving children, since in all activities of administrative bodies in connection with children the primary guideline must be their

benefit. Regular maintaining of personal contact and direct relations with both parents is justified primarily by the child's benefit.

It is no surprise that a fine of 10,000 tolars ordered on a mother who is a doctor and a fine of 20,000 tolars ordered on a mother with a law degree were not effective in forcing the liable persons to respect the enforceable decision of the CSD on personal contact of the child with the father. The authority that decided on the level of the fine was clearly not bothered by the fact that in each case of unfulfilled personal contact the father had to travel from Ljubljana to Maribor, which also undoubtedly involved considerable expense, but this was in vain, for no personal contact with the child was obtained.

The system of monetary fines to compel the liable person to fulfil their obligation under an enforceable order must ensure effective enforcement, particularly when a decision is being made on the long-term interest of the child with the establishing of personal contact also with the parent that does not live with the child. Effective enhancing of the procedure in determining personal contact can only come through the successful intervention of the state to secure fulfilment of those personal contacts, which are already often very limited in time, determined in the enforceable decision of the CSD.

Taking account of the opinion of a fourteen year-old girl

The human rights ombudsman requested the help of a fourteen year-old girl. She told us that because of the physical and psychological violence of her mother, the situation at home was intolerable. Particularly when the mother was under the influence of alcohol and became so violent that the girl had several times to see a doctor and was even hospitalised. As a result of this she was often absent from school and was behind in her studies.

The CSD saw a possible solution in placing her in a care institution. When the girl learned this, she called the human rights ombudsman's free telephone service and asked for help. It seemed wrong to her that it should be her that was punished, by being placed in an institution, for a situation resulting from her mother's excessive use of alcohol. She was aware that she could not live at home, but she wanted to stay in the home environment and at the same school, where she was attending the 8th grade. She told us that her former neighbours (a married couple without children) were prepared to look after her, and that she knew them well. She had already sought refuge with them several times. She was in fact with them when she called us. She called them to the telephone, so that we could also talk to them. From the conversation we understood that the CSD did not know where the girl was and that she was not attending class. For her absence from school she had a doctor's note relating to bodily injuries supposedly caused by her mother.

We explained to the girl how the ombudsman could help her and how much the resolving of her hardship depended on her active cooperation. At the same time we advised her to make immediate contact, together with the couple who had taken her in, with the CSD, which was bound to deal with such problems. This is what they did. We acquainted the CSD with her desire to remain where she was. We suggested that the centre should respect her opinion to the greatest extent, and make a decision if at all possible in agreement with the girl.

Following our intervention and talks with the girl and the couple, the CSD decided that the girl could stay in their care. Her residence is for the moment temporary. If the circumstances in the girl's interest allow it, they may arrange a formal fostering relationship.

The girl and also the couple with whom she is now living thanked us for our intervention. They promised that they would cooperate regularly with the CSD.

They have called us several times recently, too. The girl has told us that she feels good in the new environment, she is attending school properly and her grades are improving. This is also confirmed by the CSD, which is regularly monitoring both the girl's home life and her school work.

Housing for people under 65 who need institutional care

From the applications we have dealt with, we have learned of the hardship affecting people under 65 years who through health problems cannot remain in home care and who have no appropriate institutional care arranged. Since there is no possibility for their appropriate institutional care, in urgent cases they request accommodation in old people's homes. Such homes rarely grant their request, for priority is of course given to persons who are 65 and over.

The life and work of old people's homes are intended primarily to satisfy the needs of the elderly. Younger people have difficulty blending in to this environment, for their interests and needs differ from those of older people. They are dissatisfied and they are soon no longer prepared to constructively resolve their own problems. In this way they gradually lose their other capacities. They grow accustomed to having everything taken care for them. They get bored, they become listless and apathetic. After a certain time they no longer have the will for active cooperation and change.

This is illustrated by the case of a thirty year-old applicant who as a result of a stroke became category I disabled. After separation he was also left without accommodation. Since there was no other possibility, he requested accommodation in an old people's home. In the home he became increasingly unhappy. He often caused conflict. Through the cooperation of the professional service of the institution a small apartment was found for him. On acceptance he wanted this very much, but later he did not wish to take the option. He had grown unaccustomed to looking after himself and had become used to others doing everything for him. Although he was unhappy living in the home, he was no longer prepared to actively cooperate and live in a more independent way. He had become apathetic.

For those under 65 there is an urgent need to provide care suited to their needs, which would facilitate the preservation and activation of their remaining capacities and maintain a full life for them for as long as possible. At the same time this would free up the capacities of the frequently overcrowded old people's homes and make possible institutional care for the people for whom these homes are intended and for whom their range of services are suited.

2.10. The environment and spatial planning

The influx of matters in the area of environmental encroachment and land zoning has increased by 17 per cent in comparison with applications received in the year before, with the content and breakdown of applications remaining similar to those of previous years.

As in the preceding year, there is still a relatively high number of applications relating to the performance of various commercial activities and to the concomitant problems of noise and odour, which disturb those living in residential neighbourhoods. There is an increase in the number of applications related to construction, renovation or reconstruction of national and local roads. Applicants have turned to us most often because they were not acquainted with the envisaged encroachments, or they were acquainted with plans but did not agree with them. There have also been frequent complaints owing to unfulfilled obligations on the part of the investor in setting up noise abatement protection. A smaller share is taken by applications relating to the operation of existing and rehabilitation of abandoned quarries, gravel pits and illegal excavations of minerals. But there are still frequent applications relating to construction or extension of residential and other structures without appropriate permits or in contravention of them, and relating to procedures of adopting municipal spatial planning documents. We were approached primarily by neighbours of those investing in unlawful environmental encroachments and encroachments that were not in compliance with the issued permit. In connection with these applications there were frequent expectations from those affected that the ombudsman could bring influence to bear on the issuing or otherwise of one of the official permits for construction, on the progress of inspection procedures and decisions of the competent inspectors, and also that the ombudsman would become actively involved in procedures of adoption or amendment of municipal planning documents.

Applications in this area also directly or at least indirectly relate to issues of the functioning, effectiveness and demarcation of competence of the inspection services, not just the environmental inspectors, but also health, agriculture, market and mine inspectors. Here we have observed poor cooperation and coordination by inspection bodies, particularly where they fall under different ministries. The ministries, and especially the Government, are not devoting sufficient attention to these problems. There is also an inappropriate attitude evident in the way the Government is not dealing with reports by inspectors; in the '99 Annual Report we made criticism of this with regard to the report of the national environment and spatial planning inspectors. The reports compiled by these inspectors advise of numerous cases of lacking and unharmonised regulations which present an

obstacle to the more effective work of inspection bodies. We ourselves have observed that the insufficiently precise and clear definition of the competence of individual inspection bodies, particularly in those cases where the competence of these bodies overlaps, and the bodies come within different ministries, has an impact on their effectiveness. Certain cases which illustrate this problem are recounted below. Difficulties arise particularly when no individual inspection body regards or wishes to regard itself as competent to resolve the problems our applicants have, and it presents arguments backing up why it is not competent. As stated, a contributing factor here is the lacking legislation and absence of coordination of these services under the Government of Slovenia.

Applications indicate that despite greater awareness and concern for a healthy environment, applicants are individually or collectively not familiar with all of the legal possibilities they have, either in individual procedures or in exercising the right to a healthy living environment in general, and in dealing with applications we therefore devoted considerable attention to the greater awareness of applicants regarding their rights in this area.

Implementation of Article 78 of the Environmental Protection Act

There is still no implementing regulation which should, pursuant to Article 78, paragraph two of the Environmental Protection Act (ZVO), regulate the obligation to pay compensation or a so-called "eco-tax" payable by anyone causing a deterioration of the environment or a danger to the environment and therefore also to people's health. For this reason we advised applicants of the possibility of protection under civil law, in accordance with the Basic Ownership Relations Act and the Obligational Relations Act. Alongside this we draw attention to the fact that back on 17 March 1999 the National Assembly, in examining the ombudsman's report for 1998, under point 8 of the resolutions, proposed that an implementing regulation pursuant to Article 78 of the ZVO should be drafted as soon as possible.

Regulating odour emissions

The human rights ombudsman was approached by the inhabitants of a densely constructed settlement as a result of the odour nuisance produced by the spreading of liquid manure in the direct vicinity of their residences, and because the competent agricultural inspectors were taking no action in this connection.

Our enquiries produced confirmation from the Celje branch of the environmental and spatial planning inspectors that the liquid manure was being spread on agricultural land which did not fall within a water protection area. Since the overseeing of fertilising farm land with manure, liquid manure and other fertilisers (except sewage sludge and compost) is within the competence of the agricultural inspectors, in line with the provisions of the Regulation on placing hazardous substances and plant nutrients in the soil (Ur. list RS, no. 68/96), the branch of the environmental inspectors passed the matter on to the competent branch of the agricultural inspectors for resolving.

The agricultural inspectors informed us that several inspections had been carried out at the owner of the land on which liquid manure was being spread, and on their basis it was established that there had been no violations of provisions of the Regulation on placing hazardous substances and plant nutrients in the soil. During the period when application of manure is prohibited, which according to point 8 of the Regulation applies to farm land without vegetation cover from 15 November to 15 February, liquid manure was not applied, so the agricultural inspectors had no basis for taking action against those who were applying manure on the farm land. For this reason the inspection procedure was also stopped.

It was not possible in this specific case to accuse the competent inspection services of violations or other irregularities which would serve as a basis for action by the ombudsman. We have established, however, that the valid legislation does not provide a basis for more effective work of the competent state authorities in this area. Here we have in mind particularly point 8 of the Regulation on placing hazardous substances and plant nutrients in the soil, which relates to the setting of the time frame for banning manure application. We have learned that despite the caution from the ombudsman given in the '99 Report that the earliest possible adoption of a regulation on limiting emissions of odours was essential, such a regulation has still not been adopted. The points which should be regulated by such a regulation also demand an appropriately expert basis which would serve to determine the standards, norms and mechanisms for identification, effective monitoring and control of odours. On the basis of Article 27 of the ZVO, the adoption of regulations determining limit emission values for substances falls within the competence of the Government of the Republic of Slovenia, which may determine what concentrations or amounts of individual substances and energy in the ground, water and air are acceptable. In addition to the Government,

such regulations can also be adopted for their own area by municipalities, but only if this involves setting stricter requirements.

Provision of local public services for removal and treatment of municipal waste water and precipitation

The ombudsman was approached by an applicant who objects to the running of drainage along the edge of her parcel of property. She stated that a drainage pipe was laid without her agreement in March 1999 and that this pipe carries run-off (rainwater, waste water from households and farm buildings) which collects in a "lake of sewage effluent". The size of this "lake" increases during wet weather, and it spills over onto her property. The "lake" also produces a strong odour in the surrounding area.

In response to our enquiry the chief national inspector for the environment and spatial planning acquainted us with the results of an inspection performed on the basis of the applicant's complaint. The competent inspectors found that the local people had laid the drainage pipes without appropriate permits from the competent administrative body. On the day the inspection was carried out the water in the stream under the outflow of the drainage pipe was brown and had a strong odour.

We turned for more information to the municipality of Ajdovščina, which informed us that the drainage, as in the majority of cases in Slovenia, was built on a partial basis for individual groups of houses or hamlets and lacked technical documentation. In certain areas there was no drainage at all, and where it was installed, it carried both rainwater and fecal water, and was therefore not appropriate for linking up to a treatment facility.

The lack of adequate municipal service facilities in settlements is a general problem for Slovenia. The municipalities, which pursuant to Article 26 of the ZVO are bound to set up local public services for the removal and treatment of municipal waste water and precipitation, have avoided doing so for various reasons, most commonly through lack of funds, but also because the adjustment deadlines set for carrying out rehabilitation programmes for removal of municipal waste water through the sewage system, determined in the Regulation on emission of substances in the removal of waste water from municipal treatment facilities (Ur. list RS, no. 35/96) in 1998 (amendments and supplements Ur. list RS, no. 90/98), were extended up to 2017.

Here the legislation (Article 36 of the ZVO, which sets out measures of inspection and overseeing) does not give the competent inspection service any direct basis for ordering measures by which the municipalities would be charged with setting up local public services for removal and treatment of municipal waste water and precipitation. Resolving this problem requires an integrated approach and the coordinated cooperation of competent bodies on both the national and local levels. For this reason we advised the Ministry of the Environment and Spatial Planning (MOP), which is responsible for implementation of the government decision on the operational programme of drainage and treatment of waste water through programmes of mains water projects, that there was inadequate provision in this area. The MOP informed us that the government decision envisaged in the area of Ajdovščina the completion of a central treatment facility by 2002 and a mains water system, complete with a system of drainage and treatment of waste water.

Establishing fulfilment of the prescribed minimum conditions for performing activities from Article 9, paragraph three of the Craft Establishment Act

The ombudsman was approached again by an applicant because there was still no resolution of the problem of a large farm operating without proof of fulfilling the conditions for performing activities as set by the Craft Establishment Act (ObrZ). We had already presented the problem in the '97 Annual Report, so we will not set out all the details again here. But to sum up: the applicant's neighbour has a poultry farm, a slaughterhouse and waste disposal site even in buildings for which the competent urban planning inspector established that they were constructed without permits and that they were without operating permits.

On the basis of the applications dealt with we have ascertained that the competent inspection services in certain cases regard the fulfilment of minimum conditions for performing activities set out in Article 9, paragraph three of the ObrZ as being proved simply by the craft establishment permit. Although not all of the conditions for performing such activity have actually been fulfilled, because the person performing such activities has been issued with a craft establishment permit, it is deemed that (all) conditions have been satisfied a priori, although the competent inspection body (building inspector) established in a formal decision that the commercial premises in which the activity is being performed have not been issued with a permit for use, and this is one of the minimum technical conditions. We believe that lacking legislation should not be an excuse for the inspection service, which is empowered by law to take action (Article 18 of the ObrZ), not to do its job.

The performing of a small business or craft operation and the issuing of a craft establishment permit are connected to the fulfilment of certain special educational requirements, and at the same time certain legally provided minimum technical, sanitary and health requirements, requirements regarding exterior surfaces and other. While the ObrZ has provided a transition period for the question of educational requirements, there is no such leniency for the fulfilment of other minimum requirements. It is understandable that the educational requirements represent an element of permanence, for they are connected to the person performing the specific activity. But this does not apply to the fulfilment of the minimum conditions set out in Article 9, paragraph three of the ObrZ, and for this reason they need to be verified continuously, particularly when the activity is not being performed in the same premises as on the issuing of the craft establishment permit.

We conveyed our opinion to the chief market inspector that the craft establishment permit is simply proof of fulfilling the conditions from the first and second paragraphs of Article 9 of the ObrZ (educational requirements), while the minimum conditions for performing the activity from paragraph three of the same article are proved by an appropriate decision from the administrative body. This applies particularly for those craft establishment permits which were issued ex officio on the basis of Article 46 of the ObrZ. Irrespective of the issuing of a craft establishment permit, the person performing the craft activity must fulfil technical and other requirements relating to the commercial premises, land, equipment and apparatus, and which are set out in the rules on minimum technical and other conditions for performing craft establishment and similar activities. In Article 18 the competent inspectors have a basis for taking measures despite the issuing of a craft establishment permit, if the natural or legal person does not fulfil the requirements for performing the activity. It is true that in the aforementioned Article the ObrZ does not specifically identify which inspection body is competent to oversee the performance of craft establishment activities, which means that several inspection bodies could perform such monitoring through special regulations. Despite this, our view is that in this and similar cases it is the Market Inspection Act (Ur. list RS, no. 80/97) which is the special regulation, pursuant to Article 1 of the act itself, which provides the market inspectors with the basis on which to act. If other special regulations provide for the competence of some other inspection body, or if competences overlap, the responsibility for coordinating the work of these bodies is the very least which an individual line ministry in cooperation with other ministries can assume to secure the more effective and transparent functioning of the inspection services.

In view of amendments to the Government Act, we anticipate that there will no longer be differences between the competent ministry and the market inspectors regarding the issues in question, and above all regarding the legal basis for action or otherwise of the market inspectors, for this most certainly affects the quality and effectiveness of the work of both bodies.

Demarcation of inspectors' competence in rehabilitation of abandoned gravel pit

An applicant is endeavouring to secure the rehabilitation of an abandoned gravel pit in Bistrica pri Tržiču, because it is threatening residential buildings in its direct vicinity, the road and the water supply. The problem is still not resolved, even though in 1993 the mines inspectors issued an order for rehabilitation of the gravel pit, which was then owned by the Tržič Municipal Corporation, while now the owner of the land in which the gravel pit is located is the SKZG. Following the issuing of the order in 1993 the national mines inspectorate learned that it was not competent to deal with the matter in question, since no permit for exploitation had ever been issued for the Bistrica pri Tržiču gravel pit. On this basis it communicated its actual non-competence to the locally competent branch of the environment and spatial planning inspectors (IRSOP). Until the issuing first of an environmental encroachment permit (or a site permit), which is needed for the issuing of a permit to exploit the gravel pit, according to information from the mines inspectors (RRI), they are not competent for overseeing the abandoned gravel pit.

On the basis of answers we received in response to our enquiries, we learned that the demarcation of competence between the IRSOP and RRI is not sufficiently clear and distinct, and therefore the valid legislation does not provide a basis for the more effective operation of the competent state authorities in this area.

The position of the RRI that it is not competent to order rehabilitation of the abandoned gravel pit because no site permit had been issued and there was therefore an environmental encroachment without the proper permit, along with the conclusion that the IRSOP was therefore competent to deal with the matter, is in our view open to dispute. The information we received indicates that the

Bistrici pri Tržiču gravel pit was abandoned as far back as 1970, and it is therefore entirely unrealistic to expect the obtaining of a site permit on the part of the then contractor or even from the SKZG, the current owner of the land where the abandoned gravel pit is located.

We communicated our opinion to the RRI that the Mines Act (ZRud) sets out the types of mine workings and the body competent for overseeing them, this being the mines inspectors. In comparison with the powers provided to the IRSOP by the Arrangement of Settlements and Other Environmental Encroachments Act (ZUN), the ZRud provides the RRI more specialised powers to act, including in cases such as the one under discussion, and also when the contractor in performing works encroaches outside the area determined in the permit for prospecting or exploiting (and therefore in the event of unlawful environmental encroachment). The formalistic insistence on the obtaining of a site permit and thus the delegation of the responsibility of the mines inspectors to the IRSOP is for the above reasons unjustified, since this involves an area which is governed by a special regulation in which the legislator clearly did not foresee cases such as this one. For this reason such regulation should in our opinion be supplemented so as to enable the competent (mines) inspectors to take effective action. Although the case under discussion involves an environmental encroachment without the appropriate permit, action should be based on the original purpose which the mining contractor had, that is the extraction of gravel (exploitation of mineral raw materials) and the provisions of the ZRud should be observed. Moreover, the IRSOP does not have at its disposal the authority to take all the necessary action in this area, which is governed by the ZRud in its capacity of a special regulation. What is the point and purpose of an individual special regulation such as the ZRud, if action can only be taken on the basis of general regulations (in this case the Arrangement of Settlements and Other Environmental Encroachments Act)?

The RRI based its response on the view that in the case of illegal environmental encroachments without a site permit pursuant to the provision of Article 50 of the ZUN and without operating permits pursuant to Articles 48, 49 and 50 of the ZRud, in line with the opinion of the State Attorney and the opinion of the Government Legislation Office, the IRSOP is the competent body. Yet the possibility is not ruled out of an agreement between the two inspection services. In the opinion of the RRI it performs the overseeing of implementation of technical regulations and regulations in the area of occupational health and safety, as well as of other regulations in the prospecting and exploitation of minerals and the performance of mining operations. On 21 August 2000 the RRI sent a letter with a proposal for settling the issue of demarcation of competence between the RRI and IRSOP to the Ministry of Economic Activities and the Government Legislation Office. In view of the above we called on the Government to provide the earliest possible settlement of this demarcation of competence between the IRSOP and RRI.

Assessment of municipal contribution

In September 1999 two applicants submitted to the Ljubljana Administrative Unit, Vič-Rudnik branch, an application for a building permit for a residential building, and prior to this at the municipality of Ig they requested an assessment of their municipal services contribution liability. Despite their explicit request, they still have not received a decision on the assessment of their municipal contribution. The mayor of Ig replied to them that the municipality could not issue a decision on the assessment of their municipal contribution, because the municipal council of the municipality of Ig had not confirmed the programme of provision for building plots, and proposed to them that they settle a portion of their municipal contribution based on the calculation of a comparable part of the cost of providing services to building plots. In view of the provisions of the Building Land Act (Ur. list RS, no. 44/97) and the Instructions for calculating municipal service contributions (Ur. list RS, no. 4/99, hereinafter: Instructions) the applicants did not agree with this explanation. Since they do not have a decision on the assessment of municipal services contribution (and therefore of course no confirmation of payment), the Administrative Unit passed a decision halting the procedure for issuing a building permit until the issuing of the decision on assessment of municipal contribution. We have noted the determining of part-payment for municipal services contributions through contracts in a number of other cases.

We dealt with the problem of determining municipal services contributions by contract in the '99 Annual Report. At that time we stressed - and the same applies for the above case - that the Building Land Act clearly provides (Article 44) that the liable person's municipal contribution is assessed in a decision issued by the municipal administration. In this specific case the applicants requested just such a decision. And since no decision was forthcoming, the procedure for issuing them with a building permit also came to a standstill at the Administrative Unit. The Instructions

clearly set out that until the adoption of a programme of service provision, which is the basis for calculating municipal services contributions, the programme of service provision should be regarded as being the municipal capital programme of building land planning, adopted under existing regulations.

Ineffectiveness of environment and spatial planning inspection

In dealing with applications in connection with illegal environmental encroachments we were able to observe a varying approach by the spatial planning inspectors, as we illustrate with two cases.

In the first case the urban planning inspectors on 16 March 2000 decreed for the investors in a residential building an inspection measure pursuant to Article 73, paragraph one of the Arrangement of Settlements and Other Environmental Encroachments Act (ZUN) - removal of the building. The applicants appealed against the decision and at the same time as the appeal they submitted a proposal for postponement of the carrying out of the demolition order. The MOP decided on the appeal to the effect that in its decision of 12 May 2000 it rejected the appeal as unfounded, while there was still no decision made on the actual proposal for postponement of the order.

From both the explanation of the decision by the urban planing inspectors and the decision of the Ministry, which dealt with the appeal, it is clear that the applicants had been granted by the Ljubljana Administrative Unit, Moste-Polje branch on 24 December 1998 a standard building permit/legalisation of a residential building, which is still not legally effective. We were therefore able to conclude that the inspectors discovered the illegality of the construction very late, for the legalisation procedure at the Administrative Unit began back in October 1997. There were no obvious reservations against the legalisation of the illegal environmental encroachment from the aspect of public benefit, for otherwise the legalisation of the illegal construction would not have been permitted. Nor were we able to discern from the inspectors' decision how the inspection in this matter had been conducted. There was a surprisingly rapid resumption of the procedure following the inspection, for in 16 days the aforementioned decision was issued; this clearly was not the case for the decision on the applicants' proposal of postponement of the order being carried out. And the speed of the second instance body which decided on the appeal is also noteworthy.

In the matter under discussion the inspection procedure stands out very clearly from the usual practice of inspection services. Frequently the enforcement of an order is postponed even just on the basis of an initiated procedure for legalisation of a constructed building and in cases of appeals lodged against decisions by the urban planning inspectors. In contrast to the cases which we encountered for the most part, the competent urban planning inspector in this case very rapidly issued a decision pursuant to Article 73 of the ZUN, and here we do not bring into question the fact that there was an appropriate basis for the decision. Since the investor had succeeded in obtaining a standard building permit, albeit not final, because the competent body has still not decided on the appeal, the immediate carrying out of the order decreed by the inspectors is questionable in view of the possibility or probability that the investor might well obtain the legalisation of the construction in question.

Following intervention with the chief national inspector, the local inspector issued a decision accommodating the proposal of the applicants for a postponement of the enforcement of the inspectors' decision, until the standard building permit took legal effect.

There was an entirely different approach adopted by the inspectors in a case where the urban planning inspectors issued a decision on 28 August 1997 ordering the two investors to remove a staircase and a projecting roof built without the proper permits. The investors did not carry out the inspectors' order. In a letter dated 4 October 1999 the inspectors informed the applicants that the procedure was under way for forced execution of their decision. Despite several final warnings there has been no enforcement of the decision.

We made enquiries in this matter at the chief national inspector, who explained in response that the inspectors' decision had still not been enforced because of numerous objective reasons, including staffing problems, with which the competent branch of the inspectorate was dealing, and the generally unsuitable conditions for effective and permanent performance of administrative enforcement on the level of the entire inspectorate. For the previous autumn several administrative enforcements were planned across the whole country, and within this plan enforcement of the decision in the case under discussion is expected to be carried out.

2.11. Housing matters

We received 116 applications relating to housing matters in 2000, which is ten per cent more than in the previous year. If we add to this figure those applications relating to social security which touch on housing problems, the total number is 132 - more than in 1999 but still less than in 1998. Applications reflecting the not-yet-regulated housing conditions of applicants are still prevalent. Requests for assistance and advice in obtaining social and non-profit housing in municipalities are the most common type of application. Other applications relate to requests for a review of assessments of housing conditions, various types of dispute among the owners of individual flats in buildings containing several flats (or among neighbours in such buildings), and the difficulties experienced by tenants of denationalised flats. A fairly large share of applications still relate to the problems of householders who received army flats during the contentious period in 1991, or to the implementation of government criteria for addressing cases of illegal occupation of army housing.

Given the structure of applications in this area, it is understandable that we are most frequently obliged to turn to the competent bodies of local communities. Their responses to requests for information are generally good, and as a rule the information is sent to us within the requested deadline. This however does not apply to the Housing Fund of the Municipality of Maribor, where once again we note that replies to our requests arrive late, after several urgent reminders, and the replies themselves are often empty of content. We have drawn the attention of the mayor of the Municipality of Maribor to this problem.

Unfortunately, with the majority of applications the ombudsman is unable to intervene as the applicants would wish, in other words by helping them or by recommending the extraordinary or speedier addressing of their housing problems. The great majority of applicants understand that the ombudsman cannot intervene if this would mean a conflict with the adopted regulations and criteria which have to be observed equally for all applicants. The result would be the unequal treatment of some applicants at the expense of others. We do note that the number of announcements of allocation of social and non-profit housing in municipalities has fallen, but at the same time certain inadequacies in the regulations governing the criteria for the allocation of such housing (to which we have drawn attention in past years) have been remedied, with the result that the number of problems noted in the applications received in this area has fallen too.

On the other hand it is right to repeat our proposals that long-term and stable funding of the construction of housing in municipalities, particularly social housing, should be guaranteed. To this end the financial part of the national housing programme needs to be realised.

Tenants in denationalised housing

No progress was made in 2000 in the addressing of these problems. Despite the resolution of the National Assembly and the Government and the setting up of a tripartite commission at the MOP, comprising experts, representatives of the association of tenants of nationalised housing and representatives of the association of owners of expropriated property, the proposals designed to broaden the scope of material incentives for the settling of the problems of tenants of denationalised housing have not yet been implemented. These proposals could be implemented by means of changes to Article 125 of the Housing Act (SZ) so as to provide for more incentive measures allowing tenants to find a permanent solution to their housing problems using the substitutive methods envisaged by this law. The revocation of one of the models by the Constitutional Court and the increasing of non-profit rents have further worsened the problem, and therefore the work of the above-mentioned commission and the MOP needs to be speeded up and appropriate changes to the SZ adopted at the earliest opportunity.

Army housing

The issue of army flats illegally allocated during the controversial period in 1991 is one of the constants of the post-independence problems which the ombudsman had to deal with throughout the course of his first mandate. After the passing of the moratorium on evictions in 1995 and the adoption of government resolutions in December 1998, this problem began to be addressed, though not particularly intensively until our intervention at the MO in 1999, when we proposed activities designed to speed up the implementation of the government resolutions. With these cases now being dealt with more rapidly at the MO, the number of applications relating to this matter fell in 2000.

The main reasons that applicants turned to the ombudsman were the objective and subjective problems they experience with the implementation of the specific criteria employed in the addres-

sing of their housing problems. Particular problems occur in the case of moving from one locality to another and with regard to the possibilities of purchasing a flat in accordance with the criteria adopted by the Government. For many individuals the demand for a one-off payment of the difference in value of a larger flat in cases of illegal occupation of a larger flat was too great a burden, so they have asked for the possibilities of purchasing flats in accordance with the SZ and the Government's resolutions on addressing the issue of illegal occupation of army housing to be made easier for them. The MO and the ombudsman have insisted on the correct and consistent observing of government criteria.

Nevertheless we have proposed to the MO that it should study the possibility of an extraordinary solution in one case, since we feel that this is a case which the government criteria did not envisage. We supported our proposal to the MO (dated 16 February 2000) with arguments substantiated in six points. We explained the special position in which our applicant found himself: merely as a result of the fact that his retirement (which he requested immediately after the aggression against the Republic of Slovenia, in which he did not wish to participate) coincided with Slovenia's achievement of independence, he has been unable to exploit the possibility of moving to his native Maribor after his retirement (though he expressed his desire to do so back in 1998). The other members of his family were also born in Maribor and wished to continue their life in that town. We felt that our arguments justified the proposal that a solution should be found which would permit the applicant to continue to live in Maribor rather than compel him to move to Brežice, which was his last military posting. The MO forwarded our proposal to the government advisory body, which was however only prepared to allow our applicant to purchase his previous flat, and would not drop its demand for him to vacate his flat in Maribor.

When we learned at the beginning of 2001 that our applicant had still not resolved his housing problem and was still being threatened with eviction, we once again sent our proposal, together with all the grounds substantiating it, to the MO. Once again we proposed that the ministry study our arguments and proposal for an extraordinary solution to this problem, citing among other things the provision of the second paragraph of Article 3 of the Human Rights Ombudsman Act (ZVarCP), which gives the ombudsman the legal basis for an appeal to the principles of justice in his interventions. We considered that the special circumstances of this case had not been taken into account in the government criteria and therefore justified an extraordinary solution. The mere fact that his retirement coincided with the country's achievement of independence meant that the applicant had lost his right to return to his native town.

3. Data on the work of the ombudsman

The six-year term of office of Slovenia's first Human Rights Ombudsman Ivan Bizjak came to an end on 29 September 2000. Mr Bizjak was elected ombudsman in September 1994 by the National Assembly of the Republic of Slovenia. His appointment was supported by two thirds of the parliamentary deputies. His renewed candidacy on 13 July 2000, despite strong support for his work to date, failed to win the support of a sufficient number of deputies. At an extraordinary session on 21 July 2000 the National Assembly appointed three deputy ombudsmen - Aleš Butala, France Jamnik and Jernej Rovšek - at the proposal of the ombudsman. The previous six-year mandate of all three deputies was due to expire in mid-December 2000 and their re-appointment was therefore proposed by Ombudsman Ivan Bizjak in accordance with the second paragraph of Article 15 of the Human Rights Ombudsman Act, which stipulates that the Ombudsman shall propose to the National Assembly the appointment of a deputy at least six months before the expiry of the mandate period of the previous deputy. Mr Bizjak justified the proposal for their re-appointment on the grounds that the work of the Human Rights Ombudsman during the first mandate had enjoyed positive assessments, both among the public and in the National Assembly on the occasions of the reading of his annual reports. The ombudsman's deputies made a significant contribution to the success of this work. He considered that the areas of work of the ombudsman, which are very broad, were professionally well covered, and that their capacity for this specific work, which they had demonstrated through their work to date, and the experienced they have gained, guarantee a successful continuation of the work of the Human Rights Ombudsman.

In the opinion of numerous institutions and individuals, the ombudsman and his colleagues have succeeded in their first six years in establishing a well-functioning institution capable of taking appropriate measures and answering all the petitions addressed to it by individuals. The institution enjoys the trust of the public and the respect of state functionaries and public servants, and has also won a good international reputation. Ivan Bizjak was for four years the vice-president of the European Ombudsman Institute and a member of the board of the International Ombudsman Institute. Until the appointment of a new ombudsman by the National Assembly, deputy ombudsman Aleš Butala stood in for the ombudsman on the basis of the first paragraph of Article 17 of the Human Rights Ombudsman Act which stipulates that in the case of the ombudsman's absence or death, the expiry of his mandate, or permanent or temporary incapacity to exercise his function,

he shall be substituted by his deputy, and that the ombudsman shall specify the order in which his deputies shall substitute him, and Resolution No. 0114/96-1 of 5 April 1996 in which the ombudsman stipulated that in the cases listed under the first paragraph of Article 17 of the Human Rights Ombudsman Act he should be replaced by his deputies in alphabetical order of their surnames. The institution continued to function normally without interruption, although there was a noticeable drop in the number of petitions received in the period from the unsuccessful candidacy for re-appointment of the existing ombudsman to the appointment of a new ombudsman (approximately 40% each month), which meant a fall of around 10% in the total annual intake of cases. This fact also illustrates the great importance of the person representing the institution.

In this chapter we offer information relating to methods and forms of work, the contacts of the ombudsman with state bodies and other institutions, the ombudsman's work away from his office, activities in the area of public relations, international cooperation, the staff of the Ombudsman's Office, finances and training. Detailed statistical data on the work of the ombudsman in 2000 in comparison with previous years is also provided.

3.1. Methods and forms of work

The institution of the Ombudsman was established with the purpose of protecting human rights and fundamental freedoms in relation to state bodies. Its task is to prevent and identify violations of human rights and other injustices and to eliminate their consequences. It is therefore of decisive importance that the Ombudsman should be accessible to anyone who wishes to apply to this institution. This principle is observed in the range of systems governing our methods of work.

The reception office is open at all times during the working day (between 8 a.m. and 4 p.m.) for clients to submit applications and to talk to our duty staff, who can provide information. Discussions are held by prior appointment with the Ombudsman, his deputies and advisers. Soon after the institution began operations we set up a free telephone number (080 15 30) for explanations, advice and information on applications submitted, and since October 1998 it has also been possible to submit applications to the Ombudsman via e-mail on the Internet home page (www.varuh-rs.si). During visits to regional centres the Ombudsman also holds discussions with applicants and accepts applications in this way, too.

As a rule, in order to begin the procedure with the Ombudsman applications are submitted in writing. In urgent cases we also accept applications via telephone. Applicants can submit applications during personal discussions. Indeed some applications stem from talks held with detained persons during inspections of prisons and detention centres.

The Ombudsman's procedure is not formal and is free for clients. The application should contain the facts and enclose evidence that is important for instigating the procedure, and should state what legal means were used in the specific case.

Some applications are incomplete, lacking all the facts important for a description of the problem, or they do not enclose the necessary documentation. Depending on the type of deficiency we request supplementary material from the applicant, or we address an enquiry to the relevant body if it is shown clearly enough what procedure and what body is involved. In some applications we establish that it does not fall within the remit of the Ombudsman or that conditions are not fulfilled for it to be dealt with. In such cases we respond to the applicant with advice as to where they might turn, if other possibilities are available or if there are legal remedies that can be used before the Ombudsman can deal with the matter. The applications that do not fall within the Ombudsman's jurisdiction are often those involving disputes between individuals which cannot be resolved other than by agreement, and if this is not possible, then through the courts.

In order to obtain an explanation of all the circumstances in connection with an application being dealt with, we generally obtain the view of the other side. For this reason we conduct enquiries at the official body to which the application relates. Since the matters we deal with differ widely in content, the methods of conducting enquiries also differ greatly. As a rule we approach the competent body in writing, with a short summary of the claimed injustice or a description of the problem and request more detailed information. Sometimes, for example in confirming the lengthiness

of a procedure, we already give an opinion at this stage, on the assumption that the applicants claims are entirely true. At the same time we set a deadline for a response, depending on the urgency and complexity of the matter. This deadline is no longer than 30 days. Sometimes where time is critical or in view of the nature of the problem we conduct enquiries by telephone. In some cases, where the official body avoids responding to our questions, we look into the complete files on the case to which the application relates. We invite the head or a representative of the body for talks, if it is necessary to clear up questions of a broader nature. In cases where detainees or prisoners complain about inappropriate procedures of the institution's management or about unsuitable living conditions, we conduct talks with the management at the same time as visiting the detainee or prisoner.

When we have gathered all the necessary information, we decide on how to proceed. Sometimes the response from the official body signifies a resolving of the applicant's problem, for example information on the continuation and conclusion of a procedure which the applicant believes is being unjustifiably delayed. In such cases we can conclude the procedure, and invite the applicant to contact us again if the body does not follow up on its own assurances of continuing the procedure. In other cases where the application is justified, we continue dealing with issues in dispute until an appropriate resolution is achieved.

In dealing with applications we are aware that for the applicant the most important thing is that we resolve their problem. This is our guiding principle in deciding on the use of the most appropriate measure from among those for which we are empowered. So in cases where a procedure is excessively lengthy without good reason, we can intervene with the body to speed up the matter, particularly if the reasonable or legal deadline for giving a decision has been exceeded and if it does not involve breaking the order in which matters are being dealt with. We may also propose to the body that the problem be resolved through some settlement, if the applicant also agrees with this. If the injustice can longer be eliminated, we propose to the body that it apologise to the applicant for the injustice committed. In all stages of whatever procedure we can offer official bodies recommendations for resolving a problem, an opinion from the aspect of respecting human rights and fundamental freedoms, proposals for improving their dealings with clients and proposals for compensating clients. If we establish that a given problem is exclusively the result of inappropriate regulations, we can recommend the amendment of such regulations. If such a regulation governs an important issue regarding protection of human rights and fundamental freedoms, and our proposal for amendments of a regulation has not been accommodated, we can lodge an application for a ruling on constitutionality and legality at the Constitutional Court. We can also lodge constitutional complaints at the Constitutional Court.

Contacts with state bodies and other institutions

Among the important conditions for the successful work of the ombudsman is appropriate cooperation with state bodies and other institutions. By appropriate cooperation we mean taking note of the ombudsman's proposals and opinions, responding correctly to his inquiries, and a willingness on the part of officials to engage in direct discussion of problems from the area of human rights protection. Numerous working meetings with officials at state bodies and other institutions took place in 2000. We consider these meetings to be useful, particularly because they can encourage changes in the ways the problems we encounter are addressed. They also enable a faster and better quality exchange of information on problems and the possibilities for tackling them. At the same time they are an opportunity to confront differing positions on the way to overcome these problems.

The ombudsman submitted the 1999 annual report to the President of the National Assembly in April, to the President of the Republic at the beginning of May and to the Prime Minister in mid-June 2000 when the new Government commenced work. Each of these occasions was accompanied by a brief presentation of the contents of the annual report.

The main topic of discussion at the ombudsman's meeting with the president of the Supreme Court in May 2000 were measures to reduce court backlogs. The two parties agreed that as a result of certain measures adopted to reduce court backlogs some positive results could already be seen, and that it was necessary to persist with these measures.

At a discussion with the Minister of Justice in July we once again drew attention to the urgent need for a special programme specifying the bodies responsible for individual activities designed to reduce court backlogs. The Minister informed us that 39 courts have prepared programmes to remove backlogs. We also acquainted the Minister with a number of concrete problems deriving from

petitions we have dealt with, for example the drawing up of expert opinions within the set deadlines so that court procedures do not come to a standstill unnecessarily. We particularly stressed the need for the passing as soon as possible of a law regulating free legal aid and laws which could result in court cases being dealt with more promptly.

At a discussion with the Minister of Health we dealt with the problem of involuntary hospitalisation in psychiatric care institutions, which is still not fully regulated because the new Mental Health Act has not yet been passed. Once again the issues of poor transparency and ineffective complaints procedures in health care were stressed. In this connection the Minister proposed the establishing of a Patients' Ombudsman.

At a meeting with the Minister for the Environment and Physical Planning the ombudsman drew attention to the length of certain procedures conducted by the ministry as the second-instance body. He also touched on the question of the delimitation of competences among inspectorates (environment and physical planning, agriculture, health). We also stressed the problem of funding contractors hired to demolish illegal buildings. The ombudsman was also interested in the progress of repairs to buildings damaged by the earthquake in the area of the basin of the River Soča, and in whether those affected would be able to move into the repaired buildings by winter.

As well as the meetings of the ombudsman there were also a number of meetings between the ombudsman's deputies and officials at state bodies - for example a meeting with the state secretary at the Ministry of the Interior at which we were informed about the reorganisation of the system of dealing with complaints about the work of the police. We should also mention the discussion with the president of the Administrative Court, at which we were particularly interested in what the transfer of certain cases from the Supreme Court means for the Administrative Court. In the opinion of the president of the court this transfer should not cause major disruptions to the work of the court.

Work outside Ljubljana

Our work outside the capital is designed to ensure that the ombudsman is active across the whole of Slovenia. Every year we visit all major centres at least once, the exception being Maribor which in past years we have usually visited several times a year. In 2000 we were surprised by the great interest in meeting the ombudsman shown by the people of Koper, which we visited twice. In 2000 we made two visits to Maribor and Koper and one visit to Nova Gorica, Celje, Murska Sobota and Novo Mesto. An average of 20 to 25 conversations were held during each visit, except in Maribor where we held almost 100 conversations, and in Koper, where we held more than 30 conversations.

We have found that work away from the office has several effects. First and foremost is the fact that individuals who live a long way from Ljubljana get the chance to have a personal conversation with the ombudsman in which they can explain their problem in detail. The second is that some difficulties relating to the inappropriate work of state bodies and local bodies in the place visited can be overcome by means of direct intervention during the visit itself. The visits also have a preventive influence on the work of state and local bodies in the places visited.

The problems referred to the ombudsman by individuals outside Ljubljana are similar to those we encounter in written petitions. We do not note special differences among the regions in terms of the content of problems. It can however be noted that in regions where state bodies deal promptly with cases we do not receive petitions relating to excessively slow work by state bodies. This factor is also reflected in the amount of interest in a conversation with the ombudsman or his deputies (e.g. Novo Mesto).

During our trips outside Ljubljana we also organised a number of press conferences at which we presented the contents of some of the problems we have dealt with.

Public relations

Complete information, promotion of human rights and guaranteeing openness and transparency are also the aim of the Human Rights Ombudsman's work in the area of public relations.

In 2000 four press conferences were held at the Ombudsman's Office at which the ombudsman gave a detailed presentation of last year's annual report and of concrete cases dealt with, and drew attention to problem areas of wider importance. He also spoke about his work at press conferences held during visits to other towns, appeared on numerous national, regional and local radio and television programmes, and gave interviews to various newspapers and magazines.

The Human Rights Ombudsman's web site (www.varuh-rs.si) has proved to be a very useful and welcome source of information not only for the media but also for students, schoolchildren, petitioners and, judging from responses, chance visitors as well. By the end of 2000 the ombudsman's web site had been visited roughly 27,000 times. At the end of the year Hungarian and Italian translations of the most important information and documents were added to the site.

3.2. International cooperation

The Ombudsman at the General Assembly of the EOI

7-8 February: the Ombudsman attended the General Assembly of the European Ombudsman Institute (EOI) in Val d'Aosta. The participants of the assembly reviewed the Institute's work to date, elected a new Board of Directors and discussed plans for future activities. The Catalan ombudsman Anton Canellas was elected the new chairman of the EOI.

Council of Europe Round Table in Strasbourg

16-17 March: the Ombudsman attended the first Round Table of the Council of Europe with national human rights institutions and the third European meeting of national institutions (at the invitation of the Secretariat General of the Council of Europe). The participants discussed the protection and promotion of economic and social rights, the fight against racism and racial discrimination, and cooperation between the national human rights institutions of Member States and between them and the Council of Europe. The meeting's organisers invited the Ombudsman to chair a session devoted to the protection and promotion of economic and social rights and then to chair a working meeting on this topic. The round table was established as a form of regular meeting for the national human rights institutions of Member States of the Council of Europe by Resolution (97) 11, adopted on 30 September 1997 by the Committee of Ministers of the Council of Europe.

International Conference in Ghent

16-18 March: Deputy Ombudsman Jernej Rovšek attended an international conference of ombudsmen from all over the world in Ghent, Belgium. Owing to the absence of the Polish ombudsman he chaired the fifth workshop on human rights for ombudsmen from countries in transition. He also presented a paper on the experiences of Slovenia's ombudsman with a special emphasis on the experiences typical in transition countries, and at the plenary session reported on the conclusions of the workshop which he had chaired.

The Human Rights Ombudsman at a conference in Bratislava

28-29 March 2000: the Ombudsman attended the 'Ethics in Public Administration' conference in Bratislava at the invitation of the Slovakian government. The conference was organised by the Slovakian government in cooperation with the European Commission, the United Nations and other organisations, as part of Slovakia's efforts to reform public administration. The conference was attended by senior Slovakian government officials, members of the Slovakian parliament, representatives of the European Commission and foreign embassies, and foreign experts. The Ombudsman gave a presentation of the development of the institution of ombudsman in Slovenia and of his experiences in the establishing and operation of the institution. One of the purposes of the conference was to prepare the ground for the founding of an ombudsman institution in Slovakia.

Working visit of the Albanian ombudsman to Slovenia

3-7 April: the Human Rights Ombudsman of the Republic of Albania (Mr Ermir Dobjani) and his three deputies (commissioners) made a working visit to Slovenia in cooperation with the OSCE Office for Democratic Institutions and Human Rights (ODIHR). The institution of the Albanian ombudsman was in the process of being founded at this time and therefore the main purpose of the working visit was for the ombudsman to familiarise himself with the organisation and method of work of the Ombudsman's Office in Slovenia.

The ombudsman at a conference in Montenegro

13-14 April: at the invitation of the Organisation for Security and Cooperation in Europe (OSCE) in Podgorica the Ombudsman took part in a two-day conference in Montenegro on the role of the ombudsman as a national institution for the protection of human rights. He spoke to the conference participants about the role of the ombudsman in transition conditions and about the ombudsman's powers, method of work and relations with representatives of the authorities and the public. He also spoke about the institution of ombudsman and the possibilities of contributing to reforms in the area of legislation.

International conference in Prague

27-28 April: the Ombudsman attended a two-day international conference on the role of the institution of ombudsman at the invitation of the president of the Czech national delegation to the Central European Initiative (CEI). The conference was organised within the framework of CEI activities

by the Czech parliament and the Czech Ministry of Foreign Affairs. Over 60 participants from CEI Member States and other countries discussed the role of the institution of ombudsman in a democratic system and practical experiences from those countries which have already founded an institution of this type. The main purpose of the conference was to encourage the founding of an ombudsman institution in those countries which are still in the process of making a decision on the matter. The Ombudsman gave a presentation of the work of the ombudsman in Slovenia and chaired a debate on the special role of the ombudsman in countries in transition. The conference participants also discussed the relationship of the ombudsman with state bodies, the methodology of work, and the relationship of the ombudsman with the media.

Seminar in Athens

12-13 May: Deputy Ombudsman Jernej Rovšek attended a seminar in Athens on 'Ombudsmen in Europe and Challenges in Consolidating Democracy'. The seminar was organised by the Council of Europe and the Greek Human Rights Foundation.

Mr Rovšek presented a well-received paper on the challenges and role of the ombudsman in countries in transition. As well as the seminar, visits were organised to the office of the Greek ombudsman, who commenced work two years ago. The visits of various national ombudsmen to their Greek counterpart included an exchange of experiences in establishing and running an ombudsman's office, particularly in the eastern and southern Europe.

Meeting with the Council of Europe Commissioner for Human Rights

23-24 June: the Ombudsman attended a meeting of ombudsmen from central and eastern Europe in Budapest at the invitation of the Council of Europe Commissioner for Human Rights, Mr Álvaro Gil-Robles. The meeting was attended by ombudsmen from eleven countries in the region which already have a functioning ombudsman institution.

The position of Council of Europe Commissioner for Human Rights was established by Resolution (99) 50, adopted on 7 May 1999 by the Committee of Ministers of Member States of the Council of Europe. As stated in this Resolution, the Commissioner is a non-judicial institution to promote education in, awareness of and respect for human rights in Member States of the Council of Europe. The main functions of the Commissioner include promoting education in human rights, providing information and advice on the exercising of human rights and preventing violations thereof, and identifying possible shortcomings in the law and practice of Member States concerning the compliance with human rights. The Commissioner also cooperates with human rights structures in Member States, and where such structures do not exist encourages their establishment. The meeting in Budapest was aimed mainly at strengthening cooperation between national ombudsmen and Commissioner Gil-Robles, and at possibilities for further mutual support.

Deputy ombudsman at the Council of Europe Round Table in Tirana

5 October: Deputy Ombudsman Jernej Rovšek attended a round table in Tirana as an external expert at the invitation of the Council of Europe. This working meeting, which was mainly aimed at representatives of the Albanian public administration, was organised by the Council of Europe in cooperation with the OSCE and the American Bar Association (ABA). The experts invited by the organisers gave presentations of the role, functions and powers of the institution of ombudsman in a democratic society. In his presentation the Deputy Ombudsman touched particularly on the specific circumstances which ombudsmen encounters in transition conditions.

The Ombudsmen of Republika Srpska on a working visit to the Ombudsman's Office

18-19 October: in cooperation with the OSCE mission in Bosnia-Herzegovina the ombudsmen of Republika Srpska (Slavica Slavniž, Franjo Crnjak and Darko Osmiž) made a working visit to the Office of the Human Rights Ombudsman. The Institution of Ombudsmen of Republika Srpska commenced work at the end of May 2000 and therefore the main purpose of the visit to the Office of the Human Rights Ombudsman was to familiarise themselves with the experiences to date of Slovenia's ombudsman. The guests were acquainted with the organisation of the institution of ombudsman in Slovenia, the method of work in individual fields, the information system, the way actual petitions are dealt with, and with methods and forms of communication with the media and other sections of the public available to the ombudsman.

7th IOI Conference

30 October-2 November: the first Human Rights Ombudsman Mr Ivan Bizjak and the General Secretary of the Ombudsman attended the 7th Conference of the International Ombudsman Institute in Durban, South Africa. The IOI organises a conference every four years. The 2000 conference was mainly dedicated to the question of the international dimensions of human rights, the promotion of democracy and responsible management of public affairs, and issues relating to the effectiveness and efficiency of the work of the institution of ombudsman. The ombudsman made a well-

received speech in which he spoke about the challenges facing ombudsmen in transition conditions. The next IOI conference will take place in 2004 in Quebec.

Deputy Ombudsman receives the Commissioner for Human Rights of the Russian Federation

9 December: Deputy Ombudsman Aleš Butala received the Commissioner for Human Rights of the Russian Federation Oleg O. Mironov during his two-day working visit to Slovenia. The Deputy Ombudsman gave a presentation of the ombudsman institution in Slovenia and of its work, and illustrated the problems most frequently encountered by Slovenia's Human Rights Ombudsman. The Russian guest, who was appointed Commissioner for Human Rights on 22 March 1998, then gave a presentation of the work of the ombudsman in Russia. Mr Mironov also met the Minister of Justice of the Republic of Slovenia and the first Slovene ombudsman Mr Ivan Bizjak. The meeting was also attended by the Ambassador of the Russian Federation, Mr Tigran Karakhanov.

Other international activities

Within the framework of the Stability Pact for South East Europe there was a considerable amount of cooperation of various types with the Council of Europe. On 24 January the ombudsman attended a meeting of the Stability Pact for SE Europe's Working Table on Democratisation and Human Rights, at which most of the discussion centred on the programme of future activities. The ombudsman stated that as well as maintaining the good cooperation which already exists between related institutions in this area he was willing to receive working visits from representatives of interested institutions in order to introduce them to the substantive and technical/organisational aspects of our work. He also stressed that the institution is still prepared to offer individual countries expert assistance in the preparation of regulations on establishing an ombudsman institution and in strengthening existing institutions.

On 6 June the ombudsman attended a coordination meeting in Strasbourg at which the practical aspects of realising the selected projects were discussed.

On 6 December Deputy Ombudsman Aleš Butala received a delegation from the Council of Europe's Congress of Local and Regional Authorities and talked to them about the work of the Human Rights Ombudsman in Slovenia, and in particular about experiences and views of the work of local government and its relationship with state bodies.

3.3. Staff, training, finances

Staff

As at 31 December 2000 the Ombudsman's Office employed, in addition to the three deputy ombudsmen, 21 members of staff (including one trainee). This is two fewer than a year ago (the departure of one employee from the technical service and one from the general secretary's office). Fourteen members of staff hold university degrees (three also hold master's degrees), four have college diplomas and three have certificates of secondary education. During the course of the year a graduate trainee completed a training period in the office. As in previous years the Ombudsman's Office also offered the opportunity for students to obtain work experience. This year two third-year students from Ljubljana University's Faculty of Social Sciences completed a three-week period of work experience.

Finances

At the proposal of the ombudsman the National Assembly approved a total of SIT 215.5 million (US$ 0.95 million at the Bank of Slovenia exchange rate on 31 December 2000) from the national budget for the work of the institution in 2000, of which SIT 187.4 million (US$ 0.82 million) was for salaries (salaries, contributions and other personal receipts), SIT 51.1 million (US$ 0.22 million) for material expenses, and SIT 13 million (US$ 0.06 million) for investments. The sale of sate property provided a further SIT 0.9 million (US$ 3,958).

In 2000 the institution spent a total of SIT 244.2 million (US$ 1.1 million), or SIT 7.3 million (US$ 0.03 million) less than the approved budget funds. It is worth stressing that as a result of liquidity difficulties with the national budget at the end of the year and the government's economising measures, we were unable to use the allocated funds for the urgent replacement (planned at the beginning of the year) of out-of-date and insufficiently powerful computer and other communications equipment necessary for the uninterrupted work of the institution.

On the basis of a resolution of the president of the Court of Auditors of the Republic of Slovenia (No. 1201-6/00-4, 22 May 2000), an audit of the implementation of the 1999 budget (correct-

ness of operations in 1999) was carried out in May 2000. According to the findings of the Report on the Audit of the Implementation of the 1999 Budget at the Office of the Human Rights Ombudsman of the Republic of Slovenia (No. 1201-6/00-4) the final account for 1999 showed current expenditure of SIT 220,877,000 (US$ 0.97 million). This amount includes salary expenditure and other expenditure. The current expenditure was shown correctly and in full, but the current expenditure of the ombudsman was not entirely in accordance with regulations. The amount of these discrepancies in the implementation of the financial plan for the ombudsman for 1999 was SIT 3,614,915 (US$ 15,898). In accordance with findings on the statement of expenditure in the final account of the ombudsman for 1999, the Court of Auditors handed down a positive opinion, while regarding the implementation of the financial plan of the ombudsman for 1999 it handed down an opinion with a reservation. In its explanation of its opinion on the implementation of the financial plan it stated that the identified irregularities in the implementation of the financial plan of the ombudsman for 1999 were not important, but neither were they negligible.

Information system

In 2000 we partly replaced unsuitable and obsolete information technology and replaced it with more modern equipment. For the reasons already given we did not make the transition to a newer version of Lotus Notes software (for clerical work). This transition has been put back to 2001. The Human Rights Ombudsman's web site was overhauled and supplemented and, as mentioned earlier, Hungarian and Italian translations of legislation and other regulations covering the work of the ombudsman were added at the end of the year.

Training

In 2000 staff training mainly took place at home in Slovenia. Staff attended seminars and professional meetings organised by other institutions. Some members of staff participated actively by contributing to training sessions for various sectors of the professional public. We also provided training for all staff in the area of communication with customers. As we have already stressed in the section of the report dealing with international cooperation, the deputy ombudsman, in his capacity as a Council of Europe expert, collaborated in the setting up of ombudsman's offices in some of the other countries of eastern Europe, and in helping these newly-founded ombudsman's offices commence work, by contributing papers on the experience of Slovenia's ombudsman and other ombudsmen. Deputy Ombudsman Aleš Butala took part in the running of training programmes designed for various sectors of the professional public.

Promotion of human rights

The Human Rights Ombudsman provided financial support to the 'political science days' organised by the Slovenian Political Science Society (2-3 June 2000, Portorož). The Office also provided financial support for the participation of a group of students from the Ljubljana University Faculty of Law in the Renée Cassin Competition before judges from the European Court of Human Rights in Strasbourg, and for an international seminar entitled 'A Home Between Reality and Allegory' organised by the Skala society.

Miscellaneous

With the aim of presenting the work of the Slovene Human Rights Ombudsman to the ombudsmen of other countries, related institutions and other sectors of the professional public working in the field of the protection of human rights in other countries, we once again prepared an English summary of the report on the work of the ombudsman. The Office also published three numbers of the European Ombudsmen Newsletter (which the Ombudsman's Office has been publishing since February 1999). The texts can be found on the English version of the Ombudsman's web site. Each printed edition of the publication is limited to 150 copies. These are sent to 130 addresses.

Deputy Ombudsman Jernej Rovšek was commissioned by the Council of Europe to prepare a legal evaluation of the draft law on the Defender of Human Rights in the Republic of Armenia. His opinion was discussed at a special seminar held on 10-11 November in Yerevan.

3.4. Statistics

This subchapter includes statistical data on complaints opened and processed by the ombudsman in the period from 1 January to 31 December 2000.

Definitions of individual statistical categories

1. **Complaints opened in 2000:** complaints opened by the ombudsman from 1 January to 31 December 2000.
2. **Complaints processed in 2000:** in addition to complaints opened in 2000, they include:
   - Complaints brought forward from 1999 - complaints opened in 1999 which had not been resolved by the end of 1999 and were therefore dealt with the ombudsman in 2000.
   - Reopened complaints - Cases which as at 31 December 1999 were resolved but which due to the emergence of new facts and circumstances continued to be processed in 2000. Given that new procedures were introduced for the same cases, no new records were opened. In view of this, reopened cases were not counted as complaints opened in 2000 but only as complaints processed by the ombudsman in 2000.
3. **Resolved cases:** This includes all complaints processed in 2000 whose procedure of processing by the ombudsman was concluded by 31 December 2000

Complaints opened

Table 3.4.1. shows the number of complaints opened in 2000 by individual area. For the sake of comparison, the table also shows data for individual years for the period between 1995 and 1999.

From 1 January to 31 December 2000 the ombudsman **opened a total of 3,059 complaints** (2,352 in 1995, 2,513 in 1996, 2,886 in 1997, 3,448 in 1998 and 3,411 in 1999), which is a **10.3 per cent decrease** on 1999.

As in previous years, the largest share of all complaints opened in 2000 referred to the following areas:

- court and police procedures: 990 or 32.4 per cent;
- administrative affairs: 534 or 17,5 per cent; and
- other matters: 508 or 16,6 per cent of all complaints opened.

The table clearly shows that the number of complaints opened in 2000 increased most substantially in the following areas relative to 1999:

- housing matters: from 105 to 116 complaints, which is an increase of as much as 10.5 per cent;
- social security: from 409 to 432 complaints, which is a 5.6 per cent increase; and
- court and police procedures: from 946 to 990 complaints, which is a 4.7 per cent increase.

The number of complaints opened in 2000 relative to 1999 decreased most substantially in the following areas:

- public services: from 72 to 37 complaints, which is an decrease of as much as 48.6 per cent;
- other matters: from 711 to 508, which is a 28.6 per cent decrease; and
- labour relations: from 217 to 157, which is a 27.4 per cent decrease.

Table 3.4.1.

Area of Ombudsman's work	REGISTERED COMPLAINTS												Index
	1995		1996		1997		1998		1999		2000		(00/99)
	No.	Share	No.	Share	No.	Share	No.	Share	No.	Share	No.	Share	
1. Constitutional rights	37	1,6%	37	1,5%	43	1,5%	58	1,7%	45	1,3%	35	1,1	77,8
2. Restriction of personal freedom	74	3,1%	145	5,8%	128	4,4%	213	6,4%	174	5,1%	166	5,4	95,4
3. Social security	251	10,7%	302	12,0%	397	13,8%	404	12,1%	409	12,0%	432	14,1	105,6
4. Labour relations	125	5,3%	88	3,5%	138	4,8%	221	6,6%	217	6,4%	157	5,1	72,4
5. Administrative affairs	565	24,0%	521	20,7%	663	23,0%	697	20,8%	635	18,6%	534	17,5	84,1
6. Court and police procedures	478	20,3%	761	30,3%	776	26,9%	881	26,3%	946	27,7%	990	32,4	104,7
7. Environment	61	2,6%	75	3,0%	71	2,5%	56	1,7%	97	2,8%	84	2,7	86,6
8. Public services	27	1,1%	33	1,3%	26	0,9%	37	1,1%	72	2,1%	37	1,2	51,4
9. Housing matters	204	8,7%	141	5,6%	126	4,4%	158	4,7%	105	3,1%	116	3,8	110,5
10. Others	530	22,5%	410	16,3%	518	17,9%	623	18,6%	711	20,8%	508	16,6	71,4
TOTAL	**2.352**	**100%**	**2.513**	**100%**	**2.886**	**100%**	**3.448**	**100 %**	**3.411**	**100%**	**3.059**	**100%**	**89,7**

Figure 3.4.1.

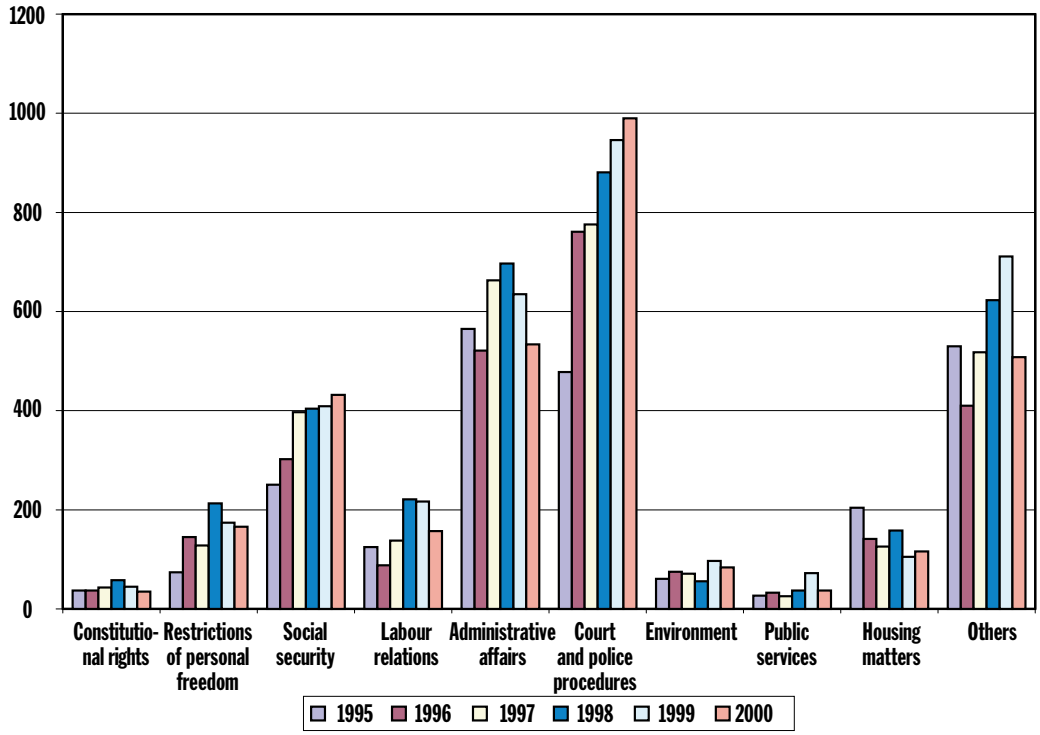


Figure 3.4.1 includes a graphic display of the comparison between the numbers of complaints opened by individual area in the period between 1995 and 2000.

Complaints processed

Table 3.4.2. shows data on the total number of complaints that were processed by the ombudsman in 2000 by individual area. As already mentioned, the group of complaints processed incorporates complaints opened in 2000, complaints brought forward from 1999, and cases reopened in 2000.

The table shows that in 2000 **a total of 3,630 complaints were processed**, of which:

- 3,059 complaints were opened in 2000 (84.3 per cent);
- 347 complaints were brought forward from 1999 (9.5 per cent); and
- 224 cases were reopened in 2000 (6.2 per cent of all complaints processed).

The area of court and police procedures (32.5 per cent), the area of administrative affairs (18.6 per cent) and the area of other matters (15.6 per cent) account for the largest shares of complaints processed in 2000. The table below shows in greater detail the number of complaints processed in 2000 by individual area.

Table 3.4.2.

AREA OF OMBUDSMAN'S WORK	COMPLAINTS BEING PROCESSED				Processed by area
	Opened 1999	Brought forward from 1998	Reopened cases	Total	
1. Constitutional rights	35	3	0	38	1,0%
2. Restriction of personal freedom	166	17	34	217	6,0%
3. Social security	432	39	22	493	13,6%
4. Labour relations	157	17	6	180	5,0%
5. Administrative affairs	534	101	40	675	18,6%
6. Court and police procedures	990	109	80	1179	32,5%
7. Environment	84	13	11	108	3,0%
8. Public services	37	5	3	45	1,2%
9. Housing matters	116	9	5	130	3,6%
10. Others	508	34	23	565	15,6%
TOTAL	**3.059**	**347**	**224**	**3.630**	**100,0%**

Table 3.4.3 shows a comparison of the numbers of complaints processed by the ombudsman by individual area in the period between 1995 and 2000.

The table shows that relative to 1999, **10.9 per cent less complaints were processed** in 2000. The number of complaints processed increased most significantly in the following areas:

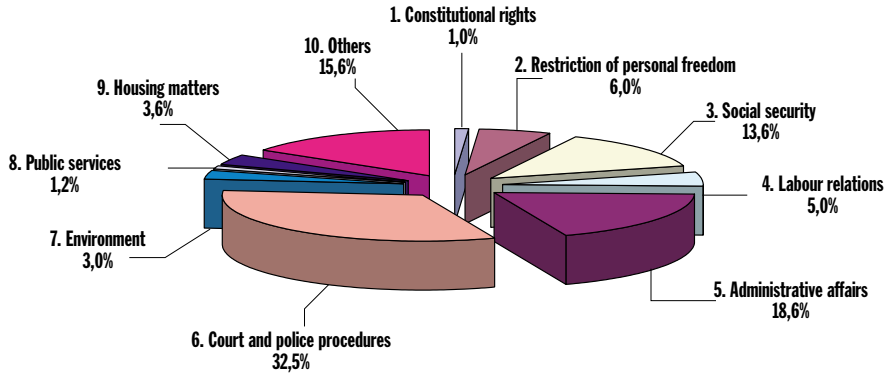
- public services: from 84 to 45 complaints, which is an decrease of as much as 46.4 per cent;
- constitutional rights: from 53 to 38, which is a 28.3 per cent decrease; and
- other matters: from 788 to 565, which is a 28.3 per cent decrease.

Figure 3.4.2. shows the shares of complaints processed by the ombudsman by individual area in 2000.

Table 3.4.3.

AREA OF OMBUDSMAN'S WORK	COMPLAINTS BEING PROCESSED												Indeks (00/99)
	1995		1996		1997		1998		1999		2000		
	No.	Share	No.	Share	No.	Share	No.	Share	No.	Share	No.	Share	
1. Constitutional rights	37	1,6%	63	1,6%	54	1,4%	65	1,6%	53	1,3%	38	1,0%	71,7
2. Restriction of personal freedom	74	3,1%	200	5,0%	179	4,6%	260	6,5%	227	5,6%	217	6,0%	95,6
3. Social security	251	10,7%	469	11,8%	528	13,7%	487	12,2%	478	11,7%	493	13,6%	103,1
4. Labour relations	125	5,3%	157	3,9%	181	4,7%	246	6,2%	233	5,7%	180	5,0%	77,3
5. Administrative affairs	565	24,0%	868	21,8%	855	22,2%	852	21,4%	831	20,4%	675	18,6%	81,2
6. Court and police procedures	478	20,3%	1.036	26,0%	1.086	28,2%	1.073	27,0%	1.118	27,4%	1179	32,5%	105,5
7. Environment	61	2,6%	122	3,1%	119	3,1%	83	2,1%	121	3,0%	108	3,0%	89,3
8. Public services	27	1,1%	49	1,2%	38	1,0%	46	1,2%	84	2,1%	45	1,2%	53,6
9. Housing matters	204	8,7%	264	6,6%	178	4,6%	185	4,6%	141	3,5%	130	3,6%	92,2
10. Others	530	22,5%	753	18,9%	636	16,5%	683	17,2%	788	19,3%	565	15,6%	71,7
TOTAL	**2.352**	**100%**	**3.981**	**100%**	**3.854**	**100%**	**3.980**	**100%**	**4.074**	**100%**	**3.630**	**100%**	**89,1**

Figure 3.4.2.



Complaints by stage of processing

Stages of processing of complaints

1. **Resolved cases:** complaints whose procedure of processing was concluded by 31 December 2000;
2. **Complaints being processed:** complaints whose procedure of processing was in progress on 31 December 2000;
3. **Scheduled complaints:** complaints to which on 31 December 2000 we were expecting a reply to our inquiries, and other procedural actions.

Table 3.4.4. shows a comparison between the stages of processing at the end of the years 1995 to 2000.

In 2000 **a total of 3,630 complaints** were processed, of which **3,443, or 94.8 per cent** of all complaints processed in 2000, **were resolved** by 31 December 2000 .

The remaining 187 complaints, or 5.2 per cent of all complaints, were in procedure of processing, of which:

- 126 were scheduled complaints; and
- 61 were complaints being processed.

Table 3.4.4.

STAGE OF PROCESSING COMPLAINTS	1995		1996		1997		1998		1999		2000		Index (00/99)
	Numb.	Share	Numb.	Share	Numb.	Share	Numb.	Share	Numb.	Share	Numb.	Share	
Resolved	1.875	79,7%	3.282	82,4%	3.442	86,7%	3.505	88,1%	3.727	91,5%	3.443	94,8%	92,4
Being processed	399	16,9%	535	13,4%	308	8,0%	261	6,6%	187	4,6%	61	1,7%	32,6
In the diary	78	3,3%	164	4,1%	204	5,3%	214	5,4%	160	3,9%	126	3,5%	78,8
Total	**2.352**	**100%**	**3.981**	**100%**	**3.854**	**100%**	**3.980**	**100%**	**4.074**	**100%**	**3.630**	**100%**	**89,1**

Resolved cases

Table 3.4.5. shows the number of resolved cases by individual area in the period between 1995 and 2000. In 2000, **3,443 cases were resolved** (1,875 in 1995, 3,282 in 1996, 3,442 in 1997, 3,505 in 1998 and 3,727), which is a **7.6 per cent decrease in the number of resolved cases** relative to 1999.

On the basis of a comparison between the number of cases resolved (3,443) and the number of cases opened in 2000 (3,059), we can conclude that in **2000 12.5 per cent more cases were resolved than opened** by the ombudsman, which can be seen to be the result of regular processing of cases.

Table 3.4.5.

AREA OF OMBUDSMAN'S WORK	RESOLVED COMPLAINTS						Index
	1995	1996	1997	1998	1999	2000	(00/99)
1. Constitutional rights	22	54	48	57	50	33	66,0
2. Restriction of personal freedom	60	165	144	226	210	211	100,5
3. Social security	202	374	466	438	439	464	105,7
4. Labour relations	98	124	157	234	216	179	82,9
5. Administrative affairs	418	717	718	687	730	623	85,3
6. Court and police procedures	397	824	931	959	1.009	1.113	110,3
7. Environment	36	86	93	65	108	104	96,3
8. Public services	21	39	30	38	79	43	54,4
9. Housing matters	175	223	156	161	132	124	93,9
10. Others	446	676	599	640	754	549	72,8
TOTAL	**1.875**	**3.282**	**3.442**	**3.505**	**3.727**	**3.443**	**92,4**

Processing of complaints by areas of work

In area **1. Constitutional rights** a total of 38 matters were dealt with in 2000, which represents a fall of 28.3 per cent from 1999, when 53 matters were dealt with. Applications in the area of constitutional rights represent barely one per cent of all applications dealt with.

The number of matters dealt with in area **2. Restrictions of personal freedom** fell by 4.6 per cent from 1999 to 2000 (from 227 to 217). This reduction in the number of matters being dealt with in 2000 is a consequence of the 11.4 per cent drop in the number of matters relating to people in custody (from 70 to 62), while the number of other matters in the area of convicts, soldiers and young people's homes in 2000 remained approximately at the same level as in 1999.

In area **3. Social security** the number of matters being dealt with in 2000 represented a 3.1 per cent increase over 1999 (from 478 to 493). The largest share among sub-sections of this area was taken by matters relating to provision of social protection (223 matters, or 45.2 per cent). We have observed a large increase in the number of matters dealt with in the area of disability insurance (from 60 to 75 - an index of 125) and social protection (from 198 to 223 - a 12.6 per cent rise). There were less matters dealt with in the area of health insurance (73 in 1999 and 56 in 2000, which is a drop of 23.3 per cent).

The number of matters in area **4. Employment matters** dealt with in 2000 (180) relative to those in 1999 (233) represented a reduction of 22.7 per cent. The largest fall in the number of matters dealt with was observed in the areas of other matters from this area (from 74 to 31 - a 58.1 per cent drop) and the area of employees in state bodies (from 38 to 26, a reduction of 38.9 per cent). There was a 10.3 per cent rise in the number of matters dealt with in the area of employment relations (from 58 to 64).

Area **5. Administrative matters**, with 675 matters dealt with, and despite a drop of 18.8 per cent from 1999 (831), represents the second biggest single distinct subject category of matters dealt with by the ombudsman in 2000. It is important to emphasise here the 12.2 per cent increase in the number of matters connected with tax (from 115 to 129) the 26.7 per cent drop in the number of denationalisation matters (from 146 to 107) and the 23.2 per cent fall in the number of matters relating to acquisition of Slovenian citizenship (from 112 to 86), which signifies a continuing reduction in the number of matters dealt with in this area since 1996 (381 in 1996, 244 in 1997, 194 in 1998, 112 in 1999 and 86 in 2000).

As was the case for all previous periods, in 2000 the majority of matters dealt with by the ombudsman were again in area **6. Judicial and police procedures** (1,179 matters, or 32.5 per cent), in which we include matters relating to police, pre-trial, criminal and civil procedures, procedures in employment and social disputes, administrative court proceedings, misdemeanour proceedings and matters in connection with notaries and lawyers. The index of the trend in the number of matters dealt with in 2000 compared to 1999 (105.5) indicates a 5.5 per cent increase over 1999 (1,118 in 1999 and 1,293 in 2000). The largest share among all matters dealt with in this area was taken by those in the sub-section of civil proceedings (617 matters or 52.3 per cent of all matters in this area in 2000). In 2000, with a total of 174, we observed a 30.8 per cent increase in the number of proceedings at the labour and social courts compared to 1999 (133).

In area **7. Environment and spatial planning** we have recorded a 10.7 per cent reduction in the number of matters dealt with relative to 1999 (from 121 to 108). There was a marked increase in the area of matters relating to environmental encroachments, with the total of 53 matters dealt with in 1999 rising to 67 in 2000 (a 26.4 per cent rise).

The number of matters dealt with showed the greatest reduction from 1999 to 2000 in area **8. Commercial public services** (from 84 to 45 - an index of 53.6). The influx of matters in effect in every sub-section of this area (communications, power, traffic and other commercial public services) fell, with the exception of municipal services, where the number of matters dealt with showed no major change between 1999 and 2000.

In area **9. Housing matters** the number of matters dealt with in 2000 fell by 7.8 per cent compared to 1999 (from 141 to 130). A fourfold reduction was noted in the number of matters in the area of other housing matters (from 20 to 5).

In area **10. Other** we have placed those matters which cannot be categorised under any of the other defined areas. In 2000 we dealt with 619 such matters, which represents a fall of 21.4 per cent from 1999, when we dealt with 788 matters.

A more detailed presentation of the number of matters dealt with in 1999 and 2000 by area of work is given in table 3.4.6.

Justification of complaints

Of the 3,443 cases concluded in 2000
- 652 were justified (18.9 per cent)
- 365 were partially justified (10.6 per cent)
- 626 were unjustified (18.2 per cent)
- 1,251 did not meet the conditions for processing (36.3 per cent)
- 549 fell outside the ombudsman's jurisdiction (15.9 per cent of all concluded cases)

The proportion of justified and partially justified cases dealt with in 2000 (29.5 per cent) remained at a similar level to 1999 (31.84 per cent). We find that this proportion is very high in comparison to kindred institutions.

Resolved cases by individual departments

Table 3.4.6. shows classifications of resolved cases by departments (the classification by departments was carried out in accordance with the Government Act) in 2000. Individual cases are classified into an appropriate department on the basis of the nature of the problem which prompted people to turn to the ombudsman.

The table clearly shows that the largest shares of cases resolved in 2000 fall under the departments of:
- justice (1,259 complaints or 32.66 per cent);
- labour, the family and social affairs (620 complaints or 16.8 per cent); and
- environment (6467 complaints or 12.11 per cent of all cases resolved).

The number of resolved cases in 2000, including departments whose share of all concluded cases in 2000 is at least one per cent, showed the greatest increase with regard to 1999 in the following departments:
- finance: from 95 to 129, which is a 35.8 per cent increase; and
- health: from 103 to 135, which is a 31.1 per cent increase.

Table 3.4.6.

DEPARTMENT	RESOLVED CASES				Index (00/99)
	1999		2000		
	Number	Share	Number	Share	
1. Labour, the family and social affairs	697	18,7 %	620	16,08 %	89,0
2. Economic relations and development	32	0,9 %	28	0,73 %	87,5
3. Finance	95	2,5 %	129	3,35 %	135,8
4. Economy	23	0,6 %	15	0,39 %	65,2
5. Agriculture, forestry, food	24	0,6 %	26	0,67 %	108,3
6. Culture	4	0,1 %	14	0,36 %	350,0
7. Internal affairs	455	12,2 %	301	7,81 %	66,2
8. Defence	50	1,3 %	43	1,12 %	86,0
9. Environment	605	16,2 %	467	12,11 %	77,2
10. Justice	1.188	31,9 %	1259	32,66 %	106,0
11. Transport and communications	58	1,6 %	34	0,88 %	58,6
12. Education and sport	53	1,4 %	52	1,35 %	98,1
13. Health	103	2,8 %	135	3,50 %	131,1
14. Science and technology	1	0,0 %	1	0,03 %	100,0
15. Foreign affairs	7	0,2 %	25	0,65 %	357,1
16. Government services	2	0,1 %	30	0,78 %	1500,0
17. Local government	108	2,9 %	38	0,99 %	35,2
18. Others	222	6,0 %	226	5,86 %	101,8
TOTAL	**3.727**	**100 %**	**3.443**	**89,31 %**	**92,4**

LIST OF ABBREVIATIONS

A. Regulations

ECHR	European Convention on Human Rights and Fundamental Freedoms
KZ	Penal Code
ObrZ	Small Business Act
PIKZ	Regulations on the Enforcement of the Penalty of Imprisonment
SZ	Housing Act
UZITUL	Constitutional Act Implementing the Basic Constitutional Charter on the Independence of the Republic of Slovenia
ZAzil	Asylum Act
ZDDV	Value Added Tax Act
ZDavP	Tax Procedure Act
ZDen	Denationalisation Act
ZDoh	Income Tax Act
ZIKS-1	Enforcement of Penal Sentences Act
ZIZ	Execution of Judgements and Insurance of ClaimsAct
ZDRS	Citizenship of the Republic of Slovenia Act
ZGD	Companies Act
ZKP	Criminal Procedure Act
ZNP	Non-Litigious Civil Procedure Act
ZP	Administrative Offence Act
ZPIZ-1	Pension and Disability Insurance Act
ZPKri	Redressing of Wrongs Act
ZPLD-1	Passports of Citizens of the Republic of Slovenia Act
ZPol	Police Act
ZPP	Civil Procedure Act
ZRLI	Referendum and Popular Initiative Act
ZRud	Mining Act
ZTuj-1	New Aliens Act
ZUN	Urban Planningn and Other Forms of Land Use Act
ZUOPP	Children with Special Needs Act
ZUP	General Administrative Procedure Act
ZUS	Administrative Dispute Act
ZUSDDD	Act Regulating the Status of Citizens of Other Successor States to the Former SFRY in the Republic of Slovenia
ZVarCP	Human Rights Ombudsman Act
ZVDZ	National Assembly Elections Act
ZVO	Environmental Protection Act
ZVolK	Election Campaigns Act
ZVOP	Protection of Personal Data Act
ZVPot	Consumer Protection Act
ZZDej	Health Care Activities Act
ZZdrS	Health Service Act
ZZVN	Victims of War and Military Aggression Act
ZZVZZ	Health Care and Health Insurance Act
ZZZPB	Insurance and Employment in the Event of Unemployment Act

B. Institutions, others

AD	Asylum Centre
COT	Centre for the Removal of Aliens
CSD	Social Services Centre
DURS	Tax Administration of the Republic of Slovenia
DZ	National Assembly of the Republic of Slovenia
GDU	Main Tax Office
HDR	Human Development Report
IRSOP	National Environment and Physical Planning Inspectorate
MDDSZ	Ministry of Labour, Family and Social Affairs
MF	Ministry of Finance
MK	Ministry of Culture
MKGP	Ministry of Agriculture, Forestry and Food
MNZ	Ministry of the Interior
MO	Ministry of Defence
MOP	Ministry of the Environment and Physical Planning
RRI	Republic Mines Inspectorate
MP	Ministry of Justice
MŠŠ	Ministry of Education and Sports
MZT	Ministry of Science and Technology
PDT	Transit Centre for Foreigners
SKZG	Agricultural Land and Forest Fund
SOS	Slovenian Indemnity Fund
UE	Administrative Unit
UIKS	National Prison Administration
ZPIZ	Institute for Pension and Disability Insurance
ZRSZ	National Employment Office
ZZZS	Health Insurance Institute

4. Description of selected cases

In this chapter we present descriptions of some of the more interesting cases we have dealt with in 2000. In some cases they are typical problems which we have encountered in numerous cases. These problems are more generally described in the chapter on issues dealt with. Descriptions of an actual case are added in order to acquaint readers with the course of the procedure and with our arguments for proposals and recommendations.

2.2-78/00 - Decision on a request for the deferral of execution of a custodial sentence after the day specified in the summons for the sentence to begin

Ljubljana District Court summoned the applicant to serve a sentence of imprisonment by means of a summons to begin serving a sentence of imprisonment (SR form No. 87), as provided by the third paragraph of Article 294 of the Court Rules. The form contains the legal caution that a convict may request deferral of the execution of a custodial sentence if he has justifiable grounds to do so. The applicant took advantage of this possibility and filed a request for the deferral of execution of a custodial sentence. His request was not approved by the court. He filed an appeal against the negative decision. The president of the Higher Court in Ljubljana ruled on the appeal after the date specified in the summons to begin serving a sentence of imprisonment.

The fourth paragraph of Article 26 of the ZIKS-1 provides that a convict must begin serving a prison sentence on the first working day after being served a decision on the refusal or dismissal of an appeal. However after receiving the appeal decision, the applicant waited for a new summons to begin his sentence or a message telling him when he had to commence his prison sentence. Because he thus did not commence his prison sentence himself, he was forcibly conveyed to the penal institution to begin serving his sentence.

The caution on the 'commencement of a sentence of imprisonment' form, which states that a convict may request deferral of execution of a custodial sentence if he has justifiable grounds to do so, is inadequate. It does not explain what happens when the decision on a request for deferral of execution of a sentence comes after the date specified in the summons for the commencement of a prison sentence. Despite the fiction that publication in the official gazette means that everyone is acquainted with a law, it is not possible to expect every convict to know the text of the fourth paragraph of Article 26 of the ZIKS-1. Another reason that a warning about this provision would be welcome is that it is a new feature in the legal system; the previous Enforcement of Penal Sentences Act did not contain such a regulation. We therefore proposed to the MP the appropriate supplementation of the content of SR form No. 87 with the content of the provision of the fourth paragraph of Article 26 of the ZIKS-1.

The MP agreed with our finding that the 'commencement of prison sentence' form was inadequate or even misleading, since it does not explain how a convict should act if the decision on his request for deferment of sentence is made after the date specified in the summons for the commencement of the prison sentence. It assured us that the form will be altered to incorporate this new provision of the ZIKS-1.

2.2-83/00 Education and training

During his visit to the Novo Mesto Department of the Ljubljana Penal Institution the ombudsman found that there was no organised education and training of inmates. In the opinion of the institution's educational service, short sentences mean that there is no interest in education and training. The acquisition of additional education increases convicts' chances of a better quality of life once at liberty. It should be the institution's task to try and motivate convicts to supplement and improve their knowledge while serving their sentences and to develop their capabilities through various forms of education and training which with the help of social services centres (CSDs) or employment offices they could also continue after being released from prison. We therefore proposed to the UIKS that in line with the possibilities which exist within the context of shorter terms of imprisonment (up to 6 months), various educational programmes should be provided for convicts.

Our proposal was heeded. The Novo Mesto Department of the institution has already forged contacts with personnel training centres in Novo Mesto, Črnomelj and Trebnje. Despite a lack of time and financial obstacles, they will begin with completion of elementary education programmes (literacy training of persons in custody is already in progress) and for each individual convict will look at the possibilities of inclusion in specific educational programmes.

3.3-9/00 - Institutional care for a patient in a vegetative state

The ombudsman received an application from the relatives of a person who had suffered serious brain damage in a road accident. Even after an operation he remained in a coma and showed no signs of improvement. Later, his relatives (parents, cousin and girlfriend), who visited him every

day, nevertheless began to notice signs of improvement. They observed that the patient was already able to move his hand, look around and notice what was happening around him. They then expressed the fear that the hospital would transfer the patient to a social care institution. They insisted that the patient should remain in the hospital, since he is showing signs of improvement in his medical condition. They would consent to a transfer to a social care institution capable of offering the patient medical care of equal quality.
Maribor General Hospital confirmed, in reply to the ombudsman's intervention, that the form of handicap has recently changed somewhat, but essentially remains at the level of vegetative life. The hospital really has tried to find a place for the patient in a home anywhere in north-eastern Slovenia. However they have been told that such a patient cannot be accepted because of a lack of personnel, that the home does not accept such young patients, or that the patient is not a resident of the area covered by the social care institution. The hospital confirmed that for the time being the patient would stay where he was, although a neurosurgical ward is not the place for patients who only need nursing and compassionate care. They will continue to seek a solution which will see the patient placed in a suitable social care institution.
The patient's relatives informed us that the attitude of the doctors has changed significantly since the ombudsman's intervention. They say that now even the doctors admit that the patient has made progress. They have been assured that the patient will not be transferred, and his relatives are now waiting for further improvements in his medical condition.

3.3-38/00 - Medical documentation the property of a health centre?

In reply to a written request to inspect the medical documentation of her young son, an applicant was told by Ljubljana Health Centre that medical documentation is the property of the health centre. Thus the applicant does not have the right to 'the free use of the documentation'. At the same time the letter from the health centre directed the applicant to clear up 'all obscurities and doubts relating to the health of her child' with the doctor who was treating him and another doctor. The applicant took this reply to be a refusal of her request to inspect the medical documentation and therefore requested the ombudsman to intervene.
In his reply to the ombudsman the director of Ljubljana Health Centre repeated the position that medical documentation is the property of the health centre and that patients are not permitted free use of this documentation. However at the same time he explained that this does not mean that the information collected in the medical documentation is the property of the institution. Thus a patient is not permitted to take the file itself, or the originals of individual documents in the file, but every patient has the right to inspect his own medical documentation and also to request a photocopy of the documentation (at his own expense).
Clearly the applicant was not asking to be given her son's file or the originals of individual documents contained in it. She merely wished to inspect her son's medical documentation and to obtain a clarification of how certain data is entered in the file. We therefore directed her to arrange an inspection of the medical documentation with the director of the health centre. We received no later notification from the applicant of any continued obstruction of her inspection of her son's medical documentation.

3.5-121/00 - Sick and homeless

An applicant was forcibly evicted from his flat a year ago for non-payment of rent. He has been unemployed for several years. After being evicted he moved into an attic without water, electricity or toilet/washing facilities. He has asked for help from the Municipality of Litija and the Litija CSD, but without success.
The mayor of the municipality explained in reply to our intervention that they have no vacant flats. The municipality has 42 applicants on its priority (housing) list for 1999 and 2000. In 2000 only two applications were approved. They were unable to find an appropriate solution to the applicant's problem. Therefore they made a public appeal via local television inviting citizens prepared to rent a room to come forward, but there was no response. The mayor assured us that the possibility of solving the applicant's housing problem will be discussed at one of the forthcoming sessions of the housing commission.
The applicant's medical condition was poor. We discovered that he urgently needs medical assistance, which however he refuses. We received a report that the CSD is not helping him. We intervened at the CSD and monitored the progress of assistance offered to the applicant.
Following our intervention, the CSD, in cooperation with the health care service, persuaded the applicant to accept treatment. He was taken by ambulance for a specialist examination. He was advised to undergo treatment in hospital but he did not agree. The CSD suggested temporary placement in a shelter for the homeless. The applicant at first accepted this proposal and later declined it. The CSD later asked the Tisje Old People's Home to take him in until his medical condition improved and his housing problem could be resolved in a suitable way.

3.5-162/00 -Placement in an institution of a disabled person under 65 years old

An applicant requested us to help him find a place in an institution for his fifty-year-old daughter, who holds disabled status. He told us that his wife had died and that he could not take care of his daughter alone. At the same time he is worried about how she will looked after in the case of his death. He is a heart patient and is 78 years old. He has made several written several requests to have his daughter placed in an old people's home but his requests have not been approved by any home since applicants over 65 take priority. Furthermore his daughter has begun to reject this possibility.
We drew the attention of Maribor CSD to the problem of the applicant's daughter and proposed that they help find an appropriate solution. It was evident from the CSD's report that they are familiar with the difficulties of the applicant and his daughter. They made the necessary inquiries and found that, given the essentially normal mental state of the applicant's daughter, the Hrastovec Institution for the Mentally and Nervously Ill was not suitable for her, but that at the same time there was no other suitable institution.
In a discussion with the ombudsman's office and the CSD the applicant agreed that his daughter should stay at home. It was agreed that a nurse from the home nursing service would help look after her, visiting her at home. If necessary the CSD will also provide home help. It will help her to gradually become included in the day care organised by the Ozara society. The applicant will be in constant contact with the home nursing service and the social service, so that, if necessary, they can see to the placement of his daughter in an institution in good time.
This is another example of a case that shows that it is essential to arrange institutional care for disabled persons which is adapted to their needs and possibilities.

4.0-7/00 - Unpaid volunteer nursing probation

The applicant underwent a special form of probation (volunteer probation) at a public health care institution, for all six months, although in the meantime, on 21 November 1999, an amendment to the ZZDej (Ur. l. RS, No. 90/99) entered into force. The applicant felt that the amended legal provisions relating to health care workers/probationers were not taken into account. The act was amended with the provision that the Minister of Health must prescribe norms for setting the necessary number of employees in health care. Implementation of this provision would have the effect of obliging public health care institutions to employ probationers if the number of nursing positions stipulated by the norms remained unfilled. In the case of employment of this type, probationers would be guaranteed the payment of a wage, and their social insurance contributions would also be paid.
We requested from the Minister of Health an explanation as to how and when the ministry established the conditions for the implementation of this statutory provision. We were particularly interested to know how the existing situation (volunteer probationers) was taken into account when the norms for employing health care workers were prescribed, and also whether, following the entering into force of the amendment to Article 34 of the act, public health care institutions agreed to change voluntary probation to probation undergone on the basis of a signed

contract of employment, or whether cases of voluntary probation were still occurring.
The minister replied that he had not yet fixed norms for the determination of vacant positions, on the grounds that the budget of the Republic of Slovenia for 2000 did not provide funds for the implementation of Article 34 of the act.
Given this reply we invited the minister to notify us of his estimate as to when the statutory obligation would be met. We have not yet been informed of this.

4.0-10/00 - Allocation to a different position

The applicant turned to us because she had not been paid solidarity assistance because of a longer period of sick leave and because in over six months she had not received a reply from the competent minister to her objection to the decision of the Tax Administration on appointment and allocation to a different position. We requested a report from the competent minister and the director of the GDU. Following our successful intervention the applicant was paid solidarity assistance on the basis of a settlement. The tax administration called a hearing at which the applicant's objection was dealt with, and also notified the Union of Workers in the State Administration of the hearing. The applicant thanked us in the name of all workers for this intervention, since with our help long-standing disagreements over the allocation and remuneration of workers have been resolved and clarified.

4.0-16/00 - Knowledge of the Slovene language in state bodies

We received an application in which the director of a limited liability company complains about the lack of knowledge of Slovene, the official language, in the case of a customs house employee. We checked his allegations. Although the customs administration did not confirm the applicant's allegations, we drew the attention of the director of the National Customs Administration to the fact that the Slovene language is the official language in the Republic of Slovenia and that knowledge and use of the Slovene language is one of the fundamental conditions for work in state bodies.

4.1-7/00 - Entering a disciplinary measure in an employment book

Two applicants turned to as the result of the unlawful entering of a disciplinary measure in their employment books. Since such an entry is contrary to the Rules on Employment Books, we invited the competent labour inspectorate to carry out an inspection and issue a decision on its findings. The inspectorate followed our recommendation, identified the irregularity and illegality of the entry and issued a decision on it. With the help of this declaratory decision from the labour inspectorate, the applicants were, pursuant to Articles 27, 28 and 29 of the Rules on Employment Books, able to request the issuing of a new employment book at their local administrative unit.

4.1-8/00 - Termination of employment

Following the bankruptcy of a company to which she had been appointed immediately before the bankruptcy, an applicant's employment was terminated. The applicant believes that this was a case of conscious violation of her rights both by the employer who had previously employed her and by the employer to whose company she was appointed. Because of lack of confidence in the state governed by the rule of law, she commenced a hunger strike in front of the government building. During her hunger strike we made personal contact with the applicant and after lengthy discussions persuaded her to call of her hunger strike. We directed her to the labour inspectorate and the ZRSZ, to both of which we proposed the priority treatment of her case. Following an unsuccessful conversation with the applicant's employer, the labour inspectorate submitted a proposal to the judge for violations and a proposal of for prosecution on the grounds of a suspected criminal offence. We advised the applicant to bring an action at the labour and social court - which she did, with the help of an attorney. The applicant is now receiving unemployment benefit and waiting for the court's decision.

4.1-58/00 - Recognition of years of service abroad

An applicant insisted that the ombudsman state his position with regard to the question of whether under Slovene regulations, or pursuant to the Agreement between the Republic of Slovenia and the Republic of Austria on Social Security, the years of service she had accumulated working in Austria should be taken into account in the exercising of her rights deriving from a contract of employment concluded in the Republic of Slovenia. With regard to the settlement of this issue in Slovene regulations, the applicant has already had the positions or explanations of the MDDSZ, the Chamber of Commerce of Slovenia and the ZPIZ. Their explanations were similar: these years of service are not taken into account for the exercising or assessment of rights deriving from a contract of employment concluded in the Republic of Slovenia.
It was also explained to the applicant that this issue is not regulated by the Agreement between the Republic of Slovenia and the Republic of Austria on Social Security. The part of the Agreement which defines the area of objective validity stipulates that this only applies to regulations on health, pension and disability insurance, insurance in the case of unemployment, and maternity leave allowance. Those rights of individuals which derive from the labour legislation of the two countries are not affected by the Agreement.
Despite all this the applicant still wanted the ombudsman to check, or confirm, that the regulation really was as it had been explained to her by the other bodies.

4.2-30/00 - Unemployment

We received an application from a person who is registered as long-term unemployed. Following an intervention at the Labour Office we received a report which stated that they had decided to use one of the measures from the active employment policy, namely introduction to work with a contract of employment. Provided this introduction is successful, the applicant will have the possibility of full-time employment. Our successful intervention leads us to think that such a measure could have been used earlier.

4.2-50/00 - Unemployment benefit

The applicant worked as an independent small businessman producing small metal objects. By means of a decision of the ZRSZ he was classified as category III disabled. When the decision became final he ceased his activity and registered as an unemployed person at the local employment office, asserting the right to unemployment benefit. The office rejected his benefit claim, and the applicant did not appeal against this (first-instance) decision. He then tried to claim an allowance for the period of waiting for employment in another suitable job, under regulations on pensions and disability, but this application was also unsuccessful and he was left without any means of support.
After studying the documents sent to us by the applicant it was utterly clear that the decision of the ZRSZ was based on the incorrect application of regulations from the area of labour relations. Although the applicant's insurance was terminated through no wish or fault of his own, the ZRSZ's decision was based on the provision of the second indent of the first paragraph of Article 19 of the ZZZPB, which provides that the right to a (monetary) allowance cannot be exercised by an insured person whose insurance has terminated because of the finding that he is not capable of carrying out the work required by the position to which he has been appointed, or because he has not achieved the expected results and has not accepted an appointment to another position. This provision relates to the method of terminating employment in accordance with Article 18 of the Act on the Fundamental Rights Deriving from a Contract of Employment. or Article 23 of the Labour Relations Act, but not to the method of terminating insurance in the applicant's case. The applicant's insurance was terminated because he was insured on the basis of pursuing an independent activity, and in the case of an insured person of this kind, category III disability is only acknowledged if the person is no longer capable of pursuing the activity on the basis of which he was insured.
As a result of incorrect application of regulations the competent body of the institution deprived the applicant of the right deriving from unemploy-

ment insurance. The fact that the applicant did not appeal against the first-instance decision certainly did not help his case, since the incorrect decision of the institution became final.
The principle of justice (Article 3 of the ZVarCP) led us to intervene at the MDDSZ. We proposed that they study the possibilities for remedying the consequences of the incorrect action of the institution in issuing a decision refusing the applicant his right to benefit.
The ministry responded that it fully agreed with our finding that the first-instance body in the case in question had breached a material regulation and thus made a mistaken decision on the claim for monetary assistance during unemployment. At the same time the ministry informed the ombudsman that under the ZUP there is no legal basis in the case in question to annul or overturn the decision denying the right to unemployment benefit, since the decision in the administrative proceedings had become final over a year ago. The ministry did however inform the ZRSZ of our proposal and proposed that the case be looked at again, above all in order to remedy the consequences of its incorrect action.
In March 2000 the first-instance body issued the applicant a decision acknowledging his right to unemployment benefit from 9 July 1997 to 8 July 1999.

4.2-51/00 - Unemployment benefit

After studying the case and talking to the applicant we established that it is clear from the resolutions of the employer that her contract of employment should have terminated and actually did terminate on 30 September 2000 (her employment book was also concluded on this date) and not on 29 September 2000 as stated, evidently in error, in her contract of employment, and that as a result of this discrepancy the ZRSZ does not acknowledge her right to unemployment benefit. The drew the attention of the employer to this discrepancy. We proposed that he correct the mistake in the contract of employment by means of a resolution, citing previous resolutions on the concluding and extending of a contract of employment for a fixed period. We also proposed that he inform the ZRSZ that the mistake was his. The employer assured us that he would immediately correct the mistake and notify us of the result. Two days later we received the correcting resolution and a notification that the applicant will receive the unemployment benefit to which she is entitled. Thus lengthy court proceedings will not be necessary.

5.2-10/00 - Rejection of a visa application and lengthiness of checking procedure

The applicant wished to attend a Slovene language winter school but his visa application was rejected because he apparently had the same name and surname as a person who has been prohibited entry to the Republic of Slovenia. As a result the applicant requested that his identity be checked in the computer database so as to establish that he was not the person to whom entry to the country had been prohibited.
The checking procedure took 14 days.
In responsible to our inquiry relating to this complication, the Ministry of Foreign Affairs explained that the documentation enclosed by the applicant with his visa application was not genuine and did not correspond to the purpose of his visit. The ministry did not explain on what grounds the applicant was not issued a visa, in what the falseness of his documentation consisted, and why the checking procedure lasted 14 days.
The applicant only applied for the visa after he should already have been attending the Slovene language winter school. We were able to conclude from the ministry's reply that the applicant would have been issued a visa in good time and these difficulties would probably have not occurred if he had made his visa application earlier. His personal details had to be checked against the computer database record for the person who had been prohibited from entering the Republic of Slovenia in order to establish whether the applicant was this person. The question however raises itself as to would it not be possible to carry out these checks in a shorter period, and whether the duration of this checking procedure is in accordance with the principle of economy of the visa-issuing procedure under Article 14 of the ZUP.
We therefore proposed to the MZZ that in cases like this one it should ensure the respecting of the principle of economy of procedure so that the checking procedure does not last longer than absolutely necessary for the correct establishing of the facts and the issuing of a legal and correct decision.
The ministry has not responded to our proposal, or told us on what grounds the applicant was not issued a visa and in what the falseness of his documentation consisted.

5.2-44/00 - Confirmation of joint household for foreign national

The applicant is a citizen of the Republic of Macedonia who holds a permit of permanent residence in the Republic of Slovenia. She told the ombudsman that her son, a citizen of the Republic of Slovenia, whose permanent residence is at the same address as hers, requested the Lendava administrative unit to issue him with a joint household confirmation. The applicant's son is a full-time student at the Faculty of Transport Studies in Portorož, where he lives while studying. He needs to enclose the above-mentioned confirmation to his application for a place in the students' hall of residence, since one of the conditions for approval of this application is an appropriate income per member of a joint household. The Lendava administrative unit issued the applicant's son a joint household confirmation in which only his father and brother, both citizens of the Republic of Slovenia, are mentioned. His mother is not mentioned in the confirmation.
In its reply the administrative unit cited an Explanation issued by the MNZ for the implementation of registration of permanent and temporary residence of foreign nationals (No. 0302-16/07-209-50/2000, dated 6 March 2000). A citizen of Slovenia living at an address which is registered as his place of residence in a joint household with a foreign national whose permanent residence is registered at the same address, and who moreover is related to him, is apparently not entitled to a joint household confirmation which takes the foreign national into account. For this reason he can be disadvantaged in the exercising of certain rights, in particular social care rights, the acquisition of which is linked to, for example, income per family member.
The legislation regulating the registering of permanent or temporary residence and notice of departure for citizens of the Republic of Slovenia has evidently not been harmonised with that covering foreign nationals. This finding is also confirmed by the draft of a new act on registering residence, under which the legal basis will be given for keeping data in a households register, not only for citizens of the Republic of Slovenia but also for foreign nationals.
We asked the MNZ to explain to us how the issuing of joint household confirmations for foreign nationals functioned before the issuing of the Explanation mentioned above, since the previous Aliens Act did not contain (special) provisions on registering the residence of foreign nationals and notice of departure. While looking for a possibility to resolve the concrete problem faced by the applicant before the final regulation of this issue by statute, we proposed to the ministry that they also take into account the circumstance that as a result of inconsistent statutory regulation a Slovene citizen is in a worse position than other citizens of the Republic of Slovenia merely because he lives in a joint household with a foreign national.
We have not yet received a reply from the MNZ. The Act on the Registering of Residence, which gives the legal basis for keeping uniform records of households both for citizens of the Republic of Slovenia and for foreign nationals, was adopted on 26 January 2001 Š(Ur. l. RS, No. 9/01).

5.3-36/00 - Denationalisation

The applicant's late father, who was an Italian citizen, submitted in 1992 a proposal for the establishing of the voidness of a nationalisation decision and a subordinate denationalisation request. On 5 July 1993 the first-instance body issued a decision refusing the party's proposal for a pronouncement of voidness of the nationalisation decision and decided that it would be treated as a denationalisation claim. The applicant's father appealed against this decision. On 16 August 1993 the appellate body refused the appeal but annulled that part which says that the party's proposal would be treated as a denationalisation claim. The applicant's father then instituted an administrative dispute against the decision of the appellate body. On 10 November 1994 the Supreme Court refused his action but in the grounds for the judgement stated that in accordance with the rules of

the ZUP the decision on whether a denationalisation claim was filed would have to be made by the first-instance body having jurisdiction in this area. Since after five years this had still not happened, the applicant turned to the Human Rights Ombudsman.
Following the ombudsman's intervention the administrative unit reported that owing to the volume of written material, filed appeals or decisions from first- or second-instance bodies, they had overlooked the Supreme Court's instruction in the aforementioned judgement. They assured us that they consider the denationalisation claim to have been filed in 1992, and that a decision on it will be issued immediately.

5.7-38/00 - Lengthiness of procedure for granting status of victim of war violence

We dealt with an application relating to the length of time taken to settle a request for the granting of the status and rights of a victim of war violence. The applicant filed the request at the Maribor administrative unit in April 1997. In reply to our inquiry the administrative unit told us that in September 1999 the regional unit of the ZPIZ in Maribor had requested delivery of a decision of the District People's Committee showing the applicant's employment in 1941-1945. Since it has still not received a reply or the requested document, the proceeding has been suspended and it has not been possible to conclude it. Investigating the matter further we found out that the applicant's file was at the head office of the ZPIZ. There we obtained the information that the file documentation had been lost and therefore it was not possible to send the District People's Committee decision to the administrative unit. We proposed to the administrative unit that, taking into account the time elapsed since the applicant filed his request, it should nevertheless make a decision on his request.
The Maribor administrative heeded our proposal and in November of this year, more than three years after the request was filed, it issued a decision.

5.7-174/00 - Removal of Roma by means of a decision from a municipal inspector

The applicant first turned to the Human Rights Ombudsman in 1999 because she did not agree with the proposal of the Municipality of Grosuplje that her family and another family of Roma should leave the sites which they were illegally occupying and move to a location where the municipality had set up container-style accommodation for them. The applicant cited above all the problem of mutual relations with the Roma already living there. We proposed to the applicant that she should accept the proposed move in a spirit of tolerance and understanding. No-one has the right to live on land belonging to someone else, and we supported the action of the municipality, which also has signs of positive discrimination. We also found that through the municipality's proposal the applicant and her family are being offered more than is offered to other citizens with housing problems, and at the same time the municipality is fulfilling its part of the obligation deriving from the position and special rights of the Rom community in Slovenia.
On 26 October 2000 the applicant informed us via an authorised person of the issuing of a decision by the Municipal Inspector of the Municipality of Grosuplje ordering the removal of the wooden shacks and the transfer of the Roma to the prepared containers. This decision imposed a deadline for compliance on the applicant and threatened her with administrative execution at her expense if she failed to comply within this deadline. It also followed from the operative part of the decision that an appeal against the decision would not delay its execution. The applicant filed an appeal against the decision.
We warned the Municipality of Grosuplje that in our opinion the Decree on Public Order in the Municipality of Grosuplje (Ur. l. RS, Nos. 16/96, 23/96 and 65/97) does not, through its provisions on the prohibition of camping and on the external appearance of buildings/constructions, provide a legal basis for the measures ordered, while the decision is also questionable in the part relating to its executability irrespective of the filing of an appeal. Although we have not changed our views in relation to the transfer of the Roma to the new location, we gave the municipality our opinion that a suitable method for the removal, with an unambiguous basis in regulations.
The mayor of the Municipality of Grosuplje replied that they have been dealing with this problem for a number of years, and that the state has refused to give any assistance except in the acquisition of project documentation from the MOP. In the words of the mayor, the situation is intolerable from the sanitary/health point of view, the site hitherto occupied has been neglected, and the Roma are very disturbing to the surrounding population because of their aggressiveness and their unwillingness to adapt. This causes conflict situations and tensions which are growing from day to day. This has required a solution - with regard to which the municipality is convinced that it has done all that is necessary and more.
According to information the administrative execution took place, but the majority of the Rom family had already moved - though not to the anticipated destination.

5.8-17/00 - Inadequate scheduling of individual exams

The daughter of the applicant was not given the possibility at her secondary school of sitting two re-examinations (retakes) which she was supposed to take in August. The applicant stated that the two exams were on the same day at the same time and that his daughter could not go to one of the two exams, with the result that now she has to repeat the year. He asked us to urge that his daughter be allowed to sit her exams. In response to our inquiry the National Schools and Sport Inspectorate informed us that they had carried out an inspection in relation to the alleged irregularities in the conducting of the re-examinations. On the basis of the submitted documentation it was found that the head teacher of the school had appointed commissions for re-examinations, subject exams and differential exams in the autumn of the 1999/2000 school year, but that she had not published within the prescribed term a list of pupils which would show before which commission and at what time an individual pupil was supposed to take an exam. Instead, a list of examination commissions by subject was published, stating also the date and time at which the individual commissions would commence work. The head teacher explained that each pupil was supposed to look on the list of commissions for the name of the teacher of the subject on which he/she was to be examined, and thus find out before which commission and in which classroom he/she the exam would take place, and at what time the commission would commence work.
After reviewing the documentation the inspectorate found that it was actually impossible for the pupil in question to undergo the second of her re-examinations, for which she did not present herself (the exams took place one hour apart; while the pupil was waiting to be examined by one commission, the examination before the other commission had already begun).
By omitting to publish the timetable of exams by pupils, the school violated the provision of the second paragraph of Article 39 of the Rules on Examining and Assessing Knowledge in Vocational Education, pursuant to which an exam timetable must be published at least two days before the date of the examination.
The fact that the pupil had to undergo two re-examinations on the same day, that the two commissions began the examinations within an hour of each other, and that neither the order in which the pupils were to be examined nor the exact time at which each individual pupil was supposed to present himself/herself before the examining commission was specified means that the school violated the provision of the first paragraph of Article 39 of the Rules mentioned above, under which the terms, conditions, method and procedure of conducting exams are fixed in such a way as to permit pupils to meet all the obligations for progressing to the next year before the end of the school year.
As a result of the violations listed above, the inspectorate ordered the school to hold the re-examination again (on the basis of Article 14 of the Schools Inspectorate Act).

6.1-25/00 - Use of handcuffs at Ptuj police station

The applicant was breaching public order and disturbing work in a health centre. Even after the arrival of police officers he refused to desist and did

not want to leave the health centre. Two police officers from Ptuj police station therefore used physical force against him (key) and employed a securing device (handcuffs), and took him to the police station. According to the police explanation the applicant only calmed down when his wife arrived at the police station and took him home.
The applicant claimed that he was kept handcuffed during the time that he was in the police station. The response from the police and the collected documentation of the case give the impression that the applicant was handcuffed (also) because there was only one duty officer present at the police station, who was unable to control the applicant. This is confirmed by the record of the statement of one of the police officers that the applicant was '….handcuffed since he is physically extremely strong and only the duty officer was present at the police station. Thus he was […] handcuffed for approximately one hour.'
We drew the attention of the police to the fact that coercive measures must cease to be used as soon as the statutory reasons for their uses cease to apply. The fact that (only) one police officer was on duty at the police station does not justify the use of coercive measures if the statutory conditions for their use are not met. This circumstance cannot of itself be the basis for the use of handcuffs. We also pointed out that the official report on the use of coercive measures does not reveal circumstances which would indicate that the applicant offered resistance while at the police station which might have justified the continued use of handcuffs. Neither does the official report contain a record of the exact time at which handcuffs were used. This information would enable us to ascertain whether the police really did cease to use the coercive measure as soon as the reasons for its use ceased to apply.
The police agreed with our observation that a record of the use of coercive measures (either in the report on work effected or in the form of an official report) must state the precise time at which the measure is used, as (also) provided by Articles 139 and 140 of the Rules on Police Powers.

6.3-45/00 - Convict not left homeless

An attorney applied to the ombudsman and requested his intervention on behalf of an applicant who is registered unemployed, disabled (category III disability) and a recipient of income support with the right to pay rent in accordance with the third paragraph of Article 31 of the Social Care Act. As the result of the revocation of a conditional sentence he has begun serving a term of imprisonment. The attorney has initiated pardon proceedings on his behalf but as the result of non-payment of rent while serving his prison sentence he could find himself without a flat when he gets out of prison. We therefore proposed to the CSD in Celje that it should help the applicant to retain his right to rent a flat after he has served his sentence of imprisonment.
The CSD heeded our proposal and reached an agreement with the Housing Fund of the Municipality of Celje on the payment of the applicant's rent while he is serving his prison sentence, thus ensuring that he can continue to rent his flat in the future.

6.4-95/00 - Assistance in finding a suitable flat

Following her divorce the applicant lived in a rented flat. Her only income came from social assistance, which however was not even sufficient to allow her to pay her rent. Judicial proceedings for the collection of the maintenance which her former husband is obliged to pay to her are still in progress. The social hardships of the applicant have now been joined by serious health problems.
We informed the mayor of the Municipality of Piran of the applicant's housing problem and proposed that within the sphere of its powers the municipality should help the applicant find at least a temporary solution to her situation.
Following our intervention the Municipality of Piran allocated the applicant a two-room flat in Piran which is adapted for the needs of a disabled person and falls into the category of social housing.

6.4-297/00 - A long wait for an expert opinion

The applicant notified us of the lengthy duration of proceedings in a non-litigious civil case under reference number N 42/88 at Jesenice County Court. She lodged a proposal for the division of joint property on 24 August 1988. Although she paid an advance against the court expert's costs on 29 December 1995, she had still not received the expert opinion by 2000.
The court excused the more-than-four-year delay in the drawing up and delivery of the expert opinion on the grounds that the other parties to the proceedings did not pay the costs for the compiling of the expert opinion until 10 June 1998. The court also confirmed that the expert opinion had still not been delivered to the parties although it had already been drawn up. Evidently the file had been somewhat forgotten as the result of a change of judges and it was only the urgent letters from the applicant and the ombudsman that 'helped' ascertain that the expert opinion was already in the file, though it has not yet been delivered to the parties concerned. The court assured us that it would send the expert opinion to the parties and in this way continue the proceedings.

6.4-303/00 - More than four years waiting for a hearing in a damages suit

On 10 May 1996 the applicant, together with his son, brought an action for the payment of damages for non-property damage arising from the mental anguish suffered at the death of his wife, the mother of his son. The letters urging a speeding up of proceedings, with requests for the trial to be called, which the applicant sent to Ljubljana District Court under reference number III P 186/96, were not successful.
Following the intervention of the ombudsman the court president reported that the trial in the applicant's case had been called for 18 September 2000. This means that four years and four months had elapsed between the filing of the action and the first hearing. If this case was dealt with in its proper order, that means that the case backlog at this court amounts to over four years.

6.4-364/00 - Mistake in a name, compounded by personnel problems in the typing pool

The applicant notified us of a long-running procedure in a land register case under reference number Dn 10753/97 at Ljubljana County Court. He received a resolution against which he lodged an objection. More than two years since he filed his objection the court has still not made a decision. The court explained to the ombudsman that the applicant is not a party to this land register proceeding. After examining the documents we found that a mistake had occurred in the issuing of the land register resolution: the court had 'renamed' the applicant 'Vinko' (His name is Viktor). After we pointed this out to the court we received the reply that the mistake in the name had occurred while the resolution was being drawn up and that, yes, the applicant really had filed an objection to the disputed resolution. The applicant filed his objection on 10 April 1998, while a decision was made on the objection on 7 March 2000, almost two years later. The resolution was annulled and sent to the applicant, but not until 23 November 2000, i.e. more than seven months after the decision (and probably even then only as a result of the ombudsman's intervention). The court explained that the delay had occurred 'because of personnel problems in the land register typing pool'.

6.4-424/99 - A five-year wait for the hearing to begin in an action for increased maintenance

On 27 October 1995 the applicant brought an action for an increase of legal maintenance before Ljubljana County Court (reference number I I P 388/95). She later petitioned the court several times to begin the hearing and decide on the dispute. The court had still not held the main hearing by the end of 1999, and therefore the plaintiff turned to the Human Rights Ombudsman.
We found that at the beginning of 1996 the court had sent the charge to the defendant, who lives abroad. (In accordance with the principle of speeding up proceedings it would have been more effective if the court had simultaneously called the main hearing. Serving the charge at the same time as the summons would have prevented the defendant, who had already been informed of the charge, from avoiding being served the summons to the main hearing.)
The main hearing was first called for July 1997. Since however the summons had only been sent abroad just over a month before the date set for the hearing, the main hearing did not take place, since the summons

against the defendant was not confirmed. The court then set a new date for the main hearing - 7 October 1997 - but the hearing was cancelled the day before, without any explanation for this decision appearing in the court record.
After this date the case ground to a complete halt. In response to our intervention urging the settling of the case at the earliest opportunity, the court assured us that the main hearing would first be called (again) at the beginning of 2000 - but this did not happen. Following a second intervention on our part, the court informed us that the first hearing would be called in September 2000, and the court president even told us that the judge handling the case had already issued an order for the calling of the main hearing but at the same time explained that the order had later been revoked because the judge had been promoted to the position of district judge. We decided to inspect the court record, and found that the order for the calling of the main trial and the revocation of the same were not in the court record. Thus the information given us by the court did not agree with the information in the court record.
In September 2000 the judge who is now dealing with the case called a new first main hearing for 6 November 2000. Because the summons against the defendant was not confirmed, the hearing did not take place and a new main hearing was called for 15 January 2001. This means the sixth year of waiting after the bringing of an action by means of which the plaintiff hoped to ensure herself better maintenance - including for the period in which she has to wait for the court to begin dealing with her case. Particularly in maintenance actions the speed of legal protection is one of the fundamental conditions of its effectiveness. The applicant's reproach that the state has let her down as far as judicial protection is concerned is a justified one.

6.5-62/00 - A long wait for a party to proceedings - and for the ombudsman

The main hearing in a case at the Labour and Social Court, Ljubljana (reference number I Pd 2980/94) was concluded on 23 September 1999. The judgement was not delivered until 9 June 2000. The reasons for the delay were apparently the excessive amount of work with which the court administration was burdened (the case was judged by the court president) and the complexity of the case.
We first wrote to the court in connection with this case on 4 June 1999. In October 1999 the court president explained in a telephone conversation that the main hearing had been completed on 23 September 1999 and she promised us a report on the case. On 14 April 2000 the applicant informed us that she had still not received the judgement. Therefore on 21 April 2000 we again asked the court for an explanation of the reasons for the delay in drawing up the judgement. At the same time we invited the court president to send us the report she had promised us back in October 1999. Because we did not receive any reply, we sent an urgent reminder on 31 May 2000. On 10 July 2000 we advised the court secretary (the president was on leave) that we had still not received a reply, and stated that we expected it by the next week at the latest. We gave a further urgent reminder to the court president's secretary on 24 August 2000. We learned that the judgement had already been drawn up and delivered to the party and that we would also be sent a written reply. On 26 September 2000 the court president assured us, in response to yet another urgent reminder, that she would send the reply immediately. On 27 October 2000 we once again spoke to the court president, at which she sent us the reply by courier the same day. We therefore waited over a year and two months for the written reply from the court.

6.5-68/00 - Delay in the writing up of a judgement

In a labour dispute under reference number Pd 212/98 the main hearing was completed on 9 March 2000 at the Brežice division of the Labour and Social Court, Ljubljana. The applicant received the judgement on14 June 2000, which means a breach of the statutory deadline for the writing up of a judgement by more than two months.
In response to our inquiry the court cited several reasons for the surpassing of the deadline. At the time of writing up the judgement the trial judge was in the process of concluding work as head of the division and as a judge in the division. We pointed out that the judge should have arranged his obligations relating to court administration and concluding his obligations at the court in such a way that the statutory deadlines in the cases he was dealing with were respected. Above all he should have organised his work in such a way as to be able to write up the court decision in good time after the conclusion of the main hearing. Even his annual leave, which the judge sites as one of the reasons for the delay, should have been planned in a period when his obligations relating to deadlines had been met. The presence of the trial judge at the funeral of an attorney only requires a few hours and can not justify a several-month delay in the writing up of a judgement. Meanwhile the claims that it was necessary to study the case again with the two lay judges show that the judge did not study the file sufficiently precisely or fully before the end of the main hearing. The objective grounds of the difficulty of the case and the extensiveness of the judgement undoubtedly have an effect on the time and effort which must be invested in order to write up the judgement. However the possibility of such circumstances was taken into account by the legislature with the stipulation of a 30-day deadline for the writing up of a judgement.
We proposed to the head of the Brežice division the adoption of appropriate measures ensuring the regular and efficient implementation of judicial authority respecting the legal deadline for the writing up of judgements.

6.5-10300 - Model settlement of cases in civil proceedings

In 1997 the applicant brought an action in a labour dispute under reference number Pd 205/97 at the Labour Court in Celje. Because by 2000 the court had still not begun to try the case, the applicant requested the ombudsman to intervene.
The court explained that 175 suits of the same type had been brought against the same defendant for the payment of a difference in salaries for 1992 and 1993. The court therefore decided to give priority treatment to two model cases. The final court decision in one of these disputes would be a model for deciding in cases with the same or similar factual and legal basis. However contrary to expectations the court did not settle the model cases speedily. One of them came to a standstill as a result of the slow work of a court expert, with the result that the case was only concluded at the first instance on 16 November 2000. In the second case the file has been before the appellate body (for the second time) since 4 July 2000. The court did not notify the remaining plaintiffs that it would be settling their cases in this way, since it considered that by the time the remaining cases came to trial it would already have a final judgement on the model cases.
Given the long duration of the model cases the court later took the decision that it would wait no longer to begin the settlement of the remaining cases. Thus in December 2000 judges called 26 cases (of the 175 identical actions which had been brought).
The ombudsman welcomes the model-case method of settling cases which have the same factual and legal basis. Settling cases in this way contributes to speedier proceedings and lower costs. The question is, however, whether it is really possible to use Article 42 of the Administrative Disputes Act as the legal basis for settling cases using the model-case method - which is what the Labour Court in Celje did. The Administrative Disputes Act is not applied in proceedings before labour courts. The court could have rested its decision on the principle of accelerating proceedings and economy of proceedings, as per Article 11 of the ZPP, and a resolution of the personnel council of the court allowing the priority treatment of model cases. Model proceedings should be especially rapid so as not to affect the schedule for trying other suits of the same type.

7.1-41/00 - Co-financing the building of a municipal road

The ombudsman received an application from an individual who did not agree with the manner of co-financing the building of a municipal road on the basis of a contract concluded between an individual co-investor and the municipality. The municipality defined the concluding of the contract on co-financing the building of a local road as an obligation towards the municipality. Because the applicant did not sign this contract, the municipality did not pay him the allowance allocated to him for agricultural production, since it considered that as a result of the unsigned contract he had settled all of his obligations to the municipality.

We forwarded the municipality our opinion that the obligations of the citizen towards the municipality only include those specified by statute or other regulation. They do not include civil law obligations, which are left to the contractual autonomy of the parties. Thus making the payment of an allowance for agricultural production conditional on the signing of a contract on co-financing the building of a municipal road does not have a legal basis. At the same time we proposed to the municipality that, taking into account our opinion, it should pay the approved allowance to the applicant.
The municipality heeded our proposal and paid the allowance to the applicant in the approved amount.

7.1-50/00 - Attending a session of the municipal council

An applicant informed us that together with a group of her fellow citizens she had wished to attend a session of the municipal council at which a decree on changes and additions to the physical planning components of the municipality's medium-term and long-term plans was to be discussed. The subject of the decree was one in which she and the other members of the group were interested. The doorman at the municipality did not permit the group to attend the session, explaining that the session was closed to the public. The applicant felt that in this way she and her fellow citizens were deprived of the possibility of being informed about matters of public importance and taking part in the decision-making process.
In response to our inquiry the mayor explained that the applicant was not deliberately prevented from attending the regular session of the municipal council but that this was the result of erroneous information being given to municipality staff. The applicant apologised to the applicant and invited her to attend the next session of the municipal council, at which the draft decree in question was given its second reading.

9.1-12/00 - The municipality wanted to sell a tenant's flat after this possibility had been revoked

The applicant had an unpleasant experience in relation to the substitutive possibility of privatising the dwellings of tenants of denationalised dwellings (as per model III under Article 125 of the SZ) when on 26 January 2000 he was informed by the competent municipal body that the municipality intended to sell his flat to a new owner. A tenant of a denationalised dwelling had selected his flat for purchase from the list of unsold flats as per this model.
We discovered that the action of the Housing Department was in conflict with statute since the fifth and seventh paragraphs and the first sentence of the eighth paragraph of Article 125 of the SZ, in other words the basis on which the flat was supposed to be sold to the tenant of a denationalised dwelling, were abrogated by Constitutional Court decision No. U-I-268/96, dated 25 November 1996. This Constitution Court decision was published in the official gazette on7 January 2000 (Ur. l. RS, No. 1/00) and in accordance with the Constitutional Court Act entered into force the day after publication, i.e. 8 January 2000. The Housing Department's letter on the intended sale, dated 18 January 2000, was received by the applicant on 29 January 2000.
The Constitutional Court abrogated the provision of the law relating to the privatisation of dwellings under model III. Thus it was no longer possible to request the party liable for the restitution of a dwelling (the municipality) to provide information and a list of the available unoccupied and occupied dwellings of which it is the owner. Neither is the municipality any longer obliged to offer them for sale. We felt that, given the above, the administrative body as at 18 January 2000 no longer had a legal basis for the sale of the flat on the basis of model III privatisation of dwellings, and we therefore proposed to the municipality to halt all further procedures relating to the intended sale of the flat. The municipality acted on our proposal.

0.4-29/00 - Confirmation of receipt of compensation

The Velenje administrative unit instructed the applicant, the lodger of a denationalisation claim (the legal successor of a denationalisation beneficiary), to submit a confirmation from the Austrian Ministry of Finance of whether the beneficiary had received any compensation in Austria for property nationalised in Slovenia, and whether she had this right at all. The applicant based his disagreement with this demand on a decision dated 28 September 1993 from the Secretariat for Internal Affairs of the Municipality of Velenje on the citizenship of the beneficiary, which established that she had been a citizen of Yugoslavia and then of the Republic of Slovenia from 28 August 1945 until her death, and on the findings of the administrative body that she held both citizenships since before being expelled from the country she had had the right of domicile in Velenje. The administrative body also found that she was not an Austrian citizen before the war and therefore had not received any compensation from the Austrian state, nor did she have any right to it.
We requested the administrative unit for an explanation and drew attention to the fact that one of the criteria for compensation on the basis of the international agreements which the former SFRY concluded with other states is the requirement that the individuals concerned were citizens of (one of) these countries at the time that the property was nationalised, and to the provision of the second paragraph of Article 27 of the national agreement on the establishing of an independent and democratic Austria (Ur. l. FPRY, MP, No. 2/56) which provided that the FPRY had the right to confiscate, withhold or liquidate Austrian property, rights and interests situated within Yugoslav territory at the time that this agreement entered into force, while the Austrian government bound itself to pay compensation to Austrian citizens whose property was taken in this way.
In its reply the administrative unit justified its demand by stating that confirmations are stronger evidence of whether a beneficiary has received compensation in Austria or not. Such confirmations state when the persons concerned became citizens of the country in question, which means that the administrative body can assess whether the beneficiary had the right to compensation even though he may not have asserted that right. Our observations, however, have also been taken into account and the administrative body will continue the procedure even though the applicant has not submitted the requested confirmation.

0.5-81/00 - Well-founded complaint as per Article 28 of the ZPol

The applicant complained about the procedure followed by police officers at the Metlika border police station. He accused them of exceeding their authority during an examination to establish the presence of alcohol.
The applicant sent a complaint to the police and also to the Human Rights Ombudsman. The intervention of the ombudsman is generally only relevant subordinately. We therefore proposed to the General Police Administration that it deal with the applicant's case and explain all the allegations forming the grounds for his complaint.
During the complaints procedure the police found that the conditions for filing a proposal for the initiation of violation proceedings had not been met. Therefore Metlika border police station withdrew the proposal for the initiation of violation proceedings which had already been filed against the applicant. The police also assured us that measures had been taken against the police officers from Metlika border police station as a result of their incorrect actions, so that similar cases do not occur in the future.

0.5-92/00 - Contacts between a child and his grandparents and other persons

In the 1999 Annual Report we drew attention to the possibility of regulating the personal contacts of a child with other persons to whom he is attached. We stressed that despite the fact that legislation does not explicitly prescribe that a child also has the right to contacts with other persons with whom he is close, the law already in force, on the basis of the general authorisation of Article 119 of the Matrimony and Family Relations Act, obliges CSDs to do everything necessary to protect the interests of the child.
In May 2000, evidently taking our position into account, the Ljubljana Moste-Polje CSD issued a temporary decision on personal contacts between two young children and their grandfather and aunt. The decision was justified by the finding that there existed an emotional attachment between the children and their grandfather and aunt which was the result of having li-

ved with them, and that the absence of contact would, in the light of altered circumstances (the death of the children's mother, the fact that their father had moved to a new area), be to the children's detriment. The expert commission of the CSD also proposed that until the issuing of a final decision an employee of the CSD would monitor the progress of contacts and their effect on the children.
The children's father appealed against the temporary decision. The MDDSZ granted the appeal, annulled the challenged decision and returned the case to the CSD, to be dealt with again. The ministry considered that not all of the facts and circumstances important for a decision had been established in the proceedings before the issuing of the decision, since the CSD had not established (by talking to the children or obtaining the opinion of a counselling centre) whether the emotional ties between the grandfather and aunt and the two children are so strong that the absence of contact would have a detrimental effect on the children.

0.6-4/00 and 0.6-28/00 - Irregularities in commercial companies

Two anonymous applications were sent to us by the employees of a joint stock company (relating to overtime) and the employees of a limited liability company (relating to supervision of employment contracts, the payment and level of salaries, allowances and jubilee bonuses, the classification of workers, and working hours). Despite the anonymity of the applications, the convincingness of the allegations they contained persuaded us to pass them on to the competent authorities - the National Labour Inspectorate - which then carried out an inspection. Inadequacies were found at both companies, with the result that the companies were ordered by the inspectorate to remedy matters within a set deadline. The irregularities were dealt with slowly, and only after several repeat inspections. The applications were therefore justified, while their anonymity confirms the employees' fear of their employers' reaction.

0.6-5/00 - Irresponsible work of a teacher

An anonymous applicant drew the ombudsman's attention to the violation of the rights of a group of fourth-year secondary school pupils. He claimed that the teacher responsible for carrying out laboratory exercises was not doing so and that in the first assessment period the pupils had not been given a grade in this subject. Apparently the teacher justified his failure to meet this obligation by claiming that he was not paid sufficiently well for his work. At a parents' meeting the pupils parents were apparently promised that the situation would be sorted out as soon as the school received instructions from the Ministry of Education and Sport on what measures to take in this case, but the situation did not change in the next assessment period either.
We informed the heads of the school of the applicant's allegations and requested an explanation of how - assuming the allegations were true - the school had acted in order to protect the rights and benefits of the pupils. Instead of a reply we were first of all sent a copy of a letter addressed to the teacher in which the head teacher of the school 'again, and for the last time' enclosed an explanation of his work obligations and an explanation of the calculation of his salary, and drew his attention to the sanctions which would result if he continued to refuse to meet his work obligations. A copy of the letter was also sent to the Ministry of Education and Sport.
Following our second intervention the school informed us of the activities undertaken to resolve the problem: they had tried to talk to the teacher, they had spoken to the parents, they had begun disciplinary proceedings and requested assistance from the Ministry of Education and Sport.
Since it was evident from the school's response that the rights of the pupils were still being violated, we notified the National Schools and Sport Inspectorate and requested a report on any measures they might take to protect the rights and benefits of the pupils.
The inspectorate informed us that our letter was the first notification it had received of the problem and that it would take immediate steps. After carrying out an inspection into the matter it sent us a report: it found that up to the date of the inspection the teacher had not given any grades at all to the pupils in question despite the fact that two assessment periods had passed. The inspector ordered that all pupils of the year in question must be given grades by the end of the school year. The teacher later complied with this order, which meant that the pupils were able to receive their certificates at the end of the year.
The school later informed us of the decision of the disciplinary commission: the teacher would be subjected to the disciplinary measure of termination of employment, with the execution of this measure conditionally deferred for one year.