

Sixteenth Regular Annual Report  
of the Human Rights Ombudsman  
of the Republic of Slovenia  
for the Year 2010

Ljubljana, June 2011



HUMAN  
RIGHTS  
OMBUDSMAN



**NATIONAL ASSEMBLY OF THE REPUBLIC OF SLOVENIA**  
**Dr Pavel Gantar, President**

**Šubičeva 4**  
**1102 Ljubljana**

Mr President,

In accordance with Article 43 of the Human Rights Ombudsman of the Republic of Slovenia Act, I am sending you the 16th annual report on the work of the Slovenian Human Rights Ombudsman in 2010.

I would like to inform you that I wish to personally present the executive summary of this report, and my own findings, during the discussion of the regular annual report in the National Assembly.

Yours respectfully,

Dr Zdenka Čebašek - Travnik,  
Human Rights Ombudsman



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## The Ombudsman's Findings, Opinions and Proposals



## 1. THE OMBUDSMAN'S FINDINGS, OPINIONS AND PROPOSALS



Zdenka Čebašek - Travnik, MD, DSc,  
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Writing the introductory thoughts to this report is a unique challenge that requires the current Ombudsman to know all the problems and also to decide whether the introduction should be a summary of the work of the Human Rights Ombudsman of the Republic of Slovenia (Ombudsman) implemented during the entire year, or an interpretation of the established situation, which cannot conceal the author's personal note in the text. The annual report for the year 2009 contained the question of whether Slovenia (still) remains a legal and social state. We still do not have an unquestionable and clear answer to this question, despite all the profound discussions of this issue. The answers on the declaratory level are clear and affirmative - that Slovenia is a legal and social state; however, numerous complaints addressed to the Ombudsman contradict this assertion. Similar opinions were seen in public opinion polls. As Ivan Bizjak, the first Ombudsman, said, it is true that our judiciary is no different from other states; however, this should not deter us from warning about irregularities which we establish and find during our work. A similar answer can be given to the question of whether Slovenia still remains a social state.

I thought carefully about selecting the appropriate issues for the introductory presentation. I asked myself many times which issues are truly relevant in human rights in Slovenia, and for whom they are relevant. The Ombudsman's Annual Report is intended primarily for National Assembly deputies<sup>1</sup> and other decision-makers in our country, who therefore also decide on our rights. We need to draw their attention and motivate them with arguments to study, accept and realise the Ombudsman's recommendations. The success of their efforts in realising the Ombudsman's recommendations so far could be shown only with a detailed analysis, for which we have neither the financial means nor sufficient staff. Surely the future will show whether it is rational to make savings (also) in the field of protecting human rights. From this aspect, the Government's opinion on the proposal to establish a Human Rights Centre (Centre) should also be assessed. However, the Government has not given its opinion on this proposal, but was only informed on the information about the closure of the Council of Europe Information Office in Ljubljana, and did not even decide on the simultaneously prepared decision on the establishment of the Centre. Therefore, the time and energy that employees of the Ombudsman and the Ministry of the Exterior invested in the preparation of the proposal for the establishment of the Centre, which in one or two years would transform into a national human rights institution (NHRI), were lost.

All hope is also lost that Slovenia would in the foreseeable future establish an NHRI that would fulfil the criteria to acquire A status at the International Coordination Committee (ICC, [www.nhri.net](http://www.nhri.net)) and cooperate in international organisations, including within the UN. Therefore, we still lack a national institution that would actively monitor the situation in human rights (the Ombudsman's work is based primarily on the consideration of individual complaints) and would advise in the planning of policies and measures that concern human rights. It would equally (in A status) cooperate in international organisations, research, inform and educate (the second phase of the world programme for education on human rights is in preparation)

<sup>1</sup> In all cases where expressions use the male gender, the text applies equally to both genders.

and cooperate in the preparation of national recommendations. It seems as if Slovenia does not require such an institution, and it is quite difficult to convey such an opinion to international organisations, which recognise the Ombudsman in this role, at least in those tasks for which we have statutory authorisation. In May, the Committee against Torture (CAT) discussed Slovenia's report, and among other things recommended that the Government strengthen the operations of the Slovenian Ombudsman in accordance with the Paris Principles by guaranteeing sufficient staff and financial means. Without the NHRI Slovenia will obviously also remain without an executor of the campaign of the Council of Europe for the prevention of sexual abuse of children ([www.coe.int/oneinfive](http://www.coe.int/oneinfive)). Is such a campaign also not required? The need to establish the NHRI is one of the Ombudsman's unrealised recommendations, which recur from year to year. Therefore, it would be interesting (and from the aspect of designing political measures also desirable) to analyse how the national authorities and local community authorities respond to the Ombudsman's findings and recommendations. Such a report was prepared in 2010 for the Dutch Ombudsman, and was summarised in the Compliance with Recommendations publication; therefore, it could be a good starting point for making a comparison with the situation in Slovenia. Without a detailed analysis, we can systematically prepare only the responses of responsible persons in national institutions, which are monitored in the procedures for discussing complaints. The Ombudsman investigates suspicions of human rights violations, whereas the Human Rights Ombudsman Act (HROA) enables the Ombudsman to investigate all alleged irregularities, take an opinion and report on all findings. It is understandable that no one, neither the state authority nor local community authority, is pleased to be criticised by others, although the criticism comes from the Ombudsman, who has the appropriate statutory authorisations for such actions.

Those who are addressed in the Ombudsman's findings and recommendations respond in different ways: some accept our findings and report to the affected individual and Ombudsman on the method of eliminating their error.

They also apologise to the affected persons, which is without a doubt an example of good practise. The second group includes those who delay their responses and provide their responses (to the Ombudsman) after several urgent calls. However, even these responses, except explanations for delays, do not give us the main statements on established irregularities. Such responses are followed by repeated inquiries from the Ombudsman; the consideration of a complaint, however, can take up to several months. The third type of response can be described as proving the Ombudsman wrong, or stating that the Ombudsman should not be involved in the matter, regardless of all authorisations. We also receive responses which more or less present a negative attitude to the Ombudsman's work, without providing answers to the questions in our inquiry. Why do responsible persons act in this way, even though the Ombudsman's findings alone do not impose direct (negative) consequences on those who are criticised, since the Ombudsman does not impose sanctions, or even propose the dismissal of individual officials? Are they disturbed by the fact that the Ombudsman has a statutory basis for providing proposals and recommendations on how to correct injustices and/or protect rights? Experience shows that by considering the Ombudsman's recommendations, we could avoid many harmful circumstances which are the subject of our report also this year. According to the HROA, the Ombudsman has the right to insight on the background of the majority of events related to human rights. How the Ombudsman will use such information for considering complaints, depends on many factors. On the one hand, there is the conduct of the alleged offender; on the other hand, there is the activity of the affected individual. People who address the Ombudsman too often overlook the most effective possibility available – primarily to take an **active part in exercising their rights themselves**. This means that they have to know their rights, ways to exercise them, ways to complain, to understand the answers provided to them by the competent persons, to grasp the meaning of legal instructions when this is the part of a decision; to be aware of the timetables set by deadlines for complaints; and to be confident enough to start the

process of filing complaints. Therefore, the questions that are relevant are where and when individuals should learn about their rights and how to utilise all methods of complaint. It would be appropriate to learn about them at school, namely on all levels and in several subjects. With an efficient utilisation of complaint methods, alternative resolutions of disputes and mediation, individuals could efficiently defend their rights in mutual relationships, as well as in their relationship with the state and the local community. However, in the process of considering complaints we have often established that this does not happen in reality.

We also notice another special feature - the **fear or apprehension of people** that if they use the complaint methods, their problems will be aggravated further. This fear has proved real on few occasions, since the complainants reported on additional problems with officials and even cited the claims of state officials who reproached them for seeking the help of the Ombudsman by saying "This is what happens if you seek the Ombudsman's assistance!" People do not dare to file complaints for fear of threats from the opposition, when the latter is backed by business interests. Uneducated clients do not even know how to describe such abuse of power (for instance, when filing a report with the police); moreover, they do not have the knowledge to oppose such abuse successfully. This is why they even lose their belongings, since they do not even attempt to use the rule of law to protect their own interests.

Even though the state likes to boast of the large amounts of money it assigns to free legal aid (FLA), we have established that FLA is not accessible to everyone who really needs it.

Therefore, we assess the possibility of such aid being offered by various non-governmental organisations and several municipalities, as welcome, as well as the pro bono work of individual lawyers. It is known that only appropriate (legal) knowledge can enable the efficient enforcement and protection of rights and legal benefits; therefore, FLA is of key importance for socially weak groups of people, since they are enabled access to the courts or judicial protection by FLA.

A similar fear, as described above, is also felt by individuals who write to the Ombudsman on **workplace bullying and mobbing**. Unclear legislation and exceptionally modest judicial practice does not give hope to anyone seeking to initiate complaint procedures of such kind. Bullies and those who practise mobbing retain dominance over the affected persons, who - given the current level of unemployment - are also destined to fail when trying to change their job, especially when this situation involves persons who become ill as a result of bullying and thus became less competitive on the labour market.

**Where do complaints originate**, and how does the Ombudsman discover alleged irregularities of state or local authority conduct towards individuals or groups of people? Most complaints are contributed by **individuals** who have encountered a problem and expect the Ombudsman to help. Occasionally, employees and officials in their own name or in the name of the institution where they work seek the Ombudsman's help. It is worrying that quite a large number of these complaints come from individuals who claim that the inappropriate conduct of their employers is the consequence of individuals' warnings about irregularities, especially if the employer is the state. We should not forget the role of the **media** in discovering irregularities and in publishing the Ombudsman's answers. Most of the information based on which the Ombudsman can **act** emerges in the media. **The media and public** have various methods of for expressing their opinions about the Ombudsman. My co-workers occasionally report on the comments on various forums. Undermining the authority of national institutions undoubtedly attracts the attention of the media more than reports on properly implemented work. If I exclude the overall and generalised criticism of all national institutions, which are also directed at the Ombudsman, I am surprised about how little people know about our work. It is true that we emerge in the media news that does not

arouse much attention, and that our work is implemented confidentially and by protecting data; however, we strive to ensure that as many people as possible find out more about Ombudsman's work. For this purpose, our web sites ([www.varuh-rs.si](http://www.varuh-rs.si), [www.pravice.otrok.si](http://www.pravice.otrok.si) or [www.otrokov-pravice.si](http://www.otrokov-pravice.si)) and publications (reports, journals, bulletins, brochures) are available, since we are well aware of the fact that the most threatened individuals have the least possibilities and knowledge to use the Internet. In connection with the media, we should mention their manner of reporting about children. We have noticed that there are fewer direct violations to the detriment of children, and that the method of reporting about wretched families in which the victims are (also) children is more acceptable.

It would be interesting to analyse how much media space and time is dedicated to the findings of the USA Human Rights Report 2010 and the Amnesty International Report in comparison with the Ombudsman's report and findings. There is an impression that the media find more interesting how the situation in the field of human rights in Slovenia is perceived by foreigners than how the Ombudsman sees it.

Although we strive to positively cooperate with the media, misunderstandings occasionally emerge. This is why we wish that the media (editors and journalists) would understand the nature of Ombudsman's work and the possibilities to act, due to which our statements are mostly made on the level of principles. Since we have to consistently protect data on complainants, we cannot make statements to the media until we have the complainants' consent, even if the consideration of the complaint by the Ombudsman has already ended. The Ombudsman may in principle not react 'immediately', because she may submit her opinion only on the basis of examining the documents and data of all sides involved.

I also address two other sets of issues in the 2010 Annual Report: supervision and legislation, where numerous obscurities and deficiencies have occurred during the consideration of complaints, which we should point out in the present report.

### Supervision

We hereby establish that the issue of human rights in Slovenia is becoming an issue of **supervision**. Supervision is not working, is weak or is not efficient. There are rare institutions that implement supervision on a regular basis, with efficiency and in sufficient scope. The significance of efficient supervision is also emphasised by international organisations involved in enforcing various international conventions in the field of protecting human rights. The efficiency of human rights and fundamental freedoms protection can be assessed within the scope of monitoring the realisation of conventions in Slovenia.

The Ombudsman recognises and establishes that there is inefficient supervision of various kinds, in principle during the consideration of individual complaints. When we verify the efficiency of inspection authorities, the reasons for their inefficiency mostly include the lack of inspectors. Therefore, we ask whether it is really rational to decrease the number of employees in the public sector according to the percentage share principle. We are convinced that this does not lead to the resolution of problems, because the inspection services should be reinforced. This could be done by reallocating public employees and considering that, as inspectors, they need to acquire additional knowledge and experience before being able to work independently and efficiently. An efficient strategy for improving the operations of the inspection services as a system is also required.

However, not all supervision is implemented by inspection authorities. We ascertain that in such cases they are even less efficient, and the dissatisfaction of complainants is even greater. The media have also frequently emphasised the (in)efficiency of supervision implemented by the Medical Chamber of Slovenia, where the Ombudsman has also

warned of undetermined and, primarily, intolerably long procedures. The latter have not been concluded in the case of the Nekrep family, even after three years. Since the Ombudsman was informed of other inefficient cases of supervision, she proposed to the Ministry of Health that the expert supervision of medical work should be implemented by an independent institution that operates outside the Medical Chamber of Slovenia. An efficient exemplar for resolving complaints in the public health care system is the Parliamentary and Health Service Ombudsman in Great Britain, Ann Abraham ([www.ombudsman.org.uk](http://www.ombudsman.org.uk)), who performs independent investigations. Cases from abroad can simplify the process of responding to questions about who **should be an efficient supervisor of expert work and who should be an ethics supervisor in relationships with patients** (and in relation to health care workers).

Our complainants complain over the supervision by the Bar Association of Slovenia on the work of lawyers. The complaints dealt with in 2010 (still) show no encouraging effects from the latest amending Attorneys Act (ZOdV-C), and especially no progress in the efficiency of the work of disciplinary authorities and the realisation of our repeated recommendations to ensure a different approach, especially by the establishment of disciplinary commissions for rapid, efficient and trustworthy disciplinary decision making. We have also found that the decisions of the disciplinary prosecutor are often poorly explained or insufficiently answer claims made by complainants. It would be appropriate to clearly explain such decisions by stating the effective and legal reasons.

The issue of supervising the operations of courts is even more complicated. Therefore, we share the opinion of Tomaž Pavčnik,<sup>2</sup> that: *“It is about time to stop handling long delays in court proceedings as the most significant topic. General social values are not solely a sum of the values of individuals, but are the subject of rational argumentation. This is the main task of the judiciary – especially now, when the system of values is threatened with decay”*. It is true that there are fewer complaints regarding long procedures, but the complaints now contain more and better documented substantive problems referring to the operations of the courts. By issuing quality court decisions and by ensuring hearings without unnecessary delays, the judiciary system itself will contribute most to improving its reputation. We have to add the findings of the European Union Agency for Fundamental Rights (FRA) or the European Court of Human Rights which show that Slovenia is well ahead among all EU members regarding the number of new complaints per ten thousand inhabitants. We can assume that more and more people are dissatisfied with the substantive work of the courts.

We should also mention the supervision of court experts who are indispensable employees or court assistants. We have dedicated our attention to the question of why there are so many complaints regarding their work, especially in medicine and family law. Complaints regarding their work are practically possible only in an individual court proceedings (complaints regarding the expert's findings), while in practice it is quite difficult to complain about the quality of performed work (for which experts are paid!) or the expert's relation to the client (which is not always appropriate). Poorly identified (required) specific education of court experts for medicine, which applies especially to the field of sexual abuse of children and family relations, allows major differences in the quality of court experts' work. We cannot convincingly deny that experts have been bribed to provide their opinion, mostly due to our consideration of a few matters and suspicions. In relation to this, criminal complaints were filed in some cases.

The Ombudsman consistently advocates transparent, efficient and independent supervision of the police. Despite some announcements, there have been no (substantial) changes in the supervision of implementing the tasks of the police. Efficient supervision is also required of all private protection subjects, where we agreed that the private protection area should be regulated by the state, since the security staff may in the process of ensuring safety also

<sup>2</sup> Slovenian Law Review, 17 March 2011, page 33

interfere with the human rights and fundamental freedoms of individuals. Changes in the implementation of supervision will be required in the implementation of prison sentences, in relation to which we have drafted several recommendations based on our findings.

The supervision of decisions of minor offence authorities is implemented by the courts in proceedings on deciding about claims for court actions. In these cases, the courts should especially carefully consider all statements in court actions claims which refer to the factual basis of the alleged offence, and in the process of decision making, follow the rules of respecting the fundamental constitutional guarantees of fair proceedings, especially in deciding possible motions for evidence. It is inappropriate that the courts are often satisfied with the established factual states that are based on conclusive evidence of minor offence authorities, and do not supplement evidence procedures. A unique feature is the supervision of the work of local self-government or local communities, where the local administration management decides on the first level, and the mayor on the second. When dealing with supervision, we have to ask who will supervise the supervisors. This is a system-related issue which has not been resolved in Slovenia, and not enough attention is dedicated to this question.

Supervision has an **international dimension**, mostly in the field of enforcing conventions. We only warn about some new requirements for supervision within the scope of the Convention on the Rights of Persons with Disabilities and modifications to protocols as determined in the European Convention on Human Rights and Convention on the Rights of the Child. We should commend the outcome of the Optional Protocol to the Convention on the Rights of the Child regarding the trafficking of children, child prostitution and child pornography, as well as the Optional Protocol to the Convention on the Rights of the Child regarding the participation of children in armed combat. On 11 October 2007, the Government of the Republic of Slovenia adopted the initiative to sign the Convention of the Council of Europe on the Protection of Children against Sexual Exploitation and Sexual Abuse; however, it has not been ratified yet. The promise that this would happen in the first half of 2011 has not been fulfilled either. When realising ratified conventions, we ask ourselves what is keeping the Government from ratifying some other already signed conventions like the International UN Convention for the Protection of All Persons from Enforced Disappearance.

## Legislation

When monitoring the legislative activities of the Government and the National Assembly, we often have the impression that the Government is not ready to deal with some urgent laws or amendments, mostly due to the strong motivation (of one or the other political side) that the statutory regulations not be modified, among other reasons. On the other hand, legislation that is prepared quickly or under a great deal of pressure, is emerging rapidly, but it has not been efficiently harmonised between the coalition partners and the opposition, unions, students and the interested public. Although this primarily concerns political questions, we cannot overlook the impact of this situation on the realisation and protection of human rights. This is why we mention cases, the subject of an increasing number of complaints sent to the Ombudsman, and which also include necessary adjustments required in the Mental Health Act (ZDZdr). The legislation which is necessary includes a regulation that would clearly determine the use of special protective measures (SPM) for disturbed patients in general sections of hospitals, i.e. outside psychiatric and social protection institutions. It is not appropriate for these measures to be determined only for persons affected by the ZDZdr Act, which was also confirmed by the Ministry of Health; when this also applies to other medical areas remains undetermined. Until it has been determined we recommend to all health care institutions that the use of SPM should be ordered by a medical practitioner, and that restraint is used only with appropriate means and that the permanent supervision of disturbed patients is implemented.

We have been discussing the adoption of the Child Advocacy Act for several years. With the purpose of drafting this Act, the Ombudsman's office took over the implementation of the pilot project in 2007, and it has been transformed into a real operational project, although without a clear statutory, personnel-related and financial future. After three years of performing advocacy work, should we abandon this project?

I believe that the time has come for the functions of the advocate to be finally institutionalised – mainly for the benefit of children who do not have the good fortune to live in functional families. The anticipated regulation of advocacy in various fields (e.g. for the elderly, the disabled) would not be problematic if it did not mean that the Child Advocacy Act would again be delayed for an indefinite time.

While I was writing this introduction, the National Assembly adopted the Family Code, which the National Council did not veto. Despite this fact, its destiny remains uncertain. Procedures connected to its adoption divided Slovenian society and disclosed numerous opinions and prejudices that are against the amendments to the statutory determination of the family and the rights of homosexuals. Regulating their rights is no special feature of our state; however, the European Human Rights Commissioner, Thomas Hammarberg, is strongly in their favour. The Council of Europe published a 134 page report entitled *Discrimination on Grounds of Sexual Orientation and Gender Identity* which precisely shows their position in Europe.

There are no clear answers to many overly necessary amendments to laws as to when they will happen, which, especially in the fields of health care and insurance, will have to be modified. Our state should not be proud of the fact that children whose parents have not paid their contributions were without health insurance. Relying on the self-sacrifice of health care workers in such cases cannot be a permanent solution, since they are breaking the law by providing health care assistance to persons not eligible for such assistance. One year ago, the Ombudsman submitted to the Minister of Health an amending act, according to which children (to 18 years of age) would be entitled to rights arising from health insurance regardless of the status of their parents or guardians. Since we know that there are increasing numbers of people who do not pay their contributions (and often this is even not their fault), it would be necessary to amend the act also for such cases.

We were also informed that the Government did not respect the current legislation. In order to present this, I refer to events related to the payment system that applies to public employees. The law determined that imbalances in cases of public employees would be eliminated; the Government requested a delay of the elimination for three quarters of imbalances, but the unions did not agree with the Government's propositions and did not change their position. This is why the statutory obligation of harmonisation entered into force; however, the Government violated this obligation by not implementing it. We cannot overlook the finding that many state authorities refer to the lack of employees when they give reasons for delays. The laws are in principle prepared by line ministries (or contractors) and adopted by the National Assembly. Therefore, it is within their jurisdiction to decide which deadlines for issuing decisions will be determined in each individual law and how many employees should be guaranteed in order to be able to meet the set deadlines. In the process of drafting regulations, too many modifications and amendments are made in order to resolve a certain case; regulations should be drafted on the basis of carefully implemented assessments of a situation in a certain area and expert knowledge on how we wish to regulate that area in the future. We also notice delays in preparing executive orders, which results in delays in enforcing certain rights.

We have established that the statutory regulations are also weak at municipal level. Spatial management in municipalities is inappropriate, and the public also complains about having no influence. The lack of knowledge of so-called spatial regulations in municipalities is also evidenced by a poll performed in various municipalities, which is discussed in chapter 2.7.2.



Slovenia is also a place for people who are experts at complicating legislative solutions. Without providing an opinion on individual statutory acts, I also draw attention to some cases of violations of human rights. One such violation emerged by deferring the local election in the Municipality of Koper; the other is a (statutory) idea relating to the waiver of a legal entity, which is without doubt a Slovenian speciality, enforced by the Financial Operations of Companies Act (ZFPPod). Therefore, it would be positive to establish possible deviations from EU legislation and violations of the European Convention on Human Rights and facilitate such finding for the appropriate modification of (current) legislation.

I should also mention that one of the tasks of the administrative authorities is to inform the public about legislation; therefore, it is unacceptable that public employees often provide such information on their own private initiative.

### Other important issues in 2010

Politicians in Slovenia have striven for quite some time to **reorganise life**. In all areas of everyday life which are important to the people, the reorganisation of the system or reforms (health care system, health insurance, pension and disability insurance, family code, labour law, penal code) has been initiated almost simultaneously. There is a lot of talk about these reforms, but people are growing more and more confused. Since the anticipated solutions change on a daily basis, they often do not know what is really awaiting them. Uncertainty forces them to reject all changes and novelties, which was confirmed also by referendums.

Let me continue in this introduction to review the situation for some population groups categorised as so-called **vulnerable groups** due to their personal circumstances.

**Children** and their rights are the priorities this year. Regardless of the fate of the Family Code, we also warn about issues which the latter will not resolve or regulate entirely. Therefore, we emphasise the **non-harmonised operations of ministries** which share concern for children (Ministry of Labour, Family and Social Affairs, Ministry of Education and Ministry of Health), which can be especially noticed in children who need institutional consideration due to various reasons. We still do not have a paedo-psychiatric ward under special supervision, where we could offer efficient expert care to children who cannot be handled in the normal paedo-psychiatric wards or in other institutions. The Ombudsman initiated a few joint working meetings in relation to problems which are under the jurisdiction of the line ministries, and several agreements and promises were made at those meetings, but still await realisation.

Again, we have to write about **violence against children** within families, in schools or in other environments (sports). We wonder why there are not more charges brought against violent persons; why all schools do not take up efficient measures to combat violence, and why we allow children and their rights to be targets. We have also established that the education system is losing its socialisation role and is focused too much on selection and competition, which some children experience as violence against them. We often hear comments that children have too many rights and too few duties, so I emphasise that duties (for children as well as for adults) have to be clearly defined and determined with rules regarding their execution (encouragement, rewards, sanctions). Trading with rights on account of executing duties is intolerable.

Everyone has rights, since we are born with them, and these can only be limited by the rights of others and not by failures to fulfil obligations. We are insufficiently aware of this right in the area of children's rights.

Vulnerable population groups also include children and adults with **special needs**, regardless of the type of their needs and regardless of their developmental or any other defect.

Therefore, we dedicate a lot of attention to the future outcome of legislation that affects the realisation of their rights. The Ombudsman is pleased to establish that the state adopted the **Equalisation of Opportunities for Persons with Disabilities Act** (ZIMI), which significantly contributes to the realisation of the Convention on the Rights of Persons with Disabilities, although organisations of the disabled, and I as Ombudsman, believe that this Act has not appropriately resolved the question of implementing supervision.

Vulnerable population groups also include **the elderly**, to whom we dedicated special attention in 2010 by preparing a consultation document entitled *The Rights of the Elderly as the Mirror of Society*. **Impoverished people** of Slovenia come from various demographic groups, including pensioners, unemployed and low-income employed people who live off social aid. Although young healthy people should not be included in the vulnerable population group when they leave school, we notice that they are being included more and more, mostly due to the poverty they face or already experience. Residential problems are connected to this, since a strategy for the unemployed, especially young persons who cannot find employment when they leave school, and consequently do not have the opportunity to start their own families, should be adopted. Impoverished people usually do not have the opportunity to enforce their rights, and above all, cannot afford to wait for justice for several years, which means that social state institutions do not have sufficient case law. It is difficult to expect a person whose water supply has been cut off in accordance with a municipal decree to attack the legality of the municipal decree in the constitutional court. When dealing with complaints, we find that the tenders for non-profit apartments are very rare, subsidies for rents are decreasing and there are not enough residential units. In November 2010, the international panel discussion of statistics experts entitled 'Measuring the Welfare and Progress of Society' deliberated on how important the meaning of real time is from the time when something happens to the statistical data that enable economic policy makers to prepare better and more efficient solutions.

Let us remind you of the Ombudsman's panel discussion regarding poverty in 2008, when we established that poverty is also becoming a problem in Slovenia. If the authorities reacted faster, the consequences of poverty would be stopped in real time.

Poverty is also related to declining health, which was emphasised in the publication *Health Inequalities in Slovenia* (January 2011) by the Ministry of Health. Poverty causes more **violence**, and the victims of violence are too often overlooked and left to themselves. This concerns all types of violence in all environments, including the working environment, where we note an increase in complaints in the field of mobbing, bullying and harassment. Due to all the above-mentioned and numerous other findings, we should heed the former Ombudsman, Mr Matjaž Hanžek, who said: *"If it were true that the most important economic cause of the crisis is huge consumption by the state and the money intended for social security, then the states that dedicate the largest GDP share for social security should have the most financial problems."* I would also like to add that we should ensure a system of social aid that will reduce the possibilities of abuse, and above all, encourage individuals to actively resolve their own problems. People living in **polluted environments** are also in vulnerable population groups, although they have many difficulties proving the impact of pollution on their health. This is why the Ombudsman encourages projects focused on the establishment of such impacts, mainly to stimulate the state to adopt additional measures to reduce pollution or rehabilitate the environment.

The Ombudsman also assists in improving relations between state authorities and individuals (Ministry of the Environment and Spatial Planning), where we should warn about the insufficient enthusiasm of some municipalities for resolving environmental and spatial problems.

We still have to mention **the erased** and their life stories. The erased are still among the Ombudsman's complainants, and the Council of Europe is interested in the enforcement of their rights. The act that regulates the situation of the erased did not introduce the expression "violation of human rights", because this was not preliminarily done by the constitutional court. The impact of the act on the actual enforcement of human rights of the erased will be shown in practice.

The Slovenian **mechanisms for protection against discrimination** are still deficient, although positive changes have been noticed in the area of acknowledging minorities from the territory of the former SFRY (RS Declaration on the situation of the national communities of the former SFRY in the Republic of Slovenia) as well as in resolving issues of the Romani and Sinti populations.

I also have to emphasise a special group of people who feel **forgotten** by the state: persons who suffered material damage in World War II, persons mobilised by the German army, war disabled without status, and persons who do not have veteran status because they did not acquire appropriate documents, although they fought for Slovenia's independence during the war. The 20th anniversary of Slovenia's independence is a bitter memory for many persons.

Let me devote a few thoughts to the legal protection of **convicted persons**. Even though there is a small group of people who were convicted for committed criminal offences, it should be emphasised that a prison sentence actually means the restriction of their freedom of movement; however, it may not permit the violation of human rights, especially not their dignity, because convicted persons have all the rights of RS citizens also during their imprisonment, with the exception of rights that have been explicitly revoked or restricted by law. Violations in prisons should be handled in the same way as any other violations of human rights. When considering the complaints of convicts, we establish that legal knowledge is frequently required to resolve appeal proceedings; however, it is disturbing that these proceedings are usually executed within the system, which does not ensure impartiality or objectivity. It should be clearly noted that there are tensions in prisons, since the premises are overcrowded, and living conditions are bad for convicts as well as for prison officers.

### How we are viewed abroad

This year is the first cycle of reporting of states by the United Nations Human Rights Council (more about the findings: [www.universalhumanrightsindex.org](http://www.universalhumanrightsindex.org)). These reports enable the creation of databases which are sources for anyone interested in the situation in the area of human rights, and these data are then used in further reports. Slovenia also submitted its Universal Periodic Review (UPR). In the following cycle starting in the middle of 2012, Slovenia will have to present how it realised recommendations, since there were almost one hundred. How Slovenia appears in this database can be seen at the website [www.ohchr.org/EN/countries](http://www.ohchr.org/EN/countries).

The European Union Agency for Fundamental Rights (FRA), which was established in 2007 and is the EU's consulting body ([www.fra.europa.eu](http://www.fra.europa.eu)) almost completely introduced its activities in 2010. It issued numerous publications in 2010, which also contain information that enables Slovenia to be compared with other countries. The Ombudsman cooperates in its activities within the scope of available options. Among foreign non-governmental organisations for the protection human rights in Slovenia, the most active is Amnesty International (<http://www.amnesty.org>); its reports on the situation of human rights in Slovenia undoubtedly contributes to revealing more or less perceivable violations. The European Ombudsman has a different role. He is not the Ombudsman for Slovenia, nor is he legally superior to the Slovenian Ombudsman; however, he protects the rights of EU inhabitants, companies, associations or other bodies in relation to EU bodies (<http://www.ombudsman.europa.eu>).

## Respect, authority, trust, reputation, safety, cooperation

We live in a society that dismisses respect as a vital feature of each relationship. It seems that nobody has respect for other people: children have no respect for the elderly, the elderly have no respect for children, children do not respect teachers and vice versa. Nurturing and expressing a lack of respect is transmitted to all levels of social life: the National Assembly has no respect for the Constitutional Court, the Government does not respect the National Assembly, ministers have no respect for the Government, the latter has no respect for supervisory institutions etc. It seems somewhat reasonable that such relationships are being reflected in some municipalities, where complainants report on the autocratic conduct of mayors and their lack of understanding for making agreements in order to simplify the lives of individuals (e.g. exchange of residential units, resolution of proprietary issues, indemnification for seized land etc.).

Trust and reputation are not just given to somebody; they have to be earned. From this aspect, we can also view the dissatisfaction of people with the work of the courts and the police, since numerous proceedings and trials start, but their conclusions are not achieved quickly, which additionally increases the lack of trust in these systems, or confirms that they function only in favour of some individuals or groups. However, we also have to see the other side. People still trust some vocations (firemen) and activities (health care, military, schooling system), which are defined by values like the readiness to help and learn, and the regulation of the system. The Ombudsman and her employees strive to implement her work and mission by respecting all those with whom they are in contact – complainants as well as alleged violators of their rights, and with civil society and the media. Our success can be judged on the basis of their responses.

The efficiency of operations does not depend solely on the Ombudsman, since her recommendations are adopted and realised by other bodies. Therefore, this year I would like to propose that National Assembly deputies accept the recommendation that an analysis of the Ombudsman's recommendations be prepared. Such an analysis would also answer the question of how much time (years) is necessary for a recommendation in the field of the protection of rights to be realised. Or we can consent to the fact - without an analysis - that problems are resolved by natural means during this waiting period: for instance, children grow up, complainants move to cleaner environments, or they die.

The Constitutional Court issued its decision regarding the salaries of state officials in the Ombudsman's office, stating: *"The efficiency of Ombudsman's work does not depend only on the normative regulation of his position and competences, but also on a high level of democracy, considering the constitutional principles of a legal state, and the responsibility of public functions carriers. As a democratic invention, the Ombudsman can function only in a democratic environment, where a government and progressive administration are truly ready to eliminate unintentionally caused violations and deficiencies."*

I would like to conclude with a thought on hate speech: first, there is a word, said and written, then it is followed by actions. In the history of humanity, hostile words have been followed by combat or even wars. This is why we have to stop hostile words, and exchange them for respectful criticism. Let us learn to discuss things with arguments, not only opinions and prejudices. This will be our greatest contribution to realising and respecting human rights.

Presentation of the management of the Human Rights  
Ombudsman of the Republic of Slovenia





**Tone Dolčič**  
Deputy Ombudsman

- 2.11 Pension and Disability Insurance
- 2.12 Health Care and Health Insurance
- 2.13 Social Matters
- 2.15 Protection of Children's Rights



**Kornelija Marzel, MSc**  
Deputy Ombudsman

- 2.6 Administrative Matters
- 2.7 Environment and Spatial Planning
- 2.9 Housing
- 2.10 Employment Relations
- 2.14 Unemployment



**Bojana Kvas, MSc**  
Secretary-General of the  
Ombudsman



**Jernej Rovšek**  
Deputy Ombudsman

- 2.1 Constitutional Rights
- 2.2 Discrimination
- 2.8 Public Utility Services



**Ivan Šelih**  
Deputy Ombudsman

- 2.3 Restriction of Personal Liberty
- 2.4 Administration of Justice
- 2.5 Police Procedures
- 2.16 National Preventive Mechanism



**Bojana Cvahte, MSc**  
Director of Expert Service





## The Content of the Work and Review of Problems



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

### 2.1 CONSTITUTIONAL RIGHTS

#### GENERAL

In 2010, the Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) received 25% more complaints (150, index 126) than in 2009 (119). The number of complaints increased in all areas, mostly in connection with voting rights (index 267), access to public information (index 300) and personal data protection (index 188); the number of complaints in the field of public speech ethics and freedom of conscience (in both cases, index is 157). The number of newly opened cases categorised as 'other' decreased, which was mostly achieved by consistently categorising matters in content areas when this proved possible.

At the beginning of 2010, the Ministry of Justice (MJ) sent us the draft of the proposal for the initiation of the procedure for the amendments to Articles 160, 161 and 162 of the Constitution of the Republic of Slovenia. We emphasised that we support the changes to the Constitution that pursue the goal of unburdening the Constitutional Court of the Republic of Slovenia, so that it can dedicate more attention to significant constitutional matters. However, changes present more jurisdiction and responsibilities to some other state authorities, including the Ombudsman. By reducing the number of authorised people proposing the initiation of procedures for assessing the constitutionality of laws and their time limitation, we should expect more pressure to be put on other such authorised persons. The latter will have to cope with an increasing number of complaints, requiring them to file such proposals; they will have to select them, and if they are not adopted, they will have to be rejected with arguments. In definitions issued in November 2009 the Ombudsman emphasised that the current organisational structure, when all officials and expert workers are included in the procedures of considering individual complaints, does not enable the satisfactory performance of work. The solutions of the new payment system also weakened the work of the Ombudsman from a long-term point of view. That is why we proposed a longer transitional phase for the possible enforcement of these constitutional changes, so that institutions that take on new tasks and obligations are able to prepare for all changes.

#### 2.1.1 Freedom of conscience

The number of complaints in this field slightly increased (index 108), and were quite varied, as in past years. complainants mostly responded to the alleged unequal treatment of individual religious communities, often in connection with various events, in publications and the conduct of state and other authorities. There were no complaints showing a direct restriction of freedom of conscience or the possibility of the undisturbed declaration and practice of religion in private and public life.

The Office of the Government of the Republic of Slovenia for Religious Communities sent us the starting points for the preparation of the act on religious and philosophical communities (theses) and called upon us to actively participate in the public discussion on the starting points for the redrafting of the Religious Freedom Act, which was initiated with the publication of these materials. On 11 November 2010, the Ombudsman and her associates discussed

with the Office's management the mentioned theses and the complaints on the issue of freedom of conscience that were sent to her. Regarding the proposed starting points, we said that the Ombudsman in principle supports the proposed reform of the Religious Freedom Act, since all starting points present appropriate solutions for the majority of issues regarding the realisation of freedom of conscience, which have also been noted in the Ombudsman's annual reports. This mostly applies to issues of legality, transparency and non-discrimination in financing religious communities and their members, as well as the implementation of religious facilities in environments that are difficult to access. In the opinion of the Ombudsman, the proposed financing of religious communities is more in accordance with the principle defined in Article 7 of the Slovenian Constitution on the separation of state and religious communities, and on the equality and free operation of religious communities.

### 2.1.2 Media ethics

The number of complaints received in this field in 2010 increased significantly (index 142). Complaints warn about different aspects of unacceptable practices of public and media operations and the mediation of messages; most complaints refer to contents accessible on the world wide web. The questions, opinions and requests for mediation received in this field were very diverse.

Among other actions, we directed complainants to the Journalists' Ethic Council (JEC), which has for several years been the only successful body in the profession that is able to assess the ethics of the conduct of journalists and editors. The JEC is a joint body of the Slovenian Association of Journalists (SAJ) and the Slovenian Union of Journalists. The basis for the operations of the JEC is the Code of Journalists of the Republic of Slovenia adopted by both representative associations of journalists of Slovenia. According to the reformed articles of association of SAJ, the JEC has eleven members – nine journalists and two representatives of the public. The Ombudsman supports the new Code and greets the decision of both of the largest associations of journalists to include representatives of the public in the JEC.

It is necessary to mention that the Ombudsman has warned for several years about the necessity to form more efficient and accessible mechanisms for the impartial treatment of ethical rules for anyone active in the media field, namely in the form of a media council or media ombudsman. The latter would not only deal with complaints, but would also consider the conduct of the media and journalists on his own initiative.

### 2.1.3 Prosecution of public incitement of hatred, violence and intolerance

Each year, the Ombudsman receives many complaints that warn about expressions of hate speech, hatred against individuals or exposed groups, most often minorities which differ according to their ethnic origin or other personal circumstances. We explain their rights to these complainants and recommend they use legal and other means to protect their rights.

Whoever finds illegal content on the web can report it to Spletno oko (<http://www.spletno-oko.si>), which is a hot line that provides the means for anonymously reporting hate speech and child pornography on the Internet, and cases that could involve criminal offences, sends to the police. The hotline for reporting illegal content on the Internet, Spletno oko, and the largest Slovenian web portals signed a Code for Regulating Hate Speech at the end of December 2010 which anticipates obligatory registration and comment management online, the cooperation of representatives of the Code's signatories in a special working group, as well as the preparation of a unified form for submitting comments. The Ombudsman expects that other online content providers will also sign the Code, since they enable their users to comment, and we also expect the signatories to respect the Code. The Ombudsman further establishes that this is only one part of resolving the reoccurring phenomenon of spreading intolerance and hatred with online messages.

## **The Ombudsman's opinion on the emergence and prosecution of publicly inciting hatred and intolerance**

In the Ombudsman's opinion, in order to efficiently restrict the emergence of the public incitement of hatred, violence or intolerance, the efficient work of the police and the prosecutor's office is very important in revealing and prosecuting actions that show signs of criminal offences as determined in Article 297 of the Penal Code (KZ-1). The Ombudsman has been stressing this for several years, since she is convinced that consistent work by competent state authorities and sanctioning such actions is the most efficient preventive measure. Case law would also be gradually formed in order to help isolate inadmissible expressions of hatred and messages that are protected within the scope of freedom of expression.

The Ombudsman agrees that punishment is an extreme measure which should be used by the state only in exceptional cases; however, it should be used in order to determine the boundary between what is permitted and what is prohibited. This limitation can only be provided by appropriate case law, and if the prosecutor's offices does not file charges, there will also be no case law. When threats and hostilities expressed in public are acted upon - that is. when threats of physical assault or exclusion of those who are different become a reality, it is too late for preventive measures. Therefore, the extreme measure is to prosecute authors of public messages that spread hatred and intolerance.

In the Ombudsman's opinion, the occurrences of hate speech published online could be reduced by categorising such acts as breaches of law and order.

### **2.1.4 Protection of children and youngsters**

The Ombudsman persistently warns about the unacceptable practice of the abuse of children and youngsters in the media. In several cases when the Ombudsman suggested an assessment of conformity of the conduct of journalists and the media with the Code of Ethics of Slovenian Journalists, the Journalists' Ethic Council established that there had been several violations of this Code. Despite numerous public warnings by the Ombudsman (on the web site and in annual reports) and several warnings of the JEC about the inadmissibility of the public breach of the privacy of children and family tragedies in publications in the media, such violations continued to occur. Discussions with editors and various calls on them to stop such actions have not significantly affected the conduct of the media.

### **2.1.5 Assembly and association**

This sub-section comprises complaints related to the constitutional rights of peaceful assembly and freedom of association. The number of complaints in this area increased in the year 2010 (index 114), their total number being sixteen. The highest number of complaints related to people demanding that they no longer be members of various chambers, not only the Chamber of Agriculture and Forestry of Slovenia (CAFS), but also the Chamber of Craft and Small Business of Slovenia and the Veterinary Chamber of Slovenia. The complainants are not content with compulsory membership, especially with the payment of compulsory subscriptions. They also claim that compulsory membership is contrary to the right to free association.

#### **Enforcement of the constitutional right to assemble and associate on public land**

The complainant (the youth wing of a political party) intended to organise a public event on public land owned by a municipality, but the municipality as the owner of the land sent the complainant a letter rejecting their request with no explanation. The Public Gathering Act (PGA) in Article 14 determines that the organiser of an event has to submit an application together with the consent of the owner of the land where the event is being held. The

Ombudsman established that the municipality acted in accordance with the legislation in the process of issuing the opinion; however, it **intervened unduly in the constitutional right to assembly and association**.

We have established that the statutory regulation enables the municipality to make arbitrary decisions when issuing rulings on public gatherings on public land owned by the municipality. The owner of public land can with an arbitrary and final decision without argument, and without providing the possibility of enforcing legal remedies, influence the content of constitutional rights to public association and freedom of expression to become void. **We sent a proposal to the Ministry of the Interior (MI)** stating that, due to legal security in enforcing the constitutional right to assembly and association, the PGA should separately regulate the conditions and procedure of issuing an opinion by the owner or manager in cases when the real property is owned by the state or municipality and is at the same time considered as a national asset or public land. MI informed us that they had already suggested that the Government support the proposal of an act amending the PGA, according to which the opinion of the owner will no longer be necessary in cases of public land which is also intended for gatherings and free use if the organisation of a gathering is not in contradiction with the purpose of the land.

Until the appropriate modifications to the PGA are made, the Ombudsman **recommended the municipality** reject the consent for the use of public land or national asset for the purpose of a public gathering or event only if the purpose of the public gathering or event is contrary to the general use of such real property. The Ombudsman recommended that the municipality apologise to the complainant for interfering with their constitutional right to assembly and association. The municipality answered that it would consider all the Ombudsman's recommendations.

### 2.1.6 Voting rights

In 2010, the Ombudsman dealt with a substantially higher number of complaints regarding voting rights than in previous years; the number almost doubled. This was partly influenced by local elections and referendums, but also by the increased awareness and readiness of voters to facilitate complaint possibilities regarding the enforcement of their rights in this area.

### 2.1.7 Protection of personal data and privacy

Since 2010, the 1.6. classification section has concerned the protection of privacy and personal data; prior to that year, this section included only the protection of personal data. The difference between the protection of privacy in the public interest that is guaranteed by the state via a personal data protection and a privacy protection system which is in principle left to the affected individuals is decreasing. The area of personal data protection is expanding with the development of new technologies, also in areas traditionally connected with the protection of privacy. The expansion of this area has proved justified, as is shown by the quantity and diversity of complaints which have raised issues not dealt with by the Ombudsman hitherto.

The number of complaints in this area almost doubled in 2010 (index 188), and their content is very diverse. Most complaints were connected with interferences in privacy and personal data caused by new data exchange methods (mainly the Internet) and the protection of privacy in the workplace. In most of the cases considered, we sent complainants explanations regarding their rights and provided them with instructions regarding the use of legal remedies for the protection of their rights and interests. We often directed the complainants to the Information Commissioner (IC) or national authorities responsible for the protection of personal data.

## **Incoherent and non-transparent practice regarding the documentation required to extend student status at university institutions and universities**

Patients rights' representative warned the Ombudsman that at some faculties, procedures for extending student statuses for health reasons, such as making decisions on extraordinary admissions to senior years, repeated admissions in the same year or on the extension of pre-graduate status, require a review of the health record of the student. In the complainant's opinion, such conduct is an interference in sensitive personal data. In order to verify the grounds for the complaint, we sent inquiries to the universities in Ljubljana, Maribor, Koper and also to the Information Commissioner.

The Information Commissioner responded with a non-binding opinion that the processing of (sensitive) personal data of students by university institutions is indisputable. The General Administrative Procedure Act is a sufficient legal basis for reviewing students' medical records.

Based on the responses of universities, the Ombudsman established that the practice in assessing the justification of health-related reasons for extending status is **incoherent and non-transparent**, and that students are not informed in advance as to which documents will be considered by individual university institutions as appropriate proof of health problems.

The Ombudsman did not establish any violation of personal data protection in the matter as stated by the complainant; however, after certain inquiries, the Ombudsman established that the Higher Education Act has some deficiencies. This opinion was sent to the Ministry of Higher Education, Science and Technology, and it was suggested that the latter prepare appropriate amendments for the Higher Education Act for the purposes of legal certainty; and to consider the principle of equality before the law, these amendments should regulate all procedures in a uniform and detailed way and clearly determine the criteria for extending student status.

The Ministry replied that they are well aware of the problems related to extending student status due to long-term illness. The Ministry will examine our proposal and present it to all the relevant bodies involved in the preparation and consideration of the proposal of amendments to the Higher Education Act that is anticipated for 2011.

### **Public access to data on the income and property of persons responsible for public tenders**

In 2010, the Human Rights Ombudsman of the Republic of Slovenia reviewed several complaints in which the complainants expressed their disagreement with the provision of the first paragraph of Article 46 of the Integrity and Prevention of Corruption Act (hereinafter referred to as ZIntPK). Pursuant to this provision, information on the income and financial position of persons responsible for public tenders are available to the public.

After examining the answers of the Ministry of Public Administration and the Commission for the Prevention of Corruption, circumstances of the complaints considered, and the constitutional terms for allowing interference in the privacy and personal data of complainants, the Ombudsman established that the first paragraph of Article 46 of ZIntPK includes **excessive and disproportionate interference in the privacy and protection of personal data of complainants with regard to the legislator's objectives**; therefore, the Ombudsman filed a claim for the assessment of the constitutionality of the **contested first paragraph of Article 46 of ZIntPK where it refers to persons responsible for public tenders to the Constitutional Court of the Republic of Slovenia, in order to establish the non-compliance of this regulation with the Constitution of the Republic of Slovenia, and to repeal it.**

Since the Ombudsman believes that the harmful consequences that could occur by executing an unconstitutional provision would outweigh the harmful consequences that could occur by not executing the contested provision, she proposed to the Constitutional Court that it

suspend the execution of the first paragraph of Article 46 of ZIntPK until its final decision. The Constitutional Court adopted the proposal and withheld the implementation of the **first paragraph of Article 46 of ZIntPK. This provision was later amended in accordance with the Ombudsman's opinion.**

### 2.1.8 Confidentiality of procedures taking place at the Ombudsman and the Act on the Access to Information of Public Character (hereinafter referred to as the ZDIJZ)

The 2009 annual report explained why we believe that the exceptions in the ZDIJZ do not ensure the protection of the principle of confidentiality of procedures taking place at the Ombudsman as stipulated by Article 8 of the Human Rights Ombudsman Act (hereinafter referred to as the ZVarCP). The principle of procedural confidentiality is very important for the efficient work and integrity of an institution such as the Ombudsman. This principle includes not only complainants who resort to the Ombudsman with expectations that the content of their statements will not be accessible to the public or anyone who, based on the ZDIJZ, would resort to the Ombudsman, but also includes national authorities that, by expecting the principle of confidentiality of procedures that take place at the Ombudsman may send the Ombudsman more information than they would otherwise do. In this way, the Ombudsman gains the trust of those filing complaints, as well as the authorities under her jurisdiction. The principle of procedural confidentiality as stipulated in Article 8 of the ZVarCP is explained in detail in Article 8 of the Rules of the Human Rights Ombudsman. In accordance with this provision, viewing of a file is permitted by the Ombudsman or her deputy based on a special application. Access to study or research work is also enabled in exceptional cases.

In the Ombudsman's opinion - with exceptions in Article 6 - ZDIJZ does not enable respect for the confidentiality of procedural principles, since it is not possible to determine exceptions in all cases which would enable an application for access to information in the Ombudsman's files to be rejected. Besides the possibility of access to a file, the Ombudsman permits access in all complainant's files on the basis of the Personal Data Protection Act, according to which each person has the right to access to data that refer to that person. The Ombudsman also permits access based on ZDIJZ regarding all other matters that refer to the operations of the Ombudsman's institution.

When we noticed a notification on the website of the Ministry of Public Administration (MPA) in 2009 that the Ministry is drafting an Amending Act to ZDIJZ, we sent the Ministry a proposal for amendments to the first paragraph of Article 6 of the ZDIJZ on 24 April 2009; the proposal stated that the exceptions where the authority denies the applicant access to requested information include claims that refer to matters which the Ombudsman considers are based on the Human Rights Ombudsman Act.

Therefore, a meeting was held at the Ombudsman's office between the MPA's representatives and the Information Commissioner on 23 September 2010. It was established at this meeting that the proposal was handled by a working group for the preparation of amendments to the ZDIJZ; however, no consensus was reached on the Ombudsman's proposal. The Ombudsman was not notified on this matter; the work in connection to drafting the act was halted. The Information Commissioner said that the Ombudsman should consider all exceptions in the current act. The Ombudsman said that it is not acceptable that she had not received a reply to her proposal. It was agreed that the Ombudsman would administer the current legislation rationally and cooperate in the process of drafting amendments to ZDIJZ.

We expect the work regarding the law amending ZDIJZ to continue and that a solution will be found which considers the transparency of the Ombudsman's work and also respects the principle of confidentiality of procedures at the Ombudsman's office.

## SUMMARY OF SUGGESTIONS AND RECOMMENDATIONS

- ✘ The Ombudsman recommends that the police and prosecutor's office consistently implement all legislative powers in restricting public incitements to hatred, violence or intolerance, and gradually form case law in this area.
- ✘ The Government should examine the possibility that public incitements to hatred, violence or intolerance should be sanctioned as an offence.
- ✘ The Government should verify whether obligatory membership in individual chambers is necessary for the presentation and enforcement of certain interests.
- ✘ For the purposes of legal protection in enforcing constitutional rights to free association and assembly, the Public Gathering Act should also include the conditions and procedures for issuing consent from the owner or manager responsible for events on public land, when such real property is owned or managed by the state or municipality.
- ✘ Data on letter envelopes of court writs in judicial regulations should be arranged in such a way that the possibility of encroaching on the privacy of addresses would be restricted to as far possible.
- ✘ Free Legal Aid Act should regulate the management of personal data contained in decisions on allocating free legal aid, so that the unjustified or ineligible processing of such data would not be enabled.
- ✘ The Higher Education Act should fully regulate and standardise all procedures and criteria for extending student status.
- ✘ The collection, protection, archiving period and further processing of (archive) materials of psychiatric institutions should be regulated by law.
- ✘ The Office of the Government of the Republic of Slovenia for Religious Communities should publish on its website information about the conditions and method of commencing and terminating membership in registered religious communities, which can be summarised from their fundamental acts.
- ✘ The Ombudsman recommends more efficient and accessible mechanisms for the unbiased consideration of ethical rules in the media, which would include representatives of publishers, journalists' associations and audiences.
- ✘ The Ombudsman proposes the examination of possibilities of enacting civil penalties for unjustified encroachments on privacy.
- ✘ The Ombudsman proposes that the Act on the Access to Information of Public Character should adopt a solution that, by considering the principle of the transparency of the Ombudsman's work, would also respect the principle of procedural confidentiality at the Ombudsman's office regarding matters which are considered by the Ombudsman to be based on the Human Rights Ombudsman Act.



## CASES

### 1. Deprivation of voting right

Parents asked us for an opinion on a district court's judgement which deprived their children of voting rights. In 2006, upon the parents' proposal, the court adopted a decision in non-litigious proceedings which, due to the lack of independence of the child, extended the parents' parental rights after the child turned 18. Four years later, the district court on its own initiative issued an amending decision on the deprivation of voting rights, which was supposedly removed in error from the primary decision's operative part. The parents did not agree with the deprivation of voting rights, since their child regularly followed the daily news, read newspapers and showed an interest in politics: Moreover, the child already had voted in parliamentary and presidential elections.

The issued decisions did not show if the court had executed a separate material procedure to establish whether the child is able to understand the meaning, purpose and effect of elections; therefore, we assessed that the complaint was founded. We believed that the court's decision on the deprivation of active and passive voting rights, which is the constitutional right of citizens of the Republic of Slovenia, was not in accordance with the law.

An additional judgement is issued when the court rectifies errors in names and numbers and other obvious written and calculation errors, deficiencies regarding the form, and in the case of inconsistencies, of the judgement's transcript in comparison with the original (Article 328 of the Civil Procedure Act). With the issued additional judgment, the court did not rectify the error, but decided on a right that was not even mentioned in the first decision; it decided on the deprivation of the right to vote and to stand for office. We could not agree with the court's opinion that the imposition on the deprivation of voting rights in the first decision was absent by mistake, since no statements or opinions claiming that the child of the complainants was not able to understand the meaning, purpose and effect of elections were found in the imposition.

Our opinion also stated that the National Assembly Elections Act (ZVDZ) in the second paragraph of Article 7 clearly states that deprivation of voting rights from a Slovenian citizen of 18 years of age is possible only on the basis of two conditions being fulfilled cumulatively: a) if the capacity to contract has been lost due to mental illness, retardation or impairment, or if the parental rights of parents or other persons extends after the child is 18 years of age, or b) that such a person is not able to understand the meaning, purpose and effect of elections. The court did not assess the fulfilment of the condition stated under b) in any decision. In connection to verifying the fulfilment of this condition, the court was satisfied to refer to the execution of evidence for the issue of the conclusion on the extension of parental rights. In our opinion, this is insufficient, since the condition "the ability to understand the meaning, purpose and effect of election" refers to the so-called condition *sine qua non*. We also warned that a person's mental state is a dynamic feature that changes over time; therefore, in our opinion, the court should not base its additional judgement on opinions and statements acquired during the parental rights extension procedure, since evidence that is more than four years old does not necessarily express the current state of affairs. For these reasons, the competent court should overturn the additional judgement of possible deprivation of active and passive voting rights; the court should implement a material procedure and acquire new expert opinions, and based on these, establish whether the complainants' child is able to understand the meaning, purpose and effect of elections.

We assessed that the complainants' conduct in filing a complaint against the district court's additional judgement was appropriate. Since the local elections were approaching, we advised the complainants that their child had the right to vote or be elected until the decision became final, and that they should monitor the preparation and publication of the electoral register for local elections at the head office of the administrative unit. This opinion was also sent

to the district court. After reviewing the court files, we did not establish whether or not such procedures occur often or systematically. We have not heard from the complainants since our actions, so we assume that their son was able to exercise his voting right in local elections. **(1.5-6/2010)**

## **2. Voting by mail from abroad**

The Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) considered the complaint of three citizens of the Republic of Slovenia with permanent residence in the Kingdom of Sweden who were not able to vote in the June referendum on the arbitration agreement with the Republic of Croatia, although they had sent to the National Electoral Commission (NEC) a request to vote by mail from abroad for voters who do not have permanent residence in the Republic of Slovenia. We established that this is a violation of the voting rights of the complainants and that the complaint was founded - since the complainants fully considered the instructions on applying to vote by mail - the NEC did not send them the material for the elections. The complainants also sent the NEC a request for an explanation of why they had not received material for the elections; however, the NEC did not reply.

After our first enquiry, the NEC responded that the complainants had sent requests for voting by mail from abroad within the statutory term, and the NEC had sent requests for consideration to the Murska Sobota administrative unit, which should have issued fourteen invitations to vote. The administrative unit prepared the invitations to vote and sent them by registered mail to the NEC. The NEC did not receive this package, so it assumed that the package had been lost.

The NEC's answer only partially explained why the complainants were not able to vote. In our opinion, the NEC should devote more attention to researching this matter, so that similar errors are prevented in the future. We suggested that the NEC establish where exactly was the package lost, what happened to it and whether the materials for elections had been abused. We believed that from the aspect of good management, it was disputable that the NEC did not send any feedback to the voters, even though some of them explicitly demanded feedback. We proposed that the NEC examine all the circumstances resulting in the loss of the package and explain to the voters why the situation had become complicated and also to apologise for all problems that emerged.

We did not receive an answer to our second enquiry in time; therefore, we sent the NEC an urgent letter and received a letter with explanations that the error occurred at the NEC due to insufficient supervision of returned voting invitations. The NEC prepared a written report on the event, so that this would not occur again. The NEC also apologised for not sending the materials to the voters in written form. The Ombudsman's actions were therefore successful; the final answer of the NEC could be considered as an exemplary case of considering the Ombudsman's proposals. **(1.5-4/2010)**

## 2.2 DISCRIMINATION

### GENERAL

In 2010, the number of complaints classified under the discrimination section was almost the same (67) as in 2009 (69). There were more complaints referring to discrimination based on national or ethnic affiliation and equal opportunities, and fewer regarding employment and other areas. As in previous years, the majority of complaints were classified under other (32), followed by national and ethnic minorities (24), employment (6) and equal opportunities (5).

This does not mean that the Ombudsman considered only the mentioned number of complaints classified under this section, since similar situations were considered in other areas, mainly relating to labour law. In general, the highest number of complaints in 2010 referred to the situation and recriminations regarding unequal consideration of Roma community members. These issues were not considered solely on the basis of complaints, but also on our initiative, based on discussions with the representatives of this community and information published in the media.

#### **Mechanisms for protection against discrimination**

The recommendations adopted by the National Assembly based on the report of the Ombudsman for 2009 include the frequently repeated recommendation to adopt statutory solutions that in accordance with the EU's legal order would guarantee more independence and autonomy of the specialised authority for protection against discrimination.

The year 2010 saw the preparation of a governmental analysis of the institutional regulation of promoting equality and protection against discrimination in Slovenia by proposing possible solutions, and the Ombudsman's efforts to continue with the operations and reformation of the already former Information Office of the Council of Europe in Ljubljana.

#### **The Ombudsman's proposal to establish a Human Rights Centre**

When it became clear in the middle of 2010 that the Council of Europe had decided to close the Information Office of the Council of Europe (IO CE) in Ljubljana at the end of the year, the Ombudsman proposed as a short-term and transitional solution that the work of this office with somewhat extended content continue as the Human Rights Centre with the Ombudsman (hereinafter referred to as the Centre).

Since no government authority was prepared to take over this activity, the Ombudsman formed her own proposal and sent it to the Ministry of Foreign Affairs. According to this proposal, the Centre would perform the following tasks:

- it would continue with the work of the human rights library;
- it would implement tasks relating to the promotion of the human rights. Within this scope, it would also encourage ministries and others to guarantee the translation of significant documents and case law in the field of human rights in Slovene and the languages of minorities. Together with governmental and non-governmental organisations, it would organise the issue and distribution of various publications and information material in Slovene, and prepare journals with documents, analyses and reports of international

supervisory mechanisms. It would organise public events (press conferences, round tables etc.) at important events in the field of human rights protection (ratifications, discussions on national reports, adoption of significant documents or publications), and encourage and harmonise governmental and non-governmental activities in the field of educating for human rights;

- it would cooperate in the preparation and consideration of research in individual fields of human rights protection in accordance with (material) abilities, and
- it would cooperate with non-governmental organisations in the field of human rights protection. It would provide spatial, expert, organisational and logistics support, and encourage as well as organise consultations in connection with the consideration of national reports and signing or ratification of international obligations of the Republic of Slovenia in the field of human rights.

A programme of work and reports on implemented tasks would be adopted by the consulting committee, the members of which would be appointed by the Ombudsman. The Centre would not consider or assess individual cases of human rights violations in Slovenia. If such cases occurred, it would hand them over for consideration by the Ombudsman, since the tasks of the Centre and Ombudsman should not overlap. The Centre would have its own website, where documents and links to all important content on human rights protection would be accessible. The Ombudsman also prepared a frame for calculating the additional costs required for the operation of the centre, which would amount to approximately 200 thousand EUR for the year 2011 (assuming a staff of four employees).

The proposal was discussed and supported at the meeting of the inter-ministerial working group for human rights within the Ministry of Foreign Affairs. However, the representatives of the Government Office for Equal Opportunities expressed reservations about the proposal being considered and urged waiting for the conclusion of the work of the governmental working group, which will prepare a “complete solution”.

Since the government was acquainted only with the proposal that was sent for governmental consideration by the Ministry of Foreign Affairs, the IOCE stopped operating at the end of 2010. Thus, we missed a unique opportunity to enable the Centre to continue working at a location already established for individuals seeking advice and information on the work of the European Court of Human Rights, as well as for non-governmental organisations that often hosted various meetings and promotional activities there. If the Ombudsman’s proposal had had (financial) support, the Centre would be the basis for promotional activities in the field of preventing discrimination, which are proposed by the governmental group within the scope of analysing the institutional regulation of promoting equality and protection against discrimination. If an independent national institution for protection against discrimination were established on this basis, the Centre could continue its work also within this framework.

Within the scope of staff availability, the Ombudsman performs only some tasks performed by national institutions for human rights established by the Paris Principles since, according to the law, the scope of the Ombudsman’s work was drafted as an institution according to the Scandinavian example, and the basis for the Ombudsman’s operations is the consideration of individual cases based only on complaints or the Ombudsman’s own perception. She does not implement, at least not systematically or permanently, numerous tasks which should be implemented as per the Paris Principles (e.g. systematic monitoring of legislation and international documents in the field of human rights and international cooperation related to this).

### 2.2.1 Special rights of national communities

We did not receive any complaints in 2010 explicitly warning of violations of any of the special rights guaranteed to both self-regulating national communities and their members, which would also be a basis for the mediation of the Human Rights Ombudsman. However, we assessed some cases of non-payment of the bonus for bilingual broadcasting on RTVS according with the Public Sector Salary System Act, which are described in the labour relations section. We still believe that Slovenia has regulated the position of both indigenous national communities at the normative and institutional levels well; however, this does not mean that there are no violations in practice, but unfortunately they remain unknown to the Ombudsman. The readiness of individuals to facilitate formal and informal ways of enforcing their rights when they believe that they have been violated can change this issue in practice.

### 2.2.2 The Roma and Sinti communities

There has been progress in numerous areas in the field of enforcing the rights of Roma community members in Slovenia. The Roma Community Act in the Republic of Slovenia (ZRomS-1) provided the basis for establishing the Roma Community Council, within which all members can express and form their demands and interests, as well as enforce them in dialogues with national and other authorities. In this way, part of responsibility for resolving the situation of the Roma community falls on them as well. Unfortunately, the Council's operations have not met all the expectations expressed at the adoption of the act. Besides the problematic structure of the Council, which also removes some legitimacy (more can be read below) it is obvious that it could do more within the current legislation and structure if its members performed their tasks with enhanced responsibility and enthusiasm in favour of the entire Roma community in Slovenia. Pursuant to ZRomS-1, the National Programme of Measures for Roma of the Government of the Republic of Slovenia for the 2010-2015 period was adopted. The realisation of this programme will require great enthusiasm from those responsible for the implementation of tasks, as well as the means for the realisation of the programme's objectives.

During the consideration of numerous issues in this area, the Ombudsman has for several years established that there are too few determinations of tasks and responsibilities among the national authorities and local communities. Too often, we see that responsibilities are passed on to others: local communities seek solutions at the state level and vice versa. We believe that making the responsibility for (non)resolving issues of the Roma community that of others contributes to a great deal of tension in individual environments. Municipalities' managers have many difficulties justifying investments in resolving residential, communal, environmental and social problems for members of the Roma community, since this results in a lack of means for other purposes. This is why we believe that the means for this purpose should be guaranteed by the state; municipalities should adopt quality projects and programmes. Many possibilities for utilising EU funds are available, and municipalities should take advantage of these.

When considering complaints and talking with representatives of the Roma community, the Ombudsman assessed the lack of transparency in the allocation of funds intended for the Roma associations and societies. The legal bases for financing the Roma community in Slovenia are deficient or even non-existent. Funds were allocated also without public tenders, and there was also no appropriate supervision of their use. We warned the Government Office of the RS for National Minorities, which replied that they are aware of some deficiencies, and therefore many activities are being conducted to establish a better method for co-financing Roma organisations. These activities are continuing in 2011, and

have led to the Office's obligation for a more transparent method of financing – that is, solely on the basis of public tenders published by the Office and the Roma Community Council. In connection with the burial of a Roma woman in the municipality of Škocjan at the end of 2009, the Ombudsman visited the location immediately after the event and acquired data by visiting the municipality, the police station and the undertakers. She also acquired the report of the Ministry of the Interior on all the activities of the police. The police filed criminal charges at the Office of the State Prosecutor General on suspicion of a criminal act of obstruction of a funeral or desecration of graves, and submitted an accusatory instrument for the offence of organising gatherings or events with the purpose of enabling the execution of criminal offences or inciting the execution of criminal offences based on the Public Gathering Act. Based on the collected data, the Ombudsman established that the gathering of village people in Dobrava at Škocjan was not justified and was inappropriate; therefore, she condemns such conduct. She has also established that in this case, the police acted appropriately when they prevented the situation from worsening, and the police enabled the funeral to take place. The Ombudsman did not perceive any irregularities in the work of the police. The Ombudsman also did not establish any irregularities regarding the implementation of funeral activities; the cemetery for the funeral was in this case determined in accordance with the municipality's regulations.

### 2.2.3 Other minorities (not recognised by the constitution)

The Ombudsman has proposed in her reports for several consecutive years that we should begin a discussion on the situation and measures for realising the collective rights of minorities which are not defined as such in the Constitution; however, these minorities are so numerous that they need to be defined in Slovenia. The Ombudsman also proposed this in the 2009 annual report; the National Assembly adopted the recommendation and suggested that the Government and the National Assembly form and adopt a strategy for regulating the collective rights of minorities which are not specially defined in the Constitution, therefore determining the policy with regard to minorities regarding the preservation of cultural identity and language, the development and preservation of ethnic or national identity of the members of this community, their occurrence in public media, and to determine an institution which would act as a national-level partner in dialogue with representatives of these communities.

Based on the Ombudsman's repeated recommendations, at a meeting held 1 February 2011, the National Assembly adopted the RS Declaration on the situation of the national communities of the former SFRY in the Republic of Slovenia, in which it is stated that starting points for the adoption of this Declaration included the Ombudsman's annual warnings and recommendations.

The Ombudsman welcomes and supports the adoption of the Declaration. This was a significant step, not only on a symbolic level, towards creating the conditions for maintaining and developing the identity of members of the nations of the former common state, who de facto became a minority after the declaration of independence. These include many people in Slovenia who gained their first official recognition on the highest level and the possibility for a creative dialogue with the state on exercising certain rights. The dialogue will begin when the Government, pursuant to this Declaration, establishes a special consulting body to deal with questions, demands and proposals from all members of these communities. Despite this fact, there is still an issue regarding other national communities members who live in Slovenia, such as the German community.

#### 2.2.4 Rights of the disabled

At the end of 2010, the Equalisation of Opportunities for Persons with Disabilities Act (ZIMI) was adopted, which introduced many novelties that will help realise the obligations of the Republic of Slovenia stipulated by the ratification of the Convention on the Rights of Persons with Disabilities. Unfortunately, neither the National Assembly nor the Government considered the warnings of the Ombudsman that the terms for the enforcement of executive acts which enable the exercise of some rights of people with disabilities are too long, and have delayed the adopted obligations by one year.

## SUMMARY OF SUGGESTIONS AND RECOMMENDATIONS

- ✘ The Ombudsman proposes that the Government prepare modifications and amendments of the Roma Community Act in the Republic of Slovenia in cooperation with representatives of the Roma as soon as possible.
- ✘ The Ombudsman recommends the adoption of statutory solutions that will - according to the EU legal order - ensure the unbiased, independent and efficient consideration of cases of prohibition of discrimination for whatever reason and in all areas. For this purpose, it is necessary to introduce an independent advocate who with the authority to investigate cases of discrimination and to sanction violations in the public and private sectors.
- ✘ The Ombudsman recommends that the Government more efficiently implement and harmonise activities regarding understanding of the current situation and formation of policies in all areas where unequal consideration due to personal circumstances (discrimination) is possible. It would be appropriate to merge the government authorities (offices) that perform tasks in these areas, so that all areas would be covered and there would be no imbalances regarding individual personal circumstances.
- ✘ The Ombudsman recommends that statutory and executive acts and measures for enforcing the Convention on the Rights of People with Disabilities are adopted as soon as possible.



## CASES

### 3. The right to view pre-referendum debates on RTV Slovenia in sign language

The Ombudsman received a letter of an association representing viewers with hearing disabilities addressed to the executive director of RTV Slovenia (RTV). The association's representatives stated that viewers with hearing disabilities cannot view many informative shows. They emphasised that they were not able to view pre-referendum debates in sign language. We turned to the executive director of RTV with a request to enable the input of an interpreter's image in the shortest possible time in all live broadcast debates, thus enabling the deaf and hard of hearing as citizens of the Republic of Slovenia an equal and active role in exercising their constitutional rights. They stated that they had warned about this problem many times in the past, but had not received an answer.

Since the Ombudsman pointed out this problem in previous annual reports, we sent a letter to the director of RTV asking him to respond to the requests of the complainants and to answer their questions. We received an answer from the informative programme executive editor, who emphasised that RTV Slovenija and its informative programmes are the leading medium, if not the only medium, breaking new ground in this area, introducing novelties and using the technical possibilities to simplify the viewing of shows for viewers with sight and hearing defects. In the preparation and implementation of election projects in the past, TV Slovenija in principle enabled viewing of debates and presentations of parties also to persons with hearing disabilities. They used subtitling and abstracts published on RTV Slovenija's teletext, as well as sign language interpreting. One of the mentioned possibilities of viewing programmes for persons with hearing disabilities was planned for the coming local elections. However, the referendum on the arbitration agreement was an extraordinary decision taken by the National Assembly's deputies, and therefore, the show was managed on a project basis and outside the regularly planned programme and implementation requirements of RTV. RTV Slovenija faced short deadlines and limited production possibilities. This is why the referendum debates were not subtitled or interpreted in sign language. The executive editor of information programmes emphasised that RTV Slovenija will try to do everything possible in the future to implement such (extraordinary) projects in such a way that viewers with hearing disabilities will be able to view them.

We assessed that the complaint was partially founded. In the past, the Ombudsman warned several times about the problem of insufficient adaptations for viewing RTV's TV programmes. The situation has improved slightly, but still not sufficiently.

Therefore, we emphasise again that equal consideration of all Slovenian citizens should be ensured, as well as rational adjustments - mainly for viewing informative shows, especially pre-election and pre-referendum debates - guaranteed. **(10.0-14/2010)**

### 4. Discrimination in employment at the Office of the State Prosecutor General

On page 38 of the 2008 annual report, we explained the case of the impermissible use of mutual recrimination. The complainant applied for a position as a state district attorney. The State Prosecutors' Council (Council) formed the opinion when selecting the candidate that the complainant was not an appropriate candidate for this position. The explanation of the opinion also stated that he was suspected of committing criminal offences. We considered the complaint as founded, because such conduct could imply interference in the presumption of innocence and discrimination in employment due to personal circumstance (being under suspicion). All charges against the complainant were dropped, and in one case, prosecution was barred under the statute of limitations. The Office of the State Prosecutor General, with no special arguments, resolutely rejected all the Ombudsman's statements regarding suspicion of discrimination. The final opinion only included the ascertainment of violating good

management principles; we deliberately avoided a final judgement regarding discrimination. We sent the complainant our opinion that he can file a criminal complaint and a complaint at the Labour Inspectorate of the Republic of Slovenia. The complainant pursued this option.

In 2010, the complainant informed us that the Labour Inspectorate of the Republic of Slovenia has established that during the inspection of the state attorney candidate selection process, the responsible person at the Office of the State Prosecutor General (SPO) abandoned the obligatory supervision of, and concern for the conduct of the Council, due to which the complainant was placed in an unequal position, which contravenes the provisions of Article 6 of the Employment Relationship Act (ZDR). The inspector established that, by abandoning supervision, the responsible person at the SPO violated the first item of the first paragraph of Article 229 of the ZDR; therefore, the inspector issued a warning and imposed on this person payment for all procedure-related costs.

The responsible person of the SPO complained against this decision; however, the request for judicial protection failed. The local court confirmed the contested decision and explained that the Council, whose work was managed and whose opinion was signed by the responsible person of the SPO, considered the data on the dropped criminal charges against the complainant when deciding whether the candidate was appropriate for the position of state district attorney. This can undoubtedly be seen from the explanation of the opinion; the information on criminal charges had a significant impact on the opinions of the Council members. In this way, the Council considered circumstances which should not be considered, and placed the complainant in an unequal position in comparison with the other candidate that applied for the position. The court judged that the complainant's case was subject to discrimination because, due to the mentioned personal circumstances, he was obviously considered less favourably than the other candidate. The responsible person of the SPO discontinued the work of obligatory supervision and concern for the legality of the conduct of Council members due to the fact that she allowed that prior to the submission of the opinion regarding the suitability of candidates for the free post, data on the (dropped) criminal charges against the candidate had been deliberated.

If the SPO had accepted our opinion two years ago and admitted its error, it would most probably have avoided all further procedures and would eliminate all irregularities without unnecessary tension. This is why the Ombudsman was obliged to advise the complainant to turn to the competent inspectorate in this matter. The minor offence authorities and the court then confirmed our assumption on the discrimination against the candidate who was not selected. By considering the Ombudsman's opinions, state authorities could avoid the further establishment of irregularities in their operations. Failure to respect the Ombudsman's opinions, recommendations and proposals is considered a violation of the good management principle as well. **(10.0-13/2008)**

## 2.3 RESTRICTION OF PERSONAL LIBERTY

### GENERAL

This section is devoted to presenting findings relating to complaints connected with the restriction of personal liberty. This concerns persons whose liberty was restricted for various reasons (such as detainees, convicted persons serving a prison sentence, juveniles serving a prison sentence in juvenile prisons and in correctional facilities for juveniles, persons imprisoned for the enforcement of fines, some persons with mental disturbances or illnesses in social and health care institutions, some foreigners and juveniles in juvenile facilities and other institutions).

#### 2.3.1 Detainees and convicted persons serving a prison sentence

In 2010, we dealt with 42 complaints of detainees (2009: 34) and 92 complaints of persons serving a prison sentence (slightly fewer than in 2008, when there were 112). When considering these complaints, we primarily assessed the respect for human personality and dignity guaranteed by Article 21 of the Slovenian Constitution also during deprivation of liberty and the enforcement of a sentence. In relation to some complaints, we tested whether judicial proceedings are being implemented in accordance with the law (namely, within the statutory provision presenting the basis of the deprivation of liberty) and if necessary, we mediated in cases of long-term judicial (for instance detention related) proceedings or the untimely issue of court decisions.

According to data from the Ministry of Justice (MJ), 1098 places are available in institutions intended for serving prison sentences according to the prescribed standards; as of 2 February 2010, 1,374 persons were imprisoned (detainees and convicted persons serving a prison sentence or juveniles serving a prison sentence in juvenile prisons, juveniles in correctional facilities and persons imprisoned for the enforcement of fines), which means that the prison facilities were overcrowded by 20 per cent. Consequently, many problems have arisen among imprisoned persons and employees. It is no surprise that many complaints related to poor living conditions in penal institutions.

For instance, the Juvenile Prison and Prison in Celje has operated in a building built in 1810, and is not functional, since it is structured from many unduly small rooms; it has no multi-purpose premises, such as rooms for visitors or study rooms, and it has only one courtyard for sports activities.

During the summer, some prisons had to deal with inadequate temperature conditions in premises, where imprisoned persons are accommodated and also in premises used by prison officers for work. The Ombudsman warned the responsible persons in previous years that high temperatures in living and working premises may endanger health; therefore, she also informed the competent inspection and supervision authorities of this problem. The Ombudsman also observes that complete solutions have to be found for reconstructing buildings that will also consider environment protection requirements and rational energy consumption.

In the past few years, the Prison Administration of the RS (UIKS) gave special concern to monitoring the number of imprisoned persons with the purpose to reduce negative consequences of overcrowding in prisons. Therefore, we should commend the efforts of

the UIKS at transferring imprisoned persons from overcrowded to more appropriate rooms, wards and institutions. If the number of imprisoned persons decreases (their number has increased in the past years), it will be necessary to find other solutions, such as finding alternatives to incarceration. However it is encouraging that the construction of two new living facilities within the scope of the reconstruction of the Prison in Dob pri Mirni continued in 2010 with no major disturbances; according to projections, these facilities will enable an additional 174 places in 2011.

Expert workers and prison officers are responsible for undisturbed work in prisons and for guaranteeing the safety of imprisoned persons. Prison officers are still most burdened by accompanying imprisoned persons outside the facility (e.g. to courts, health care institutions), often by using vehicles that are no longer appropriate for use because they are too old. The work of prison officers is very demanding from the aspect of safety; therefore, it is not right that their number for escorting imprisoned persons is decreasing, thus exposing them even more to danger. We are aware of the fact that the UIKS in 2010 strove to fill the staff shortages in prisons by considering all real options. However, it is not acceptable that due to lack of personnel, individual escorts to external institutions are not undertaken.

We have to note that prison officers are public persons; therefore, we should be aware of the fact that any kind of unprofessional conduct influences the work of all employees. The purpose of imprisonment is not only to guarantee safety from criminals, but also to enable the possibilities for the best possible inclusion of the convicted person in everyday life after serving of their prison sentence. Therefore, we emphasise the significance of the quality use of time spent serving a prison sentence. This time should not be spent only by executing the measure of deprivation of liberty. Therefore, we encourage work by imprisoned persons, and their inclusion in educational and other activities with the purpose of training them for successful integration in society when their sentence ends. We believe that more direct cooperation between the Ministry of Justice or the UIKS and the Ministry of Education and Sport is necessary.

Expert workers in prisons must have appropriate professional qualifications for the work they perform, especially for executing programmes that include the consideration of persons convicted of sexual offences, and persons addicted to prohibited drugs and alcohol. We believe that programmes should be appropriately verified, putting greater emphasis on diagnostics, motivation procedures and quality content focused changing behaviour. This is why we met in 2010 with representatives of the UIKS and informed them of our standpoints and proposals. The establishment of the council for the execution of penal sanctions as the core expert coordinating and consulting body of the MJ regarding programmes and policies in the field of the execution of penal sanctions promised quite a lot; however, we have still to see any positive changes in this area.

A step forward was taken in 2010 regarding the establishment of the forensic-psychiatric section of the health institution which would apply to special security conditions. The MJ adopted a decision on the appointment of a project group for preparing for the establishment and organisation of a forensic-psychiatric hospital in Slovenia on 20 April 2010. According to our information, this solution complies with the opinions of expert psychiatrists. Some anticipated changes and amendments to criminal procedure acts and acts on executing penal sanctions will also ensure appropriate processes and an organisational basis.

Besides complaints that require systemic solutions (amendments or modifications to legislation, improvement of living conditions), we also considered complaints of a more individual nature. They refer to the suspension or termination of prison sentences, transfers, allocation of benefits, appropriate conduct of staff and their responses in resolving problems

of individuals, appropriate use of authorisations of prison officers and similar. Several detainees turned to us due to assigned detentions, although the Ombudsman in principle may not consider matters subject to judicial or other legal proceedings.

The Ombudsman always warns that equal consideration of convicted persons must also be ensured in cases of allocating benefits. The fact that one convicted person has benefits and another has none does not mean that convicted persons are not subject to equal consideration. The situation of each person depends primarily on subjective circumstances. Which of them are considered in allocating benefits is determined by Article 77 of ZIKS-1, which determines that benefits are allocated for active efforts and achieving success in meeting the obligations set out in personal plans and respecting the house rules. Along with these criteria, other matters to be considered are the personality of the convicted person, safety assessment of the person, type and method of committing a criminal offence, the manner of commencing the serving of a sentence, possible open criminal proceedings and other circumstances showing the possibility of abusing allocated benefits. The response of the environment where the criminal offence was committed, as well as the response of victims should be considered.

Benefits are not justified for all convicted persons only by the passing of a certain time, but are allocated only under conditions stipulated by law. Benefits are allocated (or withdrawn) by the director of the institution and included in the prisoner's personal plan. Each decision of the institution's director (also, for not allocating or depriving someone of benefits) can be contested with a complaint sent to the general director of the UIKS. In such cases, we had to explain to the complainants that the Ombudsman does not have the legal authority to influence the substantive decisions of the competent authorities; however, she intervenes whenever a competent authority does not decide on the matter (is delaying the decision) or takes a standpoint regarding the matter.

### 2.3.2 Persons with mental disorders and persons in social welfare institutions

In comparison with 2009, we considered a slightly lower number of complaints (18, and 24 in 2009) in the area referring to the deprivation of liberty of movement due to mental disorder or illness. Most complaints were connected with the Mental Health Act (ZDZdr) and with admissions for treatment without consent in urgent cases.

We proposed to complainants who had doubts regarding treatment due to mental disorder or illness they acquire further explanations from their psychiatrists. At the same time, we advised them of their right to a consideration of alleged offences according to procedures regulated by the Patients Rights Act (ZPacP). These individuals have to be informed that they can complain in a psychiatric hospital (leaflets, messages on billboards etc.). The rights, interests and benefits of a person with a mental disorder who is being treated or handled by the network of mental health programmes and services providers are protected by representatives of the rights of persons in the field of mental health. After being appointed in 2010, the latter have finally started performing their tasks.

Complainants - patients hospitalised in psychiatric institutions - also wrote to us or called us with requests to help them be discharged. As in the past, we explained to them the procedure for discharge or detention due to hospitalisation. When needed, we verified the judicial proceedings, and in one case, we found a delay in the court's decision. This is not acceptable, since the courts cannot neglect periodic checks on whether an imposed measure is still required regarding the accomplished treatment. The matter included the execution of a security measure in a psychiatric hospital which did not meet its obligation to report to the court in due time as determined by the second paragraph of Article 154 of the Enforcement

of Criminal Sanctions Act (ZIKS), and reported only after the court had already intervened. In this case, we established that there had been a delay in initiating the execution of the imposed measure. Since this is a wider area of problems related to the length of the proceedings of the consulting commission of the Ministry of Justice, which on the basis of Article 151 of ZIKS provides its opinion on the institution where the measure should be implemented, we again informed the Ministry of Justice on this matter.

This is a guarantee that the time for issuing individual opinions by appointing new commission members has shortened substantially (from 20 days in 2008 to 7 days in 2010).

The Ombudsman is also authorised to verify the situation in institutions where complainants with deprived freedom of movement due to mental disorder or illness are placed. We visited some of these institutions. We also established problems caused by the lack of capacity in nursing homes and especially in socio-medical institutions. Consequently, long waiting periods for admission or placement in remote nursing homes have occurred (this especially applies to applicants from Ljubljana). We also found that there are more requirements for single bed rooms and nursing beds.

### 2.3.3 Aliens and applicants for international protection

In this area, we did not consider any complaint from an alien or applicant for international protection in 2010 related to restricted movement in the Aliens Centre or in the Asylum Centre (AC). In 2010, the Ombudsman, under the National Preventive Mechanism, visited the AC in Ljubljana and the Detention Centre in Postojna.

## SUMMARY OF SUGGESTIONS AND RECOMMENDATIONS

- ✘ The Ombudsman again recommends that the competent state authorities adopt additional measures to help eliminate the level (20 per cent) of overcrowding in Slovenian prisons.
- ✘ The Ombudsman recommends the reconstruction of prisons, which will eliminate poor living conditions, reduce high summer temperatures in living and working premises, and the irrational use of energy.
- ✘ The Ombudsman recommends the preparation of a complete programme to encourage the inclusion of imprisoned persons in various training and education programmes in order to improve their successful integration in society after they complete their sentence. The preparation of programmes should include the Ministry of Justice, the Ministry of Education and Sport, and the Prison Administration.
- ✘ The Ombudsman recommends that programmes of expert training and education of professionals in prisons should be professionally verified, placing greater emphasis on diagnostics, motivation procedures and quality content focused on behaviour changes. The Ombudsman recommends the unification of programmes and improved expert level of consideration of persons convicted for sexual offences, persons addicted to prohibited drugs and alcohol.
- ✘ The Ombudsman proposes the adoption of systemic solutions that will enable the imposition and execution of alternative forms of serving prison sentences, especially by implementing work for the public benefit. The Ombudsman also proposes expanding the possibilities of alternative forms of serving prison sentences.
- ✘ The Ombudsman proposes amendments to legislation and executive acts, especially the house rules of prisons, which will more appropriately regulate the manner and scope of visits of representatives of convicted persons and telephone communication.
- ✘ The Ombudsman warns that violations of house rules in prisons are in practice considered in two different ways: by disciplinary or treatment consideration, which in some cases may present a danger of unequal consideration of convicted persons. Therefore, the Ombudsman proposes the formation of such disciplinary policy that will enable each convicted person to participate in a disciplinary procedure without the arbitrary loss of benefits and rights.
- ✘ The Ombudsman proposes the formal regulation of official contacts between convicted persons and the press, since such visits have other purposes than visits of family members and friends.
- ✘ The Ombudsman proposes that despite the discretionary right to assess the use of one of the legal possibility of charging costs for a person to review their own personal data (and photocopying documents) in a personal file, the authorities should use the Rules on the costs of photocopying official instruments or characters at administrative body (adopted on the basis of Administrative Fees Act), which is more appropriate for the applicants (convicted persons).
- ✘ The Ombudsman proposes changes and supplements to appropriate executive acts that determine the conditions for the use of electronic means of communication in prisons (electronic mail, the Internet, mobile telephony, fax messages, voice mail, text messages).

## SUMMARY OF SUGGESTIONS AND RECOMMENDATIONS

- ✘ The Ombudsman again recommends that imprisoned persons should be permitted more contact with the outside world, thus preventing their social exclusion. There should be well-founded reasons for restricting such contact.
- ✘ The Ombudsman proposes such regulation of the admission of persons in secured wards of social welfare institutions that will enable equal accommodation possibilities (and not jumping the lines) regardless of whether the persons are committed to the institution as a result of a court decision or not.
- ✘ The Ombudsman again recommends the complete monitoring and analysis of problems in the execution of the Mental Health Act. Based on our findings, proposals for changes should be prepared which would simplify current procedures and ensure a high level of respect for the human rights of persons treated in wards under the special supervision of a psychiatric hospital, or who are in the care of a secure ward of a social welfare institution.
- ✘ The Ombudsman proposes to establish a special ward for the treatment of children who require intensive paedo-psychiatric treatment in wards that are under special supervision and who are no longer being treated in adult wards of psychiatric hospitals.



## CASES

### 5. Impermissible case of the separation of a baby from its mother in detention

The complainant, who was detained for more than one month in Ig Prison (ZPKZ Ig), asked the Ombudsman to help her return to her family. She had four children at home, including a son who was a few months old. The Ombudsman visited the complainant in ZPKZ Ig. Based on all the available documentation, we were able to find that the court was undoubtedly informed that the detainee had given birth to the son three months earlier. This obviously did not affect the decision to order detention, nor on the specifics of her accommodation in detention at ZPKZ Ig. The complainant was not given an opportunity to stay with her child, who was only three months old at separation from the mother.

We assessed that in this case, the detention of the mother without her baby was a violation of the mother's rights, and especially a violation of the child's rights. We asked the District Court President who, under Article 213.d of the Criminal Procedure Act (ZKP), executes supervision of the treatment of detainees, to visit the detainee and assess any possible irregularities, which should have been immediately rectified. We asked the Social Work Centre (SWC) to explain how the expert worker, upon the incarceration of the complainant, verified whether the complainant's children, especially her (at that time) three-month old son, whom she was breastfeeding, were properly cared for. The Court decided to visit the complainant in detention (or to execute supervision as stipulated in Article 213 of ZKP) after the Ombudsman published this case on her website. The Vice-President of the District Court received the complainant's statement that she wanted to breastfeed her child in detention and her request that she be enabled to do this. The Senate President decided on this request on the following day and notified Ig ZPKZ that there were no hindrances to prevent the complainant from being with the child in order to breastfeed him. The Ig ZPKZ then prepared a room where the complainant and her baby were accommodated on the following day. The Court also ordered an immediate main hearing and a decision in the criminal proceedings that were held against the complainant.

The SWC explained to the Ombudsman that two social workers had taken all appropriate measures to make sure that all four children of the complainant (including the newborn) would be well taken care of while she is away. The children's father and his relative had stated to take care of them, and the mother (complainant) also agreed to this. None of the social workers saw that the complainant would be breastfeeding the baby, as she always fed him with a bottle when they were present. The complainant did not explicitly express a wish to breastfeed. Based on all circumstances, the Ombudsman believes that all of this could have been avoided if the SWC had protected the rights of the newborn child with greater diligence. The child's rights are to be taken care after birth (mainly) by the mother. If the SWC, on the basis of the UN Convention on the Rights of the Child, the Constitution and the law, insisted that the barely three-month child not be separated from his mother (regardless of whether she would breastfeed him or if that was her explicit request), the court should also have considered the proposal of the SWC when making its decision.

This case would not have occurred if the child's right to stay with his mother (also in detention) up to a certain age were explicitly determined by criminal law. Thus the court would not need to decide on this possibility only after an explicit proposal of the mother or the SWC, but already in the course of its normal duties. Therefore, the Ombudsman requested the Ministry of Justice to assess whether or not legal changes are required (or are already anticipated) to prevent further such cases from happening. **(2.1-25/2010)**

## 6. Battering of a detainee

The mother (complainant) of a detainee in Ljubljana prison (Ljubljana ZPKZ) notified the Ombudsman that detainees had beaten her son. She emphasised that other detainees with whom he stayed in the same room had been blackmailing him since the start of his detention. Since the blackmailing was aggravating, and because her son was feeling more threatened, they wanted to warn the management of ZPKZ of the problem. The son wrote applications for a meeting with the head of the detention ward at least five times, but no meeting took place. The complainant informed the chief prison officer by phone of her fears one day before her son was physically attacked.

The complainant's claims were verified immediately by the Prison Administration (UIKS). The latter informed us that the prison officer had not verified the information received during the telephone conversation with the detainee's mother one day prior to the physical attack on the detainee. According to the Administration's explanation, the ZPKZ had no other information on the blackmailing of the detainee. The Prison Administration established that the method for collecting applications for consultations at ZPKZ did not ensure that applications would actually reach ZPKZ officers. Therefore, the Prison Administration guaranteed that it would take care to appropriately regulate the collection of applications for meetings. It did not take a position regarding the failure to act on the information on extortion and threats on the part of the the head of the detention ward.

Based on all the established deficiencies, the Ombudsman proposed that the Prison Administration take all necessary measures to ensure that such an event would never recur in any prison. This is why it is necessary to ensure in all institutions that such a method of submitting applications of imprisoned persons is enabled so as to guarantee that all applications are received and appropriately considered, and that they contain information accessible only to authorised officers in prisons. The Ombudsman also suggested that prison officers and other responsible persons in institutions be regularly educated and trained regarding the detection of extortion or threats to someone's safety, since every institution, or the state, is responsible for the safety of prisoners.

The Prison Administration also notified us that the conduct of the head of detention who did not verify the complainant's statements on extortion and endangering of safety of the detainee was not appropriate. The director of the prison issued a verbal warning to the operational head of detention. The system of collecting applications, which are now handed over directly to prison officers, was modified; in some institutions, the applications are also passed on to other professionals working at the institution or are collected in special mail boxes that are located near prison officers' offices. Each application is registered and then sent to the officer with whom the imprisoned person wishes to speak.

The general office also explained that the professional examination programme determined by the Minister in accordance with Article 232 of ZIKS-1 will also include the practical procedure of establishing and preventing conflict among imprisoned persons. It is planned that prison officers in this programme will also be trained on detecting violence, on ways of detecting violence and on discovering violent behaviour between imprisoned persons. **(2.1-22/2010)**

## 2.4 ADMINISTRATION OF JUSTICE

### GENERAL

#### 2.4.1 The timeliness and quality of judicial proceedings

In 2010, the number of complaints also continued to decline in the field of judicial proceedings, from 548 in 2009 to 504 in 2010 (there were 67 relating to criminal proceedings, 306 to civil proceedings and relations, 26 to labour and social courts, 17 to administrative judicial proceeding, and 79 to the area of offences).

According to information from the Ministry of Justice (MJ), the Slovenian courts started the year 2010 with 431,588 unresolved cases (including offences), the first six months ended with 401,073 unresolved cases. The number of unresolved cases decreased by slightly more than seven per cent. Despite the higher case load, the positive trend of shortening the time taken by the courts to resolve cases is becoming shorter. The information from the Ministry of Justice that the courts have never in the history of independent Slovenia had so few unresolved cases, and that they now require the shortest time ever to resolve an average case (six months) is very encouraging, although, we still had to deal with cases involving lengthy judicial proceedings (in one of these cases, the audit which the Supreme Court of the Republic of Slovenia received in November 2007 had still not been resolved at the beginning of 2010) which can in criminal cases end under the statute of limitations, which (at least in some cases) shows the continuing inefficiency of the state in guaranteeing rights to legal protection.

Progress made in this area is also confirmed by fewer findings passed against Slovenia being handed down by the European Court of Human Rights (ECHR) for not guaranteeing the protection of rights to trials within a reasonable term. It is worrying that the caseload in Slovenian courts has significantly increased. Therefore, it is appropriate for the Government and the Ministry of Justice to know that during a time of crisis, it is important that courts continue with the elimination of backlogs. We assess as positive the Government's decision to extend the implementation of activities in the Lukenda project until 31 December 2012.

#### **Continuation of normative changes**

Backlogs can also be reduced by continuing to implement normative changes that provide the basis for the operations of the judiciary. The amending Courts Act entered into force in 2010, which resulted in some changes in the organisation, management and administration of courts; the Act on Alternative Dispute Resolution in Judicial Matters has introduced mediation programmes as a part of the courts' regular function. According to the information provided by the Ministry of Justice, in 2010, mediation helped resolve 2239 proceedings, which is approximately twice the number compared with 2009, when approximately 1050 matters were resolved.

The latest amendments to the Court Fees Act (ZST-1A) bring some benefits to socially weaker clients regarding access to court services, and they improve the payment process and discovery of whether court fees were paid, and they also guarantee enhanced legal protection in procedures referring to the process of deciding on the obligation of paying court fees. The amendments determine a more appropriate and comprehensive determination of court fees within the scope of a predetermined tariff. We also welcome the improvements

made with regards to establishing payments of court fees. When considering one of the initiatives that referred to execution proceedings before the Domžale Local Court, the latter answered our enquiry by stating that the Court always asks its clients to submit confirmations of fee payments, because the deficiencies of the court entry register of the Public Payments Administration of the Republic of Slovenia in the UJPnet application (UJP court entry register), which should enable the court to verify the execution of such payments by itself are generally known. We find this explanation of the court's practice unacceptable, even though it should usually simplify procedures for clients. The Court Fees Act also stipulates that the person liable to pay the court fee is not obliged to supply the court with any payment confirmations, unless the law stipulates otherwise. We asked the Ministry of Justice to explain if the courts had warned the Ministry about the problems relating to the (lack of) transparency of payments of court fees in the UJP register and if any measures had been anticipated in connection with this problem. The Ministry of Justice explained that courts had informed them several times on problems regarding the establishment of realised payments of court fees, and therefore, the Ministry had prepared amendments to the Court Fees Act, many of them dedicated to the elimination of the mentioned problems. This will be proved only by actions in practice.

Unfortunately, the amendments did not initiate any changes regarding the regulation of the legal remedy against the payment order for the payment of court fees. When processing complaints, we established that case law is not uniform with regard to this issue of whether a complaint against a decision on the objection to a payment order for the payments of court fees is permitted. This was obviously established by the Ministry of Justice, which included a provision in the Act amending the Court Fees Act (ZST-1A) explicitly determining that a complaint against a decision on an objection to a payment order for the payment of court fees is not permitted (the proposal of the fourth paragraph of Article 34a). Such a legal provision would also prevent the case, as described by the complainant, from recurring. The complainant was instructed by the Administrative Court of the Republic of Slovenia in Ljubljana that she could file a complaint against a decision on an objection to a payment order for the payment of court fees; however, the Supreme Court of the Republic of Slovenia dismissed her complaint as not permitted. The proposal of this provision was deleted in the continuing legislative procedure; therefore, we can expect that if the case law is not uniform, cases similar to the complainant's case will occur in the future as well. Since the case of the decision on the objection against a payment order for the payment of court fee refers to a decision stipulating the material obligation of the client, it would be appropriate that the question as to whether it is permitted to file a complaint against such a decision, should be clearly answered and the case law should be unified.

With the purpose of improving the efficiency of the judiciary, Rules on electronic operations in civil procedures have been issued with the purpose the upgrading the implemented projects of the Ministry of Justice and the judiciary in the field of computerisation of court proceedings. The audio recording of court hearings and main hearings has been introduced, which is very important for the efficiency and improvement of operations of courts and for the quality of court hearings.

We also have to mention that an agreement on direct electronic access of courts to data in the central register of imprisoned persons has also been made. In this way, courts are enabled greater accessibility and a review of data on imprisoned persons, and are also enabled to make quicker decisions in court proceedings, thus contributing to reducing the administrative case load and costs for both sides.

### **Trials without undue delay**

As we have established, the major decrease of initiatives in this area is related to the smaller number of cases that refer to the backlogs of cases. This is largely because the number of unresolved court cases (again) decreased in 2010. Such complaints mostly referred to lengthy enforcement proceedings and inheritance proceedings. We received many complaints related to the duration of court proceedings caused by divorces, the major part of which refers to disputes related to the division of joint assets.

Each individual's constitutional right is that their rights, obligations and legal actions filed against them are decided by the court within rational time periods. This mostly applies to disputes before courts, when on the one hand the disputes are connected to the regulation of status and property relations between (former) spouses, or on the other hand disputes are connected with deciding on relations involving children. Unfortunately, we have established that such proceedings too often last too long. This leads to an additional aggravation of relationships between former spouses; children also live in great uncertainty, which in the Ombudsman's opinion, is unacceptable. Therefore, besides intervening with the purpose of accelerating the resolution of such cases, the Ombudsman also warns about the need to seek systemic solutions in this area.

Complainants as parties in legal proceedings can use legal remedies, which are regulated by the Protection of Right to Trial without Undue Delay Act (ZVPSBNO) in cases of lengthy trials. These remedies include appeal with a motion to expedite the hearing of the case (supervisory appeal), a proposal to set a deadline (motion for a deadline) and the claim for just satisfaction. We have regularly advised complainants to use these remedies. Some cases showed that the system of legal remedies for the protection of the right to trial without undue delay as governed by the ZVPSBNO is not completely efficient in practice, since the deadlines for implementing appropriate proceeding-related acts or for the issue of court decisions in practice are not always respected. The complainant of the enforcement case before the Maribor Local Court under ref. no. In 111/1997 exercised the possibilities as stipulated by the ZVPSBNO, since the court did not take a decision on the filed objections of debtors even upon the expiry of the deadline, and also did not decide on the objection and motions for the suspension of third party enforcements in more than two years. Since the complainant believed that his right to trial without undue delay was violated, he filed a supervisory appeal. The president of the Maribor Local Court informed the complainant that the court would decide on all legal remedies in one month. However, the court did not make a decision, since the deadline for the decision on filed legal remedies based on the filed supervisory appeal had been exceeded by more than one month. In this case, the court did not respect the deadlines set by the court itself. Such conduct can therefore cause the client to doubt the actual efficiency of supervisory appeal as a legal remedy stipulated by the ZVPSBNO. The Ombudsman therefore recommends the consistent consideration of deadlines for the implementation of acts as ordered on the basis of executed legal remedies according to the Protection of the Right to Trial without Undue Delay Act.

We would like to emphasise that the Constitutional Court issued decision no. U-I-207/08, Up-2168/08 as of 18 March 2010 (Official Gazette of the Republic of Slovenia, no. 30/10) establishing that the preliminary regulation as determined in Article 25 of the ZVPSBNO is not in accord with the fourth paragraph of Article 15 in relation to the first paragraph of Article 23 of the Constitution if it does not regulate the situation of the aggrieved parties whose violation of the right to trial without undue delay ceased prior to 1 January 2007, and who did not file a claim for just satisfaction at the international court prior to that date.

In order to guarantee this group of aggrieved parties an efficient protection of the right to trial without undue delay during the period until this constitutional disparity is eliminated, the Constitutional Court - based on the second paragraph of Article 40 of ZUstS (Constitutional Court Act) - determined the manner of executing the decision. If the courts do not consider this instruction of the Constitutional Court of the Republic of Slovenia, this may result in violation of the right to the efficient court protection of the right to trial without undue delay, which was also emphasised by several decisions issued by the Constitutional Court of the Republic of Slovenia in 2010.

### **The quality of court decisions**

Many complainants expected the Ombudsman's opinion and instructions regarding proceedings in which they are (or were) involved. The Ombudsman is not authorised to provide legal aid in proceedings in which the complainants are involved. Such complainants were in principle advised to use (other) means for resolving their problems. All court proceedings are considered as formal, and therefore require appropriate (legal) expertise, so that clients can efficiently enforce and defend their rights and legal benefits. Therefore, we warned several times that the success of proceedings often depends on whether they involve a person with no legal knowledge and without any attorney as an authorised representative, or a person with legal representation, which is why we informed the complainants on the possibility of free legal aid (FLA).

Most complaints in this area referred to dissatisfaction with individual court decisions and complaints of bias. If the client disagrees with a court decision, this disagreement should be enforced by ordinary or extraordinary legal remedies, since this is the only way to ensure that the competent higher court decides on the regularity and legality of the decision adopted by a court of lower instance. Complainants often thought that they had failed in proceedings because their attorneys had represented them badly, or they or the court were influenced by other circumstances. When we communicate with the complainants, we often find that they lack trust in the judiciary, and therefore, we believe that several measures should be adopted in order to enhance trust in the work of the judiciary. We have often emphasised the significance of hand down correct court decisions. The efficient protection of human rights cannot be guaranteed without a proper judiciary. With its decisions, the judiciary provides the formal protection of rights, which is why it is important that court proceedings are fair, since only fair proceedings can be followed by fair court decisions. By issuing sound court decisions and guaranteeing trials without undue delay, the judiciary itself will do most to contribute to improving its reputation.

Article 24 of the Human Rights Ombudsman Act (ZVarČP) stipulates that the Ombudsman does not deal with matters subject to court or other legal proceedings, except if undue delays of proceedings or an obvious abuse of power are concerned. With the exception of this provision, the Ombudsman can intervene as *amicus curiae* under Article 25 of the Act. In several court cases in 2010, the Ombudsman as *amicus curiae* warned of the duty of all national authorities in Slovenia to dedicate special attention to the consideration of cases where the interests of children could be affected.

We also dealt with a motion of one of the courts stating that in order to protect the interest of children, it would be appropriate that judges responsible for handling family affairs at district courts would exclusively decide on the execution of decisions issued in family-related matters. Judges who hear cases in family matters are acquainted already during the civil procedures with all the circumstances related to the cases and which can impact an efficient execution of the decision. Consequently, the 'replication' of procedures could in this way

be prevented, namely, when the execution of a judgement on the assignment of a minor is subject to proceedings in a local court, and at the same time, a new legal action is filed at a district court for the reassignment of the child, then the motion for the issue of a temporary decree is provided. The court has already suggested to the Ministry of Justice that the legislation in this area be amended in such way that the jurisdiction for the execution of court decisions on education and the care of children and court decisions on personal contact with children (not only because of the specifics of such execution, but mostly for the purposes of protecting the interests of minors) would be transferred to the exclusive jurisdiction of district courts, which also have jurisdiction over family matters.

The matters dealt with in this area include the complaints of persons involved in proceedings as victims of criminal acts. The courts are obliged to enable such persons to cooperate in the proceedings and enforce their rights as determined by the Criminal Procedure Act. If this was not considered in a specific case, then we can assume that case involved inappropriate conduct, which can be prevented by enforcing the appropriate legal remedies available in each court proceeding.

## SUMMARY OF SUGGESTIONS AND RECOMMENDATIONS

- ✘ The Ombudsman emphasises the significance of sound court decisions. She encourages courts to issue sound court decisions, adopted in fair court proceedings, and by guaranteeing trials without undue delay.
- ✘ The Ombudsman again recommends the adoption of programmes and measures for reducing the amount of new matters to Slovenian courts, in order to halt their constant increase.
- ✘ The Ombudsman recommends that deadlines for implementing actions determined on the basis of enforced legal remedies according to the Protection of Right to Trial without Undue Delay Act should be considered.
- ✘ The Ombudsman proposes that the courts utilise all measures available for disciplining court experts in cases of untimely implemented work.
- ✘ The Ombudsman proposes the preparation of amendments of the Penal Code to criminalise intrusive and psychologically violent behaviour (stalking).
- ✘ The Ombudsman proposes an amendment to process legislation (Civil Procedure Act), which should allow the adoption of appropriate measures that would enable functionally disabled persons access to all buildings of the judiciary, and that the payment of costs of giving evidence are met by the courts.
- ✘ The Ombudsman insists that court authorities and authorities for the execution of penal sanctions should do everything possible to ensure that the accused brought before the courts from prisons are appropriately clothed and that, if possible, photographing or recording of insufficiently clothed persons is prevented.
- ✘ The Ombudsman proposes that additional measures should be adopted so that the judicial authorities would ensure that the public are informed about filed charges after they are validated or served on the appropriate person in accordance with the provisions of the judicial regulations.
- ✘ The Ombudsman proposes that additional measures should be adopted for reducing the number of matters unresolved by enforcement officers and that the work should be more efficiently organised; all administrative deficiencies of court and execution bodies should be eliminated, since they prevent the efficient execution of enforcement proceedings based on final court decisions and represent a part of the constitutional claim for enforcing the right to court protection.
- ✘ The Ombudsman proposes that the legislator should reconsider the appropriateness of the current determination of income which is excluded from the enforcement under the Enforcement Act, and that all forms of municipal social aid (not only similar aid) originating from the state budget should be included in that income.
- ✘ The Ombudsman proposes more efficient supervision of the work of enforcement officers (supervision of the legality of performing the work of law enforcement, officers' consideration of the personal dignity of clients and all other persons that participate in proceedings, cases of failed execution of obligations and other).
- ✘ The Ombudsman again recommends that the current free legal aid system be reviewed, that procedures be simplified and the content of explanations of decisions be unified.



## CASES

### 7. Long (11 years) criminal proceedings are ruining the health of the accused

The complainant requested the Ombudsman of the Republic of Slovenia to assist in expediting criminal proceedings. He stated that the court of first instance had acquitted him of the charge three times; however, the proceedings due to repeated appeals filed by the state prosecution are now in the eleventh year. The complainant claimed that his psychological and physical balance has been completely ruined during the criminal proceeding. One year ago, he stopped working, because he was not able to cope with the normal everyday workload and responsibilities. Due to his situation, he has also considered taking extreme measures which would end his suffering.

The Ombudsman assessed the complaint as founded. Such long criminal proceedings no doubt have negative impacts on the health and quality of life of the accused. The Higher Court in Koper which handled the appeal of the Office of the State Prosecutor General, was therefore urged to assess the conditions of resolving the matter with priority. The Higher Court in Koper answered our proposal by explaining that the matter has been prioritised and will be considered as such. **(6.3-23/2010)**

### 8. After the Ombudsman's intervention, the Court decided on the notification of costs

The complainant who filed the notification of costs in the criminal proceeding under ref. no. I Kpr 286/2003 in April 2004 before the District Court in Ljubljana has not received a decision on the notification of costs. The district investigating judge sent a letter on 14 May 2004 to the complainant's legal representative, in which the judge stated that she would issue a decision on the notification of costs if the complainant insisted on such declaration. Since this decision was not issued and the court did not respond to the complainant's appeals, the complainant asked the Ombudsman for assistance in acquiring an answer from the court.

The court responded to the Ombudsman's enquiry upon an admonition. The court confirmed not making a decision on the complainant's motion for recognising travelling expenses. This was founded with the judge's assessment that the complainant was not entitled to the reimbursement of costs. The Ombudsman was not satisfied with the court's answer. She warned the court that the complainant still expects the court to issue a decision on the costs declared on 13 April 2004. At the same time the Ombudsman warned that the court's assessment on the complainant not being entitled to the reimbursement of costs cannot be grounds for the court not to inform the complainant on the court's finding. Therefore, the complainant requested the court to explain the reasons why the district examining judge had not decided on the declared costs. The Ombudsman received the court's answer upon an admonition. The court explained that the decision under ref. no. I Kpr 286/2003 as of 4 November 2010 also contained the decision on the proposal of the complainant for the reimbursement of costs for transport to the court. The Ombudsman's intervention proved justified and successful. This was also confirmed by the complainant, who thanked us for our help, claiming that without our help the court's decision would never have arrived at his address. **(6.3-10/2010)**

## 2.5 POLICE PROCEDURES

### GENERAL

In 2010, the Ombudsman of the Republic of Slovenia carefully monitored the operations of the Police and processed a few more complaints (117) than in 2009 (93). We instructed complainants to use a direct option to appeal, as stipulated by Article 28 of the Police Act, and to ensure the consideration of the alleged irregularity within the framework of the system where the irregularity occurred. Only if the appeal path did not fulfil the appellant's expectations, did the Ombudsman deal with the complaint. With satisfaction we can state that in 2010, the Ministry of the Interior (MI) and the Police responded to our questions and findings, and to a great majority also considered our proposals, opinions, criticisms and recommendations.

The Ombudsman encourages the legal and efficient work of the Police in many ways and also strives for the improvement of the working conditions of police officers, in order to enable the police to implement their tasks quickly, efficiently and with quality by working in a regulated and encouraging working environment. This also applies to the guarantee that in cases of complaints regarding their work, police officers are treated professionally and protected in cases when they unintentionally cause harm while performing their work. Police officers are often exposed to situations that are dangerous to their health as well as for their mental integrity. It is appropriate that the Police in such cases ensure professional assistance to individual officers (as of 1 December 2009, 24-hour urgent psychological assistance provided by psychologists on call and a system of confidants were introduced).

The work of the Police is always publicly exposed. It is commendatory that the Police are trying to draw a clear line between their work and the public. However, it is of some concern if the public unjustifiably receive information from pre-trial criminal procedures or other police investigations. The conduct of police officers sets an example for respecting all regulations. In 2010, we saw media-exposed cases of traffic offences (driving under the influence of alcohol) of police officers. Like other drivers, police officers are also obliged to respect all regulations, otherwise, they must without an exception be subject to the law. Their conduct, indicating signs of offence (or even criminal act), should be assessed in the same way that applies to other offenders.

In relation to persons involved in procedures, police officers are obliged to conduct professionally and legally, also in verbal communication. The Ombudsman consistently warns about this in all annual reports. It is appropriate that police officers execute their powers resolutely; however, they also have to conduct themselves with great caution in order to preserve the dignity of persons that are involved in procedures, even if they may not be acting appropriately. A police officer is a person that manages the procedure and directs it by respecting human dignity at all times. The Code of Police Ethics orders police officers to be polite and professional in contacts with individuals, and obliges them to protect and enhance their own reputation and the reputation of the police organisation in all aspects of their work and in their private lives. One of the main tasks of the Police is to protect the lives, personal safety and property of people. The issue of personal (and national) security remains the core subject of human rights protection. When we deal with complaints in this area, we often face the question of borders - which the Police (the state) cannot cross - how to recognise these borders in real life and how to react when the Police may cross these borders. Therefore, it is especially important that police officers react appropriately to urgent calls, as well as in cases where violent events could occur. The student demonstrations in 2010 were quite a big test.

Violence occurs on all levels of our society. This is why the Police also have to react in cases of family violence. The days when police officers “did not interfere” in family fights have finally passed. Their decisive, but professional interventions give victims additional courage to confront violence (also with anonymous electronic reports of violence in the family). A good deal of training and especially changes in the minds of police officers are required for the realisation of such interventions. The Police have to increasingly engage in some cases of violations of rights and criminal offences in the field of labour relations and social security.

### 2.5.1 Use of police powers

Many complaints referred to the use of police powers, which can be applied by police officers during the performance of their tasks. Complaints focused on received notifications (in one of the handled cases the notification was made by telephone) which involved bringing people before judicial authorities and the use of some coercive means. When handling such cases, the Ombudsman believes that police officers have to respect human rights and fundamental freedoms, since they are guaranteed by the Constitution, laws and other regulations. When they have to act (e.g. in order to prevent a criminal act), an intervention in these rights (can) be permissible; however, it should be implemented in a way that is in accordance with the (legal) aim and that the means for achieving this aim are appropriate. Police officers may use coercive means that help them perform the task by causing minimum harmful consequences for the person against whom the means are used. When using coercive means, police officers must always respect human personality and dignity.

Police officers can detain individuals and deprive them of their liberty. We verify the execution of this police power mostly by visiting police stations as well as dealing with individual complaints (also in the role of the National Preventive Mechanism). We also find good practice cases. For instance, when we visited one of the police stations, we noticed a brochure entitled What you need to know so that the Police will not ever again detain you until you are sober in the detention room, and this is quite a welcome instruction for a person detained for being under the influence of alcohol.

### 2.5.2 Supervision of the Police

The Ombudsman consistently defends the systematically transparent, efficient and independent supervision of the Police. Despite some predictions, no (major) changes have been made in supervising the performance of Police tasks. An inter-ministerial working group was established to prepare the normative platform for introducing an independent professional and uniform appeal mechanism in the field of the implementation of tasks of national authorities with coercive powers. We have formed our opinion regarding the proposed normative solutions, especially regarding the integration of the proposed state supervisor. We supported the efforts to introduce a systematically more powerful and coherent system for resolving complaints that refer to the work of national authorities with coercive powers. Despite this, we do not see any special need to establish a special institution of national supervisor (authorised supervisor); in our opinion, the formation of this independent authority is questionable. We are convinced that each authority should manage all the means of appeal in its own field and also take responsibility for resolving complaints. In our opinion, merging means of appeal and individual types of supervision for various fields of operations of national authorities with certain powers, which can be quite diverse, cannot contribute to the efficiency of processing appeals or to the implementation of supervision. Partial or complete centralisation of resolving appeals or implementing supervision could be performed, but it would involve specialisation and neglecting the specifics of individual areas. Therefore, we are (still) in favour of efficient means of appeal within each individual system, also by integrating external (expert) public.

## SUMMARY OF SUGGESTIONS AND RECOMMENDATIONS

- ✘ The Ombudsman recommends that efforts to introducing a systematically more powerful and coherent system for resolving complaints that refer to the work of national authorities with coercive powers should be enforced, especially by integrating external (expert) public.
- ✘ The Ombudsman again recommends that police officers should remain professional in contact with persons who are in the process of legal procedure, and also in verbal communication, all procedures conducted by police officers should be legal.
- ✘ The Ombudsman supports all efforts of national authorities to systematically regulate private protection, consistently respect the legality, human rights and freedoms and principles of a legal state, as well as the necessity to regulate this area with great diligence and unambiguously by ensuring efficient supervision and by acting in cases of irregularities, thus enabling an improved quality of education, regular training and upgrading of the qualifications of security staff.

## CASES

### 9. Dealing with Police procedure on hospital premises

In a complaint addressed to the Ombudsman, the committee for legal and ethical issues of the Medical Chamber of Slovenia (complainant) warned about the case of a patient who injected himself with an overdose of prohibited drugs to commit suicide. When the patient was hospitalised, the Police ordered a sample of the patient's blood, conversed with the patient and demanded the medical practitioner sign a form. Thus the supervisory medical practitioner and the complainant faced a legal and ethical dilemma, as to whether or not this act involved criminalising an endangered suicidal patient. Upon the Ombudsman's enquiry, the Police explained that Article 197 of the Penal Code (valid at that time) stipulated that in the cases of injecting an overdose of prohibited drugs, there is a suspicion of a criminal act that a person enables the use of drugs. According to Article 148 of the Criminal Procedure Act (ZKP), the Police should in cases involving the suspicion of a criminal act due to which the offender is prosecuted under compulsory powers do everything necessary to find the criminal and ensure that the latter (and possible other offenders involved in the act) do not escape. Therefore, the Police have to secure all evidence of criminal acts and items that could be used as evidence, and to collect all messages that could be useful for the successful implementation of a criminal procedure. In this case, the Police have executed tasks, determined by the ZKP, by executing the ordered expert examination and by collecting information from the person that allegedly injected an overdose of prohibited drugs. The Police have explained that their measure was not focused on the person being medically treated, but on the persons that provided the prohibited drugs to the medically treated person.

The Ombudsman agreed with the finding of the Police Directorate Ljubljana that the policewomen did act legally in the mentioned case. They talked with the patient after the latter became "oriented", according to the medical practitioner's opinion. When a medical practitioner assesses that the patient is (still) not capable of giving statements due to his or her medical state, police action or the collection of information can be deferred until the medical state of the patient improves. The Ombudsman agreed with the complainant's finding that the environment in which the policewomen collected information - with the presence of six other patients - was not appropriate. However, the placement of the patient in a hospital room is not determined by the Police, but by the medical staff, which could accommodate the patient (if this is deemed possible) for the execution of the conversation with the Police in a more appropriate room. The Ombudsman warned the complainant to try to ensure that more appropriate rooms are made available in hospitals. **(6.0-24/2009)**

### 10. The Police "found" photographs from the location of the reported event after the Ombudsman's intervention

The complainant stated that he was involved in a car accident on 9 December 2005. After notifying the Police of the event, two police officers from Ljubljana Bežigrad police station arrived on the scene, photographed it, drew an outline and issued a notification of physical injury to the complainant. This event was the subject of a civil proceedings before the Ljubljana Local Court, when the complainant sent the Ombudsman the described complaint. In this matter, the Court demanded that the police station send all documents referring to the event; however, as the complainant had stated, the police station did not supply the Court with complete documentation. It did not send photographs and the outline of the event, explaining that it does not have this information. The minutes of the main hearing in the civil proceedings where the police officer who dealt with the case was heard as witness, show that

the latter said that “In connection with this event, measurements were taken and the site was photographed,” but that it is possible that “the photographs got lost.” We asked the Ministry of the Interior to explain how the event reported by the complainant was dealt with, and whether the police station has the photographs and the outline of the event. If not, how was it possible that photographs which were taken at the scene could have been lost.

The Ministry confirmed that the complainant had called the emergency number of the Operative Communication Centre at the Police Directorate Ljubljana and reported the event, in which he had suffered physical injuries. Two police officers from Ljubljana Bežigrad police station were sent to the scene. The police officers collected information and circumstances on the event, photographed the scene and issued a notification of physical injury to the complainant. The Ministry also explained that when reviewing extensive archived documentation referring to various events connected with a private dispute on the delimitation of land and road, police officers of Ljubljana Bežigrad police station found five photographs from the scene of the processed event; however, they did not find the outline that was allegedly made at the scene. The Ministry therefore assumed that the place of the event had not been outlined, since the latter was modified already prior to the arrival of police officers; the consequences and photographed evidence were documented due to the suspicion that other criminal acts had been conducted.

The complaint was assessed as founded. Considering the requests of the Court for supplying photographs from the scene, the Police conducted with negligence, since they informed the Court that they did not have the photographs of the event, although this proved otherwise after our intervention. Considering the fact that the photographs from the scene of the processed event were “found” after the Ombudsman’s intervention, we proposed to the complainant that he inform the Court on this finding, since the photographs could be required as evidence in open court proceedings. **(6.1-25/2010)**

## 2.6 ADMINISTRATIVE MATTERS

### GENERAL

The number of complaints received regarding administrative matters in 2010 was approximately equal to that of 2009, namely 385.

#### 2.6.1 Citizenship

Many complaints referred to the lack of response of the Ministry of the Interior (MI). People complained about the long procedures for granting citizenship.

#### 2.6.2 Aliens

The Ombudsman was addressed by foreigners who wanted information on the regulation of their status in Slovenia.

Complaints also referred to the lack of response of the MI and the long procedures related to regulating their status. It should also be explained that the complainants in many cases received answers from the competent authorities, but were dissatisfied with the contents of the answers.

We are still receiving complaints related to the erased. In most cases, these referred to explanations of the provisions of the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia. The amendments to this Act entered into force in 2010, and have in accordance with the provision of the Constitutional Court (partially) rectified the errors of the previous law. We explained to complainants their legal status and that they could receive free legal aid at the Peace Institute, which is involved in providing advice to the above-mentioned group of people.

A few processed complaints referred to international protection. They mostly referred to the long duration of the procedure, some of the complainants wanted to be reassured that the processes would be implemented in time.

#### 2.6.3 Denationalisation

In 2010, the Ombudsman received 13 complaints in relation to denationalisation. Complainants were dissatisfied with the lengthy procedures. They asked for explanations in relation to the inability to use their property. We received a complaint requesting assistance in the rehabilitation of a procedure, and a complaint that referred to the lengthy procedure for the reimbursement of investments in a denationalised apartment. The procedure took ten years, and in 2009 ended negatively for the complainant.

#### 2.6.4 Taxes and duties

In 2010, we processed 51 complaints in relation to taxes (62 in 2009), and only three complaints in relation to duties (only 1 in 2009). This year, we dealt with cases of long appeals processing against personal income tax assessments. The situation is improving; however, the Ministry of Finance (MF) as the authority of second instance, does not resolve appeals within the two-month statutory term. We also processed a complaint in which the authority of

first instance submitted the filed appeal to the authority of second instance after two months had expired, and we also dealt with a case when the authority of second instance did not resolve the filed appeal, because it had filed it among resolved cases.

### Subsidies for the self-employed

In 2010, we dealt with the problems of persons who received self-employment subsidies (sole traders) who received a message from the Employment Service of Slovenia in April informing them on a notification of the Tax Administration of the Republic of Slovenia (DURS) on the taxation of the subsidy, meaning that the income tax should be prepaid on receipt of the subsidy. We established that the Tax Administration published the explanation on the taxation of the subsidy in May 2008; however, the Employment Service had overlooked it and even guaranteed all receivers of subsidies that the latter was not taxed.

We asked the Employment Service and the Tax Administration for an explanation. They both insisted on their positions: the Employment Service referred to the provisions of the Personal Income Tax Act (ZDoh-2); the Tax Administration referred us to the explanation regarding the taxation of such income published on their web site. The explanation states that the self-employment subsidy is taxed as income tax, since it constitute income from operations.

We established that it is not clear whether the funds for subsidies are actually subject to income tax. The means for performing employment measures are ensured from the Programme of Measures of the Active Employment Policy for the 2007-2013 period, which is based on EU decision no. 1083/2006 and no. 1081/2006, as well as on the Employment and Insurance Against Unemployment Act (ZZZBP). One of the measures of active employment policy which should reduce unemployment rates is stimulating employment by offering subsidies to unemployed persons via the Employment Service in the amount of EUR 4,500. The subsidy is paid as a lump sum immediately after the beneficiary submits all the required documents and concludes a contract on the allocation of the self-employment subsidy, which specifies that the subsidy involves earmarked funds, and that the purpose is achieved if self-employment is maintained for at least two years. 85 per cent of the subsidy's funds are financed from the European Social Fund; only 15 per cent are funded from the national budget. The Council Regulation (EC) on the European Social Fund that regulates the eligibility and allocation of these subsidies explicitly determines that the authorities responsible for the payment of the subsidy must guarantee that beneficiaries quickly and completely **receive the entire amount of the public contribution** and that no amount should be subtracted or retained, and no special tax or any other equal tax reducing this amount should be charged. In the Ombudsman's opinion, this regulation was not considered in this case; therefore, taxation of this type of income under ZDoh-2 is not compliant with this regulation.

The Ombudsman expects that the competent authorities will consider her opinion and that when unemployed persons apply at the Employment Service, they should receive a clear and professionally presented explanation about the possible payment of income tax on the subsidy received for self-employment. The Ombudsman also expects the regulations regarding the exemption of unemployment benefit from the execution.

### 2.6.5 Property law matters

We processed 28 complaints in relation to property law matters, which is 20 per cent less than in 2009. The contents of the complaints were similar to those in previous years. We received letters from complainants who wanted their municipal authorities would to measure land plots used for municipal roads and paths, and substitute land plots to be offered to them. Local communities often claim that they do not have the funds and lack appropriate substitute land plots.



We also dealt with cases where municipalities issued decrees on categorising privately owned land plots as municipal roads. The owners of the plots concerned were not informed on the passing of such decrees and did not receive any compensation for the confiscated land. Their only option is to lodge a complaint at the Constitutional Court for the initiation of a procedure for a constitutional and legal review of the decree; they can start long civil proceedings with the municipalities for receiving indemnifications, if they do not agree on settlements. We believe that such conduct of municipalities is inadmissible.

#### 2.6.6 Victims of war violence, war veterans, peace-time war disabled servicemen and persons conscripted to the German army

We dealt with a complaint related to the victims of war violence status and found that the Ministry of Labour, Family and Social Affairs (MDDSZ) had decided on an appeal eight months after it had been lodged and not within the two-month statutory period.

We also received some complaints referring to the failure to file a timely request for the acknowledgment of war disabled servicemen's status and rights. There were individual questions regarding whether it would be possible to extend the deadlines for filing such requests and thereby guarantee additional possibilities for enforcing the status and rights of war disabled persons as stipulated in Zakon o vojnih invalidih (War Disabled Act -ZVojl). The MDDSZ explained that in the case of possible amendments to the ZVojl, it will thoroughly consider possible the selective extension of deadlines for enforcing the status and rights of war disabled upon an illness for all beneficiaries who missed the deadlines for enforcing these requests.

#### 2.6.7 Declaration of residence

As we already stated in the 2009 report, problems occur when individuals need to declare permanent residence at an address which is also in the area of the authority that provides aid in material form if the individual lives in the jurisdiction of this authority, or at an address which is in the area of the authority where such aid was provided last (because declaration of residence elsewhere is not possible). These authorities do not wish to grant their consent to a declaration of residence; therefore, procedures regarding the establishment of permanent residence by official duty take too long.

We dealt with a case where the MI did not resolve the appeal in the procedure regarding the establishment of permanent residence for six months, which is considered illegal. The problems regarding long procedures related to establishing permanent residence by official duty have been emphasised for several years, since the deadline for issuing a decision in such cases is not determined.

#### 2.6.8 Social activities

In 2010, we processed 61 complaints in this area, which is less than in 2009 (84). The Human Rights Ombudsman of the Republic of Slovenia has for several years in her annual reports warned about the lack of space in kindergartens. The situation in 2010 did not significantly change.

We received many complaints regarding field of elementary education, referring to educational measures and teachers' conduct with regards to these measures. We find that persons employed in the education system are not sufficiently informed on human and especially children's rights. Obscurities also originate from the law and implementing regulations (mostly rules).

The law stipulates that based, on the educational plan outlined in the school house rules, schools determine educational measures for individual violations of rules, the organisation of pupils, excusing absences, and cooperation in ensuring the protection of pupils' health. School house rules are prepared by professional employees, pupils and parents.

In relation to educational measures, we should mention the case when a teacher sanctioned three very restless pupils that were violating school rules by interviewing them for a grade; all three received negative grades. This act violated the rules of grading, which was also confirmed by the Education Inspectorate of the Republic of Slovenia.

We also dealt with a case where a police officer held a conversation with a child in an elementary school without the presence of the child's parents. The police officer entered the school without the prior consent of the principal, which may be done only in exceptional circumstances, for instance, in cases of arresting criminal offenders or securing people or property. The police officer held a conversation with a nine-year old pupil for the purposes of investigating an alleged criminal act; however, he did not notify the child's parents or legal representatives prior to this interview.

### **Several complaints referred to violence at schools**

In relation to secondary schools, we should mention a complaint referring to grading systems in high schools; we also dealt with problems regarding the provision of food to students with various health problems (celiac disease) and other reasons for eating or not eating certain kinds of food (vegetarians, vegans, certain religious groups members etc.). We proposed to the Ministry of Education and Sport (MES) that food subsidies be provided to all secondary school students by modifying the relevant regulations.

We received several complaints relating to higher and university level education, namely with regards to problems of students with special needs. Their situation varies greatly in the different faculties and universities. In some places, they can enforce their status as students with special needs, elsewhere they cannot, because the problems are not completely regulated by law. Some groups (the deaf and hard of hearing, the blind and visually impaired persons etc.) are quite discriminated against, since they cannot study under the same conditions as other students without the appropriate technical accessories and other adjustments (e.g. sign language interpreters for the deaf). The University of Ljubljana sent us an explanation stating that they are well aware of the problems that students with special needs face, but that they do not have sufficient funds to implement adapted programmes.

We also dealt with complaints referring to the long procedures for evaluating or acknowledging educational certificates acquired in Slovenia or abroad, required for employment purposes in the Republic of Slovenia.

Higher education teachers also have problems. There were still many complaints regarding the implementation of habilitation procedures at universities. The procedures take a long time, and the fundamental principles and rules of the administrative procedure are not respected. There are occurrences when the same person participates in the first level decision making process and in the complaint resolution process.

We must also mention complaints referring to the high indemnifications that parents of athletes who are minors have to pay if their children transfer into a different club. Regardless of the fact that inclusion and cooperation in associations or sports clubs is voluntary, we believe that this should be regulated on a systemic level.

## SUMMARY OF SUGGESTIONS AND RECOMMENDATIONS

- ✘ The Ombudsman suggests an amendment to the current legislation (Labour Market Regulation Act, Enforcement and Securing of Civil Claims Act or Tax Procedure Act), which should prohibit the dispossession of funds acquired from the programme of active policy of employment by court enforcement, therefore enabling beneficiaries to quickly and completely (no special tax or duty should be levied) receive the entire amount of the public contribution.
- ✘ The Ombudsman once more recommends the earliest possible legal regulation of the issue of the compensation of material war damage suffered by exiles, parties that suffered material damage, prisoners of war and persons conscripted into the German army during World War II.
- ✘ The Ombudsman proposes the introduction of a well organised, harmonised and interconnected system for supervising the fulfilment of obligations of employers in paying social security contributions.
- ✘ The Ombudsman proposes that the Ministry of Labour, Family and Social Affairs verify the possibilities of adopting changes that will enable additional lodging of claims according to the War Disabled Act and to examine the possibilities of acquiring war veteran status for those beneficiaries who performed their duty in defending Slovenia who are not included in the current Act.
- ✘ The Ombudsman once again warns about the long procedures for establishing permanent residence by official duty and proposes the determination of a system-based deadline by which time the administrative body has to execute the administrative procedures.
- ✘ The Ombudsman warns about the great lack of premises in Slovenian kindergartens, and therefore urges the local and national authorities to adopt additional measures to ensure equal opportunities for all parents who would like to include their children in the public network of organised preschool education and care.
- ✘ The Ombudsman warns about the long procedures in relation to acknowledging and evaluating foreign and Slovenian certificates of education and proposes that the Ministry of Higher Education, Science and Technology rapidly and efficiently decide in accordance with the General Administrative Procedure Act.
- ✘ The Ombudsman once again recommends that universities consistently implement the provisions determined by the General Administrative Procedure Act in managing habilitation procedures.
- ✘ The Ombudsman recommends that the Ministry of the Interior ensure that asylum standards are respected in accordance with the Geneva Convention on Refugees and the Protocol Relating to the Status of Refugees.
- ✘ The Ombudsman proposes that the Ministry of the Interior eliminate illegal erasure as soon as possible, and finally regulates the status of erased persons by assuring the conditions for the rapid and efficient management of administrative procedures.

## CASES

### 11. Due to irregularities in a death certificate, the inheritance proceedings were not initiated

The complainant asked the Human Rights Ombudsman of the Republic of Slovenia for help because the inheritance proceedings had not started before the court, although the deceased had died in 2000. Since we believe that this was caused by irregularities in the death certificate, we asked the Gornja Radgona Administrative Unit for an explanation. The latter established that their register contains the date of death and the last permanent residence of the deceased. However, they were not able to explain what had happened during the drafting of the death certificate at the administrative body, since in 2000, this was under the jurisdiction of the local registry office, which was closed later on. We also asked the court whether it had received the death certificate; however, their records show that they did not receive this certificate.

The Inheritance Act (ZD) stipulates that the registration officer competent for the entry in the civil register of the deceased has to send the death certificate to the competent court within thirty days from the registration of death in the civil register. If the registration officer is not able to acquire the data required to draft the death certificate, the latter is sent only with the information available.

A death certificate is usually drafted on the basis of data provided by the relatives of the deceased, persons who lived with the deceased, and other persons who are eligible to provide data for the death certificate. If the court receives an incomplete death certificate or only an extract from the civil register of the deceased, the court may draft a death certificate, or order the registrar to draft the certificate. These provisions clearly show the obligation of the registry office (administrative unit or its local registry office) to notify the competent court on the death of a person, namely by drafting a death certificate or sending an extract from the civil register. In this way the competent court is notified on the death of an individual and can hold the inheritance proceedings in relation to the deceased.

We believe that an error occurred regarding the procedure of drafting a death certificate at the local registry office. The registrar competent for entering the death in the civil register of the deceased should send the death certificate to the inheritance court within thirty days from the date when death was registered. If the registrar did not have sufficient data, he could send the court an incomplete death certificate, and the court would then appropriately continue its hearing. The Ombudsman also found that the local registry office's operations with documented materials were not appropriately managed. The purpose of office operations that have to be regulated in accordance with the Decree on administrative operations is to guarantee the traceability of documents. This was not the case, since it is impossible to discover what was actually happening to the death certificate.

We proposed that the administrative unit eliminate the error in drafting the death certificate in accordance with the current legislation and inform us on its decision or solution. The administrative unit rectified the error, drafted the death certificate and sent it to the competent court. The complaint was founded and the error eliminated upon the Ombudsman's intervention. **(5.7-70/2009)**

## 12. The conditions for the repayment of scholarship for studying abroad were not argued sufficiently

The complainant appealed to the Ombudsman in relation to the repayment of a scholarship. He received a notification from the Slovenian Human Resources Development and Scholarship Fund (Public Fund) on the imminent initiation of the procedure for the repayment of a scholarship which he had been receiving for three academic years from 2002 to 2005. He studied abroad, and attached to the complaint the contract on receiving the scholarship concluded in 2002, as well as the letter from the Public Fund demanding the repayment of scholarship, because he did not acquire a doctoral degree within the period agreed in the contract. The complainant reproached the Public Fund with the fact that, by demanding from him to repayment of the scholarship, the Fund does not respect the current EU guidelines or Article 39 of the European Union Treaty. He expected the Ombudsman to advise him on what to do, so that he would not have to repay the scholarship. He was convinced that by acquiring a PhD in natural language processing, he would not find employment in Slovenia.

After examining all the available documentation, including the public scholarships tender for Slovenian citizens studying abroad, we established:

- that the content of the contract on receiving scholarship from 2002 originate from the contents and provisions of the Public Scholarship Tender for Slovenian citizens studying abroad, published by the Ad futura, Science and Education Foundation of the Republic of Slovenia, a Public Fund;
- considering the fact that Slovenia became an EU member on 1 May 2004, the content of the public tender published prior to that date is not disputable if compared with today's EU guidelines. The complainant's contract concluded with the Public Fund was not disputable from this aspect, since it did not contravene the coercive norms of our legislation and was intended to prevent the so-called brain drain. However, we would expect the state to determine a clear strategy for awarding scholarships (for example, for vocations or types of education which lack students);
- The Public Fund should issue to the complainant a declaratory decision on the basis of Article 4 of the contract on scholarship in relation to the repayment of scholarships, which would present the basis for the enforcement of contractual obligations. This decision would become enforceable when served according to the provisions of the General Administrative Procedure Act.

The Ombudsman warned the Public Fund about the error (anomaly), because it did not issue a declaratory decision in this matter. When considering this complaint, we often asked ourselves whether the content of Public Fund tenders and individual contracts concluded with candidates after the year of 2004 is in accordance with the provisions of the European Union Treaty. The review of the content of the public scholarship tender for Slovenians studying abroad showed that the tender contained the condition for allocating the scholarship, namely that the receiver of the scholarship is required to return and find employment in Slovenia. We doubt that in all cases it is possible to find employment in Slovenia after concluding studies abroad. We proposed that the Public Fund examine the possibilities of modifying the content of future public tenders for Slovenians studying abroad, so that the obligation to take employment in Slovenia is clearly and specifically noted in the tender, or that, despite all the above-mentioned, the recipient of the scholarship would have the possibility to seek employment abroad under predetermined conditions. We also proposed that the tender,

and later on also the contract concluded between the Fund and the scholarship recipient should contain data on the documents required for a submission proving that the recipient of the scholarship is actively seeking employment (the contract states that the recipient of the scholarship should complete their studies within a specified term and also find employment in Slovenia).

The complainant also asked us whether it would be reasonable to file a legal action with the Court of Justice of the European Union; however, we responded that the success of such a legal action is quite doubtful. In our opinion, this would be the only possibility for the complainant to keep the scholarship if there are no other founded reasons for violating the contractual provisions. We advised the complainant to discuss the matter with an attorney prior to taking any action. Considering all the findings, the Ombudsman considered the complaint to be partially founded. **(5.8-27/2010)**

## 2.7 ENVIRONMENT AND SPATIAL PLANNING

### GENERAL

With regards to the environment and spatial planning, we dealt with approximately 10 per cent more matters in 2010 than in 2009. Complainants turned to the Human Rights Ombudsman of the Republic of Slovenia with very diverse questions and issues.

Regarding the procedures for adopting spatial plans complain were received about the lack of opportunities to cooperate in these procedures, since their comments had not been appropriately considered and often dismissed without founded arguments (e.g. in Škofja Loka). Complainants wrote to us regarding their disagreements with adopted or anticipated spatial planning regulations. We dealt with cases referring to opposition to building domestic waste landfills, cases referring to the use of phyto-pharmaceuticals in the urban environment, odours originating from various sources, noise from various sources (air conditioning devices, restaurants, airports, church bells), impacts from disturbing working sites, polluted air, landslides in nature and their rehabilitation, the exploitation of stone-pits and emissions from chicken farms. We dealt with problems regarding cooperation in integrating electrical energy facilities in the environment, with opposition to building an overhead power line, issues of electromagnetic radiation, light pollution, dust raising on roads, and PM 10 particles. We received letters from complainant about the odour caused by integrated railroad sleepers, cases of polluted underground Karst water, occurrences of chemical traces in the air and other.

We dealt with the problem of water areas and water permits. The Slovenian Environment Agency (ARSO) has many open cases and huge backlogs in this area (case 7.1-2/2009), which was emphasised in our previous reports.

We met several times with representatives of the Ministry of the Environment and Spatial Planning. We also held meetings with representatives of the Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning (IRSOP) and with ARSO. Despite many meetings, our cooperation did not achieve the goals we hoped for. Therefore, the Ombudsman had to enforce the provisions stipulated by Article 46 of the Human Rights Ombudsman Act for the first time in the history of the institution of the Ombudsman, and demanded a meeting with the Minister of the Environment and Spatial Planning within 48 hours at the latest. The Minister responded and our cooperation has improved.

### 2.7.1 Adopting municipal spatial plans

We have established that the procedures involving public presentation of plans and all comments of individuals often formally suffice for the principle of cooperation of the public in procedures for adopting spatial plans. The competent authorities therefore formally justify their decisions in the field of the environment, since they ensure the legality of the implemented procedures involving the public; however, they often avoid considering comments in relation to the contents of plans. We emphasise that the dismissal of submitted comments without argument does not constitute public participation in the process. People believe that they do not have a real influence on outline spatial plans. Regulations are respected only by considering their comments; the local community (or the state) only makes general opinions regarding their comments. In the Ombudsman's opinion, the public should be attracted during a project's early phases, and even more important, the comments of the public should be considered and arguments provided, since this is the only way to guarantee the transparency of procedures. Adopted decisions would not be doubtful and problems would not occur in future procedures.

### 2.7.2 Municipalities lack knowledge or do not consider regulations on environment protection

The Ombudsman sent an enquiry to the 210 municipalities in the Republic of Slovenia on the implementation of the provisions in Article 34a of the Environment Protection Act (ZVO). The Ombudsman received replies from only 89 municipalities within the deadline for replies, and a total of 147 replies after the deadline for replies. Their responses show that they insufficiently exploit the possibilities regarding the regulation of environmental issues, since only slightly more than 16 per cent (24 municipalities) responded to the Ombudsman's enquiry and adopted the regulations as stipulated by the amendments to the ZVO in 2008. Less than one half of all municipalities implemented all procedures in accordance with Article 34a of the ZVO; others implemented the provisions only in part. In most cases, they did not publish their standpoints regarding people's opinions and suggestions on the Internet, thus showing a poor knowledge of the regulations concerned.

### 2.7.3 Regulations on monitoring emissions

The Ombudsman reiterates her warning about the statutory regulations on monitoring emissions, which stipulate that the manager of monitoring selects the entity that is to carry out the measurements. We are convinced that this method of selecting the entity to carry out the measurements does not guarantee efficient supervision of the quality of monitoring.

### 2.7.4 Environmental damage

The Ombudsman has established that no progress was made in 2010 in the area of environmental damage, which should be statutory under the amendment of the Environment Protection Act from 2008. The jurisdiction over making decisions on environmental damage remains vague. The Slovenian Environment Agency (ARSO) claims that this is the jurisdiction of the Ministry of the Environment and Spatial Planning; the latter claims that the jurisdiction falls under ARSO. We emphasise that, according to the statutory provision, the entity causing the threat of environmental damage has to adopt and implement all measures for preventing the possibility of the occurrence of environmental damage and for the rehabilitation of environmental damage. Environmental damage, the measures for its prevention and for the rehabilitation of the damage are under the jurisdiction of the competent authorities.



### 2.7.5 Environmental pollution

We dealt with many cases of excessive pollution, some of which are presented below. The pollution of the Valley of Mežica (Mežiška dolina): the annual programme for improving the quality of the environment in the upper Valley of Mežica for the year 2010 was adopted as late as in July 2010; funds intended for the rehabilitation of the environment were deficient. This means that the programme was formally halted, since the planned activities were not able to be implemented. It is difficult to understand how the state can rehabilitate the upper Valley of Mežica and at the same time allow additional burdening of the environment. The Ravne na Koroškem Administrative Unit issued a permit for exploitation and a permit for the implementation of works in exploiting technical limestone, dolomite, in the area of the stone-pit in the Črna na Koroškem Municipality (reconstruction works are in progress). We have been informed that ARSO is managing the procedure of issuing environmental protection permits for enhancing the production capacities of the Tab SPE Topla company in the Municipality of Črna na Koroškem.

The Ombudsman was also active in resolving issues related to pollution in the Zasavje region; she monitored the activities of the IRSOP and ARSO. She also actively cooperated in the “Zdravje za Zasavje” (Health for Zasavje) project.

### 2.7.6 Inspection procedures

Complainants turned to the Ombudsman regarding lengthy inspection procedures, dissatisfaction caused by the lack of response of the Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning (IRSOP), as well the failure to execute inspection decisions.

## SUMMARY OF SUGGESTIONS AND RECOMMENDATIONS

- ✘ The Ombudsman again recommends that state authorities and local community authorities consistently respect obligations and commitments under international conventions (especially the Aarhus Convention) and allow the participation of the public in procedures for adopting regulations that can significantly impact the environment.
- ✘ The Ombudsman insists that consistent enforcement of the third item of Article 101 of the Environment Protection Act be ensured in connection with publishing environment-related data. This entails the obligation that the entity causing the burdening of the environment is obliged to send data of monitoring operations to the Ministry and to the municipality in the area of which the entity operates.
- ✘ The Ombudsman recommends amendments to the spatial planning, environment protection and nature preservation acts, so that the public has better access to information and the opportunity to participate in the decision making process, namely by organising conferences where all participants will have the opportunity to equally cooperate.
- ✘ The Ombudsman reiterates her proposal for the systemic regulation of the sources of financing studies on environmental impacts assessments, which would not be ordered and financed only by the investors, since this is often the reason for doubting the professionalism and independence of studies.
- ✘ The Ombudsman proposes the adoption of regulations which, besides the already regulated emissions from intensive poultry and pig farming establishments, would determine the obligation of assessing emissions for so-called smaller poultry and pig farming establishments. Other forms of disturbing odours should also be regulated.
- ✘ The Ombudsman again recommends amendments and more appropriate regulations on the acquisition of the mandate for monitoring execution – the monitoring and control of the environment with systematic measurements. The Ombudsman proposes that a system of acquiring the mandates for the implementation of permanent measurements (accreditations), a system for supervision, the allocation of mandates for the implementation and verification of the quality of measurements, and a system of independent financing of measurements be established as soon as possible.
- ✘ The Ombudsman again recommends that all necessary conditions for an efficient implementation of inspection tasks be guaranteed for the Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning.

## CASES

### 13. More than 400 unresolved applications regarding waterside lands have been awaiting resolution at the Ministry of the Environment and Spatial Planning for ten years

The Human Rights Ombudsman of the Republic of Slovenia established during the processing of a complaint that the Slovenian Environment Agency (ARSO) still has approximately 500 unresolved cases (dating from the period ten years ago). The Ombudsman and the Ministry of the Environment and Spatial Planning started their correspondence in August 2009, when the Ombudsman requested explanations regarding this matter from the Ministry. In January 2010, the Ministry informed us on the execution programme of resolving applications lodged by legal and natural entities in relation to the problems of trading with waterside lands, and wrote that the Minister would appoint a project group to prepare a project task by the middle of April (2010) for a public tender, under which a contractor would be selected for resolving the applications. By considering the above mentioned facts, we asked the Ministry in February 2010 to send us their explanations regarding the appointment of the project group, and if and when it had been appointed.

After several enquires - also sent to the Minister - we received a reply on 29 November 2010, that is, nine months after our enquiry. The Ministry informed us that it had submitted to ARSO at the end of October 2009 412 applications for resolution, which were related to trading with waterside lands (purchase, sales, exchange, pre-emptive right, regulation of land plots borders etc.). They noted that the applications are generally quite old. They informed us that the Minister appointed a project group in spring 2010, which reviewed and verified the proposed project task of resolving applications in the field of trading with waterside lands. The project task determines that decisions are made after assessing the contents of applications.

The Ministry explained to us that they plan to perform a public tender for selecting a contractor to be responsible for application resolution. The contract on resolving applications was concluded in May 2010 with the selected attorney. The attorney reviewed all applications until the end of November 2010, categorised them according to contents, and asked individual clients to complete their applications. The Ministry also explained that the procedure is in the phase when all applications have to be merged in the annual programme of property disposal and sent to the Ministry of Public Administration for confirmation. The Ministry of the Environment and Spatial Planning ensured financial funds within the programme of the Water Fund for 2010.

Our consideration of these issues was warranted, since ARSO and the Ministry of the Environment and Spatial Planning violated all rational deadlines for decision making. Based on the Ombudsman's warnings, the Ministry initiated the activities regarding the resolution of the considered problems, meaning that the also ten-year-old applications of individuals which had not been resolved, are now being addressed. Considering the fact that the Ombudsman received the Ministry's answer after nine months, this matter also includes the lack of response of the Ministry, which also means obstruction of Ombudsman's work and a breach of the rights of those individuals who filed applications. **(7.1-2/2009)**

#### 14. Base station operates without a building permit (but with an operating permit)

The complainant informed the Human Rights Ombudsman of the Republic of Slovenia that a base station does not have a building permit, and the Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning (IRSOP) does not act in this matter. We asked the IRSOP on 1 April 2010 and on latter occasions to inform us on the building inspection procedure in a case of base station construction.

The IRSOP's response, dated 30 August 2010, was received on 7 January 2011 (a four-month delay). They informed us that the building inspection had established that the investor started constructing the base station on 7 May 2007 on the basis of a final building permit which was issued by the Ministry of the Environment and Spatial Planning on 3 April 2007. The construction of the base station ended on 27 July 2007; the operating permit was received from the Ministry of the Environment and Spatial Planning on 26 May 2008.

A legal action was lodged against the building permit. Considering the decision of the Administrative Court of the Republic of Slovenia, the Ministry of the Environment and Spatial Planning in the second procedure issued a decision as of 17 July 2009 rejecting the request for issuing a building permit. The operating permit as of 26 May 2008 is final; therefore, as the IRSOP explained, they have no basis for further action.

We received the answer during the drafting this report, and therefore cannot assess the merits of the complaint. The fact that the Ombudsman received the answer after nine months is unacceptable and reflects the attitude of the IRSOP to the Ombudsman. **(7.1-6/2009)**

#### 15. The Ministry of the Environment and Spatial Planning replied to a complainant no earlier than after four months

The complainant turned to the Human Rights Ombudsman of the Republic of Slovenia because he had not received a response from the Ministry of the Environment and Spatial Planning regarding a large excavation of soil from a land plot despite several requests.

The Ombudsman sent an enquiry to the Ministry, asking it to inform her on the response, which would also be sent to the complainant. Their answer shows that the Ministry answered the complainant no earlier than four months later; the communication between the Ministry and the complainant was also inappropriate. The Ombudsman asked the Ministry to consistently consider the Code of Conduct for Public Officials, which among other things stipulates that a public official should have a respectable relationship with the citizens she or he serves, as well as with his or her superiors, other public officials and other staff. We warned the Ministry about the Decree on administrative operations, which stipulates that every authority should answer all letters received in physical and electronic form, unless they are sent to intentionally cause a nuisance. The Decree also stipulates that the authority is obliged to answer each letter within 15 days after its receipt if the letter contains the sender's address. The complaint was founded and the Ombudsman's intervention was successful, since the complainant received an appropriate answer from the Ministry. **(7.1-7/2010)**

## 2.8 PUBLIC UTILITY SERVICES

### GENERAL

The number of complaints in the area of public utility services decreased in 2010 (from 80 to 66). The number of cases decreased in the areas of the public utility sector, communications and the energy sector, while an increase was noted in the area of traffic. This increase was related mostly to complaints in relation to sanctioning the failure to use vignettes and to unregulated traffic (and related ownership) situations in local environments.

The recommendations of the Human Rights Ombudsman of the Republic of Slovenia from 2009 regarding the preparation of amendments to the Cemetery and Burial Services Act and modifications to regulations referring to the field of chimney sweeping services, as well as referring to the organisation of public discussions and consultations with the public by municipalities prior to deciding on modifications of traffic regulations, also apply for 2010.

The highest number of complaints related to public utility services, namely regarding payments and the prices of services for the supply of individual public utility services (drinking water supply, disposal of waste). The complaints show increasing distress among individuals who are not able to pay for individual public utility services.

There were also many complaints regarding the execution of chimney sweeping services. They referred to the disagreement with the system of regulation in this area and to complaints of users regarding the services of individual chimney sweeping service providers. Complainants who complained about chimney sweeping service providers were informed that the latter should respond to the user's complaints within 14 days upon the receipt of a complaint. If the user of chimney sweeping services is dissatisfied with the response of the concessionaire or his conduct regarding the elimination of the claimed deficiency of the implemented service, the user can within 30 days from the expiry of the deadline for the concessionaire's response, from the receipt of the concessionaire's answer or from the date when the concessionaire takes measures to eliminate the claimed deficiency of the implemented service, file a request at the Ministry of the Environment and Spatial Planning to order the concessionaire to act appropriately.

In 2009, the Ministry of the Environment and Spatial Planning promised to implement certain measures with regards to chimney sweeping services, including an amendment to implementing regulations, enhanced inspection and expert supervision of chimney sweeping service providers, as well as an improved system of notifying users of chimney sweeping services etc.

In 2010, the Government adopted a supplemented Decision on the prices of chimney sweeping services, determining the prices of obligatory national public services related to the implementation of measurements, checking and cleaning of small combustion plants, flue ducts and vents for the purposes of environment protection and efficient use of energy, protection of health, and fire protection. This decision, prepared by representatives of civil complaints and representative chambers, specifically regulates the relations between users and service providers.

A tariff system has therefore been introduced again, all time limits for individual services have been eliminated and transport costs clearly defined.

However, based on the high number of complaints for dissatisfied users and contractors, we have established that the implemented measures are not sufficient, and that the Ministry of the Environment and Spatial Planning should devote more attention to this area of work. Expert supervision of the concessionaires should be enhanced. Supervision has been insufficient. The weakness of supervision in this area also lies in the bad and non-harmonised operations of inspection offices, which spend too much energy trying to prove that they are not competent to act. This is quite possible in this area, since four inspection offices implement supervision based on the Decree on the method, subject and conditions of the execution of obligatory national public services related to the implementation of measurements, checking and cleaning of small combustion plants, flue ducts and vents for the purposes of environment protection and efficient use of energy, protection of health and fire protection: inspection for environment protection, inspection for health, inspection for protection against natural and other accidents and market inspection. In the future, the Ombudsman will put every effort into regulating this area and especially in exercising more effective supervision.

We dealt with cases when individuals were not satisfied with the prices and manner of charging for the services of collecting and disposing of waste. Some believed that they do not have to pay for this service, since they are too remote from the closest waste deposit site. Others thought that municipalities unjustifiably charge for the deposit of waste, because they do not deposit their waste in public waste bins.

Complaints in the field of communications mostly referred to the alleged unjustifiable charging of the RTV charge and exemption from payment of this charge. Pursuant to the Radiotelevizija Slovenija Act (ZRTVS-1) any person owning a radio or television or any other device enabling the broadcast of radio or television programmes in the territory of the Republic of Slovenia, where the technical conditions for the broadcasting of at least one RTV Slovenija programme are guaranteed is obliged to pay the RTV charge. Only socially endangered, disabled persons with 100 per cent physical impairment, disabled with less than 100 per cent physical impairment if they have the right to benefit for care and assistance, as well as persons with permanent loss of hearing are exempt from payment of this charge. Quite a few complainants believed that they were unjustifiably not exempt and that they should be exempted due to their social or health condition. The Ombudsman believes that these criteria should be assessed from the aspect of the equal consideration principle. In 2010, we received many complaints regarding the blackout of certain television programmes, especially during the football world cup.

In the energy sector, many complainants were dissatisfied with the charging of heating costs and the enforcement of integrating devices for measuring heating costs. Some also claimed that the new system of charging for electrical energy is unjust. Complainants who were threatened with disconnection from electrical energy sources were explained the legal remedies. We emphasised Article 76 of the Energy Act, according to which the system operator may not halt the supply of energy below the quantity rate that is urgent considering the circumstances (season, residential situation, place of residence, property etc.), so that the life and health of the user and persons residing with the user are not endangered.

Most complaints referring to traffic were sent as a result of the payment of vignettes and the work of supervisors; several foreigners were among the complainants. The other reason for complaints in this field is the traditional lack of regulation of municipal roads. There are many roads that are intended for public use; however, they are still in private ownership, because municipalities in many cases do not have an interest (or the means) to regulate the property or land register situation, and also to purchase these land plots. If the municipalities do not respond to the complaints of the affected parties, the latter have even more reason for being dissatisfied.

In most cases, we sent the complainants explanations of their rights and the possibilities of enforcing them before the competent authorities. Despite the expectations of many complainants, the Ombudsman cannot change the decisions of the competent authorities, she cannot compel the authorities to oversee certain obligations or to consider individuals differently solely because they turned to the Ombudsman. A few typical cases in this area are described below.

## CASES

### 16. The Maribor Municipality did not respond to a complainant's application

The complaint allegedly had some problems with the Maribor Municipality in relation to real property. At the same time, the complaint reproached the Sector for public utility services and traffic at the Office for public utility services, traffic, environment and spatial planning of the Maribor Municipality for not responding to her application sent on 12 June 2009. The Municipality's answer stated that this matter is connected with the problems that the Municipality is facing in purchasing the real estate, and in its transfer to the complainant. In April 2006, the Maribor Municipality concluded a purchase contract for the real estate, the subject of this case, which could not be registered in the land register due to cadastral modifications. The Maribor Municipality asked the seller to conclude an annex to the contract in December 2008. Allegedly, the seller did not respond to this request. Therefore, the process for transferring the real estate to the complainant's ownership was discontinued.

Based on all the facts, we were able to establish that the Maribor Municipality was resolving this matter for too long and unprofessionally. Parcel numbers were modified immediately after the conclusion of the purchase contract; the Maribor Municipality asked the seller to sign an annex more than two and a half years later. Since this request, the matter has been discontinued, because the owner did not respond to the request of the Maribor Municipality. In our opinion, this delay is not excusable, since in such cases the owner's will can be substituted by a court decision. The response of the Maribor Municipality showed no sign that such a procedure had been initiated. We proposed that the Maribor Municipality begin to resolve the matter as soon as possible, and the Municipality accepted our proposal. **(8.4-2/2010)**

### 17. Aggravated access along a public road and lack of response of the municipality

The complainant complained to the Human Rights Ombudsman of the Republic of Slovenia in relation to the aggravated access and driveway to his place of residence. This was, among other things, hindered by his neighbour, who had placed an iron beam across the municipal road.

We turned several times to the Mislinja Municipality. Their explanations and the complaints documents showed that the Municipality was initially actively resolving the matter approximately one year and a half ago. According to their initial explanations, the access to the complainant's place of residence was by a road that is partially in public and partially in private ownership. Since it was not known on which part of the road (public or private) the complainant's neighbour had set up the obstacle and closed off access to the complainant, the Municipality ordered geodetic measurements according to the regulation of the borderline of the subject parcel in kind. Later on, the Municipality explained that the access to the complainant's place of residence was considered as an abandoned public asset and not as a public road; however, despite this fact, the Municipality had decided to include the procedure for the implementation and construction of the road connection to the complainant's place of residence. The Municipality proposed that the complainant exchange the abandoned public asset, owned by the municipality, for another land plot, where the road to his place of residence would be arranged. According to the statements of the Municipality, the geodetic procedure was stopped because the owners of the land plots could not agree on the matter, and because they were also not able to agree regarding the scope of the anticipated survey of the road.

The last explanation sent by the Municipality stated that the access to the complainant's place of residence is possible only by the right of way and not on the public road, which is under the jurisdiction of the Municipality, and any hindrances would therefore be resolved by the Municipality. That is why the Municipality considered the complainant's reference to guaranteeing unhindered access and driveway to his place of residence on the public road only



as annoyance. The Municipality decided that it is not obliged to regulate the road connection for the complainant, and that it will not respond to any requests of various authorities and institutions sent on the basis of the complainant's unfounded requests and complaints.

When we were reviewing the official records, we established that the driveway and access way to the complainant is a road, according to the land register, registered as a public asset; however, the actual road runs on a wider area in nature that is different from the outline inserted in the cadastral register. Here, the inscribed road and the road in nature overlap only over a length of 60 metres, where the access and driveway to the complainant's place of residence passes to the right of way. The complainant has a formal access to his place of residence along the public road, which was also relevant for the issue of the building permit to the complainant's wife; however, in reality the access is enabled along the road that in nature runs over private land plots; in its final part, it runs along the road that is longitudinally partially under public and partially private ownership; finally it runs in the right of way.

The comparison between the established effective and legal situation of the matter and the Municipality's responses, as well as the fact that the Municipality is narrowing this problem to the right of way and to disputes between neighbours, show that the Municipality provided other authorities, contacted by the complainant, with insufficient, misleading and contradicting answers. We believe that the complainant's problems, with the exception of the right of way, are the consequence of the lack of interest of the municipality regarding adjustments of the current state of road connections in the wider area of the complainant's place of residence with the state as determined by geodetic measurements and as registered in the land register, as well as with the (non)introduction of procedures necessary for the elimination of this contradiction. We suggested to the Municipality that they immediately start eliminating the legal deficiencies regarding all road connections in this area. The Municipality did not accept our findings, opinion and proposal, and therefore, we handled the matter to the Ministry of Transport in order to execute appropriate supervision. The legal department of the Secretariat at the Ministry of Transport responded to our second request. Their answer claimed that the Ministry of Transport is not competent to deal with this matter. We insisted on executing supervision on a national level and cautioned the Ministry about Article 90a of the Local Self-Government Act, which stipulates that national supervision of the work of local community's authorities is executed by the Government and appropriate ministries. If the municipality fails to execute or executes tasks that fall under its jurisdiction in contradiction with the law, the competent ministry is obliged to warn the competent municipal authority about the problem and propose an appropriate manner for executing individual tasks, as well as to set appropriate deadlines. If the municipality does not act in accordance with the warning and proposal, and if the competent ministry establishes that the municipality does not guarantee its residents appropriate realisation of their necessities and interests, consequently causing harmful effects on the lives or health of people, or the natural or living environment or property, the ministry is obliged to order the implementation of a task by decree. If the municipality does not implement the decree by the determined deadline, the ministry implements it in accordance with the provisions of the law regulating administrative execution.

The legal department of the Ministry of Transport once again sent its findings to us only after our second request. It did not establish the alleged irregularities; however, we believe that the legal department of the Ministry of Transport executed the matter negligently, since it mostly focused on the solution of the complainant's problems and was content with the explanations of the municipality, which had already been critically assessed by our office and had been the basis for our proposal.

Considering the above-mentioned, we turned directly to the Minister of Transport regarding our proposal about national supervision. The Minister replied to our second request and appointed a commission for the implementation of supervision of traffic connections in the municipality. After the above-mentioned commission performed an expert review, and the

Ministry of Transport ordered the Municipality to conclude the already initiated exchange of the abandoned public asset with the existing road, and recommended the Municipality categorise part of the road that runs on private land plots. Considering the above-mentioned facts, the complaint was regarded as founded. **(8.4-9/2007)**

#### **18. The municipality did not respond to our proposal**

The complainants turned to the Human Rights ombudsman of the Republic of Slovenia for the first time in 2007. They were convinced that the Municipality of Šentilj should have taken the driveway and access road to their place of residence that runs on private land into municipal ownership.

Based on all the facts, we were able to establish that the Municipality had been resolving this matter for too long (six years) and negligently. During the consideration of the matter, the Municipality changed its opinion several times regarding its obligation to take over ownership of the disputable road. Therefore, the Municipality also started actions for expropriation against the owners of the disputable land plot (without success), and later on claimed that no public interest was shown regarding the taking of the road into municipal ownership; however, the Municipality failed to provide appropriate legal grounds for its decisions. We reproached the Municipality mostly with the lack of legal knowledge and lack of professionalism in resolving the matter, and suggested that the Municipality re-examine the matter and adopt its final decision with appropriate legal grounds by considering all the facts and circumstances of the case and on the basis of an appropriately and completely established effective and legal situation. We warned the Municipality that we were not suggesting that it should take the municipal road into its ownership, but that it should establish the appropriate situation of the matter and should consider all legal bases.

In 2010, the complainants notified us that the matter had still not been resolved. Therefore, we asked the Municipality to explain the reasons for failing to execute our proposal. The Municipality explained that it had not followed the provisions of our proposal. Once again, the Municipality's answer contained no legal grounds, and did not provide a clear and final answer regarding this matter. Therefore, it once again confirmed the lack of professionalism and the lack of legal knowledge of the Municipality in resolving the complainant's case. **(8.4-7/2007)**

#### **19. The conduct of control officers regarding the Urbana Card**

We noticed that passengers had many problems in connection with the electronic payment system for fares on city public transport, mostly due to their lack of skill, clumsiness or lack of knowledge. In many cases, passengers were forced to leave the buses, and were also deprived of the electronic card carrier - the Urbana Card, since they allegedly had not validated their tickets when entering the bus. Consequently, we asked the public company Ljubljanski potniški promet (JP LPP) to explain the conduct of its employees in the above-mentioned cases.

The JP LPP explained that during the introduction of the new public transport payment system for city public transport, drivers, control officers, payment system services providers and students offered assistance to all passengers. Drivers continue to offer assistance to passengers, especially the elderly and children. However, it is quite difficult to differentiate between the intentional swindling of passengers and the actual lack of knowledge of using the system. The Company also explained that in order to avoid the described events, the regular passenger transport services provider adopted an internal instruction that gives passengers in such cases the possibility to correct the established irregularity (e.g. repeated validation of tickets). If violations are established, passengers will receive an oral warning; the stipulated sanction, however, will be issued when repeated violations are established. **(8.4-16/2010)**

## 2.9 HOUSING

### GENERAL

With regard to housing matters, we dealt with approximately 20 per cent fewer matters in 2010 than in 2009. Unfortunately, the lower number of complaints handled does not mean that there are fewer problems, or that they are being resolved more quickly. We believe that this is more related to lack of trust in the institutional resolution of problems, which consequently increases the apathy of people. The recommendations of the Human Rights Ombudsman of the Republic of Slovenia in the 2009 annual report remained largely unrealised. The State did not adopt the new national housing programme, and no strategy has been formed regarding the resolution of housing issues. It seems that the State does not know how to manage housing policy. Some outstanding issues similar to those from previous years are presented below. Many established issues have still not been resolved.

#### 2.9.1 Dwelling units

Based on the complaints received, the Ombudsman estimates that the number of dwelling units is too low, or there are no units. The quality of accommodation in the dwelling units is often questionable. Again, we emphasise that the Slovenian Housing Act should determine the statutory obligation for municipalities to guarantee dwelling units. The basic accommodation standard in dwelling units should also be clearly defined.

#### 2.9.2 Subsidising rents

According to the current Housing Act (SZ-1), municipalities decide on subsidising non-profit rents. According to the new regulation, this jurisdiction will be transferred to social work centres.

The Ombudsman has warned in all previous annual reports that the income census for subsidising rent is not appropriate and that it should be adapted to the actual cost of living. Regarding the subsidising of market rent, the SZ-1 also includes the condition of a preliminary application to a call for tenders for the acquisition of a non-profit apartment in a municipality where the applicant has permanent residence. We have often warned about the modification or elimination of this condition, since municipalities do not publish public tenders for the acquisition of non-profit apartments for several years in succession due to the insufficient housing stock. Certain individuals who fulfil the income-related and other conditions regarding their property cannot acquire the market rent subsidy due to the above-mentioned fact.

#### 2.9.3 Lessees in denationalised apartments

The Ombudsman has warned about the problems of lessees and their situation in denationalised apartments for several years; in 2002, the Ombudsman prepared a special report with recommendations and proposed measures. The State has adopted several solutions in the Housing Act; however, they did not guarantee an equal situation for all those who formerly had housing rights, those in denationalised apartments, as well as those who lived in the so-called social apartments.

The problem originates from 1991, when the Housing Act was adopted and did not recognise the right of people with housing rights in social apartments that had been nationalised, confiscated or expropriated in the past, to purchase the apartments under appropriate conditions. These lessees were also not granted a right equal to the possibility of purchasing an apartment as mentioned above. In 2010, the European Committee of Social Rights at the Council of Europe adopted the decision that Slovenia is violating human rights of lessees in denationalised apartments, and these rights are guaranteed by the European Social Charter, namely the right to housing, the right to family protection and the prohibition of discrimination. For these reasons, the European Committee ordered Slovenia to ensure the financial and statutory conditions for eliminating the mentioned violations. The decision of the European Committee confirms the Ombudsman's findings. This issue was discussed with representatives of the Ministry of the Environment and Spatial Planning. The Minister guaranteed that, regardless of the decision adopted by the European Committee, the Ministry had been preparing a proposal for solutions for the Government. Housing Inspection Service

The complaints which we received show that the Housing Inspection Service processes cases for irrationally long periods; the same applies to the issue of notification on ordered inspection measures. The claims referring to the lack of inspectors do not justify such conduct.

## SUMMARY OF SUGGESTIONS AND RECOMMENDATIONS

- ✘ The Ombudsman once again recommends the adoption of a new national housing programme and a strategy for resolving housing issues, and proposes an amendment to the Housing Act defining mechanisms for encouraging and ensuring accessibility to appropriate dwellings, specifically for diverse housing needs (young applicants, the elderly, people with special needs etc.).
- ✘ The Ombudsman recommends that local authorities (municipalities) adopt appropriate measures as soon as possible which will help them to efficiently implement their obligations and responsibilities in relation to ensuring dwelling units, and to publish tenders for allocating non-profit apartments for lease in determined time periods, and to clearly determine the time validity of priority lists.
- ✘ The Ombudsman proposes an amendment to the Rules on renting non-profit apartments. The income censuses should be re-determined and a solution adopted which would enable applicants that fulfil the income census to receive rent subsidies regardless of whether they applied for the municipal tender for non-profit apartments.
- ✘ The Ombudsman proposes the adoption of financial and statutory conditions which will help the state to eliminate established violations of rights, as determined by the European Social Charter, of lessees in denationalised apartments.

## CASES

### 20. The threshold for subsidising rents is too low

The Human Rights Ombudsman of the Republic of Slovenia was contacted by a complainant in a very bad financial situation. We understood her situation; however, the Ombudsman was unable to help, since she does not have the jurisdiction or the means to resolve such difficulties of complainants. We advised the complainant to contact the social work centre and the municipality, to see if the latter would grant some kind of temporary financial aid.

We were not able to help the complainant regarding the problems related to subsidising rent. Therefore, we would like to warn of the systemic problem, since we believe that the threshold for granting subsidies is too low. Many lessees with very low incomes fall out of the subsidising system; they are unable to pay rent with their monthly income. We believe that the state should bear the burden of helping socially weaker citizens in overcoming financial problems with regards to housing costs in leased apartments. We have often warned about the inappropriate regulation of subsidising rents; however, the competent state authorities have not responded to our warnings. We would like to emphasise another aspect. The complainant lived alone in a three-room apartment; therefore, we suggested she consider exchanging the apartment for a smaller unit, since the costs would consequently be lower. Rent subsidy is connected to the determined area of the apartment regarding the number of persons living in the apartment. In this way, the complainant would be more able to cope with the costs of a smaller apartment and with the appertaining subsidy.

### 21. The Housing Inspection Service took one year to resolve a notification

The Human Rights Ombudsman of the Republic of Slovenia was contacted by a complainant in connection with multi-apartment building management. The complainant claimed that the Housing Inspection Service at the Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning did not respond to his filed complaints. We asked the Inspection Service for further explanations. They responded that the Housing Inspection Service had responded to the complainant's complaint from 2009 in 2010. The second complaint, filed in 2010, was still being processed. According to the Inspection Service's answer, this area was covered by only one housing inspector. The complaint was founded. The Ombudsman believes that the terms of reasonable decision making in connection with the complainant's first complaint were exceeded, since the complainant received the notification on inspection measures more than one year after the filed complaint. However, with regards to the complainant's second complaint filed at the Inspection Service, we were not able to come to the same finding. The explanations regarding the lengthy procedures could not be considered as a justifiable reason for exceeding the reasonable terms of decision making. **(9.1-8/2010)**

### 22. The municipality has no vacant dwelling units

The Ombudsman was contacted by a complainant with regards to resolving his residential and social problems, since he was not able to resolve his housing issues by renting in the private sector, mostly due to his bad financial situation.

The Ombudsman was not able to help the complainant with this problem. However, we asked the Municipality of Radovljica to provide us with information regarding dwelling units and regarding a temporary solution for the complainant's housing problems. The complaint was not founded; however, the answer of the Municipality of Radovljica confirmed our opinion that systemic changes are required in connection with the allocation of dwelling units. The Municipality of Radovljica explained that it has only two dwelling units currently vacant. This, however, does not suffice for the purpose and objective of the legislator when introducing social dwelling units. **(9.1-14/2010)**

## 2.10 EMPLOYMENT RELATIONS

### GENERAL

The number of all complaints in this field decreased by approximately 10 per cent in comparison with 2009; there were almost 38 per cent more complaints in the field of labour matters in the private sector.

We addressed work-place mobbing, non-payment of salaries, non-payment of social security contributions, alleged illegal terminations of employment contracts and insufficient provision of conditions for safety and health at work. During the summer, we received many complaints due to high temperatures in work premises. We also received many complaints from employees at the Ministry of Defence, mostly referring to alleged mobbing.

In 2010, we also dealt with many cases involving construction workers, especially foreign workers. Despite numerous discussion and meetings with the competent national authorities, the situation of foreign workers in Slovenia has not improved (we also provided our proposals for the regulation of the situation) and the competent ministries and the Government of the Republic of Slovenia are not responding appropriately. Despite our active work in this area, the situation in employing foreign workers has remained unchanged. When workers, especially those coming from Bosnia and Herzegovina, lose their job in Slovenia, they also lose their residence permit and do not receive unemployment benefit. We have established that the procedures for enforcing the rights of workers are complicated and lengthy. The jurisdictions of the Labour Inspectorate of the Republic of Slovenia are quite limited, and the delimitations of jurisdictions of other inspectorates (inspectorates for public employees system, defence system) and institutions are quite vague (e.g. tax administration). The judicial protection of rights takes some time; after judgements become final, no property remains to facilitate the repayment of the workers (plaintiffs).

#### 2.10.1 Employment of foreigners

This is a complicated range of issues, involving undocumented work, non-payment and irregular payments for implemented work, non-payment of social security contributions, poor housing and work conditions, the acquisition of residence permits, receiving unemployment benefit etc. However, there were fewer complaints than one would expect. This is mostly ascribed to fear of the possible consequences and lack of knowledge of possibilities on how to file complaints. Despite this fact, this issue is very urgent and requires immediate amendments to the legislation.

Complications also arise in enforcing rights to insurance in cases of unemployment. The Employment and Insurance Against Unemployment Act (ZZZPB) stipulates that these rights can be enforced only by persons residing in the country if an international act does not determine otherwise. Social agreements concluded with some former Yugoslav countries do not determine that foreign workers can enforce their rights in relation to unemployment if they do not reside in Slovenia. Even if they pay contributions for unemployment insurance during their employment relationships, foreign workers cannot enforce any rights since they are obliged to leave the country, even if the employment contracts are terminated through no fault of the workers. The ZZZPB explicitly acknowledges to these workers that they have

acquired rights from insurance; however, these rights are suspended in the period when they do not reside in the country. It is the Ombudsman's opinion that such agreements should be concluded with Croatia and Bosnia and Herzegovina, since the majority of foreign workers in Slovenia originate from these countries.

### 2.10.2 The competences of the Labour Inspectorate of the Republic of Slovenia and cooperation with the Inspectorate

We dealt with several complaints referring to the non-payment of salaries and non-payment of contributions in accordance with employment contract provisions. According to the Chief Labour Inspector of the Republic of Slovenia (IRSD), the Labour Inspectorate can act only in cases when employees were not paid at least the minimum wage. The payment of the minimum wage is in public interest, and therefore requires the mediation of a competent inspector, while the payment of the remaining part of the wage is subject to the contractual relationship between the worker and employer. If the employer owes cash liabilities to the employee, the latter may enforce payment by initiating court proceedings. In the IRSD's opinion, the minimum salary comprises the net amount considering the determined gross minimum payment. Any non-payment of contributions falls under the jurisdiction of the tax administration authorities.

With regards to the non-payment of wages, the Ombudsman believes that the Employment Relationship Act (ZDR) determines the deadline by which an employer is obliged to pay employees their wages. The ZDR also determines the place and manner of the payment. If the employer does not make the pay as stipulated by the law, the latter stipulates a fines of EUR 750.00 to 2,000.00 for the employer. Therefore, we believe that a wage is considered as paid when it is paid in full and in the amount as stipulated in the employment contract. The Ombudsman believes that the amount to be paid should be established by the courts only in case of a dispute between the employee and the employer regarding the amount of payment for overtime work or in the case of various benefits that are determined in the employment contract or in other regulations. In the case of establishing whether payment was made, the undisputable part of the payment should be established as per the employment contract. In our opinion, the obligation regarding salary payment as stipulated by the ZDR is implemented when the salary is paid in the full amount, not only in the amount of the minimum wage.

The Ombudsman reiterates her recommendation that inspection services should be reinforced and appropriate material conditions for work should be ensured.

### 2.10.3 Non-payment of social security contributions

In 2010, we also dealt with many cases involving the non-payment of contributions for foreign as well as local workers. The media also dedicated a lot of attention to a case when approximately three hundred workers in the Steklarska nova company in May 2009, lost their jobs because the company went bankrupt and, even more shocking, more than one half of them were stunned to learn that the Company had not been paying their social security contributions since 2004, due to which their pensions will be lower. Workers turned to various national authorities to ask them for assurance that the State as the owner of Steklarska nova, would settle all unpaid contributions and that their rights to pension and disability insurance would not be impaired. They informed the Ombudsman that they had not received any real assurances. They also initiated criminal proceedings due to the violation of the fundamental rights of workers and rights arising from social insurance; however, the district state prosecutor's office has twice dismissed their complaints.



The Ombudsman established that the reason for this problem and inappropriate responses were a weak supervision system, and bad records that were introduced too late, since the Ombudsman had warned about this problem in her previous reports. The Ombudsman believes that employees should not suffer the consequences if their employers have not paid the social security contributions relating to their salaries. If the State permitted the suspension of the payment of contributions or did not discover that contributions had not been paid, the State should correct this error and not pass it on workers.

#### 2.10.4 Bullying, harassment and mobbing in the workplace

In 2010, the Ombudsman received several complaints where individuals claimed that they were victimised at their workplaces due to bullying, harassment and mobbing. We have established that the number of reports of alleged bullying, harassment and mobbing in the public sector has increased, among which we should highlight the Ministry of Defence and the Slovenian Armed Forces. Many complaints were anonymous.

#### 2.10.5 Issues concerning employees at the Ministry of Defence and the Slovenian Armed Forces

The special problem of handling cases of bullying, harassment and mobbing at the Ministry of Defence and the Slovenian Armed Forces is related to unresolved dilemmas regarding the supervising institution that is competent for establishing whether both national bodies have adopted the appropriate measures for the prevention of bullying and harassment in the work place that would constitute the basis for proper human resources management. The Ombudsman believes that the employees at the Ministry of Defence and the Slovenian Armed Forces are public employees, and therefore the provisions of the Civil Servants Act (ZJU) apply to them; the Inspectorate for Public Administration (IJU) is competent for establishing if the measures for preventing harassment at work place are in force; the Labour Inspectorate of the Republic of Slovenia (IRSD) is also competent for establishing if the measures for preventing bullying at workplace are in force.

Despite this, we would like to point out that the current solution which determines that the IRSD implements supervision of employers in the private sector, while the Inspection of the civil servant system (IJU) implements supervision of employers employing public servants, is not appropriate and often causes problems regarding the jurisdiction of supervision. This is especially noticeable at the Ministry of Defence and the Slovenian Armed Forces in the form of competence disputes, since the Defence Act (ZObr) determines some competences of the Defence Inspectorate. However, we should consider that the Ministry of Defence and the Armed Forces are subsystems of our society that operate according to their typical mechanisms, which we have to know well in order to assess and supervise the situation in both subsystems. Therefore, we ask who should decide in a case when an employee tries to challenge a command act and not a labour law act. It is possible that the special hierarchical system that strongly restricts the complaint methods in the Slovenian Armed Forces permits impermissible conduct towards employees in this working environment more than in other institutions.

## SUMMARY OF SUGGESTIONS AND RECOMMENDATIONS

- ✘ The Ombudsman proposes an amendment to legislation (labour relations, employment and housing of foreigners in Slovenia, enforcement of rights related to insurance against unemployment) which would appropriately regulate the situation of foreign workers temporarily working in Slovenia.
- ✘ The Ombudsman proposes the adoption of measures for the clarification and unambiguous regulation of the vague delimitation of competences between the Labour Inspectorate of the Republic of Slovenia, the Public Administration Inspectorate and the Defence Inspectorate of the Republic of Slovenia in establishing measures adopted against workplace bullying, with special reference to employees at the Ministry of Defence.
- ✘ The Ombudsman recommends that the Labour Inspectorate of the Republic of Slovenia answer all letters related to violations of labour legislation handled by the Inspectorate, sent in printed form or by e-mail, regardless of whether the senders explicitly request notifications on inspection measures, within 15 days of their receipt, since this is stipulated by Article 18 of the Decree on administrative operations.
- ✘ The Ombudsman proposes that the Ministry of Labour, Family and Social Affairs and the Labour Inspectorate of the Republic of Slovenia harmonise their policies regarding their procedure in deciding on complaints against decisions and resolutions, and that they should act uniformly in all cases connected with the suspension of the entry into force of extraordinary termination of employment according with the Employment Relationship Act.
- ✘ The Ombudsman reiterates her recommendation that inspection services should be reinforced and appropriate material conditions for work should be ensured. She also proposes to the Government that due to the economy measures, it should halt the reduction of the number of public servants in supervising institutions.
- ✘ The Ombudsman calls upon the Government to fulfil its assurances that it will settle all unpaid pension and disability insurance contributions for workers in state-owned companies where employers did not calculate and pay social security contributions and the State permitted these companies the suspension of the payment of contributions, and that employees will not be deprived of any rights.
- ✘ The Ombudsman calls upon the Government to immediately adopt measures to prevent employers from not paying the social security contributions of employees.
- ✘ The Ombudsman calls upon the national authorities and public institutions established by the State to regulate the payment of the supplement for bilingualism to all workers (and not only to some groups of workers) that work in official bilingual territories and who are required to speak the language of the national community and not only Slovene, which is also a precondition their employment.
- ✘ The Ombudsman proposes a more appropriate regulation of national competition rules for youngsters in cases when the results of these competitions are the basis for acquiring Zois scholarships for special achievements. The criteria for when and how to consider the results, as well as who is the issuing authority for confirmations on achieved results (rank and number of points) should be determined.

## CASES

### 23. Non-consideration of the right to protection during pregnancy and parenthood

We received an anonymous initiative referring to the violation of the right of pregnant women and parents to more favourable working hours as stipulated by the Article 190 of the Working Relationship Act (ZDR). The violations allegedly occurred in the Slovenian Armed Forces. The initiative stated that it was sent as anonymous due to the fear of possible consequences, which was founded in the case of a person that allegedly lost employment due to enforcing his/her rights. The Ombudsman in principle does not handle anonymous initiatives; however, this time we made an exception, since we had noticed that similar problems occurred in the past. In the 2008 annual report, we emphasised the problem that some Slovenian Armed Forces employees were not able to enjoy their rights as stipulated by Article 190 of the ZDR. On the contrary, some employees were explicitly exposed to various forms of harassment in the work place only because they tried to enforce their rights as stipulated by the Article 190 of the ZDR. After processing the complaint then, the employer assured us that further irregularities would be eliminated. In 2010, the Ministry of Defence (MORS) published a notification on the Intranet informing its employees that Article 190 of the ZDR does not apply to employees in the area of defence. Their opinion was supported by Article 96 of the Defence Act (ZObr) stipulating that each employee is obliged to perform work also in less favourable working hours if this is decided by their superiors. Therefore, the MORS' opinion was that the provisions of the ZObr are more important than the provisions of the ZDR, and therefore, the ZDR does not stipulate any obligations for the employer. MORS also emphasised that they are trying to consider the wishes of their employees as much as possible and also within the scope of Article 190 of the ZDR.

The initiative was founded. We assessed that MORS is violating the rights of employees by not acknowledging their rights as stipulated by Article 190 of the ZDR. The rights, guaranteed to employees by the ZDR, could be regulated by the ZObr only explicitly, namely by regulating the rights of parents or by explicitly eliminating these rights, and not by a general statement stipulating that the employees' superiors decide on less favourable working hours. According to the Ombudsman's opinion, Article 96 of the ZObr does not determine the rights as stipulated by Article 190 of the ZDR in any other way; therefore, the Slovenian Armed Forces employees should recognise all rights as determined by Article 190 of the ZDR. It is of concern that we have already warned the MORS about this problem in 2008, which also acknowledged the problem; however, the MORS decided in 2010 that it would not consider our warning. Later, we were informed that the instruction on the invalidity of Article 190 of the ZDR was withdrawn from the MORS' Intranet site. Therefore, Article 190 of the ZDR should be respected. In our opinion, the employer's inconsistency does not contribute to enhanced respect of the rights of employees. Such conduct also sends a message to all employees that it is not just an issue of individual commanders who do not want to recognise the rights to employees as stipulated by Article 190 of the ZDR; however, these are the tendencies of the employer. Considering the fact that employees fear possible consequences if they wish to enforce their rights, the employer's inconsistency shows that it is quite likely that employees would not even try to enforce their rights. **(4.3-8/2010)**

### 24. Insufficient supervision in the employment centre for disabled persons

The complainant notified us on being employed in an employment centre that performs its activities in compliance with the provisions of the Vocational Rehabilitation and Employment of Disabled Persons Act (ZZRZI). He stated that several irregularities occurred at work, especially in relation to safety at work. He notified the Labour Inspectorate of the Republic of Slovenia (IRSD) on the alleged irregularities. The latter actually established that the irregularities had occurred which was later followed by a termination of employment contract. In his opinion, the termination of the contract was the consequence of his repeated

warnings about irregularities. The complainant informed the Ministry of Labour, Family and Social Affairs (MLFSA) and the Disability Directorate of the irregularities. The Directorate explained to the complainant that the violations of legislation as established by the IRSD did not present a sufficient basis for establishing the non-fulfilment of the conditions for the employment centre's operations, especially since this would endanger the jobs of workers who find it most difficult to find employment and can be employed exclusively for performing work in employment centres. An expert commission was appointed in accordance with Article 56 of the ZZRZI, which was authorised to verify the conditions for the preservation of the employment centre's status. Therefore, the employment centre should fulfil all organisation and technical conditions, including guaranteeing working conditions that apply to safety and health at work regulations, as well as work places that are adapted to the working abilities of the disabled. The expert commission can order the employment centre to eliminate any established irregularities.

The Human Rights Ombudsman of the Republic of Slovenia assessed that supervision in the employment centre was not implemented in such a way as to clearly enable us to establish whether the complainant's claims were true. Some complainant's claims showed the possibility that the disabled, including persons with mental health problems, were exposed to difficult working conditions, which could have an aggravating effect on the health of employees. The Ombudsman believes that such a possibility should be rejected with arguments and that appropriate actions should be taken immediately. Various provisions of the ZZRZI (e.g. Articles 2 and 9) show that the working environment should be specially adapted to these persons. The working process and qualifications of managing persons should also be adapted. The allegations which the complainant made against his employer were not merely insignificant formalities that do not impact the rights of employed disabled persons, but violations of fundamental provisions guaranteeing a healthy working environment, which should be assured in the process of employing the disabled with the utmost care. In order to protect his rights, the complainant used his right to judicial protection by filing a criminal complaint and contacting the IRSD. However, the nature of these procedures, possible actions and the timeframes for deciding, in the Ombudsman's opinion, can in no case substitute for supervision, which should be implemented and guaranteed by the MLFSA in the employment centre. In this aspect, the complaint was considered as founded. **(4.1-27/2010)**

## 2.11 PENSION AND DISABILITY INSURANCE

### GENERAL

The number of cases considered in this area in 2010 decreased compared to 2009 (pension insurance – from 68 to 53, disabled insurance – from 73 to 45). Issues related to the protection of the disabled insurance are also treated under the discrimination section.

In 2010, the issues in this area were mostly related to the anticipated reforms of pension and disability insurance. Several complaints were received by the Human Rights Ombudsman of the Republic of Slovenia in relation to the proposed new solutions in the Pension and Disability Insurance Act (ZPIZ-2). The Act was discussed in public; however, the Government modified individual solutions already during the process and the interested parties were informed of these modifications by the media. This is why we received many questions, which we tried to answer or advised complainant to contact the competent ministry.

#### 2.11.1 The Pension and Disability Insurance Institute of the Republic of Slovenia does not respect a Supreme Court decision

We received a complaint which accused the Pension and Disability Institute of the Republic of Slovenia (ZPIZ) of disrespecting the decisions of the Supreme Court, and which claimed that the National Assembly inappropriately handled the decision of the Constitutional Court of the Republic of Slovenia. The complainant, as a lawyer, wanted to partially retire, based on Article 58 of the Pension and Disability Insurance Act (ZPIZ-1); however, ZPIZ rejected the request to acknowledge the right to a partial pension, claiming that this right is only recognised for insured persons who are in employment relationships. The complainant initiated a court proceeding against the decision; the Labour and Social Court in Ljubljana granted her appeal and ordered ZPIZ to issue an appropriate decision to the complainant. ZPIZ then appealed the court's decision. The appeal had still not been resolved at the time of the preparation of this report.

The Ombudsman only exceptionally handles matters that are subject to judicial proceedings; however, this complaint warned about several legal issues, which should be emphasised and resolved by the legislator. The Constitutional Court decision no. U-I-358/04 as of 19 October 2006 determined that the first paragraph of Article 58 of ZPIZ-1 restricting the right to partial pension only to insured persons in employment relationships is not compliant with the Constitution. It ordered the National Assembly to eliminate the established disparity in nine months from the publication of the decision. The National Assembly did not eliminate the section of the law that was in contradiction with the Constitution; the Supreme Court in 2006 in a similar matter established that the decision of the Constitutional Court caused an unconstitutional legal gap (the unconstitutionality of the provision was established; however, the provision was not repealed), therefore, it granted the request for partial retirement.

The complainant assessed that ZPIZ should consider the Supreme Court's decision and grant all similar requests. The complaint opened the issue of respecting court decisions in deciding administrative procedures. Administrative authorities and bodies exercising public powers based on the second paragraph of Article 120 of the Constitution of the Republic of Slovenia perform their work independently within the scope of, and on the basis of

the Constitution and laws. This is why we cannot expect or demand from administrative authorities that they issue their decisions directly on the basis of court decisions, especially, if such court decisions lack a direct legal basis, but only aim to fill a legal gap as established by the Supreme Court.

If the Constitutional Court repealed the disputable provision of the law, administrative authorities would not be permitted to use it. In the processed case, the disputable legal provision **remains in force despite the established unconstitutionality**, until it is repealed or modified; therefore, the administrative authority cannot overlook this provision or provide it with non-existent contents. Therefore, in our opinion, we cannot reproach ZPIZ for irregularities in the decision making process. If ZPIZ acted otherwise, it would spare many costs for itself and its clients; however, such actions would be unconstitutional and illegal.

Considering the above-mentioned, we did not confirm to the complainant that ZPIZ is violating the law, but we confirmed her opinion that the National Assembly ignores the decisions of the Constitutional Court, since the deadline for harmonising unconstitutional provisions passed a long time ago. However, this reprimand should be addressed to the Government and the Ministry of Labour, Family and Social Affairs, which should prepare expert and legal bases for the amending act in time. Each year, the Ombudsman warns about unrealised constitutional decisions; however, there is no means to force the legislator to actively and consistently guarantee the principles of a legal state.

The described problem was resolved by the Pension and Disability Insurance Act (ZPIZ-2), which, however, was rejected at a referendum during the preparation of this report.

### 2.11.2 Disability insurance

#### The significance of inviting insured persons to disability committee hearings

Complainants, sensitive due to their health and numerous other problems connected with financial and social problems, have difficulties understanding the conduct of the invalidity committee, which invites them to personal examinations, and then executes poor or no examinations. They state that personal examinations are performed quickly, without any real personal attitude and very unfriendly.

If a personal examination of the insured person in the evaluation of the person's disability, remaining working ability and physical impairment does not have any special role in preparing an expert opinion, a question arises as to what extent a personal examination diagnosis is relevant for the invalidity committee. The Ombudsman presented her opinion regarding a more specific determination of the minimum criteria for the personal examinations of insured persons at invalidity committee meetings already in the 2002 annual report; however, no changes have been noted.

### 2.11.3 List of physical impairments

No end can be seen to the complications regarding the new, updated list of physical impairments. This list was already discussed in the 2001 annual report and more extensively in the 2008 annual report. Now we can only say that the Ministry of Labour, Family and Social Affairs (MDDSZ) and the Ministry of Health (MZ) have not implemented the provisions of the third paragraph of Article 143 of the Act in the eleven years since the Pension and Disability Insurance Act (ZPIZ-1) entered into force, which also stipulates that the types of physical impairments which are the basis for the right to disability benefit and their grades are determined by the minister competent for labour, upon a preliminary opinion of the minister competent for health. This provision remains unrealised.

The list of physical impairments is a necessary act that should be adopted as soon as possible, since the expert bodies of ZPIZ - based on the ninth paragraph of Article 180 of ZPIZ-2 – will continue assessing the types and grades of physical impairments based on which the insured persons will be entitled to calculation periods (personal circumstances). Since beneficiaries with recognised physical impairments have the right to various benefits also according to other regulations (exemption from paying tourist tax, motor vehicles tax, annual tax for the use of vehicles in traffic, annual reimbursement for road use, RTV charge and the right to disabled person's parking card), it is completely incomprehensible that the list of physical impairments from 1983, which was amended in 1989, is currently not updated. According to the Ombudsman's opinion, an out-of-date list does not enable the correct and equal consideration of physical impairments. The attitude of those who are preparing the new list of physical impairments is inexcusable; therefore, the Ombudsman suggests that the Government establish the responsibility of the competent persons for this situation, and it should sanction negligent conduct and prepare an appropriate solution for this problem in 2011.

#### 2.11.4 The protection of persons with disabilities

The Ombudsman also participated in the discussion referring to the Equalisation of Opportunities for Persons with Disabilities Act (ZIMI) prepared by the Government, which is especially important due to the implementation of the Convention on the Rights of Persons with Disabilities. Unfortunately, the Ombudsman was included in the discussion only when the key solutions had already been formed in the proposed act. Despite the opposition of representatives of disability organisations, the Act also includes provisions which would have to be assessed from the point of view of compliance with the Convention's provisions, since it seems that they do not assure the independence of the monitoring authority. ZIMI introduces a trilateral council for persons with disabilities, where the Government has one third of representatives, and it is indirectly represented also by representatives of public institutions. The Ombudsman believes that such an imbalance between social partners does not reflect the independence of the authority.

Issues related to the disabled are also dealt with under the discrimination section.

## SUMMARY OF SUGGESTIONS AND RECOMMENDATIONS

- ❑ The Government should guarantee that the competent national authorities prepare all expert bases for adopting the amended regulations as stipulated by the decisions of the Constitutional Court of the Republic of Slovenia on a timely basis.
- ❑ The Pension and Disability Insurance Institute of the Republic of Slovenia should ensure appropriate additional training for members of all its bodies that decide on rights arising from pension and disability insurance.
- ❑ The Pension and Disability Insurance Institute of the Republic of Slovenia should adopt the minimum criteria for personal examinations of insured persons in the procedures of enforcing rights.
- ❑ The Government should establish responsibility for the list of physical impairments, which has not been updated; the Ministry of Labour, Family and Social Affairs should update it as soon as possible.



### 25. A decision on a widow's pension taken ten years after application

The complainant and her daughter filed a request for the recognition of the right to widow's or family pension on 11 October 2000. The Pension and Disability Insurance Institute of the Republic of Slovenia (ZPIZ) rejected their request. The judgement of the Labour and Social Court as of 23 October 2007, confirmed by the Higher Labour and Social Court, overruled the ZPIZ's decisions, and ordered ZPIZ to decide on the assessment and amount of widow's or family pension in 60 days from the date when the judgement became final. The court's decision became final on 14 May 2008. The Human Rights Ombudsman of the Republic of Slovenia was included in the process after the complainant's representative tried to enforce the court's decision at the Institute several times without any success. The ZPIZ's answer surprised the Ombudsman: they were not able to decide on the matter because the administrative file had been handed over to the court due to the filed audit against the judgement of the Higher Labour and Social Court. They asked the court several times to return the file in time; however, they never received it. The decision on the audit was implemented on 11 October 2010. ZPIZ notified us that the decision, according to which the widow's pension was assessed for the client from 1 January 2000, was issued on 10 November 2010. Since ZPIZ assured us that after our mediation they would return to the court and request the provision of copies of the administrative file, we were interested in whether the decision on the assessment of the widow's or family pension had been issued due to the court's decision on the audit or on the basis of the acquired administrative file. ZPIZ's answer confirmed that the court had not handed over the file.

The Ombudsman assesses the conduct of ZPIZ and the court as inappropriate. Despite the efforts to acquire copies of the administrative file, ZPIZ can be charged with not having prepared the copies prior to handing the file to the court; the court can be charged with having rejected ZPIZ's request to return the file in time with no founded reasons. We can only imagine what amounts of interest ZPIZ will have to pay to the client due to such a lengthy decision making process. The complaint was founded. **(3.1-34/2010)**

### 26. ZPIZ suspended advance pension payment due to a dispute before the Labour and Social Court

The Pension and Disability Insurance Institute of the Republic of Slovenia (ZPIZ) issued a decision categorising the complainant in the first category of disability, with the right to an advance pension payment. He instigated a legal action before the Labour and Social Court due to establishing the cause of the emergence of disability (occupational disease, not illness), ZPIZ suspended the advance pension payment until the final assessment of the pension was made known after the court proceedings were concluded.

We believe that there were no founded reasons for suspending the advance payment of pension and that the court dispute cannot be the reason for such a decision. Even less, since this is not a dispute about the advance payment amount, but about the question of the reason that caused the disability. The reason for disability does not impact the final assessment of pension; however, this does not mean that the complainant is not entitled to an advance payment of pension due to the court dispute, since his pension was already assessed. The advance pension payment is determined because, when deciding on the pension, it is impossible to establish the correct amount of the pension and to guarantee that the beneficiary is not left without funds.

We presented ZPIZ with arguments against the decision on the suspension of advance pension payments and warned them about the consideration of the principle of rationality and economy of operations. The complainant, who is entitled to his pension, will be paid a single amount with interest; the suspension of advance pension payments would put him in severe financial distress. ZPIZ considered our statements and guaranteed that the advance pension payment would be made to the complainant as soon as possible. **(3.2-20/2010)**

## 2.12 HEALTH CARE AND HEALTH INSURANCE

### GENERAL

The Government and the Ministry of Health announced a reform of health care legislation in 2010, namely by preparing two new laws on health care activities and on health protection and health insurance. Their announcement was not realised, since the drafts of both laws had not been prepared during the time when we were preparing this report. The Ombudsman believes that there is no necessity for complete legislative reform and that urgent changes could be enforced with appropriate modifications or amendments to the legislation. However, it is time for the granting of concessions for the implementation of health care activities based on public tenders and not only on the basis of individual applications to be regulated on a legislative basis. Such decision making processes raise justified doubts about the fairness of decision making, which is not transparent and public. Despite many warnings from the Ombudsman in annual reports and the decision of the National Assembly adopted on consideration of the Ombudsman's annual report 2009, the Ministry of Health continues the disputable policy of granting concessions.

New legislation should specifically regulate all forms of supervision in the health care sector, since we have established that the forms anticipated by the law do not serve their aim of ensuring quality and the transparency of the implementation of activities. Supervision performed by sector-based organisations on public authorisations does not meet the requirement for objectivity in decision making processes and raises doubt about the capacities of the entire health care system to ensure all citizens the same quality of treatment and the same attitude. Unfortunately, the new legislation does little to change relations between health care workers and patients, which is one of the main complaints of people who turned to the Ombudsman for her opinion. The complaints and answers to our enquiries show that there would be a lot less discontentment if health care workers responded in more positive ways and communicate more appropriately. That is the reason we implemented a survey in higher education institutions training students for health care vocations, to learn to what extent individual faculties include in their study programmes training on communication between health care workers and patients (and their family members), errors that can be made by health care workers in their work, complaints procedures and methods of professional and psychological assistance for health care workers in distress, as well as how long have these programmes been implemented.

We received answers from all eight institutions to which we sent our survey. Their answers show that their courses partially include the content mentioned in the Ombudsman's letter, but that faculties integrate and implement this in various ways. The Ombudsman therefore (as was already mentioned in the 2009 annual report) proposes systematic education on these topics, which would be based on one-year programme for all higher education institutions.

The introductory part of the training should emphasise communication methods implemented by individual bodies exercising public powers and health care services providers. Most health care institutions sent us the required information or data by the set deadlines; however, we had more problems with the Ministry of Health, which was often late with providing its answers. We can commend the cooperation with the Health Insurance Institute of the Republic of Slovenia, which sent timely and complete answers to our enquiries. We have to criticise the cooperation of the Medical Chamber of Slovenia, which has worsened in the past year, since it almost completely ignores the Ombudsman's enquiries by the set deadlines, and in the answers which it does provide, completely ignores individual questions.

### 2.12.1 Health Services Act

#### Public powers

In the 2009 annual report, the Ombudsman warned about some open issues related to the implementation of public powers, which will obviously be resolved only by a new health services act.

**We proposed that the Ministry of Health** regulate norms in the area of implementing public powers by introducing new implementing regulations. The Ministry considered the Ombudsman's proposal, and therefore, we would like to describe the issues, since similar problems could occur in the future.

#### Expert supervision of the implementation of health care services

The National Assembly confirmed the Ombudsman's recommendation (in the 2009 annual report) to the Ministry of Health to more appropriately and efficiently regulate expert and administrative supervision of the implementation of health care services and the implementation of public powers. Since the realisation of this task would require appropriate amendments to the legislation, the recommendation was not realised, and the problems in this area are increasing.

### 2.12.2 Mental Health Act

The Ombudsman met the Minister of Health and cautioned him that the lack of final agreements on the Mental Health Act from 2008 has already proved in practice. The law shows a lack of confidence of the legislator in the work of psychiatrists, since it introduced excessive supervision of their work in comparison with the work of other health care workers. The Ombudsman believes that this area should be transparent and supervised; however, individual's rights also have to be protected, since excessive supervision can actually endanger them. The cooperation between various representatives, experts and other persons in some way ensures that psychiatric treatment is not abused; however, at the same time, it requires a lot of unnecessary work, collection of data, notifying and fulfilling formal (administrative) requirements. The Ministry of Health, which was warned about the deficiencies of the law, reacted appropriately and formed a special working group for the preparation of law amendments, comprised of the Government, the courts and civil society representatives, however; the work of this group is now at a halt. Issues related to mental health are presented under the section on persons with mental disorders and persons in social care institutions.

#### The restriction of rights of patients with special security measures

The Ombudsman dedicates a lot of concern for individuals that are especially threatened due to personal circumstances, since the latter prevent or restrict them from realising their rights and fundamental freedoms. This is why we have always warned about the need to enhance the protection of the rights of patients whose health requires medical and other measures that limit individual freedom of movement. It is understandable that each patient has to approve of all medical interventions to their bodies; the problem emerges when their state of health prevents the patient from fully comprehending the content of such an approval, and that if a certain medical measure is not taken, then the patient's health, safety or even life could deteriorate, or even be in greater danger. In such cases, the legislation should undoubtedly determine who can perform the medical procedure and under what procedure also without the permission of the patient. Such cases are resolved by the Patient Rights Act.

Security measures are not medical measures, but a way of guaranteeing patient safety by using physical restraint. In the Ombudsman's opinion, such measures are not appropriately regulated by law. Currently, the law anticipates such measures only in relation to mental health (for individuals who do not fully comprehend their approval for treatment); however, they are additionally limited to psychiatric hospitals and some other social security institutions. No law determines the use of security measures in other health care institutions and in means of transport intended for the transportation of patients.

The Ombudsman's opinion with regard to this matter is clear: **any measure that encroaches on the rights or freedom of an individual, regardless of their personal circumstances, should be determined by law**, and the same applies to the method of implementing such measure, its duration and supervision of the measure.

The content of this opinion was also confirmed by the Constitutional Court of the Republic of Slovenia, which established the compliance of some provisions of the Non-litigious Civil Procedure Act (ZNP) with the Constitution.

### 2.12.3 Paedo-psychiatric treatment of children and forensic hospital

Again, we have to emphasise the inappropriate paedo-psychiatric treatment of children who cannot be accommodated in open wards of paediatric hospitals, but who require the use of special security measures. There are no appropriate facilities and staff in the secure wards of psychiatric hospitals (intended for adult population). Despite the promises of the representatives of the Ministry of Health, the issue remains unsolved, which also hold for the organisation of a so-called forensic hospital.

Psychiatric institutions are forced to admit imprisoned persons and persons sanctioned with hospital treatment. They also admit (alleged) criminal offenders who need to be observed for the purposes of drafting psychiatric expert opinions, and convicted persons with severe psychiatric problems. There are also problems in guaranteeing general health care for prisoners, since the public health care system faces many problems in providing health care services in prisons. As usual, the main reason for the non-regulated situation lies in the competence of two ministries (the Ministry of Health and the Ministry of Justice) which should agree on resolving these issues.

### 2.12.4 Patient Rights Act

Patients' rights advocates, in the Ombudsman's opinion, are an important addition to the protection of patients' rights, although complainants have often warned us about communication problems (inaccessibility) and their lack of knowledge of legislation and regulations in this area. In accordance with the law, patients rights advocates send reports on their work to the Ombudsman. Since the reports include proposals for system improvements, the Ombudsman expects that the Ministry of Health will thoroughly examine them and draft appropriate amendments to the law. We have also established that information on advocates is not sufficiently accessible or visible in health care institutions and hospitals, and therefore, neither doctors nor other health care workers are aware of them.

The Ombudsman was informed of patients' problems in obtaining second opinions. The reasons for rejecting the provision of a second opinion were mostly connected with the issue of payment for this additional service. The Slovenian Health Care Institute believes that the provision of second opinion is a service that needs to be implemented within the scope of the same treatment for which the second opinion is required, meaning within the scope of

one referral form. The experts oppose offering second opinions and believe that this is an additional service to be paid for separately – the patient requires a new referral form for an examination by another specialist (who issues the second opinion).

We received several complaints referring to disapproval of the conduct of the health care personnel. Based on the complaints and our enquiries, the Ombudsman believes that many problems could be resolved quickly with appropriate communication, and we also believe that many health care workers are not able to communicate appropriately with patients. The Ombudsman also noticed a lack of knowledge among patients regarding complaints procedures. Patients are often not informed on the option of approaching the patients' rights advocate.

## 2.12.5 Health Care and Health Insurance Act

### Treatment in health resorts

We received many complaints about the conduct of health resort treatment services providers who submitted a consent form on their arrival at the resort which required they pay a surcharge for above-standard accommodation without prior notification of a period standard accommodation would be available. The Health Care Institute of the Republic of Slovenia, implementing supervision of the consideration of the General agreement for the current year, prepares a plan of supervision tasks each year, which are implemented in the current year.

Based on the established facts, we proposed that the Institute, in addition to regular annual supervision, start performing supervision based on complaints sent by insured persons.

### Delayed decisions

We received many complaints from insured persons against the decisions of the appointed doctors on extensions of sick leaves; however, they did not receive answers to their complaints within the statutory period. Since some insured persons do not pay much attention to, or do not know the meaning of the statement "complaint does not suspend execution", they stay at home even when their sick leave periods expire. This is why some employers terminated employment contracts with insured persons due to unjustified absence from work. The Ombudsman believes that the Health Care Institute should take decisions within the appropriate period.

There were also cases when insured persons who complained about decisions that were not in their favour at the end of their sick leave, and commenced work after their sick leave period was over; however, in a few days or weeks, they again received decisions confirming the extension of their sick leave (for the period when they were already working). Since decisions on approved sick leave which insured persons received too late have no effect whatsoever (employers do not recognise them over time work), we advised the complainants to initiate court proceedings for reimbursements for any harm to their health due to the work they performed in the period that was later approved as a sick leave period.

### New treatment method

At the end of the year, we received several complaints from patients with multiple sclerosis (MS) and chronic cerebrospinal venous insufficiency (CCSVI), some of whom had already undergone the diagnostics procedure and the procedure of dilatation of jugular veins (within

the scope of Medicor's research study or abroad); others would like to have this procedure done. The complainants' wish the method of dilatation of jugular veins to be performed in the future and the costs of the procedures covered by compulsory health insurance. We sent enquiries to institutions relevant for this issue, and they responded that the possibilities for continuing the study remain open and that experts do not directly oppose the study. However, each new treatment method has to be approved in a legally determined procedure, and therefore, the Ombudsman did not establish any irregularities in the work of the Health Insurance Institute of the Republic of Slovenia, which does not pay for these procedures, nor in the work of those who perform these procedures and have fulfilled all the conditions for performing the research study.

### **Access to medication**

The Ombudsman received several complaints against the Health Insurance Institute of Slovenia regarding the fact that they do not pay for some types of medication which were administered to patients during hospitalisation. After making enquiries, we found that the Health Insurance Institute did not violate the rights of insured persons, since it did not cover the costs of medications already within the scope of in-patient treatments. Medications were ensured to the hospital only during the period of the clinical study, and co-financed by the interested pharmaceutical company; when the period laid down in the contract expires or when the study is concluded, another appropriate medication from the approved list of medications covered by compulsory insurance has to be ensured for the patients.

We have established that patients should be more acquainted with the consequences of being included in clinical studies and should be especially informed of the fact that a certain medication will not be covered by compulsory health insurance when a study is concluded, even though the medication proved effective. We received several complaints in relation to biological medications, especially regarding their accessibility. The Ministry approved approximately three million euros to finance a pilot project of administering biological medications; however, in our opinion, the Ministry should find a systemic solution that would enable all patients the same degree of accessibility and, consequently, equal rights.

### **Activities during sick leave**

The Ombudsman received several complaints from dissatisfied patients, whose activities during sick leave were supervised by representatives of the Health Insurance Institute. It is impossible to expect all patients, regardless of their diagnoses, to be locked up in their apartments for the entire time of their sick leave. Employees with approved absence from work also very rarely received (written) instructions on which activities are recommended or permitted during the period of their sick leave. Since the situation in the labour market is tense, employers act in accordance with their interests and dismiss workers also for violating rules that apply to sick leave, although these are not completely clear or unambiguous.

We proposed that the Health Insurance Institute manage and regulate these issues by issuing instructions for activities and conduct during sick leave periods. We also proposed that medical practitioners notify employers about which activities are permitted or recommended during sick leave. On the basis of feedback sent to our office, we hereby establish that the Health Insurance Institute of Slovenia has considered the Ombudsman's recommendation.

### Rights related to the payment of contributions

The Ombudsman was informed about the issue of paying obligatory health insurance contributions that can aggravate or even prevent the enforcement of a child's rights as guaranteed by the UN Convention on the Rights of the Child (CRC). According to the Health Care and Health Insurance Act, children are insured as family members of an insured person, under the conditions set by law. This law also determines the following stipulation for insured persons and their members: "During the time when an insured persons' contributions are not paid, their rights to health services and reimbursements arising from obligatory health insurance are suspended. Until the contributions are paid, they can receive only urgent treatment on the account of obligatory health insurance."

Urgent treatment does not ensure all the services that should be available for children in order to ensure their health and development, and it does not guarantee the enforcement of the stipulation in the first paragraph of Article 24 of the Convention on the Rights of the Child; that is, it does not "recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health". Without a doubt, parents have the right and the obligation to maintain, educate and raise their children, as is also stipulated in the first paragraph of Article 54 of the Constitution of the Republic of Slovenia. These rights and obligations also include the obligation to ensure children's appropriate medical care and attention whenever they need it. Since, based on Article 56 of the Constitution, children enjoy special protection and care, the State should enforce its instruments, when it establishes that the constitutional rights of children are threatened due to the conduct or lack of care of parents or guardians. In the case at issue, the State does not intervene, but waits for the insured person to pay unsettled obligations arising from obligatory health insurance; until this happens, the State only ensures urgent treatment as the minimum provision of health care.

We believe that such a statutory regulation violates the rights of the child, since a child cannot influence the fulfilment of an obligation as stipulated by law, namely the payment of obligatory health insurance, nor does the child have the opportunity to have obligatory health insurance under a special category of beneficiaries whose contributions are paid by the State. We would also like to note the inequality of children, as laid down by the law, since children whose parents did not include them in the obligatory health insurance have more rights than the children of parents who did register them in the obligatory health insurance system, but did not pay the statutory contributions.

Together with the mentioned findings and opinions, we also sent the Ministry of Health a proposal on how the new law should regulate the open question of the insurance of children. We proposed that children should be determined as a special category of beneficiary, who would not be included in the obligatory health insurance system; however, upon reaching the age of eighteen, they should receive obligatory insurance as family members or independent persons or with any other status. In this way, the public administration would also be able to avoid quite a lot of work on enrolment certificates and the health insurance costs in our opinion would not be any higher. The Ministry completely agreed with our findings and has committed to including the Ombudsman's proposal in the new law regulating compulsory health insurance.

### 2.12.6 The Transplantation of Human Body Parts Act

We learned from the media that the National Council of the Republic of Slovenia prepared an act amending the Removal and Transplantation of Human Body Parts Act and submitted it for legislative procedure. Since the Ombudsman was not included in the drafting of the law, which significantly changed the current regulation of interventions in the human body, we sent our comments and proposals to the President of the National Assembly and proposed that he should inform all competent working bodies of our proposal.

The proposed changes to the law significantly alter its fundamental provisions, since the changes are not based on the preliminary explicit consensus of the individual, but on a statutory assumption that the individual consents if he/she does not explicitly oppose. Such regulation in the area of human rights is a very sensitive issue, and therefore, the law should stipulate appropriate measures that would ensure that even after death, the human body would be appropriately secured from intervention. This is why we issued a warning that the law should anticipate a special method of informing individuals about the changes, since we know on the basis of previous experience that in other cases neither medical practitioners nor patients will be informed about them. We proposed a supplement to the law imposing an obligation to inform everyone by means of a form that would enable denial of consent within a predetermined term, namely at the first visit to the medical practitioner, and an appropriate public campaign in the media regarding the novelties in the law, which should be implemented by the Government or the Ministry of Health. The proposed act was later withdrawn from the legislative procedure; however, we expect that the same questions will emerge when the next amending act is being considered.



## SUMMARY OF SUGGESTIONS AND RECOMMENDATIONS

- ✘ The Ombudsman again proposes that the Ministry of Health prepare the necessary changes to health care legislation as soon as possible, especially regarding the granting of concessions, public powers and supervision implementation.
- ✘ The Ombudsman recommends that the Ministry of Health more appropriately and efficiently regulate expert and administrative supervision of the implementation of health care services and the implementation of public powers of chambers and associations in the health care sector.
- ✘ The Ombudsman recommends that Ministry of Health stimulate the preparation of compulsory content on the communication skills of health care personnel with patients and their family members for all education institutions in the field of health care.
- ✘ The Ombudsman recommends that the Ministry of Health enhance the operations of a special working group for the preparation of necessary changes to the Mental Health Act and to regulate the implementation of special security measures in all health care institutions, not only in psychiatric institutions.
- ✘ The Ombudsman again recommends that a forensic (prison) psychiatric hospital be established as soon as possible, which will provide more appropriate treatment and accommodation for detained and imprisoned persons needing professional psychiatric help.
- ✘ The Ombudsman proposes an amendment to the Health Care and Health Insurance Act stipulating that children have independent health insurance regardless of the payment or non-payment of contributions.
- ✘ The Ombudsman proposes a more appropriate (professional, staff- and facility-related) regulation of the paedo-psychiatric treatment of children who need supervised treatment and cannot be accommodated in normal psychiatric wards.

## CASES

### **27. Maternity leave does not exclude the right to absence from work due to care for a sick child**

The complainant was on maternity leave for her seven-month-old daughter; her older son fell ill with acute myeloblastic leukaemia and was treated with intensive chemotherapy at the Paediatric Hospital of the University Medical Centre in Ljubljana. The sick child requires the constant care of at least one parent, is treated at home or in hospital, and his medical condition is very serious. The mother cannot take care of him and the baby alone, since the baby also requires constant care. It is completely inappropriate for her to take her healthy baby with her to the hospital when accompanying the sick child. This is why her son's paediatrician, upon the proposal of the expert collegiate body of the Paediatric Hospital in accordance with Article 30 of the Health Care and Health Insurance Act, filed a request for an approval of absence from work for the husband (father) for the care of the seriously sick child, with the right to wage compensation for sick leave. The request was denied by a letter from the doctor appointed by the Health Insurance Institute of Slovenia, which, however, is not at our disposal, since it was not received by the father. Therefore, the right to care for the child was denied to the father, because the mother is on maternity leave.

We asked the Health Insurance Institute to explain why the father was denied his right to wage compensation for sick leave due to care for a close family member, or how it was established in this case that the mother is able to offer appropriate care for a close family member while on parental leave. In our opinion, the mother on parental leave was not able to care for the baby and also care for her seriously sick child. We also requested an explanation as to why the application was denied by and not with an issued decision as required by the law. We proposed that the Institute decide on the application by an issued decision and inform us respectively.

The Institute informed us that it considered our proposal and issued a decision granting the sick child's father the right to temporary absence from work due to care for a close family member. **(3.3-12/2010)**

### **28. Long waiting periods for specialist expert opinions are not in accordance with the Patient Rights Act**

The complainant turned to the Human Rights Ombudsman of the Republic of Slovenia due to a one month waiting period for the medical report after a specialist examination in the dermatology department at the University Medical Centre in Maribor. The report, which the complainant required for the issue of a sick leave confirmation form, should have been sent in a few days. Since this did not happen, he called the department twice for further information. Firstly, the report was delayed due to vacations and the huge workloads of the staff, and further delay was the consequence of the alleged fact that "there were no doctors who would sign the report".

The Ombudsman asked the University Medical Centre Maribor why the complainant still had not received the specialist medical report and why he had not been informed on the delay in sending reports due to vacations. The Medical Centre replied that reports are dictated by doctors on dictating devices, which are then transcribed by health care administrators; the whole procedure takes 2 to 3 weeks. They added that the reports of examinations in the urgent dermatological out-patient clinic are written immediately, and only exceptionally in regular out-patient clinics (e.g. if a patient requires the report for various purposes). They also explained that the complainant's medical report was written two weeks after his examination; however, since the doctor was absent, the report could not be signed and the complainant did not want to accept an unsigned report.

The initiative was founded, since the University Medical Centre did not act in accordance with the third paragraph of Article 18 of the Patient Rights Act (ZPacP), according to which the patient should have received a written expert opinion after a specialist examination when the examination was concluded or within three working days after the examination at the latest. In urgent cases, the written expert opinion has to be sent to the patient immediately. The second paragraph of Article 18 of the ZPacP stipulates that the expert opinion should include diagnostic data and instructions for further treatment. Since further treatment depends on the expert's opinion, the Ombudsman believes that the period for issuing of an expert opinion at the University Medical Centre in Maribor is too long, although the third paragraph of Article 18 of the ZPacP could be interpreted more generally, meaning that the three-day term could be understood as the term for the issue of the expert opinion and not as the period within which the patient should actually receive the opinion. Considering the established situation, the Ombudsman warned the University Medical Centre in Maribor about the periods for issuing specialist expert opinions. **(3.4-40/2010)**

## 2.13 SOCIAL MATTERS

### GENERAL

The 2009 annual report of the Ombudsman summarises all the recommendations in the 2008 annual report; however, the majority of the written recommendations have not been acted upon. Since there were 23 proposals and recommendations, we cannot explain them all again; however, we would like to emphasise that the Government has still not prepared the Long-Term Care Act, which should urgently supplement the anticipated health care reform.

The general economic crisis and increased unemployment rates increase the social distress of people who are having many problems surviving even with social benefits. The number of complaints (433) is also a pointer to emerging problems in this area. The number of complaints is 16 per cent higher than in 2009. Since the end of the economic crisis on the basis of the the Government's measurements cannot be anticipated, people are gradually becoming more pessimistic about their future, and they often project their distress and anger over the inefficient state to institutions in the social care system. The Ombudsman understands the disappointment of people in social distress who do not receive the help of the state as they would expect; and more instruments of supervision of the use of benefits are being introduced, and these instruments are perceived by people as an expression of distrust in their honesty or even as stigmatising them for the emergence of the economic crisis.

People who live in economic distress often have no understanding of administrative procedures, which, in their opinion, only aggravate their situation and cause unnecessary costs. Professionals in competent institutions, especially social work centres, are often seen as soulless bureaucrats, even if they only perform their work within the scope of the regulations and to the best of their ability. Complaints claim very diverse irregularities which individuals experienced in contacts with social work centres; some professionals supposedly addressed them on a first-name basis, inappropriately commented on the reasons for their social hardship, acted arrogantly and similar. The Ombudsman cannot verify such claims, and therefore the complainants are mostly disappointed and dissatisfied with our work. However, when communicating with social work centre experts, we have established that they would require more support from their Ministry in unifying the standards of services and conduct, as well as more information (instructions) about new regulations that apply to their work.

The common denominators of many complaints are (great) expectations from institutions, where individuals turn for help in distress (e.g. complainant expect help in settling their debts). The Ombudsman understands their hardship; however, she always explains the competences of individual authorities. Unfortunately, people often do not understand that the aid which they receive only suffices for the most essential things, and that they will have make their own effort to actively resolve their situation. It very often occurs that individuals could more easily have resolved their problems already in the past when their hardship was not as severe; however, they failed to do so. Already mentioning their lack of activity in the past often provokes anger and causes them to (wrongfully) think that no one wants to help them.

The Ombudsman once again warns about the appropriateness of the statutory provision that sanctions the social benefit beneficiary who does not submit documents on the intended use of allocated funds in time. In cases of delay, social benefit is suspended for 18 months, even though the individual does not have any other means of surviving during this period. Another form of benefit during this period should be considered (food coupons or the purchase of some products, the payment of invoices and similar). It is unjust to suspend social benefit payments for 18 months due to the purchase of cigarettes or alcohol. Due to frequent misunderstandings in proving the intended use of allocated funds, the Ombudsman proposes that social work centres issue each beneficiary with a confirmation stating when and which documents were submitted. The General Administrative Procedure Act anticipates the issue of the confirmation only upon clients' requests, who, unfortunately, are not informed on this possibility. Therefore, it would be more appropriate to introduce the issue of confirmations as good practice that will simplify the work of employees in social work centres.

The Ombudsman also warns that applications for social benefits allocation cannot be filed in electronic form, thus causing unnecessary costs and a waste of time of applicants.

### 2.13.1 Lengthy resolution of complaints

Lengthy resolution of complaints about cash social benefits still remains a special issue. The Ministry emphasises that the term for responding was reduced from one year to ten months; however, violations of law are not minor, and the distress of individuals is even greater, since they do not know when their complaints will be resolved.

### 2.13.2 Municipal social benefits

Data received from municipalities show that with the declining economic and social situation the number of applicants for municipal social benefits is rising. Some municipalities allocate part of their budget funds for social benefits for people in social distress; however, we have established that some municipalities do not have set criteria for allocating such benefits; other municipalities have adopted such criteria, but have not published them, which justifiably raise doubts about the transparency and integrity of aid allocation procedures. The Ombudsman supports the efforts of municipalities which strive to help people in social distress, and she suggests that they adopt general acts and determine the criteria for the eligibility for such benefits and for related procedures, and that they should publish such criteria.

### 2.13.3 Nursing homes

The problems related to institutional care are described under the section on health care (special security measures according to the Mental Health Act) and under the sections on the restriction of personal liberty and National Preventive Mechanism.

By visiting individual institutions, the Ombudsman wishes to establish the situation and state in which the elderly live, and the working conditions for employees. There were many complaints about the standard of individual services and the conduct of staff, and we also received several complaints from employees referring to working conditions and mobbing. In direct contact with residents, we wish to establish any possible violations of their rights, which often occur indirectly and are related to inappropriate housing conditions. Since the Ombudsman is not an inspection authority, each visit is usually announced in advance (contrary to visits in the role of the National Preventive Mechanism), so that the management can prepare required documents and data, and notify residents of our visit. During our visits,

we talk to the directors and health care managers, as well as residents. On the basis of these talks, we prepare a report, which we send to the institution we visited, so that it can respond to individual findings and proposals. The supplemented report is then sent to the Ministry of Labour, Family and Social Affairs. Occasionally, we also visit institutions to verify statements made in individual initiatives or complaints. We believe that this manner of communication is positive and useful for everyone, and therefore we plan to implement it in the future as well. We support the interest of individual service providers in the experience and good practice of other service providers; however, we believe that the Ministry and associations in this sector should stimulate such exchange of experience.

We visited nine nursing homes in 2010. The quality of housing in new homes is high; adaptations and reconstructions of older homes have improved their technical and residential conditions. Rooms with fewer beds provide more privacy and improved consideration of individuality; well equipped multi-purpose rooms contribute to improved quality of living. We have not established major irregularities; the most common deficiency were badly determined internal complaint practices and therefore also weaker traceability of complaint resolution procedures.

All the homes that we visited have good relationship with the local environment; most have a well developed network of volunteers who cooperate in group and individual activities. Personnel also contribute to the quality of life in nursing homes, since they provide residents with proper care; therefore the Ombudsman strives for appropriate staff regulations. We had some criticisms of secured wards, where no permanent staff or other appropriate supervision is available at night time.

We believe that personnel must respond to residents' calls quickly, that immobilised residents are enabled to frequently sit in their wheelchairs if their health condition allows them to do so or if they want to (even at weekends and on holidays); that the residents in secure wards have the opportunity to go outside, and that all residents in nursing wards have the opportunity to be involved in individual and group free time activities in accordance with their abilities and interests. Regardless of the levels of physical impairment or dementia, all residents should be treated equally. It was any explained to us in many homes that due to the insufficient number of personnel, they are unable to dedicate more attention to individual residents or groups of residents, even if they know that those residents need extra attention. We received the same statement from almost all the homes, that independent residents can participate in many organised activities. The Ombudsman believes that one part of personnel problems could be resolved by introducing public works.

We noticed that some homes act inappropriately by removing call buttons from residents who too frequently and unjustifiably use them or do not know how to use them, and there is a chance that they could hurt themselves with the bells. In some homes, call buttons were damaged or the calling system was inefficient. In those cases, we proposed that the homes prepare protocols regarding the removals of call buttons, so that no unjustifiable disconnections occurred, or that they should verify the functions of the call buttons and the calling systems.

Regarding waiting periods for accommodation in nursing homes, we have established that no uniform record of all interested applicants has been created yet, so the data on the need for new capacities are not reliable.

#### 2.13.4 Repayment of social benefit in inheritance proceedings

The Ombudsman received several initiatives or requests for an explanation as to why the State claims receivables from inheritance after the death of a social benefit beneficiary and demands the repayment of the paid amount from heirs. The problem was also reported by the media; criticism of the work of national authorities was related mostly to the fact that social benefit receivers did not know about this obligation, and that the State decided to save some money on the account of the poorest citizens. Complainants also informed us of the inappropriate work of social work centres - namely, that they should issue decisions on the allocation of benefits including a warning that after the death of the social benefit recipient, the paid social benefit should be repaid to the State.

The Ombudsman has formed a standpoint on this matter, which was partially published on the website; the entire content is presented below. The right of the State to claim repayment of the paid social benefit was enforced by the Inheritance Act in 1977.

The Ombudsman does not have any data on whether the State has claimed receivables on the inheritance of individuals since the enforcement of this act and how many paid funds have been repaid so far. The State Attorney's Office of the Republic of Slovenia, which represents the State in such cases, informed us that the receivable does not carry interest, so that the receivable equals the amount of benefit received.

We believe that the ability to repay the received social benefit amount from inheritance is not in contradiction with human rights and the principle of a social state, since it is also related to the notion of social justice. It would be unfair to other social beneficiaries if the State gave taxpayers' money in the form of social benefits to individuals that were not materially deprived, since it was established after their death that they owned some kind of property. This property can partially be the result of receiving social benefits, since they mitigate the obligation to maintain the property (for instance, an apartment or house). It would be unfair to leave the preserved property to heirs, who possibly did not even have a family relationship or shared joint household with the testator.

Article 129 of the Inheritance Act also follows the principle of a social state and social justice, in that the State can renounce its claim if the testator's heirs (spouse and children) are socially threatened or need social aid. Social state actually means that the State provides for the individual when, due to various circumstances and even when working, they are not capable of providing for their social security by themselves. State aid to socially endangered individuals is not a simple gift, but a kind of loan which beneficiaries are not obliged to repay in their lifetime (except in special cases). However, there is no reason that heirs who do not need such aid should inherit this "loan" after the individual who created the inheritance (or preserved it) dies.

The Ombudsman believes that **social work centres**, by not issuing special warnings on social aid decisions regarding the provisions of the Inheritance Act **are not acting incorrectly**. The provision according to which the State can claim its receivable on the inheritance of an individual who was granted social aid on the basis of regulations is not intervening in the individual's situation and is not setting additional conditions regarding eligibility for social aid.

The decision on the registration of the State's claim on inheritance is not within the jurisdiction of the social work centre, since it cannot decide whether it should reclaim social aid means. The social work centre's decision on the allocation of aid in its operative part does not include a provision on the obligation for repayment from inheritance; therefore, it is not possible to

demand that social work centres specifically warn about this possibility in the decision's explanation. The explanation states and argues the contents of the decision (the so-called operative part of the decision), and it cannot point to all the consequences that could emerge in other areas. The purpose of the decision's explanation is that everyone can verify whether the authority made the correct decision on the claim.

The Ombudsman proposed that the Ministry of Labour, Family and Social Affairs include the above-mentioned provisions of the Inheritance Act in the information material on social benefits as an additional piece of information, based on which each individual can decide whether to even apply for aid if they believe that the possibility of repaying the aid to the State is unfair or unjust. The reply of the Minister of Labour, Family and Social Affairs to the National Assembly member's question at the National Assembly meeting on 15 November 2010 shows that the Ministry responded to the issue appropriately and ordered social work centres to properly inform social aid applicants on the contents of the mentioned provisions of the Inheritance Act.

In relation to the above-mentioned we also have to emphasise the decision of the Constitutional Court of the Republic of Slovenia (no. U-I-330/97/-28 as of 30 November 2000), which considered the constitutionality of the regulation regarding the repayment of received social aid in inheritance procedures, and established that the regulation is not unconstitutional.

Considering the above-mentioned, we did not find any violations of human rights that would arise from Articles 128 and 129 of the Inheritance Act, nor did we find any irregularities in the conduct of the national authorities that implement the mentioned statutory provisions.

### 2.13.5 Violence against the elderly

In 2010, the Ombudsman received a few complaints which exposed the inefficient provision of help in cases of domestic violence. The victims of violence were mostly women and elderly persons. We dealt with cases of elderly persons being threatened, insulted, blackmailed, neglected, humiliated and having their privacy invaded. We are also concerned about violence when family members, especially those who offer care to the elderly, prevent them from having contact with other relatives and friends. Violence against the elderly is very hard to establish, whether this concerns economic, physical or psychological violence. The elderly often hide such acts and do not wish to admit that it is happening to them, and they also do not wish to report violent abuse, since it is most commonly carried out by their children or grandchildren. Even when they ask the Ombudsman for help, they do not want them to carry any consequences.

Based on the complaints we investigated, we established that social work centres respond to cases of violence against the elderly; however, the victims often decline any help, although they need it, so they remain in the situation or environment where they are exposed to repeated acts of violence. We have also established that cooperation between the police and social work centres has improved (the Rules on cooperation between the police and other authorities in the detection and prevention of domestic violence were adopted in 2010).



## SUMMARY OF SUGGESTIONS AND RECOMMENDATIONS

- ✘ The Ombudsman proposes a modification of the statutory provision that sanctions the beneficiary to extraordinary social aid who does not submit documents on the intended use of allocated funds on time.
- ✘ The Ombudsman proposes that social work centres should issue each beneficiary a confirmation form on the provision of documents for enforcing social care rights in order to encourage beneficiaries to fulfil their obligations and at the same time to reduce the possibility for the unintentional errors.
- ✘ The Ombudsman proposes that the possibility to file an application for the allocation of social aid in electronic form be made available as soon as possible.
- ✘ The Ombudsman proposes that municipalities help people in social distress within their abilities, and suggests that they adopt general acts and determine the criteria for the eligibility for such benefits and for related procedures, and that they should publish such criteria.
- ✘ The Ombudsman recommends that the Ministry of Labour, Family and Social Affairs guarantee a regular and comprehensive exchange of experience between social care activity providers.
- ✘ The Ombudsman recommends that the Ministry of Labour, Family and Social Affairs guarantee the transparency of the system for admittance to institutional care and consequently to guarantee the reliability of data on such requirements.
- ✘ The Ombudsman recommends the prompt adoption of the Long-Term Care and Long-Term Insurance Act.
- ✘ The Ombudsman proposes a modification of staff regulations in nursing homes, in order to guarantee a more appropriate (higher) number of employees and better possibilities of performing public works in nursing homes.
- ✘ The Ombudsman again warns of the substantial lack of personnel in social work centres and expects the assurance of an appropriate number of employees who will be able to exercise their public powers and perform their tasks in a quality manner and in accordance with the law, and that they will perform their primary consulting function with better quality.
- ✘ The Ombudsman proposes a more appropriate determination of internal methods of complaint in institutions of the social care system and better traceability of complaint resolution.

## CASES

### 29. Psychological domestic violence

The Human Rights Ombudsman of the Republic of Slovenia was addressed by a complainant who has been the victim of the psychological and economic violent behaviour of her husband, who was an alcoholic. She said that she was afraid of her husband. Their family lived in deprivation; her husband bullied her for money for alcohol on a daily basis. We advised the complainant to contact the social work centre, and in case of violence she should call the police. We explained to her all the forms of help provided by social work centres to victims as well as victimisers. We also informed her on the stay-away orders and other measures as stipulated by the Family Violence Act. The complainant claimed that her husband was not physically violent, but that he “only” bullied her and blackmailed her for money; otherwise, he was quite good to her. This is why she only wanted that her husband would receive treatment for alcoholism, since he was already treated in the past and at that time living with him was more bearable.

Because they have a small farm that requires a lot of physical work, which is performed by her husband, she cannot afford not to have him around. We explained to her that psychological and economic violence are also forms of violence. We believed that it was important for her to be acquainted with all the forms of help available to her if the situation worsens. We also told her that no one can be forced to receive treatment for alcoholism, unless this is a sanction determined in criminal proceedings, and that treatment and its success depend on the motivation of the person to be treated.

Despite a very difficult situation connected with violence, poverty and alcoholism, the complaint could not be considered as founded, since the complainant did not claim any irregularities related to national institutions. We described this case in order to present the work of the Ombudsman’s office, since many complainants hope that the Ombudsman will help them resolve their situation. When the jurisdiction of the Ombudsman is not provided, we direct complainants to institutions where they can request help. **(3.9-2 /2010)**

### 30. Violence in a nursing home and the relocation of a resident

A resident of a retirement home addressed the Human Rights Ombudsman of the Republic of Slovenia regarding his relocation to another ward due to a dispute with a resident who shared a room with him. The complainant stated that his roommate had attacked and hit him, although he had done nothing to provoke his roommate. Since the complainant had resided in the retirement home for twenty years, the relocation to another ward was quite stressful for him. He believed that he was treated unfairly, which is why he asked us to intervene and help him return to his primary ward.

We made an enquiry in the nursing home where the complainant lived. We were interested in the reasons for relocating the complainant and the circumstances of the dispute between the co-residents, and we also examined the possibilities of returning the complainant to his primary room. The management of the nursing home responded that they had talked to the complainant, the other resident that started the fight, and all the witnesses after the incident. Despite the fact that the witnesses said that the complainant did not start the dispute, the home decided that a relocation of one of the parties in the dispute would be the best solution. Since the resident who started the fight declined a relocation, and the complainant at that time agreed to the relocation, the home decided to relocate the complainant. After the complainant had been relocated, the management of the home held several discussions with the complainant and assured him to respect his wish and act accordingly, and if there were

a possibility, he would be relocated back on the fourth floor. The management also informed the complainant that if he returned to his primary room, the home could not guarantee his safety and could not exclude the possibility of another dispute or any other disagreements.

The Ombudsman did not agree with the nursing home's actions, and therefore, we sent them our opinion and also asked them about the sanctions they were ready to initiate against the resident who had started the fight, namely by considering their policy in such cases, and how are they planning to guarantee the complainant's safety in the future, considering the fact that this incident took place in the lobby, where the residents meet on a daily basis; and how would the home have responded if the complainant had not agreed with the relocation. The nursing home did not answer our questions; however, after receiving our second letter, they held another talk with the complainant and offered to move him back into his primary room; however, he declined such relocation. The Ombudsman assessed that the nursing home's conduct was inappropriate. By relocating the complainant who was the victim of violent behaviour, the nursing home had set a bad example for other residents who can on the basis of the incident and its consequences conclude that physical violence is the right way to resolve problems. We believe that the relocation of a resident is reasonable only when this action is used to sanction a violent person, and if such an act is in accordance with the nursing house rules. The relocation of one of the residents involved in a quarrel cannot serve to its purpose if the residents frequently meet on a daily basis despite residing on different floors. The nursing home must unconditionally guarantee the safety of its residents. The Ombudsman assessed the complaint as founded, despite the fact that the complainant had agreed to the relocation, as the Ombudsman assessed that the conduct of the nursing home was inappropriate. **(3.7-15/2010)**

## 2.14 UNEMPLOYMENT

### GENERAL

In 2010, we processed 21 initiatives in this area, which is significantly fewer than in 2009 (40). However, it should be emphasised that this could be the consequence of the method of keeping records in the Ombudsman's office. Many complaints in the area of unemployment are related to the loss of residence or to the very poor social status of the complainant, and therefore, they are categorised under different sections according to the issues investigated. We received letters from several complainants who complained about the small number of vacancies in the public works system offered to unemployed persons by the State within the scope of the active employment policy. The Government determines the public works programme implemented within the active employment policy and managed by the Employment Service of Slovenia (ZRSZ) and its branch units, and the number of persons included in the programme, who are also financed from this programme for each budget period. We have assessed that there are not enough public works providers; the number of unemployed persons who would like to be included in the public works programme significantly exceeds the vacancies.

Many social care institutions (e.g. nursing homes) would like to be involved in this system. The Ombudsman thinks that the statutory regulation which stipulates that the unemployed, with the exception of the disabled under special conditions, are included in public works for only one year, is completely illogical.

We also dealt with a case described by a complainant who concluded a contract with the ZRSZ on involvement in the ZRSZ's activities – a Training Programme (workplace training). Based on this contract, she was trained and worked in the land register department at the local court. She received payment for the work, begun in September, at the end of October, as per the contract. However, the complainant expected that she would receive the payment (EUR 3/hour as stipulated by the contract) immediately after she concluded the first month of work and not 30 days after the work (case no. 132). We believe that in order to mitigate the social distress of unemployed persons, the deadlines for payments in such cases should be set as early after the work is completed as possible.

In 2010, we dealt with issues of erasing unemployed persons from the ZRSZ's register of unemployed persons. The consequence of an erasure from the register is that an unemployed person cannot re-register in the register of unemployed persons for six months after the date when the decision on the erasure becomes final. In this period, this person does not receive unemployment benefits. This also means that, if the unemployed person appeals against erasure from the register and this procedure takes several months, the unemployed person is then obliged to repay the unemployment allowance and at the same time, this person is also obliged to repay the cash social benefit. This is hopeless and often not feasible for the unemployed.

We dealt with cases of long waiting periods for integration in the employment rehabilitation programme.

The situation did not significantly change in comparison with 2009. The reasons for long waiting periods remain the same: there are too many unemployed persons waiting for integration in the employment rehabilitation programme (managed by ZRSZ) and there are too few employment rehabilitation services providers that have concessions granted by the Ministry of Labour, Family and Social Affairs. We also dealt with cases of complaints about the work of public servants at the ZRSZ and in its branch units, as well as regarding disagreements with their methods of work. According to the Ombudsman's opinion, ZRSZ employees should perform their work professionally and in accordance with the law. Their main concern should be to help the unemployed. The final goal of the whole process should not be the administrative procedure behind their desks, but to find jobs for the unemployed.

Issues related to income tax payment for unemployment subsidy is presented under Administrative Matters, Taxes and Customs. Issues related to the payment of cash unemployment benefits to foreign workers are described in this section, in the Employment of foreign workers subsection.

## SUMMARY OF SUGGESTIONS AND RECOMMENDATIONS

- ✘ The Ombudsman again recommends the adoption of measures that will shorten long waiting periods for integration in employment rehabilitation programmes.
- ✘ The Ombudsman proposes that the Government adopt a public works programme that will enable a higher number of unemployed persons to be integrated in such programmes, thus meeting the needs of future public works providers as well as unemployed persons.
- ✘ The Ombudsman recommends that payments for the work unemployed persons in public works programmes be made immediately after work has concluded and not 30 days after the work has concluded.
- ✘ The Ombudsman recommends that the Ministry of Labour, Family and Social Affairs decide on complaints against erasures from the register of unemployed persons as soon as possible and respect at least the two-month term as stipulated by the Administrative Procedure Act.

## CASES

### 31. The term for the payment of money earned is too long

The complainant is a single mother with a twelve-year old daughter. She sent the Human Rights Ombudsman of the Republic of Slovenia a complaint, stating great dissatisfaction with the operations of employees at the Employment Service of Slovenia branch unit. She was registered at the ZRSZ from 1 February 2009 as a person seeking employment, from 1 September she was included in three-month training at a job in a district court. She expected that she would receive the payment for the work by 15 October; however, this did not happen. When she checked why she had not received the money, the employee said that she would receive the payment on 30 October. The complainant appealed to the Ombudsman about the slow operations. She was convinced that the employees working in institutions that offer help to the unemployed should work faster, especially because the unemployed usually have great financial problems. We sent an enquiry to the ZRSZ. The management answered that the basis for the payment is the contract on inclusion in ZRSZ's activities programmes – Training programmes (workplace training). Article 9 of the contract stipulates that ZRSZ is obliged to pay the programme member cash benefits in the form of activities benefits and the costs of payment transport based on received documents and confirmed records on their presence issued by the programme provider, by the end of the month for the previous month. In accordance with this contract, the complainant received the payment for work implemented in September on 30 October 2009, the work in October was paid for on 30 November 2009, and the work in November was paid for at the end of December 2009. They emphasised that the payments are made according to a schedule prepared by the Ministry of Labour, Family and Social Affairs at the beginning of each calendar year for a one-year period. This schedule determines the deadlines for payment procedures, namely the dates of the preparation of calculations of branch units, the dates for sending claims to the Ministry of Labour, Family and Social Affairs, the dates for making payments from the budget onto the account of ZRSZ, and the dates of payments made to the unemployed. The dates of payments from the budget and dates of money ordered to the unemployed were the same, meaning that ZRSZ ordered the payments to the unemployed on the same day as the ZRSZ received them from the budget.

In this case, the Ombudsman did not establish any irregularities; however, she believes that despite modern information technology, the system functions too slowly, since it requires 30 days for the collection and control of data in relation to the payments for work performed by unemployed persons. She recommends that the term be shortened to 15 days; all beneficiaries should be informed on all anticipated dates of money orders at the time of the conclusion of contracts. **(4.2-32/2009)**

### 32. Outdated legislation disables good propositions of unemployed persons that attend educational programmes

The complainant sent the Human Rights Ombudsman of the Republic of Slovenia a letter stating that it is completely irrational that the Employment Service of Slovenia (ZRSZ) cannot issue a referral for implementing public works due to a statutory restriction. As an unemployed person, she attended school via the ZRSZ and was in the second year of the higher education programme. At the time when she sent the initiative to the Ombudsman, she was performing obligatory practical work at the University Medical Centre in Maribor. Since the management was satisfied with her work, they offered her work that was included in the public works programme. For this, she required a referral from the ZRSZ; however, a problem occurred there. The ZRSZ branch office explained to her that they could not issue a referral because she was participating in an educational programme.

We asked the branch office for further explanation. They explained that their rejection of the complainant's application for the issue of a referral for employment within the scope of the public works programme was based on valid regulations (Articles 53b and 16 of the Employment and Insurance Against Unemployment Act). The complainant was included in an educational programme, financed by the ZRSZ, from 1 October 2008. Therefore, they were not able to issue a referral for work. When she finishes the programme, she will be able to work within other active employment policy programmes in accordance with her employment plan. The explanation of the branch office was correct and in accordance with the regulations. We could only advise the complainant to finish the programme as soon as possible so that she will have better opportunities to find appropriate employment and also more possibilities to resolve her financial problems.

The Ombudsman, however, confirms the complainant's opinion that the current legislation in the field of employment via public works is too rigid and too restrictive. The law currently in force was passed in 1991, meaning that several solutions do not apply to today's situation and labour market requirements. This is why the Ombudsman has emphasised several times that this regulation should be modified, especially in the field of employment in the scope of public works programmes. According to the Ombudsman's opinion, the complaint was founded mostly because of the need for the modification in the law. **(4.2-5/2010)**



## 2.15 PROTECTION OF CHILDREN'S RIGHTS

### GENERAL

The Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) has established that children's rights in our legal system are generally well regulated; however, she expects the Family Code to provide further improvement and to regulate some issues previously indicated by the Ombudsman. Compared to 2009, the number of initiatives increased, and 58 out of 308 initiatives were addressed within the pilot project Advocate – a Child's Voice, described below.

Discussion on the new Family Code, of which much was expected, was paused for a long period and focused only on how to define the family. The Ombudsman believes that the search for new, appropriate legislative solutions should be based primarily on children's rights and their best interests.

In 2010, the Ombudsman actively participated in preparing the new Optional Protocol to the Convention on the Rights of the Child, which is being developed by a special working group within the United Nations Organisation. In this field, cooperation with the Ministry of Foreign Affairs was excellent, and we expect it to result in a new protocol enabling consideration of individual claims also at the UN level.

Children's rights to health care are not frequently violated; however, we would like to emphasise a systemic flaw (described in more detail in the health insurance section). Since children are insured with their parents, they might suffer from the consequences of contributions not being paid. We propose this issue be resolved in the new health legislation.

We have to emphasise once more that interministerial work is a source of difficulty for the state authorities or, in other words, it is a convenient excuse for not resolving some issues. For some time we have pointed out the lack of adequate institutions in Slovenia for children who need to be treated for mental illness or condition in a closed department; instead, they are accommodated with adult patients, which is unsuitable. The issue of accommodating children with more complex problems requiring a specific approach from experts has also not been resolved.

Again, the Ombudsman suggests reconsidering the organisation of specialised family courts where decisions should be made by judges with additional expertise on family relations. Attorneys should likewise obtain corresponding qualifications to adjust to such courts, as it is observed that representatives are not always qualified to work on such cases.

In order to describe general problems, a teacher's letter circulating on the Web is included. The teacher sees her pupils as spoilt children who only demand their rights, disregarding the opinions and requirements of parents. She believes that children's rights should be limited or even abolished by law.

The Ombudsman's opinion, which was also communicated to the senders of the letter, is that a teacher who believes that pupils are in school because of the teacher discredits pupils, schools and the occupation of teacher.

This is not something a state can afford. The Ombudsman believes that children should have so many and such rights as are expected and demanded by adults for themselves. Nevertheless, parents, childcare workers and teachers should help children to understand their rights correctly and help them to exercise them in accordance with their age, maturity and interest. We are convinced that if there were sufficient mutual understanding between children, parents and teachers, a good school atmosphere and genuine relationships between participants in the educational process, that procedures now being resolved even before the courts, with lawyers and state authority, would be unnecessary. Adults are responsible for establishing mutual respect, from which it may be assumed that adults are incompetent to establish proper order and a pleasant working atmosphere.

### 2.15.1 The best interests of the child

The Ombudsman observes that the competent authorities (Social Work Centres, courts) too often disregard their obligation to be guided by the child's interests when deciding on children's rights. Therefore, statements of reasons for their decisions frequently involve explanations of family relationships important for the justification of the decision or judgement, but do not provide information on how or if the child's interests have been considered. If there is no evidence of the child's interests in the decisions, such decisions made by the state authorities are disputable and can be contested, as the most important parts of the decisions cannot be tested. All authorities deciding on claims or other legal instruments should thus pay more attention to this issue.

It should be noted that consideration of children's interests might cause major concern: how should a state authority, which in accordance with the constitutional requirements on the rule of law (Articles 2 and 120) supports its decisions on legal provisions, act when it discovers that consideration of children's interests would dictate a different decision, formally not appropriately justified, but following one of the basic principles of the Convention? In accordance with Article 8 of the Constitution of the Republic of Slovenia, KOP is used directly, but its principles cannot be simply used as the only legal basis, eliminating all others. Pursuant to the principle of equity in such cases, disregard for cogent legal norms or their broader interpretation might be justified, but this could lead to arbitrariness in decision-making and, consequently, to unconstitutionality.

In deciding on children's rights, the assumed child's interests cannot be the sole legal basis, but can only be a guide dictating a decision made in positive law upon assessment of all circumstances. When preparing regulations governing children's rights, legislators in particular must therefore pay specific attention to defining the legal bases of each right, which will provide the decision-making body with adequate possibilities to adjust their decisions to circumstances. This responsibility cannot be left to executive bodies or the judicial authorities. The Family Code could additionally contribute to resolving concerns regarding the child's best interests with a provision stating that all decisions of the competent authorities **which do not explain the child's interests are null and void**.

#### The opinion of the child

KOP binds all Signatory States to guarantee children's right to free expression in all matters related to them. The relevance of the expressed child's opinion should be assessed in accordance with the child's age and maturity. It undoubtedly follows that in every procedure, the child's opinion should be obtained; this does not mean, of course, that the competent body's decision should observe this opinion. The competent bodies must therefore assess the child's opinion and explain how and to what extent they have considered the child's

opinion when stating the reasons for their decision. This is also required by Article 3 of the European Convention on the Exercise of the Children's Rights. Unfortunately, in practice, statements of reasons for a decision deal only with declarations made by the parents in a dispute and not with the child's opinion.

The child's opinion should be considered throughout the procedure. It is essential that the first opinion be acquired rapidly and that the child be previously informed of the opinion in a way he or she can understand. A rapid acquisition of the opinion allows the monitoring of variations in the child's opinion through time and establishes causes for potential variations.

We have observed that children frequently speak to different experts preparing expert opinions, social workers and, occasionally, even the court. The child is usually only partially informed on the relevant data and does not completely understand the impact his or her opinion might have on the final decision. This is also one of the reasons the child feels ignored, since children only express their opinion with difficulty and after thorough consideration, but do not believe this opinion has adequate consequences for their real lives. This quickly causes children to refuse to express their opinion, as only too often they have to cope with the responses of a parent who does not agree with the child's opinion. The brochures issued by the Supreme Court of the Republic of Slovenia, 'Jana Goes to Court' and 'Jan Goes to Court' are very helpful to children.

Some Social Work Centres in Slovenia already have special rooms for discussions with children. In these rooms, which provide comfort and a sense of well-being for children, a qualified person can talk to them, or to one or both parents as well. The entire room is video surveilled and the video can be monitored in another room where a judge might be present. The judge may submit his or her questions for the child to the expert worker by means of a technical device. In addition to the child's answers, the judge can also detect their non-verbal communication messages, which often express more than words. According to our data, courts only seldom take advantage of such rooms. We believe this is an excellent solution which should be more widely introduced into the judicial work throughout the country. If necessary, recordings of interviews are also available to other experts, which could often reduce stress for the child. The protection of all collected personal data must absolutely be guaranteed. An authority which has failed to obtain the child's opinion during the decision-making process has therefore failed to observe the requirement according to which the child's interests are the primary consideration; such decisions should thus be sanctioned by the worst penalty, which is nullity.

In continuation, some outstanding issues concerning the following areas will be presented in more detail:

1. Family relations
2. The rights of children in kindergartens and schools
3. Sport
4. Policy
5. The project "Advocate – a Child's Voice"

## 2.15.2 Family relations

### **The right of parents to joint decision-making on issues essential for a child's development**

Parents often believe that if a child is entrusted to them for custody and education, this means they may exclusively exercise parental rights and the other parent has visitation rights only.

We believe that Article 113 of the Marriage and Family Relations Act is often not exercised in practice. This article ensures that irrespective of the ending of cohabitation, both parents have equal rights to (co)decide on issues essential for the child's development. The most commonly observed issues include difficulties in co-deciding on the child's place of residence. In our opinion, the state authorities, including the courts, do not respond adequately to cases where one of the parents decides to arbitrarily move the child to a new place of residence, despite the fact that both parents should previously reach a consensus or obtain a decision from the competent court. It should be pointed out that, in our opinion, it is usually not in the child's interest to move frequently, which might include changing schools and contacts with people. If one of the parents arbitrarily moves the child, who then has to change school or kindergarten (often the child has not (yet) been entrusted to this parent for custody and education), we believe that a quick and efficient response from the state authorities is required, including the courts. If there is no response, the court, due to lengthy procedures, after a year or more, might only establish that it is not in the child's best interest to change his or her living environment again.

Article 15 of the draft Family Code also requires decision-making by agreement of both parents on issues having a significant impact on the child's development. The Ombudsman proposed an amendment to this to partially state the key issues. According to our experience and views taken, such issues in particular include the following: the child's place of residence; his or her school; decisions on medical interventions other than urgent treatment, and exercising other rights according to the rules governing patients' rights; decisions on orienting the child in sport, artistic or scientific activities which require a lot of the child's effort. We are convinced that the proposed amendment to the law would in practice eliminate many doubts or ambiguities.

### **Contacts under supervision**

In practice, decisions to use temporary injunctions to define contacts under supervision are common, and the circumstances used to justify such decisions are not clearly explained. However, the court has never defined the role of supervisors. Supervision is usually performed by Social Work Centres, although they try to avoid this obligation, claiming that it is not their duty; therefore, their tasks are not clearly defined. Consequently, the only function of the Centres' experts concerning contacts is to be present, which cannot be a suitable solution, except in exceptional circumstances.

We have also observed that the courts often do not define a concrete date for contacts under supervision and leave this decision to Social Work Centres. This practice is unacceptable, since the Centres simultaneously perform supervision. Case law is here not uniform, as in some cases the higher courts have, in our opinion correctly, overturned such decisions. When parents cannot reach a consensus, power of decision making on the extent, manner, place and date of contacts is delegated exclusively to the court. We have also noted several cases when contacts under supervision took place for a long period (a year and more), particularly in circumstances when the civil court was waiting for the penalty court's decision. We believe that contacts under supervision of such duration are intolerable.

The purpose of contacts under supervision must be to observe, monitor and work with parents, not protection. Therefore, we consider it reasonable to amend Articles 165 and 166 of the draft Family Code to allow supervision of contacts by third persons. Such supervision could be performed by experts in clinical psychology or other professions, representatives of non-governmental organisations or anyone who, according to the court, could attain the ends pursued by the court when it determines contacts under supervision.

### **Work with parents**

The Ombudsman has often observed that the competent authorities are not sufficiently concerned with parents whose mutual issues and disputes are not resolved and whose actions interfere with the child's interests. The Family Code also tried to resolve this issue and provided for mandatory counselling for parents at the Social Work Centre before they propose that the court decide on the custody and education of the child. Unfortunately, in our opinion, the first paragraph of Article 204 is incorrect, as participation in counselling is stated as the procedural precondition for judicial proceedings. However, the provision does not sanction the evasion of one of the parents participating in counselling. This allows for one or both parents to act in a way that prevents the exercise of the child's interests in judicial proceedings. Therefore, it would be reasonable to state clearly in the legislation that evasion of previous counselling is considered an activity that contradicts the child's interests, or otherwise ensure that judicial proceedings begin and end independently of the parents' behaviour.

### **Restriction or withdrawal of parental rights**

According to our information, the courts in practice only rarely withdraw or restrict parental rights to one or both parents. We believe that the courts should use this measure more often, as it is used to protect the child. It is intolerable that in practice this right is actually restricted, yet does not conform to procedure, and not in the manner specified by legal bases, but only by obstructing or preventing the exercise of formally rights which have formally not been interfered with.

## **2.15.3 Rights of children in kindergartens and schools**

### **Overcrowded kindergartens**

In 2010, issues of children in kindergartens were associated with overcrowding, which was resolved in various manners by different municipalities, particularly by finding options to include children in kindergartens in neighbouring municipalities and by adopting additional measures in the regulations for enrolment of children in kindergartens. Both resulted in the dissatisfaction of parents and disagreement with the measures, and some parents addressed us, convinced this amounted to discrimination. Driving children to kindergartens in other municipalities incurred additional expenses, and parents believed that the municipality which did not provide for sufficient places in kindergartens in due time should reimburse the expenses or additionally reduce payments. We explained to the initiators that the municipality should adopt an appropriate legal act to provide such help, as there is currently no legal basis for reimbursing travel costs. In respect thereof, the Ombudsman believes that it would be fair to refund or subsidise travel costs incurred by parents if overcrowding in kindergartens cannot be resolved otherwise.

We have also received several initiatives in which parents opposed additional measures for the enrolment of children in kindergartens which favour children with permanent residence in a particular municipality.

## Nutrition of children in kindergartens and schools

Parents once more turned to the Ombudsman with regard to the provision of non-meat nutrition in kindergartens and schools and to the problem of special diets in secondary schools. In respect thereof, we addressed the MŠŠ, which was just about to prepare a new School Meals Act.

Proposals for, and comments on the draft act prepared on the basis of numerous initiatives were submitted. Unfortunately, the short deadline for the submission of comments and proposals did not allow for a longer study of the prepared materials and consequences of the proposed solutions. The Ombudsman's comments were therefore concrete and related to the content of individual articles.

More and more frequent requirements for vegetarian diets were brought to the attention of the MŠŠ. From the perspective of human rights, nutrition is a matter of the right to the freedom of conscience, which includes the right of the individual to freedom of religion. We have therefore proposed that the act set out the obligation of schools to take into account such beliefs when preparing the mandatory meal, which means the right of all children and adolescents to eat at least one meal. Moreover, we informed the MŠŠ of our support for all efforts striving for one free meal provided by schools, both primary and secondary. This would provide all children and adolescents with at least one nutritious meal per day. Considering its objectives, this would enable the act to achieve its purpose and place all pupils from primary and secondary schools in an equal position. The MŠŠ rejected the Ombudsman's suggestions related to vegetarian, vegan and other belief- or religion-related diets, and pointed out that they would continue to observe the Healthy Nutrition Guidelines prepared by the Ministry of Health.

The Ombudsman observes that the current Healthy Nutrition Guidelines in educational institutions (hereinafter: the Guidelines) do not address the particular adaptation of meals for children and adolescents taking medication, suffering from diseases related to metabolic and digestive disorders, or deficits in particular nutrients. However, the Guidelines indicate that in such cases, based on the opinions of the personal doctor, parents, meal organiser and, if necessary, a clinical dietician who proposes menus for the prescribed diets are to be considered. The applicable regime thus recommends the adaptation of meals for children and adolescents with such needs. However, it does not expressly impose an obligation on schools to implement such adaptations. The competent persons pointed out that parents have the option of fulfilling their child's special needs through the Parent Council and the school. They assured that this problem is expected to be resolved by the adoption of the new Healthy Nutrition Guidelines. These should define the educational and health aspect of school nutrition, and the monitoring of menus and orientation. This should be performed by the Institute of Public Health of the Republic of Slovenia and regional institutes of public health. The Ombudsman has established that until then, because of their health limitations, adolescents with such problems will be in a less privileged position compared to other pupils.

School nutrition is related to the issue of the prohibition of vending machines in schools. The Ombudsman believes it is questionable whether children and adolescents will eat more healthy food due to the elimination of vending machines, and that this aim cannot be achieved only by means of a legal prohibition. The Ombudsman supports all efforts to ensure healthy nutrition for children and adults, but recalls the excessive standardisation which additionally restricts the autonomy of individual school in organising and implementing their activities. The vending method does not make food and beverages unhealthy, as vending machines may also offer healthy food and beverages. This raises a question regarding the rationality of the new arrangement, as sales limited to school kitchens requires an additional workload and raises costs.

### Children with special needs

There were fewer initiatives relating to the field of education of children with special needs compared to the previous year; the content of the initiatives related to long waiting times for decisions on the placement of children in appropriate programmes. The competent persons responded to the Ombudsman's warning with justifications claiming insufficient staff and the large caseload of applications for children's placement. Nevertheless, understaffing in individual fields should not cause delays and exceeded legal time limits.

Procedures should be conducted in the order of filed applications for the placement of children; however, this is not possible in all cases. The Ombudsman's intervention always aims at encouraging the competent persons to expedite procedures for all candidates as far as possible. We believe that in this context, all cases are urgent, but the most urgent cases are those in which a child changes education levels and goes to another school which does not provide any additional support until a decision is issued, although such support might be essential for the child. It is understandable that such procedures should be conducted from the expert perspective until the child is included in the new institution. Procedures for placing children with special needs should be regulated in such a way as to provide not only quality, but also the efficient and timely management of children with special needs, which will enable their timely inclusion in a kindergarten, school or institute. The adoption of such a regulation is a necessary step towards the full exercise of the rights of children with special needs to education and training for an active life in society as specified in the second paragraph of Article 52 of the Constitution. The final objective of each regulation of placing children with special needs should provide children with the actual possibility of being fully, actively and equally included in social life.

Two more issues came to the attention of the Ombudsman: the exceptional assigning of an assistant to children without severe physical handicaps (such as epileptic patients), and the issue of managing children with behavioural and emotional disorders in majority schools or educational institutions.

The Ombudsman specifically recalls the observance of the applicable Placement of Children with Special Needs Act (particularly Article 13), which allows children with Down's syndrome and other mentally handicapped children to be included in schools with their peers (majority schools) and provides for different forms of movement between programmes. According to our information, this only rarely happens in practice. The new Placement of Children with Special Needs Act should therefore be prepared in such a way that it does not prevent any group of children with special needs from receiving an education with their peers. Joint education at primary level should also be encouraged by an adequate provision in the Elementary School Act. Legislation on the schooling of children with special needs should retain the current possibility of conducting an adapted programme with lower educational standards also in regular schools. The exclusion of this possibility would signify discrimination of mentally handicapped children, including those whose abilities allow the exercise of an adapted programme with lower educational standards in a majority school. Primary education is obligatory, which also means that the state should provide the conditions for implementing all programmes for all children.

The exclusion of an entire group of mentally handicapped children with no criteria specified by law or conditions laid down in the regular school system by excluding adapted programmes with lower educational standards amounts to a violation of the obligations Slovenia adopted by ratifying conventions on the rights of children and on the rights of persons with disabilities.

## Violence in schools

The number of initiatives concerning issues of violence was higher than the previous year. The Ombudsman most frequently received complaints by parents who felt that childcare workers and teacher treated their children violently. There was good cooperation with the Inspectorate of the Republic of Slovenia for education and sport regarding events in educational institutes, as the inspectors responded quickly to all complaints of violent treatment of children and tried to investigate each case in detail. The answers to our inquiries received from schools indicate that the response of employees in educational institutions to cases of peer violence is often inadequate and slow, and that too little attention and concern is devoted to this issue.

Given the violence in schools and the fact that prevention practices and acts of violence are diverse, this should receive more attention. With this purpose, the Ombudsman supported a research project - with the Institute of Criminology at the Faculty of Law in Ljubljana as the main investigator - which took place between 2008 and 2010. The project was funded by the European Social Fund and the Ministry of Education and Sport. The research, "Consideration of Emotions in Recognising, Managing and Preventing Violent Treatment in School" included 473 pupils in the third at primary school and 178 employees. The findings of the data acquired confirmed the rationality and indispensability of considering emotions when facing violent treatment and its consequences. According to the research, the most frequent forms of intolerable treatment are verbal attack (experienced by every second pupil), defamation and physical violence (experienced by every third pupil), theft of personal belongings (experienced by every fourth pupil) and threats (experienced by every fifth pupil), and every seventh pupil reported social exclusion. More than a third of the pupils interviewed stated that school employees almost never noticed violence among pupils. The results of the interviews with employees show that further training of employees in the field of emotional literacy would be welcome. Material was prepared on the basis of the project findings, primarily for management and other professional workers in primary and secondary schools, as well as for parents. The key point of the material is to emphasise the need for preventing hostile emotions (hatred and contempt) in mutual relations in schools and developing friendly relations of respect and self-respect. When and if prevention is not efficient, one should be consistent in maintaining that such emotions can be expressed in a non-violent and socially acceptable way. The aim is to achieve tolerance – people who do not like each other should at least tolerate each other and not use violent behaviour, in the form of humiliation or hate speech towards people they do not accept.

### 2.15.4 Children in sport

Fewer initiatives were received in this field compared to previous years. Some of the initiatives in 2010 also related to the payment of indemnities for transferring memberships between sport clubs. We therefore repeat the Ombudsman's warning from the previous year that the internal regulation of relations in sport societies without external control is deficient, which might lead to abuses or at least irregularities. Among the initiatives received regarding sport (described as case no. 11.0-26/2010), consideration should be given to the initiator's opinion that the **minimum age of a child should be determined as a condition for participating in martial arts**. The initiator described what happened at the national taekwondo championship, when parents had encouraged their seven or eight year-old children treat an opponent violently. It seems that (over)ambitious parents do not always assume their role as protectors of their children's interests. On the basis of KOP, the primary consideration of all activities, including sport, should be children's interests provided both by public and private institutions, sport clubs and societies included.



### 2.15.5 Children in political propaganda

We received a complaint that a newspaper article used children for political propaganda for the current mayor. Children in a primary school were shown photos (with the headmaster's permission) of mayoral candidates and asked whom they would choose. According to the initiator's judgement, the children were abused for political propaganda, and he asked the Ombudsman to intervene. His complaint was that the results of the children's choice violated electoral law (provision on restricting publishing of public surveys). Because he also thought the article was a mix of journalistic and advertising content, we referred him in this regard to the Journalists' Ethic Council, which is competent to take a position on such issues.

We assessed that at the primary school where the disputed survey was performed, no public convention was organised in relation to the election campaign as defined by the Elections and Referendum Campaign Act (ZvoK) as a pre-election convention. In our opinion, entry into a primary school department and interviewing children concerning mayoral candidates **cannot be considered a pre-election convention**, which is usually summoned and performed with a view to supporting a candidate of a political party. The journalists who performed the survey showed the children photos of several candidates for mayor, and children knew some, but obviously not all, of them. The method of obtaining the children's opinions based on the recognition of each candidate could not be considered as manipulation, as many voters make their decisions on such a basis. Otherwise, candidates and political parties would not without exception publish posters, TV-advertisements and similar messages. If the children had been shown photos of mayoral candidates, this cannot be deemed election propaganda. We assessed this was not deliberate wilful manipulation of children. Children are not eligible to vote, so using election propaganda to influence their decisions would be rather absurd. It would be reasonable to influence children's parents, the voters, but children usually do not have such a strong impact on their parents' decisions, and manipulated children could not manipulate their parents to make a different political decision than they would otherwise.

We do not believe that publishing the findings of the survey falls within the definition of public opinion polling on candidates, the publishing of which is restricted by Article 5 of ZVoK. This is confirmed by the data on the relatively small group of children, who was not summoned to see presentation of each candidate; they were only asked who they thought was the most appropriate person to lead the municipality. The publication of the established opinions therefore cannot be considered the publication of a public opinion polling. It is important to note that children have the right to the free expression of their opinions, which is expressly guaranteed by Articles 12 and 13 of the Convention on the Rights of Children (KOP). Declarations by children related to political issues are thus in principle not disputable when they express their true will, judged in accordance with their age and maturity. We believe that asking children questions related to politicians and policy should not be absolutely forbidden; however, their admissibility or adequacy should be assessed case-by-case with respect to their content and in the context of the circumstances.

We could not agree with the initiator's opinion, according to which school autonomy was violated in the case under consideration, as the survey was performed with the knowledge and consent of the headmaster.

### 2.15.6 Advocate – a Child's Voice

The institution of advocacy is intended to allow **children to be heard and considered as the subjects of rights**, particularly in cases when their parents cannot provide suitable representation. The Advocate – a Child's Voice project began in 2007 in five areas. The aim of the project was to prepare a model for the advocate who should allow children - in accordance with the Convention on the Rights of Children (KOP) - to participate actively in decision-making processes, and create a foundation for an independent institution of children's rights advocate, which could be included, in terms of content and organisation, in the formal legal system and thus provide advocacy at the national level.

As the draft Family Code which provides for the establishment of the advocacy is still being debated, the action of the child's advocate can only be continued within the project. Its extent has already exceeded the project's boundaries, and the capacities of Ombudsman, who has been leading the project since 2007. At that time, the project was regionally limited and planned to last for one year; however, it remains under the Ombudsman's auspices due to the unresolved legal basis. In addition to 21 members of the SIPP (the Pilot Project Implementation Group), Advocate – a Child's Voice currently includes 63 active advocates, six coordinators, five supervisors, three members of the examining board, and 17 lecturers when the training is going on.

An advocate was assigned to 97 children, most often in cases of child custody, contacts and violence against children and family violence, suspected negligence of the child and sexual abuse, rejection of placing the child in a foster family or institution or wish to return home from foster care, and sudden changes in the child's behaviour. Initiatives to provide an advocate were most commonly submitted by institutions, one of the parents, sometimes both parents, guardians, relatives. The average age of the children was 11 years, and the average number of meetings between the advocate and the child was eight meetings per child. Thus the advocates had approximately 800 meetings with children in need. The meetings usually took place on the premises of youth centres, crisis centres, primary schools, advocates' offices, libraries, dedicated municipal rooms, administrative units and institutes.

Analysis of the advocates' reports and of their work monitoring shows the following:

- children are still too often treated as objects (experts should also change their attitude),
- the child's interests are still not the primary consideration in deciding on their rights,
- there is a significant gap between the legal regulation of the child's status and the actual situation in society.

Considering that painful experiences may mark a child for life, we again recall that children should be particularly protected and cared for, and their interests should be the primary consideration in all activities related to them. Parents and various participating experts and institutions might not be sufficiently aware of their responsibility in raising children. The Ombudsman would also like to contribute to bringing up children, which is not always possible in practice. Even a firm representation of a child and transmission of his or her will in individual procedures is not enough if children's rights under international and national legislation cannot be exercised. Following the advocates' reports and monitoring of their work, the following issues should be emphasised:

### 2.15.7 Foster care

Foster care should become a short-term measure also in everyday practice, not only on paper. We believe that more attention should be devoted to the operational plan concerning all participants (children, parents, foster parents) and to the assumption of responsibility of all of them. The emphasis should be on establishing cooperation between parents and foster parents with a clear delimitation of their roles, tasks and responsibilities. For example, after weekends spent with his mother, a 12-year old boy was returning to his foster family in a collapsed state and he made less effort at school. The expert services and his foster mother thought that contact with his mother had a bad influence on him, and increasingly restricted it. There was no communication between his mother and foster mother. After a few meetings between the child and his advocate, it was clear that he wanted to go home, but he had lost hope. His changed behaviour was caused by his wish to stay with his mother. The boy firmly told his advocate that the foster family took good care of him, but he wanted to go home. When his voice was finally heard, he regained his trust and hope. His school work improved, and together with the advocate, he helped establish communication between his mother and foster mother. Unfortunately, his trust was later reduced due to the lengthy procedure to terminate foster care, although it had been established that conditions for return had been fulfilled. Only after the resolute intervention of the advocate in cooperation with the foster parents, was the boy able to return home at the end of the school year.

### 2.15.8 Family courts

Regarding the work of advocates, the participation of children in judicial proceedings is also emphasised. The right of the child to actively participate, alone or through a representative (parents or the advocate), in all proceedings related to them must become an obligation and not an exception. A child-friendly judicial administration should be set up to provide respect for the child in all procedural phases and effectively protect their rights in accordance with their age and understanding – adapted to the child's particularities and potential special circumstances of the case. In order to achieve this, all experts cooperating with the child during judicial proceedings should complete suitable additional training and be included in supervision with a view to ensuring the child's best interests in all procedural phases.

## SUMMARY OF SUGGESTIONS AND RECOMMENDATIONS

- ✘ The Ombudsman proposes that experts determine the most suitable management of children who need paedo-psychiatric treatment in protected departments.
- ✘ The Ombudsman proposes that the Government establish conditions for the immediate operation of a hospital unit with the option of protected care for children with more complex problems.
- ✘ The Ombudsman again proposes the establishment of specialised family courts.
- ✘ The Ombudsman recommends that the Ministry of Justice should examine the position of the child as a privileged witness, and prepare expert bases for legal changes.
- ✘ The Ombudsman proposes that the Government regulate the issue of representing children on suspicion of sexual abuse in such a way that qualified representatives from a special list (or register) of experts will represent the children in such cases.
- ✘ The Ombudsman proposes that the premises of Social Work Centres (or other providers) for supervised contact should be decorated so that contacts take place in a child-friendly environment.
- ✘ The Ombudsman proposes that the Government provide additional funds to perform supervised contact.
- ✘ The Ombudsman recommends that the Ministry of Education and Sport examine the option of determining the minimum age of children for participation in martial arts.
- ✘ The Ombudsman suggests that the Government prepare the legal bases for establishing a children's advocate as soon as possible.
- ✘ The Ombudsman recommends examining the option of reimbursing travel costs to parents who are obliged to take their children to more distant kindergartens in other municipalities due to overcrowding in kindergartens.
- ✘ The Ombudsman proposes an amendment to the Act Restricting the Use of Alcohol to include the possibility that parents authorise an adult to accompany an adolescent to events where alcohol is for sale.
- ✘ The Ombudsman recommends that the competent authorities monitor problems related to discarded hypodermic needles and ensure the appropriate disposal of used needles.

### 33. Parents' arrest does not restrict their parental rights

A foreign citizen in detention addressed the Human Rights Ombudsman of the Republic of Slovenia. She said that while in detention she had sought help from the Social Work Centre (CSD), as her children, also foreign citizens, were at home alone. The initiator wanted CSD to help her organise care for the children during her detention or imprisonment. She wanted to know the procedure after her return from prison. CSD told her that they could not discuss this matter. Only after had been released from prison, would CSD decide whether the children would return to her or not. Nothing could be anticipated. According to the initiator, the experts at CSD were very pleasant until they obtained her consent to the assignment of a custodian for both children. Later, whenever she had a question, CSD employees allegedly told her that the mother's consent was not necessary because CSD would make all decisions. The initiator was told that she could not decide about her children, as she was in detention, and that the children would be placed in foster care, which was beyond her control.

She asked CSD for help, and in return, they threatened to take the children into care. She was afraid that she would not be able to live with her children even after her release from prison. Because of these fears, the initiator arranged residence for both children with her parents in their country of origin and they have already left. CSD required the children come to Slovenia for an interview on the basis of which it would be decided whether they would be placed in foster care in Slovenia, or be allowed to stay with their grandparents in the country of origin. The initiator was told by CSD that the country of origin could not provide equally as high a standard of living as Slovenia.

We made inquiries at CSD and warned against potential interference with the rights of children and parents. The initiator informed us that the attitude of CSD towards her was significantly better after our intervention, but she was told it was wrong to approach the Ombudsman. CSD then decided that the children could stay with their grandparents in the country of origin. The Ombudsman's intervention was thus no longer needed.

As often happens in similar cases, we were face with the opposing views of the initiator and the holder of public authority (CSD). There was no direct evidence for the initiator's allegations except for her statements, which prevented us from taking a position on whether the rights of the mother and the children had been violated. Nevertheless, we found no proof against her allegations, and therefore we believe they are true. We also believe that the activities of CSD were aimed at protecting the children's interests, but they may have tried to do more than they were obliged to do.

It should be noted that the fact that the parents of a child are in detention or in prison does not in itself mean, nor should it mean, that they are limited in exercising their parental rights. Exercise of such rights in this case is extremely limited, but parents should be the first to have the right to provide education and care for their children when they cannot do this themselves. Only after the competent authorities have established a potential threat to a child, may they act contrary to parents wishes. In all other cases, parental choice should be the primary consideration, as parents are competent to specify their child's best interests. **(11.3-6/2010)**

### 34. Legally expressed right to piercing might lead to tensions between parents and minor children

A fifteen year-old girl asked us whether she had the right to independently decide to have a piercing, or whether parents may influence her decisions. First, we instructed her on the role of the Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) and additionally submitted the Ombudsman's opinion on her question.

After fifteen years of age, an individual obtains the right to independently decide on all medical procedures on their body. This also includes independent decisions on skin puncturing. Parents do not have the right to prevent such procedures in any way. Nevertheless, it should be noted that the term right is primarily used in a context when an individual wants to do something with the support of the state. In a family, the term right can often be problematic, and associated with family relations. The child knows his or her parents the best. It is right for a child to insist that parents respect their judgement in accordance with their age although they might not agree with it. According to the Ombudsman, respectful communication is the best way for a child to present and, if necessary, defend a decision before their parents.

We informed the girl that her right to decide to undergo the desired procedure is indisputable. At the same time, the girl is a family member and her actions contrary to her parents' opinion might aggravate their relations. According to the Ombudsman, knowing the parents, their response to the procedure, and particularly their understanding and acceptance of the child's wishes is considerably more important than legal rules when making such a decision. **(11.0-38/2010)**

### **35. Issues of placing minor children with more complex problems**

In dealing with initiatives, the Human Rights Ombudsman of the Republic of Slovenia is often faced with issues regarding the placing of minors with more complex problems for whom suitable help and accommodation cannot be found within the existing network. This proved to be particularly problematic in the case of a child of a foreigner, where closer protection was required due to suspected trafficking in children.

The Social Work Centre (CSD) organised an inter-institutional meeting and, in addition to different expert services, also invited non-governmental organisations and the Ombudsman; after the meeting, it was clear that the child had multi-layered and complex symptomatology that could only be resolved by means of an interdisciplinary approach, which was impossible within the network. The child - who suffered greatly due to numerous traumatic events - could not receive suitable help and was further harmed due to being transferred several times from one institution to another. The question arose of how to act in this and similar cases to provide secure accommodation, prompt diagnostics, suitable expert help in the institution of placement, a safe environment and, in this particular case, special protection (suspected trafficking in children).

In February 2010, we organised a working meeting under the Ombudsman's direction with a view to finding the barriers that prevent comprehensive care and custody for children with more complex problems. Representatives of the Ministry of Labour, Family and Social Affairs (MDDSZ), the Ministry of Education and Sport (MŠŠ), the Ministry of the Interior (MNZ) and the Ministry of Health (MZ) as well as the Association of Social Work Centres and the director of CSD were invited to the Ombudsman's premises, where the above-mentioned problems regarding finding suitable accommodation for the child were discussed.

Apart from MŠŠ, all those invited attended the meeting; they emphasised the urgency of solving these problems and unfortunately confirmed the finding that Slovenia has no organised network for helping children with more complex problems, or an institution to provide comprehensive care and offer suitable treatment and the best possible possibility for development, which a country is bound to provide under the Convention on the Rights of Children. Constant transfers of such children, and shifting responsibility for their management cause irreparable harm to the children and totally contradict the principle of the child's best interests, to which all individuals and the state are bound. All participating parties unanimously believed that solving this problem should be tackled in a prompt and comprehensive manner. They adopted the idea of a so-called triage centre (accommodation,

diagnostics, triage) which, among other things, could provide a form of protection and comprehensive care by means of a network of external experts. Until such triage centres or other suitable institutions are established, one of the current crisis centres should be renovated and new staff employed to serve this purpose. The representatives of MDDSZ and the Association of Social Work Centres assured that they would prepare a joint initiative for the activities in the outlined direction and verify the possibilities of adequate regulation of this issue in the Family Code or the Social Security Act.

In the following month, we received a letter from MDDSZ stating that the proposal had been discussed at a working meeting place at MŠŠ on renovating institutions which was attended by representatives of MNZ, the Ministry of Justice (MP) and MZ. They agreed on the need for such a centre and agreed to form a working group to prepare proposals to improve the current operation of institutions and inter-ministerial cooperation. They assured that - in cooperation with the Association of Social Work Centres - they would prepare expert grounds and more concrete proposals for establishing the so-called triage centre (working name) and submit it to the newly formed working group and the Human Rights Ombudsman of the Republic of Slovenia.

After a further intervention in December 2010, we received a response from MDDSZ saying that the location of the required centre was already being discussed. For this purpose, they had also prepared a proposal for a suitable legal basis and integrated it into the new Social Security Act, which was ready for public discussion, and into the new National Social Security Programme. **(11.3-23/2009 and 11.0-10/2010)**





## Information on the Ombudsman's work



### 3. INFORMATION ON THE OMBUDSMAN'S WORK

This chapter presents the most important information on the legal bases for the work of the Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman), his position and competences, communication with different publics, particularly with the initiators, media, civil society, national and local authorities, and communication tools used in our work. We dedicate special attention to web communication and a special website set up in 2010 for children and adolescents. An overview of publication activity and international cooperation is given. The Ombudsman's activities in 2010 are presented again in detailed tabular form.

Information on the funds allocated by the national budget and used for the Ombudsman's work in 2010 is provided. The number, structure and educational level of employees at the Ombudsman's office as at 31 December 2010 are indicated. The Statistics sub-chapter has information on the number of initiatives and of closed, both substantiated and unsubstantiated, initiatives with the Ombudsman from 1 January to 31 December 2010 inclusive.

#### **Legal bases for the Ombudsman's activity**

The office of Ombudsman was introduced into the Slovenian constitutional system with the new Constitution of the Republic of Slovenia adopted on 23 December 1991. The Ombudsman is defined by Article 159, which specifies that an ombudsman for citizens' rights shall be determined to protect human rights and fundamental freedoms in relation to the state authorities, local self-administration bodies and holders of public authority. A special ombudsmen for citizens' rights for individual areas may be appointed by law. Before the adoption of the new Constitution, Slovenia had not had a special institution for the extrajudicial and informal protection of individuals' rights in relation to state authorities, local self-government bodies and holders of public authority comparable to the position, tasks and powers of the Ombudsman. The closest to the role and work of the Ombudsman was that of the Council for the Protection of Human Rights and Fundamental Freedoms.

This particularly applies to the period after 1990, when the Council acted on the basis of the Council for the Protection of Human Rights and Fundamental Freedoms Act (Official Gazette of the Republic of Slovenia, no. 14/90) and was increasingly devoted to solving individuals' complaints.

The basic act for the Ombudsman's activity is the Human Rights Ombudsman Act (ZVarCP). It was adopted on 20 December 1993, declared on 28 December 1993 and entered into force on 14 January 1994. The Human Rights Ombudsman (the Ombudsman) established on its basis formally began to perform his activities on 1 January. The Act specifies that the Ombudsman is elected by the National Assembly on the proposal of the President of the Republic. A two-thirds majority of all Deputies is required for the election.

Such a majority is not required for the election of any other officer. In his work, the Ombudsman observes the Constitution and international legal acts on human rights and fundamental freedoms, and may also refer to the principle of equity and good management principle. In performing his work, the Ombudsman is independent and autonomous. His task is to establish and prevent violations of human rights and other irregularities. The Ombudsman does not have the authority of ruling and cannot impose legally binding decisions sanctioned by means of legal force. His actions and acts are not authoritative and are not used for rulings. He is an additional means for the extrajudicial protection of individuals' rights.

In the second paragraph of Article 10, ZVarCP stipulates that the Ombudsman's organisation and work are regulated by the Rules of Procedure and other general acts. The Rules of Procedure were adopted in 1995 and amended in 1998, 2001 and 2005. The consolidated text of the Rules is published on the Ombudsman's website.

The legal framework for the Ombudsman's activities also include some other acts: Articles 23.a and 50 of the Constitutional Court Act, Article 55 of the Patients Rights Act, Article 52 of the Defence Act, Article 65 of the Consumer Protection Act, the second paragraph of Article 14 of the Environment Protection Act, Articles 59 and 60 of the Personal Data Protection Act, Articles 213.b and 213.c of the Criminal Procedure Act, Article 68 of the Attorneys Act, Article 212 of the Enforcement of Criminal Sanctions Act, Article 80 of the Tax Procedure Act and Article in 3 of the Classified Information Act.

In accordance with the Act ratifying the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (MOPPM), the Human Rights Ombudsman also carries out tasks and exercises powers of the National Preventive Mechanism (DPM) against torture and other cruel, inhuman or degrading punishment or treatment. In this respect, the Ombudsman cooperates with non-governmental organisations selected on the basis of public tender.

Within the powers given to the Ombudsman by the Slovenian Constitution and ZVarCP, his main task is to establish and prevent violations of human rights and other irregularities and eliminate their consequences. The tasks are carried out by resolving individual initiatives addressed to the Ombudsman by initiators in which they claim that human rights or fundamental freedoms have been violated, or other irregularities have been committed by state authorities, local self-government bodies, or holders of public authority. The Ombudsman can also initiate a procedure on his own initiative, and can consider broader issues important for the protection of human rights and fundamental freedoms and for legal security in the Republic in Slovenia.

According to the law, the Ombudsman has certain powers with regard to all state authorities, local self-government bodies and holders of public authority. However, he has no power with regard to the private sector (e.g. civil engineering, trade, companies, etc.). The Ombudsman does not consider cases subject to court or other legal proceedings, except if unduly delays of procedures or obvious abuses of power are concerned. He may submit his opinion to each authority from the aspect of the protection of human rights and fundamental freedoms in the matter under consideration, irrespective of the type or level of procedure at these authorities.

The services of the Ombudsman are confidential, informal and free of charge for clients. Formality or the assistance of a lawyer are not needed to submit an initiative. However, the initiative should be submitted in writing and signed, and include the initiator's personal information. The initiative should contain the circumstances, facts and evidence on which the initiative for the opening of the procedure is based. The initiator must also state whether and which legal means have been used in the matter. An individual should first try to resolve the issue with the authority which he or she believes has violated his or her rights. The Ombudsman must conduct the procedure impartially and obtain of the views of all the affected parties in each case. In relation to his work, the Ombudsman has access to all information and documents pertaining to the competence of national or location authorities. Regulations on the protection of information confidentiality hold for both for the Ombudsman and his deputies and employees.

### 3.1 Key target publics of the Ombudsman

The Ombudsman realises his mission - the protection of human rights and fundamental freedoms in relation to state authorities, local self-government bodies and holders of public authority - through the power of persuasion, which is only effective with good communication with different publics. The Ombudsman's target groups or key publics are as follows:

- initiators addressing the Ombudsman due to alleged violations of human rights;
- civil society, which can also be a source of information on violations of human rights and, because of its inclusion in a particular social environment, is also a source of proposals for the elimination of deficiencies, irregularities or ineffectiveness of the authorities. It includes potential initiators who are sometimes not sufficiently aware of their rights and who are encouraged and organised by non-governmental organisations, associations or civil initiatives, which act on their behalf to exercise human rights;
- state authorities, local self-government organs and holders of public authority, with which the Ombudsman communicates in establishing the actual situation of claimed violations and in eliminating established violations and irregularities. He also cooperates with them in certain prevention and promotional activities in the field of human rights protection;
- the media disseminate the knowledge of human rights, act as a transmitter for the Ombudsman's messages to other publics and the publics' message to the Ombudsman. They can also find themselves in the role of violator or initiator, for example, if journalists are denied the right to the freedom of expression, or if employment and other employees' rights are violated by media companies;
- international and intergovernmental organisations are an important source of information and of agreed standards of human rights protection, a source of knowledge and experience, a surveillance mechanism for the implementation of obligations adopted under international conventions, and an additional source of influence on the state in eliminating systematic violations of human rights.

Public relations at the Ombudsman's are carried out by various communication means within initiative-solving procedures (interviews, written communication, telephone conversations), by personal meetings with representatives of different publics, by publication, web communication and virtual social groups, by organising events, conferences and similar.

#### **Initiators**

By resolving initiatives, the Ombudsman has an impact on the elimination of particular violations and thereby on preventing related violations in the future. The Ombudsman is available for anyone wishing to address him. To the individual it is vital that his or her problem is resolved quickly and efficiently.

This is the starting point for the Ombudsman's work and several of the Ombudsman's solutions follow this principle. Initiators may submit their initiatives in writing by mail, upon a personal conversation (at the Ombudsman's head office or during work outside the head office) or by e-mail. Some initiatives also come from interviews during the Ombudsman's visits to prisons, detention centres, hospitals, social care institutions and other institutions where persons are deprived of their liberty. For explanations and information on the submitted initiatives, the toll-free telephone number 080 15 30 can be used or questions sent via e-mail. The Ombudsman can be reached personally by telephone each Tuesday from 13:00 to 14:00, for a conversation limited to 10 minutes. Every working day from 8:00

to 16:00, initiators may come in person to the head office of the Ombudsman in Ljubljana, Dunajska cesta 56. Those whose initiatives are already under consideration can make an appointment with a counsellor responsible for their initiative.

The Ombudsman also works outside the head office. This ensures that individuals residing outside Ljubljana may personally talk to the Ombudsman, her deputies and expert workers, and are thus able to present their problems in more detail, present the required documents and receive some explanations. Since the Ombudsman does not have the power to give legal advice, initiators cannot get such advice at a personal interview. Work outside the head office always begins with a short discussion with the mayor of the hosting municipality. After the visit, we usually prepare a press conference related to the work done there and other current human rights issues. In 2010, the Ombudsman and her co-workers made working visits to Ajdovščina, Brežice, Ilirska Bistrica, Laško, Ljutomer, Maribor, Metlika, Piran, Radovljica, Rogaška Slatina and Slovenj Gradec. During these visits, we talked to more than one hundred persons.

### **State authority, local self-government bodies and holders of public authority**

At the Ombudsman's request, the above-mentioned bodies must provide all data and information within their competence, irrespective of their level of confidentiality, and allow the Ombudsman to carry out the investigation (Article 6 of ZVarCP). In accordance with Article 34 of ZVarCP, all state authorities must assist the Ombudsman to carry out the investigation and provide appropriate assistance at his request. The authorities generally responded appropriately and submitted the requested information and explanation in due time. The Ombudsman estimated that cooperation with the Ministry of the Environment and Spatial Planning (MOP) was entirely inappropriate; therefore, for the first time in the Ombudsman's history, she acted according to Article 46 of ZVarCP, which specifies that the President of the National Assembly, the Prime Minister and Ministers must accept the Ombudsman at his request. The Minister responded to the Ombudsman's request and after a discussion, agreements to eliminate the deficiencies were adopted within the time limit provided. The agreements were also carried out in due time, which showed that acting in accordance with Article 46 of ZvarČP was effective.

In 2010, the Ombudsman invited certain Ministers for interviews on the premises of the Ombudsman or the Ministries. She also had several meetings and interviews with the Heads of the Directorates of the Ministries, Offices of the Government of the Republic of Slovenia, institutions and agencies. Wherever the Ombudsman operated outside head office, she had discussions with hosting mayors and their colleagues. More details on cooperation with state authorities and local self-government bodies is evident from the general chapters of particular thematic fields and from the description of a considered case.

### **Media**

The Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) strives to establish and maintain good relations with the media. We endeavour to have a two-way and correct relationship in all communications.

We see the media as a source of information on claimed violations, but we cannot always give an opinion, because we often need time to investigate the matter and analyse all the available facts and information. Although we understand the nature of the work and demands of particular media, as well as the requirements of journalists to receive a quick answer, we have to ensure that it is technically correct and in compliance with the institution's mission.

Media relations are mainly carried out:

- **as a response to journalists' questions and initiatives.** These relations are in coordination with the Ombudsman and her deputies, the expert service (details of the cases) and public relation consultant (legality of public relations, particularly media relations, preparation of information). The Ombudsman responds publicly when she deems it necessary from the point of view of her role and powers. Thereby, she takes into account that the frequency of statements does not contribute to their effectiveness. The Ombudsman responds to individual cases only when the relevant data are obtained from the competent authorities.

In 2010, issues of the social state were in the focus of public and media attention, and the operation of the social state was also highlighted by the Ombudsman in the annual report for 2009. This topic relates to the issues of poverty, dismissal of workers, non-payment of social security contributions and non-payment of salaries, which have been pointed out by the Ombudsman in all previous annual reports; in 2010, she also prepared several press releases and many answers to journalists' questions. Another main theme could be highlighted in respect of the number of questions asked, which is the right to respect for private and family life (including children and public persons) and issues of freedom of expression and hate speech management related therewith. In the case of the bullmastiff affair, we were not able to avoid questions regarding the rights of individuals after (their) death, and we pointed out the well-known position of the Ombudsman concerning the issue of dangerous dogs (The Ombudsman's Annual Report for 2006, p. 118). The Ombudsman also responded to questions regarding the situation of the erased, which were mostly raised by foreign journalists. We also received some questions related to the public servants' strike and to the petition initiated by the Mladina journal "Abolish the Army", to constitutionally non-recognised minorities, to problems concerning the Roma, closure of the Council of Europe Information Office, and the possibility of establishing Human Rights Centre at the Ombudsman;

- **by proactive relations with the media,** by means of which we try to be aware of media interest and provide them with information that might be interesting to their public in order to increase awareness on human rights and the possibilities and methods of exercising them.

The Ombudsman presented acute cases and issues of violations of human rights related thereto at three press conferences at the Ombudsman's head office and at nine press conferences in activities outside head office. Press conferences were also organised after the interviews with ministers, after meetings with representatives of non-governmental organisations, after the conference Environment and Human Rights (19 May 2010) and the conference on the elderly (10 December 2010). In 2010, we again began to promptly publish the Ombudsman's current cases on our website. There is a major interest in the cases and some attracted wide public attention.

### **Civil society**

Civil society has a special role in protecting human rights. The Human Rights Ombudsman (the Ombudsman) regularly monitors efforts by non-governmental organisations, societies, associations and institutions, and has for several years organised regular monthly meetings for them. In 2010, open door days were organised and discussions were held with representatives in the field of protecting the rights of the elderly, sick children, the homeless, mental health, immigrants, asylum seekers and environment protection. They presented problems, irregularities and violations of human rights in the fields concerned, and the Ombudsman informed them of her findings and efforts to eliminate known problems, and

guaranteed cooperation and intervention in elimination of the established irregularities or violations of the rights of particular social groups. The Ombudsman informed the competent state authorities and other institutions of the findings following consultations with civil society, and expects them to create and provide conditions for the successful work of the non-governmental sector. Civil society is often the first to discover, respond and provide direct help to individuals and social groups needing it most, and whose rights are not respected.

### 3.2 International relations

Under his mandate and powers, the Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) actively cooperates with international and intergovernmental organisations dealing with particular areas of human rights, and with Ombudsman Associations and ombudsmen of individual countries. He also cooperates with representatives of foreign countries in the Republic of Slovenia. The cooperation is primarily intended to present the observations, findings and experience of the Ombudsman as the central institution for monitoring respect for human rights in Slovenia.

#### Collaboration with the UN

**April 2010** In October 2009, the Ombudsman applied to the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights at the High Commissioner for Human Rights for accreditation status B. The Committee adopted a positive decision in 2010. The Ombudsman did not ask for status A, because she was aware that the institution of the Ombudsman does not meet all the requirements of the Paris Principles on the mission and status of national institutions for the promotion and protection of human rights.

**May 2010** At the head office of the Ombudsman, the Ombudsman met Catarina de Albuquerque, independent UN expert on human rights in the field of access to drinking water and toilets.

**October 2010** The Croatian Ombudsman and UNDP (United Nations Development Programme – Bratislava Regional Centre) organised a regional meeting for national human rights institutions (NHRI) from Southern Europe in Crikvenica, which was attended by Liana Kalčina, the Ombudsman's counsellor.

In the role of the National Preventive Mechanism (DPM) under the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment, the Ombudsman regularly attended several events abroad in 2010, where our work in this field was presented.

#### Collaboration with the Council of Europe

**October 2010** The Ombudsman met Maud de Boer-Buquicchio, Deputy Secretary-General of the Council of Europe. They discussed the rights of children, measures against discrimination against the Roma, closure of the Council of Europe Information Office in Slovenia, and how the Ombudsman's independence is guaranteed.

- November 2010** At the Ombudsman's head office in Ljubljana, the Ombudsman met the representatives of local and regional authorities congress who were visiting Slovenia on the occasion of preparing the report on Slovenia on the implementation of state commitments under the European Charter on Local Self-Government. They discussed the exercise of human rights at the local level.
- November 2010** A delegation of the Advisory Committee of the Framework Convention of the Council of Europe for the Protection of National Minorities paid an official visit to the Ombudsman. The debate focused on the issues of the erased, the Roma, hate speech on the internet, minorities and media, the situation of constitutionally unrecognised minorities in the Republic of Slovenia, and the positions of the institution of the Advocate of the Principle of Equality.
- November 2010** The Deputy Ombudsman Ivan Šelih attended the second meeting of contact persons responsible for the performance of tasks of national preventive mechanisms against torture held in Strasbourg. The meeting was jointly organised by the European Commission and the Council of Europe.

#### **Collaboration with OSCE**

- June 2010** The Deputy Ombudsman Kornelija Marzel, MSc, attended the round table Development of the Collaboration Mechanism between the Ombudsman of BiH and Non-governmental Organisations organised by the Ombudsman of BiH in cooperation with the Office for Democratic Institutions and Human Rights (ODIHR) and the mission of the Organisation for Security and Co-operation in Europe (OSCE) in BiH. She presented the Slovenian model of cooperation of the Human Rights Ombudsman of the Republic of Slovenia with civil society under the implementation of the National Preventive Mechanism in the field of environment protection and with other associations representing the interests of individual groups.

#### **Collaboration with the EU, the European Ombudsman and FRA**

- May 2010** The Ombudsman attended a working group meeting which discussed monitoring under the Convention on the Rights of Persons with Disabilities (MKPI) and the Optional Protocol to MKPI. The meeting was organised by the European Group of NHRI, FRA and Equality and Human Rights Commission, England.
- May 2010** The Deputy Ombudsman Jernej Rovšek attended the third meeting of the EU Fundamental Rights Agency (FRA), which informed the participants on the activity of FRA, and analyses on migrations, disability and educations were presented.



- June 2010** The Deputy Ombudsman Jernej Rovšek attended the seventh seminar for contact persons of the European Human Rights Ombudsman in Strasbourg. Issues of mutual collaboration, language barriers and provision of cross-border health services and rights of patients were addressed. On the last day, a joint seminar for contact persons and national representatives of SOLVIT programme took place.
- June 2010** At the Ombudsman's head office, a discussion with Verica Trstenjak, PhD, Advocate General at the Court of Justice of the European Union in Luxembourg, took place during a regular expert meeting of employees.
- September 2010** The Ombudsman attended the celebration of the 15th anniversary of the European Human Rights Ombudsman in Brussels.
- October and November 2010** The Deputy Ombudsman Tone Dolčič attended two preparatory meetings related to the implementation of Article 33 of the Convention of the Rights of Persons with Disabilities (implementation of the Convention and monitoring of its implementation in each country). The meeting was organised by the European Commission and the Belgian EU Presidency.
- November 2010** The Deputy Ombudsman Jernej Rovšek attended the concluding conference on anti-discrimination in Serbia entitled Intersection and Perspectives, organised by UNDP and the EU. Within the project, different analyses and public opinion polls were elaborated, and a discrimination prevention act was considered.
- December 2010** The Deputy Ombudsman Tone Dolčič attended a conference in Brussels organised by FRA in collaboration with the Belgian EU Presidency. The focus was on issues of providing children-friendly administration of justice, the right of children to be heard, and issues of policies and strategies of exercising children's rights in Europe.
- December 2010** A conference entitled "The Role of National Human Rights Structures in the Protecting and Promoting the Rights of Persons with Mental Health Problems" was held in Bilbao, Spain, which was attended by Simona Šemen, MSc, the Ombudsman's expert worker.

#### **Collaboration with ombudsmen from individual countries**

- January 2010** The Ombudsman participated in a debate organised by the French Ombudsman, the University of Paris and Johns Hopkins University from the USA. The agenda was devoted to the universal principles of respect for human rights specified by the European Convention on Human Rights and the Arab Charter on Human Rights, and the role of regional organisations in implementing them.
- June 2010** Deputy Ombudsman Ivan Šelih participated in the meeting Experience and Good Practices in Preparing Human Rights Ombudsman's Report held in Podgorica, Montenegro, organised by the Ombudsman of Montenegro in collaboration with the EU and OSCE.

- September 2010** The Ombudsman organised a meeting in Ljubljana for human rights ombudsmen from the former Yugoslav countries. The meeting was chaired by the Ombudsman. Discussions focused on the position of migrant workers from the area of former Yugoslavia working in Slovenia, on the position of the erased in Slovenia, and on forms of future cooperation. A joint declaration of all present ombudsmen was adopted.
- October 2010** The Ombudsmen of Serbia and of the Autonomous Province of Vojvodina organised the Regional Ombudsmen Conference on Gender Equality, attended by Liana Kalčina, the Ombudsman's counsellor.
- November 2010** Deputy Ombudsman Tone Dolčič attended an international discussion organised by the ombudsmen of BiH, in Banja Luka in Bosnia and Herzegovina. At the discussion, debates continued that began at the spring conference, which tried to highlight key open issues on the protection of children's rights in the countries of South-East Europe.
- December 2010** Deputy Ombudsman Kornelija Marzel, MSc, attended the international conference Sovereignty and Human Rights organised by the Ombudsman of the Republic of Kosovo on the 10th anniversary of the institution.

#### **International ombudsmen's conferences**

- April 2010** Deputy Ombudsman Jernej Rovšek attended the second conference of ombudsmen and similar institutions for the control of armed forces entitled "The Role of Ombudsmen in Promotion and Protection of Human Rights of Armed Forces Members and Veterans". It was organised by the Austrian Parliamentary Commission for Federal Armed Forces in cooperation with the Geneva Centre for the Democratic Control of the Armed Forces (DCAF). The Vienna Memorandum was unanimously adopted.
- May 2010** The Ombudsman attended a two-day international conference entitled "The Elimination of Discrimination in the Region, the Role of Human Rights Institutions and Models of Regional Cooperation". It was organised by the ombudsmen of BiH and took place in Sarajevo. At the end of the conference, the Memorandum on Understanding and Cooperation, the first such document in the area of the South-East Europe was signed.
- May 2010** The Deputy Ombudsman Tone Dolčič attended the 5th annual CRONSEE conference of human rights ombudsmen from the countries of South-East Europe (Children's Ombudspersons' Network) entitled "Children Have the Right to Protection against Sexual Abuse and Exploitation". At the conference, in Banja Luka, Bosnia and Herzegovina, the participants adopted some conclusions to improve the protection of children against sexual violence.
- June 2010** Deputy Ombudsman Tone Dolčič attended the European Network of Ombudspersons for Children (ENOC) seminar held in Malta. The seminar, entitled "A Special Role of Ombudspersons for Children in Providing Conditions to Hear the Child's Voice", was a good opportunity for exchanging information on experiences concerning children's rights in individual European countries and at the European level.

### **Collaboration with IOI (International Ombudsman Institute), EOI (Europäische Ombudsman Institut) and AOM (Association of Mediterranean Ombudsmen)**

- June 2010** Deputy Ombudsman Tone Dolčič attended the 4th meeting of the Association of Mediterranean Ombudsmen (AOM) in Madrid, organised by the Spanish Ombudsman in cooperation with the French and Moroccan Ombudsman. The meeting was entitled “Immigration and Human Rights: a Challenge for the Human Rights Ombudsmen”. Issues related to wearing burkhas were also discussed.
- October 2010** Deputy Ombudsman Kornelija Marzel, MSc, and the Secretary-General of the Ombudsman, Bojana Kvas, MSc, attended the European Conference and General Assembly of the International Ombudsman Institute (IOI). The participants discussed Europe as an open society. The Deputy presented two topics: “Transparency of Procedures” and “Control of Places of Restricted Movement”.
- November 2010** The Ombudsman attended a seminar in Vienna on the efficient use of ombudsman’s methods of work. It was organised by the International Ombudsman Institute (IOI). Practical training was led by Andre Marin, the Ombudsman of Ontario (Canada) and Vice-President of the Northern American IOI.

### **Collaboration with foreign embassies in the Republic of Slovenia**

Working meetings with the ambassadors of the Netherlands, Denmark, Japan, Brazil, and the Deputy Ambassador of Germany took place. The Ambassador of the Republic of France in Slovenia, Nicole Michelangeli, decorated the Ombudsman with the distinction of Knight of the Legion of Honour for her contribution regarding the forming of contacts between Slovenia and France, activities in the interest of human rights, and the development of Slovenian-French relations.

### **Collaboration with other international, intergovernmental and non-governmental organisations and universities**

- June 2010** The Ombudsman’s expert worker Simona Šemen attended the international conference in Sweden on the topics “Does Medical Ethics Always Act in the Interest of Patients?” organised by the University of Uppsala.
- September 2010** The Ombudsman attended the Third International Symposium on Dark-sky Parks (subject of light pollution); Deputy Tone Dolčič attended the High Level Meeting of the Intergovernmental Group L’Europe de l’Enfance in Antwerpen, Belgium.
- October 2010** The Ombudsman attended the 6th Congress of the International League of Humanists “To the Children of the World of Wounded Childhood”. The participants at the congress pointed out that the suffering of children should be prevented and victims should receive adequate help.
- October 2010** Deputy Ombudsman Jernej Rovšek hosted representatives of Amnesty International from London at the Ombudsman’s head office.

### 3.3 Communication tools

#### Website

The activity of the Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) is presented on the website [www.varuh-rs.si](http://www.varuh-rs.si), which allows for the transparent presentation of the Ombudsman's work, quick responsiveness, quality communication with the public, access to information and access to the Public Information Catalogue. The website is a daily updated source of information on the Ombudsman's work and findings, both for the broadest Slovenian public and for initiators and potential initiators, media and expert public. The content of the Ombudsman's press conferences, both in the head office and in activities outside the head office are promptly published as sound recordings in the media corner on the website. The pages also provide links to various international documents and institutions concerned with human rights and fundamental freedoms at the national and international level.

On the website [www.varuh-rs.si](http://www.varuh-rs.si), a column called "Clarifications and Corrections of Media Content" has been established, in which the interested public may see our side of the story on selected content dealt with in the media if it has been represented in a different manner, either deficiently or incorrectly, or with the purpose of damaging the reputation of our institution. We chose this method because we sometimes have to forego our request for publication of a correction due to the disproportionately long text needed for our clarification compared to the text to which our request for correction refers to.

The Ombudsman has established an E-news service with 600 subscribers, who promptly receive all current information and information published on the website. We make efforts to keep the content up-to-date and of high quality, which is a condition for maintaining communication, monitoring and the interest of recipients. We should not inundate them with content that is not interesting to them, or publish news too often; we must focus on quality content, understand the interests of each target group, and elaborate legally complex messages in a non-technical and concise manner, and use the contents to raise awareness on human rights and ways to exercise them.

The Ombudsman has been monitoring visits to the website [www.varuh-rs.si](http://www.varuh-rs.si) since 2 November 2009 through the Google Analytics application. Comparison of the data shows that visits to the website are increasing.

The visitors are primarily interested in general information on the Ombudsman; current published cases, and vacancies at the Ombudsman's office; how to approach the Ombudsman, who manages the institution and when to address the Ombudsman. For many people, our website is also a source of information on international standards on protecting human rights, as analysis shows that the most sought-after information is the Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the UN Convention on the Rights of the Child, and the Constitution of the Republic of Slovenia. Such demand also indicates the absence of a wider database on the protection of human rights (national and international dimension of the issue) on Slovenian web pages and yet another reason to establish a national institution for the protection of human rights.

#### Website for children and adolescents: Children's Rights

At a press conference on 23 November 2010, the Ombudsman, her Deputy Tone Dolčič and the Ombudsman's counsellor and the manager of the project Advocate – a Child's Voice, Martina Jenkole, MSc, presented a novelty in the field of protection of children's rights, the

website [www.pravice-otrok.si](http://www.pravice-otrok.si). This symbolically marked the twenty-first anniversary of the adoption of the Convention on the Rights of the Child. On this website, children aged 6 to 12 and adolescents may find information on their rights and how to exercise them. The website is adapted to the age groups of children. A part of the page is also intended for adults and will be of help in raising awareness of children on their rights and in acting in the child's best interests. The current published cases in the field of children's rights provide useful information on methods of solving problems in exercising children's rights. More information on the project Advocate – a Child's Voice is also available. In December 2010, the Ombudsman became involved with the Council of Europe campaign against sexual abuse via this website.

With this website, the Ombudsman seeks to offer children and adolescents an opportunity to have direct contact with the institution and inform her of potential violations of their rights.

### **Social networks**

In November 2009, the Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) became a member of Facebook, thereby expanding the range of recipients of the Ombudsman's information. Approximately 1200 virtual friends follow the information on the Ombudsman's activity on Facebook. In compliance with the network's communication ethics, the Ombudsman is active on the institution profile. Video content related to the Ombudsman's work can also be found on YouTube.

### **Publication activity**

The following publications were issued in 2010:

- **Fifteenth Regular Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for the Year 2009** issued in June in 1400 copies. The Ombudsman Dr Zdenka Čebašek - Travnik delivered it to the President of the National Assembly, Dr Pavel Gantar on 26 July 2010, to the President of the Republic of Slovenia, Dr Danilo Türk, on 27 July 2010, and to the Primer Minister of the Republic of Slovenia, Borut Pahor, on 6 August 2010. It was submitted to all state institutions, Deputies of the National Assembly, political parties, local communities, non-governmental organisations, libraries, media and everyone who requested it.
- **A summary version of the Annual Report**, which was translated into English, printed in 700 copies and submitted to the state authorities of the Republic of Slovenia, to all diplomatic representations of the Republic of Slovenia abroad, to permanent missions of the Republic of Slovenia to international organisations, to the embassies of foreign countries in Slovenia, to all ombudsmen in Europe and to selected ombudsmen around the world. The report is also distributed at international conferences attended by the Ombudsman, Deputies or expert workers of the Ombudsman.
- **The Second Report of the Human Rights Ombudsman on the Implementation of Tasks of the National Preventive Mechanism (DPM)** under the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in 700 copies. The publication is bilingual (Slovenian-English), as it is also used in international cooperation and presentations of the Slovenian model of DPM.
- Bilingual publication on the **environment and human rights**, which followed the international conference **Environment and Human Rights: Public participation in environmental matters – theory and practice**. The Ombudsman organised the conference in May 2010. The Slovenian-English publication includes addresses by

the President of the Republic, the Ombudsman, the European Commissioner for the Environment and the Minister of the Environment and Spatial Planning and professional contributions by the participants and concluding findings of the conference.

- Reprint of the publication **Advocate – a Child’s Voice**, proceedings of scientific papers for advocates’ training, and the presentational brochure.
- **Brochures** for initiators (in Slovenian, English, Hungarian, Italian and Braille). Some brochures were newly issued, some were reprinted and are available at the Ombudsman’s head office (and distributed in various occasions) and on the website in electronic format.

### 3.4 Finance

Resources for the work of the Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) are provided within the budget of the Republic of Slovenia. The amount is determined by the National Assembly of the Republic of Slovenia (DZ RS) at the Ombudsman’s proposal (Article 55 of ZVarCP). This is the key element of his independence and autonomy, which should be respected by the executive authority. On the Ombudsman’s proposal, DZ RS allocated EUR 2,326,904 from the national budget for the Institution’s operation in 2010. When the national budget was being amended, the Ombudsman assessed that some planned activities and obligations would be transferred to 2011 (business lease and severance pay on retirement of a public officer), therefore the Ombudsman’s financial plan adopted for 2010 was reduced by EUR 35,000. By taking into account this fact and considering the adopted amended national budget, financial resources in the amount of EUR 2,291,904 were available to the Ombudsman. The resources were allocated to three sub-programmes:

- Protection of human rights and fundamental freedoms;
- Implementation of the Optional Protocol (activity of the National Preventive Mechanism);
- Office for Advocates of Children.

Disposal of property generated EUR 1,135; received indemnities amounted to EUR 157 (the amount was transferred from the disposal of state property and indemnities from previous budget periods).

A total of EUR 2,293,196 was thus available for the Ombudsman in 2010.

By the end of 2010, financial resources for all three sub-programmes in the total amount of EUR 2,203,184 had been used and the remaining resources for all three sub-programmes amounted to EUR 90,011, which was returned to the national budget at the end of the budget period.

The table below provides a more detailed overview of financial resources for individual sub-programmes, of resources used for individual purposes and of the remaining financial resources by sub-programme.

	Allocated resources (BR) in EUR	Applicable budget (AP) in EUR	Used resources in EUR	Remaining resources compared to AP in EUR
<b>The Human Rights Ombudsman of the Republic of Slovenia</b>	2,291,904	2,293,196	2,203,184	90,012
<b>SUBPROGRAMMES</b>				
<b>01011203 Protection of human rights and fundamental freedoms</b>	2,092,082	2,092,082	2,017,784	74,298
Salaries	1,507,782	1,507,782	1,486,074	21,708
Material costs	473,000	473,000	446,320	26,680
Investments	111,300	111,300	85,390	25,910
<b>01011206 Implementation of the Optional Protocol</b>	124,822	124,822	115,355	9,467
Salaries	103,200	112,133	106,712	5,421
Material costs	13,000	4,057	3,780	287
Non-governmental organisations	8,622	8,622	4,863	3,759
<b>01011207 Office for the Advocates of Children</b>	75,000	75,000	70,045	4,955
Increased workload	0	13,000	12,728	272
Material costs	10,600	5,600	3,657	1,943
Other operational expenditure (supervision, intervision, training for the Advocates, preparation of materials)	64,400	56,400	53,660	2,740

### 3.5 Employees

The Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) employed 43 people as at 31 December 2010, among them six officers (the Ombudsman, four deputies and the Secretary-General), 24 officials, nine technical employees, two temporary employees, one trainee and one voluntary trainee.

Among the officials, there were 17 officials of the first career class, two officials of the second career class and five officials of the third career class; 29 employees have university degrees (two are PhDs, six are MScs and one is specialist); seven have high education (one of them is specialist), two have higher education, and five have secondary education. In 2010, the employment of two employees was terminated, and as at 31 December, four employees were employed on temporary employment contracts.

### 3.6 Statistics

In this subchapter, statistical data on cases considered by the Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) from 1 January to 31 December 2010 are presented.

1. **Open cases in 2010:** Open cases are initiatives which reached the Ombudsman's address.
2. **Considered cases in 2010:** In addition to open cases in 2010, these include:
  - transferred cases – ongoing cases from 2009 considered in 2010,
  - reopened cases – cases for which the procedure at the Ombudsman as at 31 December 2009 had been concluded, but which were again subject to consideration due to new substantial facts and circumstances in 2010. New files were not opened, because new procedures were initiated for the same cases. Reopened cases are therefore not included with open cases in 2009, but only with cases considered in 2010.
3. **Closed cases:** All cases considered in 2010 that were concluded by 31 December 2010 are taken into account.

## Open cases

In 2010, the number of initiatives received was almost the same as the previous year. **There were 2,620 open cases from 1 January to 31 December 2010** (2,623 in 2009). The majority of these were received directly from the initiators, mostly in writing (2,348 or 89.6%); 35 were received during activities outside the head office; 8 by telephone, 16 through official notes and 11 assigned from other state authorities. On her own initiative, the Ombudsman opened 160 initiatives (7 per cent of all initiatives) and four which concerned broader issues. The Ombudsman also received 42 anonymous initiatives.

**Table 3.6.1:** The number of open cases at the Human Rights Ombudsman of the Republic of Slovenia for the period 2007–2010 by area of work

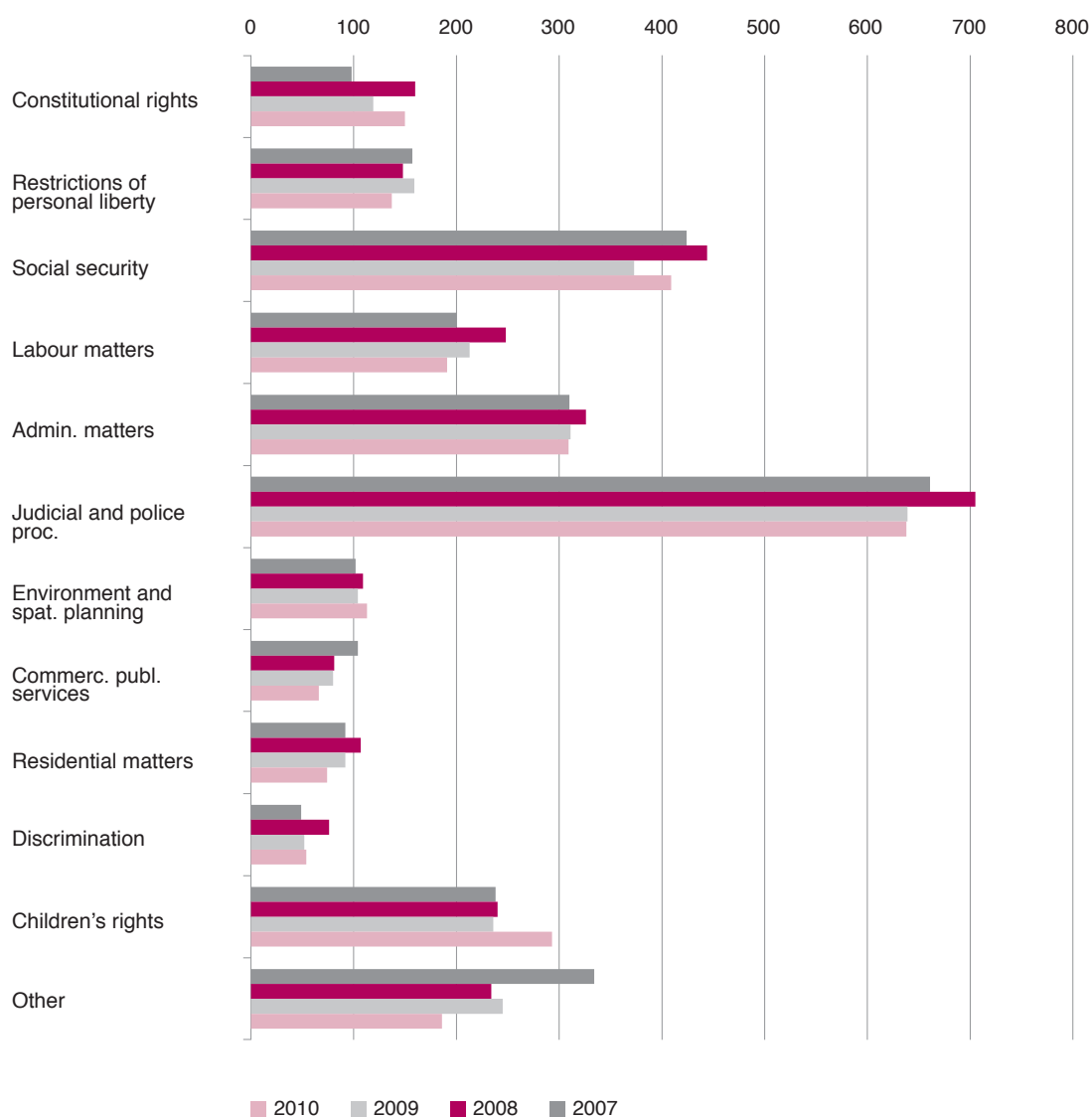
AREA OF WORK	OPEN CASES								Index (10/09)
	2007		2008		2009		2010		
	Number	Share	Number	Share	Number	Share	Number	Share	
1. Constitutional rights	98	3.5%	160	5.6%	119	4.5%	150	5.7%	126.1
2. Restrictions of personal liberty	157	5.7%	148	5.1%	159	6.1%	137	5.2%	86.2
3. Social security	424	15.3%	444	15.4%	373	14.2%	409	15.6%	109.7
4. Labour law	200	7.2%	248	8.6%	213	8.1%	191	7.3%	89.7
5. Administrative matters	310	11.2%	326	11.3%	311	11.9%	309	11.8%	99.4
6. Judicial and police procedures	661	23.9%	705	24.5%	639	24.4%	638	24.4%	99.8
7. Environment and spatial planning	102	3.7%	109	3.8%	104	4.0%	113	4.3%	108.7
8. Commercial public services	104	3.8%	81	2.8%	80	3.0%	66	2.5%	82.5
9. Housing	92	3.3%	107	3.7%	92	3.5%	74	2.8%	80.4
10. Discrimination	49	1.8%	76	2.6%	52	2.0%	54	2.1%	103.8
11. Children's rights	238	8.6%	240	8.3%	236	9.0%	293	11.2%	124.2
12. Other	334	12.1%	234	8.1%	245	9.3%	186	7.1%	75.9
<b>TOTAL</b>	<b>2,769</b>	<b>100.0%</b>	<b>2,878</b>	<b>100.0%</b>	<b>2,623</b>	<b>100.0%</b>	<b>2,620</b>	<b>100.0%</b>	<b>99.9</b>



In 2010 again, the **majority** of cases related to judicial and police procedures (638 or 24.4%), social security (409 or 15.6%) and administrative matters (309 or 11.8% of all open cases ).

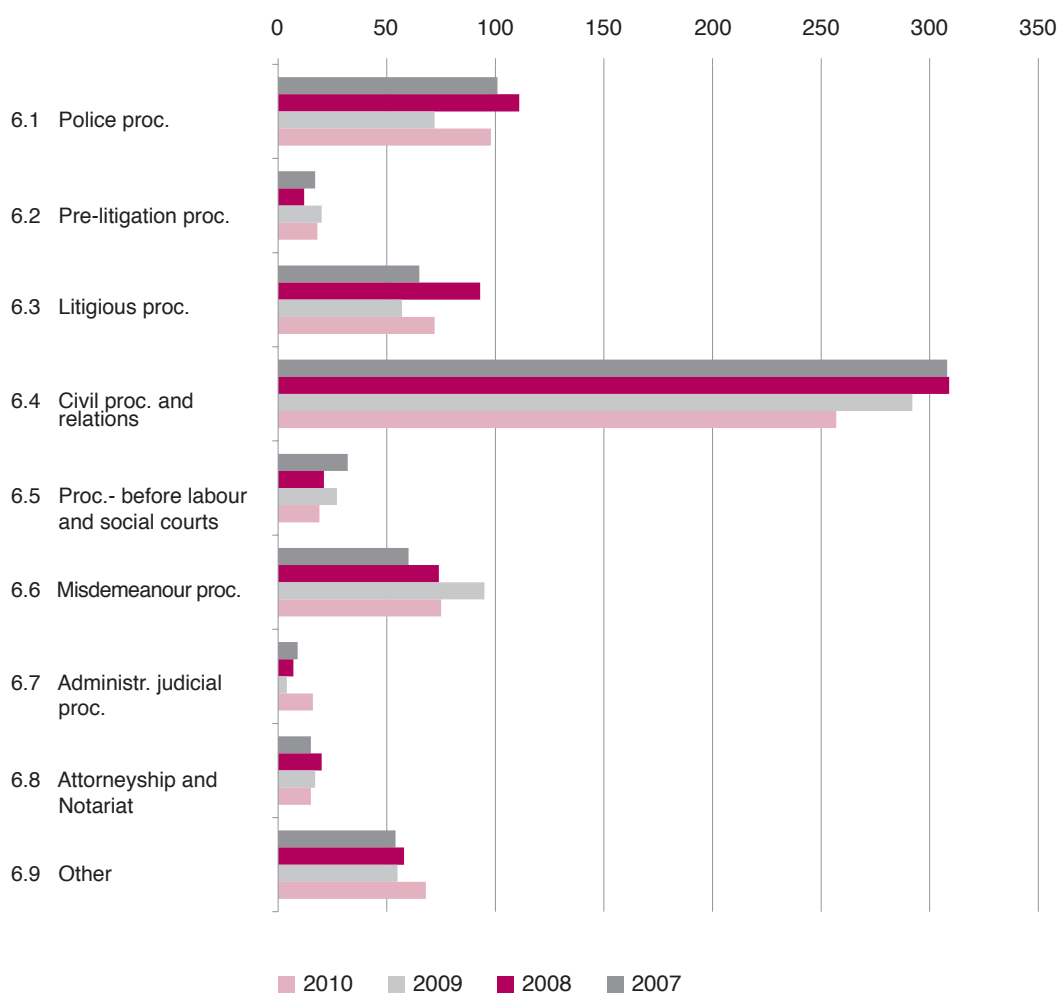
**Table 3.6.1 and Figure 3.6.1** indicate that, compared to 2009, the number of open cases **increased** in the areas of constitutional rights (from 119 to 150 or by 26.1%) and children's rights (from 236 to 293 or by 24.2%). The biggest declines in open cases in 2010 compared to 2009 were in the areas of housing matters (by 19.6%) and commercial public services (by 17.5%).

**Figure 3.6.1:** Comparison of the number of open cases by area of work of the Human Rights Ombudsman of the Republic of Slovenia for the period 2007–2010



In order to give a clearer presentation of the area Judicial and Police Procedures and as requested by the Deputies of the National Assembly, we decided to make an additional graphic distribution already in the preparation of last year's report. Figure 3.6.2 of this report again shows the structure of distribution and trends of open cases in the period from 2007 to 2010 by sub-areas of judicial and police procedures. As indicated, the largest share among these cases pertains to the sub-area of Civil Procedures and Relations. On the one hand, the reason for such a high number of cases is the fact that several procedures have been assigned in this sub-area (litigious, non-litigious, probate, execution proceedings), and on the other hand, in the majority of such procedures, at least one party is unsatisfied with the decision and understands it as an intrusion on his or her rights. It should be noted that the number of these cases has been decreasing over the period shown, probably due to a decrease in delays in lower-level court proceedings, which was observed last year, and due to the awareness of initiators of the Ombudsman's competences in judicial procedures. A considerable increase in the number of cases (compared to 2009) in the sub-areas of police and criminal proceedings should be noted.

**Figure 3.6.2:** Comparison of the number of open cases in the area of judicial and police procedures at the Human Rights Ombudsman of the Republic of Slovenia in the period 2007–2010



## Considered cases

**Table 3.6.3:** Number of cases considered by the Human Rights Ombudsman of the Republic of Slovenia in 2010

AREA OF WORK	NUMBER OF CASES CONSIDERED				Share by area of work
	Open cases in 2010	Transferred cases from 2009	Reopened cases in 2010	Total cases	
1. Constitutional rights	150	19	4	173	5.61%
2. Restrictions of personal liberty	137	21	5	163	5.29%
3. Social security	409	28	12	449	14.57%
4. Labour law	191	23	11	225	7.30%
5. Administrative matters	309	66	10	385	12.49%
6. Judicial and police procedures	638	94	26	758	24.59%
7. Environment and spatial planning	113	32	1	146	4.74%
8. Commercial public services	66	9	5	80	2.60%
9. Housing	74	6	5	85	2.76%
10. Discrimination	54	13	0	67	2.17%
11. Children's rights	293	39	5	337	10.93%
12. Other	186	26	2	214	6.94%
<b>TOTAL</b>	<b>2,620</b>	<b>376</b>	<b>86</b>	<b>3,082</b>	<b>100.00%</b>

The table shows that **3,082 cases were considered** in 2010, of which 2,620 were opened in 2010 (85%), 376 were transferred for consideration from 2009 (12.2%) and 86 were reopened in 2010 (2.8%). Table 3.6.4 shows that **2.2 per cent fewer** cases were considered in 2010 compared to 2009.

The highest number of cases considered in 2010 were from the areas of judicial and police procedures (758 or 24.6%), social security (449 or 14.6%) and administrative matters (385 or 12.5%). Compared to 2009, the number of cases in the area of children's rights increased (from 288 cases to 337, or a 17% increase) and constitutional rights (from 155 cases to 173, or a 11.6% increase).

**Table 3.6.4:** Comparison of the number of cases considered by the Human Rights Ombudsman of the Republic of Slovenia in the period 2007–2010 by area of work

AREA OF WORK	CONSIDERED CASES								Index (10/09)
	2007		2008		2009		2010		
	No.	Share	No.	Share	No.	Share	No.	Share	
1. Constitutional rights	105	3.4%	183	5.4%	155	4.9%	173	5.6%	111.6
2. Restrictions of personal liberty	180	5.8%	175	5.2%	187	5.9%	163	5.3%	87.2
3. Social security	472	15.3%	523	15.4%	443	14.1%	449	14.6%	101.4
4. Labour law	220	7.1%	292	8.6%	253	8.0%	225	7.3%	88.9
5. Administrative matters	353	11.4%	388	11.5%	387	12.3%	385	12.5%	99.5
6. Judicial and police procedures	734	23.8%	810	23.9%	751	23.8%	758	24.6%	100.9
7. Environment and spatial planning	123	4.0%	132	3.9%	133	4.2%	146	4.7%	109.8
8. Commercial public services	107	3.5%	100	3.0%	100	3.2%	80	2.6%	80.0
9. Housing	100	3.2%	125	3.7%	106	3.4%	85	2.8%	80.2
10. Discrimination	57	1.8%	104	3.1%	69	2.2%	67	2.2%	97.1
11. Children's rights	274	8.9%	279	8.2%	288	9.1%	337	10.9%	117.0
12. Other	360	11.7%	275	8.1%	279	8.9%	214	6.9%	76.7
<b>TOTAL</b>	<b>3,085</b>	<b>100.0%</b>	<b>3,386</b>	<b>100.0%</b>	<b>3,151</b>	<b>100.0%</b>	<b>3,082</b>	<b>100.0%</b>	<b>97.8</b>

#### Cases by status of consideration

- 1. Closed cases:** Cases the consideration of which was concluded by 31 December 2010.
- 2. Cases being processed:** Cases being processed as of 31 December 2010.

In 2010, 3,082 cases were considered, of which **2,590 or 84%** of all cases considered in 2010 had been concluded by 31 December 2010. 492 cases remained to be resolved (16%).

**Table 3.6.5:** Comparison of the number of considered cases by the Human Rights Ombudsman of the Republic of Slovenia from 2007 to 2010 (at the end of the calendar year) by status of consideration

STATUS OF CONSIDERATION OF CASES	2007		2008		2009		2010		Index (10/09)
	(situation as at 31 December 2007)		(situation as at 31 December 2008)		(situation as at 31 December 2009)		(situation as at 31 December 2010)		
	No.	Share	No.	Share	No.	Share	No.	Share	
Concluded	2,652	86.0%	2,938	86.8%	2,775	88.1%	2,590	84.0%	93.3
Being processed	433	14.0%	448	13.3%	376	11.9%	492	16.0%	130.9
<b>TOTAL</b>	<b>3,085</b>	<b>100%</b>	<b>3,386</b>	<b>100%</b>	<b>3,151</b>	<b>100%</b>	<b>3,082</b>	<b>100.0%</b>	<b>97.8</b>

**A detailed overview of cases considered by area of work is given in Table 3.6.6.**

Under **1. Constitutional rights**: 173 cases were considered in 2010 (by 12.6% more than in 2009; 5.6% of all considered cases). With regard to the number of considered cases, public speech ethics with 57 matters (and 42.5% increase) and personal data protection with 48 matters (an 54.8% increase compared to the previous year) stand out.

The number of considered cases in area **2. Restrictions of personal liberty** decreased by 12.8% compared to 2009 (from 187 to 163). While the number of considered cases related to detained persons increased (from 34 to 42), the number of considered cases related to imprisoned persons decreased (from 112 to 92), as well as the number of considered cases related to psychiatric patients (from 24 to 18).

The number of considered cases under **3. Social security** in 2010 did not change significantly compared to 2009. The biggest share among them (with 66 considered cases) related to health insurance (14.7%) and health care (64 cases or 14.3%). A decrease in the number of considered cases compared to the previous period can be observed in social services (from 23 to 16), disability insurance (from 73 to 53) and pension insurance (from 68 to 59).

The number of considered cases under **4. Labour law matters** (225) decreased by 11.1% in 2010 compared to 2009 (253). An increase can be observed in the sub-area of employment relationships, with 37.5% more initiatives received (72 before and 99 in 2010). Compared to the previous period, a decrease in cases related to unemployment (from 40 to 21) and state authority employees (from 88 to 70) was recorded.

According to the number of considered cases in 2010 (385 cases), area **5. Administrative matters** remained almost unchanged compared to 2009 (387 cases); it comprises the third largest thematically integral set of cases considered by the Ombudsman in 2010. An increased number of considered cases can be observed in social activities (from 51 to 68) and administrative procedures (from 115 to 139), and a decrease in citizenship and denationalisation.

In 2010 again, the largest number of cases considered by the Ombudsman were in the area of **6. Judicial and police procedures** (758 cases or 24.6%), which includes cases related to the police, pre-litigation, criminal and civil procedures, procedures in labour and social disputes, misdemeanour procedures, administrative judicial procedures, matters related to attorneyship and notariat, and others. The index of considered cases in 2010 compared to 2009 (100.9) shows that the number of considered cases in this area also did not change significantly compared to 2009. Among the sub-areas with greater numbers of considered cases, administrative judicial procedures (from 5 to 17), other (from 65 to 86) and police procedures (from 93 to 117 or a 25.8% increase) should be highlighted. The sub-areas with observed declines in initiatives should also be emphasised, namely misdemeanour procedures, with an index of 76.7, procedures before labour and social courts, with an index of 81.3, and civil procedures and relations, with an index of 89.

The number of considered cases under **7. Environment and spatial planning** increased by 9.8% in 2010 compared to 2009 (from 133 to 146). While the number of initiatives in the sub-area of interventions in the environment remained unchanged (25 in both years), the number of initiatives in spatial planning increased from 25 to 30 (by 20%).

The number of considered cases under **8. Commercial public services** decreased by 20% in 2010 compared to 2009 (from 100 to 80). A larger decrease can be seen in the public utility sector, communication and energy, and an increase in traffic (from 24 to 31).

The number of considered cases under **9. Housing matters** decreased by 19.8% compared to 2009 (from 106 to 85). A lower number of cases is evident in housing services (from 18 to 6), and the number of housing relations cases slightly increased (from 67 to 70).

The number of considered cases under **10. Discrimination** in 2010 remained practically the same compared to 2009 (69 in 2009 and 67 in 2010). In the sub-area of national and ethnic minorities, there was a smaller increase (from 20 to 24), which also applies to the sub-area of equal opportunities by gender (from 2 to 5).

It should be noted that the area **11. Children's rights** also includes the sub-area of child advocacy, in which 59 initiatives were considered. Therefore the greatest increase was in this area, by 17% (from 288 to 337). While the number of considered cases in the sub-area of contacts with parents remained almost the same (60 in 2009 and 59 in 2010), the number of cases increased in the sub-areas of violence against children outside the family (from 11 to 15) and child support, child allowances and children's property management (from 24 to 28).

The area **12. Other** includes cases which cannot be classified into any other defined area. 214 such cases were considered in 2010, which is 23.3% less than the year before.

**Table 3.6.6:** Number of cases considered by the Human Rights Ombudsman of the Republic of Slovenia in 2010 by area of work of the Ombudsman

AREA/SUB-AREA OF THE OMBUDSMAN'S WORK	Cases considered in		Index (10/09)	AREA OF WORK	Cases considered in		Index (10/09)
	2009	2010			2009	2010	
<b>1 Constitutional rights</b>	<b>155</b>	<b>173</b>	<b>111.6</b>	6.4 Civil procedures and relations	344	306	89.0
1.1 Freedom of conscience	13	14	107.7	6.5 Proc. before labour and social courts	32	26	81.3
1.2 Public speech ethics	40	57	142.5	6.6 Misdemeanour procedures	103	79	76.7
1.3 Assembly and association	14	21	150.0	6.7 Administrative judicial procedures	5	17	340.0
1.4 Security services	1	0	0.0	6.8 Attorneyship and notariat	20	22	110.0
1.5 Voting rights	7	13	185.7	6.9 Other	65	86	132.3
1.6 Protection of personal data	31	48	154.8	<b>7 Environment and spatial planning</b>	<b>133</b>	<b>146</b>	<b>109.8</b>
1.7 Access to public information	2	3	150.0	7.1 Interventions in the environment	58	58	100.0
1.8 Other	47	17	36.2	7.2 Spatial planning	25	30	120.0
<b>2 Restrictions of personal liberty</b>	<b>187</b>	<b>163</b>	<b>87.2</b>	7.3 Other	50	58	116.0
2.1 Detainees	34	42	123.5	<b>8 Commercial public services</b>	<b>100</b>	<b>80</b>	<b>80.0</b>
2.2 Prisoners	112	92	82.1	8.1 Public utility sector	25	14	56.0
2.3 Psychiatric patients	24	18	75.0	8.2 Communication	22	13	59.1
2.4 Persons in social care institutions	4	5	125.0	8.3 Energy	25	16	64.0
2.5 Juvenile homes	1	2	200.0	8.4 Traffic	24	31	129.2
2.6 Illegal aliens and asylum seekers	2	0	-	8.5 Concessions	2	3	150.0
2.7 Persons in police detention	2	0	-	8.6 Other	2	3	150.0
2.8 Other	8	4	50.0	<b>9 Housing matters</b>	<b>106</b>	<b>85</b>	<b>80.2</b>
<b>3 Social security</b>	<b>443</b>	<b>449</b>	<b>101.4</b>	9.1 Housing relations	67	70	104.5
3.1 Pension insurance	68	59	86.8	9.2 Housing services	18	6	33.3
3.2 Disability insurance	73	53	72.6	9.3 Other	21	9	42.9
3.3 Health insurance.	52	66	126.9	<b>10 Discrimination</b>	<b>69</b>	<b>67</b>	<b>97.1</b>
3.4 Health care	64	64	100.0	10.1 National and ethnic minorities	20	24	120.0
3.5 Social benefits and reliefs	53	58	109.4	10.2 Equal opportunities by gender	2	5	250.0
3.6 Social services	23	16	69.6	10.3 Equal opportunities in employment	7	6	85.7
3.7 Institutional care	31	30	96.8	10.4 Other	40	32	80.0
3.8 Poverty – general	0	28	-	<b>11 Children's rights</b>	<b>288</b>	<b>337</b>	<b>117.0</b>
3.9 Violence – anywhere	15	16	106.7	11.1 Contacts with parents	60	59	98.3
3.10 Other	64	59	92.2	11.2 Child support, child allowances, child's property management	24	28	116.7
<b>4 Labour law</b>	<b>253</b>	<b>225</b>	<b>88.9</b>	11.3 Foster care, guardianship, institutional care	28	21	75.0
4.1 Employment relationship	72	99	137.5	11.4 Children with special needs	21	18	85.7
4.2 Unemployment	40	21	52.5	11.5 Children of minorities and threatened groups	2	1	50.0
4.3 Workers in state authorities	88	70	79.5	11.6 Family violence against children	21	24	114.3
4.4 Scholarships	15	14	93.3	11.7 Violence against children outside the family	11	15	136.4
4.5 Other	38	21	55.3	11.8 Child advocacy	0	59	-
<b>5 Administrative matters</b>	<b>387</b>	<b>385</b>	<b>99.5</b>	11.9 Other	121	112	92.6
5.1 Citizenship	18	11	61.1	<b>12 Other</b>	<b>279</b>	<b>214</b>	<b>76.7</b>
5.2 Aliens	42	46	109.5	12.1 Legislative initiatives	13	28	215.4
5.3 Denationalisation	18	13	72.2	12.2 Remedy of injustice	8	7	87.5
5.4 Property law	36	28	77.8	12.3 Personal problems	28	16	57.1
5.5 Taxes	62	51	82.3	12.4 Explanations	120	124	103.3
5.6 Customs	1	3	300.0	12.5 For information	70	21	30.0
5.7 Administrative procedures	115	139	120.9	12.6 Anonymous applications	39	17	43.6
5.8 Social activities	51	68	133.3	12.7 Ombudsman	1	1	-
5.9 Other	44	26	59.1	<b>TOTAL</b>	<b>3.151</b>	<b>3.082</b>	<b>97.8</b>
<b>6 Judicial and police procedures</b>	<b>751</b>	<b>758</b>	<b>100.9</b>				
6.1 Police procedures	93	117	125.8				
6.2 Pre-litigation procedures	25	29	116.0				
6.3 Criminal procedures	64	76	118.8				

## Closed cases

In 2010, **2,590 cases were closed**, which is a **6.7% decrease in the number of closed cases** compared to 2009. **After comparing the number of these cases (2.590) to the number of open cases in 2010 (2.620), we establish that 1.1% fewer cases were closed** in 2010 than opened.

### Closed cases by substantiation

**A substantiated case:** The case concerns the violation of rights or any other irregularity in all assertions of the initiative.

**A partially substantiated case:** Violations and irregularities are found in some submitted or non-submitted elements of the procedure, but not in other assertions.

**An unsubstantiated case:** A violation or irregularity is not found in any of the assertions in the initiative.

**No conditions for processing the case:** There is an ongoing legal procedure relating to the case, and delays or major irregularities are not observed. The initiator is provided with information, explanations and instructions for exercising rights in an open procedure. This group also includes unaccepted initiatives (too late, anonymous, offensive) and termination of procedures due to non-cooperation of the initiator or due to a withdrawal of the initiative.

**Non-competence of the Ombudsman:** The subject of the initiative does not fall within the scope of the institution. The initiator is advised on other options to exercise the rights.

**Table 3.6.7:** Comparison of the number of closed cases classified according to the Ombudsman's area of work in the period 2007–2010

AREA OF WORK OF THE OMBUDSMAN	2007	2008	2009	2010	Index (10/09)
1. Constitutional rights	85	151	136	156	114.7
2. Restrictions of personal liberty	157	150	166	128	77.1
3. Social security	413	468	415	388	93.5
4. Labour law matters	182	259	230	179	77.8
5. Administrative matters	293	319	321	308	96.0
6. Judicial and police procedures	636	714	657	623	94.8
7. Environment and spatial planning	101	105	101	116	114.9
8. Commercial public services	94	88	91	76	83.5
9. Housing matters	91	114	100	71	71.0
10. Discrimination	30	89	56	56	100.0
11. Children's rights	241	234	249	295	118.5
12. Other	329	247	253	194	76.7
<b>TOTAL</b>	<b>2,652</b>	<b>2,938</b>	<b>2,775</b>	<b>2,590</b>	<b>93.3</b>



**Table 3.6.8:** Classification of closed cases by substantiation

SUBSTANTIATION OF CASES	CLOSED CASES				Index (10/09)
	2009		2010		
	Number	Share	Number	Share	
1. Substantiated cases	403	14.5	440	17.0	109.2
2. Partially substantiated cases	301	10.8	221	8.5	73.4
3. Unsubstantiated cases	399	14.4	382	14.7	95.7
4. No conditions for processing the case	1269	45.7	1219	47.1	96.1
5. Non-competence of the Ombudsman	403	14.5	328	12.7	81.4
<b>TOTAL</b>	<b>2775</b>	<b>100.0</b>	<b>2590</b>	<b>100.0</b>	<b>93.3</b>

The share of substantiated and partially substantiated cases in 2010 (25.5%) did not change significantly compared to 2009 (25.3%) or previous years. **The share of substantiated cases compared to similar institutions abroad is rather high, and the share of cases not falling within the Ombudsman's competence is decreasing.** This indicates that initiators are increasingly better informed on the Ombudsman's competences, which is undoubtedly associated with our enhanced preventive activities.

#### Closed cases by areas

Table 3.6.9 shows the classification of cases closed in 2010 by areas as treated by state authorities which do not fall within areas of the Ombudsman's work. Each case is classified in the appropriate area according to the content of the issue which caused the initiator to address the Ombudsman and about which inquiries were made. As some initiatives required our action in several areas, the number of closed cases according to the Ombudsman's classification differs from the number of closed cases by areas.

The table shows that most closed case in 2010 related to:

- labour, family and social affairs (692 cases or 26.72%),
- administration of justice (673 cases or 25.98%),
- environment and spatial planning (272 cases or 10.5%), and
- internal affairs (211 cases or 8.15%).

By percentage share, the number of cases opened in 2010 compared to 2009 increased most in the area of transport (by 42.1%) and agriculture, forestry and food (by 31.3%), and decreased in the area of foreign affairs (by 66.7%).

**Table 3.6.9:** Closed cases considered by the Human Rights Ombudsman of the Republic of Slovenia in the period 2007–2010 by area of work of state authorities

AREA OF WORK OF STATE AUTHORITIES	CLOSED CASES								Index (10/09)
	2007		2008		2009		2010		
	Number	Share	Number	Share	Number	Share	Number	Share	
1. Labour, family and social affairs	712	26.9	755	25.7	690	24.86	692	26.72	100.3
2. Finance	78	2.9	59	2.01	60	2.16	50	1.93	83.3
3. Economy	62	2.3	72	2.45	48	1.73	31	1.20	64.6
4. Public administration	24	0.9	44	1.5	68	2.45	41	1.58	60.3
5. Agriculture, forestry and food	12	0.5	23	0.78	16	0.58	21	0.81	131.3
6. Culture	55	2.1	76	2.59	37	1.33	28	1.08	75.7
7. Internal affairs	251	9.5	251	8.54	224	8.07	211	8.15	94.2
8. Defence	8	0.3	9	0.31	9	0.32	5	0.19	55.6
9. Environment and spatial planning	253	9.5	290	9.87	315	11.35	272	10.50	86.3
10. Administration of justice	691	26.1	733	24.95	764	27.53	673	25.98	88.1
11. Transport	29	1.1	24	0.82	19	0.68	27	1.04	142.1
12. Education and sport	89	3.4	147	5	112	4.04	100	3.86	89.3
13. Higher education, science and technology	17	0.6	27	0.92	18	0.65	23	0.89	127.8
14. Healthcare	165	6.2	177	6.02	161	5.8	146	5.64	90.7
15. Foreign affairs	5	0.2	16	0.54	12	0.43	4	0.15	33.3
16. Government services	7	0.3	9	0.31	11	0.4	11	0.42	100.0
17. Local self-government	16	0.6	26	0.88	23	0.83	13	0.50	56.5
18. Other	178	6.7	200	6.81	188	6.77	242	9.34	128.7
<b>TOTAL</b>	<b>2,652</b>	<b>100</b>	<b>2,938</b>	<b>100</b>	<b>2,775</b>	<b>100</b>	<b>2,590</b>	<b>100</b>	<b>93.3</b>

This year again, we have prepared Table 3.6.10, which includes an overview of substantiated and partially substantiated cases by area of work of state authorities. As already mentioned last year, this overview was prepared on the proposal of parliamentary deputies in order to establish in which areas most violations were detected in 2010.

Focusing first on areas which included more than 100 initiatives, it may be observed that the share of substantiated cases is again highest in education (68%), followed by healthcare (47.3%), the environment and spatial planning (33.8%), and labour, family and social affairs (30.2%). More on violations in individual areas can be found in the substantive part of the report.

**Table 3.6.10:** Analysis of closed cases by substantiation for 2010

AREA OF WORK OF STATE AUTHORITIES	CLOSED CASES	NUMBER OF SUBSTANTIATED CASES	SHARE OF SUBSTANTIATED/ NUMBER OF CLOSED CASES
1. Labour, family and social affairs	692	209	30.2
2. Finance	50	7	14.0
3. Economy	31	0	0.0
4. Public administration	41	12	29.3
5. Agriculture, forestry and food	21	5	23.8
6. Culture	28	8	28.6
7. Internal affairs	211	48	22.7
8. Defence	5	2	40.0
9. Environment and spatial planning	272	92	33.8
10. Administration of justice	673	83	12.3
11. Transport	27	4	14.8
12. Education and sport	100	68	68.0
13. Higher education, science and technology	23	11	47.8
14. Healthcare	146	69	47.3
15. Foreign affairs	4	1	25.0
16. Government services	11	7	63.6
17. Local self-government	13	4	30.8
18. Other	242	31	12.8
<b>TOTAL</b>	<b>2,590</b>	<b>661</b>	

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