Republic of Slovenia

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HUMAN RIGHTS OMBUDSMAN

This latest Annual Report from the Human Rights Ombudsman again differs little from previous reports, since the problems and human rights violations we have identified are, for the most part, the same as in previous years: lengthy resolving of administrative and judicial matters, the slow pace of adopting laws that are important for the protection of human rights, or laws that run counter to the constitution, non-adherence to legal deadlines and the slow pace of amending the implementation of regulations, the non-implementation of valid laws and so forth. This points to the irresponsible behaviour of those holding authority, since they are insufficiently aware that slowness or negligence in their work ultimately has a direct effect on people, increases social hardship, reduces the prospects of overcoming poverty and reduces trust in the legal safety of the country. The state and those employed in its institutions are insufficiently aware of this fact.

Last year our expanded staff began more intensive monitoring of the area of children's rights, violence (especially domestic) and the inappropriate responses of the state to these increasingly burning issues, so this area is dealt with in a special supplement to this report. Otherwise the structure of the report is similar to previous ones: the first chapter sets out an assessment of the state of human rights in Slovenia, and we highlight those problems requiring particular emphasis. In this, we also call upon all those involved, and primarily those with the greatest power in society, to exercise greater commitment in respecting human rights. The second chapter presents a more detailed analysis of the problems in individual areas encountered by the ombudsman. The issues of personal data protection and children's rights are also incorporated into this chapter, as they were last year. Subsequent chapters provide general information about methods of work, communication with the public, a review of financial expenditure and statistics. The report concludes with a presentation of some particularly noteworthy cases.

Our desire is that this year's annual report will be taken seriously both in the public and by state institutions, which are especially responsible for the respect of human rights. We also hope that it will contribute to an elimination of those errors, misunderstandings or conscious actions that represent human rights violations, since without respect for the rights of the individual we cannot speak of a progressive, developed and democratic society where people enjoy a high quality of life. And we would undoubtedly like to achieve such a society.

Matjaž Hanžek, Human Rights Ombudsman

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Forming an assessment of the state of human rights merely on the basis of complaints received by the Human Rights Ombudsman could be misleading. Whether an individual whose rights are suspected to have been violated approaches the ombudsman, depends on many factors. It depends primarily on whether individuals are sufficiently acquainted with their rights and whom to approach if these rights have been violated. Here they must at least partly trust the system: they must believe that their complaint will exert an influence for change. So the society must reach a certain level of development for the work of the Human Rights Ombudsman to have any purpose. In monitoring the complaints received by the Human Rights Ombudsman we have observed that some groups of people almost never approach the ombudsman; these are primarily marginalised people (children, Roma, refugees), and the reason for this is probably their insufficient familiarity with human rights. So this assessment of the state of human rights in Slovenia is composed not only of an analysis constructed from individual complaints, but also of other information that the ombudsman has obtained in various ways: by monitoring the media, in conversations with individuals, with representatives of various groups of people, non-governmental organisations and also from talks with the representatives of authority and state institutions. The assessment is also fleshed out by the attitude held by these institutions towards the complaints and demands of the Human Rights Ombudsman.

For there to be a minimum of violations, requires the greatest possible awareness of them – both on the part of individuals whose rights may have been violated, and of those causing the violations. For this reason the ombudsman's work is focused not just on resolving complaints, but also on the promotion of human rights, on drawing the attention of state bodies to identified violations or irregularities in their functioning, and also pointing out the poor systemic arrangements that cause violations. We have identified such arrangements in dealing with specific complaints (described in detail in the second chapter of this report) or by monitoring events in public life. Although the work of the Human Rights Ombudsman is geared primarily towards resolving specific complaints, it does not stop there; the ombudsman also deals with the systemic problems of human rights. Yet here he is restricted – the work of the traditional ombudsman is orientated chiefly towards resolving individual complaints. Alongside this so to speak "curative" work there is an urgent need for "preventive" work: systemic analyses of the state of human rights in Slovenia, and promotion and education. Insufficient awareness of one's own rights and those of others is indeed one of the main reasons for their violation, and especially for discrimination against powerless groups of people. For this reason we urgently need a **national institution**, which would deal more concertedly with this issue, something to which we are bound, after all, by the European Community directive. This task could in part be performed by certain official bodies, especially those whose establishment has already committed them to this (the nationalities, religious communities, equal opportunities, youth and other offices), but their work is fragmented, strung out between various political and party interests, too narrowly defined in law, lacking in personnel and similar. More than anything, however, there is inadequate coordination and will for them to take account of the entire social issue in their work. There undoubtedly exists therefore a need for a standard anti-discrimination policy or for a single state institution that would act as a watchdog for discrimination, human rights education and monitoring of the fulfilment of international conventions.

It is no doubt tedious if every year, at least in part, there is a repetition of the findings about the state of human rights in Slovenia, but sadly this year too, we have observed that a whole range of things are the same as the previous year or even several years ago. Some things are improving, but too slowly. Often problems are resolved in such a way where we get the feeling that more energy is invested in seeking obstacles to prevent a resolution of the problem, than means of removing these obstacles. We can repeat last year's finding that state institutions (and not just these) are excessively bureaucratised and insufficiently active in recognising or eliminating people's problems. It is still true, therefore, that the common denominator in the assessment of the functioning of institutions is **insufficient sensitivity to the problems** to those people who need help. Or a certain kind of **indiffer-**

ence to other people. Sadly we must repeat the record of previous years. For the sixth year running now, the National Assembly has not found the time or inclination to set in law the area of mental health; it would appear that political prestige is more important than help for marginalised people. The non-adoption of implementing regulations and realisation of possibilities for educating special needs children are other such examples repeated from last year's report. But there is a whole range of similar examples. To this we can add the decade spent resolving the problem of those "deleted". We may repeat: excessive zeal for "grand historic subjects and tasks" and a callous attitude to the needs and difficulties of the "little" people still mark the attitude of the state to human rights.

It has been possible, however, to identify certain positive changes, chiefly in certain institutions accommodating the ombudsman's intervention. A number of bodies are responding more seriously and rapidly to our cautions, their behaviour is changing and we may conclude that it is also changing in relation to their clients. Unfortunately there are still too many institutions that take complaints from individuals or the work of the ombudsman as unnecessary whining and a disruption to their established operation. They show this either directly through non-response or indirectly by evasion. At this point we must point out in particular the lack of seriousness shown by the National Assembly towards the special report produced by the Human Rights Ombudsman on the problem of tenants in denationalised housing. The National Assembly bodies processed the report at such a snail's pace that it was no longer possible to accommodate the recommendations in the Housing Act, although those debating it agreed with their substance. We may therefore wonder what is the point in continuing to produce special reports, given such an attitude to them? We might think the same thing regarding National Assembly decisions, since a series of decisions from pervious years have still not been fulfilled.

Despite the intervention of the Human Rights Ombudsman to resolve what has been for years now the burning issue of building an Islamic centre in Ljubljana, and despite cooperation with numerous media establishments, both domestic and international, again in 2002 there was no discernible increase in the political will for a solution, which indicates serious **xenophobia**. Moreover it would appear that improper procedures in demanding proof of identity of the Muslim mufti's wife have again dragged to the surface the smouldering intolerance that had hitherto flared up against those of a same-sex orientation caused by the media circus surrounding the show to select Slovenia's Eurovision song entry. The unresolved Roma issue (including problems in electing Roma councillors to municipal councils, and the issue of being autochthonous, which is not defined anywhere), the problems of those deleted, the disabled, discrimination against special needs children, groups undergoing addiction treatment and similar, indicate the smouldering (unresolved) problems of intolerance towards those that are different; something that needs to be dealt with on the national level.

Laws formulated unclearly (frequently as a result of party political bribery), the arbitrary approach of the state in changing rules of behaviour, violations of adopted legislation and the unequal position of the state and individuals are still poor characteristics that should be pointed out once again. To this we may add the negligent work that is still frequently unpunished, and the absence of appropriate mechanisms that would facilitate complaints and their proper resolving.

In the past year Slovenia was visited by the European Committee for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment, and its findings were similar to those that the Human Rights Ombudsman has been communicating to the Slovenian public each year. Here it is interesting to note that the government accepted the Committee's recommendations regarding the need for detainees to be visited as a rule without glass screens, although prior to this the Ministry of Justice did not heed exactly the same request from the ombudsman. The main problem in the area of restricting personal freedom has been repeated from previous years: small capacities and the corresponding overcrowding, something especially acute among remand prisoners. This was also the main cause of the group protests and in some cases even hunger strikes, which were a feature of last year. These group expressions of dissatisfaction also indicate a lack of communication between convicts or remand prisoners and staff. Nor has there been any solution to the problem of adequate health care in prisons, something that was one of the reasons for complaints. One of the means of reducing prison overcrowding is conditional release. But in the criteria for this, insufficient consideration is given to the attitude of the perpetrator towards the victim; most importantly a changed attitude of the perpetrator towards the victim should be the criterion for privileges being granted to prisoners.

In police procedures the largest number of complaints relate to the exercising of police powers, especially the use of physical force and means of restraint, and unjustified over-reaction. With such complaints the greatest problem is impartial assessment of the facts, since it appears that generally police statements are taken more seriously than those of complainants. The mere fact that the police can neither deny nor confirm the assertions of the affected person is not sufficient for the automatic acceptance of the police officer's assertions, especially if the person was physically injured in the procedure. There is therefore an urgent need for the provision of proper complaints procedures, which would engender in people a trust in their independence. In the current processing of complaints the biggest problem is the imbalance between the two sides in determining the facts and in making decisions, since generally the complaints commissions do not interview the complainant, and the opinion of the non-police section of the complaints commission is not binding in decision-making. Another frequent problem is the "excessive zeal" of police officers, who have continued dealing with the individual after verifying that the situation does not involve a suspicious person or stolen car. We also noted excessive police "zeal" in deporting people from the country, especially those that have families in Slovenia. And propriety of police procedures cannot be a reason for inaction. This was evident several times in the attitude to illegal actions by private security companies, where the police did not intervene when they should have done.

The counsel of the Human Rights Ombudsman from past years has been taken into account in the amendments to the Judicial Service Act, since alongside their rights it also stresses the duties of judges, while linking the independence of judges primarily to the right of the individual to a fair trial and not to non-liability. What is now the fifth amendment of the Criminal Procedure Act points to the general characteristic of poor and hasty drafting of laws, and the unacceptable meddling of political and other interests in the actual legislative procedure. The hundred and more amended articles of the Execution and Insurance Act confirm our past criticism of this act, which hindered and made expensive, sometimes even preventing, execution. The indiscriminate transfer of certain functions of the state into private hands often renders procedures less agreeable, more expensive and less accessible to people. Such was the result of "privatising" the execution of court rulings. The problem is exacerbated by the current thinking in certain judicial circles that execution is not a constituent part of the judicial process, but something else of lesser importance. For individuals a final court ruling issued within an acceptable deadline is still of no consequence if they have to wait years for execution. It is only through successful execution that the judicial process is actually completed. The mass of court backlogs is not being reduced, despite the promises, nice words and various much-vaunted projects. The exception to this is court procedures that do not represent a violation of the deadlines (18 months for a decision at the first instance and 6 months at the second instance). At numerous courts there is a wait of as much as five years, after filing a suit, for the main hearing. And this is far from a fair trial in a reasonable period of time. And complaints pointing out the fact that judges, attorneys and prosecutors are related, especially in certain smaller towns, arouse suspicions about the propriety of trials. The past year saw the start of the provision of free legal aid, which right from the outset has revealed certain unclear features, especially in deciding who is eligible for this aid. A feature of the misdemeanours courts is the large proportion of misdemeanours that have exceeded their time limitation, and this emphasises the inability of the state to exercise its will and rights.

The adoption of urgently needed laws as part of the reorganisation of public administration marked only the first step towards a more friendly and higher quality public administration. Just as the customary practice was unacceptable, something we have been pointing out consistently, this, too, is an excessively long route to the establishing of a system that will be finalised only with the adoption of implementing regulations and with its implementation in everyday life. And in the adoption of implementing acts the public was not sufficiently involved, so certain procedures are still problematic and not user-friendly. The gaps in this area are further exacerbated by the unresolved political issue of creating regions and the concomitant organisation of territorial units of public administration and their competence. With the later introduction of regions, the work of reorganising the administration will be repeated. Although last year the Government began by heeding our advice regarding the non-issuance of implementing regulations, and charged ministries with producing analyses of this problem, it has not verified the results of the analysis and taken appropriate steps based on it. The mere request for an assessment of the situation, which is then not taken any further – changing practices and elimination of backlogs – has no point at all. The purpose of the Human Rights Ombudsman drawing the attention of the Government and other holders of author-

ity to problems does not lie simply in maintaining the ritual of admonishing and apologising, but in effecting improvements. There still remains one salient issue, which we pointed out in the past, regarding the unequal position of the state and the individual. Here we have in mind the arrangements and procedures whereby in the same position or procedure the individual is governed by different (stricter) rules than those applying to the state. The state can also impose its will on the individual by force, but this should not mean being arbitrary. All rights and obligations must be regulated by laws that apply both to individuals and to state bodies and their employees, and the subordination of individuals to official decisions does not imply their subordination to the officials who draw up these decisions. The state determines the rules of the game and drafts and issues laws, but at the same time it is responsible for seeing that its employees also understand these regulations. For this reason individuals should not bear the consequences of possible errors in regulations, legal loopholes or ignorance on the part of officials. Where the situation is unclear, therefore, decisions must be made in favour of the individual, something that is too frequently overlooked. As with the courts, in administrative affairs there is a problem of decision-making outside the legal or at least reasonable deadlines.

In deciding on the granting of citizenship, the rigid interpretation of laws sometimes indicates discrimination on economic grounds. Here we are thinking of the demands for evidence of possession of funds, primarily for spouses or parents of Slovenian citizens. Denying citizenship to a person (parent) owing to insufficient family income makes it harder for them to find a job or other means of income, an in this way pushes the family – Slovenian citizens – further into poverty. On the other hand it raises the question, do wealthier parents have more right to live with their children than poorer parents. Equally, we do not agree with the manner of deciding who represents a threat to the state. The fact that someone was employed in the Yugoslav National Army does not in itself prove this: for such a decision mere suspicion is not sufficient, and specific evidence should be presented in the explanation to the decision, so that the affected party can challenge it. Otherwise that person's right to equal legal safety will have been violated.

Class distinction is another thing that touches on the work of the Human Rights Ombudsman. We observe it primarily in complaints – more like appeals – for a variety of assistance: in finding jobs, sorting out housing problems, welfare assistance and so forth. Sadly the ombudsman is powerless here, and can merely advise people which competent service to approach. There is a larger social problem, with hints of discrimination, indicated by the complaints of groups of people who are in some way "insufficiently productive": the elderly, disabled, sick, women with small children, and Roma. There may therefore be a need for a more socially just policy – it is perhaps time for some form of social contract on common development; a development policy that would prioritise the active inclusion of people in society. Often social transfers tend more to signify help in holding marginalised population groups on the margins, and preventing their inclusion in society. At times it seems that money is no object, as long as certain groups of people can be kept without any major social upheavals outside of the mainstream of society, since paying is easier than changing established/learned behaviour.

More intensive work in the area of children's rights has enhanced our awareness of old problems, and identified certain new ones. A particular problem is the indecisiveness of various institutions dealing with children's problems. The greatest drawback is the slow decision-making and the insufficiently consistent exercising of the interests of the child. Children are subjects in law and should be treated accordingly; and their opinion should be taken into account as much as possible. Frequently the prevarication and slowness in decision-making by social work centres is the greatest problem in dealing with violations of children's rights. This is often followed in cases where a dissatisfied parent complains, by a complaint which the Ministry of Labour, Family and Social Affairs will usually take an unreasonably long time to resolve – even as much as two years. Such practices are unacceptable, since immediate decisions are extremely important for a child's life. In separations, often one of the parents tries to antagonise or take revenge on the other, and thereby abuses the child, by not paying maintenance or preventing contact. Vacillation and slow decision-making by state institutions (social work centres, courts), which should be primarily concerned with the interests of the child, merely exacerbate such abuse. Such unacceptable practices are also in part caused by deficient legislation, which in contrast to the Convention on the Rights of the Child and the Slovenian Constitution, regards children as the subject of protection and not as independent sub-

jects with their own needs and rights. In cases where the parents through their own emotional involvement are not capable of judging realistically in the interests of protecting the child's rights, the behaviour of the social work centres is often also confused and unprofessional: they do not treat the child as a subject in law, they take no account of the child's opinion, nor do they provide it with sufficient relevant information, they do not appoint advocates, procedures are conducted unreasonably slowly and so forth. And when they do finally issue a decision, the next institution in the system then starts to drag its heels: administrative units make up myriad excuses to postpone execution of the decision. All this points to frequent practices whereby more energy is expended on avoiding decisions and seeking excuses for inaction, than on decisive action in the child's interest. And when this ordeal is finally over, the child is often already grown up, or scarred for the rest of its life.

One particular problem is violence, especially domestic violence, which we do not know how to or are unwilling to deal with appropriately. And here, too, children are the direct victims or at least impotent witnesses. In previous years this problem became more visible, chiefly owing to the efforts of the civil society and non-governmental organisations. These have been followed up too slowly by the state with amended legislation and practices. Shelters for victims are one of the solutions, but unfortunately only temporary. The practice is unacceptable whereby the state helps a violent person to exercise their will and drive a victim of violence from their own home. There is therefore an urgent need to draft, adopt and implement laws that will protect victims, ensure them safety in their homes, and provide the violent person with psychiatric and social assistance and thereby the chance of changing their behaviour.

2.1. CONSTITUTIONAL RIGHTS

2.1.0. Introduction

Relative to the previous year the number of complaints in the area of constitutional rights increased slightly. There were more complaints chiefly regarding the exercising of equal opportunities and minority rights. And there was a marked increase in the number of complaints relating to personal data protection. This was expected, since under the amendments and supplements to the ZVOP at the end of 2001, the ombudsman assumed independent oversight of personal data protection. The issue of personal data protection is discussed under a special chapter of this report.

The largest number of complaints were placed in the classification sub-area of "other constitutional rights". We cite certain cases that illustrate the diversity of complaints received in this area. A complainant proposed that disabled identity cards be introduced by law, and that this would standardise the claiming of benefits. An elderly complainant objected to the purported lack of clarity and incomprehensibility of the new payment forms issued by the Slovenian postal service. One complainant requested the intervention of the ombudsman, asserting that his stepdaughter's boyfriend was controlling her excessively and in this way restricting her freedom of choice. Another complainant asserted that his father-in-law was interfering excessively in his privacy. Regarding the issues of returning investments in telephone infrastructure, a complainant proposed the return also of funds paid by us citizens out of our personal incomes for the construction of housing prior to 1990. She asserts that she was not included in the division of a share of this public asset, so the question is raised of putting right an injustice and the return of these funds.

Although in the cases described, the ombudsman held no jurisdiction, we explained to complainants their legal position and gave them pointers for the pursuit of certain procedures or legal remedies.

Societies

We received a number of complaints regarding the joining or exclusion from societies. Some complainants asserted that their constitutionally guaranteed right to assembly and association had been encroached. We explained to them that everyone can become a member of a society under the same conditions. The constitutional right is guaranteed up to this point, but the society itself determines the "rules of the game". Where rights have been violated, the individual can demand their protection in the courts.

Elections

In 2002 presidential and local elections were held. At the ombudsman's office no special duty service was organised for monitoring possible violations of voters' rights. In view of past experience we have observed that in the elections held to date **there have been no major irregularities or improprieties which would require the direct and rapid action of the ombudsman**. In the majority of cases we explained to voters the procedures, or in respect of violations, we directed them to the competent bodies.

In the majority of cases related to suspected irregularities in conducting local elections, the complainants had already approached the competent electoral bodies and wished simply to inform us of the substance of their complaints. From these it is evident that in the latest local elections there were some problems in observance of the new rules adopted with the amendments to the Local Elections Act (ZLV-D) regarding observance of preferential votes in allocating mandates to individual candidates on the candidate lists.

In connection with local elections we received a complaint relating to the placing of posters during the pre-election campaign in the municipality of Koper. On the basis of explanations received we determined that violations had occurred owing to the unclear conditions in the consent issued. Since the affected parties had already resolved the dispute amicably in the interim, we merely advised the

municipality of the irregularities established, and called on them to exercise consistence in the implementation of formal procedural rules (see case no. 1).

We received no complaints related to the election of the national president.

Violations of the Election Campaign Act via the Internet

In connection with the local elections we dealt with the case of a complainant who asserted violation of Article 3 of the Election Campaign Act (ZVolK). This provision ensures candidates the right to a fast-track procedure for the protection of their rights at the competent court if, during an election campaign in speeches or election messages the rights of other candidates are not respected. In such cases the court must decide within three days of the submission of the request. The complainant asserted that as a candidate for mayor, he was the target of unjustified accusations published on a website owned by a foreign web provider. When he attempted, on the basis of the aforementioned provision of the ZVolK, to exercise the protection of his rights in the court, the court determined that the suit he had brought was incomplete, because he had not produced information about the accused party or the name and address of the provider of the information that was being spread about him on the website. The court called on the complainant to complete the suit in 8 days with the name and address of the accused party, otherwise it would be rejected as incomplete.

After receiving this decision from the court, the complainant went to the police. They explained to him that without a court warrant the police could not search for the necessary address, and the process itself would take too long for the information to be obtained within the deadline set by the court for completion of his suit. The complainant asserted that he himself could not determine the author of the contentious texts on the website, that the court had not enabled the protection of his rights under the provisions of the ZVolK, and that the police did not act in compliance with their powers.

We made several enquiries in this case. Regarding the response of the police officer and the jurisdiction of the police in such cases, the general police authority replied that the response of the police officer was legitimate. In response to his subsequent written complaint the complainant received the answer in which the jurisdiction and powers of the police in such cases were explained once again. Without a court warrant the police could not obtain the personal data of Internet providers and users. Such data could only be obtained if there existed the suspicion of a criminal act prosecutable ex officio or on the proposal of the injured party or eligible person. In such cases the police must justify their proposal for obtaining data at the provider of Internet services and submit it to the competent court. If the competent court determines that there are grounds for the proposal, it issues a warrant for the obtaining of data at the telecommunications network provider, on the basis of which the police conduct the ordered investigation. The complainant did not assert a criminal act, but a violation of the provisions of the ZVolK.

The Ministry of the Information Society sent us an exhaustive response, in which it explained the technical and other possibilities for obtaining data on the provider or owner of a specific website, and on the international and domestic regulation of these issues. Firstly it should be taken into account that the owner of an individual website or Internet address is not necessarily the same as the provider of the content on the site. Owners of Internet addresses, especially abroad, enable the registration of individual sub-addresses in a very simple way. All that is needed is a valid e-mail address, but this too, does not guarantee identification of the owner of a specific sub-address.

The owners of Internet addresses that offer individual sub-addresses for rent are not responsible for the content of the information posted, for it cannot be controlled, either technically or in its content (this also involves content in different languages). The Internet is set up as a highly democratic way of spreading information, and by its technical nature incorporates very little scope for control of its content, either by state institutions or by affected individuals or groups. The problems arising in this connection (hostile language, child pornography and Internet crime) are increasing all the time. For this reason, under the aegis of the Council of Europe a special convention was drafted on cyber crime, and this will allow action to be taken in the event of the perpetration of criminal acts especially defined in the convention and carried out via the Internet. It should come into force in 2003, and on this basis signatory states will harmonise their legislation.

In Slovenia, too, there is currently no special control by the authorities over the content disseminated over the worldwide web. As the EU directive on e-business also lays down, Internet service providers are not responsible for the content that is spread on their servers, if they are unaware of its illegality. Nevertheless, providers are bound to remove such content immediately upon notification of its illegality. The directive should supposedly be incorporated into the new act governing e-business and electronic signatures, which is now being drafted.

In the Telecommunications Act (ZTel-1) the concept of an Internet service provider is not defined. The operator and provider of Internet services are different, but they may also be the same. Under the ZTel-1 only the operator has obligations in connection with the control of telecommunications traffic. The operator is therefore the one that must carry out the decisions of the courts or other eligible persons in compliance with the Criminal Procedure Act regarding control of telecommunications. However, such controls are only possible as a future measure, and retrospectively only for as long as data are stored on Internet traffic, which is usually no more than one week. This restricts the effectiveness of control orders.

The reporting of content via electronic media is also regulated by the Media Act (ZMed), which provides that the publishers of media that perform the activity of disseminating programme content in compliance with this act, must before starting their activity submit to a registration of the media at the competent ministry, this being the Ministry of Culture. On the basis of the ZMed and the ministry's rules on the manner of keeping and the procedure for entry and dissemination of data from the registration of media, it is clear that such a register must incorporate all media that broadcast content in compliance with the ZMed, irrespective of the type and form of information broadcasting. It is evident from both the rules and the register that this has included certain media that offer content electronically, in other words e-publications.

The duty to identify persons responsible for messages is also provided in articles 6 and 7 of the ZvolK. Under these provisions, public media may not publish electioneering messages without reference to the client, and in all forms of information produced for the public and containing such messages, in addition to the publisher details the client ordering such messages must be stated. It is clear that in election messages that are broadcast over the Internet, these provisions are not being observed, since the majority of the providers of content broadcast via the Internet, are not defined as media pursuant to the ZMed.

In view of the above, there are obvious difficulties in observing the provisions of the ZvolK in cases such as that cited by our complainant. The judicial route envisaged by Article 3 of the ZvolK in cases of election messages posted on the Internet, is not in fact usable. There are neither technical nor legal guarantees that it could be concluded successfully. The most effective and realistic possibility remaining to the affected person is therefore to **demand the removal of the contentious content** by the Internet site owner, in compliance with the rules, general conditions of business or code of practice, observed by the owner. Such a demand can be asserted relatively quickly, if of course the owner agrees and observes the ethical rules he himself is promoting. The affected person also always has the possibility of demanding damages under the general principles of obligational law, if he can establish, without doubt, the author of libellous messages. The majority of criminal acts against honour and good name are prosecuted in private suits, so in such cases the court order for control of telecommunications operators plays no part. And even if such an order was made, on this basis there is no great possibility of being able to establish, beyond a doubt, the author of the contentious messages.

Population census

Last year a census of the population, households and residential dwellings was carried out. In connection with the conducting of the census we received only one complaint, which related to the census of people in prison. Under the ZPPGOl such people have the possibility of self-census and are also bound to use this possibility. In the case dealt with, there were therefore no violations as claimed.

Burning of the Strunjan cross

The burning of the cross at Strunjan had repercussions in some of the complaints we received. We monitored the events, and after making enquiries, we established that the police had preferred criminal charges against the perpetrators of the act, based on the suspicion of the criminal act of illegal damage or destruction of an object of special cultural or historic interest. Since the competent state

bodies had acted in due time, we did not feel the need to say anything special about it. Our view is that actions that might offend the feelings of individual groups, including religious groups, are unacceptable, although we do not believe that the perpetrators in this case had any such intention. Acts that bear the mark of vandalism cannot be justified by the claim of artistic endeavour.

2.1.1. Ethnic and other minorities and groups

The Slovenian Constitution guarantees primarily the protection of individual rights. Collective protection is provided only to the members of the autochthonous Italian and Hungarian ethnic communities and members of the Roma community.

Within the framework of exercising individual rights, we can mention the complaint of a member of the Hungarian community in Slovenia, who asserted that in the procedure of inspection control he was discriminated against because of his ethnic affiliation. After conducting procedures, we could find sufficient grounds for action by the ombudsman.

Unresolved Roma issues

The Slovenian Constitution provides that the position and special rights of the Roma community in Slovenia, shall be regulated by law. A part of this position and special rights is regulated by individual sectoral laws. In view of the partial regulation of this issue, and the problems faced by the Roma community, we believe that it would be more appropriate if the position and rights of their community were **regulated comprehensively by a special law**. The law would have to embrace all the areas of Roma issues, and precisely demarcate the powers and obligations of the state and local communities – including financial. Currently the obligation to regulate the special rights of Roma community members is transferred, for the most part, to the municipalities, without them receiving appropriate funds for this. This was also evident in the election of Roma community representatives in the municipal councils. The non-provision of financing for the fulfilment of these rights also generates dissatisfaction in local communities, as well as resistance to their fulfilment.

We monitor the Roma issue in several ways. Last year the ombudsman visited the Roma settlement of Žabjak, or what is now Brezje. We also obtain information on the circumstances and difficulties of the Roma community through participation at various forums, and in personal talks with the representatives of this community. Last year, again, two problems facing the Roma population stood out in particular: problems in arranging basic accommodation, and problems in employment. No marked shifts could be discerned in this area on the part of state bodies and local community bodies. We believe that there is not the proper will to settle this particular issue. This is also because of the "differentness" of the Roma and the consequent resistance and discriminatory attitude of nearby residents and even of certain local organisations.

We received a complaint from a Roma whose electricity had supposedly been cut off by the supplier. Since via the junction of a third person, other Roma were connected to the mains supply, this meant that the majority of residents of a certain part of a Roma settlement were without electricity. After conducting procedures, we established that the supply of electricity had been stopped in compliance with the valid regulations. For this reason we simply offered the complainant certain explanations.

At the same time the Novo mesto Municipal Council and the Novo mesto Distribution Unit of Elektro Ljublana [the electricity supplier] gave explanations to us regarding the arrangement of Roma homes. Elektro Ljubljana had supposedly already worked out a technical solution, coordinated with the competent municipality office and the Novo mesto branch of the environment and spatial planning inspectorate. The proposed solution would need the permission of the Novo mesto administrative unit, which in the words of the municipality, "cannot, or does not wish to, give this permission". The municipality maintains that the "illegal construction" needs to be legalised in spatial planning terms and for a long period through a land use plan for a sizeable section of the land, which is owned by the Ministry of Defence and for which the obligatory state basis applies. In the view of the municipality, on the basis of state spatial plans, Roma settlements were supposedly defined, and these may be deemed exceptions in changes to land use in municipal spatial plans, where it involves existing autochthonous Roma settlements. They maintain that this question cannot be resolved without changes to spatial planning legislation and the implementing regulations, which are regulated by the

state. Despite this, in the specific case, the municipality together with Elektro Ljubljana, Novo mesto Distribution Unit, is supposedly continuing to seek an appropriate legal solution.

Although the above response of the Novo mesto Municipal Council is a welcome proposal, we must point out that the proper arrangement of Roma homes is primarily the job of the local community. The local community is bound to propose the necessary changes to urban planning acts and to implement the prescribed procedures. It is interesting to note that in certain other cases, changes to land use do not cause such problems for the local communities. For this reason, local communities should immediately begin implementing appropriate procedures to arrange Roma settlements. Last year the state was also prepared to cover part of the costs of such an arrangement, since the Ministry of Economy held a public tender for co-financing basic municipal infrastructure projects in areas where the Roma ethnic community is living. We are aware that the resolving of such issues is a longer-term affair that demands mutual cooperation and the coordination of various state and local institutions, but there is no reason to put these issues off, or to pass them on to other bodies.

Other ethnic communities and minorities

The protection of collective rights in the area of ethnic communities and minorities was asserted last year at the Human Rights Ombudsman Office by ethnic groups and minorities that are not mentioned in the Constitution. We received certain complaints from the representatives of these communities, but all of them related to the systemic settling of their status. We became additionally familiarised with this issue at various conferences, round tables, presentations of publications and in personal talks with their representatives. On the initiative of the ombudsman, a meeting was convened at his office for the representatives of all these communities, with a lecture given by the ombudsman of Bosnia-Herzegovina, Mr. Frank Orton.

Unclear definition of the term autochthonous

To sum up their problems, they involve primarily the ensuring of suitable conditions for their continued cultural and ethnic existence. Certain funds are provided to them indirectly for this purpose by the state via the Ministry of Culture. The members of these communities assert that the state is bound to do more, including arrangements provided by law. Their status and position are not legally defined. The concept of being autochthonous injects confusion into the conceptualisation and work with ethnic communities. The Slovenian Constitution explicitly guarantees the special rights of the Italian, Hungarian and Roma communities, irrespective of whether they are autochthonous. The rights of other communities are ensured only indirectly, through the constitutional provisions on the expression of national affiliation, the right to use one's language and script, the right to assemble and associate, equality before the law and so forth. They believe that the constitutionally defined ethnic communities are in a privileged position. Even the concept of being autochthonous, owing to its unclear definition, does not enable ethnic communities to enjoy their rights on the same basis, and even divides and treats differently the members of the same community. In line with the provision of the ZLS, the right to representation in municipal councils is held only by Roma in those areas where an autochthonous community of Roma is settled. For this reason we believe that the fulfilment of their rights on an equal basis should be ensured for all ethnic communities. Or at least there should be a clear definition of what the term autochthonous means, and the criteria for fulfilling this condition should be laid down.

According to the valid legislation, the representatives of these communities do not have any appropriate contact on the governmental level or body, which would monitor and deal with their problems. The Nationalities Office deals only with the issues of the constitutionally defined communities. We believe that in view of its area of operation, this office could also deal with the problems of other communities.

Last year we again received several complaints from **same-sex partners**, who assert that by not being able to conclude formal marriages, their constitutional rights are being infringed – particularly the right to free choice of marital partner. The Constitution leaves the regulation of marital relations to the law. The relevant law (ZZZDR) allows for the conclusion of formal marriages only between persons of the opposite sex. Until the Constitutional Court perhaps determines otherwise, this arrangement is in compliance with the Constitution. Irrespective of such provisions in the ZZZDR, we maintained that the complainants' right to free choice of partner was not infringed, since they could create a domestic partnership with a person of the same sex, although they could not conclude a formal marriage under the ZZZDR. Such partnership should in principle be equated with a formal

marriage, although the regulations and practices in all areas do not yet ensure this. This should be provided primarily through a law governing registration of same-sex partnerships, which is being drafted at the Ministry of Labour, Family and Social Affairs.

In dealing with the subject of sexual orientation we received certain complaints owing to the purported contentious publication of a revised version of the Eurovision song by the trio Sestre, *Samo ljubezen* (Only Love). It was published in *Maturant@ka*, a monthly magazine for secondary school pupils and school leavers. The complainants asserted that the text referred to homosexuals in a vulgar and offensive way, and thereby promoted intolerance, spread homophobia and reproduced prejudices and stereotypes regarding homosexuals. Since the Ministry of Education, as the co-financer of the magazine responded appropriately to the demands of the complainants, we took the view that a public response by us was not necessary. In any event, our view is that actions which might offend the feelings of individual groups are unacceptable.

There was considerable media attention last year to the dispute between Slovenian Railways and the Molotov group. The group supposedly occupied a specific Slovenian Railways (SŽ) building illegally, and in turn SŽ allegedly attempted to remove the group from the building by force. The ombudsman cannot intervene in the resolving of this dispute. However, owing to the indirect or direct influence of "state" bodies in resolving the problem, we monitored events by being present at the actual location.

Discrimination against Religious Communities

The Slovenian Islamic community requested our intervention last year in the proposed construction of an Islamic cultural centre in Ljubljana. The procedure, being conducted by the Ljubljana Municipal Council, came to a halt in the phase of drawing up responses to the comments that were given during the public disclosure of the Spatial Planning Act determining the location of the Islamic cultural centre. According to the Ljubljana Municipal Council, this issue goes beyond the competence of the local community, and so certain questions would need to be resolved at state level. We received an explanation from the Religious Communities Office that this particular problem was exclusively within the jurisdiction of the local community, although we called upon the Office to give a clear and unambiguous view regarding the construction of the centre.

We believe that the case in question involves latent discrimination, evident in the impeding of the process. For almost thirty years the Islamic community has been trying to acquire a building in Slovenia in which it could conduct its worship and practices of faith. From a formal legal aspect, the procedure in question falls within the jurisdiction of the local community. The tasks of the Office include cooperation with ministries, other state and local bodies, and organisations, in resolving the open questions of religious communities. For this reason we cannot agree with the response of the Office's director. The Office is bound to be involved actively in the resolving of this problem. Since the newly elected mayor promised to put the procedure immediately back on track, we have temporarily suspended our action in this case.

2.1.2. Ethics of public speech

Last year we again received complaints owing to the publishing of data that identified the suspects and victims of crimes, owing to the inaccuracy of published information, the inappropriate or discriminatory content of broadcasts and so forth. In the majority of cases we explained to complainants that the ombudsman had no direct powers regarding the media. In their work the media are independent, and they are free to formulate the content of their programmes. This means that in formulating the content of programmes they have a "free hand". If an individual believes that his/her rights have been infringed by the publication of information in the media, there are various procedures open to him/her. These range from the demand for publication of a correction or response to the published information, to criminal or civil proceedings. The individual himself/herself must decide which procedures he/she will pursue, relative to the harm done and the possible damaging consequences.

In 2002 a new Slovenian journalists' code was adopted. Submissions for investigating violations of the code are dealt with by a journalists' court of honour, which is a body of the Slovenian society and

union of journalists. The court of honour may also deal with the actions of writers who are not journalists. Nevertheless this is a professional association dealing with individual cases, and we therefore believe that the issue remains open as to the treatment of violations of ethical principles of journalism with the participation of independent members of the public.

2.2. PERSONAL DATA PROTECTION

2.2.1. General

Since 2001 the Human Rights Ombudsman has also been performing the task of an independent institution for the protection of personal data. He has been playing this role on the basis of amendments and supplements to the Personal Data Protection Act (ZVOP-A), which entered into force on 24 July 2001. Harmonisation was needed to bring it into line with EU directive 95/46/EC, which requires an independent institution to oversee the provisions of this directive covering the protection of individuals in the processing of personal data and their free movement. This duty brings to the ombudsman a considerable amount of new tasks and responsibility, including in the area of international cooperation, but this has not been matched by any appropriate enhancing of the institution in terms of personnel and material support.

In this new role, the ombudsman monitors the work of the Personal Data Protection Inspectorate, advises users, handles and investigates complaints, collaborates in the procedures for adopting regulations and performs other tasks as provided by the ZVOP-A. To a certain extent these tasks depart from the ombudsman's established method of work in line with the ZvarCP, and would require more promotional and preventive work, primarily regarding familiarisation of the public with the provisions and rights in the area of personal data protection.

Since the Human Rights Ombudsman started performing the tasks of an independent institution for personal data protection, the number of complaints in this area has been increasing each year. Despite this, both the general issues and the issues arising from the complaints we have dealt with, would not justify the writing of a special report for this area, so we present the issues relating to personal data protection as a special section of the Human Rights Ombudsman Annual Report.

On the basis of complaints received, in the majority of cases we responded to the various questions of complainants regarding fulfilment of the ZVOP and advised them about the ways in which they could exercise their rights in practice. Further on we present some of the most typical complaints that we have dealt with in this area.

In his role as an independent institution for overseeing personal data protection, the Human Rights Ombudsman has taken on numerous new tasks that bring with them new obligations and new methods of work. In this role, the ombudsman began cooperating in the work of the working group of independent institutions for personal data protection, which functions under the aegis of the European Commission, and was set up on the basis of Article 29 of Directive 95/46/EC on the protection of individuals in the processing of personal data and on the free movement of such data. This working group examines and coordinates views regarding the fulfilment of individual provisions of the directive. Some of the more intriguing issues dealt with in this working group include: the legality of operating video surveillance, oversight of employers from the aspect of protection of employees' personal data, misuse of e-mail and the worldwide web, misuse of personal data in financial institutions – banks and insurance companies – and misuse of certain biometric data and personal data in so-called direct marketing. Apart from monitoring and coordination of views in this area, cooperation in EU bodies also brings with it new obligations regarding the provision of information on the situation in Slovenia. However, these additional obligations are not being supported by any appropriate personnel addition or payment of material costs.

We have observed that the area of personal data protection in the Republic of Slovenia is strikingly under-provided for, in terms of personnel and material support, since the two institutions working in this area, the Inspectorate and the Human Rights Ombudsman, combined have a much smaller level of employees than the institutions in other countries, even taking into account relative size and income. Although we cooperate well with the Personal Data Protection Inspectorate, the fact that there are two institutions brings with it numerous problems in international cooperation and coordination of our activities, and for this reason we believe that it is **worth considering the creation of a special unified independent body to oversee implementation of the regulations and directives of the European Union in the area of personal data protection**. In the short term, increasing the staff at the Personal Data Protection Inspectorate will be required, since we believe that in its current staffing level it cannot perform all the tasks arising from the law and ratified international agreements in this area. This was also envisaged on the adoption of the ZVOP-A. The development of new technologies is generating numerous new issues regarding protection of individuals in the area of their privacy and personal data, and this development should be matched by institutional oversight.

The Personal Data Protection Inspectorate is the primary overseer of fulfilment of the ZVOP: in this role it oversees all forms of collection, processing, storage, dissemination and use of personal data, both in the public and private sector. Where violations have been established, an inspector may order the impropriety or deficiency to be eliminated; he/she may also order a ban on the processing of certain personal data. Inspectors also have the right and duty to submit criminal information or instigate misdemeanour proceedings, where improprieties have been established. In addition to his general authorisation in connection with the handling of individual complaints in this area, where he has exactly the same rights and powers as in all other areas, the ombudsman also monitors the work of the Inspectorate. Since under the Constitution and the Ombudsman Act, the ombudsman has jurisdiction to deal only with improprieties in state bodies, local self-government bodies and holders of public authorisation, in resolving complaints relating to the private sector, he may propose to the Inspectorate that it performs specific oversight, takes appropriate steps and issues a report to the ombudsman. The Personal Data Protection Inspectorate is bound to submit an annual report not just to the competent ministry, but also to the Human Rights Ombudsman.

We have received the report of the Personal Data Protection Inspectorate for 2001 and are familiar with its content. We assess it as a good report. There is cause for concern, however, at the state of affairs in the area of personal data protection, as identified by the inspector. The findings are as follows:

- ministries and bodies within them still have no properly produced catalogues of data with a description of all personal databases that individual bodies manage and maintain, nor do they report to the Ministry of Justice all data for the common catalogue of personal data kept and published by that ministry;

- the majority of administrative units also have no properly produced catalogues of data and acts governing the protection of personal data;

- certain collections of personal data at administrative units are still being kept on the basis of implementing regulations, although the Public Sector Act requires exclusively the basis of an Act of Parliament for this;

- individual courts have no registered individual logs, directories and auxiliary books in the common catalogue of personal data;

- no municipal council within which oversight was carried out maintained or managed catalogues of data for the personal data collections they kept, nor did they submit them to the Ministry of Justice;

- for the requirements of calculating the contributions for the use of built sites, municipal councils keep and maintain records of built sites without any legal basis, and in doing so they entrust the management of such records to private companies with which they have no contractual arrangements for the conditions and measures to ensure protection of personal data and their security;

- educational establishments also have no properly produced catalogues of data, they do not report data to the Ministry of Justice and they have no prescribed technical procedures or measures for data protection;

- numerous personal data collection managers keep insufficient records of the dissemination of personal data to other users, so individuals to whom such data relate cannot exercise their legitimate rights;

- many employers collect excessive data on employees and job applicants, and even on their family members;

- among numerous users of personal data, both in the public and private sectors, there is insufficient physical protection of personal data;

- written consent of individuals for the processing of certain personal data is inadequate, since there is no type of data sheet which would indicate the type of personal data to be processed, the purpose of processing and the period of storing personal data collected in this way;

- personal data are being stored too long, this being because data are not deleted within the legal deadline, and also because the regulations often do not provide a deadline beyond which data must be deleted, and so forth.

The inspectorate also points out that despite the expiry of the legal deadline in 2001, many state bodies, local community bodies and holders of public authorisation are still processing certain personal data without any legal basis. Under the Constitution and law these bodies may only process those personal data provided by law. An implementing regulation or authorisation of a minister to prescribe the processing of certain personal data are not a legal basis. We therefore support the proposal that within the government or ministries, working groups should be set up, for the purpose of proposing legislation in their area and proposing appropriate amendments or suggestions for supplementing incompatible laws.

On the basis of the complaints handled at the Human Rights Ombudsman – and there is a similar conclusion offered by the Inspectorate's report – we have observed that another major problem is the poor familiarity with regulations in the area of personal data protection, both among the managers of personal data collections and the individuals whose personal data are being processed and disseminated. We welcome the issuing of a special brochure, *Varstvo osebnih podatkov* (Protection of Personal Data), published by the Ministry of Justice. This brochure sets out the legal provision for personal data protection, the rights of individuals and the powers and duties of the Personal Data Protection Inspectorate. The presentation of this area has also been improved on the web site of the Ministry of Justice. Nevertheless this is still too little to effect an increase in knowledge about the rights and duties of individuals and managers of personal data collections. Better provision of information would contribute to a reduction in both the number of violations and in the gap between the regulations governing this area and the actual state of affairs, which in numerous areas is diverging from the requirements laid down for the consistent fulfilment of the ZVOP.

The area of personal data protection in general is characterised by the existence of a fairly large lag between the requirements imposed by the law, by ratified international agreements and European Union directives in this area, and actual practice, which in numerous cases pursues short cuts and avenues whereby the regulatory requirements might be circumvented. Opportunities are sought for satisfying the requirements of overseers with the least possible effort, bureaucratic procedures and costs. This is most clearly evident in individual commercial fields, for example in banking and insurance. In these areas, with the more or less voluntary consent of individuals, who enter into commercial relationships with them, financial institutions collect a mass of personal data, indeed excessive amounts, without informing individuals of the purpose and period for which such data are being stored. Even more problematic is the exchange of such data between individual financial institutions, not merely within the country, but also internationally. These problems are also being encountered in other European Union countries, where the resolving or fulfilling of prescribed

requirements is not simple, and requires major commitment of oversight mechanisms. There are also growing problems linked to the collection of data on the basis of video surveillance (more on this below), the enormous scope for misuse of personal data via e-mail and the Internet, misuse of personal data for the needs of so-called direct marketing and numerous other new forms of violation which are spreading, particularly with the development of information technology. This also demands the greater commitment of oversight mechanisms within countries and their cooperation on the international level.

Our assessment is that in numerous elements these requirements go well beyond the capacities of the Human Rights Ombudsman and the Inspectorate in its current composition. The need for preventive operations, education, and familiarisation of users and providers requires more coordinated and concerted work in this area. We anticipate that sooner or later a unified body for personal data protection will be set up in Slovenia, and that in one institution it will combine oversight of both the public and private sectors, monitoring of legislation and other regulations in this area, and preventive operations, and that it will cover the numerous obligations arising from international cooperation in this area. If we cannot do this ourselves, we will need to do it on the request of EU agencies, since the current situation, even though it might be possible to argue that under the current structure we are still fulfilling the majority of the obligations from the relevant directive, cannot be a long-term solution for effective operations in this area.

In many respects the aforementioned duties also go beyond the methods and ways of working that are typical for the functioning of the Human Rights Ombudsman in other areas. This refers to the monitoring of the situation and regulations, this being more the job of administrative bodies than of an informal oversight institution such as the Human Rights Ombudsman. This is another reason why we believe that **the current situation demands systemic changes to the institutional oversight of personal data protection in Slovenia**.

2.2.2. Findings based on complaints received and dealt with

In attempting to assess the influx of complaints to us in this area, we must first conclude that the majority of complainants are not familiar with the legal provisions, their own rights and the powers of bodies in the area of personal data protection. The other conclusion is that complainants have often approached the ombudsman prematurely, or rather before a specific violation has even occurred and before approaching the institutions that are competent to deal with their problems or questions. A complainant asserts, for instance, that the police are still unjustifiably keeping him in their records, although he states that he ought to be deleted from them. Another complainant asked to whom and on what basis could the address of his temporary residence be disclosed. Someone asked whether the mayor of a municipality has the right to view the wages sheet of a society financed also by the municipality. In one case we intervened regarding the right of access by a parent to data on the completion of school obligations by his child.

For several years we have also been dealing with the issue of obtaining personal data on third persons to claim certain legal or other rights and benefits. Last year, we dealt with the complaint of a mother who claimed the right at the Pension and Disability Insurance Institute (ZPIZ) to recognition of the period spent looking after her child in its first year. She was required to attach with her application a copy of the original birth certificate for the child. Since the child was now an adult, the administrative unit required his consent or authorisation. We submitted the opinion that in such a case the written consent of the individual to whom the personal data related, was not necessary. We believe that in such cases the legal basis for obtaining personal data can be interpreted a little more broadly. It is not essential this that law explicitly designates the user authorised to obtain such data. It is sufficient that the user under the legal provision is identifiable. We believe that an authorised user includes a subject – natural or legal person – from whom in order to protect or exercise his/her rights and benefits, the law requires the submission of certain data on another individual. In the specific case, we proposed to the administrative unit, that it should supply the requested document without written consent, if the legal regulation indicates that this person needs the data in claiming legitimate rights or legal benefits from a state body.

We also dealt with several complaints relating to the work of the judiciary in this area. A complainant asserted that there was no legal basis for the delivery of a decision whereby the criminal proceedings against him were concluded with the dismissing of the case brought by the injured party. At the same time it disturbed him that the court ruling included a significant amount of his personal data, which the injured party now possessed and was also misusing. We explained to the complainant that the court had acted in compliance with the provisions of the Criminal Procedure Act, but at the same time, we believe that there needs to be some examination of whether all the data set out by the act are truly necessary or indeed belong in the court ruling. In another case, the complainant received from the District Court in Krško notification of the delivery of a letter, in which in addition to her name and surname, her birth details were given. Following enquiries, we established that the envelopes are printed out by computer, which automatically prints onto the envelope the personal data that is entered into the register. In this case, the birth details had also been entered. Following our notification, the court acknowledged the mistake and gave an assurance that in future the birth details would no longer appear on envelopes. We called on the court to apologise to the complainant for the identified impropriety and unpleasantness, which it did.

Certain doubts are also raised in our minds regarding the determinate, or rather indeterminate status, of the managers of personal data collections. These managers may be natural or legal persons. Although we have not yet received any complaints in this regard, we believe that the managers should be more precisely identified – especially natural persons. Does the law also apply to individuals who keep lists of acquaintances, their birthdays and so forth, at home, and are they thus bound to establish personal data collections and supply certain data to the ministry? Logic would suggest not. But from the legal and formal aspect this matter is actually ambiguous. Even more so, since the provision of item 3, paragraph 1, Article 5 of the ZVOP of 1990 clearly lays down that a collection of data shall be essentially linked to the activities of the manager of such a collection. A collection of data was defined as a "collection which in its entirety or partly contains personal data (such as records, a register, a database) and which is kept with means for automatic data processing or by classical means and is intended for the performance of tasks within the framework or in connection with the **activity** of the collection manager or other user of the data". The currently valid ZVOP no longer contains such a provision or restriction.

2.2.3. Legal provisions for video surveillance and records of visitors from the aspect of personal data protection

In dealing with individual complaints in the area of personal data protection we have observed that certain forms of encroachment upon privacy through video surveillance and record-keeping for visitors to individual buildings are not in accordance with the Constitution and law. Article 38 of the Slovenian Constitution provides that the collection, processing, purpose, monitoring and protection of the secrecy of personal data are **provided by law**. Article 3 of the Personal Data Protection Act (ZVOP) provides that personal data may only be processed if the processing of personal data is provided by law, or if the personal data collection manager has the written consent of the individual.

There is no question that the photograph or video footage of an individual, their name, surname and address are personal data pursuant to item 1, Article 2 of the ZVOP. If such personal data are stored, we may also talk about the processing of personal data, and where records of such data are established, about a collection of personal data. As stated, under the ZVOP such collections may be set up **only on the basis of a law or the written consent of the individual** to which the data relate.

Setting up collections of personal data on the basis of video recordings, which is very widespread, is therefore illegal, if it is done without legal authorisation or the prior written consent of the affected person. Video surveillance and collection of data on this basis are performed, primarily for security reasons, by private individuals, commercial companies and state bodies.

The other form of violation of the ZVOP, and one that is quite frequent, is effected through the setting up of **records of visitors**. Such records are set up most commonly by security guards, in both public and private sector buildings, on the basis of internal rules or authorisations. These types of

personal data collections should also have a basis in law, or in the written consent of individuals. The law lays down for state bodies, local community bodies and holders of public authorisation even stricter requirements: they may process only those personal data for which the law provides (paragraph 2, Article 3 of the ZVOP). So in these cases, not even the written consent of the individual is sufficient.

Both problems, the collection of footage of individuals and the keeping of visitor records, were also pointed out to us by the personal data protection inspector. We consulted with the inspector on this issue, and determined that steps by the inspector involving sanctioning violators of the ZVOP would not make sense. Given the current widespread nature of the two phenomena, prosecution of violators would not contribute to solving the problem. It could even lead to a prejudicing of the position of those providing security services, it could contribute to a deterioration in the security situation and arouse resistance to the implementation of decisions of the competent bodies, that is the personal data protection inspector. There are so many such violators, including among state bodies and local community bodies, that in its current composition, the inspectorate could not act against all of them, and the same applies to misdemeanour prosecution bodies. Even now, these bodies are in effect not able to bring to a conclusion any of the cases brought by the personal data protection inspector before they lapse.

For this reason, we proposed in a special letter to the government that **the issues of both video surveillance and record-keeping for security reasons be regulated by law**. The law ought to define the subjects that are able to conduct video surveillance, the method of carrying out such surveillance, the authorisation for setting up and keeping records of data collected in this way, the term and method of their storage and especially the purpose for which such data may be collected and used. In a similar way, legal regulation would also be needed for keeping records of visitors to individual buildings. One solution is for these issues to be regulated by the Personal Protection and Compulsory Organisation of Security Services Act. This act defines the subjects, forms and conditions for performing the activity of security provision, which is carried out by commercial companies, independent entrepreneurs and sole traders. This act therefore does not relate to the security provided by state bodies and local community bodies. For this reason we pointed out that if the conditions and method of video surveillance and record-keeping were regulated solely by the Personal Protection Act, the security measures maintained by state bodies would remain legally unregulated. We asserted that it would be more appropriate to regulate this area comprehensively **with a special law or separately to ensure a legal basis for both the private and public sectors**.

We proposed that the Government of the Republic of Slovenia look into this issue, take a view on it, and as soon as possible, draw up appropriate proposals for legal provisions which would ensure a legal basis for conducting video surveillance and keeping records of visitors.

2.3. RESTRICTION OF PERSONAL LIBERTY

2.3.1. Detainees and convicts serving prison sentences

In 2002 we received significantly fewer written complaints from persons in custody than in the preceding year. We received 35 complaints from detainees and 55 from convicts, representing 60 and 37 per cent less respectively, than in 2001. There were also probably fewer complaints owing to the slightly reduced level of activity of the ombudsman in this area, particularly involving visits to prisons. In 2001 we made a visit involving close inspection only to the Murska Sobota prison. We made several visits to Dob prison, and also visited the open section of Maribor prison at Rogoza and the Celje prison and youth remand centre. On these visits we spoke in particular to the prisoners, who provided the grounds in their complaints for circumstances that required us to visit individual institutions and make direct contact with the convicts and detainees, and as a rule also with the heads of the individual institutions. And of course in 2002 we also received a large number of calls from persons in custody on the ombudsman's freephone, in effect, from all the prisons across Slovenia.

Experiences show this to be an already smoothly functioning means of contact between the ombudsman and persons in custody, and individual institutions are making proper provision for this. Our view is that merely the possibility of this kind of communication affirms the position of persons in custody in ensuring their status, as provided by domestic regulations and international legal acts in the area of protecting human rights and fundamental freedoms, which are binding also on Slovenia.

Report of the European Committee for the Prevention of Torture

Among the reasons for the less frequent visits to prisons, particular mention should be made of the report of the European Committee for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment (CPT), which was sent to the Slovenian Government in April 2002. The report contains findings and recommendations, primarily connected to visits to individual institutions. Its substance involves opinions, proposals and recommendations that are applicable generally to all institutions in Slovenia that perform the same or comparable activities. The proposals for changes and improvements, given on the basis of deficiencies or irregularities identified in a specific institution, have a broader, generally preventive effect, which should have repercussions on the legislative level (where necessary), as well as in the area of implementing valid regulations and practices in all state bodies and institutions that directly or indirectly deal with people whose liberty has been deprived. The ombudsman therefore welcomes the decision of the Slovenian Government to require the open publication of the CPT report and the Government's response to it. It is right that the Slovenian translation of the report should be accessible to both the professional and the wider public, and especially to the institutions visited by the CPT, and of course to the other institutions for which the report might serve as an incentive for change and improvement of the living conditions and general treatment of persons that have been deprived of their liberty.

We believe that the role of the CPT in visiting Slovenia and the functioning of the ombudsman complement each other, since they are both orientated towards the same goal. For this very reason we viewed the receipt of the report on the CPT's visit to Slovenia as an important circumstance, which must work preventively and in the area of removing the identified deficiencies and irregularities, and at the same time allowing reduced level of ombudsman activity in the area of visiting prisons.

The caution made by the ombudsman in the 2001 report (page 22), that in the use of means of restraint, guards must strictly observe proportionality as a fundamental principle in applying such means to detainees, was also incorporated by the CPT into its report. Here the report specifically cites the letter of 10 July 2001 from the ombudsman to the Minister of Justice. Similarly, the CPT's report also supports the efforts of the ombudsman to secure longer visits for detainees and to have visits without a glass screen be the rule. The Minister of Justice responded to these suggestions of ours with the view that the Rules on Carrying out Detention were regulated "in a satisfactory way and that in this regard it would not be appropriate to change them". In response to the same recommendation from the CPT, that visits separated by a glass screen should be the exception and not the rule, the Government replied that the provisions for visits to detainees would be studied again, "both from the aspect of their regulatory provision, especially the provision that visits to those in custody be conducted **as a rule** with glass screens, and regarding the possibility, within spatial and personnel capacities, of visits being extended". It seems, therefore, that the ombudsman's efforts to change the regulation, and thereby provide for those in custody a more open regime and longer time for visits, may in the end achieve their desired goal, and with the support of the European Committee for the Prevention of Torture.

A year of group complaints and petitions

In the second half of 2002, at several prisons, group complaints and petitions were issued, and in some prisons these were accompanied by hunger strikes, or at least the announcement of such actions. It began with a hunger strike at Dob prison, and protests were staged by detainees to draw attention to irregularities at Ljubljana, Maribor and Koper prisons and at the Maribor open prison at Rogoza. In the spring we also received a group complaint from persons detained at the Celje youth remand centre and prison.

The biggest repercussions were felt from the lengthy hunger strike by convicts at Dob prison. It only ended with a visit and talks with some of the highest representatives of the state, including the president of the National Assembly and the Minister of Justice. Representatives of the ombudsman also participated in the talks. The ombudsman himself also talked separately to the representatives of the hunger striking convicts.

Without going into on assessment of the justification of individual demands made by the detainees through their hunger strike and other forms of protest, the state suffered a bitter aftertaste because such forms of protest had been used at all. Timely and constructive dialogue by the prison staff with detainees and convicts would have removed, or at least reduced tensions, and in this way contributed to a normalising of the situation and a consolidation of the security conditions in the prison environment.

There is no doubt that good communication, especially on the personal level between the education service, as well as the prison administrators, and the persons in custody, is an important factor, which through a proper human approach eases and even reduces tension, and makes the institution friendlier to those in custody and also those employed there. Just the fact that there were protests hints that through the timely discovery of the causes of dissatisfaction and explanation of the actual and legal circumstances, as well as through effective measures in the event that any of the complaints are justified, it might be possible to take effective, preventive, steps to avoid later unpleasant events with serious consequences.

It is worth reiterating how important it is for the unimpeded functioning of prisons that there are proper and decent human relations, that convicts are indeed punished only by the deprivation of liberty, and that their constitutionally and legally guaranteed rights are removed or restricted only as far as is truly necessary for the prison sentence to be carried out. Any actions that do not ensure respect of human rights and human dignity during the deprivation of liberty and serving of the sentence is impermissible and justifies the right of persons in custody to protest, if other forms of communication and avenues of complaint do not produce an appropriate response.

Prison overcrowding

Space constraints in prisons mean that in many facilities the regime for serving sentences is stricter and less agreeable for convicts. And usually the overcrowding is felt even more acutely by detainees on remand, who are often bound to remaining in crammed remand cells for up to 22 hours a day. It is no surprise that precisely overcrowding in prisons is one of the main reasons for the complaints and protests of those in custody. We already wrote about the problem of prison overcrowding and about the possible solutions in the last few annual reports, and it is not worth repeating. It is worth re-emphasising, however, that the state, which deprives individuals of their liberty, is bound to see that the accommodation and general living conditions are conducive to the maintaining of physical and mental health, and such that at the same time they ensure respect of human personality and dignity. From the aspect of material living conditions, prison overcrowding in itself is inhuman and degrading. For this reason effective measures are urgently required to ensure that Slovenia is not ranked among those countries (including some European ones) that are faced with unmanageable prison overcrowding.

Medical care

Every year the ombudsman receives a new series of complaints from persons in custody regarding the lack of medical care. The dissatisfaction of convicts and also other detainees over medical care in prisons also resulted in group complaints. Oversight of the provision of medical services at prisons is (clearly still) inadequate, and this is true regardless of the explanations that "all complaints by persons in custody relating to medical care are carefully checked and immediately dealt with". It arouses concern that persons in custody do not always have access to medical care that would provide them with treatment under the same conditions and in the same way as apply to people at liberty. It is therefore worth reiterating the proposal that medical care be provided at prisons within the framework of the public health care network, under the aegis of the Ministry of Health, and with the possibility of the oversight and complaints procedures established in the health sector.

Oversight of state appointed attorneys

The complaints from detainees on remand as a rule asserted their non-acceptance of the custody order or its extension. There were less claims this year than previously relating to claims of excessively long remand. But there was some dissatisfaction levelled at the attorneys appointed ex officio. In this connection, complainants accused the attorneys of providing poor representation for them as defendants where there was no contractual agreement between them.

Defendants cannot of course choose their own attorney if one is appointed for them in criminal proceedings by the state. Yet, since the right to defence with the assistance of a lawyer is an essential element of the right to a fair trial, the state is bound to ensure that court appointed attorneys per-

form their duties in line with the rules of their profession. A relationship of trust is of special importance between the appointed attorney and the defendant. It is therefore right for the court president to heed very carefully any complaint or demand for dismissal where there is an assertion that the appointed attorney is not performing his duties properly. Of course defendants may at any time take on a different attorney in place of the appointed one, but this should not diminish the importance of those provisions in the ZKP (especially Article 72) that regulate overseeing and checking the professionalism of the attorney's work. Lawyers must apply themselves to the defence of the defendant with the same diligence as when they take a case on the basis of direct empowerment and are selected by the defendants themselves.

Conditional release

The state is bound to take all necessary steps to eliminate, or at least reduce, the overcrowding of Slovenian prisons. One such possibility, and one to which convicts are also giving prominence, is conditional release. In this connection the ombudsman had to explain several times that conditional release is not a right, but merely a possibility, whereby convicts who have served half of their sentences as a rule, may be released from their sentences on the condition that up until the time for which the sentence was ordered, they commit no new criminal offence. On the basis of Article 109, paragraph four of the Penal Code (KZ), convicts may be conditionally released if it can be reasonably expected that they would not commit any new crime. In assessing whether convicts should be conditionally released, their behaviour during their time in prison is taken into account. Conditional release therefore has the aim of encouraging convicts towards order and discipline in prison, and at the same time it is chiefly a measure intended to prepare convicts for life back in liberty, in order for them to take responsibility independently and to respect the legal order. For this reason there can be no automatic implementation of conditional release relating to the amount of the sentence already served. Its application depends on each individual convict and their specific circumstances.

The Conditional Release Committee at the Ministry of Justice, which has the power to approve conditional release, has the responsible task of scrupulously and painstakingly assessing all the circumstances of the case and taking a decision in line with the purpose and aims of conditional release. Here we should mention that the criteria for application of conditional release lack any reference to the behaviour or actions of the perpetrator in relation to the injured party as the victim of a crime. It should be stressed again that there should be no conditional release if the convict displays no change of attitude to the injured party, involving above all recompense for the damage done, or at least a sincere attempt to provide this through the convict's best efforts.

It is hard to understand how the perpetrator of a premeditated crime, someone responsible for the death of one person and grave injuries to another, should be freed from a seven-year prison sentence after just four years and 11 months of the sentence, and released conditionally, while the gravely affected injured party has already been striving for years in vain to gain some recompense for the damage done. A complainant injured in this way justifiably complained that the state had left her high and dry.

A human approach in carrying out penal sanctions, be it privileges while serving the prison sentence or in deciding on conditional release, should not neglect the victims of crimes, since they too have a right to justification deriving from a state based on the rule of law and on social justice.

Unclear rules of the game in relation to conditional release

Deciding on conditional release, on the granting of privileges and generally on all issues relating to the life and accommodation of convicts while serving sentences, must to the greatest possible extent be founded on verifiable objective circumstances. Every such decision must be justified with proper reasons, and the injured party must be familiarised with them (in writing or at least orally). Here the lax and insufficiently clear provisions of regulations only serve to facilitate an arbitrary or biased approach, or even the abuse of powers in making decisions. Legislation and implementing regulations must be orientated in such a way that subjective judgement by the people making decisions is limited to the absolute minimum.

The complaints from convicts lead one to suspect that in the area of scrupulous, fair and equal treatment of convicts, there is still a long way to go. This does not mean that the ombudsman regards the numerous such complaints, especially those related to decisions on privileges and conditional release, as justified. It does mean, however, that the competent bodies are bound in each individual

case to weigh up the decision very carefully, taking into account all the actual and legal circumstances, and to communicate their decision to the convict along with the reasons for it. Direct, reasoned and open conversation with the convict on all issues about which it is possible to speak with him/her, can also help towards a proper understanding of the convict's position and the justification of his/her expectations. This involves the area of proper human relations between the prison staff and convicts, and is something that has an effect on the feelings of all those involved and on the security situation at the prison. A decision that is explained and reasoned to a convict in an understandable way, even if it is unfavourable, reduces tensions and the sense of confrontation significantly more than concealing the reasons for the decision behind the merely authoritarian provision of notification that the request has been denied because the legal requirements for it were not met.

2.3.2. Mentally disturbed persons

In 2002 we received 14 complaints relating to mental health, which does not signify any major quantitative shift compared to the year before. The content of the complaints was also very similar. It related primarily involuntary hospitalisation of patients in health facilities and keeping those in care at social security institutions. We explained to complainants their rights, especially those connected to the procedure for holding persons in institutions and oversight by the judicial branch of power over psychiatric hospitals and social security institutions.

Regrettably 2002 did not bring with it the now long-awaited and announced changes in the legislative area in relation to persons who suffer mental health problems. Neither was there any significant progress during 2002 in the parliamentary procedure for adopting the law that should regulate the area of mental health, including the rights pertaining to mental patients. So clearly the anguish continues, whereby the political prestige at the submission of two proposed laws will not yield to humanity and the interest in the earliest possible provision of comprehensive care for persons with mental disturbance. This is an unacceptable prevarication in the adoption of such an important law in the area of human rights and fundamental freedoms. Such an approach by the legislator to the protection of persons that are pushed to the margins of society and as a rule are themselves entirely powerless to effectively exercise their rights, arouses concern. The annual cautions from the ombudsman in this regard have clearly produced no appropriate response, as if the principle of a state based on the rule of law and social justice does not apply to this sensitive group of people.

Accusation of patient being beaten in hospital

The father of a mental patient that was hospitalised in November 2002 complained to the ombudsman that at the Ljubljana psychiatric clinic, his son was treated roughly. When he requested during the night that he be able to smoke a cigarette, his hands and feet were bound with straps and he was fastened to his bed. He succeeded in freeing himself from these bindings, so the two medical technicians again bound him, but first gave him a "punching", although he did not resist. When he struggled free from his fastenings once more, they beat him about the face. Later he was transferred to an open ward, where the patients asked him what had happened to him, for him to have a face like that. But he did not dare tell them what had happened, for fear that he would be transferred back to the closed ward and beaten there.

The head of the clinic explained in her reply that upon admission to the hospital, the complainant's son was already covered in injuries, and was complaining of pains in his chest. He was agitated in the ward, so the duty doctor ordered means of restraint. The patient was secured to the bed with special straps from 3 to 7 am. While he was restrained he did not free himself from the straps, and no one beat him or punched him. A medical technician was present in the room throughout the time of his restraint. The head of the clinic took the view that the staff had not made any professional medical errors, nor had they violated any other of the patient's rights. She therefore saw no reason to take action. In her letter to the ombudsman she did confirm, however, that our intervention had "provided the opportunity to point out again to staff the importance of appropriate and proper procedures" in the hospital.

Assertions of the use of physical force against a patient in a psychiatric hospital always give rise to concern. Any kind of forcible (protective) measure and restriction imposed on patients are permissible only where urgently needed, for the shortest possible time and under constant supervision. It

is right that every such intervention should be recorded in the patient's medical file, as well as in a special log (register) recording the use of force. Unfortunately the legislation in this area is inadequate, since it does not regulate the use of forcible restraint and restrictions that are applied in psychiatric hospitals (such as straightjackets, strapping to beds, isolation and other measures), and which restrict freedom of movement. Since the law does not lay down the conditions for the permissibility of applying forcible restraint and restriction, it also fails to lay down the overseeing of their use. This is a legal loophole, which calls for the earliest possible adoption of a law that would regulate the area of mental health, including the rights and status of patients during hospitalisation.

2.3.3. Centre for Removal of Aliens

In 2002 there were fewer aliens who entered Slovenia illegally or who asked for asylum here. So the alarming situation owing to the large number of aliens who were accommodated in extremely inappropriate conditions is finally improving. Nevertheless the ombudsman continued his announced visits to aliens removal centres, and in this way in December we visited the Aliens Centre Facility 1 – the Vidonci building in Prekmurje (Vidonci facility).

The first impression upon visiting is that the Vidonci facility, in its current state, cannot be a long-term solution for accommodating aliens. The two permanent buildings are in their final stages of maintenance and usability for accommodating people. For the accommodation of aliens on the ground floor and attic floor of the built section, there are two large rooms, which have been sectioned off by prefabricated partitions into smaller units or cubicles containing usually two beds. The partition walls are high enough to provide privacy from the view of the rest of the room, but do not provide any other (e.g. sound) separation of individual cubicles from other sections of the floor. The doors to the individual sleeping cubicles have no locks and can therefore not be locked. The furniture in the rooms is spartan: as a rule two metal beds with often already visibly used mattresses. Just a few cubicles have a small metal chest or cabinet, while we noticed virtually no chairs or tables anywhere.

We were surprised that on our visit all the aliens were being housed only in containers. The containers, although covered with a common roof and with paved areas between them, allow for even more provisional and temporary accommodation than the partitioned rooms in the buildings. Some benches had been placed on the paved areas under the roofing between the containers. Yet this part of the Vidonci facility is usable primarily in better weather, and by no means during winter or damp and rainy weather, as it was during our visit. The police explained that the advantage of housing the aliens in containers was greater privacy, since the living spaces in the building were separated only by partition walls, and for this reason the aliens felt better in the cabins.

A tour of the accommodation areas in the containers showed that there is also room for improvement here in maintenance. In one of the rooms we noticed that the radiator was not fixed to the wall, but was held up only by the central heating inflow and outflow pipe. The metal cupboards intended for storage of the personal belongings the aliens are allowed to have with them, were already starting to rust, the cupboard doors usually had no lock and could not therefore be locked shut. Such an arrangement, where aliens have no space where they can keep their belongings under lock and key, does not serve to underline respect of human personality and human dignity.

Numerous aliens pointed out that they were cold in the containers, especially at night, when the heating was clearly less intense than during the day. They also showed us their clothes, which were not always appropriate for colder, winter weather. We suggested to the administration of the Vidonci facility that the aliens be advised (again) of the possibility of getting additional, warmer clothing from the store room. As for heating, the police explained that all the premises are heated 24 hours a day, with the central heating boiler working on an outside thermostat, and switching on and off automatically.

There is a toilet and bathroom only in the permanent buildings at Vidonci. The drawback is the location itself, since access is only possible via the outside courtyard, which at night and in bad weather (cold, rain and snow) is never welcome. Yet since the rooms in which the aliens spend the night are not locked, access to the toilet at night is not restricted. A pleasant surprise was provided by the bath-

room, which on our visit was warm, clean and maintained in good order. Access to the bathroom is provided every day for two hours in the morning and also three times a week for three hours in the afternoon. We heard complaints that the hot water runs out quickly, even after 10 to 20 people showering. There is a boiler for 450 litres of hot water available, but since the aliens are probably not especially economical in its use, it might appear that there is a lack of hot water.

There is also likely to be a problem at the Vidonci facility with running water. In the dry (summer) time there is a shortage of water, and it has to be brought to the facility in tanks. This circumstance also indicates that the Vidonci facility is not the best solution for accommodating aliens. The aliens only have access to running water in the toilet and bathroom. There are not even main water pipes and running water in the refectory and the rooms there, which is by no means ideal from the aspect of hygiene. We were also surprised by the cesspool, which is so small that it has to be emptied every single day.

The aliens have sufficient living space, since the facility incorporates extensive land on which there is even a grass soccer pitch. The daily regime is relaxed and clearly pleasant for the aliens. They have a common day room, where they can watch television, play cards, social games or simply socialise and talk amongst themselves. There are also no restrictions on being outside, and (especially in nice weather) they can in effect spend their whole time outside. We did not observe any special organised activities, and foreign newspapers and magazines were not available for sale. The aliens had access to a public telephone, and they could buy phone cards from the trader that came every day to Vidonci. Written information was provided in the form of a folder with basic information in several world languages. In the mornings a social worker was present, and at that time also an inspector, and both were available to talk with the aliens. Nevertheless, we heard complaints regarding the lack of information, especially relating to procedures involving the aliens.

Several aliens stressed that they wished to apply for asylum, but in this they had not met with any sympathetic response, or had received differing responses, whose purport was that such applications were not accepted. The police explained that aliens understand the concept of asylum as residing in the Asylum Centre (AC) in Ljubljana, where there are more liberal rules governing accommodation and movement than in the aliens centre. They wished primarily to continue their journey unimpeded into Western Europe, where they anticipate a solution to their economic problems. Despite such explanations, we pointed out the consistent observance of valid regulations, including the ZAzil. Any application that clearly expresses the request for asylum, however unjustified it might seem, must be accepted, recorded and procedures initiated on it, as laid down for this purpose.

The conditions at the Vidonci facility are markedly better compared to the situation we observed in 2001 during our visit to the Aliens Centre at Veliki Otok near Postojna. There too, following our visit there were significant changes, with extensive renovation work conducted at the centre, and its capacity appropriately reduced.

2.4. JUSTICE

2.4.1. Judicial procedures

In 2002 the ombudsman received 679 complaints relating to judicial procedures. This represents a reduction of 18% in comparison to 2001, although these complaints still account for almost a quarter of all complaints received. The largest number of complaints relate to civil procedures. We received 406 complaints relating to civil procedures, non-litigious civil procedures and execution procedures (ten per cent fewer than in the previous year). The number of cases relating to criminal proceedings remained unchanged. There were fewer complaints relating to labour and social disputes and to administrative judicial proceedings.

The downward trend in the number of complaints about the lengthiness of judicial procedures continues but there is an increase in the number of complaints asserting other violations in judicial pro-

cedures, including violation of the right to equal protection of rights and the right to a fair trial and a fair judicial decision. Complaints stating dissatisfaction with a final judicial decision continue to reach the ombudsman. People still expect the ombudsman to take measures even in such cases, and not merely within the framework of his statutory powers.

The mass of court backlogs

Once again in 2002 the removal of court backlogs remained the biggest obligation of Slovenia's judicial system. Courts of the first instance are supposed to resolve criminal and civil matters (civil cases, non-litigious civil cases and commercial disputes) in a period of 18 months from receiving the case to the handing down of the first-instance decision. Appeal procedures in criminal and civil matters at the second instance are supposed to be completed within six months. Violation of either of these time limits supposes a court backlog.

Although the removal of court backlogs is a priority task of the judiciary and the other branches of authority, and despite the fact that numerous legislative and practical measures have been implemented to facilitate its realisation, numerous complaints to the ombudsman show that the goal has by no means yet been achieved. Resolving criminal and civil matters within the stated time limits as set out in Article 50 of the Court Rules is, in practice, more an exception than a rule. The problem does not only involve the most notorious criminal proceedings which are in the public eye because of the return of cases to courts of the first instance for a retrial, it also involves numerous disputes relating to property and other civil law matters between "ordinary" natural and legal persons.

Court statistics on the number of unresolved cases do not show a perceptible shift in the area of more rapid and effective judgement. The ombudsman has a similar view which largely derives from his treatment of the complaints of affected individuals, and thus his assessment does not include all judicial procedures. However it is sufficiently illustrative and therefore worthy of attention. Unfortunately it shows that at far too many Slovene courts of general jurisdiction – and at specialised courts too – it is still necessary to wait three, four or even five years from the case being received (the bringing of the action) to the first main hearing. Thus in June 2002 Nova Gorica District Court informed us that because of staff problems major backlogs had developed and that for this reason two commercial dispute actions lodged by a complainant in 1997 had still not appeared on the case schedule by the middle of 2002. To local courts and the Labour and Social Court (especially with regard to social disputes) we can add some of the district courts, which in some of the cases have still not fixed a date for the main hearing three years after an action had been brought. In April 2002 we received a reply from the president of the Ljubljana District Court stating that the date of a main hearing in a matter filed in 1999 would probably be fixed for September 2002 "at the latest".

An account of court backlogs at the first instance would not be complete without a mention of land register matters. Despite the prescribed three-month time limit (from receiving the case to the handing down of a resolution), it is no exception to have to wait a year or more for the issuing of a land register resolution. There is no need to lay special stress on the importance of an up-to-date and orderly land register for the security of legal transactions. Improvements in this sphere can be expected to be provided by the ongoing process of informatisation of the land register, which promises modernisation, rationalisation and a removal of backlogs in this area.

Higher courts responsible for appellate procedures likewise struggle with court backlogs. We have identified cases at every single higher court in Slovenia where considerably more than a year has been needed for an appeal decision. At the higher courts in Ljubljana and Maribor, and at the Higher Labour and Social Court, we even found cases where the appellate procedure in civil matters and labour disputes took longer than two years. Particularly interesting in this connection was the explanation offered by the president of the Ljubljana Higher Court that priority cases in the civil division already accounted for 50 per cent of new cases. A large percentage of priority cases, which are defined as such by statute, can also be conjectured from the explanations of the president of the Higher Labour and Social Court. It is clear that a judge cannot only hear priority cases, since this would delay in an unacceptable manner the resolution of other non-priority cases. The provision of the second paragraph of Article 159 of the Court Rules, according to which a judge, when setting the schedule for hearing other cases, may take into account, as well as the time that the case reached the court, the type, nature and importance of the case, must therefore be understood as meaning that reasonable proportion is also ensured with regard to the resolving cases which are not defined by statute as priority cases.

In 2002 the ombudsman also received a considerable number of complaints from convicted prisoners drawing attention to the length of time they had to wait (more than four years in some cases) for the criminal division of the Supreme Court to rule on their request for protection of legality. Since a request for protection of legality is an extraordinary legal remedy, the violation of the right to appeal does not apply here. It should not however be overlooked that the right to this extraordinary legal remedy is also guaranteed to convicted prisoners and it would be right for adjudication in a reasonable time to be guaranteed in this area too.

In November 2002, while making inquiries at the administrative division of the Supreme Court, we obtained the information that there were still 700 non-priority cases pending from 1999. This means a wait of almost three years for an appeal decision in administrative disputes, something which cannot be considered adjudication within a reasonable time.

Nevertheless things are maring along

It is encouraging that many courts are already keeping pace with their current influx of cases. Court backlogs are thus above all the consequence of unresolved cases from previous years. Of course to the individual it does not mean much that the number of cases resolved is greater than the number of cases received, if he has to wait several years for the start of a hearing and for a judicial decision. For this reason the main obligation of Slovenian courts remains the addressing of older cases so as to remove court backlogs and ensure adjudication without unnecessary delay.

Changes to organisational and procedural legislation enable the implementation of additional programmes for tackling court backlogs. The judiciary has continued with the Hercules project, which sees experienced judges help in the tackling of cases at courts with the largest backlogs. The first responses to the implementation of this project at Domžale Local Court are favourable, although of course the settling of cases, especially court backlogs, must continue with undiminished responsibility even after the departure of the temporarily assigned judges.

A far greater response is being enjoyed by the offer of alternative settlement of disputes through the intervention of mediators who help parties conclude a judicial (or extrajudicial) settlement. Pioneering work in this field is being done by Ljubljana District Court, which is achieving results which could serve as an incentive for other courts of the first instance in offering parties this type of service. In conditions when the number of unresolved cases at courts is still high, the resolving of disputes by mutual agreement is an advantage both for the parties involved and for the court, since it means a reduction in workload. In 2002, Ljubljana District Court offered mediation to parties in 1063 cases. The parties gave their consent in 313 cases and the mediation was successfully concluded with a settlement or withdrawal of the suit in 118 cases. It is undoubtedly worth welcoming these encouraging initial results, especially if we consider that even when it is unsuccessful and does not end in a settlement, mediation can bring certain benefits for the continuation of the judicial proceeding or for later settlement of the dispute. It is worth stressing here that the mediation offered is entirely voluntary and does not restrict a person from requesting a court decision.

A state governed by the rule of law needs effective execution

Rapid and effective execution of a final decision is an inseparable part of the right to judicial protection in a reasonable time. The state is bound to ensure an effective judicial procedure not merely up until the issuing of the executory title but also during the execution procedure. Every year the ombudsman receives a considerable number of complaints alleging slow and ineffective execution.

While dealing with complaints we notice irregularities in the performance of execution which prolong or even obstruct execution. By way of illustration we take here the case of a complainant who has been waiting since 1995 for an execution relating to the collection of a pecuniary claim. The executor set the date for the seizure as 5 December 2002 but did not carry out the seizure since the debtor was not at home. He was satisfied by ringing the doorbell a few times; however there was no answer. He did not carry out the seizure despite the fact that the fourth paragraph of Article 82 of the ZIZ states that seizure shall be carried out even if the debtor is not present. Delaying execution until the debtor is at home could render execution impossible. The creditor offers an interesting explanation here: according to him, the executor does not want to carry out the execution because he is afraid of the debtor, a known figure from the criminal underworld. The creditor supported this assertion with the fact that this is already the second executor to whom the court had entrusted the execution in this matter. Following the intervention of the ombudsman, the executor gave an assur-

ance that he would carry out the seizure in February 2003. Fear of a debtor cannot be an argument for an executor not doing his job.

Family ties and impartial adjudication

The right to a fair trial guarantees the individual that an impartial judge will decide on his/her rights and obligations or charges against him/her in judicial procedure. Only a judge for whom circumstances do not exist which would cause a reasonable person to doubt his/her ability to decide impartially can be impartial. Deriving from the right to impartial adjudication is the requirement that the judge cannot be related to the party or subject of the dispute in such a way that this could mean that he/she is unable to decide objectively, impartially and with exclusive consideration of legal criteria – or at least create reasonable doubt over his/her ability to do this. The judge must be impartial and therefore independent in relation to the parties to the procedure.

Quite a number of complaints assert a violation of the right to impartial adjudication and draw attention to "established local acquaintances" and also to very specific personal connections between the judge and another person who is a lawyer in the area of the same court. During a visit by the ombudsman to one of the small towns which is home to a local court, a large number of the people we spoke to drew attention to a personal connection – the fact that the president of the court and a lawyer with an office in the same town were wife and husband. We even heard that the court president "runs this court with her husband, who is a lawyer". Such an accusation may of course largely be an excuse to look for the reasons for failure in a judicial proceeding in the wrong place. We should not forget, however, that ensuring the impartiality of the court is above all a question of the trust that in a democratic society courts must enjoy among the public. The personal impartiality of a judge is assumed until a party to a procedure proves otherwise, but at the same time no circumstance involving the judge, which could cause mistrust or a suspicion of impartiality on the part of any of the parties to the proceeding, is allowed to exist.

Another complainant forwarded to us a letter from his lawyer who refers to a proceeding before the court in Koper and writes: "I can see where and how this matter is going and I probably also know why it is going in this direction and I therefore suggest that you [...] look for another counsel since I [...] evidently cannot help you since it seems to me that it is not legal issues but other matters that are involved..." In a telephone conversation the lawyer explained that "irregularities are occurring" at the court "because of family ties".

Slovenia is a small country and many people who have trained as lawyers know each other. Many judges, prosecutors and lawyers are former classmates or have established close personal friendships and relationships on other bases. Acquaintanceship among judges, prosecutors and lawyers cannot be excluded entirely. Family ties also undoubtedly exist. We have only mentioned two courts here but it is likely that cases of marital partners, extramarital partners or other family connections among judges, prosecutors and lawyers can also be found elsewhere. In no way can it be claimed that such a relationship necessarily means a violation of the right to impartial adjudication, especially if the people connected in this way do not find themselves together in the role of judge, party to a procedure or representative of the same in the same judicial proceeding. Nevertheless, this is an extremely sensitive circumstance which could very quickly lead to doubt about whether impartial adjudication is guaranteed. The exclusion of a judge who is related in this way to a party or his counsel can prevent adjudication in a concrete case since the judge must be excluded if legitimate doubt of the existence of impartiality exists. However, the institution of exclusion may not be enough for the actual appearance of impartiality of the court since the guarantee of impartiality is a matter of the trust which, in a democratic society, a court must enjoy among the public and in particular among the parties to judicial procedure. Procedural regulations also allow the delegation of jurisdiction, i.e. stipulating the local jurisdiction of another court, if it is evident that in this way the procedure can be conducted more easily, if other cogent reasons exist for this, but we have not found evidence of the use of this possibility in any of the cases of personal connections we have identified.

Protection of witnesses in judicial procedures

A complainant drew the ombudsman's attention to his experience when examined as a witness before the Labour and Social Court. He asserts that the examination "became unbearable" because they "raised their voices", which he felt to be "belittling, contemptuous, oppressive and generally incorrect behaviour". After leaving the court he even had to seek the help of a doctor. Even as a witness in a criminal proceeding he experienced "a great deal of humiliation and disrespect".

Article 21 of the Constitution of the Republic of Slovenia guarantees respect for human personality and dignity in criminal and in all other legal proceedings. This of course applies in particular to witnesses. A witness is a person who differs from the parties to a proceeding and the judge. He/she gives evidence of what he/she has perceived outside the judicial proceeding. The court summons as a witness a person to whom it knows or assumes that the facts which are being established in the proceeding are known. The witness transfers his/her perceptions of objective reality to the judge.

Procedural laws (e.g. the ZPP and the ZKP) regulate by statute the duty to testify. This includes the obligation to come to court, the obligation to give evidence and the obligation to speak the truth. Violation of these obligations can have as a consequence the production of a witness and can also lead to his/her being punished, while false testimony is a criminal offence under Article 283 of the KZ. Procedural regulations are strict in relation to witnesses, since, they, above all impose demands on them. There is no doubt that the position of the witness in a judicial proceeding is thankless, unpleasant and sometimes even dangerous. Much is expected and demanded of the witness, but at the same time he/she is always under the suspicion of being unreliable, perhaps even biased, and of not speaking the truth. Frequently, and increasingly blatantly and boldly, witnesses are also exposed to pressures and threats over what to say or what not to say.

It is only recently that changes have been introduced to legislation, particularly in the area of criminal procedure, whose purpose is to protect the mental and physical integrity of the witness – or even his/her life. However, the provisions of the law intended to protect witnesses are still subordinate to the interest of establishing the truth in a proceeding. Measures designed to protect witnesses can quite quickly encroach on procedural guarantees, especially to the detriment of the defendant in a criminal proceeding, and thus inevitably raise questions about the criteria for the balanced intervention of the legislature. The position of the witness remains in the background and is only improving slowly and with difficulty. Some improvements in the position of witnesses lie in the sphere of statutory changes, while the issue of how the witness perceives these changes in everyday life, i.e. when he/she is invited to court to give evidence, is a different matter.

The content of the summons to a witness in a criminal proceeding is set out in the first paragraph of Article 239 of the ZKP. This states that witnesses shall be summoned by means of a written summons in which the following shall be stated: full name and occupation of the summoned person, when to come to court and where, the criminal matter in relation to which he/she is summoned, a statement that he/she is being summoned as a witness, and a warning of the consequences of failure to appear. If a witness who has been properly summoned fails to appear and does not justify his failure to appear, or if he/she absents himself from the place where he/she is supposed to testify without permission or justifiable reason, an order may be given to produce the witness and he/she may also be fined. If he does not wish to testify and there are no legal grounds for this, the court may even send him/her to prison for up to one month. The summons does not give the witness any information that his/her interests will be protected, particularly as regards the protection of his/her physical and mental integrity. A similar system is used in civil procedure and other judicial procedures.

A common thread of the work of the ombudsman, ever since the institution came into being, is concern for the position of the witness in criminal and civil judicial procedures (including procedures before the Labour Court). In his annual reports the ombudsman has several times drawn attention to the unenviable position of the witness and made proposals for its improvement. We feel that the activity of the ombudsman has led to the changes to the provisions of the ZKP, although not to the extent that we would wish. The ombudsman draws particular attention to the position of the injured party or victim as a witness in a criminal proceeding.

The legislature and the court must ensure a position that means that the witness does not need a representative to protect him/her during the proceeding. The court is bound to treat every witness with consideration and respect and in such a way as to protect fully his/her personal dignity. To this end, it is also bound to prevent all questioning on the part of the parties to the procedure (including the defence) in a manner which could be insulting to the witness or could threaten his/her dignity.

Unlawful production of a defendant

A complainant turned to the ombudsman with the complaint that he had begun to receive "a kind of summons" from a court-appointed expert, without acknowledgements of service and the neces-

sary warnings which must be given to a defendant in a criminal proceeding. Since he did not respond to the "summons", Ljubljana Local Court ordered him to be forcibly taken to the court-appointed expert.

In response to the ombudsman's inquiries, the court cited the hitherto existing practice of ordering production in cases where a defendant does not voluntarily report to a court-appointed expert. Since the production of a defendant to a court-appointed expert is not statutorily regulated, the provisions of the ZKP on the production of a defendant in court for a main hearing, are applied. The defendant was invited several times to go and see the expert, but failed to attend even one interview. Neither did he justify or explain his failure to appear. A summons sent by a court-appointed expert does not contain a warning that the person summoned will be forcibly produced to the expert if he/she does not appear of his/her own free will. All that was required for the forcible production was for the expert to inform the court that the defendant had not attended the interview. The defendant had personally received a proposal of investigatory action and the court order appointing an expert psychiatrist. It clearly derived from the order that the expert would produce an expert opinion on the basis of an interview with the defendant.

We understood the response we received to represent the view that the production of the defendant in the procedure of carrying out specific investigatory actions was legal. We therefore drew attention to some actual and legal circumstances which, in our opinion, indicate a different assessment of the coercive measure used against the complainant.

With court order No. I Kpd 257/2001 of 13 December 2001 Ljubljana Local Court appointed an expert of the psychiatric profession and commissioned him with the task of drawing up a written expert opinion within 30 days. It was not explicitly stated in the order that the expert would also hold an interview with the defendant. Neither is this an obligatory element of the order, since Article 249 of the ZKP merely requires that the order states what facts should be established or evaluated with the help of experts and to whom the expert work should be entrusted. The order on the court-appointed expert was correctly delivered to the defendant. Over the course of the next ten months the expert invited the defendant to come for an interview at least five times in writing (unregistered post) but without success. The defendant did not respond to the invitations. In response to urgent prompting from the court, the expert reported that he could not carry out his function as a court-appointed expert because the defendant was not cooperating. On this basis the court ordered the defendant to be produced to the expert at the hospital and the police executed the order. The defendant was arrested at his home at approximately 5.00 am on 24 October 2002 and then at 9.00 am was taken to see the expert psychiatrist. As a result of the execution of the order, the defendant was temporarily deprived of his personal freedom, since he was deprived of his liberty for several hours.

Under Article 19 of the Constitution, everyone has the right to personal freedom. No-one may be deprived of his/her liberty except in cases stipulated by statute and according to statutorily stipulated procedure. Article 194 of the ZKP defines production as one of the measures to ensure a defendant's presence in court and the successful implementation of criminal procedure. Thus a court may also order production if a regularly summoned defendant does not appear in court and does not justify his/her failure to appear, or if it was not possible to serve him/her the summons in the regular way but it is evident from circumstances that the defendant is avoiding it.

Production is a harsher restrictive measure than a summons. Therefore statute only permits it **subsidiarily**, if the summons is unsuccessful (cf. the second paragraph of Article 192 of the ZKP). A summons is a written order sent to the defendant by the court (cf. the first paragraph of Article 193 of the ZKP). A court-appointed expert is therefore not authorised to send a summons to a defendant. His/her written invitation to the defendant (even though it was repeated several times without success) is thus not a measure which, in the case of failure, could permit the use of production as a harsher restrictive measure. This in itself is enough for us to consider that the order to produce the complainant was unlawful.

On the other hand the forcible production of a defendant is only permissible if he/she has been **properly summoned**. A defendant is properly summoned if the content of the summons is correct and complete. Under the second paragraph of Article 193 of the ZKP a defendant shall be sum-

moned by means of a written summons, which among other things, contains a **warning that he/she will forcibly produced to the court if he/she does not appear of his/her own free will**. In his written invitations the court-appointed psychiatrist clearly did not warn the defendant that he would be forcibly produced if he failed to appear. Neither does he have the power to give such a warning. Only the court can do this. The purpose of the warning in the summons is precisely that of warning the defendant of the consequences of failing to respond to the summons. It is a warning, a caution, which is an expression of a social state governed by the rule of law. Even a summons sent to the defendant by the court would not permit the use of this measure if it did not contain a warning about forcible production. In his letter the court-appointed expert refers to the judge and the possibility of her ordering production, but this in itself does not constitute a complete warning as prescribed by statute and would not be sufficient for production even if it had been stated in a court summons.

We therefore consider the order to produce the complainant to the court-appointed expert to be unlawful. Since a summons was not sent to him by a court, and since he was not warned that he would be forcibly produced if he did not present himself to the court expert, the order was contrary to the law. The complainant was deprived of his liberty contrary to the second paragraph of Article 19 of the Constitution.

We proposed that the practice be changed and brought into line with the provisions of the ZKP on summonses and production, if the practice to date of Ljubljana Local Court really was as appears in the case of this complainant. The authority of the court demands decisive, but lawful measures, if a defendant does not respond to the invitation of a court expert. We feel however, that a court-appointed expert cannot send a defendant a summons which could be the basis for ordering production. If a defendant fails to respond to the invitation of a court expert, the court expert will report this to the court. Then the court, at the proposal of the expert, who will set a new time and place for the examination or interview, will send the defendant a summons on the basis of Article 193 of the ZKP inviting him/her to present himself/herself to the court expert and at the same time warn him/her that he/she will be forcibly produced if he fails to appear. If a defendant summoned in this way fails to appear and the conditions under Article 194 of the ZKP are met, the court will order production and thus ensure the defendant's presence, which is essential for the successful implementation of criminal procedure.

We proposed to the court that it consider our opinion and the related proposal to amend its practice and that it communicate to us its view. At the same time we requested a report on any possible measures in relation to the complainant.

In its reply the court informed us of the view of the college of judges and expert consultants of the criminal division. In the case of failure to respond to a court-appointed expert's invitation, the court will first send the defendant a summons containing a warning that he/she will be produced if he/she fails to present himself for examination. Such a summons will be sent "by agreement with the court-appointed expert, who will state when the defendant should come to see him". If the court-appointed expert reports that the defendant has not responded to the summons, the court may order production. The court also informed us that "for the sake of uniform practice" a special form will be drawn up and sent to the typists. We interpret this reply as a confirmation of our position and an acceptance of our proposal to amend the practice used in the case of ordering production in respect of the complainant. In view of the unpleasantness he suffered during the forcible production, the president of the court sent a written apology to the complainant.

Impartiality of a judge and shaking hands with parties to a proceeding

Two complainants who are plaintiffs in a damage suit before Maribor District Court expressed to the ombudsman their fear that the judge who is hearing their case is failing to guarantee the impartiality of judicial decision-making. They justified their fear with the assertion that at the main hearing the judge shook hands with a doctor who is one of the defendants in the dispute. They stressed that while showing such attentive and friendly behaviour to one of the defendants, the judge offered no greeting to them, the plaintiffs.

In the role of amicus curiae we warned the court that it is perhaps insignificant that the judge greeted and shook hands with one of the parties to the proceeding. However, at the same time, it is difficult to censure the complainants for viewing such behaviour in relation to just one of the parties to the dispute as evidence of the judge's impartiality. A party to judicial proceedings also evaluates the

words and actions of the judge from the point of view of whether the judge who is hearing his case really does guarantee the complete impartiality of adjudication.

A judge must be impartial and therefore independent in relation to the parties to the proceeding. Here, impartiality in decision-making is not enough; the judge must also give the appearance of impartiality in his dealings and contacts with the parties to the proceeding. He/she must not do anything which could cause any of the parties to mistrust him or suspect impartiality. It is perhaps worth drawing attention to the heightened sensitivity of the two complainants, who consider the previous decisions of courts in proceedings connected to the death of their son to be unconvincing and perhaps even unjust and one-sided. Thus even the smallest circumstance which might lead to a suspicion of impartiality is linked by them to their views which they have also expressed in their petition to exclude all the judges of the courts of first and second instance.

The complainants did not include in their petition for the exclusion of judges the circumstance of the judge greeting one of the defendants. Since however, her behaviour clearly affected the ensuring of the appearance of impartiality of the judge adjudicating in the specific case, we asked the court to send us for our information a copy of the resolution with which the court president decides on the complainant's request for the exclusion of the judge hearing their case.

The court president approved the complainant's request for the exclusion of the judge. The exclusion order cited the intervention of the ombudsman and the statement of the judge herself confirming that she had greeted one of the defendants with a handshake after he had told her that he knew her father – with whom he had collaborated as a medical expert – very well. As the judge said in her statement, "this also raised the question of [her] father's collaboration with and obvious goodwill towards" the defendant and she herself also proposed that she be excluded from the case. The order approving the request for exclusion justified the decision with the explanation that even the judge herself "doubted the objectivity of her decision-making in this case'.

The judge sent her statement (including the request for the court president to exclude her) as a response to the ombudsman's intervention. It is worrying that it was clearly only then that the judge considered that circumstances leading to doubt about her impartiality existed – despite the fact that she had learned of the existence of a reason to refuse the case at least as early as when she shook hands with one of the defendants. She herself did not propose her exclusion.

2.4.2. Free legal aid

The implementation of the Free Legal Aid Act (ZBPP) commenced in the last quarter of 2001. Some information, including information from the notice from the Supreme Court on the basis of Article 51 of the ZBPP, leads the ombudsman to suspect that there have been some difficulties in organising, in a timely manner, the technical services responsible for technical and administrative functions in relation to the approval of free legal aid, providing first legal advice and free counselling and generally providing interested persons with information and instructions relating to the claiming, approval and implementation of free legal aid.

Given the short time since the ZBPP entered into force, it is not yet possible to give reliable estimates of the extent to which free legal aid really does guarantee the exercising of the right to judicial protection according to the principle of equality, without regard for the social position of the individual. On the other hand, we have already encountered the first questions about the implementation of the ZBPP, particularly in relation to the establishing of the financial position of the applicant, which is one of the circumstances affecting the approval of free legal aid.

Under Article 19 of the ZBPP free legal aid is not approved if the applicant or his/her family owns immovable property **which he/she can dispose of**. One applicant claimed free legal aid in relation to civil proceedings regarding the protection of possession and the right to use a dwelling. Disputes relating to the use of a dwelling do not, as a rule, only extend into the sphere of civil law, they also have social dimensions. Free legal aid was not approved for the applicant because she owns three hectares of land which she can dispose of, meaning that she can sell it and in this way cover the costs

of representation in proceedings before the courts. Such a decision presents the individual with the choice of alienating the (only) immovable property of which he/she is the owner in order to exercise the right to judicial protection. The question is whether, in a social state governed by the rule of law, the exercising of the right to judicial protection under such a burden is really guaranteed according to the principle of equality, without considering the property and general social position of the individual. Perhaps it would be worth giving more weight in the procedure of approving free legal aid to the circumstance of whether the applicant's property **enables or provides income** with which it is possible to pay the costs of legal advice and representation in a proceeding before the courts.

In any case the ombudsman will continue to monitor, with special attention, the implementation of the ZBPP from the point of view of the criteria for establishing the financial position of claimants of free legal aid.

2.4.3. Public prosecutors

Complaints relating to the work of public prosecutors most frequently cite the length of time taken to decide on a submitted allegation, or express disagreement with the dismissal of an allegation. In the first case, the longer time needed by public prosecutors to make a decision is usually connected to waiting for the police to collect the necessary reports and take other measures in order to detect the criminal offence and perpetrators. The complaints we have dealt with lead us to suspect that public prosecutors could more frequently use the power under the amended Article 161 of the ZKP with the setting of a deadline within which the police must carry out the work entrusted to them in the collection of the information necessary for a decision on the fate of a submitted allegation.

The dismissal of an allegation is usually based on the decision that the alleged act is not a criminal offence for which the perpetrator is prosecuted ex officio, or that there is no reasonable suspicion that the suspect committed the alleged criminal offence. It is important here that the reasons written in the order dismissing the allegation are exhaustive, logical, convincing and explained in a manner that is comprehensible to the person who has made the allegation (the injured party). The cases which the ombudsman encounters show that injured parties rarely decide to commence a criminal prosecution themselves, even though they are informed of this possibility. More often they express their dissatisfaction with the decision of the public prosecutor and the reasons for dismissing the allegation in a complaint to the ombudsman and evidently also in an appeal addressed to the public prosecutor himself. It also applies to the work and decision-making of public prosecutors that the quality of their handling of the functions entrusted to them is just as important as the speed with which they do their work.

The Act Amending the Public Prosecutor's Office Act (ZDT-B), adopted at the end of 2002, introduces the institution of expert supervision of the work of district public prosecutors and the group of public prosecutors responsible for special cases, and regulates more precisely the institution of supervisory complaint in relation to an unreasonably length of time taken to resolve cases allocated to a public prosecutor. The legislative body thus emphasises the importance of the role of public prosecutors in ensuring the quality and effective functioning of the judiciary.

Positive discrimination in the dismissal of an allegation?

A complainant, as the injured party, made a criminal allegation against an unknown perpetrator on the grounds of suspicion of the criminal offence of endangering safety under Article 145 of the KZ. This criminal offence is committed by anyone who endangers the safety of another person with a serious threat of assault on his life or person. The district public prosecutor dismissed the allegation on the grounds that the alleged act is not a criminal offence.

It appears from the order dismissing the allegation that the injured party had received a message via the Internet containing the following: "I swear that I am going to give X such a thrashing that he won't know what's hit him. I've been watching him for a long time and I'm just waiting for the right moment... If you're reading this, watch out..." In the order the public prosecutor states that the "mentioned text" undoubtedly "made the injured party feel personally endangered, since it is clear from the text that an unknown man is threatening to beat him and warning him to watch out."

The order dismissing the allegation therefore confirms that the communication received over the Internet caused the injured party to feel personally endangered. This suggests that the prosecutor considers that the injured party's safety was endangered by a serious threat of assault on his life or person. It can be inferred from this assessment that there exists legal evidence of the criminal offence of endangering safety.

Further on, the order stresses the fact established in the preliminary criminal proceeding that "the mentioned text was written by the [female] suspect". The threat was therefore written by a woman not a man. But the injured party made the criminal allegation against an unknown perpetrator, "i.e. a man", since it is evident from the text that it was written by "a male person". The order dismissing the allegation poses the question of whether the injured party would have filed a criminal allegation if he had known that the threat had been written by a woman, "since he was convinced all the time that he was being threatened by an unknown perpetrator, i.e. a man."

On the basis of the reasons put forward in this way, the order dismissing the allegation concludes: "Even if the stated threat is serious, in no way is it objectively feasible." This is evidently supposed to mean that a threat that comes from a woman is not objectively capable of endangering or achieving the endangerment of the victim.

The logic of the order dismissing the allegation is evidently based on the view that the reported action is not a criminal offence because the safety of the complainant was threatened by a woman. Despite the assessment that it was a serious threat which caused the victim to feel personal danger, the public prosecutor dismissed the allegation "since the reported action is not a criminal offence."

The decision of the public prosecutor can be understood as meaning that the criminal offence of endangering safety cannot be committed by a woman. In this connection the complainant rightly asks what difference there is if a weapon is in a woman's hand or a man's hand and why a woman would not be capable of carrying out a threat in which she claims that she has already been waiting a long time for the "right moment". Neither should the fact be overlooked that a woman could also carry out a threat indirectly, "with a hired man", as the complainant observes.

The dismissal of an allegation on the grounds that the criminal offence of endangering safety is not involved because the suspect is a woman is unconvincing and illogical. The gender of the suspect is not a legal mark of this criminal offence. The ombudsman therefore proposed that the district public prosecutor should look again at the reasons listed on the order dismissing the allegation and judge whether a different decision is also possible.

Later the district public prosecutor informed us that he had reconsidered the decision to dismiss the allegation and decided "to repeat the criminal proceeding". The victim offered new circumstances which show that he felt "actually seriously endangered" because of the behaviour of the suspect. The result is that he is going to file a charge against the suspect for the criminal offence of endangering safety under Article 145 of the KZ.

2.4.4. General offences judges

The new General Offences Act

The explanation of the draft of the new General Offences Act (ZP-1) states that general offences law is one of the most characteristic elements of statehood. Unfortunately these lofty words about the importance of general offences law have passed long years without a suitable response in the legislative sphere. General offences law is an important part of punitive law since general offences cases account for by far the largest number of court cases. However, it was not until the end of 2002 that new systemic legislation was introduced with the adoption of the ZP-1. Meanwhile the 1974 Public Order Offences Act is still waiting to be brought into line with changed social and political conditions.

The new systemic legislation promises greater efficiency of the general offences procedure. We hope however, that the reform in the area of general offences will not in a few years become an excuse for even greater backlogs and inefficiency on the part of the bodies which will rule on general offences

under the new system. In this connection our thoughts naturally turn to the reform of the judiciary in 1995 which was announced with lofty phrases, while today many people, especially those from the ranks of the judiciary, see the main reason for backlogs in this very reform.

When time not judges decide on general offences

There are an increasing number of regulations which define general offences. A consequence of this is a growth in the number of general offences. It is therefore not surprising that general offences judges are overburdened with work. In particular, in larger urban centres and at the second instance courts, judges are confronted with an enormous volume of work which in the given conditions is practically unmanageable. In first-instance proceedings, before general offences judges, the prosecution lapses in a quarter of all cases. Reports of lapses of prosecutions even at the second instance are a cause for concern. The subsequent inefficiency of procedures is similar: the explanation of the draft of ZP-1 quotes the rate of collection of fines and legal costs as being below 10 per cent. Inefficient collection means a loss of several billion tolars a year for the state.

Given the situation described above, many perpetrators of general offences in the role of defendants in general offences proceedings can with reason make a mockery of injured parties, the proposers of charges, general offences judges and even Slovenia as a state governed by the rule of law. The simple recipe of defendants in general offences proceedings is to skilfully avoid being served orders, summonses, etc., which of course is not difficult given the current legislation and inefficient practice. If service does actually take place, and perhaps even the completion of the proceeding at the first instance without the lapsing of the prosecution, the golden rule is to lodge an appeal in the happy expectation that the prosecution will have lapsed even before the substantive appeal decision is taken. For many defendants this wish comes true.

However, we cannot only look at the matter from this point of view. There are also defendants who want – and rightly demand of the state – a judicial decision on whether they really did commit the offence of which they are accused. The right to a trial within a reasonable time also applies in the sphere of general offences.

In addition to defendants who may themselves have an interest in a speedy decision, we should not overlook the role of injured parties and victims. Legislation and (even more clearly) practice, show a harsh attitude towards injured parties as the victims of various illegal acts, including those which satisfy the legal indications of a general offence. An injured party, for example in a road accident, often has the greatest interest in a rapid and effective decision from the general offences judge so that he/she can more easily claim compensation from the insurance company. In this connection we understand that the statutory definition of a damages case is different from the statutory definition of a general offence, but the decision of the general offences judge often opens the door to the injured party, or at least speeds up the matter in relation to the insurance company, which deals with the case of damage (a road accident) on the basis of the compulsory insurance of liability in road traffic. The decision of the general offences judge makes it easier for the victim to prove those elements of a damages case for which the burden of proof does not lie with the person who caused the damage. A fast and effective decision, before the lapsing of the prosecution, is of course above all, in the interest of the state in that it ensures the respecting of the legal system and thus establishes its credibility.

Greater severity towards foreigners

The amending statute to the Aliens Act (ZTuj-1A) deletes the fifth and sixth paragraphs of Article 75 of the ZTuj-1 which provided that the police can temporarily retain the travel document of a foreign national and in this way ensure his/her presence in a proceeding relating to the suspicion of having committed a criminal offence or general offence. On the basis of the second paragraph of Article 12 of the ZTuj-1-UPB1, a foreign national is not allowed to leave the country if a criminal proceeding, general offences proceeding, or any other proceeding which requires his/her presence has been brought against him and this is requested by the body running the proceeding. This provision is evidently understood by the police to mean that it does not give them the power to prevent a foreign national from leaving the country by depriving him/her of his/her travel document. Before the amendments to the Act in September 2002, the police temporarily withheld a travel document if this was necessary in order to ensure the presence of a foreign national at a proceeding. Under the amending statute to the ZTuj-1A, the foreign national's travel document is not withheld, but the foreign national is deprived of his/her liberty by means of a detention order. Thus a milder measure

for ensuring an offender's presence at a proceeding is replaced by a severer, more restrictive measure, although no reasonable grounds can be seen for such a change.

The person who commits a general offence who could avoid paying a fine by leaving the country (because he/she resides abroad) must pay the fine immediately and on the spot. The fine must be paid in tolars. If he only has foreign currency on his/her person he/she must change this into tolars. During the night, and at other times when bureaux-de-change are closed, this can be difficult. There have been cases of the police sending a foreign national up to 20 kilometres away to the first bureau de change (at a petrol station or border crossing for example) in order to change his/her foreign currency into tolars. If the foreign national does not pay his/her fine in this way, his/her travel document is not withheld but he/she can be conveyed to the body competent for general offences proceedings, which usually also means detention until the commencement of the general offences judge's working hours. Perhaps it would be appropriate to ensure that in such cases foreign nationals may also pay fines in foreign currency.

2.4.5. The notary service

In Slovenia 68 notaries provide a notary service. The notary service is a public service while notaries perform their duties as a liberal profession. In accordance with his competences and powers, the ombudsman is responsible for supervising the work of the notary service and the operation of the Chamber of Notaries. Every year we receive some tens of complaints relating to the work of notaries. However, once again in 2002 none of the complaints we received justified the intervention of the ombudsman, from the point of view of controlling the lawfulness or correctness of the work of the notary service on the grounds that notaries have not provided their services honestly and conscientiously in accordance with regulations as required by the first paragraph of Article 6 of the Notaries Act.

2.4.6. The attorney general

Settlement reached with the help of the ombudsman

On the basis of a final and enforceable judgement from 1995, a complainant was obliged to return to the Republic of Slovenia legal costs in the amount of SIT 101,745 plus default interest, which in October 2002 already amounted to more than SIT 430,000. Since the complainant did not pay the debt voluntarily, the Republic of Slovenia applied for a writ of execution on 15 April 2002.

In the civil action from which the executory title derives, the court awarded the Republic of Slovenia the legal costs together with default interest, even though it had not claimed the default interest in the action. With regard to the default interest the court exceeded the claim. The complainant should have asserted this defect in the court decision with an appeal, since the court of second instance only pays attention to the exceeding of a claim at the request of the party to the proceeding. The complainant did not do this. Instead he later proposed the issuing of a correcting order with regard to the awarded default interest, but the court dismissed his demand. In its order it agreed with the complainant that it had awarded default interest "although an express demand for its payment [...] was not made."

With a decision to award default interest from the assessed legal costs, the court violated the principle of free disposition, which is one of the fundamental principles of civil procedure. Under Article 2 of the ZPP, a court shall decide in a civil proceeding within the limits of the claims submitted. The court only gives parties to the proceeding legal protection at their request and is also bound by the claims of the parties.

The complainant did not have legal representation in the proceeding and represented himself. He could only have identified the error (the court awarding default interest without a claim for this having been submitted) if he had read the court record closely. At the same time he could have trusted the court and reasonably expected the court to respect the law and make its decision merely on the basis of the submitted claims.

The complainant could have avoided the detrimental consequences of default interest if he had paid the awarded costs immediately. However, he did not do this. The reason for such a decision is

undoubtedly to be found in his personal grievances, which are also evident from the procedure from which the executory title derives. He accuses the state of (at the very least) taking ineffective measures in relation to his right and the right of his daughter to personal contacts. His view of the matter, though perhaps without an objective basis in real facts, almost certainly influenced his decision to defer payment of the legal costs on the basis of the final judicial decision. The Republic of Slovenia did not do much to collect the legal costs it was owed, since it waited almost six years to apply for a writ of execution.

The complainant has the status of a person entitled to social security payments. He lives with his parents and receives social security payments from the state. This means that the complainant's ability to maintain himself is (to a large extent) dependent on state social security payments. Yet under the court decision the creditor is likewise the state. A comparison of the monthly receipts of the complainant from social security and the amount of the debt from the awarded costs plus default interest shows that only with difficulty, and not without threatening his ability to maintain himself, could he pay default interest which is several times higher than the principal (the awarded legal costs). He also has to contribute to the maintenance of his child.

Slovenia is a social state governed by the rule of law. Taking into account all the above circumstances, which could also affect the situation and actions of the complainant, we appealed to the principle of justice and proposed to the attorney general's office (as the legal representative of the Republic of Slovenia) that it **should not claim** default interest on the awarded legal costs which the court had awarded illegally by exceeding the claim. We proposed that in its writ of execution the Republic of Slovenia limit its proposal to the legal costs of SIT 101,745. The complainant gave an assurance that he would pay this amount immediately.

The attorney general's office agreed that the complainant should pay the awarded legal costs, part of the default interest and the costs of the execution procedure within 30 days. The complainant accepted the proposal and paid the agreed amount. As agreed, the attorney general's office withdrew its application for a writ of execution.

2.4.7. Lawyers

Lawyers have an indispensable role in the functioning of the legal system and the state governed by the rule of law in general. It is not surprising that almost one in six complaints addressed to the ombudsman is in one way or another related to the legal profession.

Lawyers are co-responsible for the correct and legal functioning of justice. A client who turns to a lawyer rightly expects a professional, effective and beneficial service. But the very nature of the relationship between client and lawyer means that it cannot be equal, since the position of a client who goes to a lawyer, because of a difficulty or problem and the related personal and often even mental distress, is clearly, a subordinate, dependent position. This is why the obligation of the lawyer to act conscientiously, honestly, carefully and according to the principles of professional ethics when representing a client is regulated by statute.

Cooperation between lawyer and client

In addition to providing legal advice and drafting documents, the main activity of lawyers is representing and defending clients before the courts and other state bodies. The complaints received by the ombudsman show that people expect more information, more explanations and more communication in general from the lawyer in a client-lawyer relationship. If the client understands how the case is progressing and is acquainted with the factual and legal issues of the procedure, he/she will be able, at the right time, to provide the lawyer – and thus the court – with information important for the decision. Effective cooperation of the lawyer with the client is of decisive importance in the collection of procedural material.

Frank, open cooperation between lawyer and client is not merely important from the point of view of adjudication and representation, it is also important for the transparency of the principal-agent relationship between the lawyer and the principal. Correctness in this relationship encourages the client's trust in the work of the lawyer, which is directed towards the protection of the rights and

legally protected benefits of the principal as a party to a legal proceeding. If a relationship of trust is not established between lawyer and client, this can lead to accusations of unprofessional representation, accusations that the lawyer is not working for the benefit of the principal, that he/she has been bribed by the opposing party and so on. People are quick to look for the reasons for failure in a legal proceeding anywhere but in themselves: in their relationship with the court, but also in their relationship with the agent-lawyer. Such accusations, which are usually completely unfounded, can best be prevented by suitable information which enables the client to understand, in a manner adapted to his/her needs, the process of adjudication and the importance of individual procedural acts and the facts which the client alleges and proves during the proceeding.

The ombudsman encourages representation which enables the client to understand the progress of the proceeding and judicial decision-making in general. Point 40 of the lawyers' code of ethics also obliges lawyers to keep clients regularly informed about their work and about proceedings, to enable them at all times to inspect the state of the case, to advise them about the actual situation and about legal issues, and to communicate to them the necessary data from court records and other records, or from inquiries that have been carried out. In this way, the client can also supervise the work of the lawyer whom he has authorised to represent him/her in the proceeding. Many unnecessary misunderstandings between lawyers and clients can be prevented in this way. A timely and complete explanation also helps the conscientious, honest and careful representation of the client, which as a consequence also means fewer complaints to the Chamber of Attorneys and, indirectly, fewer complaints to the ombudsman.

At the ombudsman's office we observe how lawyers are frequently reluctant to provide information to (former) clients when it comes to elucidating the principal-agent relationship and perhaps even a complaint to the Chamber of Attorneys. This occurs when a client alleges violation of duty in the performing of legal services and asserts the lawyer's liability for damages or disciplinary responsibility.

Ineffective disciplinary procedures

In the area of disciplinary procedures the lack of cooperation of lawyers and the bodies of the Chamber of Attorneys is reflected in the ineffectiveness of disciplinary commissions of the first instance. It may be precisely because of an unwillingness to make a disciplinary decision against a colleague that unreasonable deadlocks occur in the work of disciplinary commissions. Such a situation does not promote confidence that the lawyers' professional organisation will act rapidly and effectively in cases of violations of duty in performing legal services and in cases of actions which represent a violation of the conscientious performing of work and practice in a lawyer's office.

Under current regulations, the Chamber of Attorneys elects the president and members of disciplinary commissions from the ranks of lawyers. This means that it is lawyers themselves who decide on complaints against lawyers. Given its lack of effectiveness, the first-instance disciplinary commission in particular, does not give an impression of independence and impartiality in its decision-making. In this connection, it will be necessary to ensure a different approach on the part of disciplinary commissions in order to ensure rapid, effective and objective decision-making or to alter the composition of disciplinary commissions in such a way as to protect the public interest in accordance with the importance which the legal profession has in a democratic state governed by the rule of law.

A client who alleges incorrect conduct on the part of a lawyer usually only reports this to the Chamber of Attorneys once the principal-agent relationship has ended, when he/she is no longer afraid that his/her report could have a negative effect on the confidentiality of the relationship between him/her and the lawyer. Since the limitation of prosecution for disciplinary violations runs from the day of the violation, the two-year relative period of limitation and the four-year absolute period of limitation, are relatively short and there are frequent cases of decisions on an alleged disciplinary violation ending with the lapsing of prosecution. For this reason the ombudsman proposed in the 2001 annual report that it would be worth looking for a more favourable solution for the client in this relationship: for example, that limitation should not run while the principal-agent relationship is in existence (i.e. when the lawyer is representing the client concerned). The government responded to this recommendation with the explanation that the competent ministry would study the proposal of providing in the Attorneys Act that, in the case of a disciplinary violation on the part of a lawyer, limitation be suspended for the duration of the principal-agent.

2.5. POLICE PROCEDURES

In performing their duties the police are bound to act in compliance with the constitution and laws, and to respect and protect human rights and fundamental freedoms. They may only restrict human rights and fundamental freedoms in cases defined by the constitution. In their work, especially when they use police powers, they must always respect and take into consideration the individual's fundamental rights, such as personal freedom, the right to privacy, freedom of thought, conscience, religion and expression, peaceful assembly, movement and enjoyment of property.

Trust in the police is closely linked to their actions and behaviour in relation to the public, especially in respecting human dignity and the fundamental rights and freedoms of the individual. The police are responsible to the state, citizens and their representatives.

In performing their duties, when they are bound to prevent illegal acts and to take steps and use their legally defined powers, police officers encounter actual cases every day where they encroach upon human rights and freedoms. Here they must often decide quickly and even without being able to appraise fully the actual situation, and all this complicates the judgement as to which power is permissible to use. Inexperience, hasty decisions to use police powers, and the wrong selection of measure, can very quickly signify a violation of the principle of proportionality, or an exceeding of police powers. Special concern is aroused by cases where a police officer knowingly and willingly abuses police powers and in this way encroaches on the human rights and fundamental freedoms of an individual. The use of police powers, including means of physical restraint, can never be permitted for the purpose of revenge or punishment, no matter how great the temptation.

In 2002 we received 78 complaints dealing with police procedures, which indicates a drop of approximately 30 per cent from 2001. Of course this does not provide a basis for concluding that the work of the police was better in 2002, with less illegal encroachments on human rights and fundamental freedoms. Again the largest number of complaints related to the exercising of powers the police have in performing their duties, especially the use of means of restraint, and particularly physical force, handcuffs and bindings. There are increasing numbers of complaints that assert unjustified overreaction by the police, although the individual had not violated public order. Here we are not thinking of what are called routine traffic checks, which the police carry out as part of their legitimate monitoring of traffic. It involves cases where police officers have continued dealing with an individual even after verifying that the person is not suspicious or that the car is stolen, which may have initially justified the police intervention. We also handled a case of the police incorrectly establishing the identity of an offender, since they were fooled by a person who masqueraded as someone else. This meant that the police sent two payment orders for forced collection from a person who was not connected with the misdemeanour, except for the fact that the true perpetrator "borrowed" their name, something the police were unable to determine on time.

Impartiality in determining decisive facts?

In relation to the progress of procedures where the police have dealt with an individual, especially where it involves the use of means of restraint, the assertions of the decisive facts of what actually happened between the police officer and the affected person are often entirely different. Each side involved in the procedure provides a different description of the course of events, and sees the cause of the situation of conflict, or the use of police powers, as lying mainly or exclusively on the other side. In such cases, when the police complete the evidence gathering procedure, without being able to confirm the assertions of one or the other side, they generally take the assertion of the police officer. Yet in the assessment of evidence the principle cannot be applied whereby the individual's testimony is less reliable simply because he/she found himself in a police procedure.

A uniform cannot win absolute priority

A uniform cannot win absolute priority over a person dealt with in a procedure. Here we understand that owing to the very nature of the procedure in which he/she is involved, and owing to the possibility of having committed a misdemeanour or even a crime, the individual has a heightened interest in not telling the truth. Nevertheless one cannot exclude the possibility that the police officer also has an interest in describing the events differently than they actually happened. In this aspect there was an interesting ruling by the Higher Court in Celje on 24 September 2002, case no. Kp

334/2002, which judges the testimony of a police officer to be entirely unreliable. Examined as a witness in the criminal proceedings, the police officer claimed that during transportation to the detention centre, the defendant had even threatened his safety, with the serious threat that he would "kill them, shoot them, rip their heads off". The court of second instance, however, found that the other evidence taken proved reliably that the defendant could not have committed the crime of threatening the safety of the police officer, since the police officer did not even participate in the transportation of the defendant to the detention centre.

A great deal of caution is needed, therefore, in assessing all the circumstances of the individual case, and in a situation of doubt, where two different versions of the same event have been given, it is not permissible unilaterally, if not indiscriminately, to go with the police officer's assertions. Just the fact that in the procedure the police have been unable to confirm or reject the assertions of the person involved, is in itself not enough to side automatically with the assertions of the police officer. In determining the decisive facts the police are not bound by any rules of evidence. They must take into consideration empirical rules, including the rules of logic, when they weigh up, compare and evaluate the assertions and views of both sides. It is always necessary to verify in the same way the credibility of the description of events given by the police officer that performed the procedure.

The above is especially true of cases where individuals have been physically injured in police procedures. Then the police must explain convincingly how the injuries arose, and justify the proportionality in the use of force. In such cases, the burden of evidence is on the side of the police and not the individual to prove when, how and why the injuries were sustained. We should mention here that in 2002 we dealt with cases where the police claimed that an individual had deliberately injured himself by striking his head against the police car while the police were conducting their procedure. Such stories, which are not especially original, crop up year after year. It is hard to understand why an individual who was otherwise a well-presented person, would take advantage of a police procedure to beat his/her head against a hard object and later blame the police for the injury. In one such case the police officer conducting the procedure claimed there were a large number of neutral eyewitnesses who could confirm this incomprehensible action of the person involved. Later in the trial it turned out that the police could not specifically identify one single witness who might confirm the vehement assertion of self-injury during the police procedure. There is no need to stress particularly that such claims of self-injury cannot be backed up, and consequently the responsibility for physical injury lies entirely with the police. If the police do not know how to explain the origin of the injury convincingly and, at the same time, to justify the use of force that caused the injury, the individual's complaint must be regarded as founded, and illegal actions ascribed to the police.

For a police force living with the people

Irrespective of the difficulties that can arise in the subsequent establishing of the circumstances of police intervention, this should in no way put the police off taking decisive and effective action in carrying out the duties entrusted to them. It should be especially stressed again that one of the tasks of the police is to protect life and to ensure the personal safety and property of people. A police force that acts defensively and counter to the duties and powers entrusted to it in this connection, can also violate the rights and freedoms of the individual. The public has justified expectations that the police will ensure safety through the successful and effective prevention of crime and by discovering and apprehending the perpetrators of criminal and other, socially dangerous, illegal acts.

A police force that performs its duties legally, professionally and with the necessary propriety, enjoys the highest level of trust among ordinary people. Special mention should be made here of cooperation and good relations on the local level, where the police in carrying out their social function intervene in order to maintain order and peace and to ensure personal safety and the safety of private property. Through professional, considered and above all impartial intervention, the police can contribute to the respecting of human rights and fundamental freedoms, even in cases that are in fact on the boundary of their jurisdiction. Here we are thinking especially of steps during various interpersonal disagreements and disputes, such as troubled relationships or even violence in the family, neighbourly disputes and similar situations in life, where people who clearly have nothing else to resort to, approach the police for help. The police will enjoy real trust among the public and persons involved if they can understand their role as one of a servant, and not a master who merely doles out authoritarian counsel or even orders, regardless of the correctness and legality of their intervention.

In addition to substance, form is also important. In order to create trust that might facilitate a basis for effective work, the procedures followed by the police in carrying out their duties should not be overlooked. In this connection the police should be praised for issuing a laminated card entitled "Police procedures in a multicultural society", which advises police officers of cultural differences and reminds them of respectful and equal treatment of all persons, both victims and perpetrators, with whom the police come into contact in their responsible work. Politeness and propriety in performing their duties must be an emphasised commitment of the police, including in changed security circumstances, which perhaps require the greater presence of the police in people's everyday lives.

Calvary of person caught by the collapse of Yugoslavia

A complainant, an unemployed former Yugoslav Army (YNA) officer, was according to police data "temporarily unregistered" and living in Ljubljana. Indeed he lives with his wife, who is employed at Ljubljana's Clinical Centre as a nurse, and his 13 year-old daughter. He submitted an application for temporary residence, but the Ljubljana AU "removed" it, because he had also applied for permanent residence. However, his permanent residence application had not been properly supplemented, and the Ministry of the Interior issued a negative decision. He did not instigate an administrative dispute. No decision has yet been reached on his application for citizenship, submitted at the end of 2001. On 23 May 2002, the police therefore in "the process of verifying regular naturalisation" determined that the complainant was residing illegally in Slovenia.

Police officers sought the complainant at his home in Ljubljana on 23 May 2002. There, an officer talked to his 13 year-old daughter, and obtained information from her. He instructed her that her father must appear at the police station. The daughter also entrusted to the police officer the telephone number of her father's mobile telephone.

In view of their physical and mental immaturity, children enjoy special protection and care, so we desired from the police an explanation of the content and nature of the conversation the police officers had with the complainant's minor daughter. The police are also bound by the requirement that in all activities involving children, the interests of the child must be the main concern. If something needs to be conveyed to an under-age child, this can be conveyed in a valid way to one or other of the parents. The police, however, acted in quite the opposite fashion, communicating a message for the father to the minor daughter. The police explained that that conversation was "entirely non-binding, and without any consequences in the event of non-observance of the message", but these circumstances are not the issue. The point is that the police should not upset a child without legal basis, they should leave children in peace and thereby observe the constitutional provision whereby children enjoy special protection and care. The police also explained to us that there is no written record of the conversation with the complainant's daughter, since the police officer did not make out any official note. The absence of a record prevents the verification of the police actions, and thereby any control over the legality of their work.

Obviously on the basis of the telephone number given to them by the daughter, the police requested the complainant to appear at the premises of the Ljubljana Vič police station. Here is should be reiterated that a telephone request to appear at official police premises is not within police powers under Article 37 of the ZPol (see the 2000 report, page 51). Police officers may request the presence of a person orally, but such oral request may not be made in the form of a telephone call and conversation, but only through direct personal contact, in order to ensure that the request has been reliably communicated to the actual person to whom it is addressed. In the telephone request, the police officer would need to explain clearly to the person being called that this was merely a request that could not have any legal effects or consequences if the person called did not wish to speak or respond to the request. The police informed us that the complainant was familiarised with "the purpose of the request", but did not explain whether it regarded the telephone request as a summons authorised under Article 37 of the Zpol, or had advised the complainant that he would be brought to the station by force if he did not heed the request.

The complainant clearly appeared voluntarily at the police station on 23 May 2002 at 19.35 hours. Despite this, his appearance was entered into the record of persons "brought in". An official note was also made of his apprehension, with the remark that his apprehension was performed in order for him to be "produced for procedures on the basis of Article 109, paragraph one of the ZP". Given this

content of the police records, it would be possible to conclude that the complainant was deprived of his liberty. But the official note was not properly filled out. Most of the boxes on the form were empty, including the one explaining at which premises the detention was carried out. Also the box recording that the detained person has been advised pursuant to Article 44 of the ZPol does not give a clear indication of whether the complainant was advised of his rights as that legal provision lays down. The official note is not signed by the detained person, without it being clarified whether the complainant refused to sign or whether perhaps the official note was not even given to him to sign.

When we pointed out the described unclear points and deficiencies, the police explained to us that the police officer had "unnecessarily recorded the appearance" of the complainant at the police station "with an official note of apprehension, which was also incorrectly filled out". The complainant was not brought to the police station, nor was he deprived of his liberty there. The use of the official note of apprehension and detention was therefore incorrect and redundant. The same goes for the entry in the record of detained persons.

The police assert that in the interview at the police station on 23 May 2002, they informed the complainant that they would lodge a proposal for proceedings against him before the misdemeanours judge, since he was residing illegally in Slovenia (misdemeanour pursuant to Article 98, paragraph three of the ZTuj), and that on the following day, after the proceedings at the misdemeanours court he would have to leave Slovenia. In order to ensure his presence at the misdemeanour proceedings they withheld his passport.

As instructed, on the following day at 9.00 the complainant appeared again at the police station. Along with a proposal for misdemeanour proceedings, he was handed over to the Ljubljana Misdemeanours Judge. He was there until 14.30. During this time he was interrogated, the proceedings were completed, and then he waited in the corridor for the misdemeanour ruling to be issued. The complainant immediately paid the monetary fine decreed.

Despite the police proposal, the misdemeanours judge did not rule the security measure of removing an alien from the country, pursuant to Article 40 of the ZP, for the complainant. Forcible removal on the basis of a misdemeanour judge's decision was therefore not possible. So the police decided to remove the complainant from the country on the basis of Article 50, paragraph one of the ZTuj-1 as an alien who was residing illegally in Slovenia and would not leave the country voluntarily immediately or within the set deadline. The complainant was informed of forcible removal on this legal basis "after the conclusion of the procedure at the misdemeanours court, since it was only known then that the judge had not ruled the security measure of removal of an alien from the country".

In the procedure of forcible removal, the complainant was taken back to the Ljubljana Vič police station, where he was held in the interview room. At 16.35 the police took him to the Dolga vas border crossing. There he had to board a bus bound for Belgrade, and in this way he left the country at 22.30.

No official decision was issued to the complainant about forcible removal from the country. He received merely the verbal information that in a few hours he would be taken to the national border and be forcibly removed. The police interpret Article 50 of the ZTuj-1 in such a way that a written decision is not issued for forcible removal under paragraph one of this article. Not even where it involves a person linked to Slovenia by family, home and long-term residence. So of course, the complainant was provided with no opportunity to lodge an appeal. The state had in fact presented him with a *fait accompli*.

Throughout the time from his arrival at the police station on 24 May 2002 at 9.00 and up until his removal from the country at 22.30, the complainant was under the control of the police. His position during this time would be hard to interpret in any other way than that throughout this time he was deprived of his liberty. Yet on that occasion there was no record of this fact, such as an official note of apprehension and detention and no entry in the record of detained persons. What was going on with the complainant during this time can be (partly) discerned only from the official assignments for the individual police officers who took him to the misdemeanours judge and later to the border police post at Dolga vas so he could be removed from the country. Nowhere is it recorded

where the complainant was located during this time (including when he was at the Misdemeanours Court), where he was accommodated when he was awaiting the procedure and decision at the Misdemeanours Court, and when he was waiting at the police station for departure to Dolga vas.

Throughout this time, that is, from 9.00 in the morning until 10.30 at night, the complainant went without food and drink. In this connection the police explained that "police procedures do not lay down that it should be necessary to provide food and drink for persons in such cases". At the same time they emphasised that during the police procedure of removal from the country, the complainant did not express any desire "for the provision of food and drink, which we would certainly have facilitated for him".

Throughout the time of his deprivation of liberty, the complainant was clearly also not given the opportunity to inform his wife or those close to him what was happening to him. His wife made her own enquiries about this, and asserts that when she telephoned, the police officer explained that they would be removing her husband from the country that same day. The police explained that his wife was informed of this at 14.35, in other words two hours before the departure from Ljubljana for the border. It is interesting that there is no official record at the police station (record or official note) about the telephone call by the complainant's wife, her arrival at the station and her accompaniment by a police officer when she went home for clothes and essential belongings for her husband. Neither is there any written record of the official assignment of the police officer who took the complainant's wife home to get her husband's things.

We requested an explanation from the police as to whether removal from the country could not perhaps have been postponed by a day or so, or at least a few hours. After all, this would have made it possible for the complainant to make proper preparations for the long journey and his stay abroad. It should not be overlooked that this involved a person who had lived in Slovenia for many years and had with this country several linking circumstances, including a wife, child and a home that was the actual place of his residence. The police responded with the assessment that the procedure of removal had been carried out properly and "in a realistic time", without any unnecessary delay. In the process of removal he had been allowed to take his personal belongings with him.

Following his voluntary appearance at the police station on 24 May 2002 at 9.00, the police took the complainant to the misdemeanours judge. In being taken there, the complainant was in fact deprived of his liberty, and this state of affairs remained unchanged up until his forcible removal in the late evening hours of the same day. To begin with the complainant's liberty was deprived in order for him to be taken to the misdemeanours judge, and later in order for him to be forcibly removed from the country. Despite this deprivation of his liberty, the police did not advise the complainant that he had the right to remain silent, the right to immediate legal assistance of an attorney whom he could choose freely, and that upon his request a police officer was bound to inform those closest to him of his detention.

The police explained that in the case of production for the purpose of removal from the country, they were not bound to advise the person pursuant to Article 44 of the ZPol. Such a view does not take into account the fact that the complainant was deprived of his liberty. Forcible removal of an alien is carried out by him being taken to the state border. Prior to this the police temporarily restricted the complainant's movement and deprived him of his liberty so he could be taken to the border and the act of forcible removal could be performed. In such an understanding of the police actions, there can be no doubt that the complainant should have been informed of the rights applying to a person that has been deprived of his/her liberty. Persons whom the police have deprived of their liberty must be ensured those rights that signify the three fundamental guarantees against improper treatment of detained persons: the right of the person to have a third person of his/her choice (such as a family member) informed of his/her detention, the right of access to an attorney and the right of the person to demand a medical examination. The exercising of these rights must be facilitated for detained persons from the very beginning of their deprivation of liberty, irrespective of whether this involves apprehension, production or detention of the person by law. The complainant was not informed of these rights, and the notification of his wife was the result of a mere coincidence whereby she called the police station out of concern for her husband.

Special attention is demanded by the actions of the police in relation to the complainant's wife. Pursuant to Article 99 of the ZTuj-1 a monetary fine of from 50,000 to 150,000 tolars for an offence is payable by a person who enables or helps an alien to live illegally in Slovenia. The police pointed out to the complainant's wife that a proposal would be lodged to instigate proceedings against her with the misdemeanours judge for committing the offence of enabling an alien, i.e. her husband, "to reside illegally in the Republic of Slovenia". Regrettably the police do not explain what behaviour they expected from the complainant's wife in respect of her husband residing in Slovenia, in other words, in their home. Perhaps she should have informed the police or taken some other steps to prevent him "illegally" residing at home?

Wooden stick in the "operational interview and processing room" at Piran police station

In the early morning hours of 14 July 2001 a young man of 20, together with his friend, a few months younger, crossed the road diagonally, right where two police officers from Piran police station were on "breathalyser" duty conducting close checks on road traffic. Owing to their incorrect crossing of the road, loud voices and laughter, and perhaps also because of the remark "What, pigs?" (*"Kaj je, čefurji policajski?"*), one of the police officers demanded that the youths stop and let their identities be checked. But the two lads did not heed the officer's order, and in fact ran off. A little later a police patrol tracked them down and two officers gave chase. Even then the police had the impression that "both young men gave the appearance of being very intoxicated persons". The police caught them both, handcuffed them and took them off for detention at Piran police station. What happened at this juncture, however, is described entirely differently by the police and by the young man, who approached the ombudsman. The fact is that during the time he was being dealt with by the police, the complainant received physical injuries owing to which he was hospitalised for several days, he had blood in his urine, and despite surgery owing to paralysis in his right cheek he is likely to bear long-term consequences.

The complainant asserts that after getting out of the police van at the station, a police officer punched him twice in his upper body, although at the time he had his hands cuffed behind his back. When they got to the police station entrance, the officer told him to watch out he didn't bang into the door, and pushed him twice against the door. In the area to the left inside the swing door the officer told him to sit down on the chair. When he tried to sit down, the officer pulled the chair away, so he would fall on the floor. Since he did not want to sit without the chair, the police officer struck him with his fist in part of his right cheek so hard that he fell to the floor and in doing so hit his head, since he was still handcuffed. While he was lying on the floor, the officer than kicked him several times in the right side of his upper back.

The police do not link the complainant's injuries to the use of physical force in bringing him to the station. They assert that when the complainant ran off, he tripped and fell. His injuries were therefore sustained during his flight, when the complainant "fell on his right side against the kerb and hit the right side of his head against a tree. This blow was even audible". As a result of this blow, the complainant "bounced off the tree and rolled" onto the police officer, who grabbed him by his clothes, restrained him and prevented further escape. The police officer used the professional half-Nelson hold, and also used handcuffs. In apprehending the complainant, the police officer also fell and injured his knee. It is interesting that for the complainant's friend, the police also assert that during his flight he "hit his head against the low branches of a tree", lost his balance and fell to the grass, and then he was physically overpowered and handcuffed.

If the complainant was injured on being apprehended, immediately upon being brought to the station, the police should have ensured that he was examined by a doctor and his injuries determined. This only happened later, however, and on the request of the complainant himself, who complained of pains and demanded that he be taken to hospital.

The doctor from the Lucia Health Centre who came to the police station, examined the complainant, saw evidence of several blows and instructed him to be sent for X-rays, but clearly he did not carry out his duties fully. The medical examination of the complainant should have been performed in such a way as to ensure confidentiality of the doctor-patient relationship, which excludes the presence of police officers and the possibility of the doctor's conversation with the patient being heard. A record should have been made of any statement by the complainant that could have been significant in the

medical examination, including his assertions of how the injuries were sustained. On the basis of a careful and thorough examination, a professional opinion should have been recorded in respect of the injuries sustained and the degree of consistency between the complainant's assertions of how they were sustained and the objective diagnosis regarding the injuries. The sheet of paper on which the doctor wrote his diagnosis bears no statement of the complainant about the physical injuries, nor any assessment of the causal link of how the injuries arose. It is no surprise that the young man complained that the doctor just looked at him quickly and concluded "this is nothing serious".

The complainant also asserts that the police did not inform him of his right to telephone those close to him and let them know what was happening to him. At the same time he says that he demanded an attorney, but the police officer then took out a wooden stick from a cupboard, shook it at him threateningly, said he would "smash him to pieces" and that it would be better not to ask for an attorney, or else he might get angry, and "then you won't be like you are now, but a bit worse". The complainant therefore signed the official note of apprehension and detention, and that he did not require an attorney or to inform those close to him.

In dealing with the complaint, we made an unannounced visit to Piran police station on 18 March 2002. We made a detailed inspection of the room which, according to the description, matches that in which the police processed the complainant and, according to his assertions, he was beaten and threatened with a wooden stick. In this room, bearing the portentous title of "office for operational interviews and processing", in addition to a cupboard, a small table and two chairs, we found on the cupboard two wooden sticks, about half a metre long and four to five centimetres thick. At one end the sticks were wound around with masking tape the width of a fist as handles. The commanding officer of the police station was unable to explain why the sticks were in that room. He suspected that they were confiscated objects. Such an explanation is not convincing, since the sticks were in no way labelled as being confiscated. It was also not indicated or explained to what case they might relate, and why they were kept in the very room intended for dealing with detained persons.

All objects that are seized and intended to be used as evidence in subsequent (criminal) proceedings, must be appropriately labelled and kept in a safe place intended for such purpose. It is entirely improper for a stick, which can be so readily used at least to threaten, to be kept anywhere in police station rooms intended for interviews or placing summonsed or detained persons.

The discovery of the sticks matching the description given by the complainant, supports his assertions of what took place on 14 July 2001 at the police station. There is no legal basis for the use of physical force and other means of restraint when a person has been overpowered and is under control, and no basis for keeping sticks with handles in a room intended for processing apprehended persons. The burden of proof in explaining the whole chain of events lies with the police, which must convincingly explain the circumstances determined, for it not to be possible to affirm in their entirety the complainant's assertions that the police acted illegally towards him.

The police force confirmed the discovery of the wooden stick. They issued a written caution to all units in the country about the "propriety of their actions and the keeping of seized and found objects". Owing to the improper handling of seized and found objects, they "took appropriate action against the staff of the Koper Police Authority". The complainant himself referred the case to the public prosecutor. The considerable repercussions in public, including abroad, support the expectation that a similar situation will not be repeated.

Improvements in police detention

Inspecting police station detention rooms is one of the ombudsman's regular activities. In 2002 we toured the detention rooms at the police stations in Ljubljana Bežigrad, Piran and Slovenske Konjice. On each visit we sent a report on the observed state of affairs, together with suggestions for eliminating deficiencies to the General Police Authority. The police responded appropriately to our findings and recommendations.

During the visit to Slovenske Konjice police station we discovered that for safety reasons (to prevent self-injury), detained persons must take their socks off and stay in the detention room in shoes without laces. This involuntary use of shoes on bare feet without socks is most likely unpleasant in itself, and can even create a degrading feeling for the individual that encroaches on his personal dignity.

In this regard we observed differing practices at the police station, since police officers also interpret Article 71 of the Rules on Police Powers in such a way that they do not confiscate the socks of detained persons. At another station we came across a detained person who was allowed to keep his socks but whose shoes were taken away. We therefore suggested that the practices be standardised, if there are no especially justified reasons for treating individuals differently.

In its response the General Police Authority cited Article 71 of the Rules on Police Powers, which lay down that police officers must confiscate from detainees objects that would be suitable for attack, escape or self-injury. Detailed provisions on the exercising of these powers are provided in the guidelines for performing police detention. Regarding clothing and footwear, the guidelines provide that the tie, belt and shoelaces should be taken from detained persons, but they may keep their shoes. In deciding which items they will take from detained persons, police officers must take into account all the circumstances and assess which items could be a threat to the detainee's health, life and safety. So in certain cases they may also remove shoes, if in view of the detainee's aggressiveness there remains the danger of them attacking a police officer. In such cases the detainee should be provided alternative footwear.

The police confirmed that in practice they do not, as a rule, take socks away from detained persons. In certain cases, however, there may be justifiable grounds for also taking socks away (for example, if the detainee has already tried to commit suicide, and is wearing knee-high socks). The General Police Authority also responded with the explanation that in order to eliminate any confusion and to standardise practices regarding the removal of shoes and socks, it would draw up a supplement to the guidelines for performing police detention, and send this to all police units in the country. The police are also drawing up systemic arrangements regarding how to provide alternative footwear for detained persons.

In 2002 there were some encouraging shifts in the area of police detention. In September the Minister of the Interior issued new standards for the construction, conversion and furnishing of detention premises. The new system promises further improvements in the material conditions of police detention. The police have announced that they will cease using or converting premises inappropriate for detention in the coming few years through a plan to construct new and renovate existing detention premises in the 2002 – 2005 period. Here we might express our expectation that the financial means will be provided so that the plan of conversion and new construction will also be carried out. In this there should be strict adherence to all the minimum standards for building, conversion and furnishing of premises for detention, including the possibility of being outdoors for persons detained for longer than 12 hours.

In the 2000 annual report we drew attention to the deficiencies in the official notes of apprehension and detention. The form used by the police was deficient, since it contained no note regarding notification of persons close to the detainee, whereby the police must explicitly inform the detainee of this right. It was also deficient because it made no mention of the right of access to a doctor, which again signifies a fundamental guarantee against poor treatment of the detainee. The police now use an amended official note, which also bears explicitly the notification of detainees that upon their request the police will inform those closest to them of their apprehension and detention. The form has also been supplemented with the wording that the detainee has been informed of the right to select a personal physician, in addition to urgent medical attention given to the detainee by the doctor provided by the police. Official note forms with this content represent a guarantee that upon each apprehension and detention the police will also explicitly advise the detainee of these two rights. By signing the official note the detainee confirms being advised of these rights upon apprehension and detention.

Something that would be right, but is not yet in practice, would be for the police to hand detainees a copy of the official note or other appropriate document setting out the rights pertaining to persons that have been deprived of their liberty. This would ensure that such persons have the possibility of familiarising themselves "at their leisure" with their rights, even after the procedure whereby their rights were read to them and they confirmed this with their signature.

2.6. ADMINISTRATIVE MATTERS

2.6.1. General

The **reorganisation of public administration** continued intensively in 2002. The adoption of acts governing state administration, public servants, the system of wages in the public sector, inspection oversight and public agencies has provided the fundamental regulatory basis for it to function. From the point of view of the individual that comes into contact with state bodies – and for this reason from the point of view of the ombudsman, too – the amendment of the ZUP (Administrative Procedure Act) is especially important, since it means that administrative bodies should no longer be able to burden the users of their services with requests for submission of certification and other evidence of facts that are evident in official records kept by the state administration itself. We have used the conditional tense, because in the implementation of this amendment problems have arisen, and they are most likely not simply technical in nature. There have also been problems and delays in other activities that were supposed to ease contacts between users and administrative bodies (e-administration: tax returns, a common web site for administrative units, payment of administrative taxes by credit and debit cards).

As we already pointed out in the 2001 annual report, the acts listed above are not in themselves a guarantee of the better quality, more efficient and more user-friendly functioning of public administration. This will require considerably more work – from the issuing and implementing of all the necessary implementing regulations to the training of public servants. To the same end we should welcome the consideration of a methodology for drafting regulations which would include the participation of interested parties and a Regulatory Impact Analysis for environmental issues. And there is a particularly urgent need to provide systemically for the participation of the public in the adoption of implementing regulations where doubts have been raised several times about whether their connection with the law has been entirely considered, and there are certain procedures set out in detail by these regulations that are problematic and user-unfriendly.

More attention to the issue of organisation and functioning, especially in relation to users.

Ministers and other heads of bodies should pay more attention to the issue of organisation and functioning, especially in relation to users. That this area, in the face of numerous other problems, is frequently and in many places given a low priority, is evident for example in the reports on the work of individual bodies, which – at least as summarised in the report on the work of the Government – sometimes do not even contain information on the numbers and problems involved in administrative procedures. With the current type of organisation and attitude, which is more the rule than the exception, activities for improving organisation and work are often approached with insufficient commitment and consistency, so they are frequently dragged out or (entirely) watered down. We are not aware of ministries completing within the set deadline, that is by the end of October 2002, questionnaires according to the methodology for analysing the situation by department, as prepared by the Ministry of the Interior, and of providing, by the end of the year, specific proposals for removing administrative obstacles in their working area. Yet this analysis should supposedly determine the organisational deficiencies in individual bodies, the need for changes to material and procedural regulations, possible overlapping of procedures, the need for training and education of employees and obstacles to users having access to bodies – so in fact this is only an encouragement and professional support for something that in any case should be permanently pursued, alongside high-quality work.

The Government gave an appropriate response to our suggestions in connection with the issue of implementing regulations, which we presented in the 2001 report. It charged all ministries with drawing up lists of executive regulations that had not been adopted in the deadlines set, and offering assessments and reasons for the existing state of affairs and proposals for improvements. We have not been informed that ministries have carried out these decisions, let alone that the Government has studied their results. As far as we are able to monitor the drafting and issuing of regulations, however, we have noted no greater level of activity towards removing the time lags regarding implementing regulations, or any more appropriate treatment of these regulations in laws (including the defining of timetables for their issuing). Our suggestions, and the Government's decisions, have therefore produced no visible effects.

The number of new complaints received fell by just over a tenth. The possible reasons for this include: a greater awareness of the role and capacities of the ombudsman, slightly more punctual management of procedures in some areas, and in particular, the fact that there was no new prominent focus of problems that might provoke a higher number of complaints (such as was the case previously with procedures for acquiring citizenship, settling the position of aliens, carrying out denationalisation and procedures under the "war" laws). The reduction is evenly distributed across the sub-areas. The exceptions to this are the sub-areas of public activities, legal property matters and customs (albeit with a smaller share), where the number of complaints increased markedly. Taking into account the carrying over of unresolved complaints from 2001, and old complaints reopened during the year, the total number of complaints handled in the administrative area (632) was seven per cent higher than in the previous year. The proportions between the sub-areas are the same in this respect as in new complaints.

Unequal relationship between the state and the individual

In annual reports we have already drawn attention several times to the unequal relationship between the state and the individual. We are not thinking of inequality in the sense that the state, in line with the constitution, regulates the rights, freedoms and obligations of people and social relations, that this system is binding for the individual and the state can implement it by forcible means. We are thinking of the arrangements and procedures where in equal positions, in equal treatment (action, omission or error) other – and stricter – rules apply or supposedly apply to individuals than to state bodies. We cite certain examples of such arrangements and treatment.

Interest on unpaid taxes starts to accumulate from the day the taxes are due, irrespective of whether the liable taxpayer has perhaps appealed or pursued some other legal remedies. And if the legal remedies prove successful, the taxpayer is only eligible to receive interest on excess tax paid from the day of the decision officially apportioning the tax payable, which might be – as the case of our complainant shows – as much as seven years after payment.

In the unjustified forced collection of fines for misdemeanours (because the executive order had been revoked, delivery of the payment instruction had not been demonstrated or because the fine had already been paid prior to collection), those paying have difficulty securing a return of the collected sum, and there is no payment of interest or costs at all.

When cars are registered it is not established whether the car has been imported without duties being paid. Payment of duties are then not charged to the known customs liable person, that is the importer of the car, but to the third person, who bought the car in good faith on the understanding that the valid vehicle licence indicated everything was in order. State bodies prefer this route, since with the seizure and possible later sale of the car, they can more reliably secure payment of the customs duties than through the possible forced collection of the customs debt from the person actually liable; this problem should rather be solved for them by the neither culpable nor liable new owner of the car, who must in order to effect collection from the importer or seller, first obtain a ruling through litigation.

By mistake, a private car can be made a year "younger" during registration and sold as a newer model. When the mistake is identified, the administrative body corrects it by deleting the mistaken and entering the true year in the vehicle licence. In doing so, no account is taken of the fact that this involves an official administrative act, whose amending and also correction are governed by the ZUP.

When it is discovered after 15 years that someone has been mistakenly maintained in records as a Slovenian citizen, means are adopted for correcting the error that are not supported by valid legislation.

Inappropriate treatment of individuals

This area also involves other **procedures in which individuals have been treated inappropriately** or where the attitude of staff towards them has been improper or arrogant. To bring things up to date, we should reiterate our view:

- in public affairs, the state and individuals do not have equal status, since the state may exercise its will through forcible means;

- in a state based on the rule of law this should not enable state bodies to be arbitrary, since rights and duties are provided by laws that are binding not only on individuals but also on these bodies;

- individuals must subordinate themselves to specific official acts based in law, but this does not imply any subordination to the official employees that draw up or issue these acts.

Public servants and individuals are therefore equal subjects, including where this involves a party in a procedure. Their status is provided by regulations. The individual's constitutional rights and fundamental freedoms are especially protected. In view of the fact that the state is there for the people, and not the other way around, and that public servants should provide people with the (highest quality) services of the state, the personal attitude of public employees to individuals must also be appropriate.

We hope, and also imagine, that through the specific views, opinions and proposals that we implement in dealing with complaints, through the reasoned presentation of possibilities for a different interpretation and application of regulations, and through criticism of illegitimate or inappropriate actions and attitudes in procedures, we may gradually change at least to some extent the perceptions, behaviour and the general "climate" in state administration bodies, even if our specific view regarding an individual issue is not accepted.

Statutory or reasonable deadlines for decisions were exceeded

A large proportion of the complaints still related to the excessively slow pace of procedures, whereby the statutory or reasonable deadlines for decisions were exceeded both at the first and second instances and in administrative disputes. It does appear, however, that this problem has been slightly less acute. This could be a consequence of the partly positive shifts in certain bodies, but probably more because some far-reaching activities from the past have approached their concluding phase (citizenship and settling the status of "stray" foreigners, denationalisation, victims of war). It is also possible that a whole section of people have become resigned to their fate and have just accepted the fact that certain administrative, and almost all judicial administrative procedures, last a very long time. We have not accepted this.

2.6.2. Citizenship

Lengthy procedures

The number of complaints in this area fell in 2002. Again, the largest number of complainants approached the ombudsman owing to the lengthy procedures for acquiring citizenship, and owing to non-fulfilment of one or other of the criteria under the ZDRS (primarily the conditions of assured permanent source of livelihood and discharge from current citizenship), but there were also large numbers of complainants who merely wanted explanations of the conditions and procedure for acquiring citizenship. Here we determined that the Ministry of the Interior (MNZ) had managed to reduce the backlogs in naturalisation procedures.

We received only one complaint where the complainant stated that the procedure under Article 40 of the ZDRS had still not been concluded. The MNZ informed us that they were conducting a new procedure on the basis of a ruling by the Administrative Court issued at the beginning of 2002. Likewise, we also only received one complaint in connection with the issuing of a determining decision on citizenship in the process of denationalisation. We may therefore conclude that to a great extent these procedures are finally being concluded.

Children from the Free Trieste Territoy

We also received two complaints in connection with the issuing of **certificates confirming the citizenship of a child in the first year of its life**, which were required by the complainants to claim the right to have the time spent caring for children in the first year of their life being counted in the pension period. In both cases the complainants' children were born between 1945 and 1948, in the area of Zone B of the former Free Trieste Territory (the municipalities of Koper, Izola and Piran), which fell under Yugoslav jurisdiction only after the conclusion of the London Memorandum (Memorandum of Agreement between the Governments of Italy, the United Kingdom, USA and Yugoslavia on the Free Trieste Territory, *Ur. list FLRJ* - supplement, no. 6/54) and following adoption of the Law on the Validity of the Constitution, Laws and Other Federal Regulations in the Territory into which the Civil Administration of the FLRJ has Extended (*Ur. list FLRJ*, no. 45/54).

According to Article 19 of the Peace Treaty with Italy (*Ur. list FLRJ*, no. 74/47) and also Article 1 of the Law on Citizenship of Persons in the Area Incorporated under the Peace Treaty with Italy into the FLRJ (*Ur. list FLRJ*, no. 104/47), which entered into force on 14 December 1947, persons with Italian citizenship who on 10 June 1940 had a residence (domicile) in the area incorporated into the FLRJ (Federal People's Republic of Yugoslavia) under the Peace Treaty with Italy, as well as their children born after that day, acquired on 15 September 1947, the day the Treaty entered into force, citizenship of Yugoslavia and citizenship of the individual republic in the territory of which lay the location where the person had their residence on 10 June 1940. One of the complainants asserted that the Koper Administrative Unit informed her that they did not issue certificates of citizenship for persons born in Zone B. The Koper AU responded to our enquiry that they would instigate a determining procedure. In the case of the second complainant, in the first instance procedure the national pensions institute (ZPIZS) determined that the complainant's son was a citizen of the Republic of Slovenia from 15 September 1947. The complainant did not agree with this finding, since in her opinion, right from birth, that is from 3 August 1945 to 15 September 1947, and thereafter, her son had permanent residence in Slovenia and was already at that time a citizen of Slovenia. The complainant's appeal against the decision by the body of first instance did not succeed. We explained to her that determining the citizenship of an individual person was the subject of a special procedure and not the procedure for issuing a certificate of citizenship.

Eased conditions for obtaining citizenship

In line with the efforts to finally settle the status of the citizens of other former Yugoslav republics living in Slovenia, major importance may be ascribed to the **adoption of the Act Amending and Supplementing the Citizenship of the Republic of Slovenia Act** (ZDRS-Č), which entered into force on 29 November 2002. It brought with it a range of new features, and for certain categories of applicants it eased the conditions for obtaining citizenship. The transitory provision of Article 19 of the ZDRS-Č offers to "erased" persons the possibility within one year of the entry into force of the ZDRS-Č of applying for citizenship, if they are adults, if on the day of the plebiscite on 23 December 1990 they had permanent residence in the Republic of Slovenia, if since that time, they have also lived continuously in Slovenia, and if they fulfil the legal requirements regarding mastery of the Slovenian language, no criminal record or threat to public order, security or defence of the state.

We anticipate that in this way a considerable number of citizens of other former Yugoslav republics will be able to acquire Slovenian citizenship. The situation remains unresolved, however, for persons who left Slovenia during its independence struggle or who were even illegally deported, and owing to the circumstances of conflict, were unable for a long time to return, and persons that for various reasons had no formally registered permanent address, even though they resided permanently in Slovenia.

The provisions of Article 19 of the ZDRS-Č signify a major simplification of the path towards acquiring citizenship by the category of applicants specifically covered in the 2001 report – prisoners, who also owing to their unsettled circumstances in their youth strayed into wrongdoing. In deciding on the fulfilment of conditions regarding absence of a criminal record and absence of threat, the competent body may take into account the length of residence of the person in the country, their personal, family, economic, social and other ties linking them to Slovenia, and the consequences that would be caused for the person by rejection of their application for citizenship. It may be hoped that in this way they might acquire citizenship and in this way put their lives in order.

Problems of the spouses of Slovenian citizens

Unfortunately we must state, however, that the new version of the act does not provide any simplification of the naturalisation procedures for the spouses of Slovenian citizens (except for those that at the same time fulfil the conditions under the aforementioned Article 19 of the ZDRS-Č). The requirements regarding fulfilment of the condition of ensuring means of support for this category of applicant have not changed, so we may conclude that our proposal from the 2001 report on the adoption of the amended act, has not been accommodated. We also reiterated the proposal in direct contacts with the MNZ, but they asserted that things had already been made easy enough for the spouses of Slovenian citizens. However, the number and content of this kind of complaint that we received last year indicate that this problem clearly remains.

On 10 December 2001, a complainant applied for citizenship as the spouse of a Slovenian citizen. The MNZ informed the complainant on 21 June 2002 that his acquisition of Slovenian citizenship

would signify a threat to the defence of the country, since he was on active service in the Yugoslav National Army up until 1993. At the same time they informed him that owing to the non-fulfilment of this condition, a decision of rejection would be issued if he continued with his application, but that if he withdrew his application a decision would be issued simply halting the procedure.

Arbitrary decision about the threat to the country

We have always advocated the view that it is necessary to determine and assess the actual circumstances and specific actions of an applicant that would indicate their past and present threat, and in arriving at a decision to demonstrate the existence of this threat with specific facts, and not just suspicions. The existence of a current threat must also be demonstrated with specific facts, and not just suspected, and the reasons in the decision-making that provide the basis for the body at its own discretion to assess the acquisition of citizenship as being a future threat to the defence of the country, must be set out in the explanation of the decision, so that the affected person may challenge them in an administrative dispute. Otherwise his/her rights to equal and fair judicial protection (Articles 22 and 23 of the Constitution) and to effective legal remedies (Article 25 of the Constitution) are violated. In direct contact with the MNZ we again drew their attention to this, and suggested that they decide at the earliest opportunity on the complainant's case.

2.6.3. Aliens

In the area of aliens we received fewer complaints than in the previous year, but events in this area were very dynamic. The Act Amending and Supplementing the Aliens Act (ZTuj-lA), Act Supplementing the Temporary Refuge Act (ZZZat-A) and the Act Amending and Supplementing the Road Traffic Safety Act (ZVCP-C) were adopted. The issue of settling the status of what are termed "erased" persons was very topical, the housing situation of refugees was settled and finally people with temporary refuge could settle their long-term status in Slovenia.

The largest number of complaints we received again related to the length of procedures for issuing residence permits and to the non-fulfilment of one or other of the conditions for issuing such permits.

In the procedures for issuing **permanent residence permits on the basis of the Act Regulating the Status of Citizens of Other Successor States of the Former SFRY in the Republic of Slovenia (ZUSDDD)** complainants encountered their biggest problems proving continuous residence in Slovenia since independence. Since they had no other proof, they suggested the interviewing of witnesses, which usually extended the procedure by several months. The reduction in the number of these complaints in 2002 is most probably a consequence of the fact that the MNZ was able to resolve the majority of applications for permanent residence permits in compliance with the ZUSDDD. According to their assurances, all applications should have been resolved by the end of 2002, which after more than three years since their submission, is of course only right and proper.

The act has also introduced numerous other changes (such as the partial easing of the criteria for obtaining residence permits – the condition of having accommodation secured has been rescinded), for which it is still too early to say how they will turn out in practice. The ZTuj-lA entered into force on 17 November 2002, and at the time of compiling this report we had received no complaints relating to the content of the amended act. We have already determined, however, that the act offers nothing new in the obtaining of a first or extension of a temporary residence permit. So in this regard there are still unresolved issues, which we pointed out in last year's report. There is an appropriate provision in Article 31, paragraph three, however, whereby when the competent body denies or rejects an application for extension or issuing of a permit, or if the procedure is halted, the foreigner must leave the country within 15 days of the delivery of the final decision or ruling (under the previous provision, they had to leave the country within 15 days of delivery of the decision, irrespective of whether an appeal had been lodged).

The ombudsman was approached with requests for assistance by several foreigners who had to leave the country owing to the rejection of their applications for temporary residence permits. One case that stands out relates to a citizen of another republic of the former Yugoslavia, married to a Slovenian citizen and father of a young girl, who was erased from the register of permanent residents in 1992. Owing to complications in the procedures for issuing permanent or temporary residence permits

after 20 March 2000, he had no proper status. He had never been convicted of any crime, nor in any way dealt with, by official prosecution agencies. When he submitted his application for citizenship and his fulfilment of conditions was checked, the police discovered that he was living in Slovenia illegally, and on the same day **forcibly removed him from the country**. Regardless of the fact that the complainant was himself partly at fault, since he had not arranged his residence status under the ZTuj-1, it is hard to understand the police haste. Despite the fact that the misdemeanours judge would not grant their request for a ruling of expulsion from the state, and issued the complainant merely with the lowest monetary fine, a few hours after the issuing of this misdemeanours decision, the police removed him from Slovenia. We describe the procedure in greater detail elsewhere. In the ensuing days the complainant obtained a visa for entry into Slovenia, returned home and obtained a temporary residence permit. There appears to be no true explanation or excuse for the police decision to remove him and particularly for the way in which they carried it out.

Erased

From the very start of the ombudsman's operation, we have observed the **urgent need to settle the status of persons from the former Socialist Federal Republic of Yugoslavia**, who at the time of independence were permanently resident in Slovenia and for various reasons did not acquire citizenship under Article 40 of the ZDRS. These "erased" people organised themselves this year into the Society of Erased Residents of Slovenia, with the aim of working on behalf of, and in the interests of their members, in a democratic and civilised way, using legal remedies, to create the possibility for the adoption of a special law to correct the injustices to the forcibly expelled citizens of the former Yugoslavia from Slovenia, and the illegal deletion of former Yugoslav citizens from the register of permanent residents of Slovenia in the period from 26 February 1992 on, along with appropriate compensation. To this end they submitted a petition to the Constitutional Court for assessment of the constitutionality of the ZUSDDD, which in their opinion violates the constitution and the European Convention on Human Rights, since for the correction of a situation seven years old and caused by the state, it provided for those affected an excessively short, three-month deadline in which to submit applications:

- since it provided the return of the illegally revoked status only for the future, and not retroactively from the time of deletion;
- since it excepted from restitution of illegally revoked status all those affected who through the illegitimate actions of the state were forced to leave Slovenia or who left it for other reasons;
- since it excepted from restitution of illegally revoked status even those who had been illegally expelled from the country;
- since it required the submission of applications on prescribed forms, for which there was no reasonable or material basis.

A priority dealing of the Constitutional Court

In his contacts with the representatives of the society the ombudsman expressed support for the efforts to legally resolve the issues of the interim period between the day of deletion and the day of status being settled, something we also made clear upon the adoption of the ZUSDDD. At a meeting with representatives of the Constitutional Court he also proposed that the court begin its assessment of the petition as soon as possible. The court decided that it would deal with the petition for assessment of the constitutionality of the ZUSDDD as a priority.

According to MNZ data, a total of 18,305 persons were erased from the register of permanent residents in 1992. The majority of them settled their status in various ways. But on 19 June 2002 there were still 4,205 persons that had not settled their status. The MNZ undertook to determine whether these persons were still located in Slovenia, and if they were living here, to investigate the possibilities for a lasting solution to their status, whether through amendment of the ZUSDDD (extending the deadline for submission of applications) or through amendment of the ZDRS. The issue of the extent and consequences of retroactive recognition of status remains open, however. At the end of 2002 a revised version of the ZDRS was adopted, but this did not settle the status in the way sought by the society. For the final epilogue to the affair, we will therefore have to await the decision of the Constitutional Court and/or the adoption of appropriate legal provisions.

Asylum Centre

In 2002 preparatory works for the construction of a new Asylum Centre (AD) began. With this we may anticipate the arranging of housing for asylum seekers. We received no complaints relating to this, neither were we approached any more by representatives of the local residents surrounding the AD at Celovška Cesta 166 in Ljubljana. This is linked, however, to the **issue of the long-term settling of the status of persons recognised as having temporary refuge**, to which we devoted much attention in 2002. The new AD will stand on the site of the Ljubljana Vič accommodation centre, and for this reason the existing centre had to be emptied and closed. The issue of closing the centre coincided with the issue of settling the long-term status of these persons in Slovenia, or rather with the adoption of the ZZZat-A. The residents of the accommodation centre did not agree with the government decisions on monetary assistance for payment of rent in the event of private accommodation arrangements. At that time they still did not know what kind of status they would have in the future. They therefore set up their own Refugee Committee and approached government bodies and the ombudsman. Throughout this time they received strong support from non-governmental organisations, and events were also followed in the media.

Refugees

We met several times with the Refugee Committee, and on their invitation, the ombudsman together with UNHCR representatives visited the accommodation centre. We met with the acting head of the state refugees office (UPB). We worked to secure the earliest possible adoption of the ZZZat-A and an agreement between the Refugee Committee, the UPB and the Government.

On 12 July 2002 the ZZZat-A was finally adopted, and entered into force on 26 August 2002. Under this act, persons with the status of temporary refuge could obtain the status of an alien with a permit for permanent residence in Slovenia, irrespective of the provisions of the ZTuj-1. In collaboration with the competent ministries, the UPB provides them with assistance in economic, cultural and social integration into Slovenian life, as well as ensuring them certain other transitory rights, and a period of 18 months was also provided for them to maintain the right to reside in accommodation centres, except in those that are partly or entirely closing.

The adoption of the ZZZat-A partly appeased the residents of the Ljubljana Vič NC. By the time of compiling this report, 1,870 persons had acquired permanent residence permits. Applications had not been submitted by only a remaining 230 persons, for the most part because they intended to return to their home countries.

The ZZZat-A did not, however, settle the status of those formerly holding the status of temporary refuge, who had settled their status as aliens under the ZTuj-1 prior to adoption of the ZZZat-A. This involves primarily students who obtained temporary residence permits for study, workers who were employed and who obtained work permits and temporary residence permits for employment, and persons that as minors acquired the status of alien on the basis of uniting families through one of the parents who had the status of alien. We drew attention to this problem before the ZZZat-A was adopted, but our suggestions were not accommodated in the adoption of the act. We received a fair number of complaints relating to this area, and even more telephone calls. Non-governmental organisations also approached the MNZ in this regard.

At a meeting with representatives of NGO's, the MNZ assured them that the time these persons lived in Slovenia on the basis of granted temporary refuge, was counted towards the time they needed to obtain permanent residence permits (8 years of residence in Slovenia on the basis of temporary residence permits) and to acquire citizenship through regular naturalisation (10 years of residence in Slovenia). However, they may only obtain permanent residence on the basis of the provisions of the ZTuj-1, while also fulfilling all the other legal requirements; above all they must hold a valid temporary residence permit. So these persons, instead of being privileged, because previously they had actually settled their status, and had attempted to take care of themselves and not be a burden on the state, are now in a worse position than persons who obtained permanent residence permits on the basis of the ZZZat-A.

We advised the MNZ of this, and we also pointed out the urgent need to inform these persons of their rights. It had been explained to these persons throughout that the status of temporary refuge did not count towards the time needed for the issuing of permanent residence permits on the basis of the ZTuj -1, and neither towards the time needed for acquiring citizenship pursuant to Article 10

of the ZDRS. There is a justifiable fear that persons who fulfil all the conditions for obtaining permanent residence permits or citizenship, will not apply, simply because they are not aware of this possibility.

There are even bigger problems being faced by persons who arrived in Slovenia as refugees in 1992, later obtained temporary residence permits, and for various reasons did not extend them and for that reason currently have no arranged status as aliens in Slovenia. A complainant who approached the ombudsman owing to difficulty in settling her status, arrived in Slovenia in 1992 as a refugee from Bosnia-Herzegovina, and stayed on the basis of recognised temporary refuge. After completing secondary commercial school she successfully completed a traineeship. Once she was employed, she lost the status of a person with temporary refuge. Now she cannot settle her status on the basis of a temporary residence permit, since she cannot obtain new employment, and neither can she apply for a permanent residence permit under the ZZZat-A. We forwarded to the MNZ data on persons with such, and similar problems, who had approached the ombudsman in writing. We also received some telephone calls relating to this problem, but unfortunately we do not have any personal data on these complainants. We imagine that there are a fair number of people in a similar situation. The MNZ assured us that they would study these cases and try to find an appropriate solution as soon as possible.

Exchanging foreign driving licences for Slovenian licences

We received eight complaints relating to the issue of driving licences, including four owing to missing of the deadline for exchanging a foreign driving licence for a Slovenian one. In one case the complainant missed the deadline for exchanging his licence, but he had an application submitted for a permanent residence permit under the provisions of the ZUSDDD. In two cases the complainants also missed the deadline for exchanging their licences, but were living in Slovenia on the basis of permanent resident permits issued after the entry into force of the ZVCP, under the provisions of the ZTuj-1. A fourth complainant applied at the same time for permanent residence under the provisions of the ZUSDDD and for citizenship, and was granted citizenship prior to the resolving of his application under the ZUSDDD. All four complainants were resident in Slovenia before the ZVCP entered into force.

The issue of exchanging foreign driving licences for Slovenian licences, and within this the problem of "stray" foreigners, who owing to the non-arrangement of their status could not exchange their foreign licences or request an extension of the validity of the licence issued in Slovenia, and after arranging their status could not exchange licences or extend them owing to their expiry, and also the problem of those foreigners who missed the deadline for exchanging foreign driving licences through ignorance, were already pointed out in the 1999 annual report.

In connection with this problem the Constitutional Court determined in decision no. U-I-119/99 of 23 May 2002 that the ZVCP was at variance with the Constitution, since it did not provide for the exchanging of driving licences held by citizens of other republics of the former Yugoslavia, who were registered permanent residents of Slovenia up to 25 June 1991 and after that day actually lived in Slovenia, and that the deadline of one year pursuant to Article 135, paragraph one of the ZVCP cannot be applied to the citizens of other republics of the former Yugoslavia who were permanent residents of Slovenia, and who had obtained under the ZUSDDD permanent resident permits, or had applied for them and the relevant procedure had not been completed, for this was a special group of persons requiring special transitional provisions (Constitutional Court decision no. U-I-284/94 of 4 February 1999). The Constitutional Court also decided that up until the removal of the established variance, the right to drive motor vehicles in Slovenia of those categories for which they have the right to drive under their valid or non-valid driving licences was held by: (1) citizens of other republics of the former Yugoslavia, who had under the ZUSDDD obtained permanent residence permits and (2) citizens of other republics of the former Yugoslavia who under the ZUSDDD had applied for permanent residence permits, but were still awaiting a final decision.

In line with the aforementioned decision, the Act Amending and Supplementing the Road Traffic Safety Act (ZVCP-C; in force from 27 July 2002) was adopted. The act regulated the position of the above-mentioned two categories of aliens in the transitory and final provisions (Article 36). Other foreigners who arranged their status prior to the implementation of the ZUSDDD, have two options. They can re-take the driving test and thereby obtain a Slovenian driving licence, or they can leave Slovenia for at least a year and then return. In the second case, the one-year deadline for exchang-

ing their driving licence starts to run again, and also in this case, they would have to take the practical part of the driving test for those categories they have the right to drive with their foreign licences.

In line with the Constitutional Court decision discussed above, the legislator **"reopened" the deadline for exchanging foreign licences for Slovenian ones**, for those foreigners that had arranged or were arranging their status under the provisions of the ZUSDDD. The Slovenian Constitutional Court did not, however, assess the possibility of exchanging driving licences for citizens of the former Yugoslavia who fulfilled the conditions for obtaining permanent residence permits under the ZUSDDD, but had obtained such permits prior to the entry into force of this act (after 1 May 1998), or who had simultaneously applied for permits under the ZUSDDD and citizenship, and were granted citizenship before the procedure under the ZUSDDD was resolved. Instead of being privileged, because they had previously arranged their status, these persons are in a worse position than the citizens of former republics who had only arranged their status under the ZUSDDD. In the Constitutional Court decision and the ZVCP-C they have been (partly) forgotten. The second point of the Constitutional Court ruling covers all citizens of other republics of the former Yugoslavia who were registered as permanent residents in Slovenia on 25 June 1991 and who were actually living in Slovenia after that day, while the fourth point of the ruling narrows this category down to those who obtained permanent residence under the ZUSDDD, or who submitted applications under this act that have not yet been resolved. In fact, the reasons for special treatment of this category are the same as for those who have (or will) arrange their status as aliens under the ZUSDDD.

The problem could be solved by offering the possibility, to all citizens of republics of the former Yugoslavia who were registered as permanent residents in Slovenia on 25 June 1991, and since that day have actually lived in Slovenia, of exchanging driving licences for Slovenian licences within one year of the entry into force of the ZVCP-C, or one year from the acquisition of permanent residence permits, be it on the basis of the ZTuj-1 or under the provisions of the ZUSDDD.

We believe that these groups of people are in an unequal position, for which there is no visible basis in the Constitutional Court decision, so we suggested to the MNZ that they re-examine the matter and let us know what substantive reasons have dictated the treatment of those citizens who obtained permanent resident permits from 1 May 1998 onwards that was different from those who have, or will, obtain permanent resident permits under the ZUSDDD. If there were no real reasons for this, we wondered why this issue had not been appropriately regulated in the ZVCP-C and what they intended to do with regard to this problem. We had not received any response from the MNZ by the time of compiling the 2002 report.

2.6.4. Denationalisation

In this area we received a quarter **less new complaints**, but if we count the carried over, unresolved and already resolved reopened cases, there were roughly the same number of cases handled as in 2001. Complaints related, as in all previous years, primarily to the speeding up of procedures, explanations of individual provisions of the Denationalisation Act (ZDen) or advice regarding actions in the procedure, as well as intervention, since those liable under the completed denationalisation procedure had procrastinated in returning property. The administrative units still cite staffing problems as the reason for the lengthy first instance procedures. It is the same story at ministries. According to the data we have available, the Ministry of the Environment deals immediately upon their arrival with appeals against administrative acts of first instance bodies, if the procedure at the first instance cannot be continued, until a decision on the appeal (appeal against a decision determining a court expert and placing of an advance payment, decision on appointing a caretaker for special cases, on halting the procedure, on cancelling the procedure, on merging several matters into one procedure, on permitting the revival or rejecting a proposal for reviving a procedure). Apart from this they deal immediately upon receipt with all appeals in procedures in which the client was granted or denied a right, and the view of the ministry is different from that of the first instance body. In this way they facilitate the faster conclusion of first instance procedures, and make it possible for clients to pursue legal remedies (administrative dispute, and possibly ultimately constitutional complaint) on all issues where the legal provisions are not sufficiently clear and precise, and therefore differing interpretations are possible. So it is only with appeals in very complex cases, or when the clients demon-

strate the existence of facts that are difficult or impossible to prove, that proceedings last longer. The Ministry of Agriculture is currently dealing with appeals lodged at the beginning of 2002. There is a similar situation at the Ministry of Economy, although in December 2002 they increased the number of staff dealing with appeals in denationalisation matters.

With regard to the conducting of procedures in denationalisation cases, we have already determined that they are governed by the general **characteristics of conducting administrative procedures**, and deficiencies and errors are a consequence of the large influx, the demanding nature of procedures, the fluctuation of personnel and of course also the special circumstances and obstacles in implementing the ZDen, which we described in the 1999 report. Unfortunately in dealing with complaints, we have again encountered procedures and requests that had not been started at all, or had barely been started to be dealt with, or which had spent years going from one body to another, or where the administrative body had not even determined yet who was involved or eligible in a specific denationalisation case. It is similarly incomprehensible that an application for denationalisation be rejected only after nine years, in other words, an application in which the conditions for substantive processing have not even been fulfilled, something that should have been established, if not immediately, then at least soon after it was lodged. We have observed that administrative bodies frequently cite as the reason for the long duration of procedures the incompleteness of applications, but they are not eager to explain when the client was last called upon to complete the application, and they forget that they themselves are conducting the procedure and not the client.

In recent years the Government has taken a **range of measures for speeding up the process of denationalisation**. The majority of these decisions are still binding, and the majority of them have not been carried out entirely. The ministries that decide in the second instance, are still bound to finalise a case in handling an appeal against a first instance decision, and in exceptions return it for a new procedure, but the majority of ministries are still doing this in more than half of all cases. The ministries and government agencies that are parties in procedures must prepare complete records of all real estate that is owned by the Republic of Slovenia and in the process of being returned, they must attend to the parcelling of functional land and conclude settlements. The Government appointed an expert advisory working group for the coordinated preparation of negotiating positions and elements for settlement. And it also bound other institutions to greater collaboration. It called upon municipal councils to carry out as a priority the determining and parcelling of functional land, which is impeding denationalisation, and upon the State Attorney to cooperate with administrative bodies in eliminating the reasons for appeals and administrative disputes, and to conclude settlements. Through representatives in the Slovenian Indemnity Corporation and the Agricultural Land and Forest Fund the Government bound these two institutions to cooperate at oral hearings.

According to the latest report on implementation of the Zden, 25 administrative units should conclude all cases in 2003, and 36 should do so in 2004. The earliest possible completion of denationalisation procedures is linked to the introduction of the quarterly timetable that those actually carrying out denationalisation have set themselves. However, the conclusion of denationalisation within the time frames set will depend on whether financial means will be provided (contract work, incentives), on possible amendments to the ZDen or on changes to legal practices.

In last year's report we already pointed out the dubious judicial practice whereby the status of person eligible to denationalisation was not granted to those former owners whose land was nationalised in the narrow construction zones around towns and settlements classified as urban on the basis of the law from 1958, and if they retained the land in their use and possession, it was only taken from them after the entry into force of the Constitution of 1963 on the basis of a regulation that is not cited in articles 3 or 4 of the ZDen. In its decision no. U-I-130/01-18 of 23 May 2002 the Constitutional Court ruled that the provisions of articles 3, 4, 31 and 32 of the ZDen were not at variance with the Constitution, if they are interpreted in such a way that the **granting of the status of person eligible to denationalisation does not depend on the time when building land was taken from their possession**. It should be explained that in the beginning, administrative bodies granted everyone the right to denationalisation of building land, except in cases where the there was no expropriation, or where the holder of the land use right actually had the land at his/her disposal. Judicial practice then brought in a different kind of solution, to which administrative bodies were bound in their decision-making. Under the aforementioned Constitutional Court decision, the right to denational-

isation is granted to all natural and legal persons whose land was nationalised, and removed from use on the basis of a decision by a state body or through a measure taken by the said body, irrespective of the time of issuing of the regulation upon which the expropriation was based, and irrespective of the person cited in the expropriation decision, except in cases of the voluntary disposal by the former owner to the benefit of another person.

In last year's report we also drew attention to the fact that the issue of which previous owners had the right to receive compensation from the Republic of Austria was still not settled, and so the decisions made by state bodies and courts in this regard were not consistent. In connection with denationalisation procedures relating to agricultural land and forests, the Supreme Court ruled that natural persons who at the time of the peace treaty with Austria in 1955 had Yugoslav citizenship and also Austrian citizenship were not eligible for denationalisation, since they had the right to compensation from that country. Here the different system provided through Austria's implementing acts and internal regulations is irrelevant. A final position on this issue could be arrived at sooner if the administrative body did not prevaricate in making decisions in procedures involving Austrian citizens, and rather made decisions as soon as possible. In this way, the client would be given the opportunity finally to lodge a constitutional complaint and thereby exercise their rights, and in turn the Constitutional Court could deliver a ruling on this question.

2.6.5. Taxes and customs

The number of complaints received fell by 15 per cent, but taking into account cases carried over, the total number of cases handled remained at the level of the previous year. In terms of substance they related to the same or similar problems to those dealt with, in previous years. They can be condensed as follows:

- lengthiness of clearing up tax liabilities;
- high late payment interest;
- delivery of official decisions by the tax authority;
- granting special relief for maintaining family members;
- collection of fines for misdemeanours;
- procedure in the event of death of a person liable to tax;
- taxation of multi-year receipts;
- collection of membership fees for the Chamber of Commerce;
- transfer of tax liability from commercial company to company shareholder;
- the problem of interpreting tax regulations.

Again in 2002, there was a large proportion of complaints relating to the lengthiness of procedures and the late resolving of appeals. Complainants expressed dissatisfaction at the poor or lacking communication with tax authorities. These authorities either do not respond at all, or else very poorly, to clients' requests and demands for information on when they might expect a resolution of their appeal. We ourselves had no better experiences, with the Head Office usually responding to our letters with a delay. Several times we had to send reminders in order to get any response. We consider such practices to be unacceptable. We were also frequently not satisfied with the substance of the replies we received.

We indicated all of this to the Head Office, and in a letter of 14 November 2002 we stressed that their explanations and information in cases regarding which we had approached them were important,

since we could only establish conclusions and assessments of possible infringements and irregularities from the aspect of human rights on the basis of comprehensive information from all sides. We deplored the fact that we did not receive punctual responses and had to prompt them. Such practices have led us to conclude that the claims of complainants regarding non-response and lengthy resolving of cases are true and justified. We explained that we realised there may be objective reasons for such a way of conducting their affairs, but they are no justification, since this causes extra wastage of time both for us and for them. In one case they even invoked the confidentiality of tax data. We therefore advised them that pursuant to Article 37 of the Tax Procedure Act (ZDavP), data considered to be a tax secret may be forwarded to other state bodies for the exercising of their powers if the law so provides. Article 6 of the ZvarCP provides that tax bodies, local community bodies and the holders of public authorisation must, on the request of the ombudsman, provide all data and information within their competence, irrespective of their degree of confidentiality.

We suggested to the Head Office that it respond to our enquiries punctually, precisely and fully. We expressed the wish for them to familiarise us with the backlogs and timetables for resolving appeals by individual area or type of tax liability (personal income tax, corporation tax, sales tax, VAT, forced collection, write-off and tax relief) and the reasons for such a state of affairs. We were also interested in what steps they had taken to improve the situation and work of tax authorities in this area, so that the number of appeals could be reduced, so that if not altogether eliminated, the backlogs could at least be reduced, and so that they might come closer to resolving appeals within the legally provided deadline. Such information could help us in establishing the basis for an objective presentation of the situation in the tax area in this report, and as support in judging in which cases and when our investigations would be justified, if it is only a question of the time dimension of resolving individual tax cases.

Appeal does not stay execution

Complainants also find it hard to understand the legal arrangements in the tax procedure, which are at variance with the fundamental rule that the decision of a body of first instance cannot be carried out until the deadline for appeal expires. We even received a complaint with the proposal that the ombudsman instigate proceedings at the Constitutional Court to assess the constitutionality of such legal provisions. According to Article 20 of the ZDavP, a taxpayer's appeal does not stay the execution of the decision, unless otherwise provided by law, and this applies also to the execution procedure (Article 45, paragraph two). Up until the appeal decision the tax authority may postpone execution of a decision and forced collection order, if it assesses that the appeal may be upheld. But this decision is a matter for the discretion of the authority itself.

The problem of immediate execution of official decisions in tax procedures has already been subject to assessment of constitutionality. The Constitutional Court ruled that articles 20 and 45 of the ZDavP are not counter to the Constitution (decision U-I-297/95 of 28 October 1998). The court stated that such a legal arrangement was possible if the legislator assessed that serious consequences could arise as a result of non-fulfilment of liability. Apart from being fiscal income, taxes are an instrument of the state for implementing its economic and social policies, since through taxes the state collected the means for fulfilling its tasks and the fulfilment of other people's rights is vitally dependent on this.

Personal Income Tax Act still not amended

No progress has been recorded in the attitude of the National Assembly towards carrying out the decision of the Constitutional Court relating to the Personal Income Tax Act (ZDoh). Although several drafts for amending the ZDoh have been submitted to parliamentary procedure, the amendments have still not been adopted. So the decisions of the Constitutional Court remain unfulfilled. Taxpayers are anticipating a great deal from the amended Zdoh, including relief for taxpayers in the lowest income brackets. If this happens, it will remove the stream of people requesting the ombudsman's help in writing off their income tax, because owing to low earnings they cannot pay it. In such cases we may only advise taxpayers to claim relief through partial write-off, postponement or payment of income tax in instalments.

Amendment of the act is also awaited by numerous parents of children (primarily mothers) who, more or less alone, are bearing the financial burden of maintaining the child. The problem of granting special tax relief to the parent with whom children are actually living, is in practice causing difficulties and dissatisfaction when they have to prove that the taxpayer who should be paying main-

tenance for the child is not in fact paying it (but is claiming the special relief). We have already written about this problem in earlier reports.

The act may be expected to provide a more precise and clearer definition regarding the granting of increased relief for children with moderate, serious or acute disturbance to their physical or mental development. In this area the Zdoh has not been amended, but the interpretations of the Ministry of Finance have changed regarding its application. To illustrate how the act has not regulated this issue with sufficient clarity, we cite the case of a complainant whose daughter was institutionalised in 1993 owing to her disturbance. Throughout the years he claimed for his daughter special relief under Article 10, paragraph two of the ZDoh for the entire year. However, in his tax assessment for 1999 he was granted relief for only three months, which according to the tax authority's findings was the amount of time that could satisfy the requirement of the act regarding "actually maintaining". The relief could only be higher if the father submitted bills showing the funds spent on maintaining his daughter.

Procedure in the event of death of a person liable to tax

The opinion on the fairness of a certain legal provision may depend on which side the affected person is and what his/her expectations are. The ZDavP provides that the procedure of assessing income tax is halted if during the procedure the party dies. This does not apply, however, if it involves assessment of tax that is not income-related. Here the assessment procedure is suspended, and when the legal successors to the deceased party are known, it is continued for them.

The close relative of a person liable to income tax that died during the income tax assessment procedure, asserted that the tax authority should have closed the procedure and issued a decision. Excess income tax paid out should have been the subject of inheritance. Another case involved the existence of tax liability deriving from unpaid tax on income from business activities. The deceased party's children and widow believed that the tax assessment procedure should have been halted and the tax debt written off.

Of course we could only explain to the affected complainants the legal arrangements under the ZdavP and the consequences provided by law for the event of death of persons liable to tax in the procedures for assessing income tax and other forms of taxation. The affected parties would not have approached us if their situation had been reversed.

2.6.6. Other administrative affairs

Victims of wartime aggression

The number of complaints relating to the exercising of rights under what are termed the war laws remained the same as in the previous year. The reduced influx of complaints relating to claiming the status and rights of victims of wartime aggression, and the slow resolving of appeals at the MDDSZ, was counterbalanced by an increase in the number of complaints from those people who had been granted under the Victims of Wartime Aggression Act (ZZVN) appropriate status and rights, but owing to the inappropriate level of organisation among those implementing the Payment of Compensation to Victims of Wartime and Postwar Aggression (ZSPOZ) they had not been able to exercise their right to the compensation granted to them in the official decision.

In April 2002 the MDDSZ was dealing with appeals against first instance decisions issued at the end of 1999. They were still claiming as the reason for the delay the large influx of appeals and the reviewing of first instance decisions issued through the implementation of the ZZVN, and the inadequate number of administrative staff dealing with cases relating to all three war laws.

In dealing with the complaints we established that sometimes the MDDSZ is attempting to interpret the ZZVN restrictively, that they find it relatively hard to accept the differing views of the Administrative Court, and that they delay making decisions on cases that are referred back to them for renewed processing. It therefore also happens that they can decide differently on two different cases with identical actual circumstances. At a meeting with the Minister of Labour, Family and Social Affairs, the ombudsman drew his attention to the problems in implementing the ZZVN. Particular emphasis was given to the difficulties clients encountered in providing evidence of events that happened 50 years ago and more. The burden of proof is of course on the party claiming the

right, but Article 139 of the ZUP provides that the official person conducting the procedure provides ex officio information on the facts about which official records are kept by the body competent to make decisions. The same actions must also be forthcoming from an official person regarding facts about which official records are kept by some other state body, local community body or holder of public authorisation. In compliance with Article 140 of the ZUP, however, the client should not be required to produce and submit evidence which may more easily and quickly be produced by the body conducting the procedure. These provisions of the ZUP in this and other areas are still not being implemented to a satisfactory extent.

Despite our efforts to ensure that the sending out of official documents with the force of law granting rights under the war laws such that the SOD could do everything necessary for carrying out the ZSPOZ within the deadlines set out in it, we have observed that **in procedures for determining compensation there are again delays**, which for elderly complainants arouses justifiable dissatisfaction. The SOD excuses the delays in decision-making with the point that the two implementing regulations (Regulation on Issuing Bonds for Payment of Compensation to Victims of Wartime and Postwar Aggression and Carrying out Decisions Determining Compensation, and the Instructions on the Method, Form and Timetables for Providing Data on Those Eligible to Compensation Under the ZSPOZ), which are essential for implementation of the ZSPOZ, only entered into force five and six months respectively after the entry into force of the ZSPOZ. The SOD began first to issue decisions to those eligible under the ZZVN, who are also most numerous, and it did so by age. In June it began also issuing decisions to those eligible under the Correction of Injustices Act (ZPKri) later because it had itself to collect data on their national identity numbers, since the Commission for Implementing the ZPKri did not have these data.

The majority of complaints received in this area relate to the problem of lengthy procedures and in this way the violation of the legal deadlines for deciding on granting the status of a former political prisoner or relative of a person killed after the war. Despite our warning that a delay by the Government in appointing the Commission for Implementing the ZPKri would have a bad impact on how up-to-date the work of the commission was, as well as on the urgency of taking certain steps to ensure decision-making within the legal deadline (especially bolstering the office that draws up expert proposals for the commission), the situation has not changed. We dealt with complaints by intervening for an acceleration of the handling of submitted requests.

After more than six years since the appointment of the government commission, the exceeding of the legal deadline for issuing decisions is still being excused by delays in the appointment and insufficient personnel, for which reason it is only dealing with requests lodged in 1998, and prioritising only individual applications on the basis of reminders submitted by the applicants, who submit them owing to their poor state of health or insufficient paid-up pension period upon retirement. The fact is that these cases involve the correction of injustices that were done more than fifty years ago, and those eligible are elderly people, and owing to the length of the procedures many of them will not actually live to experience "satisfaction". For this reason such a state of affairs is unacceptable from the aspect of a state based on the rule of law, and indicates the insensitivity of responsible bodies to a properly ordered legal system. Under the current dynamic, it will still take several years to deal with requests. We therefore repeat that there is an urgent need to take specific, especially organisational, measures, which might ensure work that is more consistently up to date.

Again in 2002, the ombudsman was approached by complainants who were relatives of persons killed after the war, with the request that the state inform them of the fate of their family members. Although the first endeavours towards tackling the issue of the rights of people killed after the war, the marking of graves, the establishing and recording of Slovenian victims of the postwar killings date back to 1990, activities aimed at resolving these issues are progressing too slowly as the Wartime and Postwar Graves Act is still not adopted. The state, which is itself clearly not prepared to respect the rights of each individual including after their death, is in this way doing nothing to enhance its credibility, or to stand as a model for its citizens.

As in the previous year, this year the ombudsman was approached by several complainants who wished to claim the right to compensation for the material damage caused by the occupying forces during the Second World War. Since the right to payment of compensation for material damage is

not defined in the regulations governing victims of wartime and postwar aggression, we explained to complainants the possibilities they had contingent on the war laws being supplemented in this area. Despite persevering for several years, those who suffered material damage during the Second World War, have not yet been successful in their efforts.

We have also been drawing attention to the complaints of prisoners of war, who clearly remain one of those categories of people that have so far not succeeded in obtaining any kind of satisfaction or payment of compensation for what they suffered during the Second World War. The Geneva Convention on the Treatment of Prisoners of War, of 12 August 1949 (i.e. the third Geneva Convention) lays down the right of prisoners of war to fair pay for the work they had to do as prisoners. Alongside this, Article 66 of the Convention binds the country to which a prisoner belongs to see to the payment of money that upon the termination of imprisonment is owed by the country that imprisoned him/her. The Convention does not tie the payment of prisoners of war for their work during imprisonment to the conclusion of a peace treaty. And the internal legislation of a given country (for example Germany or Austria) cannot influence the duty of the state assumed through international treaties or conventions.

The Ministry of Foreign Afairs explained that the issue of wartime reparation between Slovenia, as a successor to Yugoslavia, and Germany remained open, although it would be possible to conclude from the statements of the German counterparts to date that the German side considers the issue to be closed.

In its session of 9 May 2002, the Government adopted a decision whereby it charged the MDDSZ with taking a view on the issue of payment of war compensation for non-material and material damage caused by the occupying forces between 1941 and 1945 in Slovenian territory, and with proposing tasks for individual ministries and institutions in resolving this issue. The Government also bound the MDDSZ to cooperate in preparing positions and assignments with the MNZ, MG and MF. Material on this has not yet been prepared, partly because of insufficient cooperation between ministries.

2.6.7. Social affairs

Double number of complaints

Since the areas of health and social security are dealt with separately, this section involves for the most part complaints in the area of education. Last year the number of such complaints grew by more than half, and if we take into account carried over and reopened old cases, **the number of complaints handled almost doubled**. We have not established the reasons for this, since it does not involve greater numbers of complaints relating to some especially topical issue. The thing that stands out to some extent is the problem of streaming special needs children, and we also write about this in the section on the rights of children and young people.

In the area of halls of residence for school pupils, the regulations do not give sufficient expression to special features whereby the house rules could be formulated in such a way that the rights of the pupils, and also of the staff, would not be violated. Secondary school pupils who during the period of their studies live in a hall of residence, sent to the ombudsman a complaint owing to inspection of cupboards in their rooms without their knowledge. Owing to infringements of the house rules, the head teacher together with a tutor inspected their rooms including cupboards, where they kept their cloakroom garments, school accessories and other personal belongings. The inspection was performed without the presence of the students. The students believe that this violated their right to privacy. In handling the complaint we checked the regulations and established that the valid Rules on School Order for Grammar Schools, Vocational, Secondary Technical and Professional Schools (*Ur. list RS*, nos. 17/97 and 15/98) do not set out with sufficient precision what the house rules should contain and what is the content of other internal school rules. Since we imagined that such procedures are defined in greater detail in the internal rules of the hall of residence, we called on the head teacher to send them to us. After perusing the house rules we learned that according to the room rules, everyone has their own private space in the room: a cupboard, bed and part of a desk. The reasons and methods and procedures regarding inspection of students' cupboards were not defined. For this reason we suggested to the head teacher that the house rules be appropriately supplemented.

Question of tuition fees for external students

Some complaints related to the question of tuition fees for external students. There was an especially interesting case involving in fact the request of a student for transfer from being an external student to full-time student, which her course allowed on the condition that the department's opinion was positive. The student's request was denied, but her appeal was granted by the Committee for Student Affairs at the University of Ljubljana. The faculty in turn brought a suit against this decision. The process ended three years later with a judgement rejecting the suit, since in the court's assessment, deciding in a dispute between two university bodies, did not fall within the jurisdiction of the courts. During this time the student completed her course as an external student, and paid substantial tuition fees, which she would now like to claim back. The entire documentation on this case generates confusion, since the official decisions of bodies are highly unclear in their substance. Within the university, changing the form of study is (was) clearly inconsistently regulated, and left to the individual schools. It was also unclear how it was possible to ensure fulfilment of the decisions of official university bodies in individual schools.

The Rector of the University of Ljubljana explained that transferring from being an external to a full-time student was finally regulated by the university only in 2002 through a decision of the senate. Under this decision, external students have the right to become full-time students when they fulfil the conditions for enrolling in a higher year that are equal to the conditions applicable to full-time students. Exceptions to this include possible spatial limitations, or the requirement that the number of students enrolled in a higher year be less than the number determined by the limit set on enrolment in the first year. Owing to the large drop-out rate from the first to the second year, this condition is so to speak always fulfilled. Regarding the issue of how separate schools observe the individual decisions of university bodies, he replied that through staff expansion of the Rector's office, and with a greater membership of the university, in recent years observance of decisions had been significantly enhanced. But the university can only intervene and ensure fulfilment of decisions if it has been notified of the violation or non-observance of decisions.

Several complaints related to procedures involving nostrification of academic certificates, owing to the length of the procedure. Several complainants were dissatisfied because owing to non-fulfilment of certain conditions they were unable to enrol in their desired secondary school, college or university, and they were seeking all possible rationales and ways whereby they could enrol as exceptions.

Violation of the rights of children with special needs

In two previous annual reports we already drew attention to the violation of the rights of children with special needs, owing to the possibility of only partial implementation of the Streaming Children with Special Needs Act (ZUOPP), which was adopted in 2000. There is a justified doubt as to whether the prospects of the act being implemented were realistically assessed on its adoption. More than two and a half years after its adoption, there are still no relevant implementing regulations as provided by the act, for which reason children with deficiencies in particular areas of study, and children with long-term illness cannot be streamed into programmes in line with the law (for this reason the streaming or "classifying" of children is performed according to the rules from 1977). The implementing regulations are an urgently needed condition for the act to be implemented in full. Despite all the reasoning and argumentation in favour of delaying the adoption of implementing regulations, it is unacceptable that for this reason citizens cannot exercise their legally provided rights.

Since conducting the streaming procedures is tied to the functioning of school administrations, which under the Act Amending and Supplementing the Organisation and Financing of Education Act (*Ur. list RS*, no. 108/02) should be set up by 1 September 2005, the priority task for the Education Ministry (MŠZŠ) is creating the possibilities for unimpeded work of the commission for streaming and conducting procedures of streaming after 28 February 2003, when the social work centres would cease carrying out the tasks of school administrations. After this date, the competence for conducting procedures would be transferred to units of the Slovenian Institute of Education, which will in our opinion create a range of additional complications.

Apart from this, in the area of integrating children and adolescents there are a series of other problems:

- The act is orientated only towards streaming into programmes at the lower levels. Pupils of senior years at secondary schools and students that are adults and as a rule capable of performing tasks may not themselves request instigation of the streaming procedure.

- The rights of students with special needs deriving from the ZUOPP are guaranteed in the statutes of individual university-level institutions and through other regulations. Such an arrangement is not optimal, since it requires from each student firstly a thorough familiarity with various regulations and numerous administrative obstacles, past which they must struggle to claim their rights.

- Streaming procedures are lengthy and usually take several months. Even though the reasons for this are rational and excusable (the scope of reviewing done by the streaming commission), it does involve violation of the deadlines set by the ZUOPP and ZUP.

- There is no clear obligation involved in the streaming decision, or rather in the route from decision to actual enrolment in the desired or selected programme of education at secondary, college or university level.

- Instructions are lacking for adapted provision of pre-school education programmes and secondary school programmes, which are still being drawn up.

- There is no network of schools that will provide all the necessary possibilities for individual groups of children.

- Personnel criteria for providing upbringing and education to children with special needs are laid down by rules dating back to 1978, which are of course outdated.

Especially since the philosophy of inclusive education has been a priority social task in Slovenia for several years now, our view is that the area of including special needs children and adolescents should be comprehensively addressed, and not in terms of which "department" their rights fall under. The area should be arranged to the extent that every single streaming, and primarily streaming into programmes with adapted implementation and additional expert assistance at all levels of education, from kindergarten to university, should progress in a carefully considered and expert way, and to the benefit of the child.

School education of pupils with special needs alongside their peers was also the subject of a complaint from pupils of a secondary school in Maribor, who pointed out the difficulties faced by their fellow students with disabilities, since the school is not architecturally adapted for them and they cannot therefore attend all classes. The non-disabled students help them in whatever way they can, carrying them up and down stairs, noting down the lessons for them and so forth, but they are convinced that the inclusion of these disabled students in regular forms of education has not been systemically well enough arranged.

Some complainants requested our help because of the **unclear system of transition from college to university level**, something being faced by students who graduated in 2002 from professional colleges in Murska Sobota, Celje or Brežice. A parliamentary deputy question was also addressed to the MŠZŠ. In response, the MŠZŠ stated that the transition from (2-year) college programmes to (4-year) programmes for obtaining a professional university education is governed by the Criteria for Transition Between Study Programmes in University Education, adopted by the University Education Council. The ultimate decision, in observance of these criteria, is left to the professional judgement of university-level institutions. They believe that any other kind of arrangement would be open to dispute, since the constitution itself guarantees professional autonomy to universities and university-level institutions. They did assure us, however, that the MŠZŠ will continue to strive for the most capable graduates being given the chance to continue their studies at university level, including through cooperation with the commercial sector and employer incentives.

2.7. ENVIRONMENT AND SPATIAL PLANNING

It would be most agreeable if the situation in the area of environmental encroachments and spatial planning might be the cause of the less numerous complaints (34 less than in 2001). Unfortunately, however, our assessment is that developments in this area do not indicate that this might be the cause of fewer complaints.

The complaints received indicate that their structure and nature have not essentially changed in this latest year. Complaints relate predominantly to emissions in the performance of various commercial and other activities. Several complainants point out the excessive loading of the environment with noise generated by the operation of manufacturing and catering establishments. In relation to the latter, there were also frequent complaints about violation of the official opening times and consequent excessive noise during the night. And there are still frequent complaints relating to the construction of residential and other buildings without the necessary permits or counter to them, and the inaction of the competent inspection services in such cases, plus complaints relating to the procedures for adopting municipal spatial planning acts and the (non-)provision of municipal services to residential settlements.

Lengthy processing of solving complaints

The complaints indicate that in dealing with the problems related to **noise** generated by the operation of catering establishments, especially when they stay open beyond their permitted hours, the competent bodies are not particularly successful, or at least not as successful as complainants expect. The sanctioning of irregularities, which are established either by the market or health inspectors, or by the police, is geared towards preferring complaints to the misdemeanours courts. Owing to the lengthy processing of complaints, in the majority of cases, the process lapses. In the majority of cases noise measurements are only made on the request of the inspectors, although under the Regulation on Noise in the Natural and Living Environment, the owners or generators of the burden should take measurements. There is also great scepticism on the part of complainants when measurements are ordered by those causing the noise, since they believe them to be biased. In cases where the complainants are not parties in proceedings, they are usually not even acquainted with the results of measurements taken.

There are also common complaints relating to the **adoption of municipal spatial planning acts**. The complaints suggest that complainants often expect the ombudsman to become actively involved in procedures and advocate their views. Complaints are submitted both by affected individuals and by groups of local residents and civil associations. We have observed an increased number of complaints in connection with the construction of mobile telephone antennae. Complainants object chiefly to the fact that they are not informed of the intended construction, nor are they included in the administrative procedures for obtaining construction permits. They have no chance of viewing the administrative documents, and of course consequently have no say in the work of the environmental inspectors where there is inaction in cases of construction without the appropriate permits.

Operating hours of the catering establishments

A fair number of complaints related to **repeated violation** of the provisions of the Catering Act (ZGos) **regarding observance of operating hours.** Article 19 of the ZGos envisages for such cases the sanction of temporary or permanent termination of the catering activity. Since complainants often expect the market inspectors to order such a measure, we wish to explain that on the basis of Article 19 of the ZGos, the competent inspection body that establishes repeated violation by a legal or natural person may, on the **proposal of the competent authority of the local community**, temporarily or permanently ban the offender from performing catering activities. This means that the local community has the discretional right whether or not to give the competent inspection body such a proposal. We have found that local communities for the most part are not familiar with the problems of individual catering establishments. The market inspectors may, however, on the basis of their own findings, or the findings of the police regarding frequent violations, send to the local community authority a proposal whereby the authority might propose to the competent inspection body that it places a temporary or permanent ban on the offender performing catering activities. The ZGos does not provide any duty on the part of the market inspectors to inform local community bodies of observed violations. Neither is there any definition of which situations merit a temporary ban and which a permanent ban on the performance of catering activities.

Ineffectiveness of the inspection services

Complaints in this area also relate directly or indirectly to the issue of **effectiveness of the operations of the competent inspection services**. In connection with this issue, it should be pointed out that certain complainants have a mistaken understanding of the ombudsman's role. A number of them believe that we should be concentrating our efforts on the removal of illegal buildings. The ombudsman strives for the establishing of the legal order, but this does not mean that he always favours demolition.

No respondency to the written petitions

Complainants are still claiming that the **environmental inspectors are not responding to their written petitions**. In numerous cases their complaints are justified. Often complainants also turn to the ombudsman because they are **dissatisfied with the substance of the inspector's response**. To numerous complainants it seems incomprehensible that the person reporting an infringement is not a party and cannot participate in the inspection procedure. It should be stressed that the inspection procedure is governed by the principle of official duty – the conducting of procedures ex officio. Since the inspection procedure is instigated and conducted in order to protect the public interest and not the interests of an individual, the only party in the procedure is the person against whom the procedure is being conducted, and not any other person, even though they might be immediate neighbours. In the inspection procedure, the neighbour no longer has the status of a party (as he/she could have had in the planning permit procedure) but only the status of a member of the public (and therefore the status of a person with an actual, rather than legal interest), who may on the basis of Article 126, paragraph two of the Administrative Procedure Act (ZUP), draw the attention of the competent body to the need for the instigation of a procedure ex officio. But where requested, the inspectors are indeed bound to inform persons reporting infringements of measures taken. In informing such persons they are not, however, bound by any legally provided deadline within which they must respond. Nevertheless, it is in line with the principles of good management, taking into account here the objective circumstances relating to the work of the individual body, that the body responds to the informant within a reasonable period of time.

Postponement of execution

Complainants also object to the **non-execution of inspectorate decisions** and to the often incomprehensible postponement of execution. In explanation of the fact that inspectorate decisions are not carried out, the inspection service states that in carrying out inspectorate decisions they are limited by the annual level of their budget allocation and by the provisions of the Public Procurement Act, on the basis of which they select contractors. In determining the order of priority for executions the inspectors take into account criteria such as the danger posed by a building, the acquisition of illegal pecuniary advantage, the impact of the building on the environment, the impossibility of legalisation, and construction on land that does not belong to the investor. Of course we may seek reasons for the fact that inspectorate decisions are also not carried out (in our opinion) in the unjustified postponement of executions. Here the inspectors often cite the extension of deadlines for voluntary completion of the required action under the provisions of Article 99 of the ZUP, and also the postponement of forced execution under the provisions of Article 293 of the ZUP. The deadline given in the official decision for completion of the required action may be extended upon a request submitted by the liable person prior to the expiry of the originally set deadline. The law leaves the judgement of the justification of the reasons for extending the deadline to the official person conducting the procedure. The setting of the deadline for fulfilling the obligations is therefore in the exclusive competence of the official person, in this case the urban planning inspector. Although we have already drawn attention in previous reports to the fact that the citing by inspectors of the general possibility for postponing deadlines pursuant to Article 293 does not enter into consideration in these procedures, since any appeal does not postpone execution, we have come across a number of cases where the inspectors are again justifying postponement of execution in this way.

We also believe that the absence of a public interest should not be a reason for the inspectorate decision not being carried out. The public interest must be established in the inspection procedure upon the issuing of the decision, and not when the decision is supposed to be carried out.

In connection with inspection procedures, mention should also be made of a complaint in which we drew the attention of the environment inspectors to the questionable application of Article 73 of the ZUN, whereby **rehabilitation might be a method or basis for legalising illegal constructions**, since rehabilitation is supposedly a physical intervention for removing illegal constructions where it is not possible to remove them by restoring the original state. In the specific case the inspectors instructed

the investor, on the basis of Article 72 and Article 73, paragraph two of the ZUN, within one month of the receipt of the decision, to request at the competent administrative unit a decision approving the declared works as maintenance work carried out on a farm road – spreading gravel on the existing road. The explanation in the decision indicates that upon official inspection it was determined that the investor had already carried out the maintenance work on the existing farm road. The inspectorate informed us that the investor followed the issued decision, and requested the issuing of administrative approval. The inspectorate agreed that rehabilitation was the measure for removing the consequences of the illegal construction only when restoring the original state was impossible. If an inspector finds at the actual location that rehabilitation signifies an environmental encroachment, he/she orders the obtaining of approval for it pursuant to Article 73, paragraph two of the ZUN. In connection with our advice the inspectorate forwarded the case to a body of second instance with the proposal that it revoke the decision of the urban planning inspector under the oversight right pursuant to Article 274, paragraph of the ZUP, which provides that the competent body may cancel an issued decision under the oversight right, if material law had clearly thereby been violated.

Jurisdiction of inspectors in the event of performing activities in a location without a permit for use

With the revised version of the ZGD, and also on the basis of the so-called anti-bureaucratic programme, the process of opening up small businesses should be simplified for future entrepreneurs. The entrepreneur can start performing the activity immediately after registration of the activity at the competent branch of the national tax authority (DURS) and after obtaining a small business permit. The decision determining fulfilment of the conditions for performing the activity, which had thus far been issued by administrative units, even when there was no legal basis for them, are no longer necessary, unless some other law governing the start of a specific activity provides special conditions for performing that activity. The enormous zeal for pushing back the bureaucracy, and for simplification, allowing everyone to start operating immediately after registration, at least in the initial period brought with it problems and caused a certain legal disorder. In the first months following the entry into force of the new version of the law, commercial subjects obtained a small business permit merely by signing a statement whereby they guaranteed fulfilment of the minimum technical conditions, but of course no one in the process of issuing small business permits verified whether these conditions were met – and this is not within the jurisdiction of the Chamber of Craft – but only up until the inspectors arrived.

The Slovenian Chamber of Craft informed us that it had proposed to the line ministry that it provide a compulsory interpretation of the Rules on the Procedure for Issuing a Small Business Permit and on the Small Business Register (*Uradni list RS* no. 10/95), whereby to obtain a small business permit it was sufficient for the subject to declare that he/she fulfilled all the prescribed conditions, and a permit for use would no longer be a condition for obtaining a small business permit. The ministry explained that what the client in the procedure must demonstrate cannot be assessed merely on the basis of a rule book setting out the procedure for obtaining a small business permit. Article 2 of the Rules on the Minimum Technical Conditions for Performing Small Business and Similar Activities provides that one of the forms of proof that the minimum technical and other conditions for performing small business and similar activities have been met, is the permit for use, and in view of the clear provision there is no possibility of this being avoided through a statement by the client. On this basis, henceforth the regional craft chambers should prior to the issuing of small business permits request that the future entrepreneur submits a permit for use relating to the business premises.

In connection with the new arrangements, based on the processing of certain specific cases, we are faced with the question of the jurisdiction of individual inspectorates in cases where a sole trader does not have a permit for use relating to the business premises in which the business activity is being carried out.

In the view of the Market Inspectorate of the Republic of Slovenia (TIRS), in compliance with the ObrZ, a sole trader is accorded the right to perform his/hercraft or small business activity with a small business permit, even without meeting all the conditions for performing small business activity, and without a permit for use of the premises. In line with their powers, the market inspectors therefore verify only whether the company is appropriately registered for performing the activity and whether it meets the prescribed conditions. **The TIRS believes that the competent inspection body** for determining and taking measures in the event that a permit for use has not been issued for a specific building, **is the building inspectorate**. Pursuant to Article 89 of the ZGO, in addition to

other tasks the building inspectors determine whether the building being used has a permit for use. Article 91 of the same act provides that the building inspector issues a decision prohibiting the use of a building which is being used without a permit for use, if in the deadline set the investor or owner does not obtain a permit for use, and the same possibility is also provided to the inspector, in the opinion of the TIRS, by Article 18 of the ObrZ. In the view of the TIRS, only when a sole trader performs the small business activity without a small business permit is it the task of the market inspectors to prohibit the performance of the activity.

The Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning (IRSOP) explains, meanwhile, that the urban planning inspectors act pursuant to the provisions of the ZUN, if they discover that the investor in the construction of a building or other environmental encroachment does not have a valid administrative permit, and order such building to be removed and the original state restored. Under the provisions of the ZGO they take action if they discover that the construction of the building is not being performed in compliance with the valid construction permit. So when an investor in a building in which an activity is being performed has not obtained a valid administrative permit, the consequent sanction is removal of the building. Another constituent part of the issuing of the inspector's decision is the prohibiting of the building's use or the performance of commercial, housing rental or other activities in it, in compliance with the provision of Article 76.c of the ZUN. In the opinion of the IRSOP, therefore, in such cases it is not possible to take action under the provisions of the ZGO and order a ban on the use of a building that does not have a permit for use. Such a ban may only be ordered when the investor builds in compliance with the valid permits and does not yet have a permit for use.

We cannot agree with the view of the TIRS, that for a person who wishes to become a sole trader, a small business permit is proof that he/she fulfils all the conditions for performing a small business activity, craft or other similar activity. We believe that **irrespective of the issuing of a small business permit, the manager of a small business activity must fulfil the technical and other conditions relating to the business premises, land, equipment and facilities, as defined in the Rules on Minimum Technical and Other Conditions for Performing Small Business and Similar Activities**. In this connection, mention should be made especially of those small business permits that were issued ex officio on the basis of Article 46 of the ObrZ, as well as other cases of performing activities in buildings without a permit for use, even without a construction permit, cases where the individual does have a small business permit for performing the activity, but is also performing the activity outside the company's registered premises, in premises that do not have a permit for use.

Article 18 of the ObrZ provides that the competent inspection body prohibits a natural or legal person from performing business activities, if it discovers that the conditions for the performance of this activity have not been fulfilled. In this article the ObrZ does not actually state specifically which inspection body is competent for overseeing the performance of small business and craft activities, which means that in compliance with special regulations such oversight can be performed by several inspection bodies. Despite this, we believe that in such cases the ZTI is the special regulation providing in Article 1 the competence and backing to the market inspectors to take action, as provided by Article 15 of the same act. This article provides that the inspector should issue a decision prohibiting the performance of the activity until the deficiency is eliminated, if the premises in which the activity is being performed or its furnishings and equipment do not meet the minimum technical conditions prescribed for this activity. In such cases, it is most frequently the activity that is questionable and problematic, and not the actual construction of buildings. Given that when an entrepreneur does not have a permit for use for the premises in which the activity is being performed, and therefore does not fulfil the minimum technical and other conditions relating to the business premises, functional land and other outside area, equipment and facilities, we believe this to be a justifiable reason for the TIRS to take action, either on the basis of Article 18 of the ObrZ or pursuant to the provision of Article 15 of the ZTI.

Even if other regulations – the ZGO and ZUN – provide the competence of urban planning inspectors for taking action in the cases dealt with, we have found that the IRSOP does not take action or does not declare itself competent to order the measure of prohibiting the performance of the activity in individual cases. We had not yet received their final answer to this question at the time this report was being compiled.

We have observed that in certain such cases that we have dealt with to date, both the TIRS and the IRSOP have declared themselves not competent and have taken no action. Under the provisions of the Inspection Oversight Act (ZIN), an Inspection Council was set up as a permanent interdepartmental body to effect mutual coordination of the work of different inspection bodies. In our opinion, given the powers provided to it by the act, this Council should ensure the coordinated functioning of inspection bodies in the aforementioned cases. Indeed we have observed that despite legal powers to act in specific cases of commercial activities being performed in premises without a permit for use, none of the inspection services have taken action, nor have they protected those who with justification have felt adversely affected by such activities.

2.8. COMMERCIAL PUBLIC SERVICES

The number of complaints in this area fell somewhat last year. It would be difficult to find and argue for the right reasons for this situation. In terms of complaints received, we could conclude that relations between providers and users are on a satisfactory level.

Complaints in the area of municipal services concerned the work of municipal inspections, payment of water rates and construction of water pipelines, questions relating to sewage and household waste, road problems, participation in public tenders and the clamping of vehicles. In the area of communications, we primarily received complaints which followed disagreement with payment of RTV television licence fees or which concerned such procedures at RTVS. In considering violations in the energy sector, we encountered complainants' problems in relation to electricity and gas distributors. These difficulties concerned calculation of prices for services and questions regarding the correctness of disconnection and reconnection at outlets. Many complaints were ill considered, or merely requested clarification of the actual and legal state of affairs.

2.9. HOUSING

The number of cases related to housing also fell slightly in 2002. Complaints are still dominated by those involving difficulties obtaining suitable housing, most commonly in connection with public tenders for social and not-for-profit housing. Lately we have observed a falling off in cases involving the resolving of what are called military apartments. In this connection, in 2002 we had no difficulties worthy of mention with the Ministry of Defence in resolving the issue of eviction or of the various possibilities for purchase in line with the valid decisions. There are still a large number of complaints connected to housing management; for the most part, complainants assert that the managers of apartment buildings are doing their job badly.

Tenants in denationalised apartments

At the beginning of 2002 the Human Rights Ombudsman sent to the National Assembly a special report on the problem of tenants in denationalised apartments. He decided on this measure based on numerous complaints he had received in connection with conflicts between owners and tenants in denationalised apartments, because there had been no response to the ombudsman's comments thus far in annual reports, and also because the National Assembly had recommended to the ombudsman that he should make more frequent use of his legal right to make special reports and in that way to be actively involved in dealing with areas that are especially sensitive from the aspect of protecting human rights. The Petitions Committee examined the special report in February 2002, but the primary committee, that is the Home Affairs Committee, had not completed its study of the report even by the beginning of 2003. At the first session of this working body, the committee members agreed with the findings and proposals of the ombudsman in the special report, and referred them for adoption by the National Assembly, but learned later that they could not place additional

Ignorance of the National Assembly

duties on the proposer of the housing act (SZ), since in the meantime the act had already been submitted to the National Assembly. In the debate on the special report at a National Assembly session, the great majority of those speaking also supported the ombudsman's findings and proposals. In view of this it seems even less comprehensible to us that this debate produced no appropriate response during the debate of the proposed SZ, in which the problems pointed out by the ombudsman are not resolved adequately, and in certain elements makes the position of tenants even harder. We have to take the view that while the National Assembly supported the substance of the ombudsman's special report and his findings, it did not take the necessary step forward to support on this basis the legislative arrangements, these being the only avenue for eliminating the years of problems between owners and tenants of denationalised apartments. Here it should be stressed that these problems were caused by the state through its insufficiently thought-out arrangements in the past, while it is now leaving the resolution of these problems to the innocent tenants and owners of such apartments.

The problem of social housing is rising

Based on the complaints received, we have observed that the issue of housing provision is still very critical. The housing shortage, especially in the bigger city centres, is growing. This means that in Ljubljana, in the tenders for allocation of welfare housing, only every tenth applicant is successful. Our view is that this problem will get worse if the SZ does not introduce additional systemic mechanisms to stimulate the provision of housing. We have already made several criticisms of the current arrangements, whereby it is only the municipal councils that are responsible for providing social housing. Under the proposed SZ, the category of social housing should be entirely abolished, and replaced with a standardised category of not-for-profit housing, where on every new tender the municipal councils would define those eligible for the individual tender; this would also include the relationship between their income and the average income in the country. This means that the municipal councils themselves will define the social category of people that can apply for individual tenders. The lower the income census, the more low income tenants will obtain housing, but at the same time this means that the municipal councils will have to contribute more funds for them in subsidised rents. It may therefore, be expected that municipal councils will not be interested in new tenants with low incomes, so these people will find it even harder than before to obtain housing, for there will be even less tenders for them than previously.

In the bigger cities the issue of allocating the most urgent accommodation premises has also been exacerbated. In the Ljubljana Municipal Council, such premises, which do not have the status of suitable housing under the SZ, are allocated to those whose tenancies have been cancelled or who have been evicted, and to the socially most at-risk individuals and families. But in allocating them such premises, their problems are not solved, in fact they are exacerbated, since on moving into such premises they have even less chance than before in tenders for the allocation of social housing, and this is clear from the situations presented below.

Position of applicants without housing after the third public tender for the letting of apartments to socially eligible persons in Ljubljana

In 2002 the Human Rights Ombudsman dealt with seven complaints in connection with the third public tender for letting apartments to socially eligible persons, offered in August 2001 by the Housing Fund of the Ljubljana Municipalities. The results of the public tender were published on 20 April 2002. Complaints were received about the ranking on the priority list, in other words, the points system for housing, financial, social, health and other circumstances that are important for the ranking of participants in the tender.

Of five complainants (applicants without housing) three live with their families in emergency accommodation, for which they have a rental agreement with the Ljubljana Municipal Council for a set period, up until the cessation of their exceptional social circumstances. The premises in all three cases are in the basement, with a surface area of 16 to 28 m^2, without kitchens and with shared sanitary facilities. These premises house two to four-member families. The fourth complainant (tender participant without housing) lives with her child in a space of 15 m^2. The premises are intended for the accommodation of an individual, with no kitchen and with shared sanitary facilities. The fifth complainant states that her four-member family lives in a basement flat of 48 m^2. The complainant has no tenancy contract with the owner, and is occupying the flat without the owner's permission.

We have already drawn attention to the worse position in the points system of applicants without housing compared to those that have some kind of housing, in the annual reports for 96, 97, 98 and

99. Such applicants are not given points for their housing situation, for which reason ultimately they have considerably less points than applicants with unsatisfactory housing. In the 1999 annual report the ombudsman welcomed the amendments and supplements to the Rules on Criteria for Allocating Social Housing for Rent (*Uradni list RS*, nos. 18/92 and 53/99), whereby there was an increase in the points gained by various categories of applicants without housing, but we have observed that this increase has not been sufficiently large.

Under the Rules on the Conditions and Criteria for Obtaining Social Housing for Rent (*Uradni list RS*, nos. 56/93, 73/95 and 62/01), adopted by the Housing Fund of the Ljubljana Municipalities (SSLO), accommodation in a basement gives applicants an additional 48 points. When the floor area is 5 to 8 metres per family member, this earns 64 points; a surface area of 9 to 12 meters per member earns the applicant 48 points. An apartment without kitchen earns 32 points, and one with shared sanitary facilities or facilities outside the apartment earns 16 points. By listing these specific points we are attempting merely to provide a rough illustration of the number of points that the complainants, defined as applicants without housing, were unable to claim, although they are living in unsuitable housing. In terms of their housing status they gain only 10 to 30 points more than other participants.

In the explanations for implementation of the rules and the points system for housing, financial, social and health circumstances, an **applicant without housing** is deemed to be a participant in a tender who lives in temporary accommodation premises (temporary accommodation in a mother's home, a shelter, construction site, premises in temporary buildings and similar), as defined in item 1, Article 3 of the SZ; whoever lives with their family in buildings constructed for the accommodation of individuals, as defined in item 2, Article 3 of the SZ; or who lives alone or with their family temporarily in residential buildings, but without the status of tenant, sub-tenant or user of the apartment.

We approached the SSLO regarding their experiences and possible assessment of whether the current points system provided equal participation of these members of the public in resolving their housing problems under the tenders for allocating social housing for rent.

In response, the Fund sees no essential problem in the criteria, but rather in the large disproportion between supply and demand for rented housing. They are aware of the inadequacies regarding housing status. They believe that the definition of criteria for allocating social housing is contingent on the circumstances at the time they arise. The highest number of points is envisaged for applicants without housing, but this is less than what can be scored by those with inadequate housing, since there is supposedly a fear that all the available housing would be allocated to "squatters" and other, illegal users (if in the status of "without housing" the actual circumstances were taken into account), and not to those who themselves were doing all they could to resolve their own housing problems. In their opinion an improvement on the current method of points collection would be the method of "tree criteria", as is used by the Housing Fund of the Republic of Slovenia in allocating housing loans. Everyone who applies in tenders has somewhere to live, and the issue on one hand is the uncertainty of their use of the apartment (they do not have a tenancy agreement) and on the other the differing accommodation circumstances as well as the differing degree of their own efforts. In their opinion, the criteria regarding their status should be based on the manner of using the accommodation (legal, illegal), the proportion of income applicants use to solve their housing problems, and accommodation circumstances.

If the determining of criteria in the national rules that provide the basis for all the municipal rules has truly been affected by the fear pointed out by the SSLO – that all available housing would be allocated to "squatters" and other illegal users – we believe that this is merely a further argument for the **renewed examination of the criteria for allocating social housing for rent**.

The total number of new complaints in this area was down by a quarter on the previous year. The only exception among the subgroups were state employees, from whom we received almost a third more complaints than last year. It should be remembered that many complaints relating to labour relations are group complaints, where several (or sometimes almost all) employees from an individual organisation or commercial company turn to the ombudsman. This means that the number of affected individuals is considerably greater than the number of complaints.

Labour relations

Once again we find this year that the content of the complaints is almost unchanged. Most relate to the improper or irregular payment of salaries and other receipts (overtime, allowances, jubilee bonuses, redundancy payments), non-payment of social security contributions, failure to issue payslips, termination of employment procedures (e.g. in the case of sick leave or maternity leave), allocation to another job, restriction of the right to a 30-minute break or the right to a workspace with suitable health and safety conditions. There are also numerous complaints relating to the vexatious behaviour of employers, the bending of regulations, abuse of fixed-term contracts, failure to execute the judgements of labour tribunals and impossibility of execution.

There are also a large number of complaints **relating to disability** – both with regard to recognition of disability (disabled status) and the exercising of rights once disability has been recognised. Many complaints from people with category II and III disabilities relate to failure to observe the decisions of the ZPIZ with regard to remaining capacity to work. These complainants consider that they have not been allocated to a job which they are still able to do in accordance with the decision, or that they are prejudiced in terms of salary as a result of the incorrect calculation of disability pay. Since the ombudsman has no direct power to take action in such cases, we directed them to the Labour Inspectorate or to the ZPIZ which issued the disability ruling. On the basis of periodic information which we have received, we can conclude that intervention was necessary, since the complaints were justified.

Older workers treated vexatiously

Another notable category are **complaints from "older workers"** (including complaints made by telephone to the duty officer) who believe that they are frequently treated vexatiously because it is more difficult for them to achieve norms or because their productivity falls slightly with age. Apparently employers are forgetting that in terms of productivity the older worker can usually no longer compete (quantitatively) with younger workers in the working process. Most productivity-oriented employers therefore give priority to young people. Younger workers, especially when they are compliant and uncritically loyal, are promoted more easily and more rapidly and are also better rewarded. Objections are not usually taken into account and in some cases a tendency to take sanctions is also apparent. Such an organisational atmosphere creates unnecessary conflict relationships among employees. This is reflected in poorer productivity and increases dissatisfaction at work. This can lead to absenteeism or create the possibility that employees will seek refuge in psychosomatic illnesses and other negative behaviour. Another assumption that arises from the complaints received is that in the case of employing people for management and executive jobs, and also in the case of employment in general and employment on the basis of a permanent contract, employers give priority to men.

To sum up, no major shift in awareness of the principles of dealing with people at work (employment, education, remuneration, motivation, measurement of success, career planning, use of knowledge and skills and education in this field) can yet be detected among employers, and neither is the fact that job satisfaction is the first condition for good work and consequently for the success of the organisation being taken into account.

Many complaints received by the ombudsman come from **workers employed by** private **employers** or commercial companies **with regard to which the ombudsman is unable to take direct measures**. We therefore direct such workers to the Labour Inspectorate and monitor the work of the inspectorate service. There are also frequent cases of workers applying anonymously to the ombudsman or, even when they sign their complaint, requesting a guarantee of anonymity. Notwithstanding requests for anonymity, when we consider that serious violations are involved we invite the Labour Inspectorate

to carry out an inspection and to take measures in accordance with its findings. In the case of the joint complaints mentioned above we requested an inspection in all cases, and in all cases our intervention proved to be justified. Whether the circumstance that the majority of these employers employed an exclusively female work force is simply a coincidence or an indication of something more alarming, we can only guess.

We received three complaints relating to **irregularities** in the procedure of selecting instructors and census takers for the **census of the population**, households and dwellings in the Republic of Slovenia carried out in 2002. The complainants did not agree with the method of selection and the later explanations of the responsible officers to whom they applied. We therefore requested a report from the Statistics Office which would enable us to establish in what way and under what regulations, instruction or agreement the conditions and criteria which candidates for census takers and regional instructors had to meet were determined, who formulated these criteria and who supervised the consideration of these criteria in the selection of candidates. We also wished to know what body dealt with the complaints from unsuccessful candidates and in what way. The unsuccessful candidates had merely received a notification.

According to the reply from the Statistics Office, the criteria were determined in the Review of Activities for the 2002 Census, the invitation to participate was published in the public media along with the criteria, and the procedure was implemented by regional census commissions. The commissions prepared a list of selected candidates who were then confirmed by the Office. In confirming the candidates they cited the declaration of the regional commissions on the consistent respecting of the criteria of the public call for applications. The Office also decided on any complaints from candidates.

The assumption that the conditions, criteria, procedure and selection of candidates were not sufficiently clearly regulated was confirmed. Meanwhile the complaints procedures did not provide sufficient legal protection for registered candidates. Since the census had already been carried out by the time the complaints were dealt with, it was no longer possible to take measures. For this reason we simply warn that in the future the conditions and criteria of the call for applications must be defined clearly and must be accessible to the public, resolutions must be issued on the selection, and the possibility of appeal must be provided, in this way guaranteeing the legal protection of candidates.

Unemployment

Despite a fall in the number of complaints in comparison with 2001, we consider that the global problem of unemployment is no smaller. Just as in previous years, complaints mainly related to the duration of unemployment and to the poor (unequal) possibilities of employment for disabled people, sick people without disabled status and older unemployed people. The complaints reveal the numerous problems caused by unemployment, since unemployment usually also means social exclusion, which causes the individual to feel resentment towards a society which does not give him/her the possibility to live with dignity. We find that some unemployed people have already been turning to the ombudsman for a number of years, something which indicates the insufficient effectiveness of the measures of the active employment policy. With age and illness the possibility of employment is also reduced.

Older unemployed people are redundant to the society

Cases of older unemployed people who, despite their best efforts, cannot find a job but who will not meet the conditions for an old-age pension for some years, are particularly distressing. Usually these people are over 50, have worked for more than 30 years, have used up the rights to which they are entitled as unemployed people and are now only entitled to social security support – or not even that, if their family income is too high. This situation is one of serious personal distress for these people since it is extremely humiliating for them to have worked for so many years and to now find themselves facing poverty or dependent on the help of relatives, when it is not their fault that they are unemployed. Of course the state provides them with the means to "survive", but the modest social security assistance they receive is not proportionate to their contribution as workers. It is true that many older unemployed people do not have suitable education (although some do) and many of them have already suffered health problems. Despite this, if suitable programmes existed their number would not necessarily continue to increase. We therefore see the solution in programmes designed to help employers preserve the jobs of older workers (incentives, reliefs), encouraging older workers to participate in education and, last but not least, in punishing employers who wilfully get rid of older workers first.

State employees

In comparison with last year the number of cases of state employees turning to the ombudsman has increased (by a third). The increase is even greater (by almost a half) if we take into account the fact that some complainants have come back to our office for a second time because they consider that the ombudsman's intervention is still necessary, although this has actually only meant the reactivation of their original complaint.

In those complaints addressed to the ombudsman by employees in the wider public sector, the problems that stand out most continue to be problems of promotion, overtime and non-payment of overtime, unsuitable working conditions, poor relations between superiors and subordinates, the late issuing of decisions and resolutions on employment (the police), unclear criteria for security verification in the employment of police officers, and unnecessary employment via the student service.

We dealt with two cases relating to irregularities in the employment of police officers. Both involved the question of the application of Article 76 of the ZPol, under which the police are not obliged to explain the reasons for their decision to a candidate with whom a contract of employment has not been concluded. Both cases involved security verification, where it is not clearly defined to what extent this verification may take in family ties and friendships. One of the complainants graduated from the police secondary school at Tacen and was later unable to secure employment with the police. The other had already begun work but after a few days was dismissed without an explanation, without a resolution on the conclusion of a contract of employment, without a resolution on the termination of employment and without being paid for the work he had done. In the second case we requested that an agreement be reached with the complainant on payment for work done. This was done on the basis of a contract for services. We proposed that in the future a contract of employment should be concluded before the individual involved commences work or immediately afterwards. Security verification is usually carried out before candidates begin training or during police training. In case of necessity it is carried out before the candidate commences work. The conditions and procedures relating to employment should be clear enough to exclude the possibility of arbitrary decisions.

2.11. PENSIONS AND DISABILITY INSURANCE

The number of complaints received and dealt with in the area of pensions and disability insurance allows us to conclude that conditions regarding implementation of the Pensions and Disability Insurance Act, which entered into force at the start of 2000, have settled down. To a large extent, this is due to standardisation of interpretations of individual provisions of the Act, but it is also in part due to amendments to the Act – from 1 January 2000 to 31 December 2002, the Act was amended four times.

95 complaints (105 the previous year) were received in 2002 in the area of pensions insurance, while there were 57 complaints (74 the previous year) in the area of disability insurance.

Various types of complaint are covered by the **pensions and disability insurance** group; they can be classified into two subgroups.

The first covers complaints concerning assertion that **statutory arrangements** of individual rights are unjust or unconstitutional, that arrangements are deficient, or that certain rights are not governed by the act, even though they should be.

The second subgroup covers complaints concerning assertion of the incorrect work of the Pensions and Disability Insurance Institute of Slovenia (ZPIZS) in considering specific requests to exercise individual rights, assertion of incorrect assessment of the fulfilment of conditions in the procedure for exercising rights under the act, and of course the long duration of procedures, particularly appeals.

Although there was time to implement four procedures to amend and supplement the act, there was evidently insufficient time to implement the resolution of the National Assembly adopted in its 20th

session on 28 November 2002 during a debate on the Seventh Annual Report of the Human Rights Ombudsman for 2001, which reads:

"15. The Government should prepare a new, updated list of physical injuries, since disability insurance rights include the right to disability pension or compensation for physical injuries, since the current list does not allow correct and equal consideration of all physical injuries. The competent bodies of the Government should also prepare without delay a new list of occupational diseases."

Some complainants believe that the current statutory arrangements are unjust. In cases referring to **unjust statutory** arrangements or assertion that the statutory arrangements are unconstitutional, two rights are most often mentioned:

- the right to widow's supplement or **widow's pension** in general in cases where the widow or widower must choose between his or her personal pension (old-age or disability) and their widow's pension, and

- **the right to pensions supplement.**

ZPIZ lays down new arrangements for the right of surviving spouses entitled to two pensions – their own and widow's pensions – to acquire the right to payment of part of the widow's pension. Several beneficiaries feel that this arrangement is bad, because they believe that the conditions for exercising this right, and the scope of this right, are unjust compared to those beneficiaries who never fulfilled the conditions for a personal pension. One complainant justified this by providing the following data: between them, she and her husband had been employed for 75 years, during which time they continually paid contributions for pensions and disability insurance. The husband died four years after retiring; as they both received roughly equal pensions, the widow could not claim a widow's pension, and failed to meet the conditions for exercising the right to a partial widow's pension due to the level of her personal pension. Her neighbour, who had never been employed, received a widow's pension after her husband's death that was only a few tolars lower than the old age pension of the complainant for a full pensions contribution period.

We are still contacted by complainants who in the past were dealt with under the **Provision of Social Security to Slovenian Citizens Entitled to Pensions from the Republics of the former SFRY Act** (ZZSV). Recipients claiming supplements to foreign pensions after September 1991 received supplements with regard to their pensions contribution period **based on the minimum pension base** under the then-current ZPIZ, although this was not arranged in the ZZSV itself. Even after 2001, when the National Assembly adopted ZZVS-A, thereby implementing the decision U-I-101/97 of the Constitutional Court of the Republic of Slovenia dated 20 May 1999, which ruled that ZZVS was unconstitutional, **as it failed to stipulate the method used to calculate the pensions supplement for beneficiaries who retired after September 1991**, the allocation and base for allocation remained the same as those previously used by the institute without legal grounds. Furthermore, under this act, recipients of supplements to foreign pensions could not exercise other rights which apply to beneficiaries under ZPIS (disability pension, care allowance, home help allowance).

This type of complainant views such arrangements as unconstitutional and unjust. First, because the amended act divides Slovenian citizens entitled to pensions from other republics of the former SFRY into those who claimed their pension before September 1991, and those who claimed pensions in the former SFRY after this date. Thus the level of payment under the act, which should ensure social security for all Slovenian citizens entitled to pensions in the former SFRY, depends solely on when the Slovenian citizen claimed his or her pension in one of the republics of the former common state. As Slovenian citizens living in Slovenia, they still do not understand why the law does not enable them to exercise at least those rights under the pensions system which would ease their life due to special circumstances (home help allowance, disability pension).

In these and similar cases, the ombudsman mainly explains to the complainants concerned the competences he has regarding the state body or bearer of public authority in implementing the valid act. We particularly explain to complainants the subsidiary nature of the measures of the ombudsman when an individual is convinced that some provision or the whole of a valid act is unconstitutional;

the appropriate action is for complainants to initiate proceedings before the Constitutional Court, as it is in their interests, and also because it would be very difficult to choose fair criteria for deciding whether or not the ombudsman should act on behalf of the complainant in individual cases. In the case described above of the complainant who asserts that the provisions of Article 4a of ZZVS are unconstitutional, she submitted a complaint in 2002 to the Constitutional Court, which has yet to rule on the case.

As mentioned earlier, there is a second subgroup of complaints concerning assertion of incorrect assessment of the fulfilment of conditions in the procedure for exercising rights under the act and **irregularities in procedures, particularly their long duration**. These are procedures in the ZPIZS first- and second-instance bodies.

Claiming state pensions

Article 59 of ZPIZ governs the conditions for claiming a state pension. This is a right which does not arise from insurance, but it is an income guaranteed to persons who meet the conditions laid down by the Act on Reaching a Specific Age. In 2002, persons with permanent residence in RS who did not have the right to a pension under general pensions insurance regulations in Slovenia or abroad, whose personal income was no greater than the allowed income for claiming care allowance, who were 69 years of age and who between the ages of 15 and 65 were registered as permanently resident in RS for at least 30 years could acquire this right. According to one complainant, the conclusion of ZPIZS during assessment of the last condition that she failed to meet this condition was incorrect, since she has already been living in RS for 34 years. The complainant's statement was in fact true, but she did not spend those 34 years in Slovenia between the ages of 15 and 65, since she moved to Slovenia when she was 36. A second complainant, also claiming incorrect assessment of the fulfilment of the same condition, was abroad between the ages of 21 and 47, when she returned home in 1997.

In such cases, the ombudsman explains to complainants that the Institute cannot be persuaded to decide otherwise than it must under the act, in other words to overlook failure to fulfil one of the conditions laid down by the Act for Exercising the Right to State Pension.

Return of overpayments

ZPIZ stipulates that persons paid by the ZPIZS monetary sums to which they had no right must return the amount received in accordance with the provisions of the Obligations Act. A special law lays down the procedure under which the institute issues a decision on overpayment, and the method of repayment. A special law governs the method of return of overpayment for persons obliged to return an overpayment who receive income from the pensions and disability system; such persons can repay overpayments in instalments, which are deducted from the amount due.

We have dealt with a number of complaints in which complainants assert that it is wrong that they must return the income paid to them but not due to them, since it was not their fault. The majority of those who informed the institute in good time of the circumstances which resulted in payment changes (for instance for family pension – the loss of student status) believe that if the Institute transferred to them more than they were due, then it should also bear the consequences of payment errors.

These cases required considerable effort to explain to complainants that all those receiving more than their due must return such payments.

Exercising rights from disability insurance

An expert opinion is required in the procedure for exercising rights from disability insurance to determine fulfilment of the conditions. Expert opinions on disability, physical injury, need for permanent assistance and care and on certain other circumstances (in claiming widow's or family pension) are provided by the expert bodies of the institute. The expert bodies of the institute are the disability commission, individual physicians and other professional institutions appointed by the competent body of the institute. From the sufficiently clear provisions of ZPIZ on the types of expert bodies, their competences and their composition, and further secondary legislation on the organisation and working methods of disability commissions and other expert bodies of the Institute (Rules on the Organisation and Working Methods of Disability Commissions and Other Expert Bodies of the Pensions and Disability Insurance Institute of Slovenia, *Uradni List* RS 113/2002), one would not expect major irregularities in these procedures.

The complaints considered by the ombudsman suggest otherwise.

Most complaints concern assertion of the incorrect actions of a disability commission. Inappropriate behaviour by members of a disability commission during personal examination of the insured person is a common element of complaints. They claim that there was no real personal examination, since members of the disability commission examined them for only a few minutes, or the examination consisted solely of a few questions as to how they felt. Some complainants even claim that all or some of the members of the disability commission made fun of them, or in communicating with them shamelessly suggested that they were not interested in work, that they were lazy and the like.

After conducting inquiries, the institute, or at least so it claims in its responses, very carefully checks all the statements of the insured person; to date, they have not yet confirmed any of the assertions of complainants regarding the inappropriate or even shameless attitude of members of a disability commission towards an insured person. The institute also specifically ensures that meetings with chairmen of disability commissions pay a great deal of attention to any dissatisfaction expressed by insured persons (through complaints to the ombudsman, through the media or directly to the institute).

Complainants contacting the ombudsman often cannot understand that specialist physicians determine in previous medical examinations (before referral to the disability commission) that they are no longer fit for work, and write as much in the results attached to the medical documentation in the disability procedure; and yet members of the disability commission make a completely different decision and do not take account of the opinion of the specialist. Complainants understand this as meaning that the disability commission found, in contrast to the opinion of the specialist, that they are healthy. For such claims, the ombudsman attempts primarily to explain to complainants that the disability commission does not decide on whether or not the insured person is healthy or not. Also, the commission does not change the diagnosis of the insured person; rather, it assesses his or her remaining capacity for work (depending on the disease or injuries evident from the specialist and other results, which are components of the medical documentation), taking account of the work he or she does. As regards claims concerning superficial personal examinations, we explain to complainants that the disability commission only considers requests to recognise rights on the basis of full medical and work documentation. Only such documentation allows the chairman of the disability commission to determine the composition of the senate, which depends on the medical handicap of the insured person (type of illness or injury). Personal examination of the insured person is just one of the elements on the basis of which the disability commission prepares expert opinions.

With regard to the frequency of such complaints and the fairly scant provisions on personal examination of the insured person in the rules, the ombudsman will assess whether it would be appropriate to suggest to the institute that it define in more detail in the rules the minimum criteria for personal examination of insured persons at meetings of disability commissions.

Particular mention must be made of the fact that ZPIZS has contributed considerably to informing insured persons and beneficiaries in the pensions and disability insurance system by issuing a whole series of leaflets which explain transparently and clearly individual rights from insurance, the conditions which insured persons or beneficiaries must meet, and the procedure for exercising individual rights. While in the past it was clear from a number of complaints considered that the assertions of complainants were based on non-awareness of the conditions and procedures for exercising particular rights, and that this non-awareness was also linked to the fact that institute staff did not provide assistance to uneducated clients, this is no longer the case.

2.12. HEALTH INSURANCE AND HEALTH CARE

In 2002, issues in the area of health insurance and health care were, at least as it appeared to us, among the more frequently discussed topics in the media. For this reason one would expect the number of complaints in this area to rise, too, but this expectation was false. There were less complaints than in the previous year: in the area of health insurance there were 30 (in 2001 there were 39), and in the area of health care there were 37 (in 2001: 49). The drop in the number of complaints cannot be attributed to a greater degree of organisation and transparency in these two areas. One of the suspicions regarding this situation, but something that of course is not backed up by expert analysis, is that there is perhaps a better level of information among the public as to where they should first begin the procedures for determining the improper actions of state bodies, holders of special authorisation and individuals employed by them in relation to insured people or patients.

Complaints in this area are separated by content into those in which complainants assert violations or improprieties in exercising the rights deriving from health insurance, through which social security is provided in the event of sickness, injury or death, and into those improprieties relating to everything linked to the actual treatment.

Consequences of new version of the Health Care and Health Insurance Act

December 2001 saw the entry into force of the majority of amendments to the Health Care and Health Insurance Act (ZZVZZ-D) relating to the rights: to transportation in ambulances, to "patient status" during the disability procedure, to funeral and death benefit, the right to reimbursement of travel expenses and the exercising of rights deriving from the health insurance of certain insured people who have not settled their obligations to pay contributions (implementation of this amendment was postponed for six months after entry into force of the new version of the act).

The new version of the ZZVZZ-D cut back the scope of the aforementioned rights, as well as the actual circle of people eligible to individual rights that should be ensured through compulsory health insurance. For this reason the amendments created a stir among the public. This is another of the reasons why the ombudsman responded to these amendments even before the arrival of specific complaints. He called upon the health minister to inform him within a set deadline of the consequences of the amendments to the act in providing equal access of insured people to appropriate forms and methods of treatment and diagnosis, and of other consequences of the new act's implementation.

Soon after the entry into force of the amendments to the act, the minister also took the view that the amendments relating to reimbursement of travel expenses, funeral benefit and death benefit would be untenable, so in June 2002 the ZZVZZ-D was amended again, in those sections. These amendments came into effect on 11 July 2002.

In the period from 22 December 2001 to 11 July 2002, insured persons or their relatives could exercise rights deriving from compulsory health insurance only under the valid act; the July version of the act did not provide that in the newly changed provisions the act might be applied retrospectively, so certain insured persons turned to the ombudsman to seek his help in resolving their position, which seemed to them unjustified.

A complainant's husband died in March 2002; under the regulations valid then she could not exercise the right to funeral or death benefit, so she put in a new request for the right to funeral and death benefit in July, when, or so she believed, she again fulfilled the conditions for being granted these two rights. Since the Health Insurance Institute of Slovenia denied her request in a final decision, she brought an action at the Labour and Social Court in Ljubljana, and at the same time submitted a complaint to the ombudsman.

Although following adoption in December 2001 of the revised ZZVZZ, which introduced less favourable provisions regarding the conditions for claiming the right to funeral and death benefit, the ombudsman criticised both the procedure whereby the National Assembly had adopted the amendments to the act, as well as the actual content of the amendments, which in our opinion were

unsystemic and ill-considered, in this specific case we could do no more than advise the complainant that the ombudsman, too, was bound to respect valid regulations.

Health care

The assertion of improper action by a physician during treatment was the subject of several complaints. The forms of improper action are manifold: improper or offensive reception by the physician or other health worker is still the mildest form of improper action that complainants cite in the complaints sent to the ombudsman.

In one complaint we handled the complainant – a psychiatric patient – was convinced that the physicians at the health institute where she was obtaining treatment, were violating medical ethics and in particular the confidentiality of information about her illness. Following a long period of treatment she noticed that the people around her had started acting differently towards her; she was convinced that this was because they had found out she was being treated for mental illness. This different behaviour was manifested in contempt being shown to her, her former acquaintances withdrawing from her and similar. She was most seriously affected when her application for employment was rejected.

After making enquiries at the public institute, from which according to the patient information had been leaked about her illness, her claims were not confirmed. Despite this, there remains a sour aftertaste produced by the fact that in treating just such patients, trained doctors are incapable of establishing with them the kind of relationship that might afford the patient a greater degree of confidence.

2.13. SOCIAL SECURITY

We have dealt with quite a number of complaints in which individuals express serious personal and financial hardship because of unemployment in the years before retirement. The complainants have not lost their jobs through any fault of their own, but later, because they are aged over 45 and also suffer from health problems, they have been unable to find employment. Once their right to unemployment benefit has expired they have remained without an income of their own, and because of their partner's income they are not entitled to financial social assistance. They feel powerless and suffer serious personal distress because despite being employed for many years and at the same time taking care of their family, they no longer feel wanted anywhere. The situation is particularly serious when as a result of the low income of their partner and the obligation to pay off long-term loans, they do not have sufficient funds to get by. As a result of numerous unsuccessful attempts to find employment they lose hope and also lose confidence in their own abilities. For this reason they turn to the ombudsman simply to ask for help in maintaining themselves. They feel that their rights have been seriously violated because after almost 30 years of work they should at least have earned the right to live a decent life. In the words of the husband of one complainant who despite having four children had always been in full-time employment and after working for 27 years had become redundant as the result of technological advances: "This is a death sentence for these people."

Poverty and social distress

In cases when it is evident from the complaint that despite actively seeking employment the situation is one of long-term unemployment, we draw the attention of the relevant labour office to the problem, request a report on their activities in the direction of employment and propose that they study at least the possibility of inclusion in a public work programme. In some cases, labour offices offer the possibility of employment in public work programmes. Unfortunately, it can happen that because of health problems the procedure is halted during the medical examination before the individual is accepted for work (see Case No. 8).

We feel that society should not marginalise people who have invested a great deal of energy in their work for almost the whole of their working lives and have often also helped develop a working organisation which they have later had to leave through no fault of their own. The criteria for obtaining

financial social assistance should not be the same as for young people and for people whose state of health is not an obstacle to employment.

The ombudsman also receives a large number of complaints from people in situations of social hardship which unfortunately he cannot address himself. In such cases he directs the complainants to the competent institutions and also warns the institutions to address the problems with due attention. Above all these are people who do not have a means of income, whose income is too small, who are unemployed, disabled and so on. Although Slovenia has adopted a programme for the fight against poverty, practice shows that this programme, good though it is, is not enough to solve, or at least mitigate, this urgent problem. Since the majority of social problems are dealt with in other chapters, we will draw attention here merely to a few problems from this area. A more detailed illustration of the ombudsman's method of work in such cases can be found among the cases described at the end of the report.

2.13.1. Complainants with personal problems

In 2002 we dealt with thirty-five complaints which fell into the "personal problems" group. The name of this group indicates the main common characteristic of these complainants, who as a rule have transferred their private and personal problems into the field of "social problems" with the result that what they expect or demand from the ombudsman is that he sort out their lives by means of impossible and/or unlawful interventions.

The contents of these complaints reflect people's increasing dependence on numerous social institutions and social conditions (media, money, mobility, education, law, mass consumption). The individual is often unable to cope with social pressures, which he/she experiences as a compulsion towards a kind of "standardisation" of his life. The stereotypical products of mass culture cannot fill the vacuum of loneliness which is a significant problem in some social groups (the older part of the population) or can mean a real sociopsychic risk even among people who (from the point of view of the social roles they occupy) should be the most active and successful members of society.

The complaints also reflect other sociopsychological pressures and their consequences: overwork, conflicting roles and related expectations, the experience of failure at work, in a marriage, in the family, in relations with friends and neighbours. The feeling of uncertainty is probably also increased by general social risks (uncertainty of unemployment, loss of job, uncertain living conditions and living environment).

The deinstitutionalisation and privatisation of the "former" social state has destroyed or at least broken up the network of previously stable sources of security. The individual has to rely above all on "private" networks of social support (relatives, friends, civil society organisations). When he/she does not have such a network, or when he/she loses it, he remains alone in relation to institutions whose functions and powers he/she often does not understand or interprets wrongly. Given their lack of social connections and the changed functioning of traditional rules, some people remain without stress absorbers such as family, children etc., and experience social changes much more directly, as personal losses or failures (loss of job, worsening health, retirement). Without "mediators" (shock absorbers), social and economic changes and contradictions, political events and legal frameworks are converted into personal distress and suffering. The transformation of the social into the personal, which usually takes place in the area of partner relationships and family life, and often marks and shapes it too, can be extremely burdensome for people who do not have anyone close to them who can help.

For this group of complainants, the ombudsman is not usually the "last resort" to which they turn after having exhausted all the other more traditional complaints procedures. Rather, he is the only interlocutor to occur to them in their magical expectations of a solution or satisfaction. These complainants not infrequently project onto the ombudsman their need for dialogue with someone who will respect them, be concerned and attentive towards them, and above all be honest and fair according to their personal and private criteria. Therefore they want the ombudsman to sort out relations with their children's partners, with former partners, or often even with an abstract "state" or "other people". Requests of this type sometimes degenerate into an insulting correspondence that does not

correspond to reality. It seems fairly reasonable to assume that some of these complainants need professional help, guidance or at least counselling, since their requests for intervention because of "electronic surveillance and manipulation", "dormice sent by the neighbours to destroy household appliances", "secret services from the current and former state" and so on suggest a distorted perception and understanding of reality.

Complainants only accept explanations of the powers of the ombudsman with difficulty and in a selective manner. Some complainants contact the same member of staff, who they usually recognise as "the only trustworthy person" at every possible opportunity and tell him/her about conversations they have had, the responses of strangers, their fears, thoughts and discoveries. Here the ombudsman's office takes on the role of a telephone advice line, a help service for the mentally distressed, a contact line for the lonely, and so on.

In the case of complainants with personal problems the central problem is the need for dialogue with someone who will confirm their view of life and problems of identity. We see a possibility here for work by non-governmental organisations and associations, volunteers and perhaps even self-help groups. But this would only be possible with adequate subsidies, professional supervision and monitoring, and above all an awareness that the existing network and method of work of CSDs fails to reach many people.

2.14. CHILDREN'S RIGHTS

As is the case with most of the powerless groups of the population, children tend to complain to the ombudsman more rarely than we might expect. Most of the cases that we can classify under the heading of children's rights are thus received from parents and other adults. In the case of, for example, prevention of contacts between one of the parents and a child, the parent believes that his/her rights are being violated. This is true, but it is the child who has a more serious need for contact. Children however usually remain silent and passively accept the fact. The basic approach of the Human Rights Ombudsman in all cases where children are involved is **the good of the child**.

The good of the child comes first!

When dealing with complaints and monitoring problems in the area of children's rights we observe irregularities which often derive both from existing practice and from domestic legislation. In contrast to the Convention on the Rights of the Child (hereinafter: KOP) and the Constitution of the Republic of Slovenia, which treat the child as an independent and autonomous legal subject, the ZZZDR regulates the child's legal position from the position that the child is above all, the object of protection. Thus it does not regulate the child's rights directly, but by defining the rights and obligations of parents, legal guardians and state bodies. We therefore need to change the child's legal position and the attitudes of society and the competent services, and give children the possibilities that are due to them, taking into account the provisions of the KOP. Given that some measures of the state, in particular CSDs, can be vitally important for children, children should be enabled the possibility of appeal and at the same time be offered suitable help and support. This is especially important in cases where, because of their own personal and emotional involvement, parents are not able to make a realistic judgement in the interest of protecting the rights and interests of the child. It will also be necessary to change the way the institutions work, given that they often expend more energy looking for reasons why something should not be done than in seeking solutions to problems.

The CSD responsible for this case showed an inability to make effective and reasonable decisions for the good of the young girl and, as is evident from the case described, the girl was only offered the possibility to exercise the rights that belong to her, taking into account the provisions of the KOP, after our interventions: she was not treated as a subject of rights, they did not take into account her opinion or wishes, they did not offer her sufficient information or the possibility to choose, they did not offer her representation, the procedure was slow, etc. Unfortunately, on the basis of the complaints we deal with, we can state that in this, as in many other cases there is an "ignorance", or lack of knowledge about the rights guaranteed to children by the KOP.

The child as the subject of rights

A child has the right to be considered by adults as a person with his or her own rights (both basic human rights and the child's own special rights). The legal position of the child must in principle be the same as the position of other subjects and only different in so far as the respecting of the child's personal capabilities and specific characteristics is involved. In addition to the rights of protection and security, the KOP above all emphasises autonomy or the right of the child to his or her own choice. In searching for various possibilities to help children in distress, it is all too rare for the child to be included in the addressing of the problem and thus to have the difference in his or her feelings and understanding of reality taken into account.

The right of the child to his/her own opinion

Article 12 of the KOP guarantees the child the right to his/her own opinion and imposes the obligation on adults to take this opinion seriously in all matters which affect the child. Even if this right is one of the best known provisions of the convention, it is still far from being suitably respected in Slovenia. There is too little active involvement of children in matters that affect them. At the same time our education system does not even train them to be able to express their opinion. The opinion of a child, if by chance someone asks for it, has a negligible weight in the decision-making process.

Exercising the function of representation of the child

In order to strengthen the position of the child or supplement his/her capacities, it is necessary to enable representation. The child as an independent subject is supposed to be entitled to special protection, not only in the parents-child relationship (in the case of collision between parents and children), but also in the parents-child-state relationship.

When dealing with complaints we often encounter extremely urgent problems from which it is evident that children are in serious distress, especially in cases where the interest of a child and his/her parents are at cross-purposes, and in cases where the parents are unable to, or are incapable of taking suitable care of the child (manipulation of the child during the period of deciding which parent the child will be entrusted to; prevention of personal contacts of the child with the parent he or she is not living with; domestic violence; problematic family relations; personal problems of the parents; sending the child to an institution or foster family, etc.).

In cases when it is evident that the interests of the child and the parents are at odds and the child urgently needs help, cooperation must be ensured with the help of a representative. Slovene legislation does not regulate satisfactorily the institution of appointing a child representative, although it is bound to do this by international legal documents. The convention, as an international legal document, can of course be applied directly, but such an application is unsuitable if there are shortcomings in the rules of procedure and when there are no suitably trained professional staff for this. Currently, in the appointing of a representative for a child, we can proceed from the possibility of representation under the first paragraph of Article 213 of the ZZZDR, but unfortunately CSDs hardly use this possibility. If they do, it is most often the function of the collision representative to ensure that the procedure is carried out in a legally correct manner.

The complaints we have dealt with show that professional staff very rarely opt for a collision guardian. They also make very different assessments of when the interests of the child and the parents are in opposition to each other. If they do decide, this is often very late. There is also a lack of people willing and professionally trained to do this job.

It follows from the above that the establishment of the institution of representation of the child is urgent. This would best be done by an independent and autonomous body with an interdisciplinary staff of experts who would have, among other things, suitable knowledge for working with children and reaching an understanding with them.

The interests of the child

The central principle of the KOP – "in the best interests of the child" – is reflected throughout the provisions of the convention and emphasises that in all actions concerning children the best interests of the child shall be a primary consideration.

Unfortunately "best interests" are a very imprecise legal concept. For the most part the competent bodies still decide on the interests of the child by taking into account the opinion of adults, while the views, wishes and feelings of children receive too little consideration. The convention, however,

gives priority to the views and wishes of the child himself/herself. Naturally it is necessary to evaluate objectively the child's wishes, since the child is not always capable of identifying what is in his or her interests.

The promotion of children's rights and information

Rights do not have a special weight if children do not know them or if they are communicated to them in a way they cannot understand. The state has done too little to date to meet the obligations imposed on it by Article 42 of the KOP. Teaching about human rights is part of the school curriculum and some NGOs are also involved in it, but not in a sufficiently coordinated or planned way. For this reason the ombudsman is also involved in the promotion of human (children's) rights. A coordinated approach at the national level is urgently required.

The right of the child to contact with the parent he or she does not live with

In deciding on the personal contacts of a child with that one of his or her parents he or she does not live with, it is necessary to proceed from the rights and interests of the child and not from the rights of the parents. **The holder of the right is the child** and not the parents. It is therefore essential, in cases where as a result of unsettled relations between the parents an agreement on contacts is not possible, to include the child in the procedure of agreeing contacts. The child's opinion must be obtained in an appropriate way at the very beginning of the procedure, when the child still has his or her own opinion. Naturally the child must also be given appropriate information and the possibility to collaborate. The inclusion of the child also depends on his or her age and ability to understand the situation and express his or her own views. For this reason, the child must be strengthened if necessary by the help of an independent representative. It is a lot harder for parents to feign ignorance and manipulate the child if the child is included in the procedure in an appropriate way. At the same time, parents are considerably more open to dialogue in the period when it has not yet been decided to whom the child will be entrusted.

Unfortunately, as a result of the pressures of parents on the staff of CSDs, it can happen that the true interests of the child are neglected. In cases where, as a result of unresolved relations between the parents, agreement between them is not possible, the decision-making procedures are usually lengthy and thus often ineffective. The interests of the child are usually in such cases merely the excuse behind which all those involved tend to hide. During the procedure CSDs often fail to establish the actual circumstances for a decision in the child's interests, but instead, direct themselves towards disentangling relations between the parents, which draws out the procedure considerably. In such cases mutual relations merely worsen and consultation, which is supposed to be a condition for responsible parenting and quality contacts, is worse and worse – an abuse of the concept of the best interests of the child is in such cases more the rule than the exception.

As we have already pointed out in previous annual reports, in such cases it is essential to turn to mediation (an alternative method of settling disputes) as soon as possible. With the help of a mediator, the parents are supposed to come to understand the concept of responsible parenting and their own responsibility for the consequences which the child suffers if they do not take into account his or her wishes and their decision is not in the best interests of the child. Unfortunately participation in mediation is rare at CSDs because the centres do not have trained mediators.

The duty to act rapidly

The state must also take into account Article 7 of the MEKUOP, by which it undertook to ensure that procedures concerning the child would be rapid and without delays.

Procedures are often lengthy and for this reason are often ineffective. We have drawn attention to this in all previous annual reports, but the situation has not changed much. Decision-making at CSDs is slightly faster, although there are also exceptions involving unreasonable delays (see Case No. 13). Likewise the MDDSZ is still answering that because of the large number of appeals and the lack of staff, statutory deadlines are being exceeded (even by up to two years).

It is unacceptable that in cases where CSDs finally establish that contacts are in the interest of the child and their belief is justified, the ministry should take so long to decide on the appeal and in this way "support" the arbitrary decision of the parent who is violating the rights of the child by unjustifiably preventing contacts, and thus successfully exploiting the inefficient and lengthy administrative and judicial procedures in order to prevent all contact. The interest of the child, about whose right it is being decided in the procedure, requires a rapid and effective decision, especially if con-

tacts have been interrupted entirely. During this period the child experiences serious traumas, something that is often reflected later by a refusal of contacts even once they are finally permitted. At that point there is new pressure on the child, who is often confused by the manipulation and does not know what he or she wants. All this in the name of protecting the rights and interests of the child.

One solution would probably be the establishing of family courts or specialised divisions for this purpose, at which both the judges and counsels would have the knowledge necessary for dealing with this area. Procedures would thus be faster and more efficient, especially when immediately action is necessary. It would be sensible to compile a list of lawyers who have adequate knowledge and ability for this purpose.

Deprivation of the child because of the parents' lack of financial resources (poverty)

Of the numerous articles of the KOP relating to the social protection of the child, on reviewing existing national legislation regarding assistance to the child in the case of poverty, we would particularly mention Article 27: "the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development." We would like to point out that the state has undertaken to "ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures."

Children are strongly affected by changes of various types, particularly by those which have a negative influence on the family (unemployment, overwork of the parents, increasing social differences, break-up of the family community, various forms of dependence, housing problems, large families). Problems in this area are particularly difficult to resolve when coordinated action by individual services is necessary. Unfortunately, when dealing with complaints we find that in the case of a family with financial and housing problems it is easier to arrange the placing of child in a foster family than it is to help the family resolve its housing problem or employment situation.

The position of the child is an extremely sensitive barometer with which we can measure the effects of social and economic changes. Poverty often conditions not merely material deprivation but also social and intellectual exclusion. This claims a high price in children's development. This is of course of decisive importance, since it **frequently determines their later position** in society.

Maintenance

The complaints we deal with also reveal the numerous financial difficulties experienced by single-parent families as the result of non-payment of child maintenance by those who are liable to pay it. Lengthy judicial procedures to determine maintenance and frequently lengthy collection procedures cause serious financial difficulties, especially in cases of the break-up of families with several children. We have already discussed this in earlier reports and drawn attention to the obligation of the state deriving from Article 27 of the KOP and Article 56 of the Constitution of the Republic of Slovenia. Unfortunately, with the exception of the founding of the Guarantee and Alimony Fund, not much has changed.

Violence against and abuse of children and adolescents

The complaints we have dealt with relate to violence against children and adolescents in the family and violence at school. In the latter case they involve violence on the part of teachers or staff and peer violence. Violent acts, both physical and mental, on the part of school staff mean a violation of the child's right to protection from all forms of physical and mental violence and the right of every pupil who makes a mistake or breaks school rules to be treated appropriately in a manner that respects his or her human dignity. At schools, particularly secondary schools, there are too many cases of an inappropriate, belittling and offensive attitude on the part of some teachers towards pupils. There are also too many situations where pupils do not dare express their opinions to certain teachers or where teachers fail to respect a pupil's opinion, which may be different from the majority opinion, and try to take it into consideration as far as possible. Here the question is raised of the responsibility of all participants in the educational process, and in particular, the questions of discipline and the maintenance of authority without compulsion.

Peer violence involves intimidation and maltreatment which lasts a long time and can be verbal, mental or physical. Typically there is an imbalance in strength between victim and aggressor. Adults underestimate the phenomenon, recognise it too late or interpret it wrongly. The small number of

complaints from this field shows how complex it is both as regards its identification, contextualisation in the school environment and appropriate response to it. We see the reasons for this in the fact that school staff know too little about it, do not take it sufficiently seriously, see certain forms of violence among young people as "normal" and do not know how to act. Milder forms of peer violence such as extortion, teasing, name-calling, humiliation and stigmatisation are quite common among young people at school. What is worrying, however, is that those affected are not willing to talk about such experiences or to seek help. They feel humiliated and ashamed and do not want to admit either to themselves or to others that they are less resourceful and unable to defend themselves. This is something else which points to a crisis in the attitude of society as a whole towards violence, a crisis in the formulation of the views, methods and behaviour of school staff when peer violence is suspected, a crisis in forming a positive school climate and inadequate control of events in the school on the part of teachers, and indifference towards or even tolerance of violence (see Case No. 39).

The problem of the abuse suffered by the pupils of a school for the sake of the settlement of a dispute between the people of a village and the responsible representatives of the municipal council over the adaptation of a subsidiary school is a unique one. A problem which the adults were unable to settle in good time, within the context of the competent institutions, and in accordance with applicable procedures. The locals took the matter "into their own hands" on the basis of "public opinion", which before the events, had been skilfully shaped and altered by certain individuals. In the preliminary phase the competent and responsible officers permitted this and tacitly even encouraged this behaviour. The adults also skilfully involved the pupils of the local primary school in the events. We consider that in this case, the adults overstepped the border of the admissible, since they skilfully exploited the children for the sake of a public confrontation with their fellow citizens.

Violence against children and adolescents by showing films, advertisements and videos with violent, erotic and pornographic content, in an age when children and adolescents can watch television or use the Internet without supervision, is something which in the opinion of parents the Human Rights Ombudsman should deal with and demand from the state effective measures to prevent it. The explanations we have offered on dealing with complaints of this type draw the attention of parents to their rights and obligations deriving from Article 54 of the Constitution of the Republic of Slovenia and present them with possibilities for asserting their beliefs.

We have noted from some complaints demand for supervision of the free time of adolescents, something which is a frequent source of dilemmas and conflicts between adults (parents, teachers) and young people. In all societies people see youth as a problematic and crisis-filled stage of life. This supposedly gives various authorities and institutions the legitimate right to intervene in various ways in the life of young people, particularly when their behaviour deviates from general norms and expectations. Young people often experience their youth as a stigma and therefore their experience is similar to the experience of all stigmatised minorities. They occupy themselves with the problem of how to escape from it. It is clear that young people are compelled to ensure that "they become a problem", since this is the only way they can make adults take them seriously.

We also responded to the demands of parents for the ombudsman to propose to the National Assembly the adoption of regulations limiting the exposure of children by candidates for national and local functions in their pre-election campaigns.

Education of children with special needs on the basis of equal opportunities

In the past year we have seen an increase in the number of complaints from the area of the education of children and adolescents with special needs on the basis of equal opportunities. Under the applicable regulations, these children have the right to be educated along with their peers, but the state has not created all the possibilities for this or ensured adequate conditions. The philosophy of inclusive education, i.e. education "for all", on the basis of guaranteeing equal opportunities, has already been adopted as a priority social task for a number of years. Unfortunately in practice it is not the case. In one case the problem has been aggravated to such an extent that a child's parents are encroaching on his right to education and simply not sending him to school purely because the school does not have adequate facilities to implement a programme that is suitable for the child and which matches his abilities. Through their decision, public protests in a town square together with their child, and even threats of a hunger strike, the parents wish to force the state and the local government to provide all the conditions needed to allow the education of their child in the school they

wish to send him to together with his peers. They are not sending him to a school which meets the conditions for the education of their child (a primary school with an adapted curriculum) since they believe that this would make him even more stigmatised and deprive him of the opportunity to learn the social skills necessary for life in the "normal" world.

2.15. OTHER MATTERS

2.15.1. Legislative complaints

This area covers the handling of complaints submitted independently to the Human Rights Ombudsman, with the intention of the ombudsman intervening in the drafting of more appropriate legislative provisions, and do not relate to specific cases of rights violations. If a complainant proposes that the ombudsman secures amendment or supplementation of a certain regulation that prevents the complainant from exercising a specific right, such proposals are dealt with as part of what is otherwise the handling of specific cases, and not under "legislative complaints".

In the area of housing policy, we received two complaints relating to how the ownership of communal garages should be legally regulated, and to the provision of funds for construction of housing. We explained to the complainants that the Human Rights Ombudsman does not draw up legislative projects and solutions, and that this is rather the competence of state administration bodies, specifically the Ministry of the Environment, Spatial Planning and Energy. For this reason we suggested to the complainants that they acquaint this ministry with their deliberations, since at that very time the ministry was drafting a new housing act.

In the area of health care, we received a complaint to the effect that the ombudsman should be committed to the establishing of a special ombudsman of patient's rights. The ombudsman had already set out his position on this issue in the 2001 report, so he acquainted the complainant with the report and informed him that the Ministry of Health was drafting a proposed act on complaints procedures, which should also establish what are termed patient advocates in procedures of deciding on rights to health care. The ombudsman has already given an assessment of the working material for this act, and communicated his remarks to the proposer. The ombudsman did in fact assess the proposed act positively, since it will contribute to the more effective protection of patients' rights. In this, we regard as particularly significant, the principle whereby as a rule, disputes should be resolved where they arose, and only in a subsidiary capacity before specific bodies in more formal procedures. The Human Rights Ombudsman supports the adoption of this act, since we believe that through the implementation of appropriate procedures, the new legal arrangements will exert an important influence on the demands for establishment of special oversight bodies in the area of health care.

In November 2002 we received a complaint proposing amendment of the act governing pyrotechnic devices, with an appeal for the signing of a petition that should be submitted to the Slovenian National Assembly. We informed the complainant that we agree with her findings, that the use of pyrotechnic devices creates noise pollution, and frequently even threatens the health and physical integrity of humans and animals, so their use should be extremely restricted, or even entirely prohibited. We also acquainted her with our opinion that the National Assembly, as the legislative body, clearly took the view that there existed no reasons for the complete banning of the use of pyrotechnic devices, so in the Explosives Act (*Ur. list RS*, no. 96/02), which entered into force on 29 November 2002, it limited their use only to the period between 26 December and 2 January. We suggested to the complainant that she assess the appropriateness of the legal provisions in the light of these findings, and target any possible petition at the valid legal provision, while addressing her suggestions to the MNZ (Ministry of the Interior), which is competent for this area. We emphasised especially that the ombudsman supports all arrangements that will ensure for everyone the most peaceful possible life and work.

In this chapter we provide information that relates to the work of the Human Rights Ombudsman in 2002. We set out in detail the forms and methods of work, the ombudsman's contacts with state bodies, the media, civil society and other institutions, the operations of the ombudsman away from the principal office, work in the area of public relations, international cooperation, education, employees at the ombudsman's office and finances. We also provide statistical data on the work of the ombudsman for 2002 and compare this with previous years.

3.1. FORMS AND METHODS OF WORK

3.1.1. Public relations at the Slovenian ombudsman's office

The Human Rights Ombudsman does not have direct powers of executive action, but functions in an informal way and derives authority from his standing and position in society. He has a kind of moral power, and endeavours through his cautions, findings and guidelines to correct the functioning of official bodies and change people's entrenched views and values. His "power" is exercised primarily by informing and alerting the public, offering opinions and remarks both in writing and orally (special reports, applications for assessment of constitutionality, the annual report, newsletters, press conferences and so forth), since he does not have at his disposal formal legal means by which he might force state bodies into a specific mode of action.

The standing of the institution of ombudsman is essential for the successful fulfilment of its mission

The institution therefore requires a high level of standing to fulfil its mission successfully. Only institutions with a positive standing enjoy a level of trust on the part of citizens such that consequently, through systematic provision of communication, they gradually become prepared to change their opinions, views and even values. According to some research, a change in values can only be achieved after seven years of concerted and systematic communication.

Public relations experts are unanimous in the view that an institution's standing is its worth, its most precious asset, so it should be carefully managed, and communication is of key significance here. Without systematic communication with the internal and external public, the management cannot build either trust or standing.

What is an organisation with standing?

The concept of standing is frequently exchanged, or even equated with, the concepts of identity or image.

Broadly stated, identity is what in truth an organisation is. The identity of the ombudsman is created by all the employees through their work, and is in essence the way in which the ombudsman is presented to various groups of the public. We communicate what we are, what we do and what our stand is.

Image is the projection of identity into the minds of recipients, in other words the way in which the institution is presented to the outside, or the picture which an individual builds up about the institution. The formation of an institution's image is influenced primarily by its communication efforts, i.e. how it communicates. The very nature of the work conducted by the staff at the ombudsman's office is in essence communication. All the employees communicate, and the kind of target audience depends on the field of work. And for as many target audiences there are images of the institution. The job of the ombudsman's public relations department is to manage the institution's image in a planned way. But the image must be based on a real identity, since otherwise in the long term, this can cost the institution its standing.

We may speak of the standing of an institution when its image matches the values of the public with which we have a relationship. The more the public image ties in with the values of the public, the more the public trusts the institution. And in the managing of the institution's standing, all the employees must be involved, although it is primarily the management staff that are responsible for its management.

The primary aim of the work conducted by the ombudsman and his staff is the elimination of violations and the reduction of violations in all areas. We desire consistently less violations and consistently less complainants knocking at our door, something which would signify that the state is functioning well and that citizens are educated about their rights and know how to take care of themselves. Through the intention of going beyond merely resolving specific cases of violations and broadly educating the public, the need has become evident for planning communication and overcoming the still undefined or non-standardised situation in the area of public relations in the state administration and state bodies.

The need to overcome the still undefined situation in the area of public relations in the state administration

Public relations do not serve merely to ensure the public nature of the institution, in this case the Human Rights Ombudsman, but signify the communications support to fulfilling the fundamental tasks and agenda of the institution. In this area the ombudsman's office is pursuing the professionalisation of the public relations department. Through additional education (acquisition of the international certificate LSPR) and the envisaged different methods of work in the area of public relations, we are attempting to ensure even more effective and pro-active communication with all sectors of the public. And through the planned formulation of work strategies we will contribute our share in managing the standing of Slovenia's Human Rights Ombudsman. The components of the systematic management of the Human Rights Ombudsman institution's standing include the essential planned communication of the work of all staff at the ombudsman's office, since the standing of the institution is based in part on the positive results of the working efforts made by staff (rapid and effective identification of violations and clearly pointing them out, a high degree of sensitivity towards irregularities in public life, effective intervention to eliminate violations – all of this contributes to the effective fulfilment of tasks set and of the aims of the institution, and consequently to its higher standing). Management of standing, and communication of the work done by staff at the Human Rights Ombudsman's office has been in progress since the founding of the institution, and since 1996, a member of staff with professional expertise in public relations and international cooperation has, been especially empowered for public relations duties.

The need to communicate

The work of staff at the office has been and still is most extensively communicated through the legally prescribed annual reports to the National Assembly, and to a slightly lesser extent via press conferences and regular contacts with the media, state bodies and international and other audiences.

New corporate image of the HRO

The tangible manifestation of an institution's personality is its corporate image. This helps the public to formulate an awareness of the institution, helps them to call up the image of the institution and activate it or strengthen it, and ultimately to enhance the standing of the institution. It helps to create a feeling of order in the process of communication, increases its effectiveness and in this way helps to achieve strategic goals. For this reason in 2002, we devised a corporate image for the Human Rights Ombudsman (HRO) and in this way further enhanced its communications. The main purpose of this was:

- appropriately indicating the new pro-active orientation of the HRO;
- stressing the independence of the institution in relation to other bodies of the state administration, and indicating points of differentiation;
- strengthening the recognisability of the institution (recognisability essential also in international relations);
- strengthening people's expectations (increased "access" for marginalised and underprivileged groups, strengthened pro-active orientation).

3.1.2. Education about human rights

In addition to overseeing the work and actions of state and local institutions and bodies and of the holders of public authorisation, the ombudsman also intervenes to a somewhat greater extent where a person or body exercising authority acts disrespectfully or improperly towards an individual. In other words, the ombudsman acts also in the event of a violation of the rights of morality and good manners. But the ombudsman's work is also orientated towards prevention – by endeavouring to spread knowledge and awareness of human rights and to raise the legal and administrative culture, and in the long term to change the views and values of society.

Protection of children's rights

It makes sense to begin education about rights with children, and for this reason in 2002 the ombudsman devoted considerable attention to this target group. With the aim of strengthening children's rights and on the other hand intensifying education about children's rights, an expanded team of professional staff members started operating in May. At the end of the year a proposal was submitted to the National Assembly for the appointment of a fourth deputy ombudsman, competent for the social and other rights of children. In January 2003, on the proposal of the ombudsman the National Assembly appointed Mr. Tone Dolčič as the fourth deputy.

Special attention is devoted to the area of abuse, violence and discrimination, and to family relations. In May, together with the professional team, the ombudsman gave a press conference in Maribor highlighting certain cases of child sex abuse.

At the meeting of children's ombudsmen in Warsaw, the presentation of the Slovenian Human Rights Ombudsman attracted considerable attention, since in comparison with other such institutions that are entirely independent, the protection of children's rights in Slovenia is incorporated under the wing of the Human Rights Ombudsman. Children's ombudsmen in other countries function to a great extent in a generalised way, and do not become involved in individual complaints. They endeavour to raise public awareness, oversee the fulfilment of laws and also cooperation with non-governmental organisations. A team at the Slovenian ombudsman is also working towards these goals.

Full membership of ENOC

Efforts in the area of protecting children's rights bore fruit in October with full membership for the Human Rights Ombudsman in ENOC. During the annual meeting of the European Network of Ombudsmen on Children (ENOC) in Brussels, the Slovenian Human Rights Ombudsman was formally declared a new member of ENOC – acceptance of Slovenia into the network had already been confirmed in July 2002.

The ombudsman met regularly with children on various occasions over the year (12th Children's Parliament, Days of Curiosity and so forth), and in the autumn, like the year before, the ombudsman opened wide his doors to children and in direct talks with them became familiar with their problems. For the first time, and in cooperation with Bežigrad Grammar School, he organised the marking of the convention on the rights of the child entitled *Prepih pravic* ("Breeze of Rights"), where young people spoke about various subjects that affect them and trouble them, and had the direct opportunity to pose questions to the ombudsman on subjects related to their rights.

The education of children is of course vitally linked to the need for systematic education of parents and guardians, and for education of people in authority. The Human Rights Ombudsman is also striving for the education of other groups of society, particularly marginalised and underprivileged groups, but at the same time it is essential to secure systematic education of those holding authority and power, such as police officers, state officials and similar. According to the ombudsman's observations, education about human rights is for the moment being conducted most intensively and systematically in the ranks of the police, while education of public servants and others is also being provided. The ombudsman welcomes all efforts to raise knowledge and awareness about human rights (including on the part of non-governmental organisations), but he has observed an increased need for the formulation of a national strategy of education on human rights.

3.1.3. International relations

Increased need for the formulation of a national strategy of education on human rights

Precisely in the area of education in the broader sense, a shift came about in communication with international circles. In the first six years the institution had formed itself to the extent that the need was reduced for familiarisation with the experiences of other similar European and world institutions. The institution that has thus been formed is now to a large extent transmitting its own experiences to other countries, chiefly to the countries of Eastern and South-eastern Europe.

A shift also in communication with international circles

In 2002 the staff of the Slovenian HRO "sowed the seeds" of their knowledge at approximately seven educational meetings abroad (including Montenegro, Kosovo, Armenia, Russia and Bulgaria).

Education and gathering of experience demands work in new areas. Deputy ombudsman Jernej Rovšek, since 2001 empowered for the area of data protection, participated to this end in 2002 in three meetings on this subject.

Active education and exchange of experiences on the international level were also conducted in Slovenia. In February the ombudsman of Bosnia-Herzegovina, Frank Orton, shared with more than 20 representatives of Slovenian ethnic groups, his experiences from the time when he worked in Sweden as an ombudsman against ethnic discrimination. In the autumn, two groups of experts from the institution of the ombudsman in Kosovo took part in active education at the office of the Slovenian ombudsman.

As the fourth European director of the International Ombudsman Institute (IOI), the Slovenian Human Rights Ombudsman Matjaž Hanžek took part in October in a meeting in Tunisia of all the directors of this world organisation of ombudsmen, at which a new leadership was elected.

European ombudsmen in Ljubljana talk about independence

The high point of international activities in 2002 was without doubt the meeting of electoral members of the European section of the International Association of Ombudsmen. The ombudsmen spoke about the independence of the ombudsman institution in relation to politics, the civil sphere and the media, and about financial independence, while this meeting was a unique opportunity to present Slovenia as a country with a highly developed level of human rights observance. In marking Human Rights Day, the international gathering had the opportunity to meet with representatives of Slovenia's political leadership, and also to meet representatives of non-governmental organisations, and in Ljubljana they were also hosted by then Slovenian President Milan Kučan and by the President of the National Assembly, Borut Pahor. (More on the meeting at http://www.varuh-rs.si/cgi/teksti-slo.cgi/Show?_id=ioisrecanje1)

At the meeting in Ljubljana the European ombudsmen decided to entrust the editorial duties for the European Ombudsman Newsletter until further notice to the public relations department of the Slovenian ombudsman. In this way they enabled us to continue formulating a variety of content that will contribute to raising knowledge about human rights or will simply inform. One way or another, information is one of the key elements for the effective work of ombudsmen and plays a key role in managing the standing of the institution.

Informing and educating international circles has also been made possible via the ombudsman's website, http://www.varuh-rs.si.

3.1.4. Relations with the civil society

A special place in the relations the ombudsman maintains with various circles is occupied by representatives of the civil society. The civil society is composed of various organisations and individuals that channel the participation of citizens with various aims and in different areas and dimensions (local, regional, national and international). The majority of these organisations, associations and societies require of those exercising power, who are authorised to implement the public good, to put their demands into practice. In the role of a kind of intermediary, the ombudsman strives to ensure an effective relationship between the civil society and those holding authority. Frequently the

ombudsman operates in the same areas as civil organisations (such as advocating the rights of same-sex partners, refugees and Roma), but the methods of operating can be entirely different.

Civil organisations can also be a very efficient source of information and experience. A view of burning social problems and possible human rights violations from the aspect of affected groups allows the ombudsman to use this information as an argument in bringing pressure to bear on the holders of authority that should not permit such violations. It also affords him a greater awareness of social realities.

At the same time, via non-governmental civil organisations, the ombudsman can more easily get through to groups or individuals from what are termed vulnerable or at-risk groups, the underprivileged or marginalised, that encounter the violation of their rights every day, but do not know what possibilities for resolving their problems are offered by the institution of the ombudsman. And on this level they are then given the prospect of learning about their rights and the promotion of human rights. Cooperation with the civil society (exchange of opinions, information and dialogue) therefore facilitates the opening up of specific issues that are frequently of marginal importance for the authorities, but which indicate discrimination against certain groups and non-observance of their rights.

Ombudsman "amplifier" of marginalised voices

The ombudsman's relations with the civil society do not involve a relationship of "advocate" and "injured party". The ombudsman is not an advocate for the civil society, but in as far as his judgement and powers allow, he strives to ensure observance and fulfilment of rights and freedoms in all spheres of society. It is true, however, that in many cases the voice of the civil society against the holders of authority is weak or barely audible, so in such cases, the ombudsman functions as a kind of "amplifier". That is, of course, if the situation involves cases of discrimination, non-fulfilment or violation of the rights of these groups and so forth.

The ombudsman therefore continued last year to maintain his relations with various organisations from the civil sphere, and with marginalised and underprivileged groups.

He strove with the representatives of non-governmental organisations to achieve a solution to the accommodation problems of the refugees at the Vič Accommodation Centre in Ljubljana. He participated as a kind of mediator in talks between the representatives of the refugees at the centre and the government's refugees office, and he also discussed the issue with the representatives of the UN High Commissioner for Refugees, Amnesty International, the *Pregnanci* (Exiles) project under the KUD France Prešeren centre and the Political Laboratory association. He also spoke about the refugee issue at a round table entitled *Ustavimo tujce* (Let's Stop the Foreigners), organised by the Jesuit refugee service and the St. Joseph Spiritual Centre.

He also intervened as a mediator in the dispute between the Slovenian Railways (SŽ) and the AC Molotov group, and on the request of the outgoing managing director of SŽ Igor Zajc he enabled a dialogue between the parties in dispute.

He met with the representatives of religious communities in Slovenia and became familiarised with the situation in this area. Despite his intervention at the relevant instances of authority and those competent to resolve what has been for years the burning issue of construction of an Islamic centre in Ljubljana, plus cooperation with numerous media, both domestic and international, in order to raise awareness about this problem, again in 2002 there was no discernible increase in political will for a solution. The claim of discrimination was also made at a meeting with the ombudsman and the ombudsman of Bosnia-Herzegovina, Frank Orton, by representatives of ethnic communities in Slovenia. In 2002 the unresolved Roma issue (including election of Roma councillors to municipal councils, the autochthonous issue), the problems of the people deleted from the Civil Register, the disabled, discrimination against special needs children, groups being treated for addiction and so forth called out for the ombudsman's active participation and alerting the holders of authority as to what should be done.

Intolerance is not acceptable

In 2002 the ombudsman pointed out several times that in the long term, the negative manifestations of xenophobia had a positive effect, since discussion of this made possible the awareness that

xenophobia was not socially acceptable. Intolerant reactions that are latent (such as in the guise of a Eurovision song) indicate that individuals are slowly becoming aware that the open expression of intolerance is not socially appropriate.

The subject of discrimination against marginalised and underprivileged people was also addressed at the Slovenian ombudsman's office in October by representatives of the European Commission against Racism and Intolerance (ECRI).

3.1.5. Relations with the media

The ombudsman can secure respect for legality and human rights only through close cooperation with the media, and Human Rights Ombudsman Matjaž Hanžek spoke about this in detail at a meeting of European ombudsmen in December in Ljubljana.

Education about rights – be it as a planned project or simply as a by-product of resolving and dealing with individual complaints – establishes a strong tie between the ombudsman and the media. By means of the media, the Human Rights Ombudsman can not only familiarise the public with his discoveries of the poor functioning of the state, but can also spread awareness among people about their rights and ultimately offer them pointers on how to act in their contacts with institutions.

Media violating human rights

One ultimate danger of excessive links between the HRO and the media lies in the fact that the media can – and some do – violate human rights themselves. This is especially so in the spreading of hostile language, intolerance, discrimination or violation of personal integrity, excessive involvement in an individual's privacy through the publication of personal life stories or the publishing of personal data. Sometimes they infringe the ethics of public speech when they publish the names of suspected perpetrators of crimes before they are convicted, and in this way they can brand such people for the rest of their lives, which is especially problematic if in subsequent proceedings it turns out that the person was innocent. And apologies or corrections made later, perhaps several years later, do not have anything like the weight carried by the publication of a suspected crime.
Another slippery area requiring from the media very thorough consideration, is reporting on cases in which children are involved. In such reporting it is essential to safeguard the interests of children and protect them to the greatest possible degree.

In such and similar cases the ombudsman therefore acts in the role of media watchdog. In Slovenia the ombudsman has no legal authorisation in relations with the media, but he may draw attention to social injustices that are caused occasionally by the media. It is in fact an excessive mutual connection between the ombudsman and the media that can diminish the effectiveness of the ombudsman's checking of the media as human rights violators.

Protecting the media's freedom of expression

The important work that the ombudsman has in relation to the media includes the protection of the media's freedom of expression. Every governmental authority desires the least monitoring possible, and therefore the most compliant media possible. In its radical form this can also appear as censorship. And here too it is the job of the Human Rights Ombudsman, to protect freedom of expression.

The ombudsman also worked in 2002 to secure a resolving of the case of a Koroška journalist, he intervened in the case of a journalist in connection with procedures at the Ljubljana Bežigrad police station, when police officers used unjustified and illegal means of restraint against a journalist, handcuffing him and taking him to the station, and pointed out the controversial prior disqualification of a former parliamentary deputy and before that a journalist. In this last case, Peter Božič wrote an open letter to the ombudsman expressing his protest against the view of the most vocal members of the journalists' society at RTV Slovenija, whereby a former parliamentary deputy was not appropriate as an editor or journalist for a current affairs programme. The ombudsman pointed out that on the constitutional level any job was open to anyone under equal conditions (paragraph three, Article 49 of the Constitution). The constitution also guarantees to everyone the right to vote and be elected (paragraph two, Article 43), in other words the right also of a journalist to run for a seat in the National Assembly. The constitution prohibits discrimination, including for political or other beliefs (paragraph one, Article 14). The ombudsman further established that on the basis of the

above it may be concluded that no one, including former deputies, may be limited in their right to work at any job, including that of editor or journalist. From the constitutional aspect the prior disqualification of an individual as not being appropriate for journalistic work is therefore disputable. Infringements of the professional criteria and principles of the journalistic code of ethics at RTV Slovenija channels or the Journalists' Code of the Slovenian Society of Journalists may be determined only in connection with specific actions of a journalist or editor, in other words, owing to actions already performed by an individual in that job, the ombudsman pointed out.

In cooperation with the media in 2002, the ombudsman drew attention to the issue of sex abuse, violence, police work, the problems of the people deleted from the Civil Register, refugees, and those with same-sex orientation, and he also spoke about the urgent need for access to education for children with special needs, and about discrimination against people with mental disturbance.

He also pointed out that the proposal from the USA to Slovenia for the signing of a bilateral agreement whereby the signatories would provide mutual recognition of immunity from the General International Criminal Court, was contrary to the Declaration of Human Rights.

Through consistent alerting of the public to the issue of constructing a mosque in Slovenia, and through public and media supported debates on intolerance and xenophobia (on the selection of the Eurovision song, the issue of electing Roma councillors to municipal councils and so forth) these phenomena are acquiring the increasingly hard veneer of socially unacceptable behaviour and actions.

Examining the content of the media offers a further insight into certain matters with which the ombudsman and his staff are contending, so to this end an "infobase" was set up, in which we collect a variety of media content. In 2002 the work of the ombudsman was covered by 407 media pieces, and his thoughts on specific issues could also be followed every fortnight in his column in the newspaper Dnevnik.

3.1.6. Relations with state and other bodies

The ombudsman's relations with state bodies, local community bodies and the holders of public authorisation are not changing and being reorientated in the same way that, say, international relations are. The ombudsman has maintained more or less the same cooperation with such bodies over the years, geared towards creating a society with the least possible or indeed no violations of human rights and fundamental freedoms. Cooperation on the preventive/promotional and also curative levels was also pursued intensively in 2002. Talks were continued on improving the work of the state administration. The ombudsman pointed out to the representatives of competent ministries certain problems of minorities, refugees and the people deleted from the Civil Register. He also cooperated intensively with the most senior representatives of the police, also aiming his experience and knowledge at education among the ranks of the police force. He met with the highest representatives of the judicial branch of power and the public prosecutors, and talks away from the principal office also provided the opportunity to meet with Slovenia's mayors.

Urgent formulation of anti-discrimination policy

On all levels of cooperation with state representatives the ombudsman also spoke about the formulation of a standardised anti-discrimination policy or the formation of a single state body which would watch over non-discrimination, something he also incorporated into his proposal upon the reading of his annual report in parliament in November 2002.

As a rule, state bodies accommodate the ombudsman's proposals, opinions and findings in resolving problems, and they are prepared to talk. Where there are possible communications breakdowns with some bodies, after several warnings the ombudsman then exerts pressure in public.

At the January press conference the ombudsman established that the majority of state bodies were taking his intervention seriously, while some do not seem to care less (for instance the Litija Municipal Council did not respond to four written interventions on behalf of a local resident) or do very little. At that time he also admonished the public prosecutors for not responding to his alerts about the non-fulfilment of final judicial rulings on the reinstatement of illegally fired employees to their

jobs. And he expressed concern about the "legal loopholes" that are being filled with illegalities or inaction where action is urgently needed, and non-observance of regulations and laws, which frequently goes unpunished.

At the same press conference he advised the public that in a special report on the issue of implementing regulations he had drawn attention to the excessively frequent adoption of laws which in practice could not be implemented, since the relevant implementing regulations still had not been adopted. The ombudsman proposed to the government that it take the necessary steps to put right the current situation, and in future to ensure better work in determining, drafting and issuing of implementing regulations at all levels.

In 2002 the ombudsman sent a special report to the National Assembly on tenants in denationalised housing. In this report he determines that the state, which has created the current situation in this area, in other words in its name chiefly the government and the Ministry of the Environment, has not in the decade since the problem arose, found any satisfactory solutions to the permanent conflict between tenants and owners of denationalised housing. This conflict came about owing to the insufficiently clearly thought out legal arrangements from 1991. By writing a special report on this problem, the ombudsman wished to stimulate a debate, and primarily to seek avenues for resolving the problem, so he proposed that the report should be studied by the competent and affected working bodies at the National Assembly, which should charge the government with drafting suitable legislative and other measures in observance of the ombudsman's proposals. The National Assembly had still not examined the report by the end of 2002.

The government also took action following the ombudsman's alert at a press conference in March that the January decision to reduce (by one per cent) the right of direct budget users to spending for wages in the adopted budget for 2002 violated the Public Finances Act.

The government also accommodated the ombudsman's proposal that it study the consequences of enacting amendments and supplements to the Health Insurance Act from the aspect of ensuring equal opportunities, or rather equal access to health services, as well as from the aspect of the principles of a state based on law, which require the provision of rights by law and not through implementing regulations.

The ombudsman had received several complaints proposing the assessment of suitability of the legal provisions enacted in December 2001 with the revised version of the Health Care and Health Insurance Act. In the ombudsman's opinion, insured persons were not familiarised in an appropriate way with the changes to their rights under compulsory health insurance. The ombudsman expressed the opinion that contrary to the principles of the national programme of health care up to 2004, the revised version of the law had significantly worsened the prospects of equal access to health care services, since it had abolished the right to reimbursement of transport costs as a general right of all insured persons, and had limited this to only specific categories of insured persons.

3.1.7. Relations with complainants

Parallel to raising awareness about human rights, and alerting society to possible violations, another central task of the ombudsman remains the resolving of specific complaints. Complainants are individuals or groups that have approached the ombudsman with their problems by means of written complaints sent to him, or directly in talks at the ombudsman's office or at some other location.

In 2002 at the principal office the ombudsman discussed specific problems personally with a little over 100 complainants. He also dealt with people's hardships in conducting his work away from the principal office. Along with his staff he visited Celje, Koper, Murska Sobota and Radovljica, and spoke with around 90 complainants.

We mention as a special form of operation away from the principal office the visits to prisons and other premises holding persons whose liberty has been deprived, and other establishments with

restricted movement. Visits are aimed at viewing the premises and becoming familiarised with the living conditions. In 2002 the ombudsman and staff visited the prisons at Dob and Murska Sobota, and got to know the conditions in the Idrija psychiatric hospital.

Anyone interested can obtain information about the informal and – for complainants – free procedure on the free telephone number 080 15 30 or on the regular local number 01 475 00 50, or they can read more about it on the ombudsman's web page http://www.varuh-rs.si or in the 2001 annual report, which can also be found on the same website (under *Poročila in publikacije* – Reports and Publications).

3.1.8. Staff

At the end of 2002, the ombudsman's office employed 31 staff (including the ombudsman and three deputies); this is three more than in the previous year. A total of 21 staff members hold university degrees, including one doctor of science, three masters of science, while three employees have professional tertiary education, two employees have college level and three secondary education, and one employee has completed the abridged secondary education programme. As in the previous year, we again enabled students to perform their compulsory practical placement work. A third-year student from the Social Sciences Faculty did three weeks of practical work, and under the aegis of the European Law Students Association ELSA, we enabled a fourth-year law student from Montenegro to do two weeks of practical work.

The Faculty of Law at Ljubljana University and the Human Rights Ombudsman signed a statement of cooperation on the project "Legal Consulting Room for Refugees and Foreigners" (statement), on the basis of which in the 2002 academic year they began cooperation on a project which the Faculty of Law has been implementing for three years within the administrative science department. In line with the statement, the ombudsman organised and conducted the programme of practical work for two students, within a framework of four hours a week from November 2002 to the end of April 2003. The mentors for the practical work of the consulting room were professional staff members. In cooperation with the Faculty of Law, we organised a programme of practical work for each student, and the mentors, who provided professional guidance for the students in their work, helped them and monitored their progress.

3.1.9. Other

With the aim of presenting the work of the Slovenian Human Rights Ombudsman to the ombudsmen of other countries, related institutions and other professional circles working in the area of human rights protection abroad, this year again we produced a summary of the report on the ombudsman's work in English. The ombudsman's office also produced four issues of the publication of European national ombudsmen – the European Ombudsmen Newsletter – which the ombudsman's office has been producing since February 1999. Texts are accessible on the English version web pages of the Human Rights Ombudsman at http://www.varuh-rs.si. Each edition of the publication was produced in 150 copies.

The annual meeting of electoral members of the European section of the International Association of Ombudsmen, which was organised by the Human Rights Ombudsman, was also linked to the traditional reception marking Human Rights Day. In this way, while observing Human Rights Day the participants had the opportunity to meet representatives of Slovenia's political leadership, the church, universities and science, as well as representatives of non-governmental and other organisations and societies involved in human rights who attended the reception. They were also able to meet diplomatic representatives of other countries accredited in Slovenia.

On the proposal of the ombudsman, for the work of the institution in 2002 the National Assembly determined in the national budget financial resources in a total amount of SIT 301.467 million (EUR 1.309 million at the Bank of Slovenia exchange rate on 31 December 2002). Funds for wages were determined in a total amount of SIT 236.069 million (EUR 1.025 million) (total wages, contributions and other personal receipts), for material costs an amount of SIT 56.320 million (EUR 0.245 million), and for investments, taking into account the transfer of funds from the material costs item in an amount of SIT 1.366 million (EUR 5.932), we disposed of funds in the amount of SIT 10.439 million (EUR 45.334). In the wages item the spending of financial resources was higher than that legally apportioned, and actually amounted to SIT 258.178 million (EUR 1.121 million). The difference, amounting to SIT 22.109 million (EUR 960.227), was provided from assets of current budget reserves. The shortfall of funds for wages was a consequence of the non-observance of the ombudsman's suggestion regarding the amount of funds needed for wages from the Ministry of Finance in adopting the budget for 2002 and 2003. During the adoption of the budget for 2002 and 2003, and during the budget rebalancing, the ombudsman pointed out to the Ministry of Finance that funds amounting to SIT 236.069 million (EUR 1.025 million) would not suffice for paying wages in 2002. The higher spending on this item was a consequence of the fact that it was only at the end of December 2001 and in the first half of 2002 that employment at the ombudsman's office was taken up by staff who had been selected for vacancies published owing to the departure of certain employees to jobs elsewhere, owing to new jobs needed to cover the taking on of new responsibilities by the ombudsman in the area of the Personal Data Protection Act, and in order to fulfil decisions which on its reading of the fifth and sixth regular reports of the ombudsman were adopted by the National Assembly (within the ombudsman's office a group was formed to specialise in the protection of children's rights). The new Human Rights Ombudsman was elected only in 2001, more than six months after the first ombudsman's term had expired, and in this period five employees terminated their employment at the ombudsman's office, while the National Assembly adopted the national budget for 2002 and 2003 taking into account the number of employees as at 31 July 2001, when there were seven employees less working at the office than throughout 2002. In determining the extent of funds needed for wages, the Ministry of Finance did not take into consideration the suggestion regarding the level of funds for wages as proposed by the ombudsman, but determined the extent of funds for wages based on its own judgement, which was entirely unrealistic. This can also be seen in the budget for 2003, where we estimate the shortfall amounting to more than SIT 40 million (EUR 173.711).

Funds in the amount of SIT 56 million (EUR 243.195) were determined for the material costs item.

With the consent of the donor, we used the remaining SIT 341.000 (EUR 1.481) received from the Council of Europe for the organisation of the international seminar "Relationship between Ombudsmen and Judicial Bodies" to publish the proceedings of this seminar.

In the item Investments and Capital Maintenance of State Bodies we disposed of 10.439 million (EUR 45.334).

In 2002, spending on all items together (taking into account assets from the sale of real state property and donations amounting to a total of SIT 1.241 million (EUR 5.398) amounted to SIT 324.307 million (EUR 1.408).

3.3. STATISTICS

This subchapter presents statistical data on the handling of cases by the ombudsman from 1 January to 31 December 2002.

Definition of individual statistical categories

1. **Open cases in 2002**: cases opened between 1 January and 31 December 2002.

2. **Cases being handled in 2002**: in addition to *open cases* in **2002,** includes:
- *Cases carried over* – unconcluded cases from 2001, handled by the ombudsman in 2002.
- *Reopened cases* – cases where the handling procedure at the ombudsman was concluded as at 31 December 2001, but owing to new substantive facts and circumstances their handling was continued in 2002. Since this involved new procedures in the same cases, in such cases we did not open new files. In view of this, reopened cases are not counted in open cases in 2001, but simply in cases being handled in 2002.

3. **Closed cases**: this includes all cases being handled in 2002 which were concluded as at 31 December 2002.

Open cases

Table 4.4.1. shows the number of open cases in 2002 by individual area of work. Data for the period 1995-2001 are given to provide a comparison of individual years.

From 1 January to 31 December 2002 there was a **total of 2,870 open cases** (in 1995 there were 2,352, in 1996 2,513, in 1997 2,886, in 1998 3,448, in 1999 3,411, in 2000 3,095 and in 2001 there were 3,304), indicating a 13.1 per cent reduction of cases received compared to 2001.

As was the case for the previous years, in 2002 again the highest number of open cases related to:
- judicial and police procedures: 757 or 26.4 per cent;
- other cases: 572 or 19.9 per cent and
- administrative cases: 468 or 16.3 per cent of all open cases.

The table shows that the number of open cases in 2002 compared to 2001 increased mainly in the area of constitutional rights, from 86 to 163, representing an increase of 89.5 per cent (in order to provide a better comparison with previous years, the area of constitutional rights includes the rights of children and personal data protection).

It must be stressed that the above increase is a consequence of the formation of a new working group in the area of children's rights, and the employment of a staff member for the area of personal data protection, plus the new classification system whereby in 2002 these areas were handled separately from the area of constitutional rights. So the number of open cases in 2002 compared to 2001 in the area of children's rights grew from 4 to 60, and in the area of personal data protection from 20 to 43.

On the other hand the greatest reduction in open cases from 2001 to 2002 may be observed in the areas of restriction of personal liberty (42.1 per cent drop), housing (30.7 per cent drop) and social security (30.1 per cent drop).

A graphic presentation of the comparison between the numbers of open cases by individual area of work in the period 1996-2002 is given in illustration 4.4.1.

AREA OF WORK	OPEN CASES														Index
	1996		1997		1998		1999		2000		2001		2002		
	No.	Share %	No.	Share %	No.	Share %	No.	Share %	No.	Share %	No.	Share %	No.	Share %	(02/01)
1. Constitutional rights	37	1.5	43	1.5	58	1.7	45	1.3	35	1.1	86	2.6	163	5.7	**189.5**
2. Restriction of personal liberty	145	5.8	128	4.4	213	6.4	174	5.1	166	5.4	190	5.8	110	3.8	**57.9**
3. Social security	302	12.0	397	13.8	404	12.1	409	12.0	432	14.1	472	14.3	377	13.1	**79.9**
4. Labour law cases	88	3.5	138	4.8	221	6.6	217	6.4	157	5.1	202	6.1	150	5.2	**74.3**
5. Administrative cases	521	20.7	663	23.0	697	20.8	635	18.6	534	17.5	523	15.8	468	16.3	**89.5**
6. Judicial and poli. procedures	761	30.3	776	26.9	881	26.3	946	27.7	990	32.4	941	28.5	757	26.4	**80.4**
7. Environment and spac. planning	75	3.0	71	2.5	56	1.7	97	2.8	84	2.7	130	3.9	96	3.3	**73.8**
8. Commercial public services	33	1.3	26	0.9	37	1.1	72	2.1	37	1.2	67	2.0	58	2.0	**86.6**
9. Housing cases	141	5.6	126	4.4	158	4.7	105	3.1	116	3.8	150	4.5	119	4.1%	**79.3**
10. Other	410	16.3	518	17.9	623	18.6	711	20.8	508	16.6	543	16.4	572	19.9%	**105.3**
TOTAL	**2.513**	**100**	**2.886**	**100**	**3.448**	**100**	**3.411**	**100**	**3.059**	**100**	**3304**	**100**	**2870**	**100**	**86.9**

Table 4.4.1.

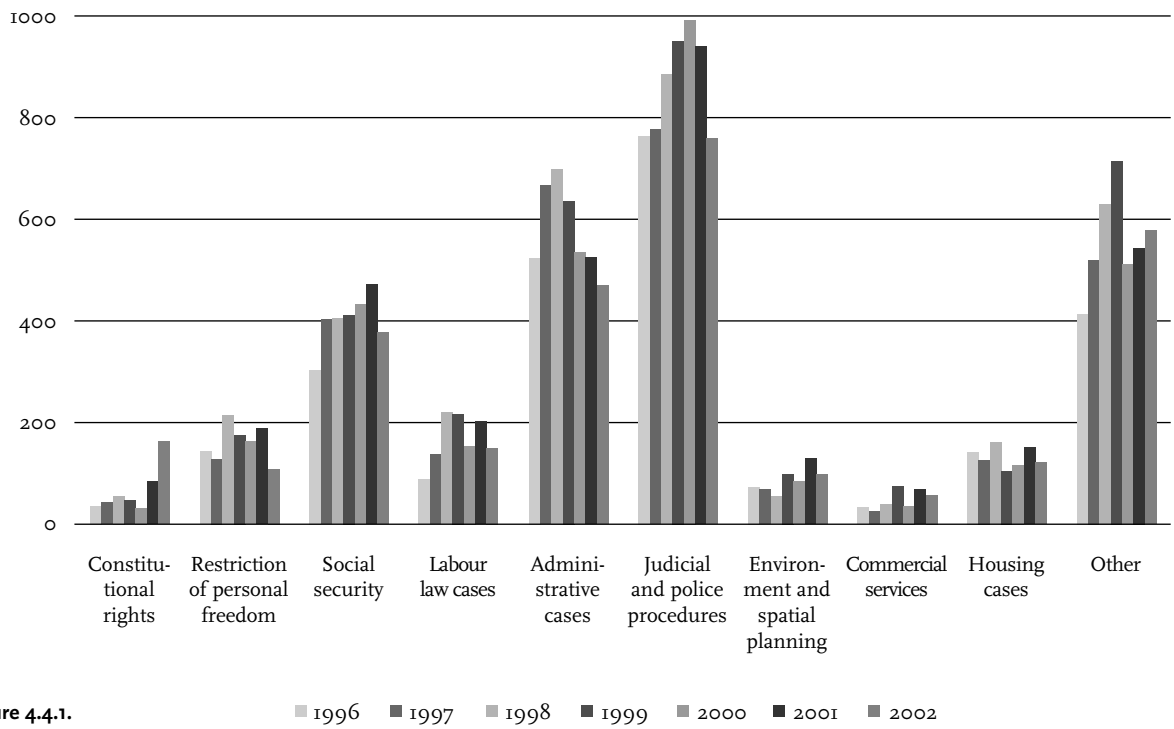

Figure 4.4.1.

Cases being handled

Table 4.4.2. presents data on the total number of cases being handled by the ombudsman in 2002 by individual area of work. As we have said, cases being handled include cases opened on the basis of complaints in 2002, cases carried over for handling from 2001 and cases reopened in 2002.

The table shows that in 2002 there was **a total of 3,490 cases being handled**, of which:

- 2,870 cases were opened in 2002 (82.2 per cent);
- 487 cases were carried over from 2001 (13.9 per cent), and
- 133 cases were reopened in 2002 (3.9 per cent of all cases being handled).

The largest number of cases being handled in 2002 were in the areas of:

- judicial and police procedures (925 cases, or 26 per cent);
- other cases (648 cases or 18.6 per cent) and
- administrative cases (632 cases or 18.11 per cent).

A detailed presentation of the number of cases being handled in 2002 by individual area of work is given in the table below.

AREA OF WORK	NUMBER OF CASES BEING HANDLED				Share by area of work
	Open cases 2002	Carried in over from 2001	Cases reopened in 2002	Total cases being handled	
1. Constitutional rights	73	12	-	85	2.4 %
2. Restriction of freedom	110	16	8	134	3.8 %
3. Social security	377	66	25	468	13.4 %
4. Labour law cases	150	21	3	174	5.0 %
5. Administrative cases	468	124	40	632	18.1 %
6. Judical & police	757	131	37	925	26.5 %
7. Environment & spat.	96	18	4	118	3.4 %
8. Comm. public services	58	10	1	69	2.0 %
9. Housing cases	119	13	2	134	3.8 %
10. Pers. data protection	30	12	1	43	1.2 %
11. Children's rights	60	-	-	60	1.7 %
12. Other	572	64	12	648	18.6 %
TOTAL	**2870**	**487**	**133**	**3490**	**100 %**

Table 4.4.2.

A comparison of the numbers of cases being handled by the ombudsman by individual area of work in the period 1996–2002 is given in Table 4.4.3.

Table 4.4.3. indicates that in 2002 there were **3.6 per cent less cases being handled** compared to 2001 (3,490 in 2002 and 3,630 cases in 2001). The number of cases being handled fell compared to 2001 mainly in the areas of:

- restriction of personal liberty: from 206 to 134 cases, which is a 35 per cent reduction, and
- labour law cases: from 213 to 174 cases, which is an 18.3 per cent reduction.

AREA OF WORK	CASES BEING HANDLED														Index
	1996		1997		1998		1999		2000		2001		2002		
	No.	Share %	No.	Share %	No.	Share %	No.	Share %	No.	Share %	No.	Share %	No.	Share %	(02/01)
1. Constitutional rights	63	1.6	54	1.4	65	1.6	53	1.3	38	1.0	90	2.5	188	5.4	208.9
2. Restriction of personal liberty	200	5.0	179	4.6	260	6.5	227	5.6	217	6.0	206	5.7	134	3.8	65.0
3. Social security	469	11.8	528	13.7	487	12.2	478	11.7	493	13.6	549	15.2	468	13.4	85.2
4. Labour law cases	157	3.9	181	4.7	246	6.2	233	5.7	180	5.0	213	5.9	174	5.0	81.7
5. Administrative cases	868	21.8	855	22.2	852	21.4	831	20.4	675	18.6	591	16.3	632	18.1	106.9
6. Judical and police procedures	1.036	26.0	1.086	28.2	1.073	27.0	1.118	27.4	1179	32.5	1041	28.8	925	26.5	88.9
7. Environment & spatial planning	122	3.1	119	3.1	83	2.1	121	3.0	108	3.0	143	4.0	118	3.4	82.5
8. Commercial public services	49	1.2	38	1.0	46	1.2	84	2.1	45	1.2	68	1.9	69	2.0	101.5
9. Housing cases	264	6.6	178	4.6	185	4.6	141	3.5	130	3.6	154	4.3	134	3.8	87.0
10. Other	753	18.9	636	16.5	683	17.2	788	19.3	565	15.6	564	15.6	648	18.6	114.9
TOTAL	3.981	100	3.854	100	3.980	100	4.074	100	3.630	100	3.619	100	3.490	100	96.4

Table 4.4.3.

Figure 4.4.2. presents the shares of cases being handled by the ombudsman by individual area of work in 2002.

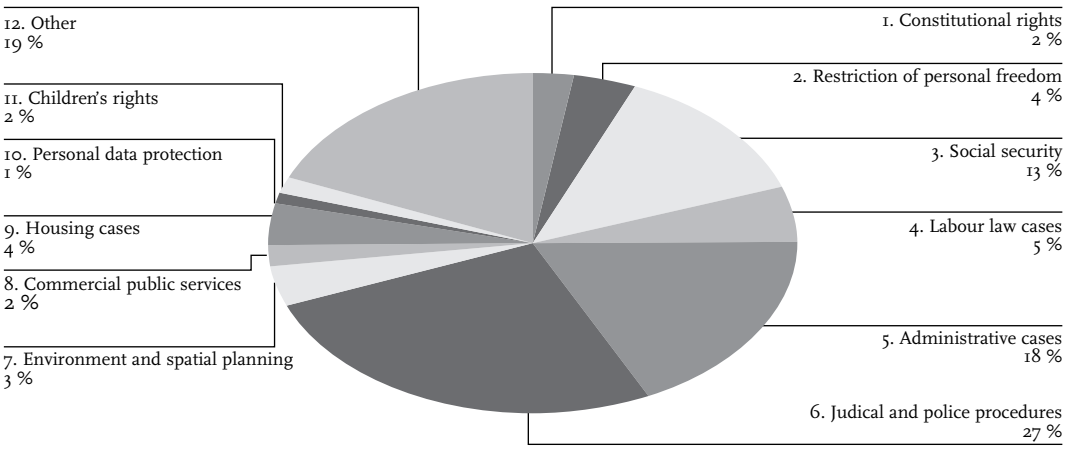

Figure 4.4.2.

Cases by state of progress

State of progress in handling of cases

1. **Closed cases**: cases dealt with and concluded as at 31 December 2001

2. **Cases being resolved**: cases in the process of being resolved as at 31 December 2001

3. **Cases pending**: cases where on 31 December 2001 we were awaiting a response to our enquiries or some other action in the process

Table 4.4.4. shows a comparison between the state of progress in the handling of cases at year end, from 1996–2002.

In 2002 there was a **total of 3,490 cases being handled**, of which as at 31 December 2002 a total of **3,087, or 88.5 per cent** of all cases handled in 2002, **had been closed**.

A remaining 403 cases were still being handled, or 11.5 per cent, including:

- 262 cases pending and
- 141 cases being resolved.

Table 4.4.4.

SATE OF PROGRESS ON CASES	OPEN CASES														Index
	1996 (as at 31.12.1996)		1997 (as at 31.12.1997)		1998 (as at 31.12.1998)		1999 (as at 31.12.1999)		2000 (as at 31.12.2000)		2001 (as at 31.12.2001)		2002 (as at 31.12.2002)		(02/01)
	No.	Share %	No.	Share %	No.	Share %	No.	Share %	No.	Share %	No.	Share %	No.	Share %	
Closed	3.282	82.4	3.442	86.7	3.505	88.1	3.727	91.5	3.443	94.8	3.132	86.5	3.087	88.5	**98.5**
Being resolved	535	13.4	308	8.0	261	6.6	187	4.6	61	1.7	308	8.5	141	4.0	**45.7**
Pending	164	4.1	204	5.3	214	5.4	160	3.9	126	3.5	179	5.0	262	7.5	**146.4**
TOTAL	**3.981**	**100**	**3.854**	**100**	**3.980**	**100**	**4.074**	**100**	**3.630**	**100**	**3.619**	**100**	**3.490**	**100**	**96.4**

Closed cases

Table 4.4.5. shows the number of closed cases by area of work in the period 1996-2002. In 2002 there was a total of **3,087 cases closed** (1996 3,282, 1997 3,442, 1998 3,505, in 1999 3,727, in 2000 3,443 and in 2002 3,132), representing a **1.5 per cent reduction in the number of cases closed** compared to 2001.

Comparing the number of cases closed (3,087) with the number of cases opened in 2002 (2,870) we may note that **in 2002 7.5 per cent more cases were closed than opened**.

AREA OF WORK	NUMBER OF CLOSED CASES							Index
	1996	1997	1998	1999	2000	2001	2002	(01/02)
1. Constitutional rights	54	48	57	50	33	67	155	231.3
2. Restriction of freedom	165	144	226	210	211	196	116	59.2
3. Social security	374	466	438	439	464	494	413	83.6
4. Labour law cases	124	157	234	216	179	192	156	81.3
5. Administrative cases	717	718	687	730	623	437	520	119.0
6. Judicial & police procedures	824	931	959	1.009	1.113	921	863	93.7
7. Environment & spat. planning	86	93	65	108	104	124	102	82.3
8. Comm. public services	39	30	38	79	43	58	59	101.7
9. Housing cases	223	156	161	132	124	139	123	88.5
10. Other	676	599	640	754	549	504	580	115.1
TOTAL	**3.282**	**3.442**	**3.505**	**3.727**	**3.443**	**3.132**	**3.087**	**98.6**

Table 4.4.5.

In area **1. Constitutional rights** there was a total of 188 cases handled in 2002, which relative to 2001, when 90 cases were handled, is an increase of 208.9 per cent. The increased number of complaints handled in this area may be ascribed to two new sub-areas, for which the ombudsman opened up a new classification, although in order to offer better comparability with previous years we have left them categorised under the area of constitutional rights. These are the areas of:

- *Children's rights* – where this year we handled 60 complaints (4 in 2001) and
- *Personal data protection* – where in 2002 we handled 43 complaints, and 20 in 2001.

Complaints in the area of constitutional rights represent 5.38 per cent of all cases handled.

The number of cases handled in area **2. Restriction of personal liberty** fell in 2002 by 35 per cent from 2001 (from 206 to 134). The reduction in the number of cases being handled in 2002 is a consequence of the 45.3 per cent drop in the number of cases involving detained persons (from 95 to 52) and a 33.7 per cent drop in the number of cases involving convicted persons.

In area **3. Social security** the number of cases being handled in 2002 fell by 14.8 per cent from 2001 (from 549 to 468). The largest share in the sub-areas was accounted for by cases related to provision of social security (202 cases, or 43.8 per cent) and cases related to pensions insurance (108 cases, or 23 per cent). We have observed a reduction in the number of cases being handled in the area of health insurance (from 39 to 30 – index of 76.9) and health care (from 49 to 37 – a 24.5 per cent fall).

In area **4. Labour law cases** the number of cases being handled in 2002 (174) relative to 2001 (213) fell by 18.3 per cent. The greatest reduction in the number of cases being handled can be identified in the area of employment (from 106 to 70 – 34 per cent drop) and the area of unemployment (from 50 to 36, representing a 28 per cent reduction). The number of cases being handled in the area of workers in state bodies rose by 46.9 per cent (from 32 to 47).

Area **5. Administrative cases**, with a total of 632 cases handled, representing a 6.9 per cent increase over 2001 (591), accounts for the second biggest contextually contained group of all cases handled by the ombudsman in 2002. It is important to emphasise the 47.4 per cent increase in the number of cases involving property law (from 19 to 28), and the 12.5 per cent reduction in cases relating to acquisition of Slovenian citizenship (from 72 to 63), which represents a further reduction in the number of cases handled in this area since 1996 (381 in 1996, 244 in 1997, 194 in 1998, 112 in 1999, 86 in 2000 and 72 in 2001).

As has been the case in all previous periods, in 2002 the largest number of cases handled by the ombudsman were again in area **6. Judicial and police procedures** (925 cases, or 26.5 per cent), which include cases relating to police, pre-trial, criminal and civil procedures, procedures in labour and social disputes, administrative judicial procedures, misdemeanour procedures, and cases relating to notaries and attorneys. The index of movements in the number of cases handled in 2002 relative to 2001 (88.9) shows an 11.1 per cent reduction from 2001 (1,041 in 2001 and 925 in 2002). The largest share of all cases being handled in this area is taken by cases in the sub-area of civil procedures (508 cases or 54.9 per cent of all cases in this area in 2002). In 2002 we observed a reduction relative to 2001 in the area of administrative judicial procedures (index of 47.5), procedures at labour and social courts (index of 70.9) and in the area of police procedures (index of 71).

In area **7. Environment and spatial planning** we have observed in 2002 a 17.5 per cent reduction in the number of cases being handled compared to 2001 (from 143 to 118). A marked reduction can be seen in the area of cases involving environmental encroachments, with the number of cases being handled falling from 91 in 2001 to 67 in 2002 (26.4 per cent drop).

The number of cases being handled in 2002 in area **8. Commercial public services** did not change significantly from 2001 (from 68 to 69 – index of 101.5). Within this area we may observe on the one hand an increase in cases handled in the area of municipal services (from 17 to 25 – index of 147.1), and on the other hand a reduction in cases relating to transport (from 14 to 10 – index of 71.4)

In area **9. Housing cases** the number of cases handled in 2002 fell relative to 2001 by 13 per cent (from 154 to 134). A reduction was observed in the number of cases in the area of housing circumstances (from 126 to 88) and an increase in the area of the housing industry (from 10 to 18).

In area **10. Other** we have categorised those cases that cannot be placed in any of the defined areas. In 2002 we handled 648 such cases, and relative to 2001, when 564 cases were handled, this represents a 14.9 per cent rise in the number of cases handled.

A detailed presentation of the number of cases being handled in 2001 and 2002 by area and subarea of work is given in Table 4.4.6.

AREA OF WORK	Cases handled 2001	Cases handled 2002	Index (02/01)
1. Constitutional rights	90	188	208,9
1.1 Children's rights	4	60	1.500.0
1.2 Minority rights	7	12	171.4
1.3 Equal opportunities	4	6	150.0
1.4 Ethics of public speech	6	8	133.3
1.5 Assembly and association	9	8	88.9
1.6 Security services	2	1	50.0
1.7 Personal data protection	20	43	215.0
1.8 Other	38	50	131.6
2. Restriction of personal liberty	**206**	**134**	**65.0**
2.1 Detainees	95	52	54.7
2.2 Convicts	92	61	66.3
2.3 Psychiatric hospitals	16	14	87.5
2.4 Military personnel	0	3	0.0
2.5 Youth homes	0	2	0.0
2.6 Other	3	2	66.7
3. Social security	**549**	**468**	**85.2**
3.1 Pensions insurance	118	108	91.5
3.2 Disability insurance	79	68	86.1
3.3 Health insurance	39	30	76.9
3.4 Health care	49	37	75.5
3.5 Social security	251	205	81.7
3.6 Other	13	20	153.8
4. Labour law cases	**213**	**174**	**81.7**
4.1 Employment	106	70	66.0
4.2 Unemployment	50	36	72.0
4.3 Workers in state bodies	32	47	146.9
4.4 Other	25	21	84.0
5. Administrative cases	**591**	**632**	**106.9**
5.1 Citizenship	72	63	87.5
5.2 Foreigners	91	84	92.3
5.3 Denationalisation	61	57	93.4
5.4 Property cases	19	28	147.4
5.5 Taxes	76	76	100.0
5.6 Customs	2	6	300.0
5.7 Administrative procedures	226	227	100.4
5.8 Public activities	35	69	197.1
5.9 Other	9	22	244.4

6. Judical and police procedures	**1.041**	**925**	**88.9**
6.1 Police procedures	131	93	71.0
6.2 Pre-trial procedures	23	22	95.7
6.3 Criminal procedures	92	101	109.8
6.4 Civil procedures	506	508	100.4
6.5 Labour and social court procedures	117	83	70.9
6.6 Misdemeanours	41	41	100.0
6.7 Administrative judical procedure	40	19	47.5
6.8 Other	91	58	63.7
7. Environment and spatial planning	**143**	**118**	**82.5**
7.1 Environmental encroachments	91	67	73.6
7.2 Spatial planning	26	35	134.6
7.3 Other	26	16	61.5
8. Commercial public services	**68**	**69**	**101.5**
8.1 Municipal services	17	25	147.1
8.2 Communications	19	21	110.5
8.3 Power	9	8	88.9
8.4 Transport	14	10	71.4
8.5 Concessions	2	2	0.0
8.6 Other	7	3	42.9
9. Housing cases	**154**	**134**	**87.0**
9.1 Housing circumstances	126	88	69.8
9.2 Housing industry	10	18	180.0
9.3 Other	18	28	155.6
10. Other	**564**	**648**	**114.9**
TOTAL	**3.619**	**3.490**	**96.4**

Table 4.4.6.

Open cases by region

Table 4.4.7. presents open cases by region and administrative unit. As in the previous year, in 2002 we categorised open cases by region and administrative unit taking into account the same basis for the geographical division of Slovenia (Ivan Gams: *Geografske značilnosti Slovenije*, Ljubljana, 1992, Mladinska knjiga). The criteria applied in categorising cases by individual administrative unit included the permanent residence of the complainant, and for persons in prison or being treated at psychiatric hospitals the place of their temporary residence (the location of the prison or hospital).

Among the 2,870 open cases in 2002, there were 57 relating to the residents of other countries (mostly from Croatia and FR Yugoslavia), and 69 anonymous applications or general files. We open general files where we are involved in handling broader issues and not just an individual problem. The handling of general files can begin on the ombudsman's own initiative, or on the basis of one or more substantively linked cases, indicating the specific broader problem.

The largest number of cases in 2002 were opened from:

- The Central Slovenian region (979 or 34.1 per cent of all cases opened in 2002) of which 746 cases were from the area of Ljubljana Administrative Unit;
- 373 cases or 13 per cent from the Podravje region, of which 225 were from the area of Maribor Administrative Unit, and
- 313 cases from the Savinja region (10.9 per cent of all cases opened).

Alongside the reduction in cases received from abroad, general files and anonymous applications, we observed in 2002 relative to 2001 the largest reduction in cases received from:

- the Dolenjska region: from 199 to 143 cases (28.1 per cent reduction) and
- the Koroška region: from 97 to 76 cases (21.6 per cent reduction).

The only increase in the number of cases received in 2002 relative to 2001 was observed from the Lower Posavje region, from 60 to 67 (11.7 per cent increase).

In Table 4.4.7. we present data on the number of cases per thousand inhabitants by individual administrative unit and region. We have taken as the source for the number of inhabitants by administrative unit the data from the Statistical Office of the Republic of Slovenia, obtained from the population census of 2002 as at 31 December 2002 (Population by Gender, Household, Dwellings and Buildings by Administrative Unit, Slovenia, Census 2002 – initial data).

The largest number of cases per thousand inhabitants was opened from:

- the Central Slovenian region: 1.9 cases – with the highest in Ljubljana AU, at 2.32 cases per thousand inhabitants, and
- the Coastal-Karst region: 1.82 cases – primarily Piran AU, where the ombudsman opened 2.09 cases per thousand inhabitants.

If we compare the influx of cases by administrative unit, we may establish that in 2002 the ombudsman opened the largest number of cases per thousand inhabitants from Trebnje AU (2.38) and Ljubljana (2.09), and the lowest number from Ilirska Bistrica AU (0.35) and Metlika (0.50). Regarding the data for Trebnje AU it should be noted that the open cases from this unit include the cases of those persons serving prison sentences at the prison of Dob pri Mirni that did not indicate a permanent address.

Figure 4.4.3. presents data on the influx of open cases in 2001 by region.

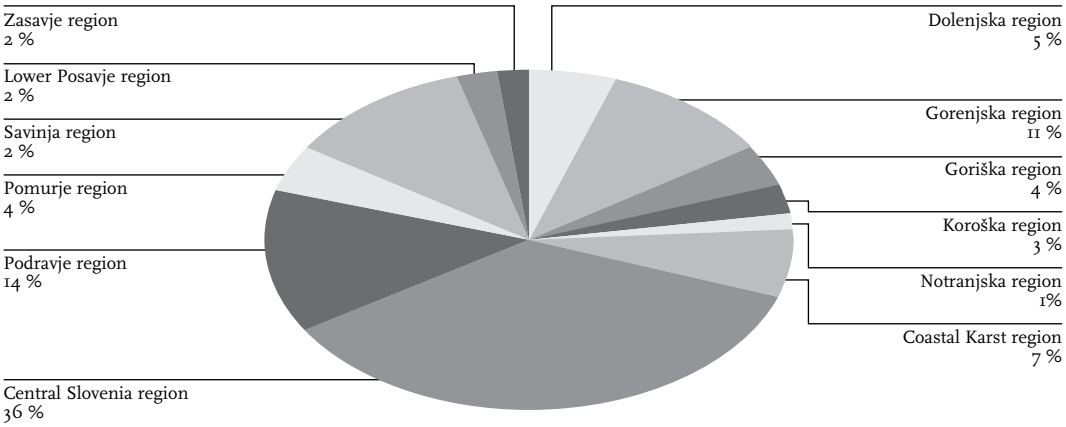

Figure 4.4.3.

REGION	2001	2002	Index (02/01)	No. cases/ 1000 inhabs.
Dolenjska region	**199**	**143**	**71.9**	**1.37**
Črnomelj	29	24	82.8	1.32
Metlika	5	4	80.0	0.50
Novo mesto	96	72	75.0	1.20
Trebnje	69	43	62.3	2.38
Gorenjska region	**291**	**289**	**99.3**	**1.49**
Jesenice	49	48	98.0	1.57
Kranj	119	116	97.5	1.56
Radovljica	61	61	100.0	1.79
Škofja Loka	41	37	90.2	0.92
Tržič	21	27	128.6	1.80
Goriška region	**112**	**109**	**97.3**	**0.93**
Ajdovščina	27	25	92.6	1.09
Idrija	11	13	118.2	0.77
Nova Gorica	66	59	89.4	1.02
Tolmin	8	12	150.0	0.61
Koroška region	**97**	**76**	**78.4**	**1.04**
Dravograd	6	6	100.0	0.68
Radlje ob Dravi	20	21	105.0	1.28
Ravne na Koroškem	40	32	80.0	1.22
Slovenj Gradec	31	17	54.8	0.80
Notranjska region	**65**	**37**	**56.9**	**0.74**
Cerknica	20	15	75.0	0.97
Ilirska Bistrica	14	5	35.7	0.35
Postojna	31	17	54.8	0.83
Coastal Karst region	**226**	**182**	**80.5**	**1.82**
Izola	32	29	90.6	2.04
Koper	119	93	78.2	1.99
Piran	39	34	87.2	2.09
Sežana	36	26	72.2	1.13
Central Slovenia	**1.098**	**979**	**89.2**	**1.90**
Domžale	83	73	88.0	1.49
Grosuplje	42	36	85.7	1.13
Kamnik	28	24	85.7	0.78
Kočevje	22	22	100.0	1.22
Litija	26	31	119.2	1.59
Ljubljana	839	746	88.9	2.32
Logatec	13	8	61.5	0.71
Ribnica	19	20	105.3	1.57
Vrhnika	26	19	73.1	0.89
Podravje region	**452**	**373**	**82.5**	**1.21**
Lenart	15	15	100.0	0.86
Maribor	286	225	78.7	1.59
Ormož	18	17	94.4	1.00
Pesnica	18	20	111.1	1.12
Ptuj	71	52	73.2	0.79

Ruše	17	14	82.4	0.94
Slovenska Bistrica	27	30	111.1	0.91
Pomurje region	**137**	**119**	**86.9**	**0.99**
Gornja Radgona	17	13	76.5	0.64
Lendava	23	28	121.7	1.19
Ljutomer	24	23	95.8	1.28
Murska Sobota	73	55	75.3	0.94
Savinja region	**376**	**313**	**83.2**	**1.25**
Celje	143	118	82.5	1.92
Laško	28	12	42.9	0.66
Mozirje	20	12	60.0	0.73
Slovenske Konjice	30	21	70.0	0.97
Šentjur pri Celju	21	18	85.7	0.93
Šmarje pri Jelšah	26	28	107.7	0.90
Velenje	56	51	91.1	1.20
Žalec	52	53	101.9	1.31
Lower Posavje region	**60**	**67**	**111.7**	**0.98**
Brežice	34	25	73.5	1.08
Krško	12	29	241.7	1.07
Sevnica	14	13	92.9	0.71
Zasavje region	**72**	**57**	**79.2**	**1.18**
Hrastnik	18	6	33.3	0.59
Trbovlje	39	33	84.6	1.82
Zagorje ob Savi	15	18	120.0	0.90
Abroad	**68**	**57**	**83.8**	/
General files. anonymus applications	**51**	**69**	**135.3**	/
TOTAL	**3.304**	**2.870**	**86.9**	/
SLOVENIA	/	/	/	**1.4**

Table 4.4.7.

Cases closed by justification

Of the 3,087 cases closed in 2002, there were:

- 353 justified cases (11.4 per cent);
- 337 partly justified cases (10.9 per cent);
- 531 unjustified cases (17.2 per cent);
- 1,370 cases for which the conditions were not fulfilled for being handled (44.4 per cent) and
- 496 cases for which the ombudsman is not the competent institution (16.1 per cent of all closed cases).

The share of justified and partly justified cases in 2002 (22.3 per cent) relative to the previous year 2001 (23.2 per cent) did not change significantly. **We have determined that in comparison with related institutions this share is fairly high.**

1. **Justified case**: The case involves a violation of rights or other irregularity in all the claims of the complaint.
2. **Partly justified case**: Violations and irregularities are established in certain of the claims made in the complaint or unclaimed elements of the procedure, and in other claims they are not.

3. **Unjustified case**: For all the claims in the complaint we determine that no violations or irregularities are involved.

4. **No basis for handling the case**: In the case a specific legal procedure is in progress where no delays or significant irregularities can be identified. We offer the complainant information, clarifications and pointers for exercising their rights in an open procedure.

5. **Ombudsman not competent**: The subject of the complaint does not fall within the framework of the institution's competence. We explain to the complainant the other possibilities that are available for exercising rights.

Cases closed by department

Table 4.4.8. provides a presentation of cases closed by government department in 2002. Individual cases are categorised under the relevant department relative to the substance of the problem that prompted the complainant to approach the ombudsman.

The table shows that the largest number of cases closed in 2002 related to the departments of:

- Justice (983 cases or 31.84 per cent);
- Labour, Family and Social Affairs (651 cases or 21.09 per cent) and
- Environment and Spatial Planning (403 cases or 13.05 per cent of all cases closed).

Taking those government departments whose share of all closed cases in 2002 amounted to at least one per cent, the number of open cases in 2002 relative to 2001 fell most in the following departments:

- health: from 114 to 88, which is a 22.8 per cent drop, and
- defence: from 47 to 35, a 25.5 per cent drop.

DEPARTMENT	CLOSED CASES				Index
	2001		2002		
	No.	Share %	No.	Share %	(02/01)
1. Labour, Family and Social Affairs	639	20.40	651	21.09	101.9
2. Econ. Relations and Devel.	15	0.48	18	0.58	120.0
3. Finance	62	1.98	91	2.95	146.8
4. Economy	20	0.64	29	0.94	145.0
5. Agriculture. Forestry and Food	14	0.45	6	0.19	42.9
6. Culture	3	0.10	12	0.39	400.0
7. Interior (home affairs)	325	10.38	296	9.59	91.1
8. Defence	47	1.50	35	1.13	74.5
9. Environment and Spat.	423	13.51	403	13.05	95.3
10. Justice	1.085	34.64	983	31.84	90.6
11. Transport and Communi.	21	0.67	31	1.00	147.6
12. Education and Sports	47	1.50	89	2.88	189.4
13. Health	114	3.64	88	2.85	77.2
14. Science and Technology	1	0.03	1	0.03	100.0
15. Foreign Affairs	7	0.22	11	0.36	157.1
16. Government Offices	11	0.35	10	0.32	90.9
17. Local Self-government	41	1.31	57	1.85	139.0
18. Other	257	8.21	276	8.94	107.4
TOTAL	3.132	100.00	3.087	100	98.6

Table 4.4.8.

1 – PUTTING UP POSTERS DURING AN ELECTION CAMPAIGN

The ombudsman was contacted by a political party which claimed to have obtained permission from a municipal inspector to erect structures on which to display posters during the pre-election campaign for the local elections in 2002. Komunala Koper (a municipal services company) is then alleged to have removed these structures on the order of the municipal inspector despite the issued permit. The complainant claimed that this was done without a reason and without a suitable written explanation. The complainant lodged a complaint about the matter with the mayor of Koper.

Koper Municipal Council explained to us that the complainant had placed the panels on the poles of public streetlights, which is contrary to the permit granted. The municipal inspector apparently warned the complainant before this that it could only erect them as free-standing structures between the poles of the public streetlights. The municipal inspector tried to inform the complainant of the violation by telephone and in person, but the complainant could not be reached. The structures were removed on the basis of an order from the municipal inspector. Later the complainant is alleged to have taken the panels and re-erected them in locations which were in accordance with the permit (in green spaces and between the poles of public streetlights). The complainant was also issued an additional permit to erect panels in the requested locations. The municipal council considered that in this matter the Ordinance on Bill Sticking and Other Similar Forms of Public Advertising was sufficient. It also logically derived from its explanations that the dispute with the complainant was resolved by mutual agreement.

Although Koper Municipal Council did not state how the complainant's complaint was resolved, we consider that the procedure involved certain irregularities. In accordance with the Ordinance on Bill Sticking and Other Similar Forms of Public Advertising, consent is given for the erecting of structures on which to place posters in public places, on public structures or on other sites owned by the Koper Municipal Council, on the basis of an application containing a sketch of the structure and sketches of the locations. The competent service then confirms the application in a simplified procedure with an official stamp and the signature of a responsible officer. The inspectorate of the Koper Municipal Council issued the prescribed consent even though the application did not contain sketches of the structures and locations. Neither did the official note on the application, or the consent if we can consider it as such, contain more precise conditions for the erecting of the structures. Therefore in our opinion the issued consent was unclear, vague and arbitrary, a situation which is not allowed to be to the detriment of the complainant. The ombudsman considers that in the case of doubt or unclear decisions, competent bodies must always decide in favour of the party – in this case the complainant. For this reason the later measures of the inspector were erroneous since they were based on the unclear conditions contained in the issued consent. We invited the Koper Municipal Council to draw the attention of the inspectorate to these irregularities and requested the consistent implementation of the formal rules of procedure notwithstanding the already issued decision on the complainant's complaint. **1.0-37/2002**

2 – PERSONAL DETAILS ON A NOTICE BOARD

A care home asked the ombudsman whether posting details about residents on a notice board in the reception hall of the home was a violation of applicable legislation. The details included the name and room number of the residents and were supposed to be for the benefit of their relatives and other visitors to the home. We explained to the complainant that personal data may only be processed if the processing of personal data is determined by statute or if the manager of a collec-

tion of personal data has the written permission of the individual concerned. The processing of personal data includes communicating this data to third persons. Thus for any communication of the personal data of a resident to a third person, statutory authorisation or the express permission of the resident is required. We also established that no legal basis can be found for the communication of personal data to third persons via a notice board. We therefore considered that the communication of personal data via a notice board is only possible with the express written permission of the residents. **1.7-17/2002**

3 – SELECTIVE APPROACH TO HOLDING VISITS TO DETAINEES BEHIND A GLASS PARTITION

A detainee was given permission by the court to receive a visit from his 11-year-old daughter in a room without a glass partition but the ZPKZ Koper did not allow him to receive such a visit on the grounds that security considerations did not permit it.

We requested an explanation from the UIKS, which confirmed that the prison had not permitted an open visit on security grounds. In its view there was no basis for applying a restriction to the visit (by means of the partition).

The only restrictions which may be used against a detainee are those which are necessary to prevent escape or any conferring which could prejudice the successful conclusion of a proceeding. The power to prohibit a visit, if this could prejudice the procedure, is only given to the judge. Meanwhile, the decision to allow a visit without a glass partition lies with the governor of the prison. In the 2001 annual report we drew attention to the ombudsman's efforts to ensure that visits to detainees behind a glass partition, in other words with a physical separation which prevents personal contact, are only imposed as an exception and that visits without a glass partition become the rule. In relation to a specific detainee, only those restrictions which are urgent and unavoidable in the given circumstances are admissible. Thus the prison governor is bound, when deciding on the matter of open visits for a detainee, to ensure proportionality between the means employed and the legitimate goal which is to be achieved.

The interests of order and security in a prison can justify visits to a detainee without the possibility of personal contact with the visitor, but only after careful consideration of the circumstances of each individual case separately, taking into account both the ensuring of order and security in the prison and the interest of the detainee in having personal contact and privacy with his/her visitor.

The ombudsman once again proposed to Koper Prison a differentiated approach regarding permitting visits without a glass partition, so that only those restrictions necessary and unavoidable in the given circumstances exist in practice in the case of visits to a detainee. The UIKS supported our proposal of a selective approach to the conducting of visits to detainees in a room with a partition and assured us that it would adopt appropriate measures to ensure that this practice is also adopted at the ZPKZ Koper. **2.1-85/2001**

4 – ATTACK ON A PRISONER DESPITE PLACING HIM IN A CLOSED WING

For security reasons a complainant serving a prison sentence at the ZPKZ Dob pri Mirni was placed in a closed wing on 3 December 2001. The reason for this was to ensure safe conditions for the prisoner during the serving of his sentence. Such a placement must prevent the possibility of conflicts which could result in physical clashes between persons in custody. Thus this type of placement requires increased supervision of prisoners. Despite this, on 17 May 2002 the complainant had a dispute with a fellow inmate. The UIKS explained that the physical conflict occurred between him and

his fellow prisoner through the fault of both parties. The complainant is also supposed to be the party who first provoked the conflict by verbally insulting his fellow prisoner. We understood from the report from the prison that both inmates were moving freely without the supervision of warders even though this supervision was necessary in order to ensure the safety of the complainant.

The ombudsman has already stressed several times that prison managements must take all reasonable measures to prevent all physical and mental violence among prisoners serving sentences. If it is not possible to guarantee safety in the prison where an at-risk prisoner is situated, appropriate measures must be taken, including transfer to another prison. We considered that by providing the necessary supervision of the complainant, taking into account his placing in a closed wing and the fact that he had already been physically attacked before this, the prison could have prevented the dispute that led to the physical conflict.

We proposed that the prison should see to it that persons who for safety reasons are placed in a section with a more austere regime are not exposed to situations which could lead to conflict with their fellow prisoners by being left unsupervised by warders. The UIKS agreed with our view that the measures necessary to prevent all physical and mental violence among prisoners must be introduced in the specially protected section of the prison. **2.2-66/2001**

5 – OVERDUE DECISION ON THE TRANSFER OF A PRISONER

On 30 June 2002 (a Sunday), during a period of temporary release, a complainant serving a sentence at Rogoza Open Prison (part of the ZPKZ Maribor) was taken by the police to the ZPKZ Maribor. The prison received him and placed him in a cell in the higher-security (closed) section of the prison, where he remained until being served a decision on 2 July 2002. The prison considered the period from the admittance of the prisoner to the serving of the decision to be "necessary in order to study the case and reach a decision on returning him to the open prison or transferring him to Maribor."

The UIKS considered that the complainant was transferred to Maribor Prison in accordance with the second paragraph of Article 80 of the ZIKS-1. Given the fact that the complainant was brought to the prison by the police, and that during his temporary release from the prison he was party to the criminal offence of taking part in a brawl, it was justifiable to conclude that he had abused the privilege granted to him and that it was therefore not appropriate for him to continue serving his sentence in an open prison. Since however, the police brought him to the prison on a Sunday, it was not realistically possible to initiate the transfer procedure or draft the decision until Monday. In the opinion of the UIKS, the prison should also have served the decision on the complainant on Monday, since that was the day it was issued.

A prisoner who abuses a more open prison regime may justifiably be transferred to a prison with a more austere regime. This procedure, which requires rapid action, is usually initiated at the proposal of the prison governor, and a decision on the transfer – against which the prisoner is permitted to appeal – is issued. It is also our opinion that the transfer decision, if this was issued on 1 July 2002, should also have been served on the complainant the same day. During our intervention at the UIKS we also emphasised that a transfer decision must be issued for every transfer of a prisoner serving a sentence under a more open regime to a more austere regime. A prisoner may be transferred from one regime to another only after the issuing or serving of a decision on this. The text of Article 81 of the ZIKS-1 does in fact justify the conclusion that the actual transfer may only be carried out in accordance with a transfer decision. A transfer decision cannot cover the period before it was issued, since this worsens the position of the prisoner.

The UIKS agreed with our view that Maribor Prison should have communicated to the prisoner without delay its decision on his transfer from Rogoza Open Prison to Maribor Prison. The governor could also have decided on the transfer by means of a verbal decision since the matter concerned was an urgent transfer because of a risk to public order and safety (Article 144 in relation to Article

211 of the ZUP). At the same time he could have ordered that the decision be implemented immediately. The UIKS therefore assured us that within the scope of its powers it would see to it that the identified irregularities in transfer procedures would not occur again. **2.2-27/2002**

6 – THE REGISTER AT THE ZPKZ DOB PRI MIRNI

A prisoner from the ZPKZ Dob pri Mirni complained that he had requested an interview with the prisoner governor more than 40 times but that the governor had not responded. As a consequence he even decided to go on hunger strike.

The UIKS explained that professional staff at the prison had already held numerous conversations with the complainant. It was not however possible to establish precisely how many applications for an interview with the government had been submitted by the complainant. A register in which all applications for an interview with the governor are entered has been available at the ZPKZ Dob pri Mirni since 1 December 2002 for this very purpose.

A number of prisoners have already complained to us about the possibilities of an interview with the governor of Dob pri Mirni Prison. Lodging complaints and requests is a right of prisoners. The right to complain to the prison governor has special importance as one of the internal complaints procedures. It is therefore right that even the governor of a prison as big as the ZPKZ Dob pri Mirni should dedicate some of his time to interviews with prisoners, who expect to be able to resolve their difficulties in this way. We therefore proposed that it should be explained to prisoners how and when they can apply for an interview with the governor, or other member of the prison staff. We also proposed that in each individual case the decision of the responsible member of staff in relation to the submitted application for an interview or request should be explained to prisoners and also suitably documented (for example in the prisoner's personal file). We believe that in the future, the register of requests for an interview with the governor will also be of help. **2.2-52/2002**

7 – DISORDER IN THE COURT

On 17 April 2001 the local court at Gornja Radgona ordered the security measure of compulsory psychiatric treatment and care in a health care institution against a complainant because as a result of a personality disorder and alcoholism, he had committed several criminal offences in a state of essentially diminished sanity. This security measure is ordered against an offender when there is a danger that he will repeat criminal offences because of his abnormal mental state. It is a measure of a curative nature which involves the medical treatment of the offender and whose purpose is to remove this danger. The court orders this measure if the danger that the offender will repeat his criminal offences can be obviated through treatment and care in a health care institution. Preventive grounds, but also simple humanity, advocate that treatment should commence as soon as possible, and thus the ordered security measure should be implemented immediately.

The order for compulsory psychiatric treatment and care in a health care institutions became final on the day that it was issued, but not even a year later did the court refer the complainant to a health care institution for treatment. The intervention of the ombudsman was necessary in order for the court to request, on 18 March 2002, the opinion of the advisory commission at the Ministry of Justice on what health care institution the complainant should be sent to. Surprised at the delay of almost a year in the procedure of referring a patient for treatment, we requested a fuller explanation. We also requested a statement from the judge who dealt with the case. The latter cited as a reason for the delay an inspection of its files by the Higher Court in Maribor, since "in this connection its work was disturbed." The president of the local court explained to us that "unfortunately there is no

record of what files [...] were submitted to the Higher Court in Maribor: whether it was all the files or just some of them, and when they were returned." Because of the disorder in the running of the court, a situation "which has been dragging on since 1994", there is no corresponding documentation. Thus, "it is not possible to state with certainty" whether the file relating to the complainant's case was even among those which were examined at the Higher Court.

The court was thus not even able to explain with any certainty where the file was to be found during the period from the ordering of the security measure to the intervention of the ombudsman. At the same time, the president of the court also pointed out that the court typist who was dealing with the complainant's case "was off sick for a total of 93 days [...] in the year in question, and the acting president did not ensure that a suitable replacement was found, something which points to objective circumstances."

The explanations from the court described above are worrying. A record of files from which it is evident where a file is located in a given period must be established. Neither can it be considered an objective circumstance the fact that there is disorder at the court – that no-one knows where court files are. The same applies to the alleged absence of the typist, since such a circumstance is not a justifiable reason for a delay in the work of a judge. The president, who took over the running of the court in March 2002, assured us that he had done everything necessary to speed up the procedure and had talked to the judge and ensured "the constant presence of technical staff" and in this way removed the causes of the delay in the work of the court. **2.3-11/00**

8 – UNEMPLOYMENT

A complainant writes about the serious material hardship facing her family. She is 54 years old and has been unemployed for some years. She states that she has already given up hope of gaining employment since despite intensive efforts she has not managed to find a job. She is becoming depressed and losing the will to live since she feels that she is a burden on her family. Problems continue to accumulate and she cannot see a solution. She asks us to help her family address its financial difficulties.

In dealing with this case we considered that the only possibility of helping the family lay in finding employment for the complainant. We drew the attention of the Labour Office to the problem and requested a report on their activities in the direction of improving her employment opportunities and proposed that they study the possibility of including her in a public work programme.

In its reply the Labour Office states that the complainant's state of health and conditions on the employment market in the region are a serious obstacle to her employment. They will include her among the candidates for an appropriate public work programme or in other public rehabilitation programmes.

The complainant later reported that following our intervention she had been given the opportunity to take part in a public work programme – providing help for senior citizens in a old people's home. This gave her new hope which however only lasted until the medical examination, when it was found that her state of health did not permit her to do this kind of work. Given that this is the only possibility of work via public work programmes in her area, she no longer sees any possibility of employment. She is still a few years away from retirement age and in the opinion of the disability commission she is not yet entitled to retirement on the grounds of disability. **3.0-15/2002**

9 – CARE ALLOWANCE INCREASED FOLLOWING THE OMBUDSMAN'S INTERVENTION

A complainant was appointed the guardian of his adult brother who was entirely deprived of contractual capacity. The ward receives a family pension and an assistance and attendance allowance. The guardianship is monitored by a social services centre (CSD) which is bound to protect the rights, benefits and interests of the ward. The guardian looks after the ward, who lives at home, by providing him with everything necessary to sustain his existence (food, clothes, accommodation, etc.).

The guardian sent a complaint to the ombudsman because the CSD was only paying him 35,000 tolars a month for the total care of the ward and paying the remainder of the receipts to which the ward was entitled from his pension and disability insurance (a total of slightly over 100,000 tolars a month) into the ward's savings account. The guardian stated that the funds provided to him by the CSD were not sufficient to cover basic expenditure for his brother, whom he looks after. He also expressed his doubt that the centre really was paying the ward's receipts into his savings account, since the centre did not want to show him the savings book or even to tell him how much money was on the savings account.

The ombudsman decided to proceed with the processing of the complaint. He proposed to the CSD that it provided a higher amount of money for the care of the ward. He proposed an amount of 70 per cent of the cost of home care, the type of care into which the ward had been placed in view of the extent of care needed. We further proposed that the CSD inform the guardian of the balance of the ward's savings account and regularly inform him in advance of payments into and outgoings from the ward's savings account.

Before reaching a decision on the ombudsman's proposal the CSD carried out a lengthy procedure to establish the facts of the matter in connection with protecting the interests of the ward. It then decided that from 1 September 2002 onwards it would grant the guardian 70,000 tolars a month for the care or maintenance of the ward. The guardian was also informed of the balance of the ward's savings account. The savings book continues to be kept by the CSD. **3.1-11/2002**

10 – DELAYS IN PAYING COMPENSATION TO VICTIMS OF WARTIME VIOLENCE

The complainant is a pensioner who has also asserted the status of victim of wartime violence. In her complaint she states that she lives in serious poverty since her pension of 87,552 tolars is encumbered by the repayment of loans under administrative prohibitions and a debt under an execution order. According to the complainant part of the debt was incurred because of her expectation of imminent payment of compensation under the ZSPOZ. Although it was already May and, under the act, compensation should have begun to be paid after 15 January 2002, the complainant had not yet received compensation. Payment would help her resolve her most serious problems, such as payment for reconnection of the electricity supply (disconnected as a result of non-payment of electricity bills).

In early 2002, the SOD, which under the act cited above is responsible for the payment of compensation, began to issue decisions and pay out the first part of compensation payments. According to figures from the SOD there are around 45,000 persons eligible for compensation. The schedule for issuing compensation decisions and the payment of compensation was agreed in such a way that the oldest claimants would receive compensation first. Because the complainant was born in 1937, at the time she lodged the complaint, she was not yet eligible for the issuing of a decision and the payment of compensation since at that time decisions were being issued to claimants born in 1934. The ombudsman did not dispute the agreement on the schedule for the payment of compensation and was therefore unable to intervene in the case in question on behalf of the complainant so that an exception could be made for her as regards the payment of compensation. We proposed to the complainant that she herself inform the SOD about her financial difficulties and propose priority treatment for the payment of compensation. **3.1-33/2002**

11 – AN APPLICATION FOR THE REASSESSMENT OF A PENSION WAS DECIDED WITHOUT A DECISION

The complainant retired in 1996 at the age of 52 and with a full pension period. Because she believed that on reaching the age of 58 she would be entitled to a reassessment of her pension, she filed a reassessment claim with the ZPIZS in 2002. The institute informed the complainant by letter that they would not reassess her pension because she had not retired in accordance with regulations on early retirement.

With regard to this complaint the ombudsman took the view that the institute had to rule on the complainant's claim by means of a decision. Only in this way is an insuree, or person entitled to benefits from pension and disability insurance, guaranteed the right of appeal. The institute agreed with the ombudsman's position and ruled on the reassessment claim by means of a decision. **3.1-61/2002**

12 – NO INTERVENTION WITHOUT CONSENT

A complainant wanted the ombudsman to intervene at the Chamber of Physicians of Slovenia to prompt the collegiate body for the field of psychiatry to give an assessment of the treatment method of alternative psychiatry, on the basis of her complaint in relation to the treatment of her daughter. She explains that a psychiatrist has completely alienated her daughter, who had previously been attached to her home. She is afraid that he is capable of leading her into total dependence and asks us to help save her daughter, who was a good pupil and student but who is now a neurotic wreck. Her daughter is 26 years old.

As was apparent from the material enclosed with the complaint, the complainant's daughter does not agree with the complaint to the Chamber of Physicians with regard to her treatment by the psychiatrist. Furthermore she evidently does not agree with her mother as regards the treatment method of alternative psychiatry which the psychiatrist is using in her treatment.

We agreed with the complainant that the right to quality health care is a fundamental right in the area of health. This means that doctors are obliged to provide health care in accordance with accepted medical doctrine, the code of medical deontology and other professional codes and codes of ethics. In his/her work, a doctor must act in accordance with the findings of science and professionally verified methods. When taking professional decisions he/she is independent and is free to choose the method of treatment which he/she deems most suitable in the given circumstances. Here it is worth stressing, however, that the relationship between doctor and patient is also very important for the success of treatment. Today, increasing emphasis in this relationship is given to personality and personal rights, including a person's right to make a free decision about himself/herself. Thus the right to health care includes the right to voluntary treatment, and thus also to the refusal of treatment. The right to self-determination in the area of personality and personal rights includes a person's right to make a free decision about himself. A decision about one's own life and health is a fundamental personal right of the individual. A doctor may only carry out a medical intervention on the basis of the patient's free consent following an explanation.

The information stated in the complaint shows that the complainant's daughter is an adult and a reasonable person who is clearly capable of making her own decision about her rights and interests. We do understand the mother's concern about her daughter's entitlement to the highest level of quality health care. Parents are not indifferent to what happens to the children and try and help them and care for them to the best of their ability even when they are adults. However, in this case there is evidently a collision of interests which is reflected in the daughter's negative view of her mother's application to the Chamber of Physicians. The Chamber rightly explained to the complainant that her daughter has the right to a free choice of doctor.

With regard to the position of the daughter, which was evident from the complaint and the annexes to it, the ombudsman declined to intervene at the Chamber of Physicians since it is evident that the daughter opposes a complaint against the psychiatrist. The ombudsman could only have intervened if the daughter's authorisation or consent had been enclosed (third paragraph of Article 26 of the ZVarCP). The allegations criticising the method of treatment employed by the psychiatrist are made in connection with the daughter, who however opposes this action. The complaint gives the impression that relations between the complainant and her daughter are troubled. Such a situation however, requires restraint from the ombudsman as regards intervention in a relationship which above all concerns the complainant's daughter. **3.4-27/2002**

13 – LENGTHY DECISION-MAKING PROCEDURE WITH REGARD TO CONTACTS AT A CSD

The complainant is the father of a twelve-year-old daughter who lives with her mother at an unknown address. Since the girl's mother had broken off all communication with him, he requested Domžale CSD to take measures to protect the girl's rights and interests and to help him re-establish personal contacts with her. He complained that for several months the centre has done nothing. It is evident from the reply from the CSD, which we received at the end of May 2002, that the procedure to determine contacts by means of a decision has been under way since the end of 2001. Given that during the course of a conversation with a psychologist the girl stated that she did not refuse contact with her father, we would have expected there to have been intensive activities in the direction of allowing these contacts to take place. For this reason the CSD's explanation – that cooperation with the complainant is very difficult and that they are not hurrying with the issuing of the decision so that contacts can be regulated in a way that is beneficial for the child – is unreasonable.

Given that in the processing of the complainant's case to date, a serious violation of the statutory deadline has already occurred, we again warned the CSD that it was obliged to make a decision on the matter as quickly as possible and to issue a final decision. We requested that they act without delay so that the procedure could be concluded as soon as possible, and that they acquaint us with their activities.

Following our intervention, the CSD finally commenced activities for the issuing of a decision but the procedure came to a halt again because, as the result of a change in the girl's permanent residence, the handling of the case was passed to the Vrhnika CSD.

In a conversation with the parents and the girl it was decided to try contacts gradually. It was the girl's wish that the first contacts should take place at the CSD. However, after the first meeting the complainant was not satisfied with this solution. In response to his request that the CSD issue a decision without delay, the CSD called an oral hearing the same month, before the issuing of the decision. **3.5-44/2002**

14 – A CHILD REFUSES TO BE PLACED IN AN INSTITUTION

Two complainants, the parents of an eleven-year-old boy, sent the ombudsman a complaint about the Kranj CSD because of its insistence on placing their son in an institution. Owing to their son's unmanageability and frequent truancy they agreed to have him placed in an institution. Since however, the son refused to leave for the institution and promised that he would mend his ways, they wished to discontinue the proposed measure.

We informed the complainants about the ombudsman's powers. We explained that, given the findings deriving from the decision of the centre, the child urgently needs professional help and there-

fore proposed that, in cooperation with the centre, they try to prepare him to accept the idea of staying in the institution.

The complainants did not come back to the ombudsman. Nevertheless we made inquiries at the CSD about the arrangements that had been made for the child before the start of the new school year. We were told that in the light of the fact that the parents did not wish to cooperate, the CSD had lodged a petition for administrative execution with indirect compulsion, or in the case of repeated failure to meet obligations being established, with direct physical compulsion, on 22 March 2002. The UE (administrative unit) informed us that despite two attempts, the execution had not been successful. On 5 June 2002 an attempt was made to perform the execution at the school but the boy escaped through an unwatched exit. Later he stopped going to school and ran away from home at every visit. His parents are refusing to cooperate in any way. It was also reported that the CSD is no longer involved in dealing with the case and is merely waiting for the execution to be carried out.

We proposed that the UE and the CSD should together try to find another suitable solution for the good of the child, so that the child and his parents are offered the opportunity to cooperate and are provided with expert help. It is apparent from the CSD's reply that the child's father at first refused all cooperation and home visits. In seeking a solution it was agreed that in August 2002 the parents would once again propose the halting of the execution procedure in relation to the decision to send the child to an institution. It was agreed that for the assessment of the appropriateness of annulling the measure of placing the child in an institution, evidence would be taken by a court-appointed expert and an expert opinion and diagnosis obtained during the declaratory proceeding before the issuing of a decision. In the period before the drawing up of the decision, the CSD should offer the family assistance (especially teaching). The parents are accepting this assistance. The school counselling service informed the CSD that the boy was only absent from school for the first two weeks of the new school year and that he is trying hard at school. **3.5-66/2002**

15 – LENGTHY DECISION-MAKING PROCEDURE WITH REGARD TO AN APPEAL AGAINST A DECISION ON CONTACT

Back in January 2000 a complainant asked the CSD for help in regulating his contacts with his four-year-old daughter. Through the intervention of the CSD, some contacts took place on the basis of an agreement between the parents. Later they were no longer able to reach an agreement. Therefore the girl's father submitted a request for the issuing of a decision on contacts. The girl's mother appealed against the decision, which was not issued until 13 November 2000.

Since by August 2002 a decision had still not been made on the appeal, the CSD intervened at the father's request and asked the MDDSZ to decide on the appeal, since contacts were not taking place. The ministry reported that the appeal is still being dealt with and would probably be completed in 2002.

We drew the ministry's attention to the serious violation of the statutory deadline and to the importance of deciding on the appeal without delay, since the contacts have been completely interrupted. We also requested an explanation. The ministry only replied to our letter after two reminders. It began by blaming its failure to reply on the absence of the member of staff dealing with the appeal. After the second reminder we received the reply that a decision had finally been made on the appeal, and the decision sent to the CSD on 28 November 2002. With regard to the delay, the ministry explained, as on all other occasions, that it addresses appeals in administrative matters in order, according to the date on which they are lodged. The exceeding of the statutory deadline occurs because there are too few staff for the number of appeals.

It is inadmissible, in cases when a CSD finally establishes that contacts are to the benefit of a child and their prevention is unjustified, that the ministry should take so long to decide on an appeal and

in this way support the arbitrary action of the parent who is violating the rights of the child by unreasonably preventing contacts. **3.5-110/2002**

16 – PROBLEMS IN THE CITY TRAFFIC WARDEN SERVICE

Several traffic wardens complained to the ombudsman about the vexatious conduct of their manager. We made inquiries and found out that although the manager is aware of the problems of the service they are tackled too late, after they have attained wider dimensions (involvement of the trade union, disciplinary proceedings). In the report they state that the problem is one of "short circuits" in communication between the wardens and their superior which are difficult to resolve. Disciplinary proceedings against one warden have been stopped, while they continue against another warden because it is considered that serious violations of work obligations are involved. We informed both wardens of our activities and the replies and invited them to turn to us should it turn out that further intervention is necessary. Since they have not got back in touch with us, we conclude that those responsible in the city administration have observed our recommendation on the need to regulate relations. **4.3-18/2002, 4.3-25/2002**

17 – GRANTING OF CITIZENSHIP

A complainant applied for citizenship of the Republic of Slovenia. He is married to a Slovene citizen and is the father of two children who are also Slovene citizens. The MNZ informed him that he does not meet the condition of guaranteed dwelling because he lives with his family in a room belonging to his wife in a hostel for single workers. The Decree on the Criteria for Establishing the Fulfilment of Specific Conditions for the Granting of Citizenship of the Republic of Slovenia Through Naturalisation states that a person has a guaranteed dwelling if (inter alia) he/she is the owner of a flat or house, or his/her spouse is the owner of a flat or house, but does not count the renting of rooms in a hostel for single workers, or other building not counted as a dwelling under the SZ, as proof of guaranteed dwelling. In this case the room in question, in which the family also actually resides, is not rented but owned. The room was sold as residential premises. The complainant's wife even received a loan from the Housing Fund of the Republic of Slovenia in order to make the purchase.

We approached the MNZ and suggested that they evaluate once again whether the complainant really does fail to meet the condition of guaranteed dwelling. We considered that the condition of guaranteed dwelling was in this case met. The MNZ replied that, under Article 3 of the SZ, rooms in a building built to accommodate individuals (hostels for single workers, boarding houses for school pupils and halls of residence for students, old people's homes, social care institutions and other communal accommodation buildings) are not dwellings. They cited the decision of the housing department of the MOL (Ljubljana Municipal Council) that under Article 2 of the SZ a specific room in a hostel for single workers is not a dwelling.

We approached the MOL and requested an explanation of the circumstances on the basis of which they considered that a room in a hostel for single workers is not a dwelling under Article 2 of the SZ. We also asked them to provide us with details about the nature of the building as a whole and of the individual parts of it which were sold, and what these parts were sold as, if they had this information at their disposal.

The MOL explained to use that Article 2 of the SZ states that under this act a dwelling shall mean a group of rooms forming a functional whole and intended for permanent habitation with, as a rule, a single access, irrespective of whether such premises be part of a residential house or of any other building. The first paragraph of Article 3 of the SZ also sets out what premises shall not be under-

stood to mean a dwelling under the act. In accordance with the second paragraph of Article 3 of the SZ, in the case of doubt as to whether specific premises mean a dwelling under the act, a decision shall be made by the municipal housing authorities (in the case of urban municipalities) or administrative body at the request of the party concerned on the basis of the regulations under the first and second indents of Article 11. These regulations, with the exception of the Rules on the Minimum Technical Conditions for Building Residential Buildings, have yet to be adopted.

Enclosed with the request to the MNZ for a decision over whether a room in a hostel for single workers is a dwelling was a copy of the deed of sale. Under Point I of this deed of sale, the contracting parties stated, inter alia, that they were the vendors and co-owners of Room No. 4, measuring 21.18 m^2, situated on the ground floor of the hostel for single workers.

The environment, planning and property matters department of the Moste-Polje branch of the UE Ljubljana informed the MOL that it was evident from the issued licence for use and the earlier consent of the sanitary inspectorate of the MOL's inspection services administration that the building in question was a hostel for single workers and that no permit had been issued for it in the sense of a change to the purpose of use of the building. They therefore consider that the building in question is a hostel for single workers and that the purpose of use of its individual parts is the same. The sale of individual parts cannot alter the purpose of use of these parts, or of the building as a whole. Half of the building is still a hostel for single workers, while the other half has been sold to 52 natural persons and 41 legal persons.

The MNZ assured us that it would look into the matter again. We imagine however, that the complainant has already resolved the problem, since an act amending the ZDRS has been adopted under which the condition of guaranteed dwelling is no longer necessary. **5.1-19/2002**

18 – EXCHANGING A FOREIGN DRIVING LICENCE FOR A SLOVENE ONE

An Ukrainian citizen applied to the ombudsman because of difficulties in exchanging a foreign driving licence for a Slovenian one. The complainant has lived in the Republic of Slovenia since 1997 on the basis of a temporary residence permit. On 18 September 2001 the competent body in Ukraine issued her with a driving licence on the basis of a successful driving test taken during a visit to her parents. On 14 February 2002 she made a request to exchange her foreign driving licence at the UE Ajdovščina. The UE rejected her request on the grounds that she had acted contrary to the first paragraph of Article 135 of the ZVCP, which provides that a foreign national who is resident in the Republic of Slovenia for more than six months may request the exchange of a valid foreign driving licence within one year of the commencement of residence in the Republic of Slovenia provided he/she fulfils the other conditions set out under this act. For a foreigner who was resident in the Republic of Slovenia before the entering into force of the ZVCP, i.e. before 1 May 1998, the deadline for exchanging a foreign driving licence for a Slovenian driving licence is one year after the entering into force of the ZVCP, i.e. 1 May 1999. The complainant appealed against the decision of the EU and also turned to the ombudsman. We dealt with the case before the entering into force of the ZVCP-C.

We communicated to the MNZ our opinion that it would be necessary, when addressing the appeal, to take into account the fact that this specific issue is not expressly regulated by the ZVCP and that the decision of the UE is questionable. We stated that the weight of the complainant's argument – that under Article 134 she may not drive a motor vehicle in Slovenia despite holding a valid driving licence, that under Article 135 she may not exchange her Ukrainian driving licence for a Slovenian one (should the UE's interpretation of the act prevail) and that under the sixth paragraph of Article 124 she cannot obtain a Slovenian driving licence even if she retakes her driving test in Slovenia – could not be denied. What is not clear here, is the sense of the obligation to hand in (submit) a foreign driving licence under this paragraph. We stressed that in accordance with the statutory regulation under which a foreign national is not supposed to drive in Slovenia with a foreign driving licence for more than a year, a possibility to fill the legal vacuum that exists in the case of a foreign

national taking a driving test in his/her own country after commencing his/her residence in the Slovenia would be offered by setting the one-year deadline for exchanging the driving licence from the date on which the foreign national took the driving test.

The MNZ informed us that they had refused the complainant's appeal. They sent us a copy of the decision for our information and added that its explanation contained a detailed study of all the statements of the complainant and the dilemmas involved, and that they considered that this removed all the inconsistencies and contradictions which the ZVCP is supposed to contain. In the explanation of the decision they stated that Article 135 of the ZVCP specifies an exception in relation to the obtaining of a Slovenian driving licence and in this way makes it easier for those foreign nationals who have already obtained a valid foreign driving licence abroad and recently settled in Slovenia to obtain a Slovenian driving licence. These foreign nationals may request the exchange of a foreign driving licence for a Slovenian within one year of the commencement of their residence in the Republic of Slovenia (or for those foreign nationals who were resident in the Republic of Slovenia before the entering into force of the ZVCP, within a year of its entering into force), and in this way avoid having to retake a driving test. It is however, a matter of their own decision – or of whether or not they are informed of this possibility – whether they will actually request to exchange their driving licences within the prescribed deadline. If they do not request this exchange, for whatever reason, and are actually residing or living in the Republic of Slovenia, they will have two possibilities: not driving in the Republic of Slovenia or retaking the driving test in the Republic of Slovenia. The right to take a driving test is not prohibited to foreign nationals by any article of the ZVCP, and therefore they have the right to take it. However, under Article 124 of this Act, an additional condition is prescribed for people who hold a valid foreign driving licence and have taken a driving test in the Republic of Slovenia: the submission of their foreign driving licence to the body responsible for issuing the Slovenian driving licence. This body will only issue a Slovenian driving licence after the foreign driving licence has been submitted. The complainant's allegation that the provisions of the ZVCP are inconsistent or contradictory and that she is not able to take a driving test in the Republic of Slovenia is inappropriate.

The explanation and position of the ministry did not entirely convince us. We informed the complainant that we would draw attention to the problem in the 2002 annual report but we did not see other possibilities of further action. The complainant had the possibility of instituting an administrative dispute against the decision of the ministry. **5.2-17/002**

19 – THE ISSUING OF A TEMPORARY RESIDENCE PERMIT

The complainant turned to the ombudsman over difficulties in obtaining a temporary residence permit. In 2001 she submitted an application for a first residence permit at the embassy of the Republic of Slovenia in Sarajevo. She later married a Slovene citizen. On 28 March 2002 her husband submitted a request for a temporary residence permit on the basis of Article 37 of the ZTuj-1 (unification of a family) at the UE Ljubljana.

On 24 April 2002 the embassy sent the complainant a letter in which they invited her to call at the embassy. It was not clear from the invitation why she was being invited, nor did the invitation state the period within which she had to appear. She did not respond to the invitation and therefore, in accordance with the second paragraph of Article 29 of the ZTuj-1, her application had to be refused. The UE was unable to resolve the application for a temporary residence permit on the basis of Article 37 of the ZTuj-1 because the procedure relating to the first application was still incomplete.

We contacted the consular section of the MZZ. Above all, we wanted to know why the complainant had been invited to the embassy (in order to clear up possible doubts about her application, i.e. supplementation of the procedure, or in order to be served a final decision), what the situation was as regards the completion of the procedure (or the serving of the decision) in the case of there being no response from the applicant, so that the procedure at the UE could proceed in the case of the deci-

sion on her application being negative, and what the situation was in the case of the decision being positive and it being necessary for her to present herself in person to collect the positive decision.

The MZZ informed us that the complainant was invited to the embassy as a party to a proceeding, in order to be served a negative decision. Since she did not respond to the invitation, the embassy returned the decision to the UE, which in accordance with the provisions of the ZUP, posted it on a notice board. After the expiry of the appeal deadline, i.e. on 12 August 2002, the decision became final.

The UE than immediately approved the application lodged by the complainant's husband. Thus the complainant was issued a temporary residence permit under Article 37 of the ZTuj-1, valid from 12 August 2002. **5.2-43/2002**

20 – A DECISION ON THE PRINCIPAL MATTER CANNOT SUBSTITUTE THE ISSUING OF A TEMPORARY INJUNCTION

On 5 March 1993 the complainant submitted, on the basis of the Ownership Transformation of Companies Act (ZLPP), a request for the issuing of a temporary injunction prohibiting disposal of nationalised property situated among the resources of a company in social ownership. The UE Radovljica did not make a decision on the claimant's proposal because by means of a partial decision dated 20 July 1993, a decision dated 26 April 1994 and a supplementary decision dated 4 May 1994, it had decided that all the nationalised property should be returned to the claimant in kind or title and possession. However, with the decision of the MKGP dated 7 October 1998, which became final on 24 November 1998, the decision of the administrative body of the first instance from 26 April 1994 was partially annulled. At that time the programme of ownership transformation of the company had already been approved and implemented by a decision of the Agency for Restructuring and Privatisation. On 23 September 2002 the UE invited the claimant to change her claim for restitution in kind into a claim for compensation in the form of SOD bonds or RS shares within 15 days. If she failed to do so, the claim would be refused as unfounded. On 14 October 2002 the complainant submitted to the agency for Restructuring and Privatisation a petition for the repetition of the procedure in which the Agency had approved the programme of ownership transformation of the company and proposed to the UE that it adjourn the procedure. On 18 November 2002 the UE issued an order adjourning the procedure until the issuing of a final decision on the proposal to renew the ownership transformation procedure. On 10 February 2003 the agency issued an order approving the petition to repeat the procedure in the part relating to the property, which was the subject of the denationalisation claim, and is part of the property of the liable party.

We warned the UE that it had acted incorrectly when it failed to decide on the issuing of a temporary injunction because of the imminent restitution of the property to the claimant, since in accordance with the provisions of the ZUP the administrative body must decide on every application. The claimant submitted a petition for the issuing of a temporary injunction for the protection of her claim in the process of ownership transformation of the company. The ZLPP provides that a claimant shall submit a petition for the issuing of a temporary injunction to the body competent to decide at the first instance under regulations on the restitution of property. The competent body must inform the company and the agency about the lodging of the petition without delay. It must issue the temporary injunction without delay, within two months of the lodging of the petition at the latest. On the basis of the temporary injunction the company must catalogue the property which is the subject of the temporary injunction and exclude it from the ownership transformation, and use it with the diligence of a good manager. An anticipated decision on the principal matter may on no account substitute a temporary injunction, something which is also shown by the case in question, or rather by the consequences of failing to issue a temporary injunction. If the administrative body already thought that the decision on the principal matter would supersede the effects of the temporary injunction, it should have issued it at least when the appeals were lodged. **5.3-25/2002**

21 – A CHANGE TO A DENATIONALISATION CLAIM AS REGARDS THE FORM OF COMPENSATION

The complainant is the tenant of business premises which are supposed to be the subject of denationalisation. The business premises, for which the complainant obtained a building permit in 1966, did not exist when nationalisation took place. The complainant, who has invested considerable sums in the premises, wishes to buy them but is unable to because it is not clear whether or not they are the subject of denationalisation. He informed us of the responses of the administrative body, which on one occasion explains that the business premises are the subject of a denationalisation procedure and on another occasion that they are not. The UE Postojna explained to us that the different responses to the complainant are the consequence of a change in the denationalisation claim. We pointed out to them that a change to a denationalisation claim as regards the form of compensation in no way alters the fact that the claim has been lodged. If the denationalisation claim has been lodged, it exists right up until a final decision on it is issued, regardless of changes regarding the form of compensation. Any other reading can cause imprecise information about whether a specific property is the subject of denationalisation. **5.3-27/2002**

22 – UNUSUAL DECISION OF THE ZPIZ ABOUT THE WRITING OFF OF CONTRIBUTIONS

The complainant requested the ZPIZ to write off a debt arising from contributions from compulsory pension and disability insurance. She was informed by telephone that her application had been approved on 12 March 2001. She was extremely surprised when a few days later she received notice from the institute that her application had been refused. She received the notice, which was dated 6 February 2001, on 16 March 2001. Because the complainant was extremely surprised to receive a decision different to the one she expected, she wrote to the institute and asked them to clarify the situation. She did not receive a reply.

After we had intervened and asked the ZPIZ to reply to the complainant, the ZPIZ informed us that they had never received the complainant's letter, but that – if they received it – they would reply immediately. Despite the fact that the complainant had sent her original letter by registered post, she sent another letter, on our advice, on 15 October 2001.

Since despite everything the complainant still did not receive a reply, we had to intervene again. On 11 September 2002 the institute invited the complainant, in the interests of resolving the matter as quickly as possible, to resubmit a request for the write-off, partial write-off, deferment or payment by instalments of her contributions, with the necessary proofs. Two months later she received notice of the write-off of the entire debt. The decision of the institute was extremely important for the complainant since in the meantime the tax office had already begun the procedure of compulsory collection of the debt from funds on her account – which would undoubtedly have been collected had they not been funds from financial social assistance, which are exempt from compulsory collection. **5.5-50/2001**

23 – UNUSUAL METHOD OF INVITING A TAXPAYER TO COOPERATE IN A PROCEDURE

The complainant had a relatively large tax debt deriving from 1993, 1994 and 1995. The Murska Sobota Tax Office sent him a list of his outstanding obligations, to which the complainant objected. The debt had increased as a result of the application of default interest. In response to the last compulsory collection order, and in particular to the list of outstanding obligations, the complainant

again appealed or objected. As provided by the ZDavP, the tax office invited him to check whether the figures from the debt list corresponded to the official figures (Article 46 of the Act provides that the tax office must give a debtor who raises objections regarding the correctness of a debt list, the possibility of checking the figures). The invitation included the statement that the complainant must communicate his possible absence and that – if he failed to respond to the invitation and to justify his absence – it would be considered that he was withdrawing his appeal and objection and the procedure relating to his appeal and objection would be halted.

In response to our intervention the tax office explained that they had decided to use this measure because they believed that the complainant was delaying the procedure of collecting the tax debt by lodging appeals and objections. They assume that in this way he is attempting to have the debt statute-barred. The statement in the invitation was inserted because they wished to "force"the complainant to cooperate, although they did not intend to put the measure into practice, since there is no legal basis for such an action.

It has therefore been clarified that there is no legal basis for setting such conditions and that the failure to respond on the part of the debtor cannot count as withdrawal of his appeal. The act imposes on the tax authority the duty to give a debtor the opportunity to check the figures if he/she objects to a debt list but this does not mean that it cannot decide on his/her appeal if he does not respond to the invitation. **5.5-23/2002**

24 – CONSTRUCTION OF AN EXTENSION

In 1995 the complainant was issued a site development permit by the UE Ajdovščina which became final. A neighbour filed a petition for the repetition of the site development procedure. This was refused in 1999 by the UE, while his subsequent appeal was refused in 2000 by the MOP. The neighbour filed a complaint against the decision of the ministry at the Administrative Court, where it has still to be heard. In 1998 the UE Ajdovščina also issued a building permit, against which the neighbour likewise appealed at the MOP. The ministry annulled the building permit in 1999 and returned the case to the UE for completion of the procedure and readjudication. The complainant completed the project documentation. He was told that the application was complete and that a building permit would soon be issued. This however has not happened.

With the intention of speeding up the matter at the UE, we pointed out that Article 260 of the old ZUP, which is being applied in this procedure, provided that a petition for the repetition of a procedure shall not as a rule delay the execution of the decision with regard to which repetition is proposed; however the body competent to decide on the petition may decide to defer execution until a decision on the repetition of the procedure is made if it considers that the petition for the repetition of the procedure will be granted. The order permitting the repetition of a procedure delays the execution of the decision with regard to which the repetition has been permitted. The neighbour's petition for the repetition of the site development procedure was refused in 1999 by means of a decision. Following the refusal of the appeal in 2000 the decision became final. The body competent to decide on the petition therefore, does not think that the petition will be granted, with the result that the legal condition for the suspensive effect of the petition to repeat the procedure is not met. A final site development permit exists and no impediments or grounds can be seen not to continue the procedure to issue a building permit. Neither may the circumstance that some of the files are located at the Administrative Court mean an impediment.

The UE replied that they have studied all the procedures carried out to date and all the administrative acts they have issued. They accept our warning to consistently observe the provisions of Article 260 of the ZUP and as soon as they have taken evidence from the neighbour, they will issue a new building permit. **5.7-4/98**

25 – LENGTHY DURATION OF AN APPEAL PROCEDURE

A complainant informed us of the difficulties he is experiencing over the construction of an office/residential building on an adjoining site. Among other things, he requested our intervention in relation to the settlement of an appeal which, he filed on 12 April 1999 against a decision of the UE Črnomelj dated 31 March 1999 but about which the MOP has yet to decide. The MOP informed us that on 25 May 2000 it sent the file to the Local Court in Črnomelj at the court's request. The court returned the complete file to the UE Črnomelj on 9 May 2001. Since then, the UE has not sent the file to the ministry, and the ministry has therefore invited it to return the file immediately so that it can decide on the appeal.

We proposed to the MOP that it decide on the matter without delay and inform us of its decision. We also communicated our opinion that it is unusual that a court which has been "dealing with" a file for one year should return this to the UE and not to the ministry from which it received the file. It is also unusual that the ministry did not make inquiries in relation to this file. The MOP sent us a copy of the decision dated 4 June 2002 with which the decision of the UE dated 31 March 1999 was annulled, and the matter returned to the body of the first instance for repetition of the procedure.

The UE Črnomelj explained to us that they had received the file from the Local Court in Črnomelj on 9 May 2001. The file was mistakenly placed in a file containing other documents relating to the construction of the building in question. The UE assured us that they have adopted appropriate preventive and corrective measures which will ensure the lawful and punctual addressing of claims in the future. We suggested that they should apologise to the complainant for the mistake and reach a decision in the new procedure within the statutory deadline and inform us of the decision. They did this but an appeal has again been lodged against the issued decision. **5.7-32/2002**

26 – PROBLEMS IN EXECUTING THE DECISIONS OF AN INSPECTORATE

Two complainants turned to the ombudsman over the inefficiency of the Environment and Spatial Planning Inspectorate. In 1996 the inspectorate issued a developer with a decision on the removal of a building. This decision has still not been executed. In the matter in question the Bežigrad branch of the UE Ljubljana refused the developer's request for the issuing of a decision on registration of works. The decision was confirmed by the MOP and also by the Administrative Court and the Supreme Court. The inspectorate informed us that the decision of the inspectorate in this case was issued on 11 January 1996 and became executable on 13 February 1996.

The party instituted an administrative dispute against the decision of the MOP dated 16 March 1998 with which the appeal against the decision was refused. The administrative dispute has not yet been settled. The execution procedure has not yet commenced because the inspector has established that by proceeding with execution before the conclusion of the administrative dispute, irreparable damage could be caused to the party. An act on deferment of execution was not issued. While the only copy of the file is being used in the procedure before another body, further official acts cannot be carried out in the matter, while without the file it is not possible to assess whether public interest exists for compulsory execution. We warned the inspectorate:

- that it is not acceptable for administrative bodies not to make a decision in cases where they are supposed to conduct the administrative procedure or make a decision on the grounds that they do not have the files in their possession;

- that the first paragraph of Article 30 of the ZUS provides that an action shall not as a rule impede the execution of the administrative act against which it has been brought, where it should not be overlooked that in procedures under Article 73 of the ZUN not even an appeal delays execution;

- that the inspection procedure commences ex officio in accordance with the provisions of Article 126 of the ZUP, which provides that the competent body shall commence the procedure ex officio if this is provided by statute, or by a regulation based on statute, and if it establishes or learns that with regard to the existing situation it is necessary to commence the administrative procedure for the sake of the public interest. In this regard, public interest is established at the institution of the procedure and during the procedure before the issuing of a decision, and not during the phase in which the decision of the inspectorate is executable. The justification that it is not possible to make an assessment in the case without the file, or that compulsory execution has been shown to be in the public interest, is therefore completely unacceptable;

- that compulsory execution, when a decision becomes executable, can only be deferred in the cases set out by the second and third paragraphs of Article 293 of the ZUP. In this case the inspector may not defer execution on the basis of his own judgement but must establish indisputably whether the statutorily defined conditions for deferment exist. The mere explanation of the inspector that execution before the conclusion of the administrative dispute could cause irreparable damage to the party, without justification or an issued administrative act, is meaningless, since statute is clear with regard to the deferment of execution in connection with an administrative dispute.

In its reply the inspectorate agreed with our opinion that the physical absence of the file, while it was being dealt with by another body, should not be allowed to impede the procedure before the body conducting the basic procedure, although, exceptionally, this is what had happened in the given case. They explain that public interest in the conduct of a procedure ex officio must be shown throughout the procedure, or for every ex officio official act. The only reason the developer cannot obtain an appropriate building permit or legalisation permit is the disputed ownership situation, while the building itself does not contravene any spatial planning acts. Execution is therefore only in the interest of the complainants, while construction is not contrary to public interest. Given the above and the fact that the building does not fulfil any of the criteria for placing the case on the priority list of executions (the danger which a building causes, the obtaining of illegal property benefits, the effect of a building on its surroundings, the probable objective impossibility of legalisation), the removal of the building has still not been placed on the priority list of administrative executions.

We warned the inspectorate that it would be worth taking into account the fact that the decision has been executable since 1996, and therefore the public interest was shown at the institution of the procedure and on the issuing of the decision. Execution is halted if a circumstance arises which prevents the continuation of the execution procedure. The justification of the inspectorate would therefore be understandable if conditions after the issuing of the decision had changed to such an extent that the reason for the execution ceased to exist, something which cannot be understood from the responses. But in such a case, it would be necessary to decide what happens with the executory title.
5.7-78/2002

27 – A PRISONER ENJOYS ALL PRIVILEGES WHILE SERVING A SENTENCE EVEN THOUGH HE HAS PAID NOTHING TO COMPENSATE FOR THE INJURY CAUSED

The complainant was the injured party in a criminal case against a defendant who was convicted of two criminal offences against life and limb. As the result of the use of a firearm, one person died and another suffered serious physical injuries as a consequence of which she now has a category I disability. The convict has not paid any form of compensation for the injury caused. On the contrary, he has even stated to the inured party on several occasions that he does not intend to, something which is also being confirmed by the lengthy execution procedure. According to the statements of the complainant, he alienated his immovable property of major value by deed of gift even while the criminal proceeding was under way. Despite this, he was serving his sentence in an open prison, with numerous privileges.

The ombudsman closely links the granting of privileges, which can make the serving of a sentence significantly easier for a convict, to the protection of the interests of the victim of the criminal offence. Our views were taken into consideration when the ZIKS-1 was being adopted. Article 77 of this act takes into account the response of the environment where the criminal offence was committed, and especially the response of the injured parties, when granting privileges.

The protection of the interests of the victim of a criminal offence must be one of the fundamental functions of the legal system, and in particular of criminal law, and in this context also of the law governing the implementation of penal sanctions. Thus, among the criteria for granting privileges we would particularly emphasise the attitude of the convicted perpetrator of a criminal offence towards the injured party. We believe that only a positive attitude towards the victim and the injury caused by the criminal offence means genuine regret and thus the first step on the road to social rehabilitation.

We agreed with the complainant, who as the injured party finds it hard to understand why the convict has been granted the most open prison regime when he still has not done anything to try, at least in the form of satisfaction, to remove or mitigate the tragic consequences of his action.

In response to the ombudsman's intervention the UIKS confirmed that after beginning a seven-year sentence the prisoner was moved after 16 months into an open prison where "he enjoyed all possible privileges outside the prison". When he had served just under four years and 11 months of his sentence he was conditionally discharged. The convict's attitude towards the victim of his criminal offence evidently did not play a very big role in this, since the victim has for years been trying in vain to obtain compensation for the injury caused. The UIKS agreed that it will be necessary to devote more attention in the future to the victim of the criminal offence. It assured us that it will see to the more consistent implementation of the provisions of regulations whose purpose is the protection of the interests of the victims of criminal offences. **6.0-9/2002**

28 – OPEN DOORS DO NOT MEAN AN INVITATION TO THE POLICE TO ENTER A BUILDING

Suspecting that people were carrying out a criminal offence which is prosecuted ex officio, police officers entered a building through an open entrance door. In the corridor and antechamber of the building they established the identity of the individuals who were there at the time of the police intervention. The police confirmed that in order to ensure their own safety they also carried out a security search of the individuals. The police however denied carrying out a house search and that police officers had entered the other (closed) premises of the building. On the basis of these actual circumstances, the police considered that the officers had lawfully entered an open deserted building.

The building's owner denied that the building was "deserted" and claimed that it had never been deserted. On the basis of the established circumstances it is evident that the police officers themselves did not consider the building to be "deserted". The police confirmed that the officers entered a building were several people were located, whose identity they established. Furthermore, the police report even stated that the behaviour of the individuals was sufficient grounds to suspect that they had committed the criminal offence of illegal occupation under Article 228 of the KZ. Occupation means de facto possession of a dwelling or other premises for the purpose of living in it. Evidence of such a purpose can be rearrangement of premises, residence, maintenance, in individual sleeping in a dwelling or other premises, and so on.

The circumstances described confirmed that the building was not deserted at the time of the police intervention. There were a number of individuals in it whom the police considered to be there for the purpose of occupation. We therefore pointed out to the police that the mere fact that the door of the building was open does not justify their entering the building. An open door is not in itself evidence that a building is empty and does not entitle an uninvited person (even if he/she is a police officer) to enter without a legal basis, for example under Article 218 of the ZKP. At the same time

we pointed out that police officers may only carry out a security search when there is a likelihood of assault or self-harm on the part of a specific person, in other words above all in order to ensure their own safety and the safety of other people. A security search carried out with a different intention is thus unlawful.

In the subsequent complaint procedure the police stated that at least three police officers had entered one of the rooms in the building. Since they did not have a court order, invitation or other legal basis to do this, the police ruled that the complaint was justified. At the same time they confirmed that the police officers had acted incorrectly by failing to observe the provision of Article 38 of the ZPol when carrying out the security searches. This article provides that a security search may only be carried out on a person in relation to whom a likelihood of assault or self-harm exists. The decision of a police officer to carry out a security search on a specific person must be based on the conduct of this person or on specific circumstances which justify the use of this power. Under no circumstances may it be based merely on the appearance of the person. The police assured us that it would inform the competent service of the General Police Administration of the irregularities so that it could take appropriate measures to ensure that these irregularities do not happen again. **6.1–52/2002**

29 – APOLOGY TO A COMPLAINANT FOR PAYMENT ORDERS ISSUED BECAUSE OF INADEQUATE IDENTIFICATION

A complainant who had received two compulsory collection orders from the DURS in relation to a debt deriving from an unpaid fine requested the ombudsman's help. He stated that the collection relates to two payment orders issued by the Ljubljana Moste-Polje police station and the Ljubljana Center police station. He stated that the did not commit the alleged offences, that he is not the owner of the car with the number plate quoted on the payment orders, that he does not use such a car and that the signatures on the payment orders, which were not served on him, are not his.

The police confirmed that in the period 14 January 2002 to 31 March 2002 police officers from several police stations under the Ljubljana police administration (PU Ljubljana) had issued six payment orders for traffic offences in the name of the complainant. When it was established that in these cases another person had pretended to be the complainant, the proposals to collect the unpaid fine were revoked.

The PU Ljubljana drew the attention to the commanders of the police stations to the deficiencies in the establishing of the identity of a road traffic offender. At the same time the General Police Administration informed its technical service about the complainant's case so that it could adopt measures to ensure that such "disagreeable" occurrences did not happen again.

Despite the adoption of these measures, we were unable to overlook the fact that the state had involved the complainant in a legal procedure even though he himself had given no occasion for such conduct. In the case of the established irregularity in the action of a state body in relation towards an individual, an apology is also appropriate. We therefore suggested to the PU Ljubljana that it apologise to the complainant in writing for the payment orders issued in his name. The PU followed our suggestion and apologised in writing to the complainant for the mistakes made by the police officers and at the same time explained to him the measures taken in relation to his complaint. **6.1-63/2002**

30 – HOUSE SEARCH IN THE ABSENCE OF A COMPLAINANT

A warrant from Maribor District Court authorised police officers to carry out a search of a furnished residential house where the complainant cohabited with this partner. The complainant alleged that the police officers had not given him the opportunity to be present at the search. The police confirmed that the complainant was not present at the search "because he is not registered at this address and only lives at this address with a person who is the daughter of the owner of the residential house".

The inviolability of a dwelling, guaranteed by the constitution, has above all the purpose of protecting the individual who expects privacy in a specific place. It aims to prevent every encroachment on premises where the individual has the right to privacy from undesired encroachments on the part of other people. A dwelling is thus every premise whose purpose is residence and which is the private living space of a person. It is not therefore of the essence whether the person whose dwelling or premises are being searched is also the owner. Neither is it a crucial factor that the person is not registered as living at the address of the dwelling. What are important above all are circumstances which show that the individual actually uses the dwelling or premises, that it counts as his/her place of residence (home) or the place where he expects privacy.

The first paragraph of Article 216 of the ZKP expressly provides that in a house search the person whose dwelling or premises is/are being searched, or his/her representative has the right to be present. The police confirmed that the complainant was actually living at the address where the search was carried out. He was not registered at this address, which however may merely be an offence under the Registration of Residence Act. Therefore there can be no doubt that the searched premises were the dwelling of the complainant, with regard to which he enjoyed constitutionally guaranteed protection.

We considered that the police officers who carried out the search had acted unlawfully when they did not give the complainant the opportunity to be present. The police agreed that the right to be present at a house search under Article 216 of the ZKP means the duty of the police to draw the attention of the person whose dwelling or premises are being searched to this right. They assured us that they would take all necessary measures to ensure that irregularities did not occur in the carrying out of house searches in the future. **6.2-9/2002**

31 – LENGTHY CRIMINAL PROCEEDING IN A RAPE CASE

The complainant was the victim of a rape committed in 1993. In 2000 the accused was acquitted. Under the appeal decision the case was remanded. The complainant pointed out that every fresh reliving of the event brings new stresses and that she would therefore like the proceeding to be completed as soon as possible. In 2002 the criminal proceeding against the offender was still not complete.

Ljubljana District Court confirmed that the reason for the lengthy proceeding lay in the fact that her case had already been set aside twice at the Appeals Court. At the same time it explained that the "third hearing of the defendant" was in progress.

It is above all in the interest of the injured party, as the victim of a criminal offence, that criminal proceedings should be conducted speedily and efficiently. The physical, mental and social consequences suffered by the victim as a consequence of the criminal offence should not be overlooked. A lengthy procedure, when the victim must describe the event over and over again, when the procedural acts and the procedure are repeated, cannot be considered pleasant for the victim. The trial was already in progress and therefore there was no need for us to intervene in the sense of speeding up the procedure. We did however, consider reasonable the complainant's expectations that in the new proceeding, the court would complete the procedure for taking evidence, reassess all the evidence and decide on the charge in as short a time as possible. At the same time we explained to her

that if the court did not do this, there could be a basis for a repeated intervention by the ombudsman. **6.3-42/2002**

32 – INCONVENIENT DELAY IN THE SUBMISSION OF A FILE TO THE SUPREME COURT

In a criminal proceeding under Job No. K 58/99 Koper District Court convicted a complainant and gave him a conditional sentence. On 23 January 2002 the complainant filed a request for protection of legality against the final judgement. However, the court of the first instance did not send the extraordinary legal remedy together with the file to the Supreme Court until 21 October 2002. In other words, almost nine months had passed from the filing of the request for protection of legality to its submission to the Supreme Court.

A court must immediately send a permitted and punctual request for protection of legality to the Supreme Court, which then decides on it. Given the major delay, we asked for an explanation from the court. The court cited as a reason for the delay the numerous procedural functions in this case and related cases. It also excused the "inconvenient delay" on the grounds of the extraordinary workload of the judge who heard the case, since in that period he was settling several far-reaching custody matters.

We considered that a period of nine months for the submission of a case to the court of competent jurisdiction, in this case the Supreme Court, was decidedly too long. The fact that a judge is busy working on other cases cannot be an excuse. A delay in submitting a file also affects the case schedule as regards the decision on the extraordinary legal remedy. This usually depends on when the file containing the request for protection of legality is submitted to the Supreme Court. As a result of the delay in the work of the court of first instance the complainant would therefore have to wait several months longer for a decision from the Supreme Court. This delay in dealing with the case could even have detrimental consequences for the complainant.

We proposed to the District Court that it forward a special letter to the Supreme Court drawing attention to the date on which the complainant's request for protection of legality was filed and to the delay that had occurred, so that the Supreme Court could take this circumstance into consideration when deciding where to put the case on its case schedule. The district court followed our proposal and drew the attention of the Supreme Court to the date on which the complainant's request for protection of legality was filed and to the delay in submitting the file. **6.3-68/2002**

33 – THE TIME NECESSARY TO APPOINT AN EXPERT WITNESS

In October 2002, a complainant turned to the ombudsman over the lengthy duration of a procedure in a damages matter under Job No. P 160/93 at Slovenska Bistrica Local Court. He stated in his complaint that at the last hearing on 10 October 2000, the court had determined that a further expert opinion should be obtained. The following day he himself paid an advance for this and delivered the notice of payment to the relevant office at the court. After this he made several inquiries – in writing, by telephone, in person and via his lawyer – as to when the court would carry out the next procedural act or issue an order on the appointment of the expert. Since he received no reply and because the procedure had already been under way since 1993, the complainant felt that the reason for the delay was simply the fact that the defendant in the case was the MNZ.

We made inquiries at the court about the reasons for the hold-up in the procedure and requested information as to when it was possible to expect the next procedural act. The court informed us that it had issued an order on the appointment of an expert and that the expert was bound to produce an

expert opinion within 45 days. In the opinion of the judge, who is dealing with the case, it will be necessary, after the provision of the expert opinion, to fix a maximum of two more hearings and then she will reach a verdict.

The complainant later thanked us and attributed the issuing of the order on the appointment of the expert to the ombudsman's intervention, since the court issued the order after our intervention. Thus after more than two years the court has finally continued the procedure. **6.4-325/2002**

34 – EXECUTORS UPSET A CITIZEN WHO WAS NEITHER GUILTY NOR A DEBTOR

A complainant informed the ombudsman that she had received in her letter box two invitations to voluntarily settle an amount owing. The invitations were sent on 28 October 2002 and 8 November 2002 respectively by different executors in two execution proceedings. The invitations stated the date and time when the debtor had to present himself to the executor and voluntarily settle the debt. At the same time they threatened him with seizure if he did not settle the debt. The complainant informed the executors and the court that she did not know the debtor, that he had never lived in her flat, but that some time ago someone with the debtor's name and surname had lived in the same building and that by coincidence her surname was the same as the debtor's. The executors had therefore relied on the address stated in the execution order and had not checked with the necessary care whether the debtor really still lived at that address. It was enough for them that there was a letter box with the same surname on it in the building. The invitations upset the complainant – something which, given that she is a heart patient, undoubtedly did her no good.

We called both executors and drew their attention to the complainant's statements. They explained that the complainant had already drawn their attention to the error, that they had apologised to her for the upset they had caused her, and that they would try and establish the current abode of the debtor. At the same time they pointed out that the debtor or above all his family or acquaintances could have been trying to avoid seizure by means of a communication similar to the one (justifiably) submitted by the complainant.

If the executors in this case had acted carefully and had verified the address of the debtor in good time, they would have sent the invitations to the correct address and would not have upset the complainant. We do agree with the executors' observation that debtors could use a similar communication to try and avoid seizure or at least postpone it. However, this merely points to the need for greater care on the part of executors when verifying that a debtor actually resides in a given flat in a building containing several flats. **6.4-366/2002**

35 – FAILURE OF THE TOWN PLANNING INSPECTORATE TO TAKE ACTION

In 2002 a complainant turned for a second time to the ombudsman about a sewage system built without the appropriate permits and the failure of the competent inspectorate, the IRSOP, to take action in relation to it. Although we presented this case in detail in the 2000 annual report, the complainant informed us that the competent inspectorate had still not taken action even though it had established during an inspection carried out in 1999 that the pipes for the sewage system at issue had been laid without the appropriate administrative permits. It was not until a year later, on 3 November 2000, that on the basis of Article 73 of the ZUNDP the competent planning inspector issued to the developer – Ajdovščina Municipal Council – a decision ordering the removal of the sewage system running along a path belonging to the municipal council by 1 March 2001. The IRSOP informed us that the municipal council had also requested the issuing of an appropriate administrative permit for the legalisation of the sewage system. Since the UE Ajdovščina has still not decided on the application

for a permit for the sewage system in question and since removal of the sewage system would cause major damage to the municipality and local residents, while the structure itself is not disturbing from the town planning point of view, the sewage system was not included among the structures which were supposed to be removed this year under administrative execution procedure.

In its reply the UE Ajdovščina informed us that on 28 October 2002 (and not until then) the municipal council filed an application for the issuing of a decision on the permitting of registered works for the rehabilitation of an existing ditch for the drainage of rainwater which it supplemented in such a way that it actually involves the legalisation of the works carried out in 1999. Since, on the basis of the supplemented application and the decision of the inspectorate, it is evident that what is involved is not the permitting of maintenance work which the developer will carry out on an existing legally built structure, but in fact the legalisation of works done during the building of the sewage system, the application of the developer for the registration of works was not appropriate.

Apart from the fact that, in accordance with the assurances given in 2000, Ajdovščina Municipal Council passed an ordinance on the drainage and purification of municipal waste water and rainwater and thus, in accordance with the provision of Article 26 of the ZVO, established a basis for the provision of a compulsory local public service, we found that the competent inspectorate had no basis for failing to act, since by means of the regulatory decision issued in November 2000 it clearly ordered what measures the developer was obliged to take and within what period. Although the deadline for the voluntary execution of the decision of the inspectorate expired on 1 March 2001, the inspectorate did not continue the execution procedure. If the structure itself was not disturbing, from the town planning point of view, the inspectorate should have taken this into account in its regulatory decision and ordered the developer to take a measure corresponding to this. Otherwise, the inspectorate is bound to take action and also to ensure that the decisions it issues are actually executed. Unlawful use of land is unlawful use of land even if it is not disturbing from the town planning point of view. **7.1-43/2002**

36 – SLOW AND INEFFECTIVE ACTION BY THE PLANNING INSPECTORATE

Two complainants informed the ombudsman that the competent town planning inspectorate had still not carried out the execution of a final decision of the inspectorate issued in a case of unlawful use of land, even though the Trbovlje branch of the IRSOP had in as far back as 1995 issued the developers with a decision ordering them to rehabilitate a site under the conditions of the site development permit and building permit issued by the UE Trbovlje within a specific period (30 days after the acquisition of the permit). The request of the developers for the legalisation of the unlawful use of land was refused by a decision of the UE Trbovlje dated 11 November 1998. The appeal against this decision was refused by a decision of the MOP dated 11 April 2000. The developers did not institute an administrative dispute.

The IRSOP informed us that the compulsory execution of the decision of the inspectorate was stayed until the final decision of the UE on the application of the developers for the legalisation of the unlawful use of land. The decision of the UE which refused this application became final on 16 May 2000, but the UE did not forward this decision, which included a confirmation of executability, to the town planning inspectorate until September 2002. Such conduct by the UE is contrary to its explanation that it sends a copy of all site development permits or decisions refusing the issuing of such a permit to the competent town planning inspectorate as soon as they have become final.

Given the finding that the procedure of legalisation had finished unfavourably for the developers (the parties bound by the decision of the inspectorate) and that the developers themselves had not adhered to the execution of the decision, we received an assurance from the IRSOP that the inspection procedure, finalised with an executable decision, would continue in an execution procedure the purpose of which is to force the developers by means of fines to fulfil their obligation within a given time limit.

The inspection procedure conducted by the town planning inspectorate in the matter of the unlawful use of land came to a standstill because after the decision of the UE refusing the developers' application for the legalisation of the unlawful use of land became final, the competent inspectorate did not respond and take suitable action or continue the inspection procedure. Another reason is the conduct of the UE Trbovlje, which did not forward to the competent inspectorate the decision on the basis of which the inspection procedure could have been continued until more than two years after it became final. Such conduct on the part of both the UE and the town planning inspectorate, irrespective of the reasons for it, is at least contrary to one of the fundamental principles of general administrative procedure – the principle of economy of procedure. **7.2-19/2002**

37 – CONCEALMENT OF INCORRECT SERVICE ON THE PART OF AN INSPECTORATE

The complainant informed the ombudsman that the building inspectorate is failing to act in a matter of alleged non-compliance of building work done by his neighbour. The neighbour has apparently run the ventilation pipe for a gas central heating system through the wall of the block instead of into the ventilation shaft as specified in the site development permit and building permit. Since he had not received a reply from the inspectorate despite a request and a reminder, the complainant turned to the ombudsman. On 26 July 2002 the inspectorate informed us that a decision had been issued on 9 October 2000 instructing the developer to ensure the compliance of the central heating system with the projects contained in the building documentation. We asked the inspectorate to send us a copy of the decision, from which it derives that the developer was ordered to bring the installation of the central heating system into compliance with the issued building permit within 30 days of receiving the decision. On 19 March 2001 the complainant contacted the inspectorate again because the situation had remained unchanged. We therefore asked the inspectorate for additional explanations of the measures it had taken on the basis of this decision. On 2 December 2002 we received a reply from the inspectorate in which it informs us that the service of the decision on the developer had not been correctly carried out. It explains that the mistake occurred because of a lack of conscientiousness on the part of the inspector when tidying the file. We warned the inspectorate that it is unacceptable that the decision had not been served in two years. The inspectorate did not inform us of the method of service, and neither was it obvious from its responses when the irregularity was noticed. We therefore asked ourselves whether this was established during our first inquiry, without the inspectorate telling us, or only during an inspection of the file on the basis of our third inquiry. We proposed to the director of the IRSOP that he clarify these issues with the competent branch and inform us of his findings, and the further progress of the inspection procedure. **7.2-20/2002**

38 – IDENTIFYING A DENATIONALISATION BENEFICIARY AFTER NINE YEARS

On 29 November 1993 the complainant filed a denationalisation claim for nationalised property at the Ljubljana Centre municipality and the UE Jesenice. On 23 August 1994 the municipality, which later became the "Center" branch of the UE Ljubljana assigned part of the claim to the adjudication of the UE Jesenice. Another part of the claim was assigned to the UE Celje on 29 January 1998 and a further part to the UE Radovljica on 3 February 1998. We made several inquiries at the individual UEs. The replies were surprising. On 20 June 2002, on the basis of our interventions, the UE Celje dismissed the denationalisation claim because the applicants had not enclosed the documents which proved legal succession in relation to the beneficiary. The UE Jesenice made a final decision on that part of the claim which had been filed directly with it in 1995. With regard to the remaining part of the claim, it issued an order interrupting the procedure until the establishing of the mistakes of the UE Ljubljana, which had not issued a temporary injunction against the ownership transformation of Lek d.d., Ljubljana, and the conclusion of procedures relating to the complaints that had been

filed. Following the issuing of a decision by the MG, the UE Radovljica contacted the Centre branch of the UE Ljubljana on 18 April 2002 and requested additional documentation relating to the case. The beneficiary had died in 1942 and therefore – as they were now establishing – it was necessary to identify the legal successors who are the beneficiaries in the procedure. Because the UE Ljubljana had not yet established who the beneficiaries were, it was agreed that this information would be obtained ex officio by the UE Ljubljana and forwarded to the UE Radovljica. However, the UE Radovljica did not receive the information and therefore on 18 August 2002 called on the applicant's agent to submit evidence of this. On 3 October 2002 the agent informed the UE Radovljica that he had been notified by the Centre branch of the UE Ljubljana that it would conduct the entire denationalisation procedure and that the UE Radovljica would therefore assign it the case for adjudication. The Centre branch of the UE Ljubljana is conducting four denationalisation procedures relating to the nationalised property for which the complainant has lodged a claim. With regard to all the cases, it is first of all necessary to establish, as a preliminary issue, the legal succession in relation to the beneficiary. For this reason the UE will invite the applicant to supplement her claim and also submit to her its findings from its inspection of the probate file relating to the beneficiary. To date, the administrative body has taken no action with regard to one of the denationalisation files.

Identifying a beneficiary after nine years, assigning claims after several years, citing incomplete applications, and claims which have not yet been dealt with at all, are merely the worst irregularities in the conduct of the procedures in question – irregularities which should not be allowed to occur and which make it seem unlikely that all the denationalisation procedures will really be settled in the foreseeable future.

We also drew the attention of the Office for Organisation and Development at the MNZ to the case and proposed that it study our findings and if necessary re-examine the cases and monitor them and take steps in accordance with its powers. However, the Office has merely informed us of the progress of the individual procedures. **0.5-259/2001**

39 – VIOLENCE AGAINST A PUPIL – AN INTOLERANT ATTITUDE TOWARDS THOSE WHO ARE DIFFERENT

Just before the Christmas and New Year holidays in 2001 the complainant contacted us by telephone. She wished to remain anonymous because she was afraid that revenge would be taken against her daughter. She told us that her daughter, who is a third-year pupil at the secondary school of catering, had a classmate who is maltreated by his peers and that even some of the teachers had become extremely intolerant towards him because of his difference. She told us that his classmates took his textbooks and exercise books and refused to give them back, that they humiliated him and made fun of him, spat on his chair, flicked his head, pulled his hair, wet his clothes, set fire to his jacket, and had once hung him on the blackboard...

She claimed that in some lessons the other pupils joined together in grading him and that they made fun of him if he did not pronounce a word correctly in English lessons. Things were worst during English lessons, where he no longer dared to open his mouth because he was afraid of being teased. The teacher apparently told him in as early as December that he would fail the year. He was becoming increasingly strange (depressed) and was very lonely.

To begin with we informed the boy's parents of what we had been told. His mother told us that she already knew about some incidents but had not suspected that things were so serious. She had noticed major changes in her son and was seriously worried. She had already mentioned the problem several times to the class mistress, the English teacher and the counselling service. However, she had received the reply that because of his social immaturity and slightly different behaviour, her son provoked strange reactions among his classmates. They therefore suggested to her that she should take measures to make him behave differently. She received no adequate response to her explanation that he had been slightly different ever since he was born but that with hard work and

the help of his parents he had attended a normal primary school and also successfully completed the first two years at their school. It was explained to her that since he had not been streamed and was therefore not in a class with fewer pupils, they could not treat him any differently.

She told us that she was afraid that if we intervened the situation would become even worse. She asked to us to intervene in the mildest way possible to begin with. We informed the school of the anonymous complaint by telephone.

We telephoned the head teacher of the school and informed her of the allegations of the anonymous complainant and of our agreement with the pupil's mother. We understood from our conversation with the head teacher that she was aware of the situation in the school but not in its entirety. She told us that she was only aware that the parents of the boy's classmates had complained about the favouritism shown him. A joint meeting to clear up doubts and inform the parents about what their children were doing had not been organised. It appeared to be the case that violence is tolerated at the school, since there are some pupils with behavioural problems and it is easiest "to turn a blind eye".

Two weeks later the pupil's mother informed us that major changes had taken place at the school. Following an interview with the pupil and an interview with the parents (the head teacher, educational counsellor and class mistress were all present), they discussed the problem at an assembly of teaching staff, held a meeting with parents and with the class pupils and on this basis drew up a plan of work. Since he no longer spoke in front of his classmates during English lessons, the boy was tested orally in front of a commission and was given the grade "good".

At the end of January the pupil's mother informed us that the attitude towards her son had changed considerably, first on the part of the teachers and later also on the part of his classmates. Conflict situations still occasionally appeared but he coped with them in a different way. He regularly attended lessons, had corrected his bad marks, was happy in his work again and had slightly changed his behaviour. He finished the school successfully. **0.6-8/2002**

40 – UNJUSTIFIED REFUSAL TO ALLOW INSPECTION OF A FILE

A complainant turned to the ombudsman over the difficulties she is being caused by a mobile telephony base station placed on a residential/office building. Among other things she informed the ombudsman of the MOP's order dismissing her request to inspect the files relating to the procedure of issuing a site development permit, building permit and a licence for use. In the explanation of this order, the ministry explains that they had treated the agent's request as a petition for the repetition of the procedure. In the decision they likewise explain that "if the represented parties thought that they should have participated in this procedure as secondary participants and that the administrative body should have permitted them to inspect the file, they should have filed their request to be recognised as parties to the procedure by no later than the commencement of construction." In relation to the issued order, we asked the ministry to inform us on what basis it had treated the applicants' request as a petition for the repetition of the procedure. We also pointed out that Article 142 of the General Administrative Procedure act contains provisions regarding the request of a party to enter a procedure and the decision-making procedure to be followed by an administrative body in relation to the request of an applicant, while the provisions of Article 82 of the ZUP, in relation to Article 43 of the same act, relate to the inspection of files and notices about the progress of a procedure, the rights of parties and others to inspect a file if they can credibly demonstrate that they have a legal benefit from this. The ministry replied that after carrying out an inspection of the files and re-examining the complainant's request, it had established that its decision had not been correct. It therefore sent the applicant an invitation to **inspect the files** relating to the matter in question. **0.5-90/2002**

1 - VIOLENCE AGAINST WOMEN

The most common form of violence against women is **domestic violence**, abuse by an intimate partner (WHO, 2002). This is completely different from violence against men, who as a rule are victims of violence outside the borders of the family system. Women are usually emotionally and economically connected to the aggressor, which significantly determines both the dynamics of the abuse and the possible approaches to this issue. Violence by an intimate partner appears in all countries, independent of the social, economic, religious or cultural reference framework. Although women can also be violent in partner relationships, and although violence also appears in homosexual relationships, the predominant pattern of violence in partner relationships is when the aggressor is a man and the victim is a woman.

Thanks to the efforts of "women's" organisations and movements, violence against women has attracted the attention and concern of the international community. The problem concerns both **the respecting of fundamental human rights** and **the issue of public health/health care**.

Violence by an intimate partner is any type of behaviour in a partner relationship which causes physical, mental and/or sexual suffering/consequences. The most common forms are:

- **acts of physical aggression** – slapping, kicking, punching, pulling hair, pushing, etc.
- **mental abuse** – humiliation, intimidation, blaming, etc.
- **coercion to sexual activities**
- **control** – exclusion from circles of relatives and friends, monitoring movement and behaviour, limiting contacts, information, preventing seeking help, etc.

The phenomenon of recurring abuse is usually described as **maltreatment**.

Forty-eight population studies (WHO, 2002:89) on all continents have shown that 10-69% of women report that they have been the victims of physical violence on the part of their intimate partner at least once at some stage in their life. For the majority of these women, physical violence is merely part of a recurring pattern of abuse. Research data indicate a connection between physical violence and mental abuse, and in approximately every second woman there is also a link with sexual violence. In addition to physical violence, the majority of women also experience other forms of violence sooner or later. In a violent partner relationship various types of abuse tend to occur, but most data is available on physical violence.

Violence by intimate partners in industrially developed countries follows at least two patterns.

- **Intensification of violent behaviour**, various forms of abuse, terror and threats linked to increasing possessiveness and control
- **A more moderate form of interpersonal violence** when constant frustration and anger occasionally break out in the form of physical aggressiveness.

The latter is also commonly known as "violence by habitual partners" and is more often included in analysis and research than the first pattern, which is described as torture. In industrial countries we note a high frequency of physical violence, which for the most part, is not dealt with by social services, the police and/or the courts.

Research shows that violence in a partner relationship involves both men and women in different proportions. In industrial countries women who are the victims of violence are three times more exposed to injuries, seek medical help five times more frequently and five times more frequently live in an atmosphere of fear for their life than do men (also victims of violence in a partner relationship). Women turn to violent behaviour as a form of self-defence (WHO 2002). In traditional societies beating a wife/partner is a man's right. The acceptability of physical punishment of women is linked to traditionally defined sexual roles. The mission and role of a woman in such an environment is to look after the home and the children and to be submissive and respectful towards her husband/master. If the latter considers that his woman is not fulfilling her duties, he has to punish her.

Studies in industrially developed countries and developing countries have shown a similar repertoire of trigger situations which lead to violent responses from the man:

- disobedience;
- answering back (active participation in a quarrel);
- lateness in preparing a meal;
- unsuitable care of children and home;
- mentioning money or other women (as sexual partners);
- leaving the home without the husband's permission;
- refusing sex;
- suspicion of the woman's infidelity.

Even in developed countries many women agree that a man has the right to "discipline" his wife even with force. Refusing sex is the most common reason for physical violence (WHO, 2002:95) and is related to the inability of women to protect themselves from undesired pregnancy or sexually transmitted diseases.

Some societies differentiate between "good" and "bad" reasons and between "acceptable"' and "unacceptable" violence, where this is usually decided by the men or the older family members. Only when a man oversteps the borders of the acceptable do others intervene. The majority of abused women do not remain in the role of passive victims but instead develop methods (strategies) to increase their own safety and that of their children. A woman's response to abuse is always limited by the possibilities she has at her disposal. Numerous factors keep a woman in a partner relationship of this type: economic dependency, concern for children's welfare, absence/lack of support from friends and relatives, emotional dependency, fear of vengeance and a desperate hope that the man will change. In many places the stigmatisation in a society which looks down on unmarried women is an additional burden.

Denial and the fear of "what others will say" often halt a woman on her road to help. Those who reveal their distress in most cases confide in relatives or friends, but very few report matters to the police. Many women leave their violent partners, usually when the children have grown up. They usually make this decision when the violence intensifies, when they no longer believe that their partner will change, or when the violence increasingly begins to affect the children too. Such a decision is more likely if the woman has the support, including financial support, of relatives or friends.

Breaking off a violent partner relationship is a lengthy process and not a single action or the consequence of a momentary decision. Many women leave several times and return before they are able to definitively break off the relationship. During this period they experience periods of denial, self-reproach and acute mental suffering, and are frequently unable to comprehend the dimensions of their own problems. Unfortunately leaving an abuser does not always bring safety and peace. The violence can continue – or even intensify – after the woman's departure.

For most public institutions violence against women and children is a relatively new problem and one that they have not dealt with in the past. Violence and abuse have only been talked about in the last few years, and therefore in most cases, doctrines of work have not yet been developed. The same applies to techniques and methods. The absence of a doctrine of work is a particularly urgent problem in the case of social services centres (CSDs). A noticeable change was brought about in the mid-1980s by various feminist campaigns whose most significant result was the appearance of non-governmental organisations offering direct help to those affected and drawing public attention to the problem of violence. The problem of abuse of children and women is dealt with by government organisations and NGOs, various public health care and psychosocial services (health centres, nursery schools, schools), CSDs (in the case of child abuse CSDs have the power to act – to take a child away from its family and place it in a substitute family or other institution) and the police and courts.

It very often happens that despite all the institutions involved in dealing with the victims of the abuse, the victim remains alone and, worse, the abuse continues. The qualitative and also quantitative changes that have taken place in past years should be ascribed to the increasingly ramified, persistent and enthusiastic activity of NGOs, which place an emphasis on individual and telephone counselling, advocacy and self-help groups, rather than to the work of the responsible services such as CSDs or the police. There is however still far too little of this sort of help.

It is impossible to determine the exact number of women and children who suffer abuse and violence. In 2000 NGOs prepared, in conjunction with the Office for Women's Policy, a campaign under the slogan "*Kaj ti je deklica?*" ("What's the matter with you, little girl?"). As part of this campaign an estimate was published that in Slovenia every seventh woman is raped and every fifth woman beaten. The methodology with the help of which the authors arrived at this estimate is not a subject of the Human Rights Ombudsman's treatment of violence against women. Undoubtedly the figure is an arbitrarily determined one, but nevertheless it requires consideration and comparison. With this frequency of violence against women we could conclude that in the capital of Slovenia approximately 28,000 women suffer violence. In 2002 over 1200 women turned for help to four NGOs in Ljubljana (the Women's Counselling Centre, the SOS telephone helpline for women and children who are victims of violence, the Association Against Violent Communication and the Association Against Sexual Abuse). Experts consider that this is fewer than 5% of those who suffer violence. The number of those who do seek help is increasing from year to year, something which can be ascribed to greater sensitivity and awareness among the public. A further consideration is the fact that the majority of NGOs operate in the area of the capital city, which means that women from other parts of Slovenia have far fewer possibilities of getting necessary and appropriate help. At the level of society as a whole we are still too little informed and violence against women is typically understood as a private problem and an embarrassment. For this reason the role of the Human Rights Ombudsman in informing the public is of unquestionable importance. In 2002 the ombudsman took an active part in events marking the international days of the fight against violence against women and will continue with his activity, particularly in the sense of increasing sensitivity to this issue.

When we talk about the number of those who suffer violence, we should be aware that within the framework of the competent institutions in Slovenia no uniform methodology exists for the collection of data on violence against women. For this reason, in the case of violence against women and children, it is undoubtedly worth considering the so-called "grey area", since NGOs, given their capacities (public institutions do not usually deal with the problem except when it involves a child), only manage to help a small section of the population facing violence (according to their statements the figure is probably around 5%). NGOs also work in extremely difficult conditions: the premises they have at their disposal are small and unsuitable for individual work with users, highly trained and professional workers can almost only be provided via public work programmes and for a low salary, and there is apparently also a noticeable lack of administrative personnel. We consider the most urgent problem to be the inadequate cooperation of public institutions with NGOs and, related to this, the inadequate training of professional workers. Special attention should also be devoted to the suitability (or otherwise) and adequacy (or otherwise) of preventive programmes.

At the declarative level the police claim to be aware of their role in dealing with violence against women. However, the experience of many victims suggests otherwise.

Reporting violence at police stations

The attitude of the police towards women who are the victims of violence

When a victim comes to a police station to report a violent act, police officers usually direct her to the police station nearest to her place of permanent residence – which is not in accordance with the law. A police officer (any police officer, at any police station) is obliged to take a report and only then may he/she assign the case to the competent police station or police administration. A frequent consequence of such conduct is that the victim gives up – she can no longer summon the strength to repeat her statement to another police officer, especially since the arrangement of the premises at many police stations is unsuitable. Most police stations are arranged in such a way that the citizen has to explain to a duty officer at a window his or her reason for coming to the police station. The room where this window is situated is not divided and the conversation takes place in front of everyone present. A statement about violence is in itself difficult and demands a great deal of strength from the victim. With such an arrangement at police stations, the victim has no privacy because everything she says will be heard by the other people waiting in the room. This is an undoubted breach of confidentiality. Police stations should be arranged in such a way as to give a person the possibility of entering a closed room and telling the police officer why she has come. Some police stations do offer such a possibility. The fact is, when victims of violence come to a police station and see the conditions, they are often unwilling to say anything because they feel ashamed and they simply turn around and go away, while the incident remains unreported. This happens most often with victims of criminal offences against sexual integrity.

When a victim reports violence on the part of her partner, she does not usually get a copy of the report of her statement. Most victims do not even know that they have a right to this, or that they can ask for the report. The police explain that a victim is a party to a procedure and could be preparing to testify in court. If she had a record of her own statement, this could affect the credibility of her statements. Apart from the fact that this method of "ensuring" the credibility of statements is professionally extremely questionable, the victim is in an unequal position since the offender, or his counsel, is able to study the full documentation. The police should give a copy of the report of his or her statement to every person reporting a criminal offence, at the same time as warning of the consequences of giving false information.

Inappropriate photographs

Rooms at various police stations are sometimes decorated with photographs of naked women. These are usually calendars or other promotional material. This is unacceptable since these are not private premises and such a practice shows the attitude of the police (or at least of some police officers) towards women as sex objects, or their attitude towards female nudity. Since, as a result of frequent problems of space at police stations, interviews with citizens can sometimes take place in the offices of police officers, such a practice becomes even more questionable. Women who are victims of violence usually become silent when they see photographs of naked breasts and crotches. One victim who wished to report her partner's violence did not once mention being forced to have sex, even though this was a frequent occurrence, during her conversation with the police officer. After leaving the police station she said that her husband had long been torturing her by placing pictures of naked women around the house, commenting on their appearance, talking about what he would like to do with them, and then converting these sexual fantasies into humiliating sexual relations to which she did not consent and which she did not want. When she saw photographs of this type in the policeman's office she was unable to say anything about this.

Such an environment is also extremely unsuitable for conversations with sexually abused children and adolescents, since one extremely frequent method of abuse involves the offender showing his young victim pornographic material.

Insufficiently thorough collection of information from women reporting violence

Figures show that most women experience all forms of violence but usually report physical violence to the police. Police officers do not, as a rule, inquire about sexual or mental abuse. Thus sexual violence remains concealed. Victims rarely start talking about this and are often not even aware that forcing someone to have sex is a criminal offence. When collecting statements, police officers limit themselves to what the victim says and because of ignorance or lack of knowledge about the issue, they do not ask the right questions and do not obtain information about additional elements of criminal offences, which however, should be the purpose of the work of the bodies responsible for the detection of criminal offences.

Defining violence as an offence against public order and peace

The majority of reported cases of violence against women (and children) in the family environment are defined in police records as offences against public order and peace. The police officers who intervene in a domestic violence situation do not usually deal with the incident in such a way as to identify the elements of the criminal offence (e.g. violence). The reasons for this are probably numerous. One of them is the value system and the attitude towards violence against women, which is apparent from the typical statements of police officers who advise victims "not to provoke" and not infrequently add that "it takes two to quarrel". Police officers are not suitably trained and often do not know the mechanisms and dynamics of domestic violence. Furthermore, qualification of an offence under the General Offences Act requires considerably less effort. In this way the impression is created that violations of the rights of children and women who are victims of violence are not serious or important. The belief still prevails that women provoke and that it is sometimes educational to hit children, despite adopted conventions and declarations.

Such practice, even with repeated interventions by the police, does not bring greater safety to victims of violence. Many victims stop calling the police after their first experience of a police intervention of the type "it takes two to quarrel". It is useless to call on victims not to suffer violence and to report it if the action taken by the police remains unchanged. Women persevere in violent relationships since they are convinced by the reactions of the police (who are often for a long time the only people to whom they turn for help) that no-one can help them and that the violent partner can do whatever he likes to them. Even actions which could be defined as attempted murder (e.g. strangulation with a washing line) end up as offences against public order and peace. Debate about domestic violence ought to lead to agreement that it is not a matter of a breach of public order and peace, it is a matter of violence, as defined under Article 299 of the Penal Code, which has to be consistently prosecuted.

During an intervention police officers take a record of the incident. The victim is not given the chance to inspect the record and cannot correct any irregularities. Police officers submit proposals to general offences judges on the basis of such official notes, in which, more than a description of the event, their personal attitude towards violence against women and children can be apparent. Thus as a result of a breach of public order and peace both victim and abuser are often punished. This is another reason why proposals to general offences judges can be questionable. The victim is punished for an act carried out against her by the offender, her right to safety remains violated, while if the judge only punishes the abuser (for example with a fine), it is often again the victim who really pays the fine. The statement that the victims of domestic violence are always in an unequal position and in one way or another are constantly "punished" is therefore not a simplification. Undoubtedly this is yet another reason why victims do not call the police.

Restraining order and detention

Detention of a violent person and bringing him before an investigating magistrate happens only rarely. An investigating magistrate only issues a restraining order or injunction when the victim has already moved out of the place of residence she shared with the offender (e.g. to a refuge or a safe

house). While the victim remains at home, investigating magistrates rarely decide to issue an injunction, let alone order detention, although we would expect a violent offender to await trial in custody. One of the reasons that investigating magistrates do not issue injunctions in such cases must be the fact that the aggressor has the right to access to his own dwelling. The state or its representatives thus pretend to ignore the fact that this same right is violated in the case of the victim who has to leave the house and go to a refuge, since in their opinion she has done this voluntarily!

Sexual violence

The section of the Penal Code that deals with rape (Article 180) talks about sexual intercourse while the section that deals with sexual violence (Article 181) talks about "sexual acts". The threatened punishment in the first case is 1 to 10 years. In the second case it is 6 months to 10 years. In practice, anal and oral sexual relations without consent (rape) are treated as sexual violence. The problem is many-layered and such a definition further demolishes the psychosocial integrity of the victim. If vaginal penetration is not involved, it is not rape, although for the victim every form of rape is traumatic and humiliating and anal rape is frequently far worse for the victim. Additionally, the most lenient punishment threatened in the case of sexual violence is less than the most lenient punishment for rape, which also effects sentencing in practice. From the point of view of the protection of the rights of the victims of such acts, this is utterly unacceptable.

Periods of limitation

The problem of the period of limitation in the case of criminal offences which reach into the area of violence against women by partners lies in its brevity. From the point of view of the dynamics and mechanisms of domestic violence this is unsuitable. In this sense victims are often "too late" to report an offence. Many women who leave a violent partner are not ready at the beginning to report acts of violence. The reason lies not so much in ignorance of regulations and the legal system as in the psychosocial state of the victims themselves. When the victim is able to step out of the vicious circle of a violent relationship, to begin with all she wants is peace from the abuser. After a certain amount of time, when for example she gains strength and confidence during the counselling process and realises that what has happened to her is wrong, that it is punishable, and that it is right for the offender to take responsibility for his actions, the victim no longer has the opportunity since the period for prosecution has already expired. In this way society and the state are telling victims of violence that they should keep quiet, that they themselves are guilty because they have waited so much time, which is an unambiguous reflection of the total lack of knowledge (perhaps even ignorance) of the issue of violence against women and children.

A "missed" opportunity to prosecute the perpetrator of violence further burdens the victim and victimises her for a second time. Meanwhile the process of re-establishing psychosocial balance gets longer. When there are no more possibilities of prosecution, there are also no more possibilities of satisfaction and the victim is pushed by the very system of operation of criminal prosecution to the margin of social, and often also economic security. Victims of domestic violence are victimised at least twice – the second time by society and the state.

Violence against women is also affected by the periods of limitation in cases of sexual abuse in childhood. Traumas in early childhood have multiple effects on adult life perspectives, identity issues and the quality of partner relationships, which means that the victims of violence in childhood are, to a significantly larger extent and with significantly greater frequency, also the victims of violence in adulthood (WHO, 2002). Numerous women only begin to talk about sexual abuse in childhood once they are adult and independent – often during a therapeutic or counselling process which they have chosen for other reasons, among them partner violence. Furthermore, children suppress the memory of sexual abuse and in some cases such memories only surface many years later when they are adults (under the influence of some apparently insignificant and unrelated incident). At that point many victims confront the abuse and seek help. During the counselling process victims recognise the traces that the abuse has left (e.g. attitude to sex and partner relationships, low self-confidence and self-esteem, frequent health problems, eating disorders, dependency illnesses). One of the important elements of processing and recovering from this type of mental trauma is the expression of and confrontation of anger and guilt (the majority of victims blame themselves for the actions they have suffered). However, the current regulation and the relationship between the threatened punishment and the periods of limitation often no longer permit prosecution of the offender. Thus the victim is deprived of the possibility and experience of "justice", something extremely important in the process of recovering from a trauma. The victim does not have the possibility of society and

the state showing her, and proving to her by convicting the offender, that it is the offender who is to blame for the sexual abuse – because the criminal offence has come under the statute of limitations.

The route chosen by some legislations has overcome the problem of the "lateness" of the prosecution by commencing the period of limitation for the prosecution of this type of criminal offence on the day that the woman remembers the abuse and talks about it for the first time to an expert. Since the need to report the act and the need for satisfaction does not develop in the first phase of the process of recovering from trauma, this period is longer than a year.

Psychosocial help

Women who are victims of violence are mainly offered psychosocial help by NGOs. The CSDs do not have a formulated doctrine of work and therefore do not act uniformly and are often dependent on the professional interests or the recommendations and ambitions of staff.

Operating under the aegis of some NGOs, largely concentrated in Ljubljana, are various self-help groups for women who have experienced rape, women who experience domestic violence, women with eating disorders, and also for their families. The various forms of counselling – individual counselling, advice and assistance via free telephone helplines and personal counselling – are of the utmost importance, especially when they help in contacts with various institutions such as CSDs or the police. Advocacy is developing increasingly. This includes accompanying the victims of violence to various institutions, assistance in writing official letters, legal actions, complaints, assistance in drafting various types of applications and so on. Advocacy includes an accurate record of the report of the abuse, the actual report of the abuse, forwarding the report to the competent police administration or criminal police and to the competent CSD, a written request for the convocation of a team at the CSD and for an invitation to join the team, and of course collaboration in the multidisciplinary team.

NGOs organise training for volunteers and professionals, actively cooperate with the media, prepare leaflets, carry out surveys and small research projects on the extent and forms of violence against women and on the response of institutions to violence, collaborate in the free legal aid project and also try to collaborate in the formulation of legislation. They also carry out social care programmes and programmes of work with young people which are linked to various social campaigns, the purpose of which is informing and changing social consciousness. One NGO carries out group work with the causers of violence, and group and individual counselling work with prisoners serving sentences for criminal offences related to violence. It is also introducing a universal play programme in nursery schools and runs a guided support group for parents and several projects designed to raise public awareness and issues new publications. Occasionally a lack of specialist knowledge is evident in the work of these organisations. This is something that can affect the suitability and professionalism of procedures. For this reason the state should develop, in addition to the invitations for applications on the basis of which NGOs are financed, clear criteria for professional workers, a system of monitoring the quality and professionalism of work, and of course a transparent model for funding activities which fill the vacuum in the network of psychosocial help which the CSDs themselves are unable to fill.

Shelters or safe houses for women and children who are victims of violence are an important acquisition. These offer women and their children a safe place where they can escape from a violent partner or other family member. Providing safety to women and children is one of their key functions. Staying in a shelter or safe house is free for women who have no income, since financial problems can prevent a victim from escaping from violence. Various forms of help are available to women and children who have entered a shelter in order to escape violence. These include counselling (individual, group, self-help groups), advocacy and help with material problems. Because of the limited space, however, these are solutions that are more the exception than the rule. As well as expanding the network of shelters, we urgently need to seek systemic solutions and adopt a special law which regulates the issue of domestic violence in full.

Partner violence is greater in societies where the role of the woman is changing – transition societies. In environments where women have a low status and little social power, violence against women as a way of establishing male predominance is "unnecessary", since male authority is unquestioned. A good status of women in society (more social power) simultaneously means a dif-

ferent, "modernised" gender role. Thus partner violence is greatest where women are taking on non-traditional roles and incorporating themselves to a greater extent in the labour market. Additionally, violence against women in partner relationships is linked to the frequency of criminal offences with elements of violence in a society, to the suitability (or otherwise) of the network of social services, to social norms that determine the integrity of family privacy and to the evaluation of male dominance or superiority over women. To a significant extent this is also true of the Slovene society, and therefore efforts to reduce violence against women are a long-term commitment, backed by the recently announced policy of zero tolerance of violence, to which the Human Rights Ombudsman has given his unequivocal support.

2 - PROTECTION OF CHILDREN AGAINST SEXUAL ABUSE

The Convention on the Rights of the Child defines the rights which children should enjoy and the obligations which the state must meet to this end. Children are extremely vulnerable and unprotected in relation to the adults who are important to them. Criminal offences such as **sexual abuse of a mentally ill person, sexual assault on a person under the age of fifteen and violation of sexual integrity through abuse of position** (we normally refer to these as sexual abuse of children) provoke various reactions among the public since they concern the sociocultural norms and values of our society. The sexual abuse of children is a real social phenomenon and problem which demands the fastest responses from the network of institutions and various professional activities.

Many people find it difficult to talk about sex; talking about children as the victims of sexual violence is even harder. However, the inability of adults to put into words their fears, embarrassment and doubts and admit that the world we live in is not (necessarily) "in the best interests of the child" does not remove the problem. Just how "non-ideal" the attitude of adults to children can be, and the fact that institutions do not necessarily act in accordance with the child's best interests, is shown by cases of maltreatment and sexual abuse of children. It is always adults who interpret and define the rights of children. The office of the Human Rights Ombudsman of the Republic of Slovenia has begun to actively strive for the **protection of children from sexual abuse**. Our efforts are directed towards breaking down prejudices and taboos and the all too frequent "conspiracies of silence" of adults. The protection of children from all forms of sexual exploitation and sexual abuse is the important goal of various international organisations and institutions such as UNICEF, ENOC, the Council of Europe and others. The task of the Human Rights Ombudsman in this case is to try and ensure the consistent respecting and implementation of Article 34 of the Convention on the Rights of the Child, which defines this problem, and Article 19 of the same convention, the first paragraph of which talks about protecting the child from all forms of physical or mental violence, including sexual abuse, while in the care of the family (in the care of parents, legal guardians, etc.).

At the end of April 2002 the media reported on criminal charges which had been brought against three primary school teachers. Two teachers from primary schools in the Celje area were reasonably suspected of fifteen criminal offences of sexual assault on a person younger than fifteen. A teacher from the Koper area was charged for the same criminal offence on the basis of the testimony of fourteen female pupils. On 8 May 2002, at the ombudsman's regular monthly press conference, the ombudsman drew the attention of the public to sexual violence against children and adolescents and called on the Ministry of Education, Science and Sport and the Ministry of the Interior to take decisive action. Precisely because of the special socialising role of teachers, priests, etc., sexual abuse is specially criminalized by both the third paragraph of Article 183 and the second paragraph of Article 184 of the Penal Code (KZ) of the Republic of Slovenia (pp. 160-1).

Sexual violence against children and sexual abuse of children are a social phenomenon of increasing dimensions. They provoke fear and discomfort but, above all, they have lasting consequences for their victims, since children, the most vulnerable and powerless group in society, are additionally exposed because of the changes that take place in the processes of growth, development and maturing.

In May 2002 the Human Rights Ombudsman called on the Ministry of Health, the Ministry of Labour, Family and Social Affairs, the Ministry of the Interior, the Ministry of Education, Science and Sport and the General State Prosecutor to present the activities of the competent services in the treatment of the issue of sexual abuse of children.

How, when and in what cases does the state protect the best interests of the sexually abused child?

In Article 19 of the Convention on the Rights of the Child, the states parties undertook to take all appropriate measures "to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has care of the child" (p. 14). In addition to the establishment of appropriate social programmes aimed at providing support to children and those who have care of them, the second paragraph of this article calls for measures for "other forms of prevention, identification, reporting, referral, investigation, treatment and follow-up of other forms of child maltreatment described heretofore..." (p. 14)

Article 34 of the convention binds the states parties "to protect the child from all forms of sexual exploitation and sexual abuse" (p. 21). For the purposes of the Convention a child means every human being below the age of eighteen years unless majority is attained earlier under the law applicable to the child. Under Article 3 the child's best interests are stressed as a primary consideration in all actions concerning the child. This binds the state to provide appropriate care for a child whose own parents cannot care for him or her. The convention largely follows the idea that the family is the basic social group and, as such, is the most important for the child, just as the parents are the child's most important guardians. However Articles 9 and 19 also protect the child from abuse on the part of his or her parents.

The responses to the ombudsman's inquiry showed varying degrees of sensitivity and various attitudes towards the issue of sexual abuse: while we can commend the response of the public prosecutor's office, we can also draw attention to the extreme indifference and feigned ignorance of the Ministry of Labour, Family and Social Affairs.

The Marriage and Family Relations Act (hereinafter: the ZZZDR) also protects children from abuse and neglect. Both can be a reason to take a child away from his or her parents. Neglect and cruel treatment of a child is criminalised and defined under Article 201 of the KZ. In 1995 the Ministry of the Interior recorded 95 cases of neglect and cruel treatment of a minor, while a year earlier CSDs reported to the Ministry of Labour, Family and Social Affairs on 1697 cases of maltreatment and abuse of children in families (Initial Report of the Republic of Slovenia on Measures Taken for the Implementation of the Convention on the Rights of the Child, 1997). At that time (in the initial report), Slovenia reported that **a suitable doctrine of work for work with victims had not yet been prepared in Slovenia, while the procedures of collecting evidence in cases of neglect and abuse of children were problematic because of the uncoordinated work of services and the slowness to act of the courts**. The Human Rights Ombudsman made the same findings in 2002, which means that in five years there have been no changes worth mentioning.

The Republic of Slovenia's second report on measures taken for the implementation of the Convention on the Rights of the Child in 2001 mentions the multidisciplinary treatment of abused, maltreated and neglected children at the majority of CSDs. The expert teams are supposed to include various experts who in the initial phase note the level of risk for the child, and collaborate on the preparation of a strategy and the implementation of the treatment itself. In 1998 the Ministry of Labour, Family and Social Affairs prepared guidelines for work with at-risk children aimed at the coordination of activities, the protection of at-risk children and their rehabilitation, which involves various governmental and non-governmental organisations. According to the second report, in 1999 there were 807 neglected children, 592 psychologically abused children, 331 physically abused children and 145 sexually abused children – or at least this was the number of cases of neglect and abuse detected.

In 2002, the Ministry of Labour, Family and Social Affairs needed four months to communicate to the ombudsman the data obtained via questionnaires which CSDs had been completing since 1997 for the purpose of monitoring the phenomenon of maltreatment of children. In 1997, multidisciplinary teams dealt with 84 allegedly sexually abused children aged up to 14 and 41 adolescents aged 15 to 18. In 1998, 74 children and 34 adolescents were treated on the grounds of suspected sexual abuse. In 1999, 112 children aged up to 14 and 33 adolescents aged 15 to 18 were dealt with. In 2000, CSDs dealt with 100 allegedly sexually abused children and 63 adolescents (Table 2). A comparison of Tables 1 and 2 shows that the number of charges filed by the police between 1997 and 2000 was greater by 101 than the number of alleged victims of sexual abuse dealt with by CSDs. These children and adolescents were either not treated at CSDs or they were classified in one of the other groups of maltreated children. It is worrying that in 2000 only 7 of the 10 CSDs had multidisciplinary teams, given that the Ministry of Labour, Family and Social Affairs has found that CSDs without multidisciplinary teams **report a significantly lower number of cases of sexual abuse**. Furthermore, taking a child into care and away from his or her family is the measure that CSDs employ least frequently.

The Ministry of Labour, Family and Social Affairs warns out that the **Professional Bases for the Treatment of At-risk Cildren with Guidelines for Treatment in Cocial Care**, which were prepared as a binding instruction for all those supposed to take part in the process of dealing with at-risk children, cannot be issued because the cooperation of the other services – the police, the public prosecutor's office, health care institutions, schools and nursery schools – was not guaranteed.

The work of the bodies responsible for crime detection and prosecution

In dealing with cases of the sexual abuse of children, criminal investigation and evidence law suffer from an absence of convincing methods and solutions for approaching the "material truth". There are usually no witnesses and expert witnesses are often of little benefit for the rights of the victim and the evidence procedure itself. In dealing with criminal offences defined in the Penal Code of the Republic of Slovenia as sexual abuse of a mentally ill person (Article 182 of the KZ), sexual assault on a person under the age of fifteen (Article 183 of the KZ) and violation of sexual integrity through abuse of position (Article 184 of the KZ), the police receive the largest share of reports from CSDs and annually file at least 100 criminal charges.

Table 1
Number of criminal charges filed
(matters under Articles 182, 183 and 184 of the KZ)

year	1995	1996	1997	1998	1999	2000	2001
police figures	135	116	148	209	196	173	267

Tables 2
CSDs – treatment of alleged victims of sexual abuse aged up to 18

year	1995	1996	1997	1998	1999	2000	2001
MDDSZ		no figures	125	108	145	163	no figures

According to figures from the public prosecutor's office 1013 people (978 men and 33 women) were charged between 1995 and 2001 (inclusively) in the Republic of Slovenia. In the same period 272 people were convicted. The difference is evident, although it should be added that to a large extent these figures do not refer to the same cases, since prosecutors estimate that "particularly in cases which do not carry a custodial sentence, the resolving of cases takes considerably longer and many cases are only concluded after several years." The majority of cases carrying a custodial sentence are concluded at the first instance within four to six months of the arrest, while it takes between nine months and a year for a verdict at the second instance. Matters that do not carry a custodial sentence often take years to be resolved in court.

The bodies responsible for detection and prosecution do not collect data on victims of sexual abuse, while as regards data on offenders (suspected/convicted), numerous difficulties related to the method of collecting and classifying this data are encountered.

Most of the difficulties experienced by prosecutors derive from Article 236 of the Criminal Procedure Act (p. 143) since the victims, who in most cases are related to the accused, avail themselves of "legal benefit" and do not testify at the trial. It is thought that mothers often persuade their children, even in pre-trial proceedings, to say what they themselves want or think is "right". Relations in the family thus remain hidden. Criminal procedure treats victims unsuitably since it exposes them to a very painful examination. An absurd about-turn is even possible in criminal proceedings, where because of the prevailing denial of the offender the victim him/herself almost ends up as the person being investigated. The mental integrity of the victim is too little protected in evidence proceedings. A child aged under 15 is questioned at least three times. If the victim is older than 15 during a criminal offence trial he/she is questioned several times (at the police station, during the investigation, at each main hearing). Naturally during pre-trial procedure the police collect statements and do not "take evidence", but the effect of the "informative interview" at the police station can be just as traumatising for the victim as later questioning by the investigating magistrate and/or questioning at the main trial.

The 1999 amending statute to the KZ introduced a new feature in the case of criminal offences against sexual integrity by raising the age threshold of the victim to 15 (KZ, p. 160). Biological maturity when the victim is otherwise dependent does not guarantee the possibility of choice (to consent to sexual activity). The amending statute introduces to the first paragraph of Article 183 (sexual assault on a child) the condition of disproportion in maturity (between offender and victim).

Difficulties in prosecution arise because of the exclusion of testimony both from the victim and from the people with whom the victim has spoken and to whom he/she has also described the sexual abuse if the victim is a privileged witness and has refused to testify. In this case, the victim has to attend each main hearing and on each occasion declare whether he/she wishes to testify against the accused. If the victim refuses to testify, as a privileged witness, all his/her statements in the pre-trial and criminal offence proceedings, and also the statements of all the people to whom he/she has described the events of the case, are removed from the case file. In such cases the criminal offence is as good as unprovable. Since for the most part the, crimes involved take place behind closed doors there are no witnesses. The offenders remain unpunished.

The collection of statements in the pre-trial procedure, where victims are still prepared to talk about details, but where later their statements are withdrawn or revoked as a result of pressure from the offenders, represents a special problem. For this reason, in cases of this type, the collected statements should also be taken into account as legally relevant evidence during the criminal proceeding.

The circumstance that the victim of the criminal offence remains in the family (where sexual abuse has taken place within the family) even after the filing of a criminal charge often has as a consequence extreme tensions and additional traumatisation. This applies in particular to families which are dependent on the accused for their means of survival. Difficulties of an evidential nature are also related to the institution of the statute of limitation. In many cases the consequences of sexual violence do not appear in the victims until puberty and/or adolescence and for this reason proof of the use of force or threats is very difficult.

Prosecutors believe that as a rule victims only decide to report a crime if they have the support of a third person of when the action represents such a burden that they cannot support it. There are believed to be many more criminal offences involving sexual abuse than are actually reported, but upbringing, social climate and the later treatment of victims during criminal proceedings together form serious obstacles to the bringing of criminal charges. **Shortening the criminal procedure, which should have priority at court even if the matter is not one that carries a custodial sentence**, could be of key importance.

The counsels representing victims who are minors are often unsuitable, without adequate professional training for the specialist treatment of such a sensitive area. Under Article 65 of the ZKP they

must represent the interests of the victim and his/her pecuniary interest, which in criminal proceedings often does not come into effect. Victims are referred to civil suits where they are no longer entitled to the lawyer from the criminal proceeding. **The counsel should also represent the victim in the civil suit after the completion of the criminal proceeding**. It would also be a good idea to think about a help fund for victims of this type of criminal offence from which compensation could be paid, and also funds for representation and assistance to victims. And of course consideration of the idea of **family courts** which would also deal with the perpetrators of sexual abuse (criminal offences under Chapter 19 of the KZ) would not be superfluous.

Special attention should constantly be paid to the **professional training** of all those involved in the detection, prosecution and treatment of sexual abuse. In past years the police have carried out several training programmes which were attended by domestic and foreign experts. In this way they more or less successfully achieve the goal of specialised training which is of vital importance for ensuring the protection of victims. However, there is no doubt that evaluation studies are urgently needed for all the training programmes. A number of expert conferences have been dedicated to improving cooperation with prosecutors. The Ministry of Health has announced the preparation of a strategy for the field of maltreatment and sexual abuse of children and expressed its expectation that the contents of the strategy which relate to identification and the action to be taken in the case of suspicion of maltreatment and abuse will be appropriately included in the proposal of new elements in the work of paediatricians and school doctors.

The work of paediatricians and school doctors

The second report of the Republic of Slovenia on the measures taken for the implementation of the Convention on the Rights of the Child mentions the national health care programme of the Republic of Slovenia **Health For All By 2004** which also includes activities for the protection of the health of children and adolescents. Integrated health care for children and adolescents (preventive and curative) is provided at the primary level in clinics for pre-school children and clinics for schoolchildren and young people and in private surgeries for children and young people. The renewal of the curriculum has brought the proposal of a syllabus for health education, and Slovenia has been a member of the European healthy schools network for the last ten years. The second report also mentions a project begun in 1999, **The Rationalisation or New Organisation of the Paediatric Service at the Primary, Secondary and Tertiary Levels of Health Care**, which is aimed to reduce the number of hospitalisations, shorten hospital stays and redirect diagnostics and treatment to specialist clinics at the secondary level and to day hospitals.

In dealing with the sexual abuse of children, prosecutors for the most part do not collaborate directly with doctors, while the police do occasionally. The Ministry of Health does not have figures on how many doctors have reported suspicion of sexual abuse, while the police do not know of any reports made by doctors, which does not necessarily mean that such reports have not been made in the past, but they were probably not so common as to stand out or become sufficiently noticeable. The Ministry of Health believes that "the main obstacle preventing doctors from taking rapid and appropriate action in the case of suspicion of sexual abuse is a lack of experience and skills in working with the police and the courts, and also uncertainty in the case of further work with the victim." On the other hand paediatricians should be encountering the problem of sexual abuse of children increasingly frequently (Orel, Kobe-Brecelj, 1998).

The lack of skills and experience in working with the police and the courts is an argument which does not stand up to critical appraisal, especially since Article 18 of the Declaration on the maltreatment and neglect of children places on doctors the obligation "to officially notify the competent bodies of all forms of maltreatment, be it physical, sexual or psychological." The approximately 1000 people who between 1995 and 2001 were reasonably suspected of the criminal offence of sexual abuse of a mentally ill person (Article 182 of the KZ), sexual assault on a person aged under 15 (Article 183 of the KZ) and the violation of sexual integrity with abuse of position (Article 184 of the KZ) are supposed to have sexually abused in one way or another a certain number (roughly the same number?) of children and adolescents. In the case of sexual assault on a person aged under 15, 25 per cent of victims were under 7 years old, 54 per cent were 7 to 13 years old and 16 per cent were aged 14 to 15 (police figures). Inadequate data on victims means that only guesswork is possible but if according to police figures relating to sexual assault on a person aged under 15 1,033 criminal

charges were filed in the period in question, this means (assuming that the number of criminal charges is roughly equal to the number of victims) 250 children under 7 whom it was reasonable to suspect were the victims of sexual abuse.

The Initial Report of the Republic of Slovenia on Measures Taken for the Implementation of the Convention on the Rights of the Child emphasised that after 1996 minors should choose their own paediatrician or specialist in school medicine. This is supposed to ensure better quality curative and preventive health care for children and adolescents. The purpose of preventive medical examinations is to know the child's state of health, provide active health supervision, detect health problems and advise parents or guardians and children. According to the initial report there are 71 health care centres in Slovenia which have to offer organised health care for women, children and adolescents. One of the orientations of health care which is provided by the clinic method is supposed to be a reorientation from sickness to health. Total treatment of children and adolescents is supposed to be guaranteed. In 2002 the Ministry of Health claimed that the abuse, maltreatment and neglect of children and women "is considered a serious public health problem."

If we continue with the inference begun earlier, the approximately 250 children aged up to 7 who were alleged to be the victims of sexual abuse were most probably included in a health care system which should have been oriented towards the total care of children. The police do not have figures on the number of reports from paediatricians, which does not mean that there were no reports (of this kind). The question is: how many? Perhaps the guidelines for taking a decision on reporting suspicion of sexual abuse of a child really are welcome to paediatricians, but this gives rise to the question of the relevance of "degree of suspicion", on the basis of which assessment doctors should decide whether to take action. The Declaration on the Maltreatment and Nneglect of Children merely talks about suspicion, while the attached commentary says that "every suspicion of maltreatment of a child means a doctor's duty to report it to the competent services." The degree of suspicion and the substantiation of suspicion is a matter for pre-trial proceedings, which do not take place at all when the doctor decides, with regard to the guidelines, that when the degree of suspicion is "low" he will "monitor" the child. Did paediatricians therefore overlook the (allegedly) 250 children who were victims of sexual abuse or did they "monitor" them?

Multidisciplinary treatment of victims of sexual abuse

Detecting sexual abuse of children is, in the experience of the police, conditioned by the complexity of the problem, since misconceptions in society and the ignorance, inability and often also unwillingness of individuals and even professionals to recognise sexual abuse and then report it create a large field of undetected abuse (the so-called grey area of crime). Multidisciplinary crisis (expert) teams work with different levels of effectiveness and professional competence and the cooperation of various institutions is usually dependent on the professional training and sensitivity of all the participants. In a network of (co-)operation conceived in this way, the police are responsible for substantiating suspicion. The obligation to report is also supposed to have got over the problem of doctors' reticence because of the protection of the child, which is supposed to be the paediatrician's first concern. Assuming that all participating institutions (CSDs, bodies responsible for detection and prosecution) meet basic professional standards, it would be worth emphasising that it is better to have several "unjustified reports" than one "justified" report too few.

Reflection on the treatment of sexual abuse of children and a review of the activity of various institutions relatively quickly comes up against the "*emperor's new clothes*" of the myth about the child's best interests.

In other countries numerous institutions deal in depth with the problem of sexual abuse of children. In past years this has also been responsible for abundant research activity and results. Various authors in Europe and the USA state that sexual abuse of children represent around 15 per cent of all cases of abuse, maltreatment and neglect of children. Just under half the children involved are five years old or younger. Girls predominate among the victims of sexual abuse. **In Slovenia in 2002 it was not possible to obtain a valid and uniform figure on the number of victims of sexual abuse. The police detect offenders and claim that they do not have numerical data on victims. The figures of the Ministry of Labour, Family and Social Affairs differ from the number of criminal charges filed.**

The model of multidisciplinary treatment and the expert team used in Slovenia for the treatment of sexually abused children cannot respond to the complex challenges of the issue of sexual abuse. This applies in particular to the area of monitoring offenders. Experience in other countries has shown that only appropriate therapeutic treatment during the serving of a prison sentence, and, above all, systematic monitoring can to a certain extent reduce recidivism and increase public sensitivity to the growing phenomenon of sexual abuse.

The models and solutions of a given environment are linked both to the norms and values of that environment and to cultural, economic and political practices and frameworks. Crime in Slovenia is imitating the trends and patterns of crime in industrially developed, market oriented economic and state systems from a few years (or decades) ago. The so-called transition influences can be understood and recognised as stressors or triggering factors for crime with elements of violence. This is merely one more reason for thinking about solutions.

The consequences of sexual abuse of children are frightening, especially if the abuse remains undetected for a long time. In many cases victims suppress traumatic events and later do not remember them at all. This, however, does not remove their destructive effect. A closer relationship between victim and offender causes more harm to the victim than abuse by a stranger. As the victim grows older, his or her sense of responsibility also grows, and with it feelings of guilt which form a vicious circle and grow deeper.

Research has confirmed the terrible consequences of sexual abuse, which can often leave its mark on victims for their whole life. Many victims of sexual abuse develop eating disorders and dependencies and are believed to be more likely to suffer from depression, suicidal tendencies and difficulties in interpersonal relations. Most at risk are solitary children who do not have a satisfactory relationship either with peers or with their parents.

The protection of children from sexual abuse requires combined and coordinated efforts both at the level of preventive activities and in the field of the multidisciplinary treatment of victims and offenders. More attention should be devoted to the latter, since recidivism figures are alarming. Therapists in other countries are fairly unanimous in considering that sex offenders suffer from personality and behavioural disorders which cannot be "cured", but that it is possible to teach these people to control their impulses. Of key importance in all therapeutic programmes is acceptance of responsibility for one's own behaviour and learning to control and supervise one's actions and impulses. The behaviourist and/or cognitive orientation of therapists has pragmatically established that an irreplaceable factor in the process of monitoring sex offenders is fear of discovery (recidivism). Naturally success is only possible if all the experts collaborating on the treatment programme work in harmony. **The protection of children from sexual violence and abuse is only possible if there is integrated treatment which includes both (potential) victims and offenders. The guided treatment of sex offenders is a way of ensuring greater safety for the individual (potential victim) and for society. For this reason it should be statutorily regulated** – something which places the treatment of sexual abuse beyond professional frameworks and into the sphere of politics.

Children should be at the centre of attention of adults, especially parents. These should invest unlimited effort in trying to ensure that children are given the best possible opportunities in life. In this protective idealised construct, the best interests of the child can become an excuse, explanation and/or apology for treatment which in no way contributes to improving the child's bio-psycho-social welfare.

If the legitimately elected representatives of adults adopted changes and amendments to material and procedural criminal legislation which contributed to the better safety of children and criminalized newer phenomena (such as the *production, distribution, sale, importation, exportation and possession of pornographic material* featuring children), this would be a step on the road to protecting children (also from adults). If the social group of adults were to go beyond the question of principle that we are "obliged to offer children security and a suitable living environment which will enable them to grow up to be healthy and responsible adults", and adopt for example **a special law on the protection of children**, something which many countries have already done, the road to the (unreachable?) goal would be slightly shorter. If everyone were to consistently strive for the implementation of pro-

visions adopted in this way, in time we would perhaps reduce the mythical connotation of "the child's best interests". On the other hand the implementation of the conventions and declarations we already have (or know?) would be a good beginning.

More about this in the special report of the Human Rights Ombudsman.

3 – VIOLENCE AGAINST CHILDREN – THE COMMITMENT TO A NON-VIOLENT SOCIETY

In Article 19 of the Convention on the Rights of the Child the states parties undertook to take all appropriate measures "to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has care of the child". (p. 14) In addition to the establishment of appropriate social programmes aimed at providing support to children and those who have care of them, the second paragraph of this article calls for measures for "other forms of prevention, identification, reporting, referral, investigation, treatment and follow-up of other forms of child maltreatment described heretofore..." (p. 14)

The issue of **violence against children** is also covered by other parts of the convention:

- rights are ensured to children without discrimination of any kind (Article 2), and thus violence against children is unacceptable and cannot be justifiable because of tradition, religion or culture;
- in all actions concerning children the best interests of the child shall be a primary consideration (Article 3) – violence against children is never in their best interests;
- every child has the inherent right to life – the survival and development of the child shall be ensured to the maximum extent possible (Article 6);
- a child shall be assured the right to express his or her own views freely (Article 12), the views of the child being given due weight in accordance with the age and maturity of the child.

The states parties undertook:

- to abolish traditional practices prejudicial to the health of children (Article 24.3);
- to ensure that school discipline is administered in a manner consistent with the child's human dignity (Article 28.2);
- to protect the child from all forms of sexual exploitation and sexual abuse (Article 34);
- to prevent the abduction of, the sale of or traffic in children (Article 35);
- to protect children against all other forms of exploitation prejudicial to any aspects of the child's welfare (Article 36);
- to ensure that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment (Article 37);
- to take all feasible measures to ensure protection and care of children who are affected by an armed conflict (Article 38);
- to take all appropriate measures to promote the physical and psychological recovery of a child who is the victim of any form of neglect, exploitation or abuse (Article 39).

Within the problem group "violence against children", the Human Rights Ombudsman supervises the implementation of the provisions of the convention to which the state is bound. In 2002 a deliberate and in-depth monitoring of violence against children in the family environment was carried out. The ombudsman is committed to the preparation of systematic programmes to reduce violence against children and protect children from violence, which at the same time means striving for a safe, non-violent society (and state). This involves looking for positive strategies and a global approach, which as a strategic guideline is fully in accordance with the strategy of work of the European Network of Ombudsmen for Children (ENOC) and is evident from the applicable documents of the Council of Europe: *Recommendation (2001) 16* (protection of children against sexual exploitation), *Resolution 1307 (2002)* (sexual exploitation of children: zero tolerance), *Recommendation (85) 4* (violence in the family), *Recommendation (90) 2* (social measures concerning violence within the family). It is also in accordance with the declarations made at the conferences in Yokohama and Budapest at the end of 2001.

The Human Rights Ombudsman proposes:
a joint commitment to a non-violent society, adopted by the government, local communities and civil society.

Such a commitment requires:

- recognition and understanding of the factors which affect violence against children and those which reduce it or protect against it;

- measures to protect children against violence on the part of various services and institutions and within the family;

- consistent censuring of all forms of violence (media, opinion leaders, politicians).

The protection of children from violence requires the following measures and activities:

1. The establishing of coordinated interdepartmental and interdisciplinary activity at the national, regional and local levels.

2. A review and evaluation of the work of the services dealing with children and families, from a clearly defined antiviolence perspective. A lack of appropriate services and activities increases the risk of violent behaviour/treatment and therefore activities to abolish inequality and poverty, improve the health care and educational systems and the network of education and care organisations etc. should be at the centre of interest.

3. Statutory changes in the sense of doing away with all tolerance of violence against children and consistent punishment of violence against children, including corporal punishment and degrading treatment in the family and/or institutions.

4. Severe punishment of illegal possession of weapons and/or explosives, reduction of accessibility of pyrotechnic substances.

5. Designing a system to collect data and research violence against children.

6. Consistent respecting of applicable (penal) legislation and necessary changes:
- criminalisation of family violence – removal from the sphere of general offences into the sphere of criminal offences;
- legal protection of children against all forms of violence in the educational system;
- consistent prosecution of sexual violence;
- criminalisation of the production, distribution, sale, importation, exportation and possession of pornographic material featuring children;
- professionally appropriate treatment of children who are victims of violence on the part of the bodies responsible for crime detection and prosecution;
- the establishing of family courts or specialised family divisions at district courts.

7. Services for the protection of children and the treatment of children who are victims of physical, emotional and/or sexual abuse and neglect. The current method of work of CSDs does not guarantee this, shifting this type of activity largely to the non-governmental sector is unacceptable since it does not take into account the requirements of special knowledge, high professionalism and a guaranteed system of control of the quality of work, supervision and consistent evaluation of programmes.

8. Designing a system to protect children against violence:
- measures for protection against violence in families, foster families, institutions, for protection against self-harm and suicide and against sexual exploitation and any other form of exploitation;
- accessibility of a network of counselling/support services for children;
- duty of professional staff to report violence/abuse;
- consistent detection and prosecution of offenders;
- ensuring a safe environment for the victims of violence – removal of the violent family member.

9. Establishing a network of centres for the psychosocial rehabilitation of children who are victims of violence.

10. Establishing a system for the treatment and psychosocial rehabilitation of (violent) offenders.

11. Preventive programmes for children.

Special emphasis should be placed on **collecting** data, especially in the following two areas:

1/ **The detection and prosecution of perpetrators of criminal offences with elements of violence against children** – from infanticide, murder, physical injury, abuse. Statistics must include the gender and age of the victim and the status of the offender (relation to the victim). This method of collecting and processing data enables comparisons in time and between countries.

2/ **Protection of children (health and social care)** – data on the causes of child death, careful research into the causes of injuries, etc. Systematic collection of this type of data requires protocols and procedures to be drawn up in the field of paediatric medicine and school medicine, nursing, counselling services, etc. as well as, systematic collection a kind of central register will need to be provided (perhaps at the Institute for the Protection of Health) – a centre for the collection and processing of data. As well as noting individual cases, monitoring is necessary. Population studies should help identify the most vulnerable groups of children and adolescents. These should get appropriate help and support, which could be provided within the context of preventive activities in health care if in addition to doctors (paediatricians and school doctors) multidisciplinary teams included psychologists, special educators and (if necessary) child psychiatrists. In this way we could develop a system of monitoring with the help of which we could either evaluate previously identified risk groups of children and adolescents or identify new risk factors.

Research activity

- Retrospective studies of representative samples of adults who suffered violence in childhood.

- Research into the presence of violence in a representative sample of families.

- Analysis of calls to confidential telephone helplines (the "TOM" helpline for children and adolescents, the "SOS" helpline for victims of violence, etc.) – additional support and help for the NGOs who carry out these activities is necessary. Analysis would also enable (among other things) an evaluation of the work of these organisations.

- Longitudinal studies of the factors which work together in forming patterns of family violence.

- Longitudinal monitoring and evaluation of various preventive activities, taking due account of the views of children and adolescents (users).

The bodies responsible for these research activities should be university institutions and institutes, while it is vitally necessary to appoint a **national coordinator** since this would ensure transparency of work and findings, and at the same time enable the collection of empirical data in one place.

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A. REGULATIONS

CZ	**Customs Act**
EKČP	**European Convention on the Protection of Human Rights and Fundamental Freedoms Act Ratifying the Convention on the Protection of Human Rights and Fundamental Freedoms, amended by protocols 3, 5 and 8 and supplemented by protocol 2 and its protocols 1, 4, 6, 7, 9, 10 and 11**
KZ	**Penal Code**
MEKUOP	**Act Ratifying the European Convention on the Exercising of Children's Rights**
OZ	**Obligational Code**
ObrZ	**Craft Establishments Act**
SZ	**Housing Act**
SPZ	**Property Law Code**
ZAzil	**Asylum Act**
ZBan	**Banking Act**
ZBPP	**Free Legal Aid Act**
ZDavP	**Tax Procedure Act**
ZD	**Inheritance Act**
ZDen	**Denationalisation Act**
ZDoh	**Income Tax Act**
ZDRS	**Citizenship of the Republic of Slovenia Act**
ZDT	**Public Prosecutor Act**
ZDDPO	**Corporate Profit Tax Act**
ZFPPod	**Corporate Financial Operations Act**
ZGD	**Commercial Companies Act**
ZGO	**Building Construction Act**
ZGos	**Catering Act**
ZIKS-1	**Enforcement of Penal Sentences Act**
ZIN	**Inspection Oversight Act**
ZIZ	**Execution of Judgements and Insurance of Claims Act**
ZJU	**Public Servants Act**

ZKP	**Criminal procedure Act**
ZLPP	**Ownership Transformtion of Companies Act**
ZLS	**Local Government Act**
ZLV	**Local Elections Act**
ZMed	**Public Media Act**
ZOdv	**Attorneys Act**
ZP	**Administrative Offence Act**
ZP-1	**Misdemeanours Act**
ZPIZ-1	**Pension and Disability Insurance Act**
ZPKri	**Redressing of Wrongs Act**
ZPol	**Police Act**
ZPP	**Civil Procedure Act**
ZPPG01	**Act Regulating the Census of Population, Households and Dwellings in the Republic of Slovenia, 2002**
ZSPOZ	**Payment of Compensation to Victims of Wartime and Postwar Aggression Act**
ZSS	**Judicial Service Act**
ZSZ	**Construction Land Act**
ZTel-1	**Telecommunications Act**
ZTuj-1	**New Aliens Act**
ZTI	**Market Inspectors Act**
ZUN	**Planning of Settlements Act**
ZUOPP	**Streaming Children with Special Needs Act**
ZUP	**General Administrative Procedure Act**
ZUS	**Administrative Dispute Act**
ZUstS	**Constitutional Court 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**
ZVCP	**Road Transport Safety Act**
ZVojD	**Military Service Act**

ZVolK	**Election Campaigns Act**
ZVOP	**Protection of Personal Data Act**
ZZSV	**Act Providing Social Security to Slovenian Citizens who are Eligible to Pensions from the Republics of the Former SFRY**
ZZVO	**Private Security and Compulsory Organisation of the Security Service Act**
ZZVZZ	**Health Care and Health Insurance Act**
ZZZat	**Temporary Refuge Act**
ZZZDR	**Marrige and Family Relations Act**
ZZZPB	**Employment and Unemployment Insurance Act**
ZZVN	**Victims of War and Military Aggression Act**

AD	**Asylum Centre**
APP	**Payment Transactions Agency**
CSD	**Social Services Centre**
DURS	**Tax Authority of the Republic of Slovenia**
GCU	**General Customs Authority**
IRSOP	**Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning**
MDDSZ	**Ministry of Labour, Family and Social Affairs**
MF	**Ministry of Finance**
MG	**Ministry of the Economy**
MK	**Ministry of Culture**
MKGP	**Ministry of Agriculture, Forestry and Food**
MNZ	**Ministry of the Interior**
MO	**Ministry of Defence**
MOL	**Ljubljana Municipal Council**
MOP	**Ministry of the Environment and Physical Planning**
MP	**Ministry of Justice**
MŠZŠ	**Ministry of Education, Science and Sports**
MZZ	**Ministry of Foreign Affairs**
NC	**Accommodation Centre**
PP	**Police Station**
PU	**Police Directorate**
RS	**Republic of Slovenia**
RTVS	**Radio and Television Station Slovenia**
SDK	**Public Accounting Service**
SOD	**Slovenian Indemnity Corporation**
SSLO	**Housing Fund of Ljubljana Municipalities**
SŽ	**Slovenian Railways**
TIRS	**Market Inspectorate of the Republic of Slovenia**
TV	**Television Station**
UE	**Administrative Unit**
UIKS	**National Prison Administration**
UPB	**Refugee Settlement Office**
VČP	**Human Rights Ombudsman**
ZPIZS	**Slovenian Pension and Disability Insurance Institute**
ZPKZ	**Prison Service**
ZRSZ	**National Employment Office**

C. OTHER

CPT	**Committee for the Prevention of Torture**
DDV	**Value Added Tax**
EMŠO	**Standardised Citizen's National Registration Number**
ENOC	**European Network of Ombudsmen for Children**
EU	**European Union**
FLRJ	**Federal People's Republic of Yugoslavia**
HKS SHP	**Savings and Loan Service, Slovenian Savings and Loan Bank**
IOI	**International Ombudsman Institute**
JLA	**Yugoslav National Army (also YNA)**
KOP	**Convention on the Rights of the Child**
LP	**Annual Report**
SFRJ	**Socialist Federal Republic of Yugoslavia**
UNCHR	**United Nations High Commissioner for Refugees**
UR. LIST	**Official Gazette of the Republic of Slovenia**
ZDA	**United States of America**

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