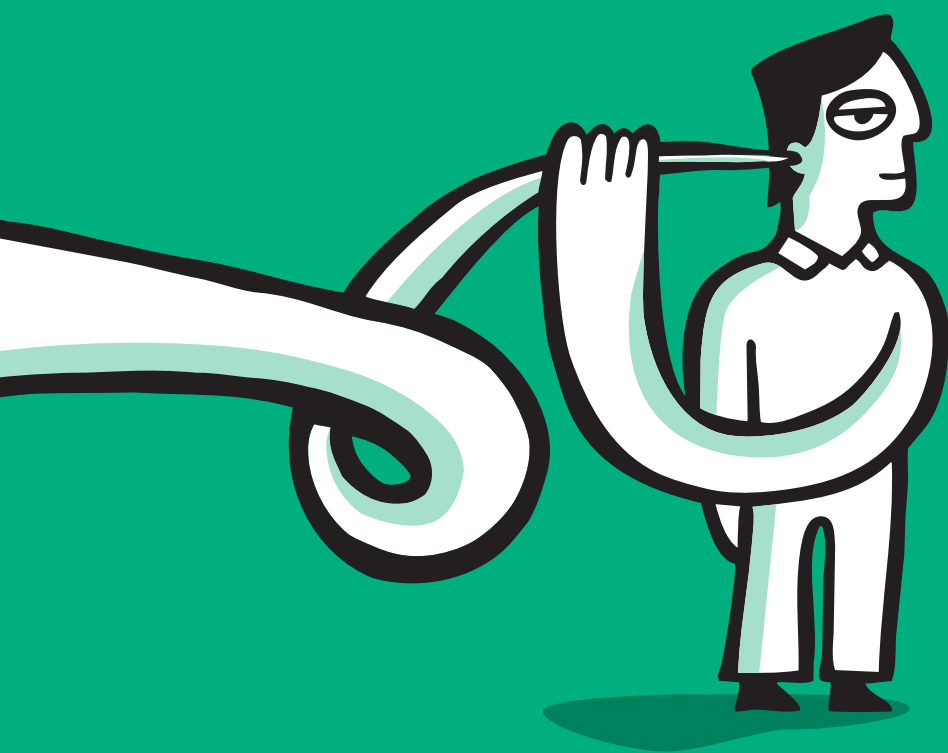


ANNUAL REPORT  
OF THE HUMAN RIGHTS OMBUDSMAN  
OF THE REPUBLIC OF SLOVENIA  
FOR 2015  
WITH  
ANNUAL REPORT  
OF THE NATIONAL PREVENTIVE MECHANISM  
FOR 2015



**ABRIDGED VERSIONS**



REPUBLIC OF  
SLOVENIA



HUMAN  
RIGHTS  
OMBUDSMAN



**Annual Report  
of the Human Rights Ombudsman  
of the Republic of Slovenia  
for 2015**

with

**Annual Report  
of the National Preventive Mechanism  
for 2015**

ABRIDGED VERSIONS

Ljubljana, September 2016

**NATIONAL ASSEMBLY OF THE REPUBLIC OF SLOVENIA  
Mr Milan Brglez, President**

**Šubičeva 4  
1102 Ljubljana**

Mr President,

In accordance with Article 43 of the Human Rights Ombudsman Act I am sending you the twenty-first Regular Report referring to the work of the Human Rights Ombudsman of the Republic of Slovenia in 2015.

I would like to present personally in accordance with Article 44 of the Human Rights Ombudsman Act, at the session of the National Assembly, the Summary report and findings concerning the level of respect for human rights and fundamental freedoms and the legal protection of citizens in the Republic of Slovenia.

Yours respectfully,

Vlasta Nussdorfer  
Human Rights Ombudsman



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Date: 11 May 2016

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# 1

## INTRODUCTION

*No one is born hating another person  
because of the colour of his skin,  
his background, or his religion.*

*People must learn to hate,  
and if they can learn to hate,  
they can be taught to love,  
for love comes more naturally to the human heart  
than its opposite.*

**Nelson Mandela**



**Vlasta Nussdorfer, Human Rights Ombudsman**

## Dear Reader,

this is the 21<sup>st</sup> annual report on the work of the Human Rights Ombudsman of the Republic of Slovenia. All findings, opinions and recommendations in this report are based on the extensive work I performed as the fourth Human Rights Ombudsman of the Republic of Slovenia together with my colleagues: four Deputies, the Secretary General, the Director of the Expert Service, the Ombudsman's advisers and other expert and technical staff. As an establishment, the Human Rights Ombudsman is on the bridge, overseeing the observance of rights, for which it was authorised with the Constitution and the Human Rights Ombudsman Act. The tasks and authorisations were allocated to the Ombudsman in additional 25 acts and rules. I believe that in 21 years, which marks the age of majority in some countries, we have justified our operations with direct or indirect assistance to thousands of complainants who claimed violations of their human rights.

## The Ombudsman as overseer of the rule of law and a social state

By analysing the 3,418 complaints discussed in 2015, of which 3,008 were completed, we established that in 475 cases the complaints were justified. State and local authorities and holders of public authorisations functioned unlawfully, managed poorly or violated human rights and fundamental freedoms in another way. It is difficult to present all the discussed cases in which violations were established, and we thus in addition to general findings publish only the most important or representative ones which explicitly feature individual violations of human rights and also several systemic forms of violation. All other forms of communications must be added to the above number of complaints discussed, which serve as the source of determining the satisfaction of Slovenian citizens with the functioning of institutions. We received as many as 9,611 calls to the toll-free telephone number 080 15 30, and held twelve external sessions, at which we conducted 217 personal interviews with complainants. I received 68 persons for a personal interview at the head office of the institution

in 2015, and a total of 258 persons in my three-year term. The fact that we received as many as 11,307 incoming documents in 2015 testifies to the complexity of conducting business with various publics. We received 2,785 new complaints and discussed 3,418 complaints together with those from previous years, of which we discussed 19 complaints at our own initiative, for which we obtained the consent of the complainants. Some 47 complaints were addressed as wider issues important for the protection of human rights and fundamental freedoms and legal certainty of citizens of the Republic of Slovenia relating to the relevance of the topics or media exposure of certain individual cases or issues affecting a larger number of people. As part of the Advocate – A Child's Voice project, 41 children were appointed representatives. We organised or attended over 500 events. The work performed was extensive and is described in detail according to substantive sets, and also in the third chapter of the report and the statistical data presentation.

I find that many complainants writing to the Ombudsman, and those to whom I have spoken believe that they are frequently alone and even treated as second-class citizens when facing the state with its compartmentalised, opaque and frequently autocratic apparatus, which is not always friendly to individuals, and often an end in itself functioning according to the principle of an insensitive computer; when making an error, it is unable to apologise, reimburse the damage or eliminate irregularities. In many fields, the management of the state and institutions is poor. In particular, it is slow, inefficient and does not always work for the best interests of people, particularly those on the social margins who are poor, helpless, deprived of dignity and disappointed. These people go from door to door seeking answers and solutions. Unfortunately, they are frequently confronted with closed doors. I often stress that a full person cannot empathise with a hungry one, nor does a healthy person believe a sick one, or a rich person a poor one. A person may be self-sufficient until something or someone jerks the rug out from under their feet and they themselves are pushed among the people on the social margin. People are also helpless if they lack sufficient legal aid in legal procedures, but free legal assistance is what they most frequently need.

## Has our 'navigating' bridge sufficient 'compass'?

We urgently require a people-friendly 'navigating bridge' from which it will be possible to scrutinise minutely with a good 'compass' and notice movement in the wrong direction and change the course promptly and decisively. It seems that the operators have not yet agreed on the direction of social development, and frequently do not know what to do when inhumane situations develop. They claim that the laws are good, and only have to be respected. I find that by merely appealing to respect for legislation, moral standing, ethical conduct and the humanitarian resolution of problems in all fields of life, we will not succeed in reducing the number of entirely wrongful acts which visibly affect the dignity of people and eat away at the fabric of society. These include new forms of slavery, where employers practically 'own' workers who have no rights and refuse to pay them wages for their work. The workers do not receive minimum social and health protection or even suitable legal assistance. People with no morals and compassion apparently do not fear supervisory mechanisms or legal sanctions.

## To maintain the attained level of human rights protection

I am concerned that the level of human rights already obtained has declined or is frequently too easily limited almost overnight. Many new limitations on human rights are enforced without public notification, and broader jurisdictions are allocated to certain authorities, even with the legitimate support of the legislators.

A time of lurking, utterly new and sometimes also unfounded fear does not favour the consistent observance of fundamental human rights and freedoms already ensured in the Constitution and international treaties. Respect for them is unfortunately not self-evident, but demands constant efforts by all, both the governmental and non-governmental sectors, particularly to maintain their present level, the realisation of known and codified rights, the modification of poor practices into good ones and finally adding to the range of human rights in the Slovenian Constitution and perhaps also in the European Convention on Human Rights and Fundamental Freedoms, e.g. the right to water.



## We must also respect international human rights standards

The international community has developed several successful ways of monitoring the level of respect and enforcement of human rights and fundamental freedoms in countries which are members of these international intergovernmental human rights organisations. In particular, the Council of Europe, the European Court of Human Rights (ECHR), other supervisory mechanisms and the UN. The position of Slovenia at the very top of violators of human rights for its per capita share of judgements of convictions of the ECHR received a lot of attention in 2015. Upon the publication of the news, we confirmed that the data are, unfortunately, very revealing. However, it is not possible to simply claim that Slovenia is among the greatest violators of fundamental human rights and freedoms without an in-depth analysis or merely on the basis of the share of judgements of conviction, although Slovenia is undoubtedly a violator. Since 1994, when Slovenia ratified the European Convention on Human Rights and Fundamental Freedoms and until the end of 2015, our country was recognised a violator in as many as 317 cases, with at least one determined violation of a right from the above Convention. The most frequently determined violations were the violation of the right to an effective remedy (265 times) and the right to trial without undue delay (262 times). I emphasise that, since the beginning of its activities 21 years ago and in my first three years as Ombudsman, the Ombudsman's annual reports have emphasised the need to respect everyone's human rights, and the right and responsibility of the courts to decide in a reasonable time, without undue delay and highly professionally.

If the National Assembly, the Government and competent ministries respected and 'took seriously' our numerous recommendations in this field, this situation would not have occurred. I thus appeal to the National Assembly, the Government and all competent authorities to discuss the findings and recommendations of the Ombudsman with all due seriousness and observe consistently the adopted recommendations when drafting amendments to legislation. This will be beneficial in the long term, since, if the Ombudsman's recommendations had been considered accordingly, it would have been possible to avoid the payment of compensation for the erased, payment of unduly and discriminatingly reduced pensions and the re-payment of foreign-currency deposits with interest to savers of Ljubljanska Banka from the countries of former Yugoslavia, as decided by the ECHR.

I repeat that a final resolution is also required with regard to the shameful and unwarranted post-war massacres, particularly with a decent burial for all victims. We have to do this because we are human, although we were not directly responsible for the atrocities committed by our forebears after the Second World War. By burying the victims, we must also 'bury our hatchets' and unify our visions for the further social and economic development of the society to the highest extent possible and strive for better welfare, with basic respect for human rights and fundamental freedoms. The violation of human rights is expensive, but the remedy for injustices is even more expensive, as I frequently emphasise.

## The state should respect the recommendations of the supervisory mechanisms of the Council of Europe and the UN

The Ombudsman carefully monitors the functioning of the supervisory bodies of the United Nations Organisation and the Council of Europe. As a member of international organisations in the field of human rights, Slovenia is subject to periodical reporting on the realisation of conventions of both organisations. The state presents these reports before the committees which discuss Slovenian reports and then draft conclusions and recommendations about further measures for implementing obligations. I particularly wish to stress that the Ombudsman's reports that are translated into English and available on our website are a source of many findings and recommendations which these international mechanisms submit to Slovenia. So this significant dimension of the Ombudsman's work should not be overlooked. I am concerned that Slovenia is late with the submission of certain reports. A report with regard to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment should have been delivered in 2015, but the state has not submitted it yet. Slovenia has also not delivered the report on the realisation of the Council of Europe's Framework Convention for the Protection of National Minorities, which should have been submitted in 2014. I believe there is no excuse for non-compliance with international commitments. I also find that the public are not familiar with the recommendations of international supervisory mechanisms, they seldom refer to

them or demand their realisation by state and local authorities. The Ombudsman believes that international documents, recommendations and the findings of international organisations on Slovenia must be translated into Slovenian and made publicly accessible, since they hold up a mirror to Slovenia and its provision of human rights protection. It is unacceptable that state authorities have no clear plans for their realisation, and thus the same recommendations are being repeated, some even since the establishment of the autonomous and independent state. I am certain that part of this duty, particularly informing the public and promotional and research tasks, will also be conducted by the Human Rights Centre, which will function within the institution of the Ombudsman following the amendment to the Human Rights Ombudsman Act. Namely, the Ombudsman has expressed readiness to assume full membership of a national institution for human rights with A status according to the Paris Principles on the condition that suitable staff and material are provided to enable the implementation of such extensive and new duties.

## We must eliminate all forms of discrimination

We discussed several complaints referring to the constitutional right of equality before the law. I find that amendments to regulations which would eliminate discrimination in the arrangement of transport of higher education students with disabilities have not yet been drafted. The latest amendments to the Marriage and Family Relations Act were rejected at the referendum on 20 December 2015, so the rights of same-sex couples in the Republic of Slovenia, due to their sexual orientation, are not the same as those enjoyed by heterosexual couples, which will have to be regulated systemically (at the time of drafting this report, the Partnership Act (*Zakon o partnerski zvezi*) had not entered into force). I point to the systemic violation of the right to free transport of persons with mental disorders aged between 18 and 26 participating in a special education and training programme. According to the assessment prepared by the Ministry of Education, Science and Sport at the Ombudsman's proposal, 400 persons participating in this special programme have been affected due to unregulated transport. I am concerned that no improvement has been made regarding the living conditions in Roma settlements and their surroundings, which are not arranged legally and in terms of municipal infrastructure. Many Roma people have no access to drinking water, which is a human right, and also no access to electricity. The state and local self-government authorities do not respond, or their response is very slow, to the Ombudsman's recommendations on this issue over the years. It is mandatory for the National Assembly to pass a new national programme on the Roma people.

Systemic measures are needed to implement fundamental human rights, which was also pointed out by the international supervisory mechanisms of the UN and Council of Europe. I am pleased that the Ombudsman's recommendations that such legislative solutions must be adopted, which, together with the legal arrangements of the EU, will enable impartial, independent and effective discussion of violations of the prohibition of discrimination, also by establishing an independent advocate of the principle of equality, are being realised with the new Protection against Discrimination Act, which is not in force yet at the time of writing this introduction.

## Ethics of public discourse must be ensured

As the Ombudsman, I point to the frequently low level of ethics of public discourse. We received several complaints which claimed unconstitutional incitement to intolerance and hate speech. I detect strong links with current social events and intolerant or even hate speech. More complaints were received with the second wave of the migrant crisis in 2015, when reports of hate speech on religious and national bases or speech directed against refugees increased severely. We also received complaints about hate speech due to sexual orientation, religious affiliation and hatred on the basis of nationality. The complainants are usually also referred to the prosecution service and the police; however, case law in this field is very limited. The European Court of Human Rights formed admissibility criteria on restricting the human right to freedom of speech and restrictions that are necessary in a democratic society. Nevertheless, I appeal to all holders of public office and politicians to abstain from all statements with discriminatory and hate content, not to use negative stereotypes or stigmatise, humiliate, frighten or harm minorities, groups or individuals in any other way. I am aware that forms of expressing positions and criticism of formal politics must be ensured in a democratic society, including the functioning of a political opposition; however, these rights must not be misused to marginalise or silence any minority or group. Even with stricter punitive policies in this field, unacceptable hate speech

or expressions of hostility will never be completely eliminated; nevertheless, serious consideration should be given to sanctioning them. The Ombudsman further proposes that deputies and other politicians adopt a code of ethics and form a tribunal to respond to individual cases subject to public condemnation.

## More efficient measures for high-quality and timely judicial decision-making are expected

Similarly to 2014, one quarter of complaints received in 2015 involving judicial matters were related to lengthy judicial proceedings, and three quarters discussed the content of court decisions or the conduct of procedural acts, i.e. issues regarding the quality of trials. We are aware that the Ministry of Justice is striving for the efficient implementation of the right to trial without undue delay, and is also taking action in accordance with its jurisdiction; however, amendments to the current regulatory bases will also be necessary to realise our constant recommendations from the viewpoint of effectively providing the right to trial without undue delay, the aspect of the right to an effective remedy and the question of the timely award of just satisfaction. I also strive to have further measures adopted for high-quality judicial decision-making with a system of consistently established judicial responsibility, which will function within the constitutional principle of the independence of judges and the judiciary. I emphasise that it is understood that public employees and judges also have their own obligations and responsibilities. They are obliged to perform their work correctly, with fairness and responsibility, and ensure their judicial function is effectively implemented. A judge's independence must not mean they are inviolable or non-culpable, because they must comply with the Constitution and the law. The Ombudsman again calls for the further improvement of the operational efficiency of judicial supervisory authorities in order to ensure the quality of courts' work and strengthen their integrity, which must not affect their autonomy.

## We must respect the dignity of persons deprived of liberty

The Ombudsman receives and discusses many complaints from persons deprived of their liberty for various reasons. In the role of the National Preventive Mechanism (NPM), we conducted 67 visits in 2015. We visited detainees, prisoners serving sentence in solitary confinement, persons in forensic units, minors in juvenile detention, minors in correctional and juvenile facilities and special education institutions, several people with mental disorders or diseases in social and health-care institutions, and aliens at the Aliens Centre. The purpose of these visits was to improve the protection of these persons against torture and other forms of cruel, inhuman or degrading treatment or punishment.

We are pleased that regulatory improvements have been made on the basis of the Ombudsman's recommendations. Nevertheless, many problems remain. Our prisons are still overcrowded and the legal option of sentencing alternatives is still not being applied frequently enough. I particularly stress that the European Court of Human Rights (ECHR) established in its judgements (*Arapović v. Slovenia* and *Beljkaš v. Slovenia*) unsuitable conditions of detention or degrading treatment in Ljubljana Prison, which the state is obliged to eliminate with systemic measures, possibly also with the planned construction of new prisons in Ljubljana. In addition to overcrowding in individual prisons and, consequently, poor living conditions, we also highlight the shortage of personnel and overburdening of employees, which is reflected in the quality of expert work with prisoners and their care, including worsening security conditions in prisons. It is mandatory to adopt staffing norms for work in prisons. We also established that no progress has been made on providing work opportunities for prisoners. The Ombudsman has been pointing out this issue for several years, also in its role of the NPM. We cannot accept the justification that the Prison Administration are slow to discuss complaints due to staffing problems. Prisoners even state that prison staff deter them from seeking legal remedies or complaining. Complaints must be discussed within the statutory time limits.

I am pleased to determine that not many complaints received in 2015 accused judicial police officers of ill-treatment; however, we expect more consistent recording of data on the alleged occurrence of injuries or ill-treatment in prisoners' medical records. We further stress the unresolved situation of elderly, ill, physically-impaired or other disabled prisoners serving prison sentences and the unacceptable delay in preparing a regulation to define in more detail the functioning of the Forensic Psychiatry Unit. In the past and also now,

the Ombudsman has highlighted the issue of accommodating persons with mental disorders in secure wards of social care institutions, where the situation is alarming.

We also noted that minors and families are usually accommodated at the Aliens Centre, where freedom of movement is limited. In this regard, we contacted the ministries and the Government of the Republic of Slovenia and asked them to take suitable measures. They said that the problem would be solved and families and minors would be relocated to more suitable institutions; however, this has not happened. I emphasise that, in acting in this way, Slovenia, is violating the Constitution of the Republic of Slovenia, according to which children in our country are subject to special protection and also the Convention on the Rights of the Child, the recommendations of the Committee of Ministers of the Council of Europe and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

In 2015, we enquired about concrete procedures relating to complaints about the work of police officers particularly at the Ministry of the Interior and in certain cases directly at the police. We can again commend the prompt and high-quality responses of the Ministry of the Interior and the police. We nevertheless urge them to continue to consistently observe human rights in police procedures, suitable communication and for police officers to take a respectful approach to individuals, and consistent discussion of all possible irregularities in the work of police officers.

## We require more efficient and qualitative public administration

I determined that the principle of good administration in particular had been violated in most the complaints in which it was established that human rights had been violated. Professional officials should be more sensitive to the needs of users and be aware that they serve the people.

As the Ombudsman, I am dissatisfied with the fact that certain state authorities, local authorities and holders of public authorisations (institutions, social work centres and others) function too slowly, take too long to resolve applications and exceed all reasonable time limits when making their decisions. Prompt decision making is particularly important in cases of recognising the right to unemployment benefit or other forms of social assistance. When inquiring and obtaining the information needed for the Ombudsman's work when discussing complaints, certain authorities respond only after several interventions, although the Ombudsman clearly provides the expected deadline for a reply. Such conduct amounts to obstruction of the Ombudsman's work. Any authority responsible for making decisions in an administrative procedure must decide on the rights and duties of individuals within deadlines determined by the General Administrative Procedure Act or other acts, and such excuses as the lack of personnel, sick leave or other reasons are unacceptable to the public and the Ombudsman. This is even more important in procedures which involve severe encroachment on the rights of individuals and come into force before the finality of a decision, e.g. removal of children from their parents.

The state and local authorities should not overlook or merely put in a drawer letters, requests or petitions from Slovenian citizens (submitted in paper or electronic form) but should always reply to them in writing, as per the principle of good administration. The constitutional right to petition is particularly important, and so is the duty of the state authority which is its addressee, to state its position on the content of the proposal within a reasonable deadline and within its jurisdiction.

Modern information technology may make the work of state authorities faster and more efficient, but its technical limitations must not cause unequal treatment, which cannot be rehabilitated in any other way than by a revocation and repetition (e.g. of a public procurement for allocation of grants for shortage occupations). Information technology (IT) cannot and must not be a substitute for rational analyses of the situation of a person who needs social or any other form of assistance or a service; at best, IT may provide support. It facilitates, sometimes even unduly, interference of public authorities with personal data and people's privacy, and with its publication (also on a website or on local TV) may constitute an unacceptable violation of the right to privacy (e.g. publication of names and surnames of pupils with approved payment of school meals). Also in cases when reporters submit various complaints to state authorities and wish to remain anonymous, the state or local authorities should not forward reporters' personal data to third persons without their consent; by

doing so, they encroach upon the reporters' privacy, human rights and fundamental freedoms and violate the principles of confidentiality and good administration.

Persons with disabilities or persons with special needs are in a particularly sensitive situation. They reasonably expect that state authorities will do more to allow them decent and as independent and sovereign communication with them as possible. More should be done for this (or at least within the framework of regulatory provisions) so that deaf or deaf-blind persons are able to use sign language or other adjusted forms of communication (interpreters) in procedures before state and local authorities.

It is of great concern that in cases when state authorities make mistakes in administrative procedures, also by incorrectly interpreting of legislation, there is no possibility of retroactive payments of eligible income (e.g. simultaneous enforcement of child-care allowance and assistance and attendance allowance), or persons affected must return unjustifiably received social assistance or part of their personal income (due to an error by the authority). People find themselves in severe financial distress which is not their own fault, and their social position is at risk, since they have to repay what they owe in a very short time, which drives them to despair and extreme disappointment over the quality and justice of the functioning of state authorities. It is unacceptable for the entire burden of errors of the authorities to be borne or assumed by people, and most frequently also without establishing the responsibility of the authorities that made the mistake. Public employees must be willing to accept the mistakes they make and remedy them, so that the state assumes the burden of its own mistakes. The consequences of unjustifiably extending procedures or exceeding the statutory time limits on decision making cannot be imposed on clients, nor should they be blamed for the problems that occurred.

Authorities may misplace or lose certain documents; these also include providers of health service, who should be particularly careful when protecting data entrusted to them by law. In cases of their loss, the providers must assume full responsibility and help the injured parties immediately by at least issuing a suitable certificate.

## Rehabilitation of degraded environment is mandatory

The right to a healthy living environment is gradually gaining recognition as a human right; however, I find that in Slovenia we are not aware that a polluted environment is a severe threat to people's health and the maintenance of natural balance – if not today, then surely tomorrow. It is an encroachment on the individual's private and family life, which was determined several times with the analysis of received complaints, when visiting degraded surroundings and speaking with the people affected, and also during regular monthly discussions with non-governmental organisations and civil society initiatives involved in this issue and also directly in the field (in Ankaran, Mežica and Vrhnika in 2015, and in the Celje region and Bela Krajina in 2014). The number of complaints in this field is growing annually. We have noticed for years that systemic changes or concrete activities that affect the environment are frequently implemented without public participation. The disregard for the public and the ratified Aarhus Convention causes dissatisfaction in many cases, particularly when developments significantly reduce the quality of life, and arouse resistance among the affected people and the establishment of civil initiatives.

Reducing funds for rehabilitating certain environments is an utterly unacceptable measure, because the state must rectify the consequences of ill-judged past decisions that are endured by the citizens, particularly children. Citizens should not have to petition for rehabilitation. The state is obliged to rectify this as soon as possible. Funds are always found to rehabilitate e.g. 'gaps in the banking system', while it seems that polluted human surroundings are not a priority task for decision makers, to which as the Ombudsman I decisively object. It is difficult to imagine the life of people on whose doorstep a composting plant or a biogas facility has been built and have to live in stench and noxious odours every day. A regulation to govern the field of noxious odours must be prepared, which the Ombudsman has been stressing for several years to no avail. The state is obliged to protect its citizens from such developments by implementing supervision of the issue of permits, operations and safety of industrial activities, particularly if such activities could be hazardous to the environment and human health. I wonder why the interests of capitalists are frequently more important than the public need.

In 2015, we also dealt with the introduction of the digital radio system (GSM-R) without suitable notification of the public. In spite of responding and a readiness to cooperate, the responsible authorities do not meet the

demands of people, civil initiatives or local inhabitants to relocate base stations. The problems occur with the payment of relocating individual problematic base stations. The construction of base stations is a textbook example of the consequences of insufficient inclusion of the interested public and local communities in the planning process, which does not suitably inform or clarify, and joint agreement. People say that they do not believe anyone any more.

I also wish to draw attention to the frequently inefficient and non-transparent work of inspection services, which have nevertheless published their strategic guidelines and priorities on their websites on the basis of our recommendations. However, we still believe that work priorities as defined in the internal rules of the Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning should be defined in a regulation. In 2015, cooperation with the Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning was good.

## Let us end the new-age slavery of workers

I am exceptionally displeased with the actions of the state authorities in cases of new-age forms of slave work, which is a glaring example of violating fundamental human, labour and social rights and human dignity. Foreign workers are in an even worse situation, because they are unfamiliar with their rights and suitable ways of protecting them. Why do new entrepreneurs record exceptional profits, but do not settle their liabilities to their workers and the state? Have many established ten or more private companies due to their many business operations, or perhaps also with bad intentions? Is it necessary to discuss this issue for several decades? While the state and law enforcement authorities refuse to take sufficient action, we follow stories of short-changed workers reported in the media with great pain and anger. Until these rapidly established and 'hollow' business elitists are not substantially afraid of ruthless exploitation, they will continue to heartlessly exploit local and foreign workers with the aid of porous legislation, transfer their 'dirty money' to private foreign accounts, and continue to deliberately bankrupt once flagship companies of our business sector. Workers will not only be left on the street, but will be robbed of their basic human dignity, abandoned and ashamed in front of the doors of humanitarian organisations. While the state does nothing. It is simply impossible to live on promises.

In 2015, we again discussed the issues of the non-payment of salaries and social security contributions, chaining of companies, employment in precarious (uncertain) forms of work, ill-treatment, bullying, mobbing and other forms of violence at work, the conduct of inspection procedures, suspicious placement abroad, voluntary traineeship and the problem of foreign migrant workers.

I believe that the state is not aware of the seriousness or the extent of the non-payment of salaries. The shortage of personnel at certain inspections could be corrected by reorganising staff within the public administration, which particularly applies to the Labour Inspectorate, which employs only 78 inspectors, and in spite of 16,000 inspections cannot sufficiently monitor the implementation of labour legislation in many companies. Systemic measures are urgently needed to ensure a transparent, efficient and fast system of supervision of the payment of salaries and other contributions.

People are deprived of their minimum dignity when employers with unstoppable double-crossing and chaining of companies are refusing to pay workers for their work. And when workers wish to retire, they discover that their employer had not been paying their social security contributions. They are injured yet again in their retirement with lower pensions. The state is unquestionably responsible for the situation of many workers; as the Ombudsman, I ask all responsible parties to invest more effort in eliminating this shameful violation of human rights in the shortest time possible. The systems are in the domain of the state, and if the measures are inefficient or poor, they have to be replaced with new ones immediately.

On the occasion of Human Rights Day, we prepared a round table with the Slovene Ethnographic Museum on the topic of the employment and employment relationships of young people. With representatives of many institutions and organisations, we revealed the problems of young people when venturing onto the labour market after completing their education. We mutually condemned unpaid traineeships and other forms of exploiting young people's work, and expressed our expectation that more efficient systemic measures would be adopted to create new jobs for the young and revive traineeship and apprenticeship. We determined that,

in spite of the efforts, the state has not done enough for facilitating young people's transfer from education to employment and an independent life without the financial assistance of their parents. We stressed that more effective and friendly housing policy should also be formed and adopted. On Human Rights Day, we also published a special bulletin on exercising labour rights in which we highlighted many issues relating to unemployment and employment and recommended necessary changes that have not been realised yet.

## Children's rights are an important part of the Ombudsman's work

Much effort and time were also dedicated to the field of children's rights in 2015. Although we received fewer complaints, the problems in this field remain the same as in previous years. There is a growing need for new family legislation to consistently determine the division of jurisdiction between the executive and judicial branches of power, the obligation to acquire children's opinions in all legal procedures, the prohibition of corporal punishment of children and, above all, ensure the prompt and effective action of competent authorities upon every violation of children's rights. It is almost incomprehensible that we have for years been unable to clearly prohibit the corporal punishment of children by means of a law, which has also been required by international human rights organisations. Complications regarding the passage of the new family code must not be the excuse for the state being unable to regulate this field legally for over a decade, when we know that in urgent cases acts can be adopted according to expedited procedures almost over-night. This issue must be stated clearly in the new family code or the amendments to the Family Violence Prevention Act. The tasks of children's advocates who are now functioning successfully and are organised within the Ombudsman's institution must also be systematically defined.

We dedicate special attention to children with special needs, and continue the practice of accepting one such person for work experience at the Ombudsman's office. Our experience regarding this measure has been excellent. In 2015, as many years before, I again point to – unfortunately without success – problems when discussing children with emotional and behavioural disorders and children with severe psychiatric problems, because there are still no suitable accommodation facilities for providing suitable expert paedopsychiatric assistance. We discussed complaints from parents of blind and visually impaired children, stating the inaccessibility of adjusted study material, the issue of a permanent assistant for providing physical assistance and the insufficient number of hours of additional expert assistance for blind pre-school children and secondary-school students. The ministries are familiar with these issues, but explain that inter-ministerial cooperation is mandatory when resolving such problems. Unfortunately, the procedure of 'inter-ministerial cooperation' in practice frequently means unnecessary delay or even blocking of the procedure of adopting decisions. The supervision of the harmonisation of work of all inter-ministerial groups in all fields should be taken over by the Office of the Prime Minister, and the groups should regularly report to the Government on procedures, solutions and barriers at work.

I wish to emphasise the lack of seriousness of the state regarding its international obligations and the unacceptable practice of state representatives who conclude international agreements to gain political support and then refuse to ratify or transpose these policies to the internal legal order. One example is the Optional Protocol to the Convention on the Rights of the Child on a communications procedure. The Republic of Slovenia was actively involved in drafting it and was one of the first UN countries to strive for prompt signing of the Protocol, which was signed in 2012. Since then we have heard numerous reasons why the Government has not yet submitted the document to the National Assembly for ratification.

In May 2015, we organised a consultation with 300 participants, who discussed the situation of children in judicial proceedings. We determined that the judiciary are not always sufficiently friendly to children or young people when they find themselves in the middle of a divorce battle, and also when determining custody, adoption and family violence. We emphasised again that the child's long-term benefits must be the main guidelines when deciding on the situation of a child. I recommend that all state authorities dedicate more attention and expert efforts to these issues.

We are pleased to attend annual municipal, local and national children's parliaments. At the end of 2014, the Ombudsman organised a conference on the participation of children and adolescents in cooperation with the Slovenian Association of Friends of Youth (ZPMS) and the School Student Organisation of Slovenia,

where representatives of the Government and ministries undertook to do everything possible to realise the conference's recommendations. I express dissatisfaction with the lack of the anticipated progress, since the recommendations have disappeared in the multitude of other current tasks, which is improper, because the realisation of children's right to freely express their opinion also means that adults, particularly politicians and decision makers, will consider their opinions and recommendations. As a social group, children do not play at democracy, but they practise it.

## Social security and health are, and must remain, fundamental goods

The Ombudsman received many complaints in which complainants claim that certain services are obtained with difficulty or not at all; that expert errors occur which may even be irreversible; waiting periods for certain health services are too long; corruption in health care is increasing; the construction of the emergency centre network is being planned without the participation of local communities; certain groups of patients faced untenable treatment conditions; the prices of dental services are formed freely, with no supervision; procedures on deciding on the right to medical treatment abroad are not regulated; certain patients are refused rehabilitation and the parental accompaniment of hospitalised adults with special needs is not ensured systemically. There are many more problems which may be resolved only with public participation and integrated work by all social sectors and the Government. The awareness that people's health is one of the fundamental goods is imperative and society must thus do everything to ensure that qualitative health care is available to all and not only those with enough money. The stratification of population leads quickly to social practices in which certain people have faster access to high-quality health services, while others do not have enough money to pay for supplementary health insurance, for example, and are unable to access certain services. As the Ombudsman, I am concerned that there are groups of people in our country who have no compulsory health insurance due to various personal circumstances and receive health care in pro bono out-patient clinics where doctors and other staff work voluntarily. What would happen if such clinics did not exist?

Let us think about our future being paved with pro bono out-patient clinics, daily centres and free meals for the poor, humanitarian fundraising for treatment abroad and helping children and families; or will we remain a social and solidarity-based society which cares about each and every individual? These questions are linked directly with the issues of social security, social justice, equal accessibility and the prevention of social exclusion. Unfortunately, the complaints discussed in the social field reveal that poverty is spreading in Slovenian homes and people lack the tools to tackle it. As many as 300,000 people live below the poverty line, which is 14.5 per cent of the entire population, which comprises 26 per cent of pensioners, 24 per cent of unemployed persons, 19 per cent of minors and 18 per cent of active working persons, and at least 13 per cent of others (unable to work, housewives, students). The inequality of income distribution between households has continued to grow. Comparisons with other countries are important, but it is not necessary to develop a model of society in which we already accept in advance the fact that such a large percentage of people depend on social benefits and other forms of assistance, among which are many pensioners, the unemployed and the young. Although the state provides substantial funds to mitigate social distress and many non-governmental organisations help individuals and families, the Ombudsman believes that social assistance does not ensure survival. Many people remain desperate and disappointed and, when they see no other solution, even commit suicide. Almost 500 people commit suicide every year. This shocking number is a warning for all who take political, economic, social, health and other decisions in the country.

Homelessness has become a cruel reality not only for men, but also for women and children, in fact, entire families, who, when they lose the roof over their heads and basic conditions of survival, become individuals with no address, frequently even deprived of certain rights – people with no hope of returning to a decent everyday life. I wonder why many municipalities still do not provide sufficient housing units or other forms of providing temporary housing for them.

State institutions, ministries, social work centres and other institutions are rigid in their work and take unreasonably long to resolve complaints, contrary to legislation. In 2015, the Ministry of Labour, Family, Social Affairs and Equal Opportunities informed us that, due to personnel shortages, complaints involving the right to a family assistant are being resolved within one year. Furthermore, complaints regarding the exemption from

payment of social assistance services or rent subsidies from 2013 are still being processed. The Ombudsman is not pleased with this situation, since the deadlines for decision making are unacceptably long. With such delays, the Ministry and the state violate people's right to equal protection of rights as guaranteed by Article 22 of the Constitution of the Republic of Slovenia, and they also violate the principle of the rule of law and a social state as per Article 2 of the Constitution. The Ombudsman has been emphasising these problems for a long time, and measures will have to be taken resembling those in the Lukenda project. The reorganisation of social work centres would also be necessary, which would enable more time for consultations and the provision of expert assistance.

Legal solutions which limited the observance of insurance periods upon retirement which people bought in the past in legal procedures also contributed to increasing distrust in the rule of law and the social state. Individuals feel double-crossed in their expectations, and some even demand reimbursement of their contributions. So the Ombudsman filed a request for a constitutional review of the Pension and Disability Insurance Act (ZPIZ-2), which enforced these changes, and impatient complainants request that we accelerate the procedure at the Constitutional Court. An increasing number of complainants expect the Ombudsman to submit additional requests for constitutional reviews of various regulations, e.g. the Ministry of Health was supposed to determine the types and levels of physical impairments by 1 January 2015, which would serve as the basis for enforcing rights to disability insurance. The Ministry has not done this yet, and thus the Self-governing Agreement on the List of Physical Impairments (*Samoupravni sporazum o seznamu telesnih okvar*) of 1983 is still in force. The obsolescence of a legal act from 33 years ago needs no further clarification, and the legal extension of applicability of a regulation from the former state after 25 years of independence is improper for a state governed by the rule of law.

In my three-year term, we filed one constitutional complaint and five requests for constitutional reviews or legality of a regulation or general act issued for the exercise of public authority. These also included a request for a constitutional review of Article 25 of the Act Regulating Measures Aimed at the Fiscal Balance of Municipalities relating to the enforcement of rights to public funds (subsidies of rents for tenants of market and caretaker dwellings) and a request for a constitutional review of certain articles of the Exercise of Rights from Public Funds Act and the Rules determining the savings amount and property value and on the value of provision for basic needs with reference to procedures for exercising rights to public funds.

Unfortunately, no progress has been made in the drafting (of certain urgent) amendments to the Mental Health Act in 2015. Our recommendation that the Ministry of Labour, Family, Social Affairs and Equal Opportunities adopt all necessary additional measures to ensure suitable facilities to accommodate persons in special social care institutions according to court decisions on the basis of Article 74 of the Mental Health Act also remains unrealised. In 2015, the Constitutional Court of the Republic of Slovenia complied with our request and partly abrogated Article 74 of this Act. The Ombudsman commends the decision of the Constitutional Court, which will enable better (legal) protection of persons declared contractually incapable, while eliminating concern that such persons would be left to the autocracy of representatives and reducing the possibility of abuse in this field with judicial supervision.

In 2015, we also met the advocates of patients' rights and the Patients' Rights Ombudsman. They pointed out the long waiting times, delayed diagnoses, different prices of services in private out-patient clinics and problems of patients with dental treatment at home and abroad. They agreed that the field should be more transparent, and better professional supervision of providers should be provided to enable a higher quality of health services.

## Refugees received our help

I express great respect for the work of all Slovenian and international non-governmental organisations which unselfishly assisted and attracted numerous volunteers during the migration crisis, when hundreds of thousands of people fled wars, famine, hopelessness and death through our territory. The volunteers distributed food and water day and night and provided humane living conditions, medical assistance, legal advice and other. State institutions also, although with a delay in certain fields, but nevertheless suitably and together with volunteers, proved that we are capable of helping people. I am concerned that we are almost



Photo of the Ombudsman's board (May 2016).

From left to right: Deputy Ombudsman **Ivan Šelih**, Secretary General of the Ombudsman mag. **Bojana Kvas**, Deputy Ombudsman mag. **Kornelija Marzel**, Ombudsman **Vlasta Nussdorfer**, Deputy Ombudsman **Tone Dolčič**, Director of the Expert Service **Martina Ocepek**, and Deputy Ombudsman **Miha Horvat**.

insensitive to human tragedies elsewhere, in other countries. Has Lampedusa not touched us as people? Do we not care about hundreds of thousands of people, including many children and unaccompanied minors, who simply disappear along the way, perhaps in the claws of human traffickers or human organ traders? Many were taken by the sea, forever. Fundamental human rights of these people were violated, and as a member of the UN, the Council of Europe and the European Union, Slovenia should take a more decisive approach to eliminating crisis areas and establishing peace.

## In conclusion

The annual discussion of the Ombudsman's annual report at sessions of boards and committees and later at the plenary session of the National Assembly of the Republic of Slovenia, at sessions of committees and the plenary session of the National Council of the Republic of Slovenia and the session of the Government of the Republic of Slovenia is undoubtedly a unique example of good practice also in Europe and an expression of the great attention which the highest state authorities pay to the report, the findings and recommendations of the Ombudsman. A longer document (over 150 pages) from the Government of the Republic of Slovenia on the realisation of the recommendations of the National Assembly of the Republic of Slovenia adopted upon the discussion of the previous annual report, including the response report of the Government of the Republic of Slovenia on the current regular annual report, is particularly valuable. For the most part, I find that state

and local authorities comply with the recommendations proposed by the Ombudsman and adopted by the National Assembly of the Republic of Slovenia, and then recommend institutions and officials at all levels to observe them. This is also noted in the preparation of certain amendments to legislation and executive acts. Unfortunately, certain recommendations adopted by the National Assembly have remained unrealised for many years. I have mentioned these in the introduction, and they are also provided in more detail in every substantive chapter.

After the first year of my term as Ombudsman, I promised to monitor the realisation of our recommendations. In the 2014 report, we prepared a 'brief' review of all 150 recommendations published in the 2013 report. In this report, we did not prepare such a 'simplified' review of their realisation, but we analysed the level of their realisation in the introduction to every substantive chapter.

I wonder what more the Ombudsman could do to instigate the elimination of certain established irregularities and violations of human rights and principles of good administration. I believe that more decisiveness and unity of all decision makers is needed. Concern for a higher level of their realisation must become an individual's, but also a joint responsibility, because when the Ombudsman's recommendations are accepted by the National Assembly, these become an important and mandatory direction sign for the elimination of established violations of human rights in the Republic of Slovenia.

At every crossroads, a direction sign is of great importance, particularly for those who know and care about their destination. For us, this must mean the enhancement and full functioning of the rule of law and social state, not the erosion of its systems and reduction of its efficiency.

While a certain level of erosion is still acceptable in nature for a healthy ecosystem, the erosion of the rule of law and the social state may be devastating. And this is something we cannot permit. The price will be too high.

**Vlasta Nussdorfer**, Human Rights Ombudsman

# 2

## WORK CONTENT AND REVIEW OF CASES DISCUSSED





# 2.1

## CONSTITUTIONAL RIGHTS

FIELD OF WORK	CASES CONSIDERED			RESOLVED AND FOUNDED		
	2014	2015	INDEX 15/14	NO. OF RESOLVED	NO. OF FOUNDED	PERCENTAGE OF FOUNDED AMONG RESOLVED
<b>1. Constitutional rights</b>	<b>198</b>	<b>190</b>	<b>96.0</b>	<b>185</b>	<b>19</b>	<b>10.3</b>
1.1 Freedom of conscience	2	6	300	5	1	20
1.2 Ethics of public discourse	89	87	97.8	86	0	0
1.3 Assembly and association	6	8	133.3	8	3	37.5
1.4 Security services	2	1	50	1	0	0
1.5 Voting rights	14	4	28.6	3	1	33.3
1.6 Protection of privacy and personal data	66	61	92.4	60	8	13.3
1.7 Access to public information	6	3	50	3	1	33.3
1.8 Other	13	20	153.8	19	5	26.3

### 2.1.1 General observations

The number of complaints about constitutional rights sent to the Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) was approximately the same as in 2014. The number of complaints in the sub-section "Ethics of public discourse", where a major, 50 per cent, decrease was noted in 2014, did not decrease further in 2015. However, the largest, i.e. threefold increase in the number of cases considered was noted in the sub-section "Freedom of conscience", while the greatest reduction in the number of complaints was in the sub-section "Voting right", which can be ascribed to the fact that there were no elections in 2015.

The largest share of cases, almost 50 per cent, among constitutional rights cases was in the sub-section "Ethics of public discourse". An exceptionally low level of argumentation of cases is typical of this sub-section. This can be largely ascribed to the fact that the alleged human rights violators are media publishers which are legal entities without public authorisations, or individual natural persons who publish on Internet sites (e.g. forums, Facebook), and therefore, the Ombudsman cannot consider the alleged violations. Most complaints in this area refer to alleged excessive interference in complainants' privacy (11 complaints). These are often connected with media reports on criminal proceedings.

### 2.1.2 Realisation of the Ombudsman's recommendations

Regarding the ethics of public discourse, the Ministry of Culture responded and entirely supported the Ombudsman's recommendation. They added that within the scope of the amendments of the Media Act they plan to regulate discourse in the media by placing liability on the publishers of offensive material, i.e. to design

rules for comments and publishing them on appropriate site within the scope of the medium. The new Media Act that was also harmonised with the Ombudsman in this matter was passed during the preparation of this Report.

In connection with a case in 2014, when we also warned about the problem that in cases of threats to state officials, they must initiate prosecution by means of private lawsuits, the Government in its response report explained that the Act Amending the Criminal Code (amendment KZ-1C) had been passed in July 2015. Article 19 of the KZ-1C determines an important procedural modification – all offences under Article 135 of the KZ-1 are to be prosecuted upon proposal (as a sub-type of prosecution *ex officio*) and no longer (partially) upon a private criminal action. The Government emphasised that the Ombudsman's recommendations also contributed to this modification.

Regarding the possibility that the Internet could be considered a public place in respect of the prosecution of individual offences that could be considered as incitement to hatred and intolerance, the Ombudsman held several discussions with officials and competent experts at the Ministry of Justice. We believe that solutions based on an appropriate interpretation of Article 2 of the ZRJM-1 should be sought in further discussions, and if case law does not confirm this interpretation, the regulations should be modified to further clarify the obligation to sanction the unconstitutional incitement of hatred and intolerance.

The Ombudsman also commented in the 2014 report that the reasons and possibilities for electronic voting should be re-examined. In its response report, the Ministry of Public Administration states that in general they are striving to establish more electronic public administration services, and in this sense, they can also support e-elections. The Ministry of Public Administration presented the e-elections project to the public in June 2013. They warn that a high level of political consensus is required to pass amendments to fundamental voting legislation.

With regard to the "Possibilities for identifying insulting anonymous commentators on the Internet", the Ministry of Justice stated in its response report that this is a complex issue. However, based on the Ombudsman's recommendations with regard to identifying anonymous commentators when there are indications of minor criminal offences that are dealt with by civil lawsuits (slander and libel), the Ministry of Justice will initiate public discussion about a proposal for the renewed regulation of the content of Article 149b of the Criminal Procedure Act, which would determine that a so-called *ex nunc* court order or "data preservation system" could be acquired for such minor criminal offences.

In the 2014 report, the Ombudsman warned about Constitutional Court Decision no. U-I-70/12-14, which determined that the Protection of Documents and Archives and Archival Institutions Act (ZVDAGA) does not comply with the Constitution if public archives include the documentation of health service providers, who under this law are determined as entities of public law, which contains data on patient treatment. With regard to this, the Government responded that the amended act on archives (ZVDAGA-A) from 2014 partially follows the Constitutional Court Decision, since it enables archiving of health documentation at health service providers; however, a systemic legal regulation to regulate archiving and access to health documentation in accordance with the decision of the Constitutional Court of the Republic of Slovenia has not been adopted yet.

With regard to the Ombudsman's recommendation that a solution in the Public Information Access Act be adopted to enable the realisation of the principle of privacy of procedures conducted by the Ombudsman in relation to matters considered by the Ombudsman pursuant to the Human Rights Ombudsman Act, the Ministry of Public Administration explained that the comparable legal regulations concerning access to documents arising from Ombudsman's procedures differ. After re-examining the materials in the course of preparing amendments to the ZDIJZ at the beginning of 2015, it was established that no problems had been detected in practice, or that the legal framework of the ZDIJZ enables the use of safeguards that prevent the violation of the confidentiality principle. If monitoring the realisation of the Act in practice shows otherwise in the future, the Ministry of Public Administration will appropriately act within its powers.

## 2.1.3 Freedom of conscience

The number of complaints in this field slightly increased, but remains low in nominal terms (six complaints). Most complaints referred to various issues with regard to freedom of religion and the realisation of the constitutional principle of the separation of state and religious communities. The case presented below refers to this issue. We also received a question with regard to exercising the right to conscientious objection in the education system.

### Blessing of a public school and benediction of the municipality at an event celebrating the municipal holiday

A complainant contacted the Human Rights Ombudsman who believed that the principle of the separation of state and religious communities was violated at two public events. These events were the opening of a primary school and kindergarten, where the facility was blessed by the Bishop of Novo mesto, and the celebration of a municipal holiday, where the Auxiliary Bishop of Ljubljana blessed the municipality. The complainant wished to have the Ombudsman's opinion on whether these events violated Article 7 of the Constitution of the Republic of Slovenia, and who is responsible for preventing such violations. The Ombudsman expressed the opinion that these cases could have violated Article 7 of the Constitution of the Republic of Slovenia, which stipulates the separation of the state and religious communities, but determines that religious communities are equal, as well as the violation of paragraph two of Article 41 of the Constitution of the Republic of Slovenia that protects people who attend religious ceremonies unwillingly, as well as Article 72 of the Organisation and Financing of Education Act (ZOFVI), which prohibits confessional activities in public kindergartens and schools.

When considering this case, we found that the ZOFVI does not envisage sanctions for the implementation of confessional activities in public schools. A law that prohibits certain conduct but does not envisage a sanction for the violation of the prohibition is an incomplete regulation, or *lex imperfecta*. Due to the lack of a sanction, such a legal provision cannot effectively achieve its purpose, and prohibited conduct could increase if there is no sanction. We pointed this out to the Ministry of Education, Science and Sport, but at first they were not in favour of amending this article, since in their opinion the prohibition could be realised with informal discussions, guidelines and training of head teachers. However, after additional explanations of the Ombudsman, the Ministry promised that they would also consider sanctioning the prohibition under Article 72 when preparing amendments to the ZOFVI, and would additionally dedicate more attention to this topic at further training of head teachers.

## 2.1.4 Ethics of public discourse

Most complaints in the sub-section "Ethics of public discourse" refer to the alleged unconstitutional incitement to inequality and intolerance, or so-called hate speech (27 complaints). In complaints that were addressed to the Ombudsman in connection with hate speech, we noted a strong connection between current social events and expression of hatred. The number of complaints due to hate speech based on religion or ethnicity or speech directed against refugees greatly increased at the end of August 2015 simultaneously with the occurrence of the migrant/refugee issues. The highest number of complaints related to the aforementioned (12), followed by complaints about statements based on sexuality (6). The number of these complaints increased during the December referendum campaign on amendments to the Marriage and Family Relations Act. We also received five complaints on hate speech regarding religious affiliation and four regarding hatred on the basis of nationality. In addition to the usual referrals of complainants to the police and the prosecutor's office, complainants were referred also to the Anti-Hate Speech Council. This is an informal body that strives to establish higher standards for public discourse and publicly responds to individual cases of hate speech.

In 2015, we first noticed that there was a large number of complainants (7) who claimed that an online website did not want to publish their comments and thus interfered in freedom of expression. The publication of an anonymous comment in the media is not a human right or the purpose of freedom of expression. Therefore, we explained to the complainants that the publication of a comment in an (online) medium is not a (human) right and not part of freedom of expression. Every internet medium publishes and deletes comments in accordance



with its own rules and commenting conditions, thereby assuming all responsibility for whatever is published. The right to publish an individual's standpoints in the media may therefore be exercised only on the basis of a right to respond and the right to make corrections.

We also frequently have to explain to complainants that the Ombudsman is not competent to provide an assessment of whether elements of a criminal offence are present in individual cases. Prosecutors and judges are competent for such assessments. Due to the protection of freedom of expression and particularly freedom of the media, the conditions for a criminal prosecution of spoken or written words are justifiably very strict.

The Ombudsman has frequently publicly condemned all cases of incitement to intolerance and hatred. Regarding individual responses, we try to respond only to those cases which indisputably show elements prohibited by the Constitution. These particularly include cases of incitement to hatred against minorities that cannot respond themselves or that have no access to the media. In Article 63, the Constitution clearly states that any incitement to national, racial, religious or other discrimination and inciting hatred and intolerance are unconstitutional.

Many complainants do not differentiate between public incitement of hatred and intolerance and the inflaming of national, racial, religious or other hatred and intolerance which are considered by the Constitution as unconstitutional, including expressions of hatred, intolerance and threats directed against **individuals**, including politicians. In such cases, **the victim must seek legal remedies to protect themselves and their reputation.**

#### **Self-regulatory mechanisms for responding to hate speech must be established and supported**

Since the conditions for criminal prosecution of so-called hate speech are very demanding, and therefore Slovenia has almost no case law in this field, the Ombudsman supports other forms of responses to hate speech and the initiation of discussions about this issue. It is also obvious on the basis of complaints received by the Ombudsman that a wide grey area of unsuitable public speech exists in practice which fails to meet the requirements for criminal prosecution. Criminal prosecution is suitable only in the most extreme cases, when violence is anticipated or when speech is directed at a group being discriminated against. To this end, other forms of public response and public condemnation of unacceptable practices are also important.

This is why self-regulatory mechanisms of responses, such as the Journalists' Ethics Council and the Slovenian Union of Journalists are very important. The Ombudsman proposes that deputies and other politicians adopt an ethics code and form a tribunal to respond to individual cases of hate speech in politics.

The Ombudsman supported the project **"Responding to Hate Speech – launch of an independent connecting body"**, coordinated by the Peace Institute with partners. The partners of this project are the Ombudsman, the Faculty of Social Sciences (Spletno oko) and RTV Slovenia Multimedia Centre.

The Anti-Hate Speech Council (Council) was established at the beginning of 2015 within the scope of this project as an independent body constituted according to the plurality principle. Members of the Council work as individuals for the common good and do not represent any interest group or individual institution. The Council responds to cases of hate speech with public statements at the request of a legal entity or a natural person or at the proposal of a member of the Council. The Ombudsman believes that the Council achieved the goals with their responses: they contributed to setting up public discourse standards and initiated discussions on this issue. One of the project goals was the empowerment of vulnerable groups and the stimulation of active citizenship, which was achieved with several discussions and popular round tables at which hate speech and potential responses to hate speech were debated. During the implementation of the project, Deputy Ombudsman Jernej Rovšek was a member of the Programme Council and the vice-president of the Anti-Hate Speech Council. More information about the project can be found at <http://www.mirovni-institut.si/govor>.

## **2.1.5 Assembly and association**

In 2015, more complaints (8) were received than in 2014 (6) concerning the constitutional right to assemble and associate, three of them founded. Systemic problems were among the subjects of complaint – the first with regard to the enforcement of the right to petition and the second with regard to deficiencies in the enforcement of the voting right of persons with mental disabilities. These are presented below. The unfounded complaints include a case in which, after due consideration of the complaint, we provided our opinion that the provision of the statute of a chamber where only representatives of active members may be elected and appointed as members of chamber bodies does not constitute a prohibited form of discrimination.

### **Enforcement of the right to petition**

At the end of 2014, the Human Rights Ombudsman received a complaint from a complainant who had addressed three petitions to the National Assembly of the Republic of Slovenia and the Government of the Republic of Slovenia in July 2012, December 2013 and July 2014 respectively, to which he did not receive an appropriate answer. The Commission for Petitions, Human Rights and Equal Opportunities (Commission) considered the first petition and adopted a decision on familiarisation; with regard to the second petition, the complainant received only an answer from the expert co-worker of the Commission, who forwarded a letter from the Ministry of Finance, and the Commission was informed about the petition after two months, i.e. on all received applications prepared by the expert service of the Commission. The complainant received no reply to the third petition from the Commission. The complainant did not receive answers from the Government of the Republic of Slovenia to any of the three petitions; the Office for Religious Communities replied to the first petition, which was not considered sufficient by the complainant, since in his opinion, the answer of the Office for Religious Communities should be considered at a meeting of the Government, since the latter was the addressee of the petition. In the middle of 2015, the complainant addressed a new complaint to the Ombudsman stating that he had received no reply to the petition addressed to the Government.

The Ombudsman addressed extensive opinions to the Commission and the Government, including a proposal that both bodies reply to the complainant's petition. We believed that a state body's opinion with regard to the content of a petition in a democratic system where the people must effectively influence the execution of power is very important. In the Ombudsman's opinion, the right to provide information about the reasons for adopting a decision on a petition is also supported by the principle of the rule of law, due to which the decisions of state bodies must include founded reasons, because this prevents an authority from acting independently and ensures equal consideration of all petitioners.

The Commission replied that they had considered all three complainant's of the petitions in accordance with the agreed working method in every term of office and in accordance with the instructions published on the website of the National Assembly. With regard to the systemic proposal by the Ombudsman that the content of the right to petition should be regulated by law, the Commission stated that the content of the right to petition is appropriately arranged with the agreement on the method of work of the Commission and the Rules of Procedure of the National Assembly, so in their opinion a special act is not necessary.

In the procedure for considering complaints, the Ombudsman met with the president, vice-president and secretary of the Commission, who all explained that most complainants are satisfied with the consideration of petitions. In a ten-year period, this was the first example of a dissatisfied petitioner. They added that the laws cannot be amended or a new one cannot be passed on the basis of only one case.

The Ombudsman's opinion, sent to both bodies, is that the general interpretation of the right to petition can apply only in a case of potentially different legal regulation with regard to the enforcement of the right to petition. The consideration of three complainant's petitions by the Commission and the fourth petition of the complainant by the Government in Ombudsman's opinion constituted a restriction of the right to petition which could only be permissible based on a law. Therefore, the right to petition cannot be limited on the basis of an agreement on the method of work of the Commission, Rules of Procedure or Regulation which does not apply to some state bodies, including the National Assembly.

In the Ombudsman's opinion, a law should be passed to determine the content of the right to petition and the obligations of petition addressees. The adopted act could unify the way in which authorities handle petitions or provide the authorities with a legal basis for considering individual petitions in different ways. In relation to petitions which the complainant may address to the National Assembly, the Government and a ministry, only one state authority could be determined (e.g. competent ministry) to answer complainants. Furthermore, the act could also determine when the authority should not consider a petition (e.g. a petition is not in the jurisdiction of the authority, the content of the petition is not clear, it is offensive etc.); it would eliminate uncertainties with regard to the question of what happens to a petition if the authority's term of office is terminated during the petition's consideration; and it would determine the deadline for responding to petitions.

## 2.1.6 Voting rights

Only four complaints (14 in 2014) concerning the right to vote were considered, three of which were founded. One of these, relating to the systemic issue of exercising the right to vote of persons with mental disorders, is mentioned in continuation.

In 2015, the Ombudsman started to consider a case of exercising the right to vote of persons who were institutionalised in a hospital, detention or prison in the period between the tenth day before the voting date and the day of voting, whereby they could not express their intention to vote by post in the period stipulated by the National Assembly Elections Act (ZVDZ). The Ombudsman found that both cases involved a systemic violation of the right to vote. The Ombudsman will publish the case in the 2016 report; however, we can express our expectation that legal amendments to enable the effective exercise of the right to vote for persons who are institutionalised and are not able to express their intention to vote by post in time will be adopted as soon as possible.

### Right to vote of persons with mental disorders

The father of an adult child with a mental disorder contacted the Human Rights Ombudsman, whose right to vote had been withdrawn in the procedure of extending parental rights. The father (complainant) found that such a withdrawal is in accordance with Slovenian legislation; however, he was interested in how such legislation could be harmonised with international conventions ratified by the Republic of Slovenia.

The Ombudsman examined the valid internal legal regulation and international documents which are binding on the Republic of Slovenia. It was found that the internal legal regulation of voting rights of the disabled, especially those with mental disorders, could be contrary to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).

With regard to the issue of the right to vote of persons with mental disorders, Article 29 of the UNCRPD is significant, since it deals with the engagement of the disabled in political and public life, and also determines: "States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to: a) Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by: i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use; ii) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate; iii) Guaranteeing the free expression of the will of persons with disabilities as electors, and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice."

In Article 5, the UNCRPD prohibits disability-based discrimination; Article 12 obliges states parties to reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law, i.e. states parties shall in accordance with Article 12 of the UNCRPD recognise that persons with disabilities enjoy legal

capacity on an equal basis with others in all aspects of life. The Convention does not envisage any exceptions from equalities in the enforcement of the right to vote.

So far, the European Court for Human Rights and Fundamental Freedoms has not interpreted the right to vote as widely as the Committee, i.e. that all persons, regardless of mental capacity, should be ensured equal enjoyment of their right to vote. Three categories of states exist in the European Union with regard to the right to vote. In Bulgaria, Portugal, Slovakia and Denmark, the right to vote is automatically withdrawn from all persons to whom protective measures such as partial or full guardianship apply. Slovenia, France, Spain and Estonia are in the category of states where the actual capacity of the individual to vote is separately assessed in the procedure of withdrawing full legal capacity. Considering the Committee's standpoint and advanced regulations of some countries (e.g. Austria, Finland, the Netherlands), voting legislation is developing towards the full engagement of all persons in political processes.

Thus, the Ombudsman found that there have been substantial changes in the development of understanding the right to vote of persons with mental disorders in the period from the adoption of the amended ZVDZ-B, and that the Republic of Slovenia is a signatory of the UNCRPD, in accordance with which the withdrawal of the right to vote as envisaged by paragraphs two and three of Article 7 of the ZVDZ could contravene the ratified international treaty, i.e. the provisions of Articles 29, 5 and 12 of the UNCRPD.

The Ombudsman informed the Ministry of Public Administration of these findings. In its reply to the Ombudsman's inquiry, the Ministry emphasised that the withdrawal of the right to vote as per Article 7 of the ZVDZ is not automatic, but the court must decide separately in each case. The Ministry continued that voting at elections has certain legal and actual consequences and that, like any other legal right, it can only be exercised if the person understands the meaning and consequences of voting. According to the Ministry, if this limitation on right to vote were to be abolished and persons who are incapable of understanding the meaning, purpose and effect of elections were able to enjoy their right to vote actively, there is a great possibility that such persons would submit a spoiled ballot, because the voting instructions on the voting ballot must be understood and considered in order to submit a valid voting ballot. The Ministry also stated that the secret ballot principle and personal ballot principle are enshrined in our voting legislation as in other similar systems. The Ministry also questioned the method of preventing potential misuse of the voting right, when a third person would seek to influence the wishes of persons with mental disorders in the exercise of their right to vote. The Ministry concluded that the limitations on the right to vote of persons with mental disorders are proportional and appropriate in Slovenian legislation and that they do not interfere with the right to vote as such. They emphasised that the withdrawal of the right to vote was not automatically implemented by withdrawing full legal capacity or the continuation of parental rights, but that the withdrawal of the right is decided on separately by the court. The Ministry's argumentation did not fully convince the Ombudsman: as it stands, the text of the UNCRPD and the Committee's comment do not indicate that the Convention permit exceptions from equality in the exercise of the right to vote. It seems that the Ministry is not entirely convinced that aforementioned provisions of paragraphs two and three of Article 7 of the ZVDZ are harmonised with the UNCRPD, since the Ministry announced in the conclusion of the reply to the Ombudsman's inquiry that the Ombudsman's warning would be re-examined in the preparation of amendments to the National Assembly Elections Act. The Ombudsman welcomes the Ministry's decision to reconsider this issue.

## 2.1.7 Protection of privacy and personal data

Many complainants contacted the Human Rights Ombudsman in 2015 with various questions relating to the invasion of privacy or violation of regulations on the protection of personal data. We discussed 61 cases, which is slightly fewer than in 2014 (66); however, the share of justified complaints was somewhat higher.

In most cases, the complainants sought explanations about their rights or the legal means with which they could protect their rights to privacy and personal data protection. The complainants were usually provided with specifications of their rights or instructions on the use of legal methods to protect their rights and interests. On most occasions, we referred them to the Information Commissioner of the Republic of Slovenia (IC) or to the national supervisory bodies for the protection of personal data. If necessary, we contacted the IC for explanations about procedures. We were pleased with their response.

## The right to privacy in the decision-making procedures of state prosecution

The Ombudsman received a complaint from a person who, as the injured party of a criminal offence, received a decision dismissing a criminal complaint from the district state prosecutor's office (DSP). Three burglaries in which where three other persons were harmed were also considered in this decision. The DSP sent the decision to dismiss the criminal complaint to all four injured parties, thus revealing their private data. The explanatory note contained the names, surnames and addresses of residences of the injured parties, information on the value of stolen property and the dates of the burglaries. The complainant believed that this violated their right to privacy.

The Ombudsman assessed that revealing the name, surname and address of the injured party and the value of stolen property involves personal data of the injured party or private data of the injured party.

After examining the case, the Ombudsman assessed that the issue of protecting the right to privacy and personal data protection in the decision to dismiss the criminal complaint could indicate a systemic issue; therefore, we informed the Office of the State Prosecutor General and suggested that they inform other district state prosecutor offices of the Ombudsman's opinion with regard to the issue of protecting the right to privacy and personal data in the decision on dismissing the criminal complaint. The Office of the State Prosecutor General considered the Ombudsman's proposal.

Example:

### Translation of concluding observations of the Committee on Economic, Social and Cultural Rights

The Ombudsman considered a complaint which emphasised that upon the publication of the open letter of NGOs sent to the Prime Minister of the Republic of Slovenia with regard to the Final Observations of the Economic, Social and Cultural Rights Committee to the second report of the Republic of Slovenia in accordance with the International Covenant on Economic, Social and Cultural Rights, the latter document had not been translated into Slovenian. The complainant believed that such documents should be translated into Slovenian, since she did not know English and this topic was of concern to her and she wanted to be informed about it.

The Ombudsman informed the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ), which is competent for the translation of the mentioned document. The MDDSZ informed the Ombudsman in February 2015 that the translation could be obtained after the adoption of the revised 2015 budget. After adopting the mentioned revised budget, which was passed by the National Assembly of the Republic of Slovenia on 20 February 2015, the Ombudsman once again sent a inquiry to the MDDSZ to establish when the translation would be prepared. At the end of March 2015, the MDDSZ sent the Ombudsman the official translation of the concluding observations and the explanation that the editing and corrections of the translation were carried out by an interministerial working group for the preparation of the second periodical report of the Republic of Slovenia on the implementation of the International Covenant on Economic, Social and Cultural Rights.

The Ombudsman found this complaint justified, since the concluding observations of the Committee on Economic, Social and Cultural Rights are an important source of feedback to Slovenia with regard to progress on ensuring the protection of human rights, which at the same time strengthen democratic culture in society. Therefore, the aforementioned response report had to be translated into Slovenian and appropriately published.

1.0 - 12/2014

# 2.2

## DISCRIMINATION

FIELD OF WORK	CASES CONSIDERED			RESOLVED AND FOUNDED		
	2014	2015	INDEX 15/14	NO. OF RESOLVED	NO. OF FOUNDED	PERCENTAGE OF FOUNDED AMONG RESOLVED
<b>2. Discrimination</b>	<b>75</b>	<b>76</b>	<b>101.3</b>	<b>68</b>	<b>19</b>	<b>27.9</b>
2.1 National and ethnic minorities	33	24	72.7	21	5	23.8
2.2 Equal opportunities by gender	4	1	25	1	0	0
2.3 In employment	6	5	83.3	5	1	20
2.4 Equal opportunities relating to sexual orientation	1	6	600	4	0	0
2.5 Equal opportunities relating to physical or mental disability (invalidity)	25	22	88	20	7	35
2.6 Other	6	18	300	17	6	35.3

### 2.2.1 General observations

The number of cases in relation to discrimination in 2015 remained approximately the same as in 2014. The number of complaints with regard to "equal opportunities relating to sexual orientation" and "other" saw the biggest increase, while the number of complaints with regard to "national and ethnic minorities" and "equal opportunities by gender" saw the biggest reduction.

Although the share of justified complaints with regard to discrimination in 2015 fell to 27.9 per cent, it is still quite high with regard to the percentage of justified complaints among all complaints considered by the Human Rights Ombudsman of the Republic of Slovenia in 2015. The reduction in the number of justified complaints in individual areas does not tell much about the situation of human rights protection in individual areas. To illustrate this, we can indicate the sub-section "equal opportunities relating to sexual orientation". Statistical data show that the justification of complaints in this sub-section decreased by 100 percentage points. We ascribe this reduction to the fact that in March 2015 the National Assembly of the Republic of Slovenia confirmed the amendments to the Marriage and Family Relations Act which re-defined marriage. It was indicated that these amendments would eliminate unequal treatment of homosexuals in various areas of life, and therefore, in expectation of the near equalisation of rights of same-sex couples, potentially affected persons in 2015 did not contact the Ombudsman in 2015 with regard to the systemic equalisation of their rights. However, the amendments to the Act were rejected at a referendum on 20 December 2015, and a large number of complainants soon contacted the Ombudsman claiming that, due to their sexual orientation, same-sex couples in the Republic of Slovenia do not have the same rights as heterosexual couples. These complaints, which point to systemic violations and which can largely be considered justified, were still in consideration at the end of 2015 and are not included in the statistical data for 2015. These complaints will be presented in the statistics for 2016.

We must also emphasise that **the number of justified complaints and the percentage of justified complaints among the resolved complaints are not real indicators of the situation of human rights protection in the Republic of Slovenia**. Firstly, because not every person whose human rights are violated by state authorities necessarily turns to the Ombudsman. Secondly, because a single justified complaint where the Ombudsman observes systemic irregularity may represent the violation of rights of several hundreds, or even thousands, of people. Therefore, the Ombudsman initiates its complaints based on data acquired from publicly accessible data in individual areas. In the field of discrimination, many issues concerning the Roma have been raised and considered upon our own initiative.

Therefore, we must especially emphasise and warn about **systemic violations of human rights**. In addition to the aforementioned systemic violations of the rights of same-sex persons and members of the Roma community in the field of discrimination in 2015, we must especially emphasise the systemic violation of the rights of disabled students with regard to their transportation from their place of residence to place of education. We have been drawing the attention of the Ministry of Labour, Family, Social Affairs and Equal Opportunities to this issue since 2013; we have informed the Ministry of Education, Science and Sport about the systemic violation of the right to free transport of students between the ages of 18 to 26, who attend special education programmes. According to the assessment prepared by the Ministry of Education, Science and Sport at the Ombudsman's proposal, 400 students who attend special education programme are affected by the unregulated transport regulations. In 2015, the Ombudsman also dealt with one similar systemic irregularity in the field of equal treatment, i.e. the unequal treatment of applicants for scholarships for shortage occupations. Somewhat less than six thousand students were potentially affected in this matter, since they applied for shortage occupation scholarships at a tender that was subsequently annulled and repeated as proposed by the Ombudsman. Based on this systemic violation, which was subsequently eliminated, the Ombudsman's statistics report on eight affected persons who turned to our office with regard to this issue.

## 2.2.2 Realisation of the Ombudsman's recommendations

With regard to the Ombudsman's recommendations that such legislative solutions must be adopted which, together with legal arrangements of the EU, **will enable impartial, independent and effective discussion of violations of the prohibition of discrimination, also by establishing an independent advocate of the principle of equality**, the Government stated in its response report that the efforts to achieve a more appropriate regulation of an authority to promote equal treatment – Advocate of the Principle of Equality – will continue in the coming year. The Ministry of Labour, Family, Social Affairs and Equal Opportunities has prepared a proposal for a protection against discrimination act that follows the current Implementation of the Principle of Equal Treatment Act and also regulates the Advocate of the Principle of Equality as an independent state authority. The Ministry of Foreign Affairs has indicated that they agree with the Ombudsman's observation that a state institution for human rights with status A according to the Paris Principles is in the interest of the state and its reputation. Within the scope of managing the Interministerial Commission for Human Rights, the Ministry will further strive to achieve consensus on the formation of such an institution, which is very important for the reputation and collaboration of the state in the international environment.

Regarding the Ombudsman's observations and recommendations **concerning the integration of members of the Roma community into Slovenian society**, the Government in its response report agreed with the general observation that sufficient progress was not made in 2014, so the recommendations from previous years remain. The Government of the Republic of Slovenia is aware that the status of the Roma community in Slovenia is still difficult, so its priority remains the preparation of a new national action programme for the Roma for the next five-year period that addresses all key fields.

With regard to the recommendation to eliminate discrimination in the regulation on the right to free transport of persons with mental disorders between the ages of 18 and 26 who are included in a special education programme, the Government indicated in its response report that the Ministry of Infrastructure had prepared a proposal to amend the Road Transport Act that envisages transport on call as a special form of public passenger transport. On this matter, the Ministry of Education, Science and Sport responded that it would prepare an analysis or simulation of the funds needed for this purpose in autumn and obtain the views of the Ministry of Labour, Family, Social Affairs and Equal Opportunities as to whether two rights to public funds from

different acts would be acquired if the law were amended. The ministry will seek a solution within the scope of its financial abilities.

The Ombudsman is not satisfied with the aforementioned activities, since, as already mentioned, this pertains to an issue of unequal treatment which must be resolved systemically, i.e. by legislation.

In its 2013 report, the Ombudsman recommended that the competent ministries **immediately prepare amendments to regulations to eliminate discrimination in subsidising the transport of disabled students**; this unrealised recommendation was already mentioned in the 2014 report. At the time of writing this Report, the assurances of the Ministry of Infrastructure, the Ministry of Labour, Family, Social Affairs and Equal Opportunities and the Ministry of Education, Science and Sport had not been realised and the systemic issue of unequal treatment of disabled students had not been resolved; therefore, we must once again admonish them for their unresponsiveness. Since several ministries are involved in the resolution of this issue, we have also notified the Prime Minister.

## 2.2.3 Mechanisms to protect against discrimination and the organisation of the state

### State institution for the protection of human rights

For some years, the Ombudsman has emphasised that Slovenia lacks a state institution for the protection and promotion of human rights (national institution) which operates on the basis of the Paris Principles (Principles relating to the Status of National Institutions), as adopted by similar institutions in 1991 and confirmed in 1993 by the General Assembly of the United Nations. These principles determine the tasks and conditions for the recognition of state institutions, which deal with general tasks relating to human rights protection (assessing the situation, promotion, raising awareness, education) to a greater extent than with the consideration of individual complaints.

The Ombudsman expressed readiness to assume full membership of a national institution for human rights with A status according to the Paris Principles on the condition that suitable staff and material are provided to enable the implementation of such duties. In these discussions, the Ombudsman proposed that the most rational solution for Slovenia would be to reorganise the Ombudsman into a national institution as per the Paris Principles according to the Finnish example. When transforming the Ombudsman to a national institution according to the Paris Principles with A status in Finland, they did not modify the competences and duties of the parliamentary ombudsman and the institution remained as is envisaged in the fundamental legislation; they merely added (by amending the law) the human rights centre and the advisory body that manages the work of the centre. Information on the establishment and work of the Finnish Human Rights Centre (HRC) is available at <http://www.oikeusasiamies.fi>.

We believe that the experience of the HRC can serve as a good basis for possible future discussions on the formation of a similar centre for human rights and an institution for human rights with full membership on the basis of the Paris Principles in Slovenia. Such dilemmas and issues have to a great extent been resolved by the Government of the Republic of Slovenia, which at its meeting on 23 December 2015, adopted a decision under point 6 of the Decision no. 00405-8/2015/7 (that affects the establishment of an Interministerial Working Group for the Enforcement of Judgements of the European Court of Human Rights) to the effect that the Ministry of Justice would prepare amendments to the Human Rights Ombudsman Act to meet the criteria for acquiring A status by the Human Rights Ombudsman according to the "Paris Principles relating to the Status of National Institutions (1993)" and to meet the implementing "Articles of Association of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights". When amending the law, the Ministry of Justice would invite the Human Rights Ombudsman to cooperate.

However, the Ombudsman's office did not wait for this invitation, but invited the Minister to a meeting. The meeting about the realisation of the decision was held on 22 January 2016. At the meeting, we quickly reached an agreement with regard to the method according to which the Ombudsman would acquire the A status

according to the Paris Principles, i.e. by transformation based on the Finnish example (the Human Rights Centre would be added to the Ombudsman's office, implementing promotion, awareness-raising and research tasks, as well as an advisory or steering council constituted according to the plurality principle). It was also agreed that other amendments to the Human Rights Ombudsman Act are not necessary, because the Act functions well in practice and enables the Ombudsman to fulfil its constitutional mission. The Ombudsman will collaborate on the preparation of amendments and appoint a representative to the working group that will draft a proposal for amendments to the Ombudsman Act.

## 2.2.4 National and ethnic minorities

Most complaints concerning discrimination based on national or ethnic origin in 2015 referred to the Roma community living in Slovenia. In addition to these complaints, we also encountered these issues during our field sessions and numerous discussions with complainants and representatives of non-governmental organisations.

The response of state authorities to the Ombudsman's inquiries in this field was good, particularly of the Office for National Minorities. We again found that the situation in this field is not improving or is improving too slowly, so most recommendations from previous years remain current.

## 2.2.5 Special rights of national communities

The Ombudsman received no complaints in 2015 claiming a direct violation of any of the special rights guaranteed to members of the two self-governing national communities (Italian and Hungarian) in the Republic of Slovenia. There were some complaints regarding the ethics of public discourse which evinced hatred of members of other nations, including both indigenous national communities.

After discussions with the members of parliament representing the Italian and Hungarian national communities, who highlighted some deficiencies **in the use of the nationalities' respective languages in bilingual areas**, the Ombudsman opened a general file upon its own initiative and decided to be proactive in this area. For this purpose, the competent Deputy Ombudsman and expert assistant made unannounced visits to state and local institutions in bilingual areas in January and February 2016 and checked the accessibility of forms in the nationality's language in the field, thus acquiring additional information about the possibility of using the nationality language in various procedures. The final observations based on this activity which we initiated will be presented in the 2016 report.

### Roma community

Insufficient progress was made in the integration of members of the Roma community into Slovenian society in 2015. In some areas, conditions are even deteriorating or being exacerbated, particularly in the area surrounding Novo mesto. State and local community authorities fail to express sufficient (political) will and readiness to undertake long-term activities leading to the arrangement of conditions in certain critical areas and the integration of the Roma into the social environment.

The ZRomS-1 and strategic documents, particularly the National Programme of Measures for Roma of the Government of the Republic of Slovenia for the 2010-2015 Period (NPUR), provided some results, but the conditions are improving too slowly, or the changes are being hindered at the local level and the state cannot or does not want to utilise the available mechanisms, especially on the basis of Article 5 of the ZRomS-1. Instead of exploiting these possibilities, national authorities, as is evident from the Government's response report and the Government's reply in the case of arranging living conditions and access to drinking water in Goriča vas, are thinking about amending the provisions because they are supposedly interfering in local self-government.

At the local level, the readiness to make long-term arrangements to improve conditions depends on the (political) will of mayors and majorities in municipal councils. It is clear that political survival with such priorities

in the local environment is difficult, so the state should help municipalities by providing financial assistance and also by taking the necessary decisions at times when for various reasons local politicians cannot or do not want to. The burden of resolving the issue of Roma settlements cannot be placed on municipalities.

Only long-term results are possible; however, long-term activities have not been observed at the governmental level. Municipalities are realising the commitments from the national programme for the Roma as they wish; however, there is no readiness at the governmental level to sanction those who do not want to realise the programme or even fail to provide information about this.

With the establishment of the Roma Community Council of the Republic of Slovenia, some of the powers and responsibilities for resolving the situation of the Roma community were transferred to the members of this community. Nevertheless, it has to be stated that the current functioning of the Council has not met the expectations raised by the passage of the Act. The conflicts in the Council, which are based on the poor solution of Article 10 of the ZRomS-1 and which the Ombudsman has been noting since 2007, are continuing, and as said before, this body should function as a discussion partner to state authorities in this field, but instead it insufficiently deals with concrete conditions in the field. The Ombudsman believes that in cases when municipalities fail to eliminate established violations of human rights, the state must remedy their (in) action and ensure respect for human rights and fundamental freedoms. The state is bound to do so by Article 5 of the Constitution of the Republic of Slovenia and ratified and published international treaties on human rights. When the state fails to fulfil its obligations to provide protection of human rights, violations are solely the state's responsibility.

Example:

### Access to sanitary facilities in a Roma village

A complainant from the Roma village of Šmihel who lived in a multi-dwelling building that had been demolished by the Municipality of Novo mesto due to obsolescence wrote to the Human Rights Ombudsman. When demolishing the multi-dwelling building in August 2013, the municipality promised the complainant, who is a single parent with three minors, that his move to a container would be temporary and that the family would have access to water and sanitary premises in the container. More than one year after the demolition, the municipality had not kept its promise, but even made setting up of sanitary facilities conditional on his signing a statement whereby the complainant would be committed to raising his children to be decent citizens, send them to school and ensure that the surrounding area outside the containers was arranged, that the family would be engaged in village's and local community's activities and work with the Roma village representative. The complainant did not want to sign the statement and contacted the Ombudsman in relation to help in acquiring sanitary facilities.

The Ombudsman visited the complainant's family, thereby learning about the relevant circumstances of the case in person. After an inquiry at the municipality, the Ombudsman found that the complainant had really been made a promise that had not been kept. We notified the municipality that their conduct violates the complainant's right to access sanitary facilities, which is an internationally recognised human right. Resolution No. 64/292 of the United Nations General Assembly declared access to clean water and sanitation a human right. We warned that cases where children are affected by the absence of access to sanitary facilities must be treated with even greater attention. We believe that making the arrangement of a sanitary facility conditional upon a signed statement is unacceptable. The Ombudsman proposed that the municipality immediately fulfil the given promise to arrange sanitary facilities for the complainant.

The municipality did not respond to the Ombudsman's proposal for three months, although we had sent an urgent letter, and the Ombudsman even made the request to the mayor in person to reply. After a second urgent letter, we received an assurance from the municipality that the procedures and activities for arranging a sanitary container for the complainant were in progress. **10.1-16/2014**

## 2.2.6. Equal opportunities relating to sexual orientation

A few years ago, we introduced a new classification in the chapter on equal opportunities to obtain more accurate data on discrimination on the basis of sexual orientation. In 2015, we included six complaints in this field; most of the complaints were received at the end of 2015 after the amendments of the Marriage and Family Relations Act that would have re-defined marriage and equalise the rights of same-sex couples were rejected. These complaints have not been resolved, so they will be presented in the 2016 report. The statistics on the justification of complaints in this field were presented in the introduction to this chapter.

Complaints where we observe discrimination due to sexual orientation and gender identity also involve those that were presented in the section "Ethics of public discourse" and refer to alleged unconstitutional incitements to inequality and intolerance or so-called hate speech. There were six such complaints in 2015. The number of complaints about hate speech directed at individuals due to their sexual orientation increased mainly during the December referendum campaign about the amendments to the Marriage and Family Relations Act.

## 2.2.7 Equal opportunities relating to physical or mental disability (invalidity)

Twenty-two complaints were considered in this field, seven of them or 35 per cent being justified, which is also a high share of justified complaints.

Many complaints referred to problems with parking for the disabled. One complainant contacted us in relation to ensuring parking for the disabled in front of the office of the advocate of patients' rights. After several inquiries and proposals, we found that the complaint was not justified, since two car parks for the disabled are provided nearby and the lack of space prevents the arrangement of a car park in front of the office.

### Unequal treatment of applicants in a tender for scholarships for shortage occupations

Several complainants contacted the Ombudsman with regard to a tender published by the Slovene Human Resources Development and Scholarship Fund (Fund) for allocating scholarships for shortage occupations in the 2015/2016 academic year. One of the complainants mentioned that on the first day of the tender, she was not able to access the form due to technical problems on the website and was not able to submit her application for the scholarship at the same time as applicants who live in Ljubljana, for instance. She believed that, due to technical problems, she was in an unequal position in comparison to applicants who received the form at the Fund's head office.

The tender for allocating scholarships for shortage occupations is an open deadline tender, meaning that scholarship recipients are selected in the order of complete applications received with regard to the date and time of the submission of an individual complete application until all funds are spent. According to point 7 of the tender document, the form should have been accessible on the website of the Fund on the first day of the deadline for the submission of applications (24 August 2015) which was not possible due to technical problems.

In the Ombudsman's view, technical problems when ensuring online access to the form constituted unequal treatment of applicants. Applicants who relied on the provision under point 7 of the tender and planned to print the application were in a worse situation than those who received the form at the Fund's head office. The fact that applicants who live in Ljubljana were able to go immediately to the Fund's head office when they saw that there was an Internet problem could also constitute additional unequal treatment, since those people who come from other places could not do this (in the same time frame).

In a letter sent to the Fund and to the Ministry of Labour, Family, Social Affairs and Equal Opportunities, the Ombudsman provided the preliminary opinion that unequal treatment cannot be eliminated in another way than by annulling and repeating the public tender. The Ombudsman's intervention was successful, and the Fund announced that the tender would be annulled and published again.

Example:

### Notifying applicants for protection at the Commission for the Prevention of Corruption

A complainant who had asked the Commission for the Prevention of Corruption (CPC) to protect him as the reporter of corrupt conduct at a national authority where he was employed wrote to the Ombudsman. This is actually assistance which the CPC offers reporters based on Article 25 of the Integrity and Prevention of Corruption Act (ZIntPK). Since the complainant did not receive a reply from the CPC within 20 days of submitting the application, he turned to the Ombudsman.

The obligation of national authorities to respond to letters arises from principles of good administration. The Ombudsman interprets the content of this obligation in practice based on Article 18 of the Decree on administrative operations and other regulations, e.g. the European Code of Good Administrative Behaviour. In our opinion, in accordance with these regulations, which are not directly binding on the CPC, the complainant should receive the first notification from the CPC within 15 days at the latest. The complainant should receive feedback in the first notification, i.e. that the CPC has received his letter, information about further actions and information on when to expect a substantive decision with regard to the his request. The Ombudsman therefore suggested that the CPC send such a notification to the complainant.

The Ombudsman's intervention was successful because the CPC considered the Ombudsman's proposal. We also sent two systemic proposals to the CPC that could improve the operations of the CPC in relation to individuals. In the first proposal, the Ombudsman recommended the CPC send the first notification to applicants that request assistance and protection within 15 days and that they inform applicants on the final decision of the CPC in all matters (whether the CPC will provide protection or not).

The second proposal referred to other reporters of corrupt conduct (those not requesting assistance and protection). The latter were notified on the measures and actions of the CPC in accordance with Article 23 of the ZIntPK only if they explicitly requested such notification. We proposed that the CPC, in accordance with good administration principles, send reporters a notification within 15 days, i.e. stating that the CPC has received the letter, including information about the time when the report would be considered, and that the CPC should inform the reporter that the CPC would notify them on their measures and conduct upon the reporter's request.

The CPC guaranteed that the first Ombudsman's proposal would be considered. With regard to notifying other reporters of corrupt conduct, the CPC will strive to establish an automatic response system for reports sent to the website. The CPC will also inform reporters who contact the CPC in person or by telephone during office hours about the right to information with regard to CPC's actions and conduct.

Despite the Ombudsman's proposal to introduce novelties in the CPC's operations to ensure equal treatment to all reporters, the CPC will not be able to guarantee the first notification to reporters who send reports by ordinary post or by e-mail. **10.3-3/2015**

# 2.3

## RESTRICTION OF PERSONAL LIBERTY

FIELD OF WORK	CASES CONSIDERED			RESOLVED AND FOUNDED		
	2014	2015	Index 15/14	NO. OF RESOLVED	NO. OF FOUNDED	Percentage of founded among resolved
<b>3. Restriction of personal liberty</b>	<b>173</b>	<b>176</b>	<b>101.7</b>	<b>151</b>	<b>28</b>	<b>18.5</b>
3.1 Detainees	19	22	115.8	17	2	11.8
3.2 Prisoners	95	101	106.3	90	13	14.4
3.3 Psychiatric patients	29	21	72.4	16	4	25
3.4 Persons in social care institutions	12	12	100	11	5	45.5
3.5 Youth homes	1	2	200	1	0	0
3.6 Illegal aliens and asylum seekers	0	1	200	0	0	-
3.7 Persons in police detention	0	1	200	1	0	0
3.8 Forensic psychiatry	13	13	100	12	3	25
3.9 Other	4	3	75	3	1	33.3

### 2.3.1 General observations

This chapter contains findings established from complaints concerning the restriction of personal liberty, and concerns of individuals deprived of their liberty, or whose freedom of movement was restricted for different reasons. These include detainees, convicted persons serving sentences in (home) confinement, persons in the unit for forensic psychiatry, minors in youth homes, minors in correctional and residential treatment institutions and special education institutions, people with mental disorders or diseases in social and health-care institutions, and aliens at the Aliens Centre.

**More complaints were received from imprisoned persons (detainees, prisoners)** in 2015 than in 2014. We considered 22 complaints from detainees (19 in 2014) and 101 complaints from convicted persons (95 in 2014) (other complaints in this field are presented under individual sub-sections). In addition to handling individual complaints, we also continued to visit prisons **for the purpose of implementing the tasks and powers under the National Prevention Mechanism (NPM)**, which is presented in a special report.

Our work in this field was aimed at establishing whether the state consistently observes the rules and standards to which it is bound by the Constitution and international conventions to respect human rights when depriving people of their liberty, particularly **regarding the human personality and dignity**. When convicted persons are subject to penal sanctions, they must be ensured all fundamental human rights, except those explicitly deprived or restricted by law. The complaints of detainees and convicted persons were verified (in some cases with visits) at the relevant bodies (e.g. courts), particularly the Prison Administration of the Republic of Slovenia, prisons

or the Ministry of Justice. Individual topics in this field were also discussed at meetings with representatives of the Ministry of Justice and other representatives of the Prison Administration of the Republic of Slovenia. If an assessment procedure was instigated (e.g. in the event of major irregularities or obvious arbitrariness), prisoners were informed about the replies to our inquiries at the relevant bodies and our findings and possible other measures, e.g. recommendations to the relevant authorities. To establish a basis for further action by the Ombudsman, we sometimes asked complainants to let us know if the clarifications they received were suitable or perhaps inaccurate and insufficient. If complainants did not respond, we were unable to continue our inquiries. **Considering the aforementioned and the fact that we intervened only if the responsible bodies failed to present their position on a matter or did not consider it, the share of closed cases according to justification of complaints of imprisoned persons matches the last year's results accordingly.**

### 2.3.2 Realisation of the Ombudsman's recommendations

**We are only partially satisfied with the realisation of the recommendations we made in 2014.** Some improvements have been made (especially with regard to standardisation); however, we observed that **the main issues in this field persisted.** With regard to eliminating over-crowding in some prisons or greater application of legal alternatives to incarceration (**recommendation no. 17**) we have seen no significant progress. Despite a slight decline in the average number of prisoners from 1,511 in 2014 to 1,463 in 2015 (especially due to the elimination of imprisonment for the non-payment of fines) in most of the seven prisons visited under the NPM (Maribor, Koper, Dob pri Mirni prisons and the Ljubljana Prison Unit in Novo mesto) the number of prisoners exceeds the official capacity. The amended ZIKS-F simplified the mechanism of moving convicted persons between individual prisons, which is certainly helpful in cases of over-crowding in individual institutions, but this is only possible if the institution to which prisoners can be relocated is not also overcrowded. We must also emphasise that the **European Court of Human Rights (ECHR)** in its rulings in 2015 (**Arapović v. Slovenia and Beljkaš v. Slovenia**) continued to highlight the unsuitable conditions of detention and degrading treatment in Ljubljana Prison (for the previous period). The long-term solution to the problems of this prison is obviously the construction of a new facility if the number of prisoners is not significantly reduced.

In connection to emphasising that the fairness principle of any judicial proceedings, especially proceedings that can end with a sanction limiting individual's rights must always be critically and unilaterally assessed from all aspects, and not only biased claims should be considered, and also that the Ombudsman recommends amendments to the ZKP concerning the disciplinary treatment of detainees and considering the recommendations of the CPT (**recommendation no. 18**), we hereby establish that the announced amendment to the ZKP-N to regulate the issue has not been made yet. We believe that it is very important that the Ministry of Justice confirmed the recommendation and that professional literature already indicates the view that preliminary hearings must be carried out.

With regard to **recommendation no. 19**, that the Prison Administration of the Republic of Slovenia thoroughly and impartially verify complaints from convicted persons without undue delay and that their replies to complaints from convicted persons should always include their positions regarding all essential statements in complaints from convicted persons or explanations from the institution, we commend the assurance of the Prison Administration of the Republic of Slovenia that it would make every effort to expediting the current appeal procedure and also consider this recommendation. However, some complaints considered in 2015 still indicate that there are delays in processing appeals at the Prison Administration of the Republic of Slovenia due to staffing problems (more about this below). We must also add that the Ombudsman occasionally receives statements from imprisoned persons to the effect that prison staff deny them the use of legal remedies or methods of appeal (more about this below).

Regarding the recommendation to the Government of the Republic of Slovenia to include in its future priorities a plan for the comprehensive resolution of the unsuitable situation in prisons due to high summer temperatures, especially by renovating old buildings and providing sufficient funds for investment maintenance (**recommendation no. 20**), made during our visits to prisons, we expressed our concern about alleviating the effects of high summer temperatures (e.g. by changing the time spent outdoors, with additional washing options, use of fans and other measures, as well as with minor investments maintenance works, e.g.

replacement of windows). However, no comprehensive resolutions (such as the restoration of old buildings) have been made yet.

In the 2014 report, the Ombudsman recommended that all persons involved in the treatment of prisoners on hunger strike treat them appropriately, professionally and compassionately, and to respect the rules that regulate their actions in such cases (**recommendation no. 21**). We did not observe any particularities in connection to this when we considered complaints in 2015, and we also did not observe any particularities with regard to the reminder sent to the Ministry of Justice and the presidents of courts for a regular assurance that the inspection of prisons is being conducted according to Article 212 of the ZIKS-1 (**recommendation no. 22**). The Ministry of Justice did not carry out the requisite number of inspections of prisons (6) in 2015; however, it did inspect prisons in Dob pri Mirni (twice), Ljubljana, Celje, and at the beginning of 2016, Koper.

The cases considered in 2015 did not indicate that the recommendation that procedures for assessing the justifiability of the use of coercive measures should always include the option for prisoner, against whom coercive measures might be used by judicial police officers, to make a statement or state their view of the procedure and the circumstances of the use of coercive measures (**recommendation no. 23**). In the preparation of the proposal for new **Rules on exercising the powers and duties of judicial police officers**, we welcomed the provision that a report on the use of coercive measures must contain information on who carried out the interview with the convicted person against whom coercive measures were used.

With regard to **recommendation no. 24**, the Ombudsman recommends the consistent implementation of the recommendation of the CPT that convicted persons placed in a special room for isolation should always be examined by a member of the medical staff as soon as possible, and this was particularly highlighted in the procedure of adopting amendments to the ZIKS-1F. **Our message was received, since the amended Article 236 of the ZIKS-1 stipulates that medical staff must be informed when a convicted person is put in a separate room and that medical staff order measures to protect the life and health of the convicted person.**

In the 2014 report, we recommended a clear determination of the conditions in which prisons may use the measure of special accommodation for convicted persons (**recommendation no. 25**), and diligent handling of all cases that involve putting convicted persons in rooms with a stricter regime (**recommendation no. 26**); however, the guarantees made by the Ministry of Justice or the Prison Administration of the Republic of Slovenia could not be checked, since we did not consider any complaints concerning this matter. Nevertheless, one case once again indicated some problematic aspects of this type of measure.

No complaints were considered in connection with the recommendation that persons received in prison be immediately examined by a physician, and if necessary, all required measures for their health care be taken (**recommendation no. 27**). During the preparation of the Rules on the implementation of prison sentences, we noted that the CPT emphasises that a doctor should interview all new prisoners and conduct a physical examination. In exceptional circumstances, the examination should be done on the day that the prisoner arrives in the institution, especially if a detainee is concerned. This task can be implemented by appropriately qualified nurses, who then report to the doctor.

The Ombudsman recommended the adoption of all required measures to provide work for all prisoners who wish, and are healthy enough, to work (**recommendation no. 28**). Despite the guarantees made by the Prison Administration of the Republic of Slovenia to do everything within its financial and material capacity to enable appropriate working conditions despite the large number of prisoners – because the PARS is aware that work is one of the main factors for preserving and acquiring work habits and forms an element in prisoner's preparation for discharge from prison – it is **very concerning that no progress has been seen in this field, because there are still not enough possibilities for work, and we constantly stress this issue during our visits within the scope of the NPM.** It is necessary to repeat that more will have to be done to enable prisoners to spend their time on useful activities, particularly work, education and other training which would facilitate their reintegration into society after their sentence, which is one of the main purposes of a prison, in fact. The training possibilities (according to CPT recommendations) should allow each prisoner to spend eight or more hours per day outside their residential premises.



The Ombudsman once again recommended that the regulation determining the work of the Forensic Psychiatry Unit should be prepared as soon as possible (**recommendation no. 29**); however, no such regulation was adopted in 2015.

The 2014 annual report extensively discussed (pages 104–107) observations with regard to fire safety in prisons, including our positive opinion about the fact that the chief inspector at the Inspectorate of the Republic of Slovenia for Protection against Natural and Other Disasters (IRSPNOD) assured us that they would “follow the Ombudsman’s proposal and include supervision of Ig Prison and other units and institutions of the Prison Administration of the Republic of Slovenia in their 2015 work programme”. At the end of 2015, we verified how many inspections were actually carried out in prisons or their units. The chief inspector at the IRSPNOD informed us that “/.../ at the beginning of 2015 they carried out supervision at Ig Prison and in accordance with the annual work plan they also carried out supervision in four other prisons or their units. The 2016 annual work plan of the Inspectorate of the Republic of Slovenia for Protection against Natural and Other Disasters includes the task in relation to inspections of fire safety in prisons and their units.” This shows that the **Ombudsman’s proposal concerning this matter in 2014 was realised and that some actual measures have been taken.**

**Due to spatial limitations in individual prisons, which are mainly reflected in poor residential conditions, as well as worn, obsolete and deficient equipment in residential and other premises due to the lack of funds, there are still problems related to insufficient staff and this situation remains barely sustainable.** Work overload in some cases is also evident in expert work with prisoners and their care, which may also have consequences for security. **Therefore, we notified the PARS that staffing standards for work in prisons must be adopted as soon as possible. The PARS notified us that these standards are being prepared and that they hope they will come into effect by the end of 2015.**

### 2.3.3 Detainees

Most detainees’ complaints referred to detention orders and the implementation of detention, which can otherwise (only) be enforced in judicial proceedings with the aid of ordinary and extraordinary legal remedies. The complainants also complained about **poor living conditions in detention, problems with fellow detainees, the conduct of detention staff, limitations on contact with families and unsuitable health care, and the limitation on contacts with relatives (see the example below) as well as other irregularities.**

Example:

#### **Detainee’s disability must not be a reason for preventing visits**

At the end of August, the Ombudsman received a letter from the wife of a detainee who was detained in Celje Prison, where she pointed out that the detainee had suffered “severe consequences” due to a long hunger strike, and that she and their seven-year-old daughter are prevented from visiting the detainee, although the court permitted them to visit him. The next day, the Ombudsman’s representatives visited the relevant prison and verified the legal and actual situation. We found that the matter involved a detainee who was accommodated in a double room on the second floor, where he was alone. His detention started in the first half of March, and he went on hunger strike in the middle of April, which continued until the end of July. Celje District Court issued his wife and daughter a (permanent) permit for visits; however, problems arose when he became so weak due to the hunger strike that he was not able to walk downstairs from the second floor to the ground floor where visiting premises are located; at the same time his wife and daughter were prevented from visiting him in the room, since it was located within the closed section of the prison. The prison staff provided the detainee with a wheelchair, and took him to the telephone or shower, but did not take him down the stairs to the ground floor (in one of the letters to the vice-president of Celje District Court, the institution stated: “It is practically impossible to carry the detainee to the room for visits down the institution’s staircase. The prison does not have a lift. This was explained by Mr X to the detainee’s visitor on 19 August 2015 when she wanted to visit him. It was also explained to her that as soon as the detainee can walk, we will help him down the stairs and you will be able to visit him.”).

These statements showed that Celje Prison does not facilitate the detainee’s right to private and family life in the form of visits by his two closest relatives (which was also permitted by the court), the interference of the

public authority in this right in the way described was not due to national security concerns, public security or economic welfare, to prevent riot or crime, or to protect the health or moral, rights and freedoms of other people. In our view, the detainee’s (in)ability to cope with the architectural features of the prison does not constitute such a reason. In the light of the position of the prison and the explanations that the director did not submit the proposal to the competent court for relocation to another institution, (i.e. that Article 55 of the Rules on the implementation of detention lay down that prisoners may be relocated only for reasons of safety, order and discipline, over-crowding and the successful and rational implementation of criminal proceedings), the Ombudsman decided to contact the president of Celje District Court. The Ombudsman presented the opinion that the circumstances described above require the judicial authority, within the scope of powers provided in Article 213d of the Criminal Procedure Act, to at least verify how the detainee was being treated in Celje Prison, i.e. also with regard to visits by his closest relatives, which was his right to private and family life, and that the court should fulfil its obligation to “act as necessary to eliminate any observed irregularities”. While we were waiting for a reply from the president of Celje District Court, we received a notification from Celje Prison, i.e. that on considering all the facts, they decided to empty the reception section on the ground floor and relocate the detainee in a room with fewer physical obstacles and to enable his relatives to visit him. The next day, we received a notification from the president of Celje District Court, who claimed the same as Celje Prison and added that they had visited the detainee on the previous day and conducted an interview in which the detainee expressed his satisfaction with the relocation.

The Ombudsman’s intervention contributed to enabling the detainee to have visits from his wife and daughter in Celje Prison, and visits were no longer prevented merely because he could not use the stairs in the institution where he was detained. The purpose of our mediation in this case was achieved. However, the institution itself could have sought such a solution in collaboration with the court, so that our intervention would not have been necessary. **2.1-4/2015**

In certain cases, we also encouraged detainees to use internal complaint channels as enabled by Article 70 of the Rules on the implementation of remand, which stipulate that detainees may complain to the president of the relevant district court or the Director-General of the Prison Administration of the Republic of Slovenia if they believe that prison staff are not treating them correctly. The Director-General is obliged to reply in writing within 30 days of receiving a complaint.

### 2.3.4 Prisoners

**Complaints of prisoners referred to practically all aspects of imprisonment** such as the call for serving sentence, the start of serving sentence, poor living conditions, the regime of incarceration or relocation from a more liberal to a stricter regime, relocations to other prisons or departments (or premises), interruptions or suspensions of incarceration, endangerment by, or violence of, fellow prisoners, bonuses for work performed, possibilities for work, granting (or withdrawing) various privileges, visits and other communication with the outside world (e.g. writing), confiscation of personal belongings, health care, inclusion in addiction treatment programmes, urine testing, diet, escort by judicial police officers, parole and other. Some complaints also referred to the possibility of doing community service instead of serving a custodial service. As in the case of complaints by detainees, prisoners’ complaints were also verified if necessary (in some cases by visits) at the relevant authorities, particularly at the Prison Administration of the Republic of Slovenia, the Ministry of Justice or the relevant prison. Prisoners serving their sentences were further motivated that they could complain about violations of rights and other irregularities which are not subject to judicial protection as per Article 85 of the ZIKS-1 with a **complaint to the Director-General of the Prison Administration of the Republic of Slovenia.** According to the above Article of the ZIKS-1, a convicted person has in the case of “other violations of rights or other irregularities which are not subject to judicial protection” also “the right to complain to the Director-General of the Prison Administration”, and if they fail to receive a reply to their complaint within 30 days after its submission or if they are not satisfied with the decision of the Director-General, they also have the **“right to file a complaint with the ministry responsible for justice”.**

## Amendments to the Enforcement of Criminal Sanctions Act (ZIKS-1)

Criminal sanctions and other measures determined by courts in criminal proceedings are enforced according to the Enforcement of Criminal Sanctions Act (ZIKS-1). In 2015, the latter was **extensively amended with ZIKS-1F (Official Gazette of the Republic of Slovenia, [Uradni list RS], No. 54/2015)**. We provided numerous comments and proposals within the scope of expert harmonisation based on the proposal for amendments to the Act. We welcomed all amendments to the current legislation that are intended to eliminate the consequences of recent findings against the Republic of Slovenia at the European Court for Human Rights (ECHR) regarding the implementation of prison sentences, the fulfilment of recommendations of the CPT and those amendments that followed our recommendations, as well as a more effective and just application of alternative sanctions to replace imprisonment, as well as those that are necessary, because during implementation, some legal solutions proved ineffective, since they permitted different interpretations and were insufficient. We agreed that the main task of expert and other workers in prisons is expert work with convicted persons and not “bureaucracy” or the issue of decisions in bureaucratic procedures.

**We also established that many of our comments were fully (or at least reasonably or partially) considered and realised with the preparation of norms** such as:

- the preparation of a personal plan at the end of the reception period – Article 30 of the ZIKS-1 (we emphasised that the convicted person must be motivated to collaborate in the preparation of a personal plan and must be enabled to cooperate; this should also be emphasised in the Act, so that a greater sense of relevance and responsibility for realising the personal plan is given to the convicted person);
- the possibility of delaying imprisonment – Article 24;
- the establishment of adapted premises or a section of one of the institutions for convicted persons who need additional assistance for their basic needs due to their age, sickness or disability, i.e. in the form of care or social care – Article 60 of the ZIKS-1;
- the withdrawal of initially prepared amendments to Article 71 (convicted person writing and receiving letters from other persons) and amendments with regard to other contacts of convicted persons with the outside world, e.g. regulation of contact between convicts and the media – Article 73 of the ZIKS-1;
- regulation of phone calls, including the possibility of calling the police emergency number – Article 75 of the ZIKS-1;
- modification of the practise of terminating imprisonment;
- amendment to the educational measure of committal to an institution for training based on an orientation decision – Article 199 of the ZIKS-1;
- better regulation of relocations to special premises – Article 236 of the ZIKS-1.

**Unfortunately, some of our comments and proposals were overlooked or not considered**, e.g. some of our comments with regard to regulating the practise of delay in imprisonment, i.e. our warning that the modification (e.g. removing the possibility for convicts to file request for a delay of their imprisonment after a deadline if there is a reason for such delay) ignores potential cases where convicts have justified reasons for requesting such a solution, because we are concerned that when the convict makes a request to terminate a sentence this will not always be the best and most appropriate solution – Article 25 of the ZIKS-1. Most of our comments with regard to regulating effective legal protection of convicts' rights in Article 83 of the ZIKS were ignored; therefore, it is questionable whether the amended text of this Article can be an effective legal remedy as intended by Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The amended Act does not consider our warnings with regard to excessively strict application of Article 39 of the ZIKS-1, since the victim of a crime is in any case unable to discover whether the perpetrator is still in prison based on the sentence imposed or when they will be discharged (more on this topic is available in the 2010 annual report).

We will closely monitor the realisation of the Act (including all amendments) and if necessary take additional action.

In addition to the comments on the amended ZIKS-1F, we also commented on other executive acts that are in preparation (**Rules on the exercise of the powers and duties of judicial police officers, Rules on the implementation of prison sentences and Rules on payments for the work of persons subject to a criminal sanction**).

## The importance of an accurate medical examination and keeping records of the use of coercive measures

There were not many complaints in 2015 alleging **ill-treatment or other irregularities by judicial police officers** in the course of their work. Due to the lack of cooperation of one complainant when verifying a claim of inappropriate use of coercive measures, we discontinued our consideration of one matter which began in 2014; when considering a similar complaint, we found that the complainant's statements and explanations contradicted decisive facts referring to the conduct of judicial police officers. Because we were unable to verify the information, we assessed further investigation of the matter would not yield the truth of the matter in this case.

We have emphasised that only a **medical examination** can provide expert findings about physical injuries and their occurrence when coercive measures are used against prisoners. This is in the interests of both prisoners and judicial police officers, and enables the observation of potential injuries and the mechanisms (cause) of those injuries, which has an important role in verifying allegations of ill-treatment. **Therefore, a medical examination must include an extensive record of prisoners' statements, including all statements about the occurrence of injuries and a precise description of any injuries observed or absence thereof.**

**During its visit to the Republic of Slovenia in 2006, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)** emphasised that doctors were not recording their findings to the extent to which an observed injury corroborates the potential statements of prisoners about ill-treatment. The CPT recommended that this deficiency be eliminated. The CPT (not only during the visit to Slovenia but also to other members of the Council of Europe) **recommends that the medical examination of prisoners when coercive measures are taken must contain a record of objective medical findings based on a precise examination (including the type, location, size and special features of each individual noticed injury). Another important part of the doctor's record is to assess the extent to which the claimed ill-treatment is supported by the findings of the medical examination.**

With regard to this, the **Ministry of Health** reported to the CPT that it would prepare instructions for doctors on how to record information appropriately on the medical charts of detainees, prisoners and persons in social care institutions, particularly in the event of injuries. It will also prepare instructions on the consistent observance of regulations on personal data protection, especially medical data, and on handling medical documentation. With regard to CPT recommendation, the Ministry clearly explained that the instructions would consider all the CPT recommendations. **In the 2009 annual report, we reported that we had warned the Ministry of Health that, for reasons of credibility, the Ministry's explanations should be provided as soon as possible.** Therefore, in **April 2009, the Ministry of Health asked all doctors** who care for prisoners that they must in “all cases appropriately record all health data in their medical documentation, where special emphasis is put on recording data in cases of physical injuries and their occurrence; this is enabled by a medical examination based on which potential injuries and their causes can be established, which has an important role in verifying allegations of ill-treatment. Therefore, the Ministry of Health recommends that the medical examination contain extensive records on prisoners' statements, including their statements on the cause of injuries. The medical examination must contain a record of medical findings based on a precise examination (including the type, location, size and special features of each individual injury). Another important part of the doctor's records should include an assessment of the extent to which the claimed ill-treatment is supported by the findings of the medical examination. The same procedure as in the examination of detainees and prisoners must be applied to persons who are medically examined during detention with the police.”

The distribution of the instructions was commended this year, since we believe that diligent recording of information definitely enables easier verification of allegations of potential ill-treatment. We also emphasised the application of the **Istanbul Protocol**, the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (its relevance is also emphasised by the second report of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment from the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment). **However, the medical documentation of prisoners still contains only modest records of information on alleged occurrences of injuries or ill-treatment, and we also notice the absence of records on findings the extent to which the claimed ill-treatment is supported by the findings of the medical examination.**

We emphasised these findings when we sent our comments on the preparation of the **Rules on the exercise of the powers and duties of judicial police officers**, because we believe that the preparation of the Rules is an opportunity to make improvements in this field.

### Improvement of the situation of the elderly, sick or other disabled persons in prisons

The Ombudsman has noted the need to respect the situation of convicts with mobility issues and those with serious health issues, and proposed that they must be appropriately accommodated to provide them with the conditions to serve their sentences appropriately. Some meetings and consultations were also held in order for the Prison Administration of the Republic of Slovenia together with the Ministry of Labour, Family, Social Affairs and Equal Opportunities to provide **better opportunities in this field, with the aim of temporarily resolving the accommodation of elderly, ill and disabled persons who need special care and suitable adjustments to their living space.**

Already in previous reports and in the 2014 report, we discussed problems encountered by elderly, sick, physically disabled and other disabled prisoners (disabled persons in prisons) while serving their sentence. **Similar complaints were also observed in 2015.** We pointed out to the competent authorities that the state must ensure that all prisoners serve their sentence in conditions appropriate to their (remaining) physical capacity. If a state deprives an individual of their freedom, it must also ensure that the deprivation of liberty and enforcement of penalties are conducted in a way that respect human personality and dignity. In our opinion, it is even more critical to observe the situation of persons who may be affected due to health problems and/or disability. Appropriate placement and living conditions where such persons can serve their sentences decently must be ensured; otherwise, this may be considered inhuman or degrading treatment and could be understood as a violation of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

As was written in the 2014 report, we emphasised in the cases we discussed that the aforementioned requires careful consideration on the **suspension of sentence**, and particularly the consideration of circumstances if living conditions compliant with human dignity or their medical needs can be ensured to concrete prisoners when serving sentence.

**Noticeable progress was made in 2015 in terms of regulations in this field.** The Act amending the Enforcement of Penal Sentences Act (ZIKS-1) modified the **practise of requesting the termination of a custodial sentence.** Now, based on the request of a convict, their close family members, guardian or a custodian, a director of an institution can, if there are no reservations with regard to security, terminate a custodial sentence, **if the requisite health care cannot be provided to the convict due to illness, injury, or treatment other than hospitalisation, and also if the convict is not able to carry out at least one of the basic necessities without assistance, i.e. in accordance with the act on pension and disability insurance, and if the institution cannot provide such assistance.** With paragraph two of Article 60 of the ZIKS-1 the state made it mandatory for convicts who need additional assistance at carrying out their basic needs due to their age, illness or disability, i.e. in the form of care or social care, to be able **to reside in adapted premises or a section of one of the institutions.** Therefore, it is planned to establish such a unit in Dob pri Mirni prison for men and in Ig Prison for women. Financial, staff and spatial conditions must be guaranteed by 1 June 2016 (Article 91 of the ZIKS-1F). We will actively monitor the realisation of this commitment. We will also monitor the adoption **of the agreement on mutual cooperation in the procedure for accommodating persons who have been discharged from prison and whose custodial sentence has been terminated in retirement homes and special social care institutions**, which was announced for the end of 2015. We were notified by the Prison Administration in 2015 that the draft of this agreement had been harmonised with the amended ZIKS-1F, which was sent to the Ministry of Labour, Family and Social Affairs for further harmonisation at the end of October 2015.

**Approval of privileges:** regarding approval of benefits for convicts, paragraph one of Article 77 of the ZIKS-1 stipulates that prison directors may approve certain benefits to a convict for their active participation and success in fulfilling their personal plan. According to the ZIKS-1, one of these privileges is making visits outside the institution and the freedom to leave the institution, but not to the environment where the convict committed the criminal offence. Paragraph three of this Article stipulates that the decision to grant a particular privilege must be based on the convict's personality, flight risk, type and method of their offence, method of sentencing,

potential other criminal proceedings and other circumstances indicating a possibility that approved benefits may be abused. It is also necessary to consider the **response of the environment in which the offence was committed, especially the response of victims.**

During consideration of a complaint sent by a female victim of domestic violence, i.e. that the perpetrator (former partner) still presented a danger during his exits from prison, it was found that the prison had not obtained all the information needed to make a decision on privileges outside the prison when deciding on granting leave to the convict. Therefore, the Ombudsman agreed **with the standpoint of the Prison Administration that in the process of determining the freedom to exit the prison in cases of domestic violence, the competent social work centre must always be requested to form a multidisciplinary team that can establish the necessary circumstances, i.e. related to the victim and the convict, and which then prepares a plan for victim protection and a plan for implementing benefits outside the prison for the convict.**

### 2.3.5 Forensic Psychiatry Unit (Unit)

In the 2014 report, we once again recommended that regulations on the work of the Forensic Psychiatry Unit should be prepared as soon as possible (**recommendation no. 29**). Unfortunately, this recommendation has still **not been realised.** In the phase of **public discussion on the proposed Rules on the implementation of security measures of compulsory psychiatric treatment and care in a health establishment of compulsory psychiatric treatment outside an institution** we commended their preparation, and at the same time warned about the unacceptable delay in the preparation phase. Since the Unit began operations, the Ombudsman has observed that the implementation of security measure is insufficiently determined by norms; therefore, the Ombudsman has invested a great deal of effort to have deficiencies in this field immediately.

**It is encouraging that capacities at the Unit increased in January 2015, since an additional half of section E (sub-unit E1) with a capacity of 18 beds was opened,** and this has greatly relieved the existing sub-units F1 and F2, as well as improved the living conditions of all patients. We expect the remaining part of the section and capacities of the Unit to be open for operation, so that the Unit will start working at full capacity.

**At the beginning of 2015, we considered several complaints concerning ill-treatment by the Unit's staff.** Allegations referred to the conduct of judicial and medical staff. These allegations included excessive use of force by judicial police officers and medical staff when a person is already under control and settled. We proposed that the management of the psychiatry unit appropriately verify the allegations and inform us of their findings, as well as potential additional measures taken to improve the situation at the Forensic Psychiatry Unit. The management followed our proposal and explained that they had received no complaint, with regard to allegations of excessive use of force made by patients in that period, and that they were implementing special security measures according to the ZDZdr provisions.

Example:

#### Untimely responses of the court violated the rights of a terminally ill person

The Unit for Forensic Psychiatry of the Department of Psychiatry at Maribor University Medical Centre (Unit) informed the Ombudsman on 7 July 2015 of their letter to Celje District Court of 2 June 2015. With this letter, they proposed the termination of the security measure of obligatory psychiatric treatment and care of a 92-year-old patient who was extremely physically debilitated due to illness and was dying in very unsuitable situation. The Unit informed the court about the serious state of his health on 11 May 2015.

The security measure was imposed by a decision of Celje District Court of 9 June 2014, ref. no. III K 13711/2014, in connection with a decision of Celje Higher Court, ref. no. I Kp 13711/2014 of 17 July 2014, because the patient had attempted manslaughter, according to paragraph one of Article 115 in connection with paragraph one of Article 34 and paragraph two of Article 29 of the Criminal Code (KZ-1) in insanity. The security measure commenced in the Unit on 22 August 2014.

Based on paragraph two of Article 70a of the KZ-1, the court is obliged to terminate enforced treatment and protection in a health-care institution when it finds that such institutionalisation is no longer necessary. In six

months, the court must reconsider whether continued treatment and care in a health-care institution are still required. The non-trial panel of Celje District Court made a judgement by considering this legal provision and after deciding again on the need to continue the imposed measure, it determined with a decision on 24 April 2015, ref. no. I Ks 13711/2014, that continued treatment and care was still needed. Regarding the expert opinion, it was not possible to exclude the possibility that, if discharged, the patient would not present a danger to the environment, although the Unit's assessment differed, i.e. holding that the patient was no longer dangerous and needed stationary care in the care unit. The statement of the expert, i.e. that any modification would be bad for the patient and that he was receiving the necessary care and treatment at the current facility also influenced the panel's decision.

In the letters sent on 11 May 2015 and 2 June 2015 and described in the introduction, the Unit explicitly informed the court about the poor health of the patient and proposed urgent consideration of the matter, since the security measure was no longer possible or rational. The Unit warned that the patient was dying and no longer receiving any psychiatric drugs, since his condition did not require them. He was not eating or drinking water, and was fed and hydrated by infusion. He received oxygen through a mask while lying stationary in bed at all times. He contracted pneumonia twice within a very short time. According to the Unit's assessment, the patient was utterly exhausted physically due to his illness and was dying in highly inappropriate circumstances. Therefore, it was believed that it was necessary to terminate the security measure and enable them to accommodate the dying old man in a special care institution. They also pointed out that the Unit was not an appropriate place for people in such a condition and the situation had been assessed as seriously life threatening. The Unit reasonably proposed immediate and urgent verification of whether the security measure was still needed.

After studying the letter sent by the Unit as of 7 July 2015, and considering all the facts, on the same day, i.e. on 7 July 2015, the Ombudsman requested Celje District Court to provide the information about the consideration of the letters from the Unit and measures taken. On the following day, i.e. on 8 July 2015, we visited the Unit and verified the patient's health condition. We could only affirm the statements of the Unit on the man's worrying condition. During our visit, the patient lay in bed and did not respond to what we said. We noted that he was also visually impaired and quite helpless, relying on the assistance of the medical and other staff at the Unit.

**The Constitution of the Republic of Slovenia emphasises that human personality and dignity must be guaranteed in criminal and all other legal proceedings, as well as during the deprivation of liberty and enforcement of punitive sanctions. At the same time, it prohibits any form of violence against persons with limited liberty (Article 21 of the Slovenian Constitution), including torture, inhumane and degrading punishment or treatment (Article 18 of the Slovenian Constitution).** In our opinion, the health of the patient required an immediate decision by the court about the assessment of the need for, or rationality of, further continuing the security measure and, consequently, of the patient's accommodation at an institution such as the Forensic Psychiatry Unit. We once again informed Celje District Court about this fact in a letter of 9 July 2015. We stated that the Ombudsman would consider any delay in making the decision a violation of the person's personality and dignity, as well as inhumane and degrading treatment. By considering health of the patient, we proposed that the court immediately respond to the Unit's proposals and decide whether further treatment and care in the health institution was necessary.

In its reply, which we received on 14 July 2015, the Court notified us that the public session at which a non-trial panel would decide on the imposed measure had been planned for (as late as) 17 August 2015. In their additional reply of 29 July 2015, they explained that, having considered the Unit's proposal, a session had been planned for 8 August 2015.

We immediately informed the Unit about the date of the session and also encouraged them, given the poor health of the patient, to themselves seek a solution for the patient's relocation to another proper institution. Unfortunately, this did not happen, since the patient died at the Unit on 16 July 2015.

In our opinion, the court did not respond appropriately to the Unit's warnings about the serious health condition of the patient, i.e. in both letters as described in the introduction. Despite the fact that we also noted this, the session for deciding on the imposed measures was envisaged for mid-August. This was too late for this patient, since he died before this session had even been held. The Ombudsman considers the delay in making the court decision a violation of the person's personality and dignity, as well as inhumane and degrading treatment.

Despite the fact that the matter involved a person on whom a security measure of obligatory treatment had been imposed, this person had the right to die in an appropriate institution and conditions. Therefore, we were unable to accept the explanation of the court that it "immediately upon the proposal of the Forensic Psychiatry Unit of the Psychiatry Department of Maribor University Medical Centre once again and before the legally determined six-month period started the procedure for verification with regard to the duration and modification of this measure". The serious health condition of the patient, about which the Unit (and also the Ombudsman) had explicitly informed and which was worsening, required more rapid response from the court.

The Ombudsman believes that this case involved circumstances that could be the subject of official supervision of a judge's work. Therefore, the Ombudsman filed a request for official supervision with the President of Celje District Court on the basis of Article 7 of the Human Rights Ombudsman Act (ZVarCP) and paragraph one of Article 79b of the Judicial Service Act (ZSS), i. e. on 29 July 2015 to verify whether the judge had responded and worked appropriately in this case.

**The President of Celje District Court considered our complaint and proposed the implementation of official supervision with regard to this matter to the President of Celje Higher Court.** On this basis and also based on information obtained after reviewing the file on the matter, the President of the Higher Court ordered a review of what had occurred, i.e. covering the period after the finality of the decision on the imposition of the security measure. The review was conducted by the Head of the Criminal Justice and Offences Department at Celje Higher Court. In the final report of 15 September 2015, and after studying the comments received on the findings of the review, it was concluded that the termination of the imposed measure had not been ordered and that the level of urgency of the relevant criminal matter required a public session to be organised earlier, also when the court was on vacation, if necessary. He believed that the reason for the delay lay in the lack of harmonisation or coordination of work between the expert co-worker and the reporting judge. Within the scope of their powers, the Head of the Criminal Justice and Offences Department and the President of the District Court (excluding the involved persons) will have to do everything possible to prevent the occurrence of such irregularities in the court's work in the future. Based on the order of Celje Higher Court as of 23 September 2015, the final report was also added to the personal files of the judges involved in this matter.

The warning in the final report was considered by the President of Celje District Court, and on 2 October 2015 he issued an Instruction on the implementation of harmonised and coordinated work between expert co-workers and reporting judges. The President ordered the Head of the Criminal Justice and Offences Department of Celje District Court to notify all participants (registration clerks, expert co-workers and judges) about the aforementioned instruction and to present and explain it to them. He also ordered the preparation of a schedule for the work of panels for a three-month period (until the end of 2015) including the names of members and exact dates of sessions.

In the instruction, the President of Celje District Court warned, and indicated that, when holding a public session (of panels), expert co-workers and reporting judges are obliged in cases when matters are considered as regular although the content of proposals (e.g. a proposal to terminate compulsory treatment and care in a health institution or other proposals) indicates that a delay in a court decision would be considered a violation of personality and dignity of the patient (convicted person, detainee, prisoner), such proposals should not be formally considered as regular matters, but studied separately when applications are received and they should then be classified as priority or urgent matters. An expert co-worker should immediately report to the reporting judge, who would make a diligent assessment and order that the matter is considered a priority or urgent matter, as must be indicated in the announcement of the (earliest) date of the public session (the first possible date).

The expert co-worker and reporting judge must constantly and regularly collaborate and work in a harmonised and coordinated way (especially considering the content and complexity of the case considered), which will ensure that the decision-making process is not delayed. This is especially important during judicial vacations. Registry clerks should also act accordingly, and immediately (after registration) notify the competent judge or expert co-worker on any new matter (regardless of the potential procedure for establishing the finality of a preliminary decision).

The findings of the review of court operations in the above-mentioned case confirmed our warnings that the court should in no event delay the decision-making process for applications made by the Unit that warn about the seriousness of patients' health status. We expect that all the measures that have been taken, especially, the instruction mentioned above, will prevent similar cases from happening. We presented this case at a press conference on 31 July 2015 and 29 October 2015, and also discussed it in *Pravna praksa* (Legal Practice Journal) no. 7-8/2016 **2.8-8/2015**.

### 2.3.6 Persons with restricted movement at psychiatric hospitals and social care institutions

Regarding **deprivation of liberty due to a mental disorder or illness**, we discussed 21 complaints in 2015 involving restriction of movement in psychiatric hospitals (29 in 2014) and 12 complaints involving social care institutions (the same as in 2014). We continued to visit these institutions in the capacity of the National Preventive Mechanism (more is provided on this in a special NPM report).

Similarly to 2014, the complaints referred to **admission to treatment without consent at the department under special supervision** of psychiatric hospitals or the **admission and discharge of persons from secure wards of social care institutions** (in some cases with police assistance) and requests for relocation to other institutions, the possibilities of going outdoors, exits etc. Some complaints also referred to living conditions, treatment, care and the attitude of medical and other staff to patients or people in care in these cases.

Complainants' claims were further verified by making inquiries at the competent authorities, and complainants were then informed about the Ombudsman's findings and explanations regarding procedures for admission to treatment and accommodation in social care institutions. We also answered their questions.

**The share of justified complaints in this field still remains high.** Four of the 16 resolved complaints relating to psychiatric hospitals were assessed as founded, including five out of a total of eleven resolved complaints relating to persons in social care institutions. **The majority of complaints (including providers of psychiatric treatment and social care services and programmes) again related to the Mental Health Act (ZDZdr) or unresolved systemic issues.**

Unfortunately, no progress was made in 2015 in the drafting (of certain urgently needed) amendments to the ZDZdr. Our recommendation i.e. that work on the preparation of necessary amendments to the Mental Health Act to eliminate established shortcomings (**recommendation no. 30**), **still remains unrealised.** Our recommendation that the Ministry of Labour, Family, Social Affairs and Equal Opportunities adopt all necessary additional measures to ensure suitable facilities to accommodate persons in special social care institutions according to court decisions on the basis of Article 74 of the Mental Health Act also remains unrealised (**recommendation no. 31**). The participants at the expert consultation held at Hrastovec Social Care Institution in April 2015 and subsequently at Nina Pokorn Grmovje Home in December 2015 pointed out that the situation in this field, to which the Ombudsman has been drawing attention for some time, is alarming. Representatives of courts, social work centres, psychiatric hospitals, special and combined social care institutions as well as representatives of the Ombudsman's office **ended the consultation by alerting** the competent authorities (Ministry of Labour, Family and Social Affairs, the Ministry of Health and the Ministry of Justice) about the need to amend the provisions of the ZDZdr, which have so far proven deficient in practice. A legal basis and appropriate conditions for further treatment should be ensured for those forensic patients who need long-term specialised and protected treatment due to the risk that they might commit offences after being discharged from the forensic unit. We also warned the competent authorities that they should take all necessary measures to ensure suitable capacities to accommodate persons in (special) social care institutions according to court decisions pursuant to Article 74 of the ZDZdr. They also expressed the opinion that the question of the payment of accommodation costs in (special) social care facilities based on court decisions must be carefully studied, especially from the aspect of the equal treatment of persons deprived of liberty (e.g. those who are sentenced to imprisonment), which is dealt with below.

The Ombudsman emphasised this issue to the Ministry of Labour, Family, Social Affairs and Equal Opportunities at a meeting on 7 July 2015 (also attended by the Minister of Health, since the issue involves matters that require interministerial collaboration); **however, despite their promises, no (significant) progress has been made.** When deciding on these matters, the courts emphasise that it is **the duty of the state to provide sufficient capacities and ensure the suitability of institutions to ensure the protection of personality rights of an institutionalised person, as well as the personality rights of other persons in the institution** (see, for example, Maribor Higher Court decision as of 6 November 2015, ref. no. I Cp 1245/2015).

**Recommendation no. 32** for the adoption of amended **expert guidelines on the use of special protective measures (SPM)** has not been realised (yet). We received information that the Psychiatry Department at the Faculty of Medicine in Ljubljana agreed to prepare a draft of amended guidelines that are harmonised with the ZDZdr, so that the Expanded Professional Board of Psychiatry at the Ministry of Health could consider them. In the last year's report, we recommended to the Ministry of Labour, Family and Social Affairs as well as the Ministry of Health **that they use the same forms for reporting on the use of SPM** (recommendation no. 33), but this recommendation has not yet been realised. The Ministry of Labour, Family and Social Affairs reported that they had not prepared the forms because they were waiting for the Ministry of Health to prepare them in collaboration with the Expanded Professional Board of Psychiatry.

#### Unconstitutionality of the ZDZdr

Article 74 of the ZDZdr regulates the admission of a person by way of consent into a secure ward of a social care institution. Paragraph two of the aforementioned Article states that consent must be an expression of free will, that it must be based on comprehension of the situation and given on the basis of an appropriate explanation regarding the nature and purpose of the treatment. The consent must be given in writing. If a person is declared incompetent, the law clearly states that the consent in his/her name must be given by his/her legal representative. Paragraph three of Article 74 of the ZDZdr states that a person who has consented to admission to a secure ward may at any time revoke his/her consent explicitly or by his/her actions whereby such intent may be inferred, and demand to be discharged from the secure ward. The Act requires that such a person be discharged immediately. A social care institution must act in the same manner if the consent is revoked by the person's statutory representative.

**Therefore, an incompetent person is prevented from participating in the procedure regarding admission to a secure ward.** Under the ZDZdr, the admission of a person declared legally incapable is considered to be admitted with consent (by a statutory representative), regardless of whether the person concerned agrees or not and without any form of control of such a decision by a statutory representative being envisaged. This also excludes the opportunity for the court to decide on the regularity of such an admission to a secure ward. In this part, the applicable statutory regulation as referred to in the ZDZdr is significantly different from the previous regulation under the Non-litigious Civil Procedure Act, where, specifically in Article 71, the detention of a person declared legally incapable was considered detention without consent and thus provided for judicial control of such detention. **In the Ombudsman's opinion, the ZDZdr in this part significantly exacerbated the position of persons without legal capacity and exposed them to potential abuses.**

**For this reason, the Ombudsman addressed a request to the Constitutional Court of the Republic of Slovenia in 2012 to review paragraphs two and three of Article 74 of the ZDZdr** (this was described in greater detail in the Ombudsman's report for 2013, pages 77 and 78). The Ombudsman believes that the contested provision, which lays down the rules on the admission of an incompetent person to a secure ward of a social care institution by consent given by his/her statutory representative and the revocation of such consent, violates paragraphs three and four of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and of Articles 14, 19, 22 and 23 of the Constitution of the Republic of Slovenia, because it unacceptably encroaches on the human rights and fundamental freedoms of incompetent persons, and it fails to ensure judicial protection to such persons when they are admitted to a secure ward of a social care institution.

**At its session on 10 June 2015, the Constitutional Court of the Republic of Slovenia granted the Ombudsman's request and nullified the third sentence of paragraph two of Article 74: this involved a provision determining that a legal representative gives consent to admission to a secured ward of a person who has been declared**

**legally incapable. It also nullified the third sentence of paragraph three of Article 74 of this Act, i.e. the provision that only the legal representative of a person in a secure ward may at any time revoke the consent or demand that the person be discharged from the ward.** The Constitutional Court also determined the method for ensuring judicial control of the deprivation of liberty for persons declared legally incapable, i.e. until a different regulation is adopted or until the Constitutional Court decision enters into force, and the Court also determined the actions of social care institutions for all current cases of persons declared legally incapable and admitted to secure wards on the basis of the current regulations.

The Ombudsman commends the Constitutional Court's decision, which will enable **better (legal) protection of persons declared legally incapable**, while eliminating concern that such persons would be at the mercy of representatives, and also by means of judicial supervision reducing the possibility of abuse in this field.

This decision of the Constitutional Court refers only to the (legal) regulation of admitting persons declared legally incapable, i.e. to a secure ward of a social care institution. Therefore, the decision in itself **does not amend or does not (and should not) affect the consideration of each individual person admitted to the secure ward of a social care institution.** In our opinion, the decision on potential day-to-day releases of persons accommodated on secure wards can be based primarily on the risk assessment or the assessment of the need for protection (risks) and care in individual cases, but not perhaps on the legal regulation determining the admission of a person. The ZDZdr does not separate persons with regard to the method of admission when regulating the rights of persons on secure wards.

### 2.3.7 Minors in residential treatment institutions and special education institutions

Minors are admitted to residential treatment institutions on the basis of decisions of social work centres, court decisions (as educational measures) and also on the basis of placement decisions concerning educational programmes in certain institutions. **Ten institutions** operate within the scope of the Ministry of Education, Science and Sport (MIZŠ): Maribor Youth Home, Jarše Youth Home, Kranj Residential Treatment Institution, Malči Belič Youth Care Centre, Fran Milčinski Smednik Educational Institution, Slivnica pri Mariboru Residential Treatment Institution, Višnja Gora Educational Institution, Planina Residential Treatment Institution, Logatec Education and Training Institution, and Veržej Primary School – Dom Unit. **One institution** (Črna na Koroškem Special Education, Work and Care Centre) works within the framework of the Ministry of Labour, Family, Social Affairs and Equal Opportunities.

(Only) six institutions accept children and adolescents on the basis of court decisions (as an **educational measure**): Slivnica pri Mariboru Residential Treatment Institution, Višnja Gora Educational Institution, Planina Residential Treatment Institution, Logatec Education and Training Institution, Veržej Primary School – Dom Unit and Črna na Koroškem Special Education, Work and Care Centre, which accepts only adolescents with moderate, serious and severe mental disorders whose admission was ordered by a court decision. This institution implements a special education and training programme, and adolescents require a decision to be placed there. **This is now emphasised (after amending the ZIKS-1F) by paragraph two of Article 199 of the ZIKS-1.**

In 2015, the Ombudsman continued to visit residential treatment institutions while implementing the duties and powers of the National Preventive Mechanism (more is provided on this subject in a special report); otherwise, only two matters were considered in this field. One matter involved a complaint made by the General Police Administration with regard to the preparation of the draft of the new **instructions on implementing procedures involving juveniles in the implementation of educational and protective measures.** We commended the preparation of these instructions as an important regulation, and also assured our collaboration in its further preparation. In the second complaint, we were informed about the responses of the Slivnica pri Mariboru Residential Treatment Institution with regard to an anonymous complaint that was considered by the Inspectorate of the Republic of Slovenia for Education and Sport.

**Unfortunately, we established that the Ombudsman's recommendation for the adoption of a special act to comprehensively regulate the organisation, operation and other special features of residential treatment**

**institutions, whereby the text of the act should be coordinated with all ministries directly or indirectly responsible for making decisions on the admission of children and adolescents to residential treatment institutions, still has not been realised (recommendation no. 34).** Additionally, we pointed out in last year's annual report that it was necessary to determine which children and adolescents are involved: children and adolescents with mental and physical disorders or children and adolescents with special needs.

In Slovenia, we have been dealing for decades with issues related to insufficient and frequently completely absent paedo-psychiatric assistance to vulnerable children and adolescents and problems with their placement in (in)appropriate institutions. Children's and adolescents' aggressive behaviour in residential treatment institutions and other institutions is a very big problem, since it is occurring more frequently and is seriously endangering children and adolescents, as well as their environment.

The Ombudsman informed the Ministry of Education, Science and Sport about this issue at a meeting on 1 July 2015. **However, the assurance given by the Ministry of Education, Science and Sport** that amendments to the Placement of Children with Special Needs Act would be prepared enabling the adoption of an executive act specifically defining the roles of individual institutions in the admission and discharge of children in residential treatment institutions and work in residential treatment institutions has not yet been fulfilled yet, although such an executive act was already in preparation in collaboration with residential treatment institutions.

It is of some concern that **no comprehensive regulation of the placement of children in residential treatment institutions has been prepared, although several similar proposals were sent to the Ministry of Labour, Family and Social Affairs.** As confirmed by the Ministry of Education, Science and Sport, there are still **problems with placing (especially) children with behavioural problems (also mental disorders) and children who are aggressive and who abuse drugs and alcohol**, and therefore, it is urgent that institutions develop new forms of work or programmes and apply best practices from abroad. Along with the establishment of a paedo-psychiatric institution, health-care activity at individual residential treatment institutions is needed to help children who need such treatment. It is also necessary to **activate an interministerial cooperation system to seek solutions that will enable the comprehensive treatment of children.** The Ombudsman has pointed out for several years that the treatment of children and adolescents with mental health and similar hetero-aggressive behavioural problems is not merely a pedagogical problem. Too often these children and adolescents are not admitted or are excluded from institutions or schools, or are admitted to secure wards of psychiatric institutions together with adult patients.

The Ombudsman welcomes the innovation and opening of an intensive unit enabled by the Ministry of Education, Science and Sport based on the written support of the Ministry of Health, the Ministry of Labour, Family and Social Affairs and the incentive of the Ombudsman at Planina Residential Treatment Institution. The innovation defines a model for the comprehensive treatment of children and adolescents which is implemented in their living environment and enables them to have regular schooling during continuous health and pedagogical care. Five children and adolescents can be included in the innovative programme, which is entitled **'The introduction of a comprehensive pedagogical and scientific model for the treatment of children and adolescents with mental disorders and accompanied uncontrollable aggressive and violent behaviour'**; the programme is monitored by the National Education Institute of the Republic of Slovenia. Medical staff (psychiatrist, nurses) and pedagogical staff care for the group of five children and adolescents. Based on additional training, they act according to guidelines that are determined for the treatment of children with the described behavioural problems. Children and adolescents have the opportunity to receive comprehensive treatment in their living environment.

The Ombudsman believes that in addition to other features of residential treatment institutions, the field of **preventing and supervising the use of illicit drugs should also be regulated**, including the competences of the inspection services (e.g. Inspectorate of the Republic of Slovenia for Education and Sport, social inspection services) regarding the placement and accommodation of adolescents in institutions. The deadline for preparing individualised programmes according to which the education and correction of an individual take place must be uniform.

The Ombudsman also points to a substantive aspect of an **educational programme which is insufficient with respect to work with juvenile offenders.**

The Ombudsman believes that the option of **separating institutions which admit children and adolescents who are offenders from those accommodating children and adolescents because of the poor conditions in their families, parental neglect, the death of their parents or severe emotional, behavioural disorders, and also psychiatric disorders (which are increasingly common)** should be examined. As already mentioned, the possibility of organising accommodation and educational work in small independent units should be considered for groups of children and adolescents who are juvenile offenders (e.g. residential groups in various and mutually remote locations). The concept of classic educational work in residential treatment institutions (classic organisation model and functioning of a residential treatment institution) with 40 or more children or adolescents should be re-examined for possible obsolescence or adequacy in the current situation and present problems of the young, and also if experts with the current type and level of education are still qualified to work with them.

### 2.3.8 Aliens and applicants for international protection

In 2015 we received no complaints in the field in which we discuss possible complaints by aliens dealing with the restriction of movement or deprivation of liberty. The consideration of an issue based on our own initiative **with regard to assuring the proper placement of unaccompanied alien minors and families with alien minors** is presented below (consideration of this matter was not completed in 2015). Other findings concerning complaints made by aliens and **issues related to migrants/refugees** encountered at the end of 2015 are included in the chapter on administrative matters; issues concerning foreign citizens, and the visit of the NPM to the Aliens Centre (Centre) and the visit to the location for the receiving and placing migrants/refugees is subject to a special report on the implementation of the duties and powers of the NPM. In 2015, we met representatives of the United Nations High Commissioner for Refugees (UNHCR) and exchanged opinions and findings on the treatment of aliens in Slovenia.

In the report for 2014, we **commended the adoption of the legal basis for monitoring the removal of aliens** in accordance with the amended ZTuj-2A, which determines the legal basis for the monitoring system of (forced) removal of aliens for the purposes of implementing Council Directive 2008/115/EC as of 16 December 2008 on common standards and procedures in Member States for returning illegally residing third-country nationals (Return Directive), and expressed the expectation that the act would be enforced (recommendation no. 35). This expectation has been partially realised. In 2015, **the public tender to select an organisation to monitor the removal of aliens and to monitor the removal of aliens from the Republic of Slovenia was published; Caritas Slovenia was selected.** This organisation has cooperated with the Ombudsman on the implementation of the tasks and powers of the NPM, which also refer to aliens deprived of their liberty. The Ombudsman will discuss possible cooperation with the organisation and monitor its work.

When considering complaints and the implementation of tasks and powers of the NPM, the Ombudsman **has observed problems in assuring the appropriate placement of unaccompanied minors and alien families with minors.** Since our recent warnings and recommendations for improving the situation in this area have not led to any satisfiable progress, we contacted the Government of the Republic of Slovenia in August 2015 upon our own initiative, because we believe that this involves **the resolution of issues that affect several national authorities and need immediate response.**

#### Proper treatment of aliens – migrants/refugees

The Ombudsman contacted the Ministry of the Interior with regard to **the alleged bad practices of individual police personnel in the field when receiving migrants/refugees.** Based on information received and interviews, the Ombudsman assessed that special attention should be given to these issues, since the information was worrying and demanded an appropriate response. The Ombudsman stressed that the fact that certain bad practices have been emphasised does not mean that the situation is generally bad and that there are no examples of good practice, which the Ombudsman's personnel have witnessed themselves on numerous occasions while monitoring particular centres and performing visits in the field.

We have pointed out that the Constitution of the Republic of Slovenia emphasises that human personality and dignity must be guaranteed in criminal and all other legal proceedings, as well as during deprivation of liberty and the enforcement of punitive sanctions. It also prohibits any form of violence against persons with limited liberty (Article 21 of the Constitution of the Republic of Slovenia), including torture, inhuman and degrading punishment or treatment (Article 18 of the Constitution of the Republic of Slovenia). It must be taken into consideration that migrants arriving in Slovenia may have many personal problems, that they have been travelling for a long time, and that they are helpless because they are in a foreign environment, all of which calls for the utmost tolerance and understanding. For these reasons, they may be impatient and irritated, which is also evident in their attitude to the personnel who deal with them.

**The Ombudsman is certain that personnel – especially police officers – who deal with refugees must be diligently selected and qualified to be able to reduce tensions with appropriate communication and human relations, thus contributing to the better well-being and safety of all people in a certain location.** Therefore, they should be regularly reminded of the commitment to treat refugees appropriately (especially verbally) and that any irregularity will be properly and firmly sanctioned. It would be disappointing if some unsuitable conduct of individual police officers, perhaps only verbal or symbolic, were to tarnish the efforts of other police officers who are dedicated to their work with refugees on a daily basis.

The Ombudsman also emphasised **the difficult working conditions of police officers** (they normally work in 12-hour shifts and frequently commute to work from distant locations (for two or more hours); they are deprived of sleep, tired, separated from their families for lengthy periods, receive low salaries and often insufficient information about the course of work, the arrival of new groups etc., and therefore they are constantly uncertain, which can be expressed in their relations with aliens).

**Thus, the Ombudsman asked the Ministry to examine relevant cases and, if necessary, take additional measures to improve the situation in this field, perhaps by enhanced supervision of police officers' work, decisive responses from superiors to any verbal or physical threats made by officers under their command.** The Ombudsman believes that special (additional) training of police officers for working with large crowds and special preparation of police officers to work with migrants of other nationalities, religions and cultures, including how to communicate without the use of (verbal) intimidation, should be considered, and that additional measures aimed at reducing language barriers when communicating with aliens should be adopted.

The Ministry of the Interior replied that the Slovenian police had striven to respect all human rights during the increased influx of migrants. **Instructions were sent to all police administrations with regard to the proper conduct of police officers in procedures involving aliens, and their work is constantly monitored and supervised by the General Police Directorate. An informative brochure was also prepared for the purpose of informing aliens on their rights and police proceedings.**

During the period when the number of migrants increased, the Ministry of the Interior observed minor irregularities which are continuously being eliminated, while at the same time they make every effort to prevent irregularities in the future. When working with aliens, they collaborate with NGOs and humanitarian organisations, and they have not been notified of any major violations or irregularities in the work of police officers. The Ministry of the Interior was also neither informed of, nor did it detect, any concrete irregularities in their conduct towards aliens. **After receiving information from the Ministry of the Interior, the Ombudsman's findings were sent to all police administrations, which were also warned about the established irregularities.** They were also ordered to ensure a suitable organisation or work in order to prevent unnecessary problems. The management of police units were also ordered to inform police officers of correct communication prior to the commencement of their work or their deployment. Members of the Ethics and Integrity Committee of the police were also invited to participate in deployment.

The Ministry of the Interior also informed us that the police had organised various training programmes for officers dealing with aliens over the years. All training programmes include content on human rights and the protection of freedom, and some also include content on communication and conflict management.

# 2.4

## JUSTICE



FIELD OF WORK	CASES CONSIDERED			RESOLVED AND FOUNDED		
	2014	2015	INDEX 15/14	NO. OF RESOLVED	NO. OF FOUNDED	PERCENTAGE OF FOUNDED AMONG RESOLVED
<b>4. Judicial proceedings</b>	<b>725</b>	<b>596</b>	<b>82.2</b>	<b>527</b>	<b>41</b>	<b>7.8</b>
4.1 Pre-litigation procedures	38	31	81.6	26	3	11.5
4.2 Criminal proceedings	103	95	92.2	83	6	7.2
4.3 Civil proceedings and relations	335	283	84.5	261	19	7.3
4.4 Proceedings before labour and social courts	31	28	90.3	23	3	13
4.5 Minor offence proceedings	92	61	66.3	54	3	5.6
4.6 Administrative judicial proceedings	2	4	200	4	0	0
4.7 Attorneys and notaries	39	23	59	21	2	9.5
4.8 Other	85	71	83.5	55	5	9.1

### 2.4.1 General findings

In 2015, 401 cases concerning judicial proceedings were discussed (563 cases in 2014). Some 95 complaints related to criminal proceedings (103 in 2014), 283 to civil proceedings and relations (335 in 2014), 28 to proceedings before labour and social courts (31 in 2014), 61 to minor offences (92 in 2014) and four related to administrative judicial proceedings (two in 2014). Some 31 cases (38 in 2014) were discussed in the sub-section of pre-litigation procedures, 23 cases in the sub-section of attorneys and notaries (39 in 2014) and 71 other cases related to this field of work.

**In all sub-sections, a slight decline in the number of cases considered (and also received) was recorded (with the exception of administrative judicial proceedings); however, the share of justified complaints is higher than in 2014.** Unfortunately, the statistics that are available do not allow for a more detailed substantive breakdown of cases in this field, particularly regarding the general trend of complaints about lengthy judicial proceedings and the share of these complaints that are justified, and also a credible comparison with preceding years. **Nevertheless, it may be ascertained that a quarter of received complaints in 2014 and in 2015 concerned lengthy judicial proceedings, while the remaining three quarters referred to the content of court decisions or procedural actions taken by courts, i.e. issues regarding the quality of trials.** We hereby add that it is not possible to make a comprehensive assessment of the situation in the judiciary merely on the basis of complaints discussed by the Ombudsman, since our assessments depend only on the content of the complaints we considered. The fact that the number of complaints (included those that were founded) involving a violation of the constitutional right to trial without undue delay was substantially lower also in 2015 is encouraging on the one hand, since it indicates progress by the judiciary in this field; however, this



issue (although to a minor extent) remains among complaints considered by the Ombudsman, which is also evident from the examples provided below. On the other hand, we may be worried by the multitude of other complaints, which indicate that the speed of judicial decision making must not be detrimental to its quality. **When evaluating the share of justified complaints, it must be taken into consideration that this process is closely linked to our (limited) jurisdiction in regard to the judicial branch of power.** The Human Rights Ombudsman Act stipulates explicitly that the Ombudsman may not examine cases which are subject to judicial or other legal proceedings unless undue delay in the proceedings or evident abuse of authority are established (Article 24 of ZVarCP). In the case of judicial proceedings, the latter would be e.g. an intentional act by means of which judicial proceedings could be abused for illicit or illegitimate objectives. With regard to the judicial branch of power, our operations may extend only to the point where they do not encroach on the independence of judges in their judicial work. The Ombudsman's intervention does thus not extend to the field of decision making, but particularly to judicial administration or other circumstances which require our action. **In one case, we informed the court in our role as an *amicus curiae* of an injured party's concern that a defendant who persistently violated a restraining order could actually pose a threat to the life of herself and her son and we proposed that the court pay special attention to the complainant's concern.**

## 2.4.2 Realisation of the Ombudsman's recommendations

**Only minor improvements were established regarding the realisation of recommendations in this field.**

In the 2014 report, we encouraged the adoption of a long-term judicial strategy as a fundamental framework for the operation of the courts (**recommendation no. 36**), and **we asked the Ministry of Justice** to further implement well-considered legislative measures to ensure the protection of the right to trial without undue delay in dialogue with the judicial authority and the expert public (**recommendation no. 37**). The Ombudsman encouraged further strengthening of the efficiency of supervisory authorities to ensure high quality in the work of the courts and of trials (**recommendation no. 39**) and recommended that the Ministry of Justice and courts study the existing mechanisms for supervising the work of judges, especially their efficiency, and on this basis, take possible additional measures to improve the work of the courts (**recommendation no. 40**).

With regard to the recommendations, the **Ministry explained** that it was striving to efficiently implement the right to trial without undue delay on the basis of the Protection of Right to Trial without Undue Delay Act (ZVPSBNO) and was also taking action as per its authority. It further stated that, as per the latest practice of the European Court of Human Rights (ECHR), **it would also examine the need to amend the current regulatory bases with respect to more effectively providing the right to trial without undue delay, and also the right to an effective remedy and the question of the timely award of just satisfaction.**

In the beginning of 2015, amendments to Courts Act (ZS) and the Judicial Service Act (ZSS) were passed which also affect the provision of **qualitative judicial decision making**. Detailed criteria for the selection and promotion of judges and the procedure for assessing judges' work were introduced. The field of **judicial ethics and integrity** was also further regulated, since the latest amendments to the ZS (ZS-L) provided a basis for the adoption of the **Code of Judicial Ethics** and the establishment of the **Ethics and Integrity Committee**, which will function under the auspices of the Judicial Council. With the latest changes to the organisation of judicial legislation, the Ministry of Justice further expanded judicial responsibility; the Ministry thus believes that an **efficient, broad and proportional system for enforcing judicial responsibility was established, which will be integrated accordingly within the framework of the constitutional principle of the independence of judges and the judiciary**. According to the Ministry, the fully compartmentalised system of enforcing judicial responsibility should also provide suitable legal or legislative foundations for high-quality judicial decision making, which is determined in more detail in the ZSS.

The Ombudsman recommended that the competent stakeholders examine again the efficiency of measures taken in the past by **labour and social courts** to reduce court backlogs and ensure trials within a reasonable time (**recommendation no. 38**). In this regard, the Ministry of Justice expressed hope that the situation in the relevant field would improve. The courts are striving to shorten judicial proceedings concerning labour and social disputes. Thus the courts optimise the organisation of their work, re-assign judges for some of their working time to other courts in order to assist with the elimination of court backlogs, and introduce 'triage' to alleviate judges' administrative tasks so that they can concentrate exclusively on trials, which results in more

cases being resolved. This field will also be monitored in the future, and if necessary, additional measures may be proposed according to the Ministry's jurisdiction. **This response is commendable; however, it is necessary to add that certain problems were still observed in this field in 2015, which are discussed below.**

The Ombudsman recommended that judges consistently act in accordance with the provision of paragraph one of Article 71 in relation to point 5 of Article 70 of the Civil Procedure Act (ZPP), and ensure respect for the right to impartial trial (**recommendation no. 41**). This was a general recommendation to which the Ministry of Justice provided no special response.

The Ombudsman further recommended additional measures be taken in the regulatory field to limit the possibilities of the abuse of regulations permitting doctor's notes and other justifications connected with ensuring the presence of parties in court proceedings. Courts should use the prescribed procedures to assess doctor's notes (**recommendation no. 42**). In response to this recommendation, the Ministry of Justice gave an assurance that the relevant issue would be examined during the drafting of amendments to the ZKP-N, i.e. from the aspect of clearly referring to the ZZVZZ, and with regard to limiting the abuse of doctor's notes when ensuring the presence of parties in criminal procedures; however, **the amendments to the ZKP-N were not adopted in 2015.**

## 2.4.3 Judicial proceedings

From the complaints discussed and the Ombudsman's recommendations regarding judicial proceedings in 2015, issues arose again which (still) referred both to the **length of individual court proceedings, and to the quality of decision making**. The complaints claimed (and frequently with good reason) and primarily addressed the following rights: the right to judicial protection, equal protection of rights, right to a legal remedy, legal guarantees in criminal proceedings etc.

When considering complaints about judicial proceedings, the Ombudsman continued to turn to the **presidents of courts and other competent bodies** (e.g. heads of prosecution offices) by way of enquiries and other interventions, and when necessary, the Ministry of Justice, particularly concerning an issue of a systemic nature or regarding the regulatory framework governing the work of the judiciary, and to the Ministry of the Interior (concerning procedures carried out by the police as a minor offence authority). **For the most part, the Ombudsman was satisfied with the responses from the competent bodies.**

The Ministry of Justice provided us with the draft **Act on the Treatment of Juvenile Delinquents** for us to examine and provide an opinion. In this regard, we emphasised that the implementation of a criminal law for adolescents, which was anticipated already by the KZ-1, or another suitable legislative solution for discussing juvenile delinquents, was urgent, since an act was being used which was no longer applicable. The Ministry of Justice also requested our opinion on the draft **Act Amending the Criminal Code** (KZ-1C). We examined the draft particularly in the light of the current discussion of complaints submitted to the Ombudsman relating to this field. As per the above, we made no substantive comments or proposals regarding the proposed act. We commended the **amendment to the arrangement of the prosecution for the criminal offence of serious threat as per paragraph one of Article 135 of the KZ-1** thereby basing prosecution on a private action rather than on a complaint. We particularly pointed to the unsuitability of the current arrangement in the 2012 and 2013 annual reports and also proposed the re-examination of the legislation on the prosecution of threats. We commended the inclusion of the newly proposed criminal offence of **stalking (excluding with respect to family relationships)** (new Article 134a). The need to criminalise this criminal offence was already explicitly highlighted in the 2010 report. We also added that it should be explicitly communicated at the legal level that the security measures of a restraining order or the prohibition of communicating with the victim of a criminal offence take precedence over imprisonment, since different positions were noted in past practice in this regard.

We also positively assessed all the amendments to the current legislative arrangements intended to enhance the protection of vulnerable persons and groups, eliminate certain deficiencies or strengthen the principle of legality, while being aware that the Criminal Code may only be amended with thoughtful and meticulous consideration, particularly in the light of the constitutional principle of the rule of law, legal certainty and the predictability of law (Article 2 of the Constitution of the Republic of Slovenia). During the drafting of the Act,

we also proposed a careful assessment of warnings that certain proposed amendments to the KZ-1 may place (further) restrictions on media activities or freedom of expression.

#### Lengthy duration of court proceedings

The data on the judiciary showing that the number of important and also other unresolved cases decreased again in 2015 are certainly encouraging, since the time expected for resolving cases is also shortened. Nevertheless, the Ombudsman also discussed complaints in 2015 which referred to lengthy court proceedings. As mentioned above, these complaints constituted **one fourth of all complaints involving court proceedings**. According to our findings, court backlogs are still one of the main issues facing the Slovenian judiciary. In few cases, we proposed that certain court presidents verify as per the type, nature and importance of a case if there were reasons for possibly classifying cases differently in their order of resolving cases than was determined relating to their caseload.

The data on compensation paid due to the violation of the right to judgement within a reasonable time show that problems in the field of ensuring judgements within a reasonable time still exist, including judgements of the **European Court of Human Rights (ECHR)**. Of thirteen judgements issued by the relevant court against the Republic of Slovenia in 2015 in which violations of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) were established, as many as **seven judgements referred to the violation of Article 6 of the ECHR, i.e. the violation of the right to a fair trial and thus the violation of the right to trial within a reasonable time**. The speed and efficiency of criminal proceedings are particularly in the interests of the injured party as the victim of a criminal offence. This is relevant to considerations of sexual abuse and the physical, psychological and social effects which such criminal offence have on the victim. Lengthy proceedings in such cases cannot be understood as victim-friendly conduct. Unfortunately, Slovenia was again found to be in violation of Articles 3 and 8 of the ECHR in the ruling of the European Court of Human Rights **in the case of Y. v. Slovenia of 28 May 2015**. In her case against the state, the applicant emphasised that criminal proceedings relating to sexual assaults against her took an unreasonably long time, that they were biased and that she was subject to several traumatic experiences during the proceedings, which encroached upon her personal integrity. The Court established with concern that the proceedings were marked by several lengthy periods of complete standstill, which according to the Court were impossible to reconcile with a request for a prompt discussion of the case. It also assessed that the manner in which the criminal proceedings had been conducted in this case did not provide a suitable balance between the rights and interests of the injured party, as ensured by the Convention, and the rights of defence. **It particularly stressed that the first and most important duty of the presiding judge was to ensure protection of, and respect for, the personal integrity of the injured party.**

In 2015, the public was disturbed by the data on the **share of the ECHR's rulings against Slovenia**. These data were not surprising to us, although they are of great concern and demand thorough analysis. The opinion of the State Attorney's Office of the Republic of Slovenia, which is the attorney of the state, is important in this case since it has the best insight into the cases brought against the Republic of Slovenia and the subsequent rulings of the ECHR. We must not ignore the fact that the system of human rights and freedoms' protection introduced by the ECHR demands the persistent and sometimes lengthy implementation of fundamental standards of human rights' protection in individual countries.

That respecting human rights is expensive, but disrespecting them is even more expensive, is true with regard to rulings of the European Court of Human Rights, particularly concerning systemic and mass violations. We also find that many recommendations which the Ombudsman made to the state or its competent bodies over the years of its operations with regard to violations of human rights which were later determined by the ECHR were overlooked, since their observance would certainly have reduced the number of successful lawsuits and thus spared the country the payment of large sums in compensation.

We understand that amendments to legislation or judicial and other practices cannot be implemented quickly and with no suitable financial resources, but this is nevertheless a necessary investment in improving the enforcement of human rights and the country's reputation at home and abroad. We believe that Slovenia needs a **national programme to determine measures to eliminate systemic problems, and measures to**

**reduce the number of human rights' violations, and contribute to establishing effective legal remedies available in practice.**

#### Lengthy decision making on an expediting legal remedy

A party to court proceedings – a participant according to an act governing non-contentious proceedings and an injured party in criminal proceedings – has the **right that their rights, duties and accusations against them are considered by a court without undue delay**. The protection of the right to trial without undue delay is governed by the **Protection of the Right to Trial without Undue Delay Act (ZVPSBNO)**. This Act prescribes the rules of proceedings, (expediting) legal remedies and measures in cases of alleged and established violations of the right to trial without undue delay.

The Ombudsman already **emphasised the need to consistently observe the deadlines** (e.g. in the 2010 annual report) within which actions must be taken which are determined on the basis of applicable expediting legal remedies as per the ZVPSBNO. We also considered a case in 2015 in which the complainant was certain that a (district) court was unduly delaying decision making. On the basis of our advice, he first filed a request for supervision and then another expediting legal remedy (motion for a deadline) which **the president of the higher court considered significantly longer than determined by the Act, the purpose of which is the protection of the right to trial without undue delay** under Article 23 of the Constitution of the Republic of Slovenia. In paragraph five of Article 11, the ZVPSBNO stipulates that a president of a court must decide on a motion for a deadline within 15 days after its receipt. In this particular case, the complainant filed the motion for a deadline at the beginning of March, whereas the legal remedy was granted only at the beginning of May, i.e. roughly **after two months from when it had been received**; whereby, it was also revealed that this was not the result of the fact that the president of the court which discussed the case had failed to immediately forward the motion for a deadline together with the case file and the file of the request for supervision to the president of the higher court as determined in Article 10 of the Act. When examining the case, we explicitly asked the president of the higher court to clarify why the motion for a deadline had not been discussed yet by that time, but we received no explanation. The complainant submitted his correspondence with his attorney, which stated that the office of the president of the higher court had explained *“that the lack of staff posed a problem, since there is no vice-president of the court and deadlines are thus delayed”*. Regarding the purpose and significance of expediting legal remedies according to the ZVPSBNO, **the Ombudsman repeats here the recommendation made in 2010 that the courts should always do everything possible to ensure the actual observance of deadlines, which in this regard were set for making decisions on expediting legal remedies as per the ZVPSBNO.**

#### Proceedings before labour and social courts

In spite of the expectations of the Ministry of Justice that the situation in the courts' work would improve, we continued to observe problems in this field in 2015, which are illustrated with the cases described below.

Example:

##### **Twenty months for scheduling the main hearing in a social matter**

A complainant informed the Human Rights Ombudsman about the undue duration of a social case, ref. no. V Ps 2240/2013, at Ljubljana Labour and Social Court. Since he had obtained information from the relevant court that it took approximately two years for the case to be heard, he turned to the Ombudsman for help.

We submitted our inquiry on the matter to Ljubljana Labour and Social Court, which explained that a lawsuit against the Health Insurance Institute of Slovenia had been filed in the complainant's case on 24 July 2013 with respect to the recognition of other rights arising from health insurance, and the defendant had responded to the lawsuit on 19 September 2013. On 24 February 2015, the case was re-assigned to another district judge, who wrote in her report that the first main hearing was scheduled for 21 April 2015. The court explained that the cases were being resolved according to the order in which they were filed at the court, and priority was given only to cases determined as such by the Court Rules or the annual work programme of courts. Disputes on

the recognition of other rights arising from health insurance were not considered priority cases, and the court was thus unable to consider the complainant's case before other lawsuits that had been filed before his. As an additional reason for not considering the case sooner, the court also mentioned the shortage of personnel. In the critical period, the court was waiting for three vacant judges' posts to be filled at the social department. The district judge who was allocated the case was appointed by the Judicial Council on 10 February 2015, and she scheduled the first main hearing in the complainant's case soon after taking office.

Relating to the time that passed in this case from the filing of the lawsuit to the scheduling of the first main hearing, we considered the complaint founded, since it took the court almost twenty months to schedule the first main hearing. The overburdening of courts with cases and the shortage of personnel are not, and cannot be, excuses for lengthy judicial proceedings. While observing the provision of Article 50 of the Court Rules, which stipulates that cases in labour and social disputes must be resolved in six months from the filing of the case, the relevant case was subject to a court backlog and, in our opinion, also constituted a violation of the right to a trial without undue delay, which is an element of the right to judicial protection as per paragraph one of Article 23 of the Constitution of the Republic of Slovenia, or Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. **6.5-3/2015**

#### Example

##### **First main hearing scheduled almost 21 months after a lawsuit is filed in a labour dispute**

A complainant wrote to the Ombudsman due to the lengthy handling of her lawsuit, which she filed in a labour dispute in 2013 and was recorded at Maribor Labour Court under ref. no. Pd 509/2013. She stated that she had received a reply from the court, no. Pd 509/2013 of 27 August 2014, to the request for priority consideration of the case, stating that the case had not (yet) been scheduled for consideration. Some six months later, the complainant's attorney received the same reply (of 17 February 2015). The complainant also stressed that some of the actions for damages filed by her co-workers, who filed their suits against the (same) defendant later than her (i.e. after 9 September 2013), had already been decided on. Due to the lengthy proceedings, the complainant was also worried that she would be unable to recover anything from the defendant, since the defendant was supposedly withdrawing from the Slovenian market.

We made inquiries at Maribor Labour Court, which explained that the complainant had filed her lawsuit on 25 September 2013, and the court had received the statement of defence on 15 November 2013. The dispute involved the payment of allowances for working conditions, compensation for unused annual leave and payment of damages. According to the content, this was a non-priority case, for which a hearing of 22 June 2015 was scheduled on 23 March 2015.

In its reply, the court also clarified that it had been decided, following a review of the order of cases to be heard by the judge to whom the case was allocated, that the judge was consistently observing the order of discussing cases, and that the court was striving to schedule the settlement hearing or the first main hearing in priority cases within two months of receiving statements from the defence (and was also successful in doing so, according to the President of Maribor Labour Court). Since, according to the order of the court's caseload, the hearing in the complainant's case was scheduled on 23 March 2015, it was expected that her statement of claim would soon be resolved.

While observing the time that passed in the relevant case since the filing of the lawsuit to scheduling of the first main hearing, the Ombudsman considered the complaint founded, because the first main hearing was scheduled by court almost 21 months after the action had been filed and 19 months after the statement of defence had been received.

In our inquiries, we asked the court whether the complainant's case would have already been scheduled for a hearing if observing indent four, point 3b of Article 7 of the Annual work programme of courts for 2015, which considered cases older than nine months as having relative priority. Since the complainant's case had been filed with the court already 20 months ago, we assessed that as such it would (probably) already have been classified as (at least) a case with relative priority. Unfortunately, the court failed to respond to this question.

While observing the provision of Article 50 of the Court Rules, which stipulates that cases in labour and social disputes must be resolved in six months from the when the case is filed, we found the relevant case an example of a court backlog, which also constituted a violation of the right to a trial without undue delay.

On the basis of explanations provided by Maribor Labour Court, we expressed expectations in our reply to the complainant that the scheduled hearing would actually be conducted, and that the court would further consider her case on an ongoing and concentrated basis and resolve the matter within a reasonable time. The complainant has not informed us of the contrary. **6.5-8/2015**

#### Quality of decision making

Complainants' dissatisfaction with **court decisions in their cases** was noted in as many as **three quarters of complaints** which referred directly to judicial proceedings. The Ombudsman is not (yet another) state authority established to assess the correctness of court decisions, i.e. correctness of the actual situation established or of the application of substantive and procedural law. Likewise, the Ombudsman is also not an authority which can affect the content of court decisions, since this would encroach on the independence and autonomy of decisions made by the judicial branch of power, which is not permitted by the Constitution of the Republic of Slovenia. As per the Human Rights Ombudsman Act, the Ombudsman may intervene in court matters only if it is established that the court unduly delays proceedings (that the rule on the order of resolving cases is not being observed, or if a violation of the provisions in a procedural act which ensure prompt and effective discussion and decision making in judicial proceedings is discovered) and in cases of evident abuse of authority.

Claims of certain procedural errors, an incorrectly established actual situation or any other disagreements with court decisions in certain judicial proceedings are particularly the bases for application of legal remedies (ordinary and extraordinary), which are available to an individual as a party to proceedings in individual types of judicial proceedings. The legal system observes the fact that courts settle certain situations or disputes between parties only with the finality of a court decision. Thus, prior to issuing a final court decision, a repeated test of any previous decision at a higher instance is possible in order to eliminate possible judicial errors before a lower instance court and a correct final decision be made. The system enables claims concerning any errors before finality (by means of appeal or other ordinary legal remedy) and some claims may also be pursued after the finality of a court decision (by extraordinary legal remedies). Nevertheless, we emphasise again that judges (in particular) also have obligations and responsibilities. They are obliged to perform their work correctly, with fairness and responsibility, and ensure their judicial function is effectively implemented. A judge's independence must not mean they are inviolable or non-culpable, because they must comply with the Constitution and the law.

In this regard, the Ministry of Justice emphasised that it is not permissible to intervene in judges' independence in the performance of their judicial duties according to the Constitution due to the principle of multi-level judicial decision making. The organisation of courts is based on the principle of multi-level judicial decision making, as the organisational result of the constitutional right to a legal remedy. An autonomous and independent court bound by the Constitution and law decides on whether claims made by parties to judicial proceedings are founded. If parties disagree with courts' decisions, they may protect their rights by seeking ordinary and extraordinary legal remedies with the competent judicial authorities as per the principle of multi-level judicial decision making and their right to a legal remedy. It is also clear that the regulations in force provide sufficient mechanisms to prevent abuses or deal with establish violations of judicial duties if these occur (ZSS and ZS). Court presidents have several tools with which they monitor the work of courts and judges. The PSP (business data warehousing) project is underway, which, as an interactive and dynamic tool, enables visual monitoring and data processing from the data warehouse, and is intended for monitoring operations in judicial proceedings on the basis of selected parameters (staff, transfer of cases, backlogs, performance, quality of work). The presidents of courts can thus verify the quality of judges' work (assess judges' service) more easily, and faster discussion (review of operations, supervisory appeal etc.) is also enabled through judicial management and with certain limitations.

## Official supervision of judges' work

As per the provisions of the ZSS, the official supervision of a judge's work is intended to ensure the fulfilment of judicial duties according to the law and the Court Rules, and encompasses all measures to eliminate reasons for any unacceptable volume, quality and professionalism of work and delays. **Court presidents may implement official supervision also at the Ombudsman's request.** Two such requests were submitted in 2015, and in both cases the official supervision conducted at the Ombudsman's request revealed irregularities in the implementation of judicial duties.

## Prohibition of torture in the context of the European arrest warrant

The Human Rights Ombudsman of the Republic of Slovenia also considered a complaint submitted by a Lithuanian citizen detained in the Republic of Slovenia and his representative appointed *ex officio* relating to the case discussed by Kranj District Court under ref. no. I Kpd 4371/2015 **concerning a European arrest warrant issued by a court in the Republic of Lithuania.** Upon receiving the complaint, the Ombudsman was able to determine that the complainant had already stated that he was unwilling to surrender and did not waiver the principle of speciality and that his attorney had emphasised before the court at the hearing of the wanted person on 24 February 2015 that "*many pieces of information were obtained on intolerable conditions in Lithuanian prisons which violate human rights and fundamental freedoms*". The reply to the proposal to extend detention of 24 February 2015 (where the "*case of Liam Campbell*" (a case discussed by a court in Northern Ireland) was being referred to in particular) also provided similar information. **Due to allegations made by a person detained in Slovenia and wanted on the basis of a European arrest warrant regarding circumstances relating to the prohibition of torture, inhumane and degrading treatment or punishment (hereinafter: prohibition of torture) in the country that issued the warrant, the Ombudsman decided to exercise its right under Article 25 of the ZVarCP and contacted Kranj District Court about the case.** In our letter to the court, we highlighted that "intolerable conditions in prisons which violate human rights and fundamental freedoms" (we cite the wording of the complainant's attorney) were not among the grounds provided by the ZSKZDČEU-1 for refusing to surrender a requested person (Article 10) or the optional grounds for refusing to surrender a requested person (Article 11) regarding the procedure for arrest and surrender between EU Member States. **However, according to the Ombudsman, this alone is not a sufficient reason for not observing the alleged violation of the prohibition of torture, inhumane and degrading treatment or punishment in a suitable way when considering a possible refusal to surrender a person detained on the basis of the European arrest warrant.** It must be observed at all times that the prohibition of torture is not merely a category from the catalogue of human rights and fundamental freedoms of the Constitution of the Republic of Slovenia and one of the convention rights of (e.g.) the European Convention for the Protection of Human Rights and Fundamental Freedoms: it is also a category of human rights which has become a fixed part of the law (*jus cogens*). This particularly emphasises the significance of the relevant prohibition and the need to discuss any alleged violations with due seriousness. It must also be mentioned that Article 2 of the ZSKZDČEU-1 determines mutual recognition and execution of court decisions on the arrest and surrender of persons as per "the Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and surrender procedures between Member States (OJ L 190, 18 July 2002, p. 1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at a trial (OJ L 81, 27 March 2009, p. 24; hereinafter: Council Framework Decision 2002/584/JHA)" the introductory note of which explicitly states (point 13): "No person should be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment."

**The Ombudsman is aware that such cases involve issues which primarily refer to the law of the European Union; however, we primarily focused particularly on the constitutional view and the aspect of the law of the Council of Europe, since we believe that this provides sufficient support for our findings and that various interpretations of often ambiguous rulings of the Court of Justice of the European Union could not contribute to resolving dilemmas arising from the case in question.** After all, the Constitutional Court of the Republic of Slovenia had already withheld the execution of both regular courts' decisions, which permitted

surrender on the basis of a European arrest warrant. With decision Up-572/12-14 of 5 July 2012 due to a violation of Article 22 of the Constitution of the Republic of Slovenia, the Constitutional Court set aside the contested individual decision of the higher court, returned the case for reconsideration and ordered the court to consider "all reasons the complainant submitted against the decision to be surrendered to the Italian Republic, including her request to serve her sentence in the Republic of Slovenia due to the right to respect for family life" (in this case, the complainant claimed *inter alia* that her right to respect for family life, which is protected under Article 8 of the ECHR, had been violated with the contested decisions; the prohibition of torture under Article 3 of the Convention is undoubtedly a norm of even greater significance, e.g. according to the ruling of the ECHR in *Mikalauskas v. Malta* of 23 July 2013, which became final on 23 October 2013 (point 15): "/.../ in the event of a violation of Article 2 and 3, which are considered some the most fundamental provisions of the Convention /.../"). On the other hand, the ECHR frequently considered cases where an element of European Union law was relevant. It is not difficult to find examples in a comparative legal context in which a national court has refused to surrender a subject of a European arrest warrant or to surrender a wanted person due to a potential violation of the prohibition of torture or poor conditions in prisons in the state issuing the warrant.

In the case in question, we were able to determine that the complainant's attorney had provided (at least) two examples proving "intolerable conditions in Lithuanian prisons which violate human rights and fundamental freedoms". Since the Ombudsman wishes to be constructive, particularly when in the role of *amicus curiae*, we wanted to facilitate the court's decision making by providing the ECHR's statements in certain rulings concerning Lithuania, references to certain pages in the CPT's reports on their visits to Lithuania in 2000, 2004, 2008 and 2012, and references from annual reports (English versions) of Lithuanian Seimas Ombudsmen for 2006, 2007, 2010, 2011, 2012 and 2013, as grounds for refusing to surrender the person in question as per the procedure under the ZSKZDČEU-1 due to the effect of the prohibition of torture. On the basis of Article 7 of the ZVarCP, we concluded our intervention at Kranj District Court with the proposal "to verify in the case under reference number I Kpd 4371/2015 if, in addition to the reasons stated in Articles 10 and 11 of the ZSKZDČEU-1, there was also the possibility of a violation of the prohibition of torture or inhuman or degrading treatment or punishment in Lithuania, where the person in question was to serve his sentence, which constituted grounds for refusing to surrender the person in this particular case – and to observe in this regard also all the aforementioned sources, and if necessary conduct all other investigative measures as per paragraph three of Article 23 of the ZSKZDČEU-1, whereby it would be possible to establish whether the conditions are provided to surrender the person in question with regard to the prohibition of torture and inhuman or degrading treatment or punishment." **Thus the Ombudsman did not propose to the competent court how to decide (to the benefit of the complainant or otherwise), but merely provided some of the most relevant documentation to aid the court when discussing the violation of the prohibition of torture claimed by the complainant and when making a decision.** The Ombudsman believes that, in accordance with Article 22 of the Constitution of the Republic of Slovenia, the party's claims, which reasonably counter the assurances of the requesting state or the issuing country, relating to the prohibition of torture and inhuman or degrading treatment or punishment must be considered as "decisive reasoning for assessing the dispute" or one of the "significant claims of the party", who must not doubt that the relevant claim was not evaluated by the court with all due diligence. If the court had failed to take a position in its decision on the claimed circumstances as per the prohibition of torture, it would have been violating Article 22 of the Constitution of the Republic of Slovenia according to the Ombudsman's opinion.

We later received a letter from the President of Kranj District Court stating that the court was "aware of the importance and sensitivity of its decisions in individual, and particularly criminal cases, and also acknowledges its constitutional role and tasks", and that in its "future conduct /.../ all legal and constitutional principles will be observed, including the provisions of the Convention on the prohibition of torture and inhuman or degrading treatment or punishment". However, it later emerged that the non-trial panel of Kranj District Court in decision ref. no. I Ks 4371/2015 of 31 March 2015 permitted the surrender of the complainant as the requested person to the Republic of Lithuania **without particularly stating its position on the alleged prohibition of torture, and had only concluded that "complete European arrest warrants (Article 18 of the ZSKZDČEU-1) were submitted and no conditions for refusing to surrender the requested person as per Articles 10 and 11 of the ZSKZDČEU-1 were met"**. The court thus only verified the fulfilment of optional or obligatory conditions for refusing surrender as per the two aforementioned Articles. It completely ignored the Ombudsman's clarification relating to the prohibition of torture arising from other requirements (Constitution of the Republic of Slovenia, the ECHR and finally also the legally non-binding preamble of the Framework Decision itself).

Since the complainant and his attorney had already drafted an appeal in which they also stressed that the court of first instance had overlooked the Ombudsman's opinion (the attorney also attached the opinion to the appeal), we assessed that there was no need for the Ombudsman to also contact Ljubljana Higher Court and repeat what was already known to the court. **We were pleased to discover that the appellate court finally (decision ref. no. I Kp 4371/2015 of 13 April 2015) granted the appeals of the complainant and his attorney, set aside the contested decision and returned the case to the court of first instance for reconsideration, whereby it stated in the grounds of the decision inter alia that the complainant and his attorney had claimed with justification that the court of first instance had failed to provide its position with regard to the documentation provided in the Ombudsman's letter, and had practically observed all our observations pertaining thereto (relating to the preamble of the Framework Decision, queries on the basis of paragraph three of Article 23 of the ZSKZDČEU-1 etc.).**

#### Court experts

Certain complaints discussed in this field again referred to **dissatisfaction with the work of court experts**. There were fewer complaints about the exceeded time limit for drafting expert opinions and more about the content of opinions. Although in these cases dissatisfaction (may) be mainly connected with an unfavourable ruling in judicial proceedings, and thus claims about the unprofessionalism and even corruptibility of the expert, we still believed in the 2014 report that a review of the **efficiency of procedures would have to be made which ensures the highest possible degree of professionalism of experts and also prompt and effective discussion of individuals' complaints about the (un)professionalism of experts**. We also recommended the adoption of additional measures to **establish and ensure the professionalism of experts**, and to improve the situation in this field (**recommendation no. 46**). In 2015, we discussed again (also with representatives of the Ministry of Justice) the **issue of the discussion of children by court experts**. In one of the cases discussed, we contacted the court, since the assessment of professionalism and conduct of the court expert in a specific court procedure also depended on the judge. We emphasise that experts are obliged to treat children correctly in their work and must ensure in particular that children are not additionally exposed to repeated victimisation, or to traumatising if this is not necessary. **Requiring minor victims of sexual abuse to repeat their statements in the presence of perpetrators for the needs of drafting expert opinions is a questionable practice in our view**. We also believe that so-called safe rooms would have to be used more frequently in practice for the needs of experts, which would have to be regulated by law. Furthermore, **guidelines on discussing children in cases of sexual abuse, including suitable education of experts and supervision of their work, would also have to be defined**.

Information from the Ministry of Justice that the latest amendments to the ZS (ZS-L), which determine a lesser scope of cases in which the Ministry is obliged to assess conscientious work of experts, will **enable a more thorough and in-depth examination of the relevant cases discussed**.

#### Enforcement proceedings

Two recommendations in the 2014 report also referred to enforcement proceedings. The Ombudsman thus recommended that the Ministry of Justice adopt the required measures to solve the problem of the enforcement of income due for previous months which were transferred in the current month (**recommendation no. 43**). We are pleased to note that this recommendation was realised with amendments to the ZIZ-K, i.e. by amending Article 137 of the ZIZ. As per the recommendation for a more detailed definition of the calculation of costs for the direct performance of enforcement or insurance by payment service providers (**recommendation no. 45**), the amendments to the ZIZ did not bring about direct progress, but they regulated the compensation settlement of an enforcement agent in the new Article 102, which we believe to be a significant contribution to regulating this issue.

**Complaints referring to enforcement proceedings in 2015 included the complaints of both creditors (e.g. ineffective or lengthy enforcements) and debtors (e.g. disagreement with the claim; inability to settle a claim; debtors' distress if their home is the subject of enforcement; conduct of enforcement agents, etc.).**

We find that many enforcement cases are still subject to **lengthy (judicial) proceedings**.

#### Recovery of maintenance from a debtor in Switzerland

We do not encounter creditors' complaints claiming that they are unable to recover maintenance only occasionally. When discussing one such complaint, we learned of the problems of a creditor who, for some time, had been attempting to recover maintenance from her father, who had moved to Switzerland. Regarding the alleged complications, we contacted the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ) also to obtain information on whether this was the only case on their records involving such problems regarding the relevant authority in Switzerland when recovering maintenance claims on the basis of the Convention on the Recovery Abroad of Maintenance. After reviewing all cases of maintenance recovery from Switzerland, the MDDSZ replied **"that procedures vary, but the response times of Swiss authorities are very lengthy in all cases"**. In connection with the case in question, we proposed that the MDDSZ verify if further action relating to the circumstances was necessary. The Republic of Slovenia could use Article 16 of the Convention on the Recovery Abroad of Maintenance, whereby, in the case of a dispute arising between Contracting States with regard to the interpretation or application of this Convention, and if the dispute cannot be resolved in any other way, the dispute is to be submitted to an international court.

It was understood from the MDDSZ's recent reply that it had failed to act on our proposal, which, nevertheless, affected the resolution of the matter, since the Ministry also ensured that it would "again contact the creditor and continue the recovery process on the basis of the Convention on the Recovery Abroad of Maintenance and in accordance with information from the Swiss intermediary body about which documents are required to reactivate the recovery of maintenance". At the end of the year, we asked the complainant to inform us on possible further developments; however, we have not heard from her again.

#### Free legal aid

In the 2014 report, the Ombudsman promoted all measures that enhance the efficiency of free legal aid and contribute to improving the accessibility of such aid (**recommendation no. 45**). Nevertheless, no special progress was detected in this field regarding the content of the complaints discussed. We have also not noticed (yet) the effects of the extensive amendments to the Legal Aid Act (ZBPP-C), which entered into force in 2015.

We find that **free legal aid fulfils many needs, whereas the accessibility and awareness of complainants of the possibility provided by the state to persons in social distress to enforce their right to judicial protection are still (too) low. It is encouraging to see that these gaps are still being filled by various non-governmental and humanitarian organisations, municipalities and attorneys**.

When considering individual complaints, the Ombudsman continued to observe that individuals are **frequently not familiar with the rights to which they are entitled or with all the legally important circumstances which may affect the purpose and objective of a certain procedure or which may even nullify it**.

In its 2011 annual report (p. 122), the Ombudsman highlighted that this function by the state and competent institutions, perhaps also of non-governmental organisations, is needed in order to raise awareness of individuals (on the possible consequences of failing to meet their obligations, and also help and advise in concrete cases when people are in trouble, but do not know how to start solving their problems) on their rights, and how they may be asserted and protected, including their duties (e.g. when assuming certain liabilities). Free legal aid is organised and available at the national level under conditions determined by the ZBPP. Locally (as mentioned above), aid is also provided by certain Slovenian municipalities on their own accord and initiative. **Practice reveals that such aid is usually applied when individuals are (already) dealing with a concrete (administrative, judicial) procedure instigated against them, and not sooner, or when they assume certain liabilities or wish to enforce rights to which they are entitled regarding certain regulations**.

## 2.4.4 Minor offence proceedings

Somewhat fewer cases (61) were discussed in this sub-section than in 2014 (92), whereby the **content of issues did not change significantly**. We assume that the decline in the number of complaints may also be attributed to the Constitutional Court Decision RS U-I-12/12-22 of 11 December 2014 on the elimination of imprisonment for the non-payment of fines. **The share of founded complaints in this sub-section (5.6 per cent) is closely linked to the Ombudsman's powers**, since the Human Rights Ombudsman Act stipulates explicitly that the Ombudsman may not discuss cases which are subject to judicial or other legal proceedings unless undue delay in the proceedings or evident abuse of authority are established (Article 24 of the ZVarCP). Therefore, the Ombudsman's interventions may not refer to decisions on minor offences, but to other circumstances in minor offence proceedings.

Two recommendations in the 2014 report also referred to this sub-section of the Ombudsman's work. Relating to the recommendation that all stakeholders in the procedure of supplementing a fine with community work must take into account its purpose and statutory regulation (**recommendation no. 47**), the fact that the proposed amendment to the ZP-1J anticipates a comprehensive renewal of the rule of supplementing a fine with community work is quite positive, and we expect it to contribute to realising this recommendation. Regarding the recommendation that the Ministry of Justice study the highlighted decisions of the ECHR from the aspect of the need to improve the Minor Offences Act (ZP-1), and that the courts respect the right to fair trial when making decisions regarding requests for judicial protection (**recommendation no. 48**), the Ministry explained that these issues were rather a question of case law than a question of the suitability of the provisions of the ZP-1. However, we can point out that **certain complaints we considered still reveal that decision making on requests for judicial protection is still not done with sufficient due diligence**. This is of some concern, since we must not overlook that an individual in minor offence proceedings has limited legal remedies, and perpetrators are actually ensured the right to judicial protection or judicial review of an alleged minor offence by means of requests for judicial protection. **The Constitutional Court of the Republic of Slovenia** highlighted this again in its decisions (e.g. **Up-718/13-17 of 7 October 2015 and Up 187/13-8 of 7 October 2015**) and also emphasised that the individual's right to defence was one of the guarantees of fair proceedings. An individual also exercises the relevant aspects of the right to defence as per indents two and three of Article 29 of the Constitution in procedures involving a request for judicial protection. This follows from the established constitutional position that a request for judicial protection affords the individual the right to present evidence in their favour with all means of proof; the right to question prosecution witnesses; the right to review all the documentation in a case and to state their position on the case, and the right to be present during the submission of evidence when supplementing the evidence-taking procedure. These rights are in accordance with the court's duty to acknowledge all allegations of a client, weigh in on their relevance and permissibility and state its position on the allegations, which are permissible and important for a decision. **In decision ref. no. IV Ips 38/2015, the Constitutional Court of the Republic of Slovenia** also stressed that the existing legal arrangements for requests for judicial protection do not mean that the defendant's right to personal participation in proceedings is excluded or depends merely on the judge's subjective assessment. **The judge's area of assessment, on whether the minor offence authority determined the actual situation correctly and in full or must the evidence-taking procedure be amended or repeated as per the rules of ordinary judicial proceedings, is namely limited by the defendant's right to a fair trial.**

**Most of the complaints in this sub-section concerned dissatisfaction with fines or decisions taken in minor offence proceedings. Complainants wrote about the possibility of deferring the payment of fines, issues of time limits and individual actions in minor offence proceedings (e.g. breath test). Complaints concerning participation in road traffic and about the police as a minor offence authority were still predominant.** Some of the relevant findings in this field are also included in the chapter on police proceedings.

Example:

### Irregularities in a minor offence procedure

The complainant stated that as a responsible person of a legal entity (owner of a car with which a minor offence had been committed) he was served a payment order by Medvode Police Station (PS) due to a minor offence as per paragraph four of Article 46 of the Act of rules on road transport (ZPrCP). He believed that he

could not be held responsible for the minor offence, since he was not the responsible person of the legal entity at the time the offence was committed, which was also evident from the data of the Agency of the Republic of Slovenia for Public Legal Records and Related Services. The complainant tried to inform the minor offence authority of this, but unsuccessfully, and in a (late) request for judicial protection and a request for revocation of the decision.

We requested the Ministry of the Interior to state its position on the complainant's claims and the justification of the finding that the complainant was the responsible person of the company at the time of the offence. We also determined that the request of Medvode PS for the submission of data on the driver included only the submission of data on the user or driver (name and surname, birth data and permanent address) who had used the car on the relevant day. Although the company provided all the required information (and even attached a copy of the driving license of the driver using the car), this did not suffice. Because the driver was a citizen of Serbia, his statement should also have been provided, although the first request of Medvode PS did not contain such a request. It was stated in one of the later replies of Medvode PS that the legal entity had failed to attach more credible pieces of evidence to its reply (e.g. a certified photocopy of the driving license, a copy of a travel order, a copy of the lease agreement, a statement by the actual offender etc.). We thus also requested a clarification of the claims made by Medvode PS, or clarification of the basis for the conclusion that a statement by a driver must be submitted in the case of a foreign driver and other "more credible pieces of evidence". We inquired about the legal basis for such requirements, and in what way, and when, the company as the owner of the vehicle involved in the offence was informed of these requirements. We added that it would have been suitable if the request for submission of data on the driver who had committed the offence consisted of clear requirements about which data were to be submitted, and particularly, that it was necessary to provide all facts and evidence to one's own benefit in a (timely) reply, since they may not be used later.

The Ministry of the Interior determined that, following the receipt of the (first) request to revoke the decision submitted by the complainant's attorney, the minor offence authority's authorised officer at Medvode PS failed to verify the statement that the complainant was not the responsible person of the legal entity at the time of the offence. Had this been verified, it could have been established that the reasons for revoking the decision at the proposal of the minor offence authority were given as per Article 171a of the Minor Offences Act (ZP-1), since the complainant was actually not the responsible person of the company which owned or had the right to use the vehicle involved in the offence at the time of the offence, which was evident from the official records of the Agency of the Republic of Slovenia for Public Legal Records and Related Services. The Ministry thus determined that the authorised officer had made the decision too quickly and issued the payment order to the responsible person of the legal entity. It also added that, according to the fact that the deadline determined by the authorised officer in the request for data on the driver was an indicative period (i.e. a deadline specified by the minor offence authority which is not a statutorily determined deadline) on the basis of paragraph one of Article 51 of the ZP-1, the officer could have requested the legal entity to supplement its reply with additional evidence (e.g. copy of a lease agreement, copy of a travel order, copy of the company car log book) and then decide on the basis of additional evidence if it was possible to ascertain who was driving the car at the relevant time. According to the Ministry, the minor offence authority's authorised officer failed to discuss the relevant request for judicial protection comprehensively, since they overlooked the key fact included in the request, i.e. that the complainant was not the responsible person of the legal entity at the time of the offence and could thus not be held liable for the offence as per paragraph two of Article 8 of the ZPrCP.

The Ministry further determined that the complainant's attorney had informed the minor offence authority in her first letter (request for judicial protection) that the complainant was not the responsible person at the time of the offence. So, the conditions under indents three and four of paragraph one of Article 171a of the ZP-1 for filing the request for revocation or amending the decision as per paragraph one of Article 171a of the ZP-1 had been met already at that time. The Ministry concluded that the authorised officer should have filed such request with the court already upon the receipt of the request for judicial protection. Apparently, the minor offence authority had done so only after the complainant's attorney submitted another request for revocation, which the complainant submitted with the help of another counsel, having also contacted the Ombudsman.

The Ministry informed us that Medvode PS submitted a request for the revocation of the recovery of court fee determined in the decision rejecting the request for judicial protection. The Ministry also stated that the police would highlight this example in its training of authorised officers who conduct and decide in minor offence

proceedings, i.e. with the objective of comprehensive consideration and thus correct decision making in similar cases.

The Ombudsman considered the complaint as founded, since the complainant pointed out the irregularities when discussing the alleged offence. We expect that the lessons learned from the findings and measures taken in this case will have a salutary effect so that such cases do recur. **6.6-6/2015**

### Amended ZP-1j

In 2015, the Ministry of Justice drafted (as many as three) **proposals for the Act Amending the Minor Offences Act (ZP-1j)**. With this amending act, the ZP-1 is primarily being harmonised with decisions of the Constitutional Court of the Republic of Slovenia on the elimination of imprisonment for the non-payment of fines and the finding of the partial unconstitutionality of paragraph one of Article 193 of the ZP-1. **The proposed ZP-1j regulates anew or significantly amends certain rules, which will affect the systemic implementation of minor offence legislation, which is why we also submitted our comments to certain of the solutions proposed. We also emphasised that we do not support the decision to reintroduce custodial sentences as a substitute for the non-payment of fines or the fines that were not collected.** We believe that the state should find other, more suitable mechanisms to ensure the enforcement of its decisions (e.g. by enhancing the efficiency of the service which collects fines), i.e. with measures which would improve effectiveness of the service, instead of resorting to a great encroachment upon personal freedom such as imprisonment. It must not be overlooked that sanctions in the form of fines (in addition to some other measures), not the deprivation of liberty, are prescribed for minor offences which are less threatening criminal offences to society. Regarding this aspect of minor offences, the Ombudsman assesses that deprivation of liberty (in any form) should not be permitted in the procedure of collecting fines imposed for minor offences. **We nevertheless observed that some of our comments were, or will be, considered when the anticipated provisions on substituting imprisonment are drafted, particularly when determining the procedure for custodial sentences, and it is expected that imprisonment will (should) be imposed in practice only exceptionally.**

According to the text of the proposed act, imprisonment is to be executed according to the rules determined by the act governing the enforcement of sentences. On that note, we commented that the applicable ZIKS-1 includes no rules in this regard, and it is also not clear in which regimes (closed, semi-open or open) or in which prisons custodial sentences will be served if the legislator decides to apply them.

Furthermore, it is also not clear if or what personal plan will be drafted for this category of prisoners, or if and who will be dealing with them during their imprisonment, and where they would be accommodated (separate from other categories of prisoners?) given that the majority of Slovenian prisons are already overcrowded. It is with such issues that we have discovered most problems when visiting prisons, and we have also repeatedly drawn the attention to this situation.

## 2.4.5 Prosecution service

In the sub-section of pre-litigation proceedings, where most complaints concern the work of state prosecutors, **31 complaints were considered in 2015** (38 in 2014). Complainants' claims were verified at heads of state prosecution offices if necessary (and we informed the State Prosecutor General of the Republic of Slovenia thereof) who usually (with few exceptions) **responded regularly to our inquiries.**

Similarly to judges, state prosecutors are autonomous when performing their duties, but must nevertheless comply with the Constitution and the law. Their main role in criminal proceedings is to prosecute offenders and in this capacity present the charges, while observing constitutional and legal provisions. When conducting state prosecutions, prosecutors must comply with the **Code of Ethics for State Prosecutors**, which consists of ethical and moral principles (the Code was adopted by the State Prosecutorial Council on 22 September 2015). Principled opinions relating to conduct contrary to the Code are evaluated by the Ethics and Integrity Committee.

The content of complaints in 2015 also related primarily to the **dissatisfaction of complainants with individual decisions of prosecutors** (e.g. rejection of complaints) and the **lengthy processing of their criminal complaints or (non-)responsiveness to individual complaints**. The complaints we considered **justified (3)** are described in more detail below; the remainder were closed with clarifications regarding their content (after inquiries had been made if these were necessary).

**Two recommendations in the 2014 report** also referred to the functioning of the prosecution service. The Ombudsman thus further encouraged the prosecution service to continue to provide for the speedy and effective criminal prosecution of perpetrators of criminal offences, and to adequately inform injured parties of clear and substantiated reasons for decisions on the potential rejection of indictments or suspension of prosecutions (**recommendation no. 49**). The Ombudsman also recommended that state prosecutors pay special attention to the treatment of those aliens who are under special protection in accordance with the Convention Relating to the Status of Refugees (**recommendation no. 50**). Regarding the latter, no complaints were discussed in 2015, which would indicate that this recommendation was not being observed in practice. With regard to recommendation no. 49, which is of more general or permanent application, we did not establish anything worthy of note when considering complaints received in 2015; however, we believe that the recommendation was worth repeating given the nature of the discussed complaints considered.

We again noted that the situation of injured parties in criminal proceedings has not improved, a matter discussed more extensively in recent annual reports. The Ministry of Justice informed us that, in correspondence with the Office of the State Prosecutor General of the Republic of Slovenia, it was examining additional possibilities to ensure due diligence when exercising injured party's rights regarding the start or assumption of criminal prosecution. Therefore, we anticipate the imminent realisation of the anticipated solutions in this field.

In one of the examples below, it is understood from the prosecution service's statement that it would not inform the complainant about filing a charge it was preparing, stating that it was not obliged to do so. While this is true, the Ombudsman adds that such statement by the prosecution service cannot be understood as friendly to the victim of a criminal offence, particularly since the complainant claimed that she had inquired about the progress of the criminal complaint several times. With regard to the above, we can **commend the new Internet application which the police now have for notifying victims of criminal offences** and enabling fast and direct provision of information about pre-trial procedures. The application also contains a link to a brochure, "When I am a victim of a criminal offence", which provides information to victims about the rights they have as victims.

Example:

### Complainant receives documentation from the prosecution file only after the Ombudsman's intervention

A complainant who failed to receive a response from the District State Prosecutor's Office in Ljubljana asked the Ombudsman for help. As a father whose son was deceased, he submitted a written request to the prosecution service, which investigated his son's sudden death, to obtain a copy of the police report. The prosecution service failed to respond to the request for over three months. He wanted to obtain a document which would exclude any suspicion of a criminal offence as the cause of his son's death.

The Ombudsman also failed to receive a reply to its inquiry addressed to the prosecution service; the Ombudsman then demanded a response. The head of the prosecution service then replied that the complainant's request for a photocopy of the police report was actually in the prosecution file, but it was not equipped with an order from the head of the prosecution service or the department that it was to be submitted to the relevant state prosecutor for consideration. The prosecution service stated that the registration service had apparently filed the complainant's request to the already archived file. When the prosecution service received the Ombudsman's first inquiry, the head of the prosecution service asked to be sent the relevant prosecution file, which was forwarded only after the receipt of the Ombudsman's urgent letter. On that note, the head of the prosecution service ensured that the copy of the relevant police report had already been sent to the complainant. The complainant informed us that he received the copy of the police report several days after the Ombudsman had received the assurance from the head of the prosecution service.

On the basis of the summarised reply of the District State Prosecutor's Office, the Ombudsman concluded that the complaint was founded. The Ombudsman's intervention was successful; however, cases such as this should not occur at all. Apparently, the District State Prosecutor's Office was responsible for the lack of response to the complainant (and the Ombudsman), and we assume that the Head of the District State Prosecutor's Office has taken suitable measures (although it failed to inform the Ombudsman of this explicitly) in order to prevent such cases from recurring. To this end, we presented the complainant's case in particular. **6.2-11/2015**

## 2.4.6 Attorneys and notaries

In this field, we discussed **23 cases**, which is somewhat fewer than in 2014, when we considered 39 such complaints. The share of founded complaints was 9.5 per cent.

The cases predominantly involved complaints claiming **negligent provision of services or dissatisfaction with the work of attorneys** (including complainants' allegations that they were insufficiently informed about the legal and actual situations of their cases, assessments of the dispute, possible continuations of proceedings with legal remedies, particularly in cases of free legal aid), **incorrect calculation of costs** (involving an allegation that the client received no receipt upon payment stating which type of services were charged by the attorney), **inappropriate conduct and disagreement with a decision of the disciplinary authorities of the Bar Association of Slovenia** and other irregularities, including claims that attorneys are not inclined to file expediting legal remedies as per the ZVPSBNO, supposedly because these are not beneficial for the outcome of proceedings.

**Among the recommendations in the 2014 report**, the Ombudsman commended all the efforts of the Bar Association of Slovenia regarding the adoption of measures to improve the transparency of the work of their disciplinary bodies, and encouraged the Association to provide efficient responses to irregularities in their sector through the efficient work of their disciplinary bodies, and to make swift and objective decisions regarding complaints filed against attorneys (**recommendation no. 52**). Unfortunately, certain cases that we considered, which are presented below, reveal that this recommendation has not been fully implemented (yet). The Bar Association of Slovenia publishes the composition of its disciplinary bodies and authorities for assessing violations of the Code of Professional Conduct of the Bar Association, data on reporting, decisions on final disciplinary measures, final opinions of the Ethics Committee and removals from the Register of Attorneys as per points 3, 4 or 9 of paragraph one and paragraph two of Article 30 of the Attorneys Act (ZOdv) on its website under section "Publications as per Articles 31 and 60 of the Attorneys Act" (*Objave po 31. in 60. členu zakona o odvetništvu*), which improves the transparency of attorneys' work and of the Bar Association of Slovenia. The Bar Association of Slovenia must ensure these data are regularly updated within the deadlines determined by the ZOdv. Among the opinions of the Ethics Committee, we wish to particularly point out the finding on the **violation of professional ethics by an attorney who charged disproportionate costs when recovering parking fees in the Republic of Croatia and was unable to explain her replies to counterparties' objections conscientiously**, since such issues occur in certain complaints submitted to the Ombudsman.

The Ombudsman also recommended that the Ministry of Justice suitably regulate *pro bono* aid from attorneys (also in the field of taxes) in cooperation with the Ministry of Finance (**recommendation no. 51**). With regard to this recommendation, the Government of the Republic of Slovenia explained that *pro bono* aid from attorneys was regulated by tax legislation. The statement of the Government of the Republic of Slovenia that it was aware of the **importance of pro bono legal aid** was encouraging, and that it would also examine the **possibility of a systemic arrangement of pro bono aid in a separate regulation**, which would be subject to broader public discussion. Unfortunately, with the exception of this assurance, we have no other information on possible progress in this field. It is also commendable that attorneys further comply with their decision to open their offices one day per year for **free legal advice**, and we cannot overlook the fact that many attorneys provide some of their services *pro bono* or grant discounts when charging for their services.

In dealing with individual complaints, we primarily addressed the Bar Association of Slovenia (OZS), as this was the case in previous years. We are pleased with their response to our inquiries. We particularly commend the Association's finding that **education is needed for qualitative representation or defence** and that it has begun intensive **preparations for training attorneys in various legal fields, including their respective responsibilities**.

The Ombudsman has no direct authority to take action with regard to individual attorneys, but takes measures when the circumstances of a case reveal that the OZS or its disciplinary authorities fail to implement public authorisations with due care.

The grounds for the Ombudsman's intervention at the OZS or its disciplinary authorities are thus given particularly when the Association fails to respond to an individual's complaint or if the procedure for discussing the complaint by the disciplinary authorities takes too long. On this note, it must be stressed that the Ombudsman cannot seek legal remedies against the decisions of the Association's disciplinary authorities and has no power to change their decisions.

**On the basis of certain cases considered in 2015, we determine that lengthy consideration of reports on alleged violations by attorneys is still problematic in practice.** No later than 30 days from receiving notification of a violation, the disciplinary prosecutor is obliged to request the initiation of a disciplinary procedure if informed of the facts and evidence on the basis of which it is possible to justifiably conclude that the attorney, candidate attorney or trainee attorney violated their duties (paragraph one of Article 64 of the ZOdv) on the basis of a complaint submitted by an injured person, the Human Rights Ombudsman or in another way. We believe that the **relevant obligation also applies** if it is understood from the report that the reported action is not a disciplinary violation and it is not possible to justifiably conclude that the attorney violated their duties in the exercise of their profession, or if the action is of minor significance and no harmful consequences were incurred by the reporter, or if the disciplinary procedure is time-barred and the report must be rejected as per paragraph two of Article 37 of the Statute of the Bar Association of the Republic of Slovenia.

Example:

### **Attorney must not retain a client's money**

In his letter to the Ombudsman, a complainant claimed that he regularly paid all the representation costs to his attorney, and the latter had later refused to pay the sum acknowledged by the court as reimbursement of the costs of the attorney's services. On 17 December 2013, the complainant contacted the Bar Association of Slovenia (OZS), but received no reply.

We wrote to the OZS several times for information on the course of this disciplinary procedure. On 18 August 2014, we received the explanation that the case had been forwarded to a disciplinary prosecutor on 11 February 2014 and the assurance that we would be informed of his measures. Following a new inquiry, we received a clarification on 17 October 2014 that the disciplinary prosecutor had filed a request to commence a disciplinary procedure against the attorney. We were then notified on 3 April 2015 that the hearing was scheduled for 7 April 2015, and on 8 June 2015, were informed that the disciplinary committee of first instance had already made its decision, although this was not yet final. On 12 October 2015, we received the OZS's notification with the attached decisions of the disciplinary commissions of first and second instance. It was evident from the disciplinary decision that the disciplinary defendant, i.e. the attorney, had violated his duty when practising law because he was unduly retaining cash he received for his client. A disciplinary measure was imposed on the attorney, i.e. a fine in the amount of EUR 3,000. He was also obliged to pay a lump-sum fee for the costs of the procedure, i.e. EUR 300 for the first-instance procedure and EUR 200 for the second-instance procedure.

The disciplinary procedure in this case took more than a year and a half from when the case was first reported to the finality of the decision. Since clients frequently wait for decisions of the Association's disciplinary bodies before initiating other proceedings (e.g. compensation claims), it is particularly important that these procedures are completed swiftly. Lengthy procedures such as this, which according to the complainants' information is not an exception, cannot be determined as being swift. We are certain that our inquiries also contributed to expediting the disciplinary procedure in the relevant case. **6.8-4/2014**



## Notaries

We find that the **anticipated amendment to the legal arrangements of notaries' disciplinary responsibility when they work as attorneys has not been implemented (yet)** in this field. However, notaries are expecting new tasks to be entrusted to them. The supervision of regularity of notaries' service is still in the jurisdiction of the Ministry of Justice, and direct supervision of notaries' operations is conducted by the Chamber of Notaries of Slovenia (NZS).

In the 2014 annual report, the Ombudsman recommended that the legislator consider the suitability of the arrangement regarding the procedure and role of notaries in matters of electronic applications for the registration of land titles (**recommendation no. 53**). The Government acted on the recommendation, and informed us that it had examined our concerns regarding the issue, but was of the opinion that the current arrangement of the land register procedure was suitable.

The complaints we considered also included **a proposal to file a request for a review of the constitutionality of paragraph one of Article 19 of the Notary Act**. We did not comply with the proposal because, among other things, a procedure to dismiss the notary in question was underway or had not been completed (yet), which had been instigated by the Ministry on the basis of the NZS's notification. We added that the relevant ministry had still to determine whether a reason for dismissal was actually given under paragraph one of Article 19 of the Notary Act in the relevant phase of the procedure, and then had to issue a suitable document in this regard and justify its decision accordingly. We also determined that case law or standard legal practice, which would deal with the issue of the correct interpretation and application of indents 2 and 5 of paragraph one of Article 19 of the Notary Act, does not exist. We believe that case law or legal practice should be formed in accordance with suitable explanatory methods of legal rules, which is particularly a matter for the courts when deciding on individuals' rights and duties. If a constitutional court is to decide on the constitutionality of an individual regulation, preliminary explanations already adopted by courts have a significant impact on the decision making process, including the quality and argumentation of the constitutional court's decision. The courts are nevertheless (only) bound by the Constitution and the law. As per the above, a court must discuss clients' objections regarding the unconstitutionality of regulations accordingly and substantiate its rejection. If the court admits the objections and the unconstitutionality of an act is established, then it must suspend the procedure (as per Article 156 of the Constitution of the Republic of Slovenia) and initiate a review of constitutionality.

### Notaries must be persons of public trust

When considering a complaint, the Ombudsman discovered the disturbing information that a criminal complaint against a notary had been filed with the competent state prosecutor's office due to the suspicion of committing a criminal offence of the abuse of office or official duties under paragraph five of Article 257 of the KZ-1 and fraud as per paragraph three of Article 211 of the KZ-1 to the detriment of the complainant.

**A notariat is a public service and notaries are persons of public trust. Notaries must perform their work honestly, with due diligence and in accordance with the regulations in order to gain their clients' trust with regard to the notaries work as a public service. Thus notaries must enjoy (permanent) public trust to perform their services, since such work requires reputation, integrity and credibility.**

From replies of the Ministry of Justice and the Chamber of Notaries of Slovenia, we were able to ascertain that measures were taken in the relevant case (at the time of our inquiries), which the Notary Act anticipated in this regard. A criminal complaint filed against a notary, in our opinion, indicates a loss of the trust in which the service must be held, including trust in the credibility and the notion of a notary in general. **This example thus points to a need to revise the provisions on the disciplinary responsibility of notaries under the Notary Act in order to ensure the efficient protection of public trust already at the time of instigation of, or during the course of, criminal proceedings against notaries.**



# 2.5

## POLICE PROCEEDINGS

FIELD OF WORK	CASES CONSIDERED			RESOLVED AND FOUNDED		
	2014	2015	INDEX 15/14	NO. OF RESOLVED	NO. OF FOUNDED	PERCENTAGE OF FOUNDED AMONG RESOLVED
5. Police proceedings	100	81	81.0	74	7	9.5

### 2.5.1 General observations

In 2015, the Ombudsman discussed 81 complaints relating to police proceedings. The work of police officers was also considered in some other areas (e.g. the restriction of personal liberty in police detention) or sub-areas (e.g. in offence procedures). **This is a slight reduction compared to 2014, when 100 complaints were considered.** We hope that this is (also) due to improvement in the work of police officers or continued efforts by the police and the Ministry of the Interior (MNZ) to consistently consider human rights in police proceedings, with appropriate communication and a respectful attitude of police officers to individuals. We must note that an assessment of the situation in this area cannot be made only on the basis of the number of complaints sent to the Ombudsman and/or their justification.

**The share of (un)justified complaints is mainly a reflection of the method of considering complaints in this area or the complainants' uncooperativeness.** A procedure is initiated immediately after the receipt of a complaint only in specially justified cases. We usually encourage complainants to exploit the complaint procedure based on the Police Tasks and Powers Act (ZNPPol) if they do not agree with police proceedings. We believe that it is appropriate to first verify potential questionable procedures within the system in which an alleged irregularity occurred. We inform complainants that our intervention in such cases is usually appropriate only if they are dissatisfied with the anticipated complaint procedure, or due to unduly long procedures or even a lack of response from a competent authority. We further ascertain that few complainants contact us again after we have suggested they use a complaint procedure as per the ZNPPol, which means either they were satisfied with the result of the complaint procedure or are no longer interested in our further intervention. In such cases, we cannot continue the procedure, and the case is closed with clarifications only, without actually stating a position on the alleged violations, i.e. the justification or non-justification of complaints.

### 2.5.2 Realisation of the Ombudsman's recommendations

**We are pleased to note that in most cases, the Ministry of the Interior and the police follow our recommendations.** It is commendable that **the Ministry of the Interior considered some of our proposals or recommendations in the preparation of guidelines and compulsory instructions on police work in 2015**, which were included in the guidelines (e.g. establishing the current situation with regard to offences – recommendations no. 54 and 55; unauthorised leaking of information to the media, which can affect close family members of suspects – recommendation no. 58; and tact and tolerance in the consideration of

anonymous e-complaints, which can be malicious and can stigmatise individuals or their families in the local environment – recommendation no. 56).

With regard to the recommendation made last year, i.e. that the police should inform all units when irregularities in their work are discovered to prevent the recurrence of similar or the same errors (recommendation no. 60), we can state that the Sector for complaints against the Police of the Police and Security Directorate prepared materials including the summaries of justified complaints received in 2014 at the beginning of 2015. The material was prepared in order to prevent unsuitable behaviour by police officers when they implement police tasks and ensure the consistent observance of the human rights and fundamental freedoms of persons in police proceedings, including a proposal to inform all police units of the relevant content when training police officers. This is considered a case of good practice, which should be continued. We are convinced that the findings from the complaints we considered can be used as guidance in improving police work and in detecting and eliminating the causes of potential new (similar) complaints.

**The complaints considered with regard to other (general) recommendations in the 2014 report (e.g. recommendation no. 56 and recommendation no. 57) do not indicate cause for concern.** One of the recommendations made in the previous year emphasised that special attention should be paid in the exercise of police powers to children, who must not, and cannot, find themselves in a similar position to that of their parents. Therefore, law enforcement authorities must also consider how to protect children when seeking accommodation for them (recommendation no. 58). In this regard, we also positively assessed the conduct of police officers in a case in connection with a complaint considered in 2015, in which the complainant stated that prior to searching her home police officers allowed her to take care of her children and accompany them to kindergarten and school; they also stated that they would include the competent social work centre in the matter.

With regard to our recommendation on the procedure of diligently studying and verifying information received about possible criminal offences passed on by means of an anonymous telephone number (recommendation no. 56) and the organisation of work in courts whereby investigating judges can see or initiate the procedure without delay to discuss a case of a person arrested on a European arrest and surrender warrant after the conclusion of police proceedings (recommendation no. 59), we received no complaints, so we were unable to monitor the realisation of the recommendation.

### 2.5.3 Findings from complaints considered

In addition to dealing with complaints in this field, we also visited certain police stations in 2015 when implementing tasks and powers under the National Prevention Mechanism (NPM), which is the subject of a special report on the implementation of tasks and powers of the NPM. In 2015, we enquired about concrete procedures relating to complaints about the work of police officers, particularly at the Ministry of the Interior and in certain cases directly with the police. **We can again commend the prompt responses of the Ministry of the Interior and the Police.** Within the scope of preparations for implementing guidelines and compulsory instructions on the preparation of the police work plan, we once again met the Police and Security Directorate at the Ministry of the Interior and considered individual issues (e.g. some aspects of secret police operations) with the Director General of the Police or the General Police Administration. As an external expert, Deputy Ombudsman Ivan Šelih continued cooperating on the Expert Council on Police Law and Powers, a permanent, autonomous and consultative body of the Police and the Police and Security Directorate at the Ministry of the Interior. The Council combines the external and internal expert public in the provision of the lawful, expert and proportionate application of police powers, and contributes to enhancing trust among the internal and external public in the expert integrity and operational autonomy of the work of the police.

**During police officers' strike,** the Ombudsman as the custodian of good management informed the Government of the Republic of Slovenia by a press release that the negotiations with the police unions was a moment when comprehensive information on the work and conditions under which police officers work could have been obtained, and when appropriate measures can be adopted. Good working conditions and appropriate remuneration can contribute to the dignity of employed police officers and their motivation, and this leads to the more appropriate implementation of tasks and powers, as well as to greater concern for the rights of people with whom they come in contact. Poor working conditions have quite the opposite effect. It is

appropriate for the police to constantly strive to improve the quality of their work. And the Ombudsman assists them with relevant recommendations. Due to the oppressive nature of the work, the Ombudsman expects the police to be careful when dealing with the weakest people, and that the police have appropriately qualified and motivated personnel for this purpose. Therefore, the working conditions of police officers are very important. The Ombudsman expects the Government of the Republic of Slovenia to find methods to improve them.

The complaints we encountered most frequently referred to **violations of rights to equality before the law, protection of a person's personality and dignity, the right to personal dignity and safety, legal guarantees in minor offence proceedings, the right to equal protection of rights** and others. Complaints expressing the helplessness and despair of complainants due to **disputes with neighbours, domestic violence or other threats** were also frequent. We emphasise that in such cases, complaints or requests for further action must be responded to, and the actual situation of all the complaints that are considered must be diligently and properly examined, since this is the basis for possible further actions by police officers, which must be effective. There were also some complaints with regard to the (lack of) measures taken by the police in cases of **unregulated ownership of public roads**. Criminal repressive measure is an extreme way to deal with conflicts, so a comprehensive solution to the issue of public road ownership is possible with the immediate reconciliation of disputable regulations of municipalities with the law. As well as being in the public interest, the interests of the owners of disputable land and those who use municipal roads also demand this.

This year, complainants **most frequently pointed out irregularities in police proceedings in which the police acted as a minor offence authority** when considering violations of public peace and order and road traffic offences, as well as road accidents. The (in)action of police officers, subjectivity when establishing the facts and circumstances of alleged offences, incomplete establishment of the actual situation, and dissatisfaction with the issue of a payment order or a fine and other violations of rights were mentioned in particular. **Some complaints were also made about impolite and incorrect or inappropriate verbal behaviour by police officers.** At the end of 2015, the Ombudsman was alerted to the allegedly inappropriate behaviour of some individual of police officers **towards refugees**. We warned the Ministry of the Interior about this matter and demanded appropriate action. The alleged inappropriate conduct of individual police officers detracts from the continuing and considerable efforts of most police officers in the treatment of refugees.

The remaining complaints referred to allegations of police misconduct, e.g. in the use of coercive measures, detention (see the case below), (discriminatory) conduct of border controls, pre-trial procedure management and within the scope of this procedure, the collection of notifications or performed interviews, failure to respond to reports or requests for action, notifications on the process and conclusion of a police investigation etc. With regard to the above mentioned, we can commend the new Internet application which the police now have for notifying victims of criminal offences and enabling fast and direct provision of information about pre-trial procedures. The application also contains a link to a brochure 'When I Am a Victim of a Criminal Offence', which provides information to victims about their rights as victims.

Example:

#### **Detention of suspects continued for longer than registered**

A complainant contacted the Ombudsman stating that, while shopping, he and his wife had been wrongly accused of stealing clothes by a security officer at a shopping centre in Maribor on 4 June 2014. Although the security officer had tried to prevent them from leaving, they drove from the shopping centre in their own car and were then stopped in the centre of Maribor by a police patrol. They then had to drive to the police station accompanied by police officers, where, according to complainant's statements, a number of irregularities occurred.

Because the complainant did not file a complaint about the conduct of the police officers involved, the Ombudsman was primarily concerned with establishing the legality of the deprivation of liberty, and the examination of the complainants' car and of his and his wife's person. The Ombudsman inquired at the Ministry of the Interior and reviewed the file about the complainant and his wife that is kept at Maribor II Police Station. Based on this information we found that the police officers had stopped the complainant at 12:24 at the crossroads of Dravograjaska cesta and Ulica na Poljanah in Maribor. When recording information about both of the passengers in the vehicle, police officers noticed bags and parts of clothes that could have been obtained

by criminal means. Due to the suspicion of a criminal offence prosecuted *ex officio*, the police officer invited the complainant to drive (himself) to the police station. The complainant parked the vehicle there, and he and his wife entered the premises of the police station. The security officer also went to the police station, where he filed a criminal complaint regarding the criminal offence of theft, as per paragraph one of Article 207 of the KZ-1, and the criminal offence of minor physical injury as per paragraph one of Article 122 of the KZ-1. At this time, the complainant and his wife were held separately in interview rooms, which were not locked, and a police officer on duty could watch over them. According to the information of the Ministry of the Interior, no one prevented or restricted their freedom of movement. When, based on information, the police had established that there were grounds for suspecting the aforementioned offences had been committed and that there were reasons for detention under points 2 and 3 of paragraph one of Article 201 of the ZKP, the detention of the complainant and his wife was ordered at 15:45. At 19:15, the couple were officially notified of the deprivation of liberty and detention, which was terminated at 20:15, when the police had conducted an investigation of the alleged offences. At that time, the complainant and his wife left the premises of the police station.

It was quite difficult to follow the Ministry of the Interior's claim that no one had prevented or restricted the freedom of movement of the complainant or his wife from when they were stopped in Maribor at 12:24 to 15:45, when their detention was ordered. They were not at the police station for no reason or voluntarily, but for the needs of the police procedure. Therefore, the Ombudsman agreed with the finding of the Ministry of the Interior that there were reasons for depriving the complainant and his wife of liberty when they were stopped when driving through Maribor at 12:24 and that police officers could have arrested them at that point and detained them, as per paragraph two of Article 157 of the ZKP. The police officers did not act accordingly, and the Ministry of the Interior assessed that the entire matter was a professional error. They stated that the police officers would be appropriately warned about the error.

The Ombudsman believes that if the police procedure had been clearly and unequivocally presented to the complainant and his wife (including the order of detention or deprivation of liberty and the provision of information about the rights to which the suspects were entitled from the moment when they were deprived of liberty) they would not have been uncertain about their situation. We have established that inconsistencies also emerged at the police station, where there were different interpretations concerning the deprivation of liberty. The official record of the police station on the notification of the state attorney showed that the couple were deprived of liberty at 13:40, while according to the electronic register of detentions at the police station their detention started at 15:45, whereas, in fact, they were deprived of their freedom at 12:24 when the police procedure was initiated against them. The Ombudsman drew special attention to this deficiency at the Ministry of the Interior and proposed that the record of the time when the couple were deprived of liberty should be appropriately corrected, and that all necessary measures must be taken to prevent the recurrence of similar errors in police proceedings.

The Ministry of the Interior considered this proposal, and entered a new time for the start of detention in its records which actually corresponds to the deprivation of freedom of movement, i.e. at 12:24. All police officers at the police station concerned were informed of the errors in this case, and the Ministry of the Interior ordered the management of the station to ensure appropriate supervision and professional assistance for police officers so that similar errors do not occur again.

The complaint in this case was justified and the Ombudsman's actions were successful. The case described above shows that the Ministry of the Interior is ready to take firm action to eliminate the errors in police proceedings, and the Ombudsman assesses this decision as positive. **6.3-60/2014**

## 2.5.4 Police Tasks and Powers Act

The tasks and powers of the police are regulated by the Police Tasks and Powers Act (ZNPPol). In addition to the amendment to the ZNPPol (Official Gazette of the Republic of Slovenia [*Uradni list RS*], No. 23/15) the Ministry of the Interior prepared a **Draft of amendments to the ZNPPol** (draft amendments) in 2015. In connection with this matter, on 19 August 2015, we attended the presentation of the draft amendments, and we also offered some written opinions and standpoints on the envisaged amendments (e.g. with regard to the introduction of the use of electric paralyzers). Our comments on the documentation and other opinions were entirely general, since no special problems during the period of application of the ZNPPol were determined in this field of legislation. Therefore, we also allow the possibility that we will make certain points with regard to this legal regulation if complaints should so require. **We were surprised by the scope of the proposed amendments of the ZNPPol**, since this Act has been in force for a short period. We also noted the fact that the documentation on the draft amendments contained no information on whether the assessment of the **effects on privacy and the justification of urgency, suitability and efficacy as well as the proportionality of new powers or the use of technical means** were considered in the preparation of the amendments to the current legal regulation, which would enable a public discussion and timely anticipation of risks and safeguards for potential unjustified encroachments on human rights in the sense of the guidelines provided by the Information Commissioner under the title "Assessment of Effects on Privacy of the Introduction of New Police Powers" from 2014 ([https://www.ip-rs.si/fileadmin/user\\_upload/Pdf/smernice/Presoje\\_vplivov\\_na\\_zasebnost\\_pri\\_uvajanju\\_novih\\_policijskih\\_pooblastil\\_Smernice\\_IP.pdf](https://www.ip-rs.si/fileadmin/user_upload/Pdf/smernice/Presoje_vplivov_na_zasebnost_pri_uvajanju_novih_policijskih_pooblastil_Smernice_IP.pdf)). We proposed to the Ministry of the Interior that our comments and proposals to the draft amending the ZNPPol be considered, or to provide its comments on our proposals, respectively.

## 2.5.5 Changes of forms of deprivation of liberty and detention

Due to the amended Criminal Procedure Act (ZKP-M), which also determines some rights on which a person must be informed when deprived of liberty, the Ministry of the Interior prepared amendments to individual forms of the deprivation of liberty and detention also by considering our comments and proposals. These included the finding that the Official Note on Transfer (form JRM-4, MNZ RS (PC2)) was deficient in determining the field for entering the date and time of security search. We found that it is possible to enter data (date and time) only on the performed (first) security search in the target field on sheet 1 of the form; however, in addition to a security search prior to transfer under paragraph five of Article 57, the ZNPPol also envisages (repeated, additional) detailed security search according to Article 66 and in connection with paragraph six of Article 51 of the ZNPPol prior to the immediate placement of persons in the detention area. Therefore, we believed that the aforementioned field on the form is not entirely suitable, since it does not enable the recording of data on potential security searches. If the transfer continues to detention, data on potential second (detailed) security search must be indicated on the third sheet, under special remarks, where all tasks involving the transferred person are registered. We suggested that the Ministry of the Interior study the content of the Official Note on Transfer in the light of our findings. The ministry envisaged the possibility of both security examinations when amending the form 'Implementation of tasks during detention – official note (JRM-1 MNZ RS (PC2))', i.e. in the field with data on detention.

## 2.5.6 Resolving complaints about the work of police officers

If an individual who believes that the conduct or lack thereof of a police officer has violated their rights and fundamental freedoms, they can make a complaint about the officer's work or use other possible legal remedies (e.g. criminal procedure, civil procedure etc.) (Article 137 and further articles of the ZNPPol). Last year, we **received several allegations from complainants that during visits to individual police stations, police officers did not want to accept their complaints, which is quite worrying**. In our opinion, this constitutes inappropriate conduct by an officer (on duty at the police station, including a senior at the police station) if they do not inform the person who wishes to make a complaint about the work of an individual police officer about how to make a complaint, the possibility and method of making the complaint, or if they do not accept a complaint based on the complainant's request, i.e. that in the event of a verbal complaint, minutes are prepared and the complainant is informed of the type and further progress of the complaint procedure.

The Ombudsman encourages independent, objective, professional and high-quality resolutions of complaints about the work of police officers. **We established several times that the statements of complainants on the one hand and the police's explanations on the other hand differ with regard to important facts referring to particular police procedures.** Based on the established facts and circumstances, we were able to conclude in the majority of similar cases that our potential further detailed investigation of a particular event would probably not help discover the actual conduct of the officers concerned. Thus, we can mention a complainant who did not agree with the decision of the appeals senate, i.e. that none of her reasons for complaining were founded. She emphasised the individual assessments of evidence by the senate, such as: "The senate sees no reason to disbelieve the police officers /.../", "The senate sees no reason to disbelieve the police officer /.../", "The senate concludes that it is not possible to confirm your allegations /.../", ".../ the senate believes that the police officer /.../ was convincing and credible in his statement, in which he identified himself as the police officer to whom the reason for the appeal refers /.../". On the other hand, the senate did not find the statement of the complainant's friend significant and found that her statements were not convincing or credible because of their friendship, although the senate itself accepted the statements of police officers as "always" credible. The complainant believed that this was an indicator of double standards and bias.

When considering complaints in which statements on key facts differ, i.e. on what really happened between the officer and the injured party, the Ombudsman has previously point to the practice where officers' statements are usually considered true. We would again like to point out that the **assessment of evidence cannot be based on the view that the individual's statements (or statements of witnesses proposed by the individual) are less reliable merely because they are involved in a police procedure.** We cannot give the uniform an absolute advantage in comparison to an injured party who is being considered in a procedure. We understand that, due to the nature of the procedure in which the individual is involved, and due to the fact that an offence, even a criminal offence, may have been committed, the individual has an interest in not telling the truth. Despite this fact, we cannot exclude the fact that police officers may also have an interest in describing the course of events differently from the way in which they actually happened. Therefore, we would like to point out that a great deal of caution is always required in the assessment of all circumstances of individual cases, as well as when there is doubt because two different interpretations of the same event are provided; therefore, it is not permissible to unilaterally, or even without criticism believe the statements of a police officer or officers. The fact that the police or the Ministry of the Interior could neither confirm nor dismiss the claims of the injured person is not enough reason to automatically accept the police officer's claims in the Ombudsman's opinion. The appeals authority is not bound by any rules of evidence when establishing decisive facts. They must consider the rules of experience including the rules of logic when weighting, comparing and assessing the claims and statements of each side. The credibility of the description of events as presented by the police officer involved in the procedure must always be equally verified.

In the complaint procedure, a complaint can also be considered by means of a conciliation procedure. The conciliation procedure entails a meeting between the head of the police unit to which the police officer about whom the complaint was made is assigned and the complainant in which the head of the unit informs the complainant of the findings concerning the complaint. They must allow the complainant to present facts about the complaint and propose evidence for establishing the actual situation. Police powers and police officers' conduct in the event in question are explained, and if the complaint is justified, the complainant is informed about the measures that have been and will be taken (apology, written and oral warning to the police officer, proposal to initiate a disciplinary procedure, offence procedure or criminal proceedings). If the complainant attends the conciliation procedure and accepts the findings, the complaint procedure is concluded when the minutes are signed. **If the conciliation procedure is conducted appropriately, it can resolve most of the conflicts that cause complainants' dissatisfaction, especially with regard to complaints about minor encroachments of police officers on an individual's rights.**

Due to the importance of the method of resolving complaints in the conciliation procedure, **during the consideration of one matter, we proposed to the Ministry of the Interior, which is competent for managing and supervising individual complaint procedures, that it take additional measures to improve the situation in this field, especially in order to improve the quality of managing conciliation procedures and to resolve more complaints successfully** already at the first level, which is also one of the goals of resolving complaints about the work of police officers. Regarding one of the case considered, we also proposed that they comment

on the suitability of visits by an assistant commander to a complainant's home after a complaint is filed if this is an element in the complaint procedure.

With regard to the quality of conducting conciliation procedures the Ministry of the Interior also stated that individual conciliation procedures are (still) not evolving at the desired level of quality, and therefore, the Sector for complaints against the Police is engaged in a number of activities in this field, which the Ombudsman commends. In the first half of 2014, training on conciliation procedures and other individual tasks in the complaint procedure was conducted at all police administration units, and the minister's authorised representatives constantly monitored conciliation procedures, which has proven to be a very good practice, since complainants consider this an additional concern and safeguard against the biased management of the complaint or conciliation procedure. The Ministry of the Interior announced that training would be carried out in the first half of 2015.

Regarding the aspect of the suitability of an assistant commander's visit, the Ministry of the Interior explained that if the head of the police unit assesses that an interview with the complainant is required to completely clarify the circumstances of the subject of the complaint, this can be done prior to the conciliation procedure. Any speculation or encouragement of the complainant to withdraw the complaint are of course not permissible. The Ministry of the interior has found that the need to visit the complainant in this case was not convincingly proven, and at the same time the Ministry could not confirm the complainant's statements about the authorised representative of the head of the police unit attempt to encourage the complainant to withdraw the complaint or alleged speculation that the complainant would not be able to prove the statements made in the complaint.

After an unsuccessful conciliation procedure with the head of the police unit (who considers complaints based on accusations of minor encroachments by police officers on individual's human rights) the complaint is considered by the appeals panel of the Ministry of the Interior (as well as complaints based on paragraph four of Article 148 of the ZNPPol). **The minister's representative, who is assigned to head the panel, may decide, in accordance with paragraph two of Article 152 of the aforementioned Act, not to schedule a panel meeting after an unsuccessful conciliation procedure.** The condition for this is that all evidence-based procedures (e.g. review of documentation, interviews with witnesses) have been implemented in the conciliation procedure and that all procedure circumstances are verified and the current situation accurately examined. An additional condition is the evaluation that, based on the evidence obtained, a panel procedure would not lead to a different decision. According to the explanations of the Ministry of the Interior, this enables the conclusion of the complaint procedure in cases when the complainant does not accept correct explanations in the conciliation procedure based on justified reasons, or if the statements of the police officer and the complainant differ in significant respects in the absence of potential witnesses and if there are no other ways to establish the current situation of the complaint, as well as when a further procedure would not be reasonable based on the principle of efficiency. We must emphasise that the application of this practise must be diligently considered and substantively justified.

## 2.5.7 Private security and traffic warden services

**We did not consider any complaint in 2015 that required our action due to the work of security staff or traffic warden services, although they frequently encroach on human rights and freedoms. Therefore, issues related to this area are also of interest to the Ombudsman. We explained to some complainants the duties and measures of security guards and methods of complaint, but they did not contact us subsequently.**

We considered a complaint of one of the security services providers who requested our **standpoint on the application or scope of application of Article 58 of the Private Security Act (ZZasV-1).** This provision determines that, if, while doing private security tasks, a security guard discover that a criminal offence is being planned, executed or has been committed for which an offender is prosecuted *ex officio*, the security guard is obliged, in accordance with the act regulating criminal procedure, to immediately notify the nearest police station or to file charges with the competent state authority. The security services provider informed us that an unusual situation occurs if the injured party does not request prosecution or denies prosecution in advance; however, the police violate the personal integrity of persons (also injured parties) who do not want this or even oppose it.

Since we have found that there are various interpretations with regard to the application or scope of Article 58 of the ZZasV-1, we **proposed to the Ministry of the Interior that it amend or modify this article during the first amending of the ZZasV-1 so that it does not permit various interpretations with regard to a criminal offence that is prosecuted *ex officio*.**



# 2.6

## ADMINISTRATIVE MATTERS

FIELD OF WORK	CASES CONSIDERED			RESOLVED AND FOUNDED		
	2014	2015	INDEX 15/14	NO. OF RESOLVED	NO. OF FOUNDED	PERCENTAGE OF FOUNDED AMONG RESOLVED
<b>6. Administrative matters</b>	<b>453</b>	<b>409</b>	<b>90.3</b>	<b>344</b>	<b>63</b>	<b>18.3</b>
6.1 Citizenship	7	8	114.3	7	2	<b>28.6</b>
6.2 Aliens	65	63	96.9	44	9	<b>20.5</b>
6.3 Denationalisation	14	11	78.6	6	0	<b>0</b>
6.4 Legal property matters	42	38	90.5	38	5	<b>13.2</b>
6.5 Taxes	85	80	94.1	65	8	<b>12.3</b>
6.6 Customs	4	4	100	3	0	<b>0</b>
6.7 Administrative procedures	130	123	94.6	110	22	<b>20</b>
6.8 Social activities	82	55	67.1	54	14	<b>25.9</b>
6.9 Other	24	27	112.5	17	3	<b>17.6</b>

In this field, we considered 409 complaints in 2015, somewhat less than in 2014, when we considered 453 complaints. In general, the number of justified complaints is quite high but relatively low in individual fields. The fields of denationalisation, customs, taxes and legal property matters stand out. Denationalisation is in the final phase; we did not consider any complaints with regard to customs; in the area of taxes, most complainants complain about the amount of tax and tax regulation; in the field of legal property affairs, we usually deal with civil proceedings involving municipalities and their residents.

### 2.6.1 Realisation of the Ombudsman's recommendations

The Government explained the measures for the conclusion of denationalisation, the efforts to modify paragraph five of Article 29 of the Motor Vehicles Act and revealed activities in connection with administering permanent residence. The Government or line ministries took a position on all our recommendations and observations, except about the issue involving **illegal building** (purchase of an illegally constructed building registered in the land register). We cannot report on the realisation of any of our recommendations. Planned measures, some of which are time-defined, give us hope that the unrealised recommendations will be realised soon. We are carefully monitoring this process.

## 2.6.2 Denationalisation

We considered 11 complaints about denationalisation in 2015, and 14 complaints in 2014. None of the complaints was justified. Most complainants did not agree with the final decisions of an administrative authority or court. Unfortunately, we received complaints about procedures which have not been finalised yet.

Considering the lack of justification of the complaints considered, we cannot overlook the notification made to the state that procedures are taking far too much time and that the situation of unfinished denationalisation is impermissible and incomprehensible.

The state must act to enable the conclusion of denationalisation. The Denationalisation Act (ZDen) was passed in 1991.

## 2.6.3 Taxes

Within this field, we considered 80 complaints in 2015, which is slightly less than in 2014, when we considered 85. The percentage of justified complaints was 12.3 in 2015 and 10.9 in 2014. As per the high number of complaints considered, the rate of those that were justified means that complainants not only complain about irregularities in tax procedures but also about the bad management of the tax authorities, and are frequently dissatisfied with the taxation system and levels of tax. Former sole entrepreneurs whose debts cannot be cancelled wrote to us in connection with tax enforcement. As already mentioned, many complained about legal solutions: they disagreed with the subject or amount of tax obligation, as well with the group of taxable persons for the payment of building land use tax, motor vehicle tax, agricultural subsidies tax etc. Some even expressed dissatisfaction concerning income tax statements. Most complaints of the type mentioned above were dealt with by providing explanations; we advised complainants on the legal remedies available to protect their rights in legal procedures, and also described ways to propose changes.

Some complaints referred to alleged double taxation of cross-border labour migrants, which was described in greater detail in the 2014 annual report, page 210. Our standpoint on this remains the same and accords with Constitutional Court of the Republic of Slovenia Decision no. U-147/12 as of 29 May 2013 in which the court expressed a negative standpoint on tax privileges (additional tax benefits or relief) for cross-border migrants in comparison to persons who work on the basis of employment contracts in the Republic of Slovenia, and emphasised the importance of equality of individuals in taxation. The Constitutional Court held that the status and location of the employer alone are not grounds for giving privileged consideration to cross-border migrants.

Example:

### Payment of enforcement costs despite debt repayment

A complainant who wrote to the Ombudsman had, according to the attached documentation, settled her tax debt on 28 September 2015; however, a tax enforcement order was issued on 29 September 2015. When the complainant informed the tax authority on the timely money order, the tax authority only partially stopped the tax enforcement procedure and claimed the costs of the enforcement order.

The Ombudsman requested explanations from the Financial Administration of the Republic of Slovenia (FURS), and received the reply that the complainant had settled her obligation on 28 September 2015, but outside the working hours of the payment system. The FURS received and registered the payment on 29 September 2015 at 22:55, and issued the enforcement order on the same day at 14:44. The FURS referred to the Tax Procedure Act, which determines that the tax must be paid on the day when the payment transactions services provider executes the order for tax payment (time is not specified).

The Ombudsman is aware that the complainant did not settle her obligation with regard to income tax payment until the maturity date, i.e. 29 July 2015 and that the tax authority issued the reminder on 12 September 2015 to inform her of the debt status (which is most certainly an example of good practice on the part of the authority). However, the Ombudsman insists on the standpoint that the costs of the enforcement order should not burden

the taxable person. We have no complaints with regard to the work of the financial debt collector who managed the procedure, but with regard to the system as described by the FURS. We believe that it is unjust that an individual who actually ordered the amount on the day before the issue of the enforcement order (although the money order was made outside the working hours of the payment transactions system) – in this case on 28 September 2015 – should bear costs because the FURS received the payment or registered it a day later. It is a fact that the debt was settled before the initiation of the tax enforcement and that the complainant voluntarily settled the debt to avoid the enforcement procedure.

The complaint was justified. We also notified the Ministry of Finance about this matter. **5.5-50/2015**

### Other administrative matters

## 2.6.4 Residence registration

The Ombudsman considered several complaints about residence registration. This is quite a problematic issue. Many people lose their work, apartment, home, and residence, followed by the right to financial social assistance, health insurance, and the possibility to apply for tenders for non-profit housing. Another problem is that many individuals who do not receive financial social or other assistance or who have never received it cannot be registered at the address of the authority that provides or provided assistance. The same applies when an individual receives assistance in the area of one social work centre and resides in the area of another. There are also complications when requesting the consent of the competent authority to register at the address of their head office. This and the great distress of people who remain without residence through no fault of their own, calls for the passing of a new act and the regulation of legal residence. We have held discussions with all ministers of the interior for several years and we spoke about this matter with the current minister Vesna Györköš Žnidar. However, these meetings indicate only an awareness of the need for changes, and the promises that changes are being prepared. Therefore, we wish propose again that the responsible bodies regulate this matter.

## 2.6.5 Municipal roads on private land

The Ombudsman has noticed that irregularities concerning road categorisation by municipalities are quite frequent. This issue appears in several sets.

### Within the first set, this issue involves categorised municipal public roads that cross private land.

Despite several legislative attempts to regulate this issue, also by simplifying procedures, and despite clear constitutional standpoints, municipalities do not approach the regulation of the legal and constitutional situation. Municipalities only rarely resolve such situations, i.e. when there are problems with individual owners of land crossed by public roads. Resolving this issue can be selective and unplanned, and depends on the good will of the individual municipality or mayor. The dynamics of resolving this issue depend on the financial means of each municipality.

The second set refers to **plotting of municipal roads in the land register**. These routes are usually different from the routes registered in land mapping registers. In these cases, municipalities frequently take no action to eliminate these illegal situations. The issues usually involve abandoned municipal roads that do not serve their purpose and, due to this criterion for classification under the Decree on public road classification criteria (Decree), traffic actually runs on other, formally non-regulated "municipal" roads.

### The third set refers to the municipal road categorisation procedure with respect to the verification of criteria for categorisation in accordance with the Decree.

We have observed that municipalities categorise roads without legally and professionally justifying the technical conditions for categorisation in accordance with the Decree, i.e. which roads fulfil the criteria for categorisation and which do not. Therefore, in our opinion, categorisation is not always according to expert criteria.

**The fourth set refers to the exercise of rights, or individuals affected by irregularities caused by municipalities with respect to road categorisation.** Individual owners do not have an effective legal remedy against such measures of municipalities. The constitutional court also denies them legal protection, since such matters are usually outdated, or the limitation period for them has passed (the limitation period is one year from the date when the municipal regulation is enforced).

**We have been drawing the attention to this issue for years;** in the past few years the problems in this field have grown worse.

The Minister of Infrastructure was personally informed about this issue at the meeting held with the Ombudsman at the end of 2014. We also informed the Minister of our opinion, i.e. that the Ministry of Infrastructure should take a more active supervisory role of measures taken by municipalities and prepare a strategy to resolve issues at the national level. **The Minister has made a commitment to order municipalities in written form to actively approach the resolution of this issue and unconstitutionality issues and to study the possibilities of establishing control mechanisms.**

## 2.6.6 Inspection procedures

Several complaints referred to the work of inspection services. Insufficient staff frequently causes long procedures, thus limiting the execution of the rights of complainants. Similar complaints sent to the Ombudsman are considered as justified from the aspect of violating the principle of good management and decision making in a reasonable time.

The Government should provide all inspection services with appropriate conditions for work and their staff should be increased by transferring other public employees.

## 2.6.7 Legal property matters

We considered 38 complaints in this area in 2015. Many of them referred to land disputes with municipalities and involved civil disputes between municipalities and their residents. We found that municipalities often act in an authoritarian, domineering and patronising manner in these cases. They are not prepared to resolve problems and disputes or make possible settlements. Residents are often referred to the courts for dispute resolution, however, municipalities keep forgetting that they are 'litigating' at the taxpayers' expense, while individuals have to cover their own judicial costs.

## 2.6.8 Aliens and citizenship

### Citizenship

The number of complaints in this area in 2015 was somewhat higher than in 2014, but still relatively small (eight complaints). Complainants mostly asked how to acquire Slovenian citizenship for themselves or their family members, about individual conditions, which are the competent decision-making authorities etc. We also considered some complaints with regard to 'erasure'.

### Consideration of the proposal of the new International Protection Act

The Ministry of the Interior sent the Ombudsman proposed new International Protection Act and requested an opinion and comments. The Ombudsman replied and focused mainly on the proposed solutions in the proposed new act, which we were able to estimate could greatly impact the protection of human rights and fundamental freedoms as well as legal security in the Republic of Slovenia (interpreting and translating, counsellors for refugees, principle of the higher interests of the child, specification of the age of an unaccompanied minor,

prohibition of removal, deadlines for making decisions, decision of the first level competent authority, withdrawal of the application, obviously unjustified application, the concept of a safe third country, the criteria for determining a safe third country, procedures in the event of repeated application, judicial protection and detention of applicants). The Ministry of the Interior sent us an answer in which they responded only to those of our comments which were not considered (interpreting and translating, counsellors for refugees, specification of the age of an unaccompanied minor, deadlines for making decisions, the concept of a safe third country, procedures in the event of repeated application, judicial protection and detention of applicants). According to information received by the Ombudsman from NGOs, the draft act was modified several times and the Ministry of the Interior no longer notified the Ombudsman on the matter. During the preparation of this Report, the proposed act was still in the legislative procedure. (0.1-10/2015)

### The Ombudsman did not submit a request to initiate a review of the constitutionality of the act on compensation for damage to erased persons

The Ombudsman received a complaint or a petition of the Association of the Erased Persons in Slovenia – Society for Human Rights (DIPS) to submit a request to initiate a review of the constitutionality of the Act Regulating the Compensation for Damage Sustained as a Result of Erasure from the Register of Permanent Residents (ZPŠOIRSP) and, if possible, also of the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia (ZUSDDD). The legal representative of the DIPS requested the Ombudsman to make a fast submission of at least the first request, since people have been waiting almost a year, and 23 years after the illegal erasure, for the decision of the Committee of the Ministers of the Council of Europe on whether the ZPŠOIRSP will be recognised under the European Convention for the Protection of Human Rights and Fundamental Freedoms as an appropriate response from Slovenia to the judgement of the Grand Chamber of the European Court of Human Rights. Regarding this complaint, the Ombudsman sent a letter of support to the Peace Institute, i.e. asking the Institute to submit a request to initiate a review of the constitutionality of both acts that refer to erased persons (ZUSDDD and ZPŠOIRSP). The Peace Institute supports the DIPS opinion that both acts address the problem of legal statuses and indemnifications insufficiently and unconstitutionally, and therefore, the Ombudsman's request would significantly contribute to harmonising the regulations with the constitution. In the letter, the Peace Institute did not take a position with regard to concrete solutions in acts that are supposedly unconstitutional.

Regarding consideration of this complaint, the Ombudsman obtained additional material connected with the consideration of requests for a review of the constitutionality of the ZUSDDD and the ZPŠOIRSP with the Constitutional Court of the Republic of Slovenia. At our request, the Ministry of the Interior sent us the opinion of the Government of the Republic of Slovenia to the DIPS request for a review of the constitutionality of the ZUSDDD and the ZPŠOIRSP, both opinions as of 14 April 2014. We also received the opinion of the Legislative and Legal Service of the National Assembly of the Republic of Slovenia to the request of the DIPS for a review of the constitutionality of the ZUSDDD of 7 May 2014 and the proposed amendments to the proposed ZPŠOIRSP (EPA 1345-VI), whereby individual solutions proposed by the Government of the Republic of Slovenia were explained.

**The Ombudsman invited the Peace Institute to attend a meeting,** since the Institute wrote a letter of support for the submission of the request, and representatives of the Ministry of the Interior, who additionally explained individual solutions that were proposed in both acts, especially the ZPŠOIRSP, and who replied to the questions of all representatives who attended the meeting.

At several meetings, the Ombudsman studied the available material in relation to the consideration of the complaint, including both decisions of the Constitutional Court of the Republic of Slovenia as of 8 January 2015 (U-I-22/14-17 and U-I-48/13-17), which were issued to deny or dismiss the request of the DIPS for a review of the constitutionality of the ZPŠOIRSP or the ZUSDDD and the ZUSDDD-B. With regard to the criticism of the complainant, who claimed that there was an unconstitutional legal gap with regard to the issue of how to ensure the recognition of unconstitutionality of erasure for those erased persons who did not remain in the Republic of Slovenia and do not have the wish or real chance to return, the court stated that "by adopting the ZUSDDD-B, the legislator responded constitutionally to an unconstitutional situation as established in the Constitutional Court of the Republic of Slovenia Decision no. U-I-246/02. Moral satisfaction as a special



form of eliminating the consequences of human rights violations was established due to erasure from the permanent residency register". The court also stated: "When reviewing the constitutionality of the ZUSDDD, it is essential that this Act enabled persons who were erased from the permanent residency register based on their request to arrange their legal situation in advance, i.e. by acquiring a permanent residence permit under conditions that were more beneficial than at the time when the ZTuj regulated the system, as well as by acquiring a supplementary or special decision on permanent residence retrospectively, i.e. from the moment of erasure from the permanent residence register onwards." It is evident that the court permits the possibility that individuals may claim violations of human rights in individual cases, but it must be "considered that the addressees of legal norms have to always abrogate violations of human rights before the competent court as far as possible, thus ensuring that the courts also decide on constitutional law issues". We also considered the fact that with regard to the realisation of the ZUSDDD the Ombudsman did not receive any complaints that were obviously justified or indicated the unconstitutionality of legal solutions.

With regard to the issue of allegations of unconstitutionality of the Act on compensation for damage to erased persons, or the ZPŠOIRSP, we must initially emphasise that the Ombudsman has dealt with the issue of injustice committed with illegal and unconstitutional erasure since the start of the term of office. Efforts in this area are evident from the annual reports; in 2004, we issued a special report on this matter informing the National Assembly. We regret that 23 years have passed since the erasure, and that until 2014, especially due to the lack of political will, the injustices committed by the erasure were not appropriately corrected. We also regret that the highest-ranking (political) state authorities were not able to publicly admit this injustice and appropriately apologise and that there was no political will to establish the circumstances or political responsibility of individuals for erasure. The European Court of Human Rights "forced" the state to start rectifying this injustice. If we had done this ourselves and sooner, it would have been much less painful.

After examining the available material and information, and based on a unanimous decision of all seven members of the Ombudsman's board, the Ombudsman decided not to submit a request for a review of constitutionality of the ZPŠOIRSP. There are several reasons for this, and we would like to point out the following. No rectification of injustice in the past by laws is, and cannot be, just for individuals who have suffered injustice. Generalised compensations that equate all individuals – although each has their own story and injustice, and this cannot be considered and individualised appropriately – inevitably present a certain satisfaction, but not the reimbursement of actual and total damage. Any act to rectify injustice committed in the past at the same time presents a burden for people who did not cause the injustice and the redistribution of available public funds in society. This is particularly painful if the persons who actually caused the injustice are not officially revealed and do not contribute to the rectification of injustice. The amount of (lump sum) compensation for damage recognised by law, is always too little for those who suffered injustice, and a (unjustifiable) burden for those who had nothing to do with injustice but who have to contribute to rectifying it, or who bear the consequences due to the reduction in public funds.

All compensation for injustice is therefore merely symbolic. If the amount of lump sum compensation as envisaged by the ZPŠOIRSP is assessed, it will be found that it is a similar amount to the compensation envisaged to rectify other forms of injustice. The amounts of compensation based on the Payment of Compensation to the Victims of War and Post-war Aggression Act (ZSPOZ) that determines compensation based on three different acts on the rectification of injustice (Act on Victims of War Violence, Redressing of Injustices Act and Act on Special Rights of Slovenia War Victims 1991) are comparable to compensation based on the ZPŠOIRSP. The total amount which an individual can receive based on the aforementioned acts is even lower than the total amount which a beneficiary receives based on the ZPŠOIRSP (we must emphasise that the Ombudsman received many complaints from victims of previous injustices who cannot agree to such limitations and low compensation and consider such legal regulation unjust). On the other hand, we can seek differences between the aforementioned regulations, e.g. on who caused the injustice subject to rectification.

We assessed that, from the great number of requests for financial compensation based on the ZPŠOIRSP, more than one half of the total number of beneficiaries (according to information from the Ministry of the Interior) and a small number of complaints sent to the Ombudsman in this regard (which frequently did not fulfil the conditions for consideration) and a relatively small number of requests through the courts show that the great majority of beneficiaries accepted what the ZPŠOIRSP offered. The foundation and causality with damage do not have to be proven in an administrative procedure, so this solution is probably better for beneficiaries than

procedures where actual damage must be proven, especially given the lapse of time from when the damage occurred. The possibility of receiving higher compensation, although with a limit, by means of a judicial procedure is also still available. Nonetheless, we must consider that Article 15 of the ZPŠOIRSP envisages other forms of just satisfaction for the erased. Besides monetary compensation under the conditions from the mentioned Act, beneficiaries are also entitled to the following forms of just satisfaction: payment of the obligatory health insurance contribution, inclusion and priority consideration in social care programmes, relief in the enforcement of rights to public funds, national scholarships, equal treatment in resolving residential issues, access to the educational system, inclusion and priority consideration in programmes for assistance in the inclusion of aliens who are not citizens of EU Member States, i.e. in the cultural, economic and social life of the Republic of Slovenia.

The regulation of a special form of compensation based on the ZPŠOIRSP involves a special legal regulation whereby the legislator has many opportunities to arrange the method of enforcement of compensation and the possibility of balancing the interests of beneficiaries and the capacities of the state and citizens. As is evident from the explanations of amendments in the adoption of the ZPŠOIRSP, this balance was accurately presented and explained. Also, because according to judicial practice the right to compensation based on erasure exceeded its limitation period, the regulation can be treated as a special case. This was also done by the legislator in other similar cases involving the enforcement of monetary compensation, also in the case of the act on the protection of the right to trial without undue delay. Erased children are also entitled to compensation according to the ZPŠOIRSP, but not those children born to the erased subsequently who were not actually erased. Now the legislator envisages that the damage caused to non-erased children can be considered only within the scope of enforcing compensation in a judicial procedure. We must also consider that the legal regulation of these issues requires a complex and casuistic standardisation of different life situations; therefore, it is more appropriate to consider similar cases individually. The Constitutional Court stressed that there should also be an option for a judicial assessment of the legal regulation, including the Constitutional Court's assessment. With regard to the legal deadline for enforcing compensation and the regulation of inheritance, we believe that the legislator must assess this issue.

#### **Granting Slovenian citizenship of a minor child of a Slovenian citizen**

The Ombudsman considered a complaint of a foreign citizen with regard to granting Slovenian citizenship to her minor son. The complainant stated that she and her husband, who was a Slovenian citizen, divorced in 2006. Their son was born in 2000; however, the father never wanted to bring him to the Republic of Slovenia. After the divorce, the complainant came to the Republic of Slovenia for employment purposes, and she arranged her status and residence here. At that time, her son was staying with grandparents in Bosnia and Herzegovina. In 2013, he visited the father in Slovenia, where he had a major accident and was hospitalised. The father should have signed documents to arrange residence for the son, but refused to do so. Residence was subsequently arranged, not due to the father's status, but based on the mother's residence. Since the complainant obtained the information that she could also submit an application for a subsequent entry of citizenship, she went to the administrative unit in Maribor, where she was rejected with the explanation that subsequent entry of citizenship can only be made by the parent with Slovenian citizenship. She asked the Ombudsman for help.

The Ombudsman explained to the complainant the provisions of the current Citizenship Act of the Republic of Slovenia (ZDRS) that refer to the subsequent application for Slovenian citizenship. Considering the situation described above, the Ombudsman assessed that the provision of Article 5 of the ZDRS is inflexible and could encroach on the constitutional right to equality, and also be a violation of the equal treatment principle and the principle of the child's best interests. According to the aforementioned provision, an application for Slovenian citizenship can be made only by a parent with Slovenian citizenship, which means in the case concerned that children may be considered differently, since it is left to the will of the parent who is a Slovenian citizen. We assessed that the ZDRS should allow the application to be submitted by a parent who is not a Slovenian citizen, or submitted by the child by legal representative. The Ombudsman informed the Ministry of the Interior of this assessment and requested a comment on the possibilities of amending Article 5 of the ZDRS in accordance with our assessment.

The Ministry of the Interior explained the provision of Article 5 of the ZDRS and stated that the existing legal regulation prioritises a more genuine relationship, i.e. the fact that the child is born abroad and that one of the parents is a foreign citizen. The other parent who is a Slovenian citizen may submit a special statement requesting that the child be granted citizenship of the Republic of Slovenia. An application for citizenship is not required if the child remains without citizenship, since in such a case the child acquires citizenship by law. If the parent does not want to apply for citizenship, the ZDRS allows the child to submit an application at the age of 18. The ZDRS does not allow a foreign citizen to apply for citizenship of the Republic of Slovenia for a minor, since there is no circumstance to connect the child with the Republic of Slovenia.

Furthermore, the Ministry of the Interior informed us that the administrative authority is obliged to consider the benefits to the child that are acquired by citizenship when deciding on granting citizenship to a minor. The administrative authority is obliged to act in this way in accordance with the provisions of the United Nations Convention on the Rights of the Child (Convention). According to the provisions of Articles 3, 8 and 9 of the Convention, the child's best interests should be the main goal of all activities concerning children, whether administered by national or private social care institutions, courts, administrative authorities or legislative authorities. Signatories are obliged to respect the child's right to preserve their own identity, including citizenship, name and family relations, i.e. in accordance with the law and without unlawful hindrance. If the administrative authority assesses that child's best interests must be protected against the consequences of a negative decision with regard to obtaining citizenship of the Republic of Slovenia, they can base their decision on the mentioned Convention.

Given the foregoing facts, the Ministry of the Interior assessed that an amendment to the ZDRS is unnecessary, since the aforementioned legal bases already allow minor children to acquire citizenship of the Republic of Slovenia to a sufficient extent. The Ministry of the Interior also proposed that the complainant – with regard to the fact that the actual situation of the case had not been completely resolved and it was not possible to establish the best interests of the child if s/he obtained Slovenian citizenship – should obtain more concrete information and contact the competent Sector for Citizenship at the Ministry of the Interior, where she would be offered professional assistance in the procedure for acquiring citizenship for a minor.

The Ombudsman informed the complainant of this proposal, and proposed to the complainant to contact the Ministry of the Interior and notify us on the result of the procedure. The complainant did not contact the Ombudsman again, so we do not know how the matter was arranged.

Regardless of this, the Ombudsman assesses that the ZDRS could contain a provision that in similar cases would permit a child's application for Slovenian citizenship to a foreign citizen. In this particular case, it could also be considered that the mother, who is a foreign citizen, has arranged her residence in the Republic of Slovenia, is employed here and that this is her main living environment.

Example:

#### **Wrong form and written explanation in procedure for granting Slovenian citizenship**

The Ombudsman considered a complaint about the granting of Slovenian citizenship based on the national interest of the Republic of Slovenia. The complainant stated that he had submitted an application to acquire Slovenian citizenship which was not approved, since he did not fulfil the condition of five years of involvement in Slovenian associations. The complainant received a form from the administrative unit to submit an application for Slovenian citizenship; however, it was indicated on the form that several years of involvement in Slovenian associations is required. Via an attorney, the applicant found that on the basis of Article 3 of the Decree on criteria for establishing the compliance of the national interest for acquiring citizenship of the Republic of Slovenia through Article 13 of Act on the Citizenship of the Republic of Slovenia (Decree) persons with Slovenian nationality must, for acquiring Slovenian citizenship, prove active relations with the Republic of Slovenia and at least five years of involvement in Slovenian associations. The complainant believed that he was entitled to a positive reply because he had submitted the application in good faith and in accordance with the instructions on completing the form. In a telephone conversation, the complainant stated that he had not been informed by the official about the five-year active participation condition and that the application had cost him around 400 euros.

The Ombudsman explained everything concerning the conditions for acquiring Slovenian citizenship to the complainant. We believed that in this case it was disputable that the complainant had received a form and explanations from the administrative unit, which **contained the wrong legal basis**, so we sent an inquiry to the Ministry of the Interior.

Based on the documentation attached to the complaint (decision of the Ministry of the Interior which did not grant the acquisition of Slovenian citizenship, application for Slovenian citizenship based on national interest obtained by the complainant, and the application for Slovenian citizenship based on national interest available on the Internet), we established that the applications were different. The application form which the complainant received contained the condition of several years' involvement in Slovenian associations, while the application available on the Internet contained the condition of five years involvement in Slovenian associations. We informed the Ministry of the Interior that the complainant had disposed of an application which he acquired at the administrative unit including explanations that do not apply to the provisions of the Decree on criteria for establishing the compliance of the national interest for acquiring the citizenship of the Republic of Slovenia through Article 13 of Act on the Citizenship of the Republic of Slovenia (Decree). The complainant relied on the fact that the explanations were harmonised with the valid legislation, and when submitting the application, according to his statements, he was not warned about the condition of five years active participation in a Slovenian association. The Ombudsman assessed that in this case there could have been a violation of the principle of the protection of rights of clients and the principle of good administration, so we requested the Ministry of the Interior to give more explanations.

In their reply, the Ministry of the Interior initially explained the process of acquiring Slovenian citizenship based on the complainant's national interest. In accordance with the Act on the Citizenship of the Republic of Slovenia (ZDRS), the Ministry of the Interior is competent to decide on citizenship acquisition procedures, so it is also competent to provide all answers that refer to the methods and conditions of acquiring citizenship on this basis. Administrative units do not have this legal authorisation, but they can accept an application for extraordinary naturalisation and forward it to the Ministry of the Interior. In accordance with the principle of the protection of clients' rights in administrative procedures, administrative units are obliged to inform clients of the legal and implementing regulations and conditions for acquiring citizenship after extraordinary naturalisation. Furthermore, the Ministry of the Interior indicated that the form for applying for extraordinary naturalisation is not a prescribed form, but prepared by the Ministry of the Interior as an aid to clients to indicate all essential information to enable the easier and quicker resolution of applications. The explanation on the completion of the form in the opinion of the Ministry of the Interior is not intended as legally binding, but as an aid to completing the application form. Forms were published on the e-government website observing the latest amendment of the Decree and the Ministry of the Interior believed that it was possible that the administrative unit still possessed old forms. The Ministry of the Interior emphasised that the most applicants living abroad decide to submit the application for citizenship through diplomatic representations of the Republic of Slovenia, so administrative units only rarely handle cases of extraordinary naturalisation. To avoid potential further misunderstandings, the Ministry of the Interior notified all administrative units about the use of appropriate forms and explanations.

Based on the statements in the complaint, the reply of the Ministry of the Interior and the documentation attached to the complaint, the Ombudsman assessed that the complaint was justified. In our opinion, the concrete procedure violated the principles of the protection of the rights of clients and good administration when the administrative unit gave the complainant an old application form for acquiring citizenship based on national interest, including the instructions for completing the form which did not contain the provisions of the valid Decree.

The Ombudsman believes that the fact is – regardless of which form is involved – that the form was prepared by a state authority and the complainant received it from an administrative unit. As a lay person, he expected the form to be accurate and that the explanations contained the provisions of the valid Decree. He verified this at the administrative unit, where they confirmed that he had the valid form, including explanations. The complainant had no reason to doubt the accuracy of the form and explanations he received. Believing that the form and explanations were valid and that he fulfilled the conditions to acquire Slovenian citizenship, he submitted the application for citizenship, paid the administrative fee for the application and attached all necessary documentation, which was translated into Slovenian. Thus the costs were incurred by the

complainant which he could have avoided if he had accurate information, since he would not have submitted the application had he known that he did not meet all the conditions for acquiring Slovenian citizenship. Considering the fact that the old form stated that the condition for several years of active participation in a Slovenian association abroad must be fulfilled, the complainant assumed that he fulfilled the conditions for acquiring Slovenian citizenship. The application for acquiring Slovenian citizenship was denied because he did not fulfil the condition of five years' active participation in a Slovenian association abroad, as determined by the valid Decree. The complainant was therefore unintentionally misled into believing that he met the conditions for acquiring Slovenian citizenship.

Considering the statement that, the Ministry of the Interior is according to the ZDRS competent to provide substantive explanations about the method and conditions of acquiring citizenship after extraordinary naturalisation, and administrative units do not have this authority, but they can accept an application for extraordinary naturalisation and forward it to the Ministry of the Interior, the Ombudsman believed that this was not true. The Ministry of the Interior emphasised that, in accordance with the principle of the protection of clients rights in administrative procedures, administrative units are obliged to inform clients of the legal and implementing regulations and conditions for acquiring citizenship after extraordinary naturalisation.

The Ombudsman explained to the Ministry of the Interior that administrative units rarely receive applications for citizenship after extraordinary naturalisation, but this must not be a reason for not providing an explanation in the administrative procedure or for the fact that the unit disposes of inaccurate forms. State authorities must, regardless of the quantity of considered matters, do their work professionally and ensure that they have all the forms and documentation that are provided to the client in the procedure in accordance with the valid legislation.

The Ombudsman commended the decision of the Ministry of the Interior to notify administrative units about the use of appropriate forms and explanations, and proposed that the administrative unit apologise to the complainant for their error and to reimburse him for the paid administrative fee and costs of the procedure.

In its last reply, the Ministry of the Interior emphasised that the case involved an unintentional error by the administrative unit. Since they are aware of the importance of the principle of the protection of clients' rights and good management, they will send the complainant an apology, including the option to choose between reimbursement of the administrative fee or exemption from paying the fee in the event of a subsequent re-submission of the application for citizenship of the Republic of Slovenia, while the evidence submitted will be considered in the new procedure. The Ministry realised its promises, and the complainant informed us on the progress and thanked us for our mediation. The Ombudsman commends the response of the Ministry of the Interior in this case, which is a good example for how to resolve similar cases. **5.1-6/2015**

## Aliens

In 2015, we considered 65 complaints concerning aliens' status issues, two more than in 2014. Most complainants only made inquiries about how to obtain a residence permit in Slovenia for themselves and their family members, and about the possibilities of family reunion or acquiring work permits. We sent them appropriate explanations and instructions; we made additional inquiries in cases of complaints which suggested that further irregularities could occur. In most cases, the ministry and administrative units acted appropriately and on a timely basis. Only one fifth of all complaints in this area were justified.

Several complainants contacted us about reimbursement claims based on the Act Regulating the Compensation for Damage Sustained as a Result of Erasure from the Register of Permanent Residents. One complainant complained about an alleged inaccurate determination of the period of erasure from the register of permanent residents of the Republic of Slovenia. Based on his statements and information sent by the Ministry of the Interior, we found that the complaint was unjustified. We must also mention a complainant who contacted us about compensation for damage sustained as a result of erasure for her deceased husband. She was not able

to accept the fact that she was not entitled to receive compensation after the death of her husband who died before the Act Regulating the Compensation for Damage Sustained as a Result of Erasure from the Register of Permanent Residents was adopted.

Several complainants sent opinions about the so-called migration crisis. In their letters, they emphasised the conduct of the Government of the Republic of Slovenia, volunteering, the closure of borders, the need to help refugees, the readiness of Slovenia to accept refugees, the failure of the police to take action against economic migrants who come to Slovenia illegally, violations of the Schengen rules etc.

One complainant wrote about the intended accommodation of refugees in an old primary school. He stated that the mayor had offered the facility without notifying the city council. The complainant believed that former school premises were inappropriate for accommodating migrants and that residents were not in favour of this. They believed that their safety and that of other Slovenian citizens was endangered, because they were exposed to an uncontrolled influx of people.

Based on this, we established that people are quite fearful, and so they have a negative attitude to refugees who, for the most part, passed through Slovenia in large numbers. The main reasons for this fear are distrust and the poor provision of information. We sent explanations on our findings and ways to complain to all complainants, as well as other options available to them.

### Allocating financial social assistance based on the Aliens Act

A complainant wrote to the Ombudsman about the denial of financial social assistance based on the Aliens Act (ZTuj). He had a temporary residence permit in the Republic of Slovenia, which he obtained based on a permit to remain here.

The Ombudsman dealt with this issue in 2013 and 2014, and also highlighted this issue in the Annual Report, so in this particular case, the Ombudsman sent an opinion to the competent social work centre on the application of provisions of the ZTuj. The competent social work centre was informed about paragraph two of Article 51 of the ZTuj-2, which also stipulates that an alien with a temporary residence permit and no means of subsistence has the right to financial assistance in the amount and in the manner stipulated for the payment of financial aid by the act on social assistance benefits. The funds for financial aid are ensured and paid for by the social work centre competent for the area where the alien resides.

We also clarified that the explanation of the decision which determined that the complainant was not entitled to financial social assistance also shows that the application for financial social assistance was lodged on 30 December 2014, and that he was not entitled to financial social assistance because he did not have a temporary residence permit in the Republic of Slovenia. The then applicable ZTuj, which was the legal basis for decision making in this case, stipulated that an alien with a temporary residence permit and no means of subsistence has the right to basic welfare, as applies to aliens who are permitted to remain in the Republic of Slovenia. The provision that determines the rights of aliens permitted to remain in the Republic of Slovenia also states that the right to basic care is the right to financial assistance in the amount and in the manner stipulated for the payment of financial social assistance by the act regulating social assistance benefits. The funds for financial assistance are provided by the centre. We also emphasised that in the 2013 annual report the Ombudsman pointed out problems related to the lack of consideration of the aforementioned provisions of the ZTuj; however, in our opinion, social work centres should decide on financial social assistance. The Ministry of Labour, Family, Social Affairs and Equal Opportunities did not agree with the Ombudsman's opinion; however, the Ministry of the Interior confirmed our standpoint, and due to the unclear provisions of the ZTuj, it prepared an amendment to the Act, which entered into force on 1 January 2015. This amendment now clearly determines who decides on the right to financial social assistance and who provides the funds for this assistance.

The competent social work centre was also notified that the ZTuj was unclear to the extent that it was not possible to decide on the right to financial social assistance; therefore, we assessed that in the decision to reject, the substantive law was erroneously applied, since the competent social work centre did not base its position on the provisions of the ZTuj in its explanation. The competent social work centre was requested to

inform us on the current situation, and we proposed that they study the possibility provided to them as the first instance authority in connection with a complaint by the General Administrative Procedure Act (ZUP), i.e. in Article 242. In their reply, the competent social work centre explained that they had decided on the basis of Article 3 of the Financial Social Assistance Act (ZSVarPre), which stipulates that beneficiaries are citizens of the Republic of Slovenia with permanent residence in the Republic of Slovenia, aliens with the permanent residence permit and with permanent residence in the Republic of Slovenia, and persons under international protection, as well as their family members, who, based on the right to family reunion acquire a permit to reside in the Republic of Slovenia and who have a registered permanent or temporary residence in the Republic of Slovenia, and that they decided in accordance with the standpoint of the Ministry of Labour, Family, Social Affairs and Equal Opportunities, which denied the competence of the social work centre to decide on financial social assistance as per the ZTuj. They explained that the complainant was not entitled to financial assistance according to the issued decision. After the complaint was submitted, they acted in accordance with Article 242 of the ZUP and issued a new decision granting financial assistance to the applicant.

The Ombudsman considered the complaint justified, since the substantive law was erroneously applied in this case, causing a violation of the right to social security of the complainant. The Ombudsman commended the decision of the competent social work centre, i.e. that they recognised their error after the complaint was submitted and that they had granted financial social assistance to the applicant. This ensured the complainant the constitutional right to social security.

Two interesting and justified complaints concerning aliens that we received and considered are presented below.

Example:

**Disregarding the instruction of the ministry and violating the provisions of the General Administrative Procedure Act in the case of issuing the first residence permit for the purpose of family reunification**

The Ombudsman considered a complaint submitted by an adult alien (complainant) who needed care and assistance of his mother due to his severe health condition and requested the issue of the first residence permit for the purpose of family reunification. The complainant turned to the Ombudsman for help, since Ljubljana Administrative Unit refused to issue the first temporary residence permit for the purpose of family reunification.

In this matter, the Ombudsman addressed several inquiries to the administrative unit and to the Ministry of the Interior. Based on the answers provided by the aforementioned authorities, the Ombudsman found that the request for the first temporary residence permit for the purpose of family reunification for the complainant's mother was filed on 4 December 2014 with the administrative unit, which issued a decision on 16 January 2015, rejecting the complainant's request. The administrative unit justified its decision based on the provision in indent one of paragraph one of Article 55 of the Aliens Act (ZTuj-2), based on which a permit for residence in the Republic of Slovenia is not issued to an alien if the conditions in paragraphs three and four of Article 33 of the ZTuj-2 are not met, i.e. general and special conditions for issuing the residence permit. According to the opinion of the administrative unit, the complainant did not prove in the procedure for acquiring a permit that he had sufficient means to caring for his mother. According to the same opinion, the complainant did not prove that he had an obligation to maintain the mother under the law of Bosnia and Herzegovina, which is the condition in indent five of paragraph three of Article 47 of the ZTuj-2. According to this provision, parents are considered family members of an alien if the alien is obliged to maintain them in accordance with the law of the country of which they are citizens.

The complainant lodged a complaint against the decision at the Ministry of the Interior, which issued a decision on 20 April 2015 granting the complaint due to the incompletely or inappropriately observed current situation with regard to the guaranteed sufficient means of the complainant for maintaining his mother and with regard to the obligation of the complainant to maintain his mother as per the law of Bosnia and Herzegovina, and it dismissed the decision and initiated a new procedure at the administrative unit. In the complaint procedure, the Ministry of the Interior also found that Ljubljana Administrative Unit will more easily and quickly supplement the procedure for issuing a permit to the complainant's mother, i.e. establish the current situation with regard to the means for maintenance which the complainant has at his disposal on a monthly basis, and with regard

to his obligation to maintain his mother under the law of Bosnia and Herzegovina. In the repeated procedure, the administrative unit once again rejected the application for the temporary residence of the mother for the purpose of family reunification.

After examining the decision on the rejection, the Ombudsman proposed to the administrative unit that, when deciding on a priority request, they should consider the fact that the case involves an extreme situation, since the complainant had severe health problems and needed daily care and assistance. We also proposed to the Ministry of the Interior that, if the complaint is justified and if Article 251 of the ZUP is considered, they should decide on the matter with regard to the principle of efficiency.

The Ministry of the Interior replied that, considering the request for priority consideration, they would try to decide on the complaint as soon as possible. On 25 August 2015, the complainant notified us that the Ministry of the Interior had accepted the complaint and decided on the request for the first temporary residence permit for the purpose of family reunification for his mother. The Ombudsman asked the Ministry of the Interior to send a copy of the decision.

The Ombudsman received the decision of the Ministry of the Interior and its explanation with regard to the priority consideration of the request on 21 September 2015. The Ministry of the Interior was able to decide on the complaint and on the administrative matter when the administrative unit extended the temporary residence permit for the complainant. The right to family reunification can be granted to an alien who receives a temporary residence permit.

The explanation in the decision of the Ministry of the Interior indicated that the administrative unit had considered the instruction of the Ministry of the Interior in the repeated procedure, i.e. on how to supplement the procedure for the first temporary residence permit for the purpose of family reunification (with regard to establishing the current situation in relation to sufficient means for maintenance and with the complainant's obligation to maintain his mother under the law of Bosnia and Herzegovina); they did not consider the instruction of the Ministry of the Interior on how, or with what evidence, the complainant's obligation to maintain his mother under the law of Bosnia and Herzegovina can be proven in the repeated procedure. Because in accordance with paragraph three of Article 251 of the ZUP in the repeated procedure, the administrative unit should have dealt with the matter as per the instructions of the Ministry of the Interior, and because in the opinion of the Ministry of the Interior this violation affected the legality and accuracy of the decision, Ljubljana Administrative Unit committed a significant violation of rules of procedure. At the same time the administrative unit erroneously assessed the evidence, and based on the established facts, it drew the wrong conclusion about the current situation concerning the complainant's obligation to maintain his mother under the law of Bosnia and Herzegovina. Due to these facts, the Ministry of the Interior accepted the complainant's complaint and abrogated the contested decision of the administrative unit. The Ministry of the Interior then decided on the complainant's request for the first temporary permit for the purpose of family reunification with his mother, and issued a temporary residence permit for an alien in the Republic of Slovenia for the purpose of family reunification.

The Ombudsman regarded this complaint justified, since the administrative unit did not act in accordance with the ZUP in the repeated procedure and disregarded the instructions of the Ministry of the Interior on how, and with which evidence, the complainant's obligation to maintain his mother under the law of Bosnia and Herzegovina could be verified. Thus, the administrative unit encroached on the complainant's right to family life and violated the principle of good administration. **5.2-14/2015**

Example:

**Delaying the procedure for issuing a permanent residence permit for an erased person**

A complainant wrote to the Ombudsman with regard to the delay in the procedure for issuing a permanent residence permit in accordance with the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia (ZUSDDD). The complainant stated that she had submitted the application in 2012, whereupon Maribor Administrative Unit rejected the application three times; all decisions were abrogated by

the Ministry of the Interior and the application submitted for a repeated procedure. The complainant contacted the Ombudsman when the administrative unit in Maribor was deciding on her application for the fourth time.

The Ombudsman sent an inquiry to the administrative unit to establish the reasons for the delay in the procedure. In their reply, the administrative unit explained the chronology of the procedure and stated that they were not delaying it. They believed that they had done everything necessary to end the procedure quickly. Some parts of the procedure had taken longer because the complainant lived abroad and because the administrative unit allowed her to submit additional evidence and comment on the authority's findings during individual stages of the procedure.

Based on a review of chronology, the Ombudsman assessed that the procedure had not been delayed in this case. Since the complainant's application was denied three times at Maribor Administrative Unit and the Ministry of the Interior accepted her complaint three times and submitted the application for repeated procedure, we sent a new inquiry to Maribor Administrative Unit requesting them to inform us about the decision taken in the last repeated procedure.

On 17 August 2015, Maribor Administrative Unit sent us the decision of 7 August 2015, in which the complainant's application was denied for the fourth time. The complainant sent us an e-mail and informed us that she had complained on a timely basis about the latest decision of Maribor Administrative Unit, so we sent a new inquiry to the Ministry of the Interior. In this inquiry, we informed them about the complainants' claims and asked them to comment on them. We also proposed that, if the complaint was to be accepted, they should consider the provision of Article 251 of the General Administrative Procedure Act (ZUP) and in accordance with the principle of efficiency and protection of clients' rights and decide on the matter themselves.

The Ministry of the Interior replied that on 30 October 2015 they had issued a decision within the scope of the complaint procedure accepting the complaint. The Ministry of the Interior overruled the decision of Maribor Administrative Unit and granted the request for a permanent residence permit based on the ZUSDDD by issuing a permanent residence permit to the complainant. Together with the permanent residence permit, the Ministry of the Interior also issued a special decision *ex officio* in accordance with paragraph two of Article 1 of the ZUSDDD.

After reviewing the decision of the Ministry of the Interior accepting the complaint and at the same time granting the request of the complainant for a permanent residence permit based on the ZUSDDD-1, the Ombudsman established that the complaint had been justified and that there had been a delay in the procedure. This violated the principle of efficiency and the principle of protection of clients' rights.

The explanation of the decision of the Ministry of the Interior indicates that: Maribor Administrative Unit erroneously assessed the evidence, i.e. the oral statements of witnesses and the statement of the complainant provided as a client in the procedure; that a false conclusion concerning the current situation was inferred from the established facts, and that substantive law, i.e. the ZUSDDD, was wrongfully applied. Therefore, based on Article 252 of the ZUP, the Ministry of the Interior overturned the decision of Maribor Administrative Unit and resolved the matter directly. The explanation of the decision also states that the first instance authority in its previous rejections and in the contested decision did not take a position on the statements of the proposed witnesses, as recorded by the first instance authority, since this authority stated that the complainant had not left the Republic of Slovenia for justified reasons, as per Article 1č of the ZUSDDD. Therefore, Maribor Administrative Unit did not establish or assess the complainant's attempts to return and continue to live in the Republic of Slovenia, so they did not take a position on the complainant's statements or the statements in the process of hearing witnesses.

Based on all the documentation, the Ombudsman assessed that Maribor Administrative Unit did not entirely follow the instructions of the Ministry of the Interior with regard to clarification of the current situation. In three explanations of decisions which were issued to acknowledge the complaint, the Ministry of the Interior provided clear instructions to Maribor Administrative Unit on how to clarify the current situation, but Maribor Administrative Unit did not consider these instructions and insisted on their own findings. Based on this, we can assume that, during the entire procedure, Maribor Administrative Unit had planned to reject the application. Thus, Maribor Administrative Unit violated the principle of efficiency and the principle of the protection

of clients' rights. The Ombudsman assesses that the Ministry of the Interior also violated the principle of efficiency, since, with regard to the fact that Maribor Administrative Unit did not consider the instructions in the procedure, the Ministry could have considered the provision of the ZUP before the final decision and decided on the matter directly, thereby ensuring that the complainant's application was granted sooner. **5.2-31/2015**

## 2.6.9 The Ombudsman's response to the so-called migrant crisis

We assessed that the so-called migrant crisis raises broader issues which are relevant for the protection of human rights and fundamental freedoms, and at our own initiative became intensively involved in monitoring the position of these aliens (the term 'alien' is used in this sub-chapter in this context only). Whereby we functioned on the basis of the ZVarCP and the MOPPM (National Preventive Mechanism). At the outset of the so-called migrant crisis (September 2015), the Ombudsman also organised a meeting with representatives of non-governmental or humanitarian organisations working in the field of aliens, because they are valuable sources of information. It must be emphasised that the unresolved issue of accommodating unaccompanied minors and families with minor aliens in centres which limit freedom of movement was highlighted again at this point as a significant problem (the Ombudsman had already addressed this aspect before the crisis began, and this issue remains open; see Chapter 2.3.7 on the current discussion of the issue).

In September, the Ombudsman first visited the Aliens Centre in Postojna and the accommodation centre in Celje, where no significant irregularities were found. We visited a similar centre in Šentilj in October, and then the reception facilities in Brežice and Rigonce (twice). On the basis of media reporting, we also examined the situation in the Municipality of Cirkulane. In November, we visited Šentilj and the Livarna centre in Dobova (where we witnessed the course of the then newly introduced procedure of transporting aliens by train) and Gornja Radgona (where it was established that the number of police officers had been substantially reduced and so dogs were being used for escorting aliens on their way to Austria, which was particularly frightening for children; the reduced number of police officers also resulted in fewer police vehicles available to transport vulnerable groups to the Austrian border etc.). When discussing this issue, the Ombudsman submitted several inquiries to the Ministry of the Interior (MNZ) and the Government of the Republic of Slovenia. The Ombudsman also requested an urgent meeting with the Prime Minister on the basis of Article 46 of the ZVarCP. We also held a press conference at which we presented our main current activities and findings.

We informed the Government of the problems we had found, i.e. cases of separated families, difficulties in communicating with aliens (the lack of translators or interpreters, particularly in police procedures) and insufficient provision of information; the lack of a definition whereby refugees were accommodated in various centres, the problem of charging for accommodation in Postojna Aliens Centre; problematic coordination of volunteers, non-governmental and humanitarian organisations; questionable transportation of children with buses at night, alleged discrimination based on nationality upon reception and registration; the lack of water and food and unhygienic conditions at border crossings, and the issuing of payment orders for illegal border crossing and similar. On the basis of the findings established during the monitoring of accommodation and reception centres, we also proposed that the Government ensure the observance of human rights and fundamental freedoms at entry points at border crossings by accelerating the reception and registration of aliens, and provide translators or interpreters in accommodation centres and at border entry points who would be able to inform aliens of the reasons for their accommodation at centres, the procedures that they would undergo and when they would be able to continue their journeys (the Ombudsman assessed that riots and dissatisfaction among aliens would thus be prevented and the work of personnel in the field would be facilitated significantly). Communication with neighbouring countries, especially the Republic of Croatia, concerning the crossing of the aliens should also be improved. The Government should also consider and, after deliberation, propose to neighbouring countries the establishment of a humanitarian corridor through the Republic of Slovenia, and provide brochures, flyers, signs, etc. in the languages spoken by aliens informing them of the procedures they would undergo and of the possibility of protection. A sufficient number of staff should also be provided in the field, which the Ombudsman estimated would prevent the exhaustion of those currently

working in the field and prevent any unprofessional treatment. Furthermore, the Ombudsman proposed that security be provided for volunteers from non-governmental and humanitarian organisations, and that all measures should be taken to prevent the separation of families, whereby the extended definition of a family be observed; groups of aliens travelling together should be kept together if possible; suitable sanitary conditions should be provided, both for refugees as well as for staff in the field (more portable toilets in accommodation centres and at border crossings; more possibilities for washing and the provision of drinking water at all points, which would prevent the possible spread of contagious diseases), and suitable organisation, coordination and provision of information should be provided with regard to all workers in the field.

The Ombudsman submitted several questions to the Ministry of the Interior concerning the alleged bad practices of individual police officers in the field (which we did not witness in person), i.e. certain police officers supposedly shouted and screamed at the aliens in Slovenian, and unsuitable, at times racist, xenophobic and scornful comments about the inclusion of real men in the army and the fight for their homeland and the like were noted. Certain police officers pushed and shoved aliens for no reason. The non-responsiveness of police officers to the expressed intention to file applications for international protection was also mentioned. We assessed that these claims were a cause for concern and required a suitable response from the authorities.

The Ombudsman believes that it must be taken into consideration that people arriving as migrants (also on the territory of Slovenia may have many personal problems, that they have been travelling for a long time, and that they are helpless because they are in a foreign environment, all of which calls for the utmost tolerance and understanding. Due to the above, they themselves may be impatient, tense and irritated, which may be displayed in their attitude to the personnel dealing with them. Therefore, we are certain that it is even more important that personnel working with refugees are carefully selected and trained accordingly. In such conditions, it is appropriate to issue regular reminders of the commitment to treat refugees correctly (firstly at the verbal level) and that all irregularities will be sanctioned accordingly and decisively. It would be disappointing if some unsuitable conduct of individual (in this case) police officers tarnished the efforts of other police officers who are dedicated to their work with aliens on a daily basis. Furthermore, we did not forget to mention the difficult working conditions of police officers (12-hour shifts, several hours' drive to work, lack of sleep, tiredness, separation from their families, lack of information about work tasks or arrival of new groups etc.).

While observing the aforementioned, the Ombudsman asked the Ministry to study the aforementioned examples and take additional measures to improve conditions in this field if necessary (possible enhanced supervision of the work of police officers, decisive response of the superiors to possible verbal or physical threats made by inferior officers etc.) and consider special (additional) training of police officers for working with large crowds and special preparation of police officers to work with migrants of other nationalities, religions and cultures, including the manner of communication without the use of (verbal) intimidation, and take additional measures aimed at overcoming language barriers when communicating with aliens.

The Ministry of the Interior explained that the police were striving to respect all human rights during the increased influx of aliens and that instructions had been sent to all police administrations on correct treatment of aliens in police procedures, and that their work was being monitored and supervised promptly by the General Police Directorate. An informative brochure was also prepared which was intended to inform aliens of their rights and police procedures. The Ministry also stated that it had not been informed of, or it had not found, concrete irregularities in their conduct towards aliens. The Ombudsman's findings were supposedly submitted immediately to all police administrations, which were also ordered to ensure an appropriate organisation of work in order to prevent unnecessary problems, and the management of police units was also ordered to inform police officers of correct communication prior to commencing work or their deployment. Members of the Ethics and Integrity Committee of the police were also invited to participate in deployment. The Ministry concluded that the police had organised various training programmes for police officers dealing with aliens over the years (these programmes include content from human rights and freedoms protection, and some also include content from the fields of communication and conflict management).

At the time of drafting this Report, the migrant crisis had not ended – and the Ombudsman is continuing to monitor the situation. Our additional findings will thus be included in the next report.

# 2.7

## ENVIRONMENT AND SPATIAL PLANNING

FIELD OF WORK	CASES CONSIDERED			RESOLVED AND FOUNDED		
	2014	2015	Index 15/14	NO. OF RESOLVED	NO. OF FOUNDED	PERCENTAGE OF FOUNDED AMONG RESOLVED
<b>7. Environment and spatial planning</b>	<b>131</b>	<b>178</b>	<b>135.9</b>	<b>154</b>	<b>30</b>	<b>19.5</b>
7.1 Activities in the environment	60	75	125	67	14	20.9
7.2 Spatial planning	29	46	158.6	43	9	20.9
7.3 Other	42	57	135.7	44	7	15.9

### 2.7.1 General observations

The number of complaints discussed in 2015 (178) was much higher than in 2014, when 131 complaints were discussed, and the highest number in the field of the environment and spatial planning so far. The share of founded complaints is almost 20 per cent and is lower than in 2014, when it was 25.8 per cent. The increase in the number of complaints may be attributed to several complaints concerning the same issue, which were submitted by complainants (neighbours) regarding an intended activity in the environment, which is (when such complaints are unfounded) also the reason for lower number of founded complaints in addition to the amended method of recording complaints that were considered.

In 2015, the Human Rights Ombudsman was most frequently contacted by complainants who expressed their **disagreement with activities in physical space**. They frequently complained **about the cooperation of public in environmental and spatial planning procedures**. These and other issues were discussed at regular monthly meetings with NGOs involved in the environment and spatial planning, at press conferences, meetings with relevant ministers responsible for infrastructure and the environment and spatial planning and at meetings with mayors.

We also dealt with the **issue of pollution** with solid particles (PM10 and less), metals, waste and other pollution sources. The Meža Valley, Zasavje and the Celje Basin are particularly polluted areas that require the prompt rehabilitation of soil and air. Possible savings must not be an excuse for an insufficiently active approach by responsible bodies.

The **issue of noxious odours from different sources** is still topical (fertilisation with liquid manure, biogas plants, pig farms and other sources). The complainants are unable to understand why nothing can be done about noxious odours. We explained to them that there were no regulations or odour meters to govern this field, although the Ombudsman has been emphasising the need to regulate this field for many years.

We particularly note the **violation of the right to a healthy living environment in Article 72 of the Constitution of the Republic of Slovenia and the violation of the right to a legal remedy in Article 25 of the Constitution of the Republic of Slovenia. In most cases, we have also established violations of the right to good governance.**

## 2.7.2 Realisation of the Ombudsman's recommendations

The Government and the Ministry of the Environment and Spatial Planning did not state their positions on our findings about the lack or absence of cooperation of the public in activities concerning the environment and physical space. The disregard of the public and the ratified Aarhus Convention leads to many violations, as is evident from the cases presented below.

We commend the monitoring of noise emissions implemented by the competent Environment and Nature Inspection Service; however, mere inspection procedures will not lead to the desired effects. A comprehensive systemic arrangement of the field of noise is lacking, since not every noise is currently determined as a source of noise which would be subject to regulation.

In its response report, the Ministry of the Environment and Spatial Planning presented measures to eliminate backlogs in the field of land with water use. The situation is expected to improve. The legal basis for reorganising water management was established with the Act Amending the Waters Act (ZV-1E; Official Gazette of the Republic of Slovenia [Uradni list RS], No. 56/2015). The Directorate for Water of the Republic of Slovenia was established, which also functions as a body affiliated to the Ministry of the Environment and Spatial Planning. The Directorate combines all management tasks, including improved implementation of administrative procedures in water management (property management, permits for spatial development and the awarding of water rights).

The Ministry also presented measures for the rehabilitation of the Meža Valley in its response report, for which the financial resources needed were reduced due to cost-cutting, to which the Ombudsman explicitly objects. The Ministry explained in detail the activities for the rehabilitation of the Celje Basin; we met representatives of the Ministry to discuss this matter at the Ombudsman's head office. Regarding the pollution in Zasavje, the Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning issued a decision prohibiting the activity of the company, Lafarge Cement, d. o. o., Trbovlje, which was also the Ombudsman's proposal. The case is currently at the administrative court. The Government did not state its position on our explicit recommendation that the Ministry of the Environment and Spatial Planning prepare a systemic solution to acquire authorisations for measuring emissions into the air and ensure the independent supervision and financing of measurements; however, the Government provided tasks, measures and incentives adopted on the basis of the ordinances on air quality at municipal level and the state with the aim of improving air quality and which were being implemented.

The Ombudsman is not satisfied with the reporting of the Ministry of Education, Science and Sport (MIZŠ) about the limitation of funds for implementing the Programme for the systematic monitoring of the working and residential environment in 2014. The rehabilitation of locations where excessive radon values were established has also not been taking place at a suitable pace. Due to the potential connection of increased radon concentrations and the energy renovation of buildings, the preparation of systemic solutions is urgent, particularly given that the legally permissible threshold of radon concentration is to be lowered from 400 Bq/m<sup>3</sup> to 200 Bq/m<sup>3</sup>. **Thus the Ombudsman supports the proposal of the Ministry of Education, Science and Sport to establish a national group to prepare guidelines for planning and building kindergartens and schools in Slovenia.**

At the proposal and recommendation of the Ombudsman that the priorities of inspection services' work be determined in a regulation and not merely by an internal act of an individual inspection service, the Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning responded that it had proposed to the Ministry of the Environment and Spatial Planning that these priorities be included in the Construction Act. The amendments to this regulation have not been adopted yet. The Ministry of Public Administration (MJU) responded positively regarding the priorities of inspection services' work, as did the Government, which instructed the ministries, inspectorates as their affiliated bodies and inspection services operating within ministries to publish the criteria for determining priorities and risk assessments on their websites.

### Meetings with ministers, NGOs and other public sector bodies

At the beginning of 2015, we met the Minister of the Environment and Spatial Planning to discuss the environment and spatial planning. We spoke about the work of state authorities relating to the company Lafarge Cement, the pollution and rehabilitation of the Celje Basin (we met representatives of the Ministry of the Environment and Spatial Planning regarding this issue on another occasion), the Meža Valley, Zasavje, PM10 particles, acceleration of procedures relating to land with water use, water permits, noise, inspection procedures etc. We hosted a meeting with the current Minister of Infrastructure to discuss the siting of infrastructural facilities in physical space, and we also discussed this matter with the President of the Association of Municipalities and Towns of Slovenia.

We held eight meetings with **NGOs** involved in the environment and spatial planning; three meetings were held outside our office in Ankaran, Mežica and Vrhnika. We also sought and discussed solutions regarding environmental problems and challenges with the Information Commissioner, the Minister of the Environment and Spatial Planning, Dr. Jože Šrekl and Dr. Dušan Plut at the Ombudsman's head office.

## 2.7.3 Odours

The Ombudsman has been pointing out the need to adopt a systemic regulation on odours for several years (since 1999). A draft decree on odour emissions was published on the website of the Ministry of the Environment and Spatial Planning for a short period in 2009. However, the regulation has not been adopted yet. **In its reply to a National Assembly member's question, the Ministry of the Environment and Spatial Planning responded in March 2011 that a regulation on odours is not needed because these problems could be managed without additional regulations by consistently implementing the existing regulations and observing regulations on spatial planning.**

In 2015, the Ombudsman discussed noxious odours with representatives of civil society involved in the environment and spatial planning, the Environment Directorate and the Environment and Nature Inspection Service in Vrhnika. The representatives of state authorities stated that activities for drafting suitable legislation were underway. We conclude that responsible authorities at the Ministry of the Environment and Spatial Planning seriously approached the issue of noxious odours. Nevertheless, more concrete measures will have to be taken to realise the anticipated solutions. We will further monitor the activities of the Ministry of the Environment and Spatial Planning when the regulation regarding the odour emissions is being drafted.

## 2.7.4 Openness, transparency and public access

The Ombudsman received several complaints and questions from complainants concerning whether they could access environmental data and what to do if the authorities refuse to divulge data.

We explained the provisions of the Environmental Protection Act (ZVO-1), which determine that **environmental data are public**. We emphasise the importance of realising the right to environmental data, which is also demonstrated in the decisions of the Information Commissioner in such cases. The realisation of this right is particularly important in relation to realising the constitutional right to a healthy living environment.

Example:

### **The Ministry of the Environment and Spatial Planning violates the right of the Civil Initiatives of Celje to access environmental information**

A complainant informed the Ombudsman that he had asked the Ministry of the Environment and Spatial Planning on 19 November 2014 for the Report on the detailed environmental review of the company Cinkarna Celje – Phase II. On 19 December 2014, the Ministry of the Environment and Spatial Planning replied that the Report on the detailed environmental review of the company Cinkarna Celje – Phase II had been prepared for the sale of the company and in compliance with the guidelines on the preparation of the baseline report arising from Directive 2010/75/EU or the Industrial Emissions Directive. The Ministry explained that the document was

confidential and that the company Cinkarna Celje had decided that access to the document was possible only at its head office. Information relating to the report was on the website of the company Cinkarna Celje. The Ministry also stated that it had received the final report for administrative purposes on 15 December 2014, that it was very extensive and in English.

The Ombudsman informed the Ministry of the Environment and Spatial Planning of the following: Article 13 of the Environmental Protection Act (ZVO-1) determines that environmental data are public. The public has the right to participate in procedures of adopting policies, strategies, programmes and plans that refer to environmental protection and in procedures of issuing concrete legal acts referring to developments in the environment, which means that it has the right to all data in such procedures. Article 108 of the ZVO-1 defines in detail the right to access environmental data.

Paragraph two of Article 110 of the ZVO-1 defines environmental data. The definitions in these articles explain that environmental data is always public and cannot be deemed as a business or any other type of secret which would allow exemptions to the right to access as per the provisions of the Public Information Access Act (ZDIJZ). In its relation to the ZDIJZ, the ZVO-1 as *lex specialis* extends access to public information when determining that environmental data on emissions, waste and hazardous substances are always public, irrespective of prescribed exemptions.

A broad right of the public also arises from the Act Ratifying the Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (Aarhus Convention). Point three of Article 2 of the Aarhus Convention defines 'environmental information' as any information in any material form on the state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components. The Convention is also binding on all authorities of executive branch of power, natural persons and legal entities holding public authorisations or conducting public legal tasks with the exemption of authorities of judicial and legislative branches of power. The exemptions permitted by the Convention are subject to public interest tests. According to the Aarhus Convention, the request for environmental information may be rejected only when an authority does not dispose of the requested information, when the request is obviously unreasonable or too general or when it refers to incomplete or internal documents. For other exemptions, the Convention anticipates the application of a weighing test (weighing between disclosure and non-disclosure). While referring to Article 7 of the Human Rights Ombudsman Act, the Ombudsman proposed that the Ministry of the Environment and Spatial Planning discuss complainants' request as per the provisions of the ZDIJZ and informs us about its conduct or its decision within eight days.

The Ministry rejected the request of the complainant in its entirety with its decision of 24 February 2015 and did not observe the Ombudsman's notification about the right to access environmental data. The complainant filed a complaint against the Ministry's decision. The Information Commissioner partly set aside the Ministry's decision with a decision of 14 July 2015 and determined that the Ministry of the Environment and Spatial Planning was obliged to provide the complainant with an electronic record (CD) containing the following files: (a) Final Phase II Environmental Site Assessment of the Cinkarna, Metalurško-kemična industrija Sites in Celje and Mozirje and (b) Figures and Appendices Phase II Environmental Site Assessment of the Cinkarna, Metalurško-kemična industrija Sites in Celje and Mozirje, in which it was obliged to render names, surnames, titles, addresses, e-mail addresses, signatures, phone and fax numbers anonymous within 31 days from the receipt of the decision. The complaint was justified. **7.0-3/2015**

## 2.7.5 Water-related issues and land with water use

In this Report, we are compelled to mention the issue of the backlogs relating to land with water use to which the Ombudsman has been drawing the attention for several years. In last year's report, we again pointed out the unresolved ownership and property issues relating to land with water use, and demanded measures to

eliminate the backlogs. We added that we cannot report on progress in this regard and we hoped that the provision of the Decree on bodies affiliated to ministries, which made the Slovenian Environment Agency the body responsible for expert tasks of environment protection and management of land with water use, would contribute to the resolution of this several decades' long story. In 2015, the Directorate for Water of the Republic of Slovenia was established as an affiliated body within the Ministry of the Environment and Spatial Planning. We hope that this body will finally eliminate backlogs, end the need for a competent authority and resolve disputed ownership and property issues relating to land with water use. We intend to invite the management of the institution to a meeting and discuss how to resolve backlogs and unresolved issues.

Example:

### (In)efficiency of the state when helping citizens affected by severe natural disasters

The Ombudsman was contacted by a family whose house had been demolished by a landslide in September 2014 and which was also endangering nearby agricultural facilities. The family wanted to relocate their farm to one of the two locations where they owned agricultural land and where they wanted to build a new home and facilities for their agricultural activities. The locations were situated in two municipalities and a procedure amending the applicable municipal spatial plans would have to be conducted in both cases, whereby the intended use of (a part of) agricultural land into construction land would be amended, which would enable the relocation of the farm. Neither of these municipalities were planning to commence such a procedure in the near future and the procedure would take several years even if started in this year, which would be too long for the family, who were living separately with different relatives. Regarding this issue, one of the municipalities obtained preliminary opinions from the Ministry of Agriculture, Forestry and Food and the Ministry of the Environment and Spatial Planning which did **not** guarantee that both ministries would later provide positive opinions on the proposal to change the use of the land. **This meant that the family had no guarantee that they could relocate their farm to any of their land plots even after a procedure that may take several years.** When discussing the complaint, we received a clarification from one of the relevant municipalities that changing the use of the relevant land plots was possibly no longer urgent for the family, since they had already bought a new building plot. We verified this statement with the complainants, and it was established that the family had indeed bought a plot of building land, but they would only be able to build a house there and would not move the entire farm, since the new plot is too far from their agricultural land plots, which would make farming at such distances uneconomical. They were planning to give up farming, which could mean that the agricultural land plots that had previously been cultivated would be overgrown.

On the basis of the relevant complaint, we determined that the state does not have a mechanism to allow for prompt and efficient assistance to citizens affected by severe natural disasters. Thus, in the specific case it would take unreasonably long if the problems of this family were to be arranged by amending the municipal spatial plan according to the regular procedure and if the family had not decided to purchase another real estate. It was also determined that, on the one hand, the state was trying to limit the trend of building on agricultural land in various ways by means of procedures for adopting municipal spatial plans, while on the other hand, this leads to the disuse of previously cultivated agricultural land due to lengthy procedures and the rigidity of the system in cases when prompt solutions are necessary (such as the case above). **7.2-3/2015**

## 2.7.6 Noise

We receive more complaints about disturbing noise in the environment every year, i.e. noise from catering facilities, roads, sports grounds etc. The problem occurs where various activities take place in residential areas and a conflict of interest arises because residents usually want peace and rest, but profit-seeking activities are also carried out in such environments. It is very difficult to harmonise conflicting objectives, so spatial planning is of the utmost importance, including the adoption of municipal spatial acts and the issuing permits for various activities by administrative units. Noise is a factor which must be considered particularly when planning the siting of certain activities in physical space (schools, kindergartens, hospitals, retirement homes,



dormitory towns). Supervision of noise is the responsibility of the Environment and Nature Inspection Service at the Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning in compliance with the Decree on limit values for environment noise indicators. This Decree covers only sources of noise. The Inspection Service does not meter noise, but only the implementation of the Decree (if metering is conducted in the prescribed manner).

### Pollution of the environment

Industry, household heating devices, traffic and other sources cause severe pollution of air and our environment. Dust particles (PM10 and smaller) are particularly critical, and town centres are the most exposed to the risk.

All ordinances on the air quality plan, which should originally have been adopted already by the end of 2006 (two years after Slovenia's accession to the European Union) have been adopted. In 2015, the Government prepared and adopted detailed programmes of measures as per the above ordinances, which together with anticipated state incentives (Climate Fund and cohesion funds) indicate some progress in resolving the issue of air quality. In all regions where ordinances have been adopted (Ljubljana, Maribor, Celje, Murska Sobota, Kranj, Novo mesto and Zavrč), very polluted air is being breathed, which may also affect health in the long term.

## 2.7.7 Inspection procedures

Cooperation with the Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning (IRSOP) was good; communication took place mostly in writing, but we also met in person at the Ombudsman's head office.

The notification of reporters submitting complaints took place according to the provisions of the Decree on administrative operations. When explicitly requested, complainants receive a notification of measures imposed after a completed inspection procedure. On the basis of discussed complaints and general observation, the Ombudsman sees the lengthy duration of these procedures as the main problem with these procedures. The classification of individual complaints in an order of priority frequently leads to dissatisfaction among reporters and they begin to doubt the impartiality and objectivity of inspection procedures. The course or completion of an inspection procedure cannot be anticipated in advance, because it also depends on other additional complaints which may be given a higher priority, so complaints of lower priority take longer to be considered and resolved. All of the above raises reporters' doubts about the fairness and equal treatment of all complaints. The Ombudsman thus supports the setting of priorities for the work of inspection services in a regulation which is accessible to all. The possible definition of priorities only in an internal document of an individual inspection service which is published on the website in a section that may be difficult to find does not satisfy the requirement for openness, transparency or objectivity in inspection procedures, which are already oppressive in their nature.

This topic was discussed at a meeting with the management of the IRSOP at the Ombudsman's office in May 2015. The management agreed with our findings on the dynamics of discussing complaints and already initiated inspection procedures; however, a prompt solution is not to be expected in this field, since the main problems preventing the discussion of reporters' complaints are the large number of complaints received and the staff shortage at the IRSOP, which is why a priority system must be established, which in practice means that consideration of lower-priority cases will be further postponed.

# 2.8

## PUBLIC UTILITY SERVICES

FIELD OF WORK	CASES CONSIDERED			RESOLVED AND FOUNDED		
	2014	2015	Index 15/14	NO. OF RESOLVED	NO. OF FOUNDED	PERCENTAGE OF FOUNDED AMONG RESOLVED
<b>8. Public utility services</b>	<b>80</b>	<b>70</b>	<b>87.5</b>	<b>62</b>	<b>4</b>	<b>6.5</b>
8.1 Municipal utility services	24	22	91.7	20	0	0
8.2 Communications	13	7	53.8	6	0	0
8.3 Energy sector	14	19	135.7	16	0	0
8.4 Transport	20	17	85	15	2	13.3
8.5 Concessions	6	4	66.7	4	2	50
8.6 Other	3	1	33.3	1	0	0

### 2.8.1 General observations

In the field of public utility services, 70 cases were discussed in 2015 (80 in 2014 and 92 in 2013). Many complaints referred to the inability to pay the costs of municipal services (water, waste collection, RTV licence fee, electric energy supply, connection to sewage network, etc.). The costs are high and incomes are insufficient to cover the standard of living. We advised complainants on where to seek help and on their options to enforce rights at competent authorities.

Regarding the foregoing, the share of justified complaints is relatively low; these cases are not usually classic examples of violations of the rights of individuals by the authorities, but are violations committed implementing public services or providing public goods (public services).

We cannot be satisfied with the realisation of our recommendations in the 2014 annual report. Progress was observed only in the completed discussion of the proposed Cemetery and Burial Services Act (*Zakon o pokopališki in pogrebni dejavnosti*), which, according to the Government's forecast in its response report to our 2014 annual report, would be submitted for inter-ministerial harmonisation in September 2015 and to the Government in October 2015.

The proposed Act has not been discussed by the National Assembly and we can only hope that it does not simply lie in a drawer at the Ministry of Economic Development and Technology.

We also agree with the Government that the issue of public roads sited on private land is very urgent, as we have mentioned several times in our annual reports. We hope that the concrete solutions foreseen by the Government in its response report regarding our recommendations on the urgency of arranging this field are adopted soon, and thus the Ombudsman's observations and efforts of many years would finally bear fruit.

For many years, we have unsuccessfully demanded the entry of the right to water in our legal order as a fundamental human right, but this has also remained unrealised. Moreover, the Government did not state its position on the relevant recommendation in its response report for 2014 and also did not mention any progress in this regard.

Relating to the implementation of chimney-sweeping services, the Government mentions changes in its response report which would change the concession system into a licensing system. With the adoption of the Act Amending the Environmental Protection Act (Official Gazette of the Republic of Slovenia [Uradni list RS], No. 92/2013-ZVO-1F), the current arrangement chimney-sweeping services would continue until 31 December 2015, when it would no longer be a mandatory public utility service. Unfortunately, the changes have not happened, since the current concession system of chimney-sweeping services has been extended until the end of 2016. The Government has another year to prepare a systemic act to regulate this field better; the Ombudsman's recommendation remains unrealised.

Below we describe significant issues which were noted on the basis of complaints we received and discussed, and we also provide interesting cases.

# 2.9

## HOUSING MATTERS

FIELD OF WORK	CASES CONSIDERED			RESOLVED AND FOUNDED		
	2014	2015	Index 15/14	NO. OF RESOLVED	NO. OF FOUNDED	PERCENTAGE OF FOUNDED AMONG RESOLVED
<b>9. Housing matters</b>	<b>111</b>	<b>124</b>	<b>111.7</b>	<b>117</b>	<b>12</b>	<b>10.3</b>
9.1 Housing relations	61	53	86.9	52	4	7.7
9.2 Housing economics	46	62	134.8	56	7	12.5
9.3 Other	4	9	225	9	1	11.1

### 2.9.1 General observations

In 2015, we discussed 124 cases, which is **an 11.1-per cent increase** compared to 2014. The content of complaints have not changed significantly. Most complainants were concerned about how to find suitable accommodation, the options for subsidised rents, how to avoid evictions and where to seek assistance for the payment of costs etc.

We explained their rights to complainants and provided possible ways of resolving the situations that arose. This topic and possible solutions were also discussed at a meeting with the Minister of the Environment and Spatial Planning and representatives of the Association of Municipalities and Towns of Slovenia. Mayors regularly inform us about housing situations in their municipalities at meetings held outside our office. They particularly note financial problems to maintain the housing stock and resolving their residents' housing problems; the state does not provide any special support to the municipalities for this. Mayors also mentioned the subsidiary responsibility of the municipality as the owner of accommodation, when tenants fail to settle liabilities in relation to their rented accommodation. In these cases, municipalities are obliged to settle all liabilities, and since the number of defaulted obligors is increasing rapidly, this presents a serious problem and challenge for them in reconciling the interests of the municipalities with the distress of individuals.

As in previous reports, we again highlight the insufficient housing stock of the state and municipalities. There are many systemic shortcomings, which deepen and enhance the housing and social distress of people during this period of economic crisis. For these reasons, the number of justified complaints about housing does not reveal the actual situation or the poverty relating to housing conditions in the country. The method of recording cases also reduces the share of justified complaints; many are included in other substantive fields, such as poverty, social relations etc. due to their interaction with various other fields and issues.

## 2.9.2 Realisation of the Ombudsman's recommendations

Our recommendation – that the Ministry of the Environment and Spatial Planning (MOP) draft amendments to the Housing Act which places an obligation on municipalities to provide a certain number of residential units (as per the number of residents) of a suitable standard; publish a call for the allocation of non-profit apartments for lease at certain intervals; make a thorough analysis of the management of multi-dwelling buildings, and supervise the work of managers of multi-dwelling buildings more closely – remained unrealised and dependant on the anticipated amendment to the Housing Act (SZ-1) following the passage of the National Housing Programme, which points to progress; however, it is too slow and for many people even too late.

Our recommendation on additional personnel for the Housing Inspection Service has not been acted on and is linked to the excuse about the staffing plan of the Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning under the auspices of which the Housing Inspection Service operates. We believe that a reassignment of public employees from other state authorities could be a possible solution. Our recommendation to clearly define the competences of the Housing Inspection Service was also not observed.

Regarding the urgent elimination of violations, which in our opinion arise from the unequal position of all former holders of occupancy rights (those in denationalised and others in socially-owned flats), the Ministry of the Environment and Spatial Planning stated its opinion only with regard to tenants in denationalised flats, i.e. that social and other protection provided to these persons by the applicable legislation is suitable. For reasons given in its 2014 annual report (p. 250), the Ombudsman **does not agree** with this argument.

The recommendation on the equalisation of rights of former caretakers – those who used apartments as holders of occupancy rights and those with temporary rights – was also not acted on.

### Evictions and insufficient housing stock of the state and municipalities

In 2015, we also considered **numerous cases** relating to which the complainants wrote to us immediately before an announced eviction. They admitted the non-payment of liabilities relating to apartments or other debts, but they also stated that this was due to their loss of jobs or other unpredictable and uncontrollable problems. They asked us to help postpone evictions, find new apartments or allocate aid for the payment of debts.

## 2.9.3 Homelessness

**Evictions and the inability of the state to provide at least a roof over the head of people who find themselves in distress, if not a proper home, are the reasons for people's homelessness.** We particularly dealt with this issue in 2015 and met NGOs operating in this field. In cooperation with the Slovenian Network of Organisations Working with the Homeless and the Socio Association, we held a press conference on the occasion of World Homeless Day. The Deputy Ombudsman spoke about the Ombudsman's findings and recommendations at the event, 'Homelessness Here and Now', which was organised in Koper by the Slovenian Red Cross, Regional Red Cross Association Koper and SVIT Koper, the Association for helping addicts and their families. During the Ombudsman's visits to individual municipalities, we always discuss this topic with mayors. The Ombudsman was an honorary sponsor of the Homelessness Congress in Piran, where she also spoke and emphasised the Ombudsman's efforts in this field.

### Joint findings and proposals include:

- The number of homeless persons is growing; the structure of homelessness has changed. If homeless people in the past were mainly unemployed men aged about 50, today they include entire families.
- It is necessary to adopt a strategy to combat homelessness, which NGOs should be included in preparing, since proposals and solutions must come from practice, not merely theory.

- A special act on homelessness should be considered which would also regulate housing issues. At present, the field is only very partially regulated according to individual sectors which lack mutual coherence.
- Since several rights may be violated simultaneously in regard to homeless people – not only the right to adequate housing and home, but also the right to health insurance and social security – it is necessary to address homelessness immediately and with all due responsibility.

Regarding the above, our general finding from previous years must be repeated: there is a lack of sufficient housing and residential units; insufficient funds are provided for residential construction; the existing housing legislation lacks flexibility, since it fails to promote mutual assistance between municipalities when resolving housing issues, and finally, many problems could be eliminated with a suitably managed policy on leasing private apartments.

## 2.9.4 Subsidising rents

Regarding subsidised rents, we point out the issue of the existing Housing Act, which determines that only people who applied to the latest call of a municipality to obtain non-profit flats were eligible for subsidised market rent. The problem is that municipalities publish these calls at very different and 'rare' intervals due to the shortage of flats, so individuals who cannot apply to these calls are also unable to obtain subsidies even if, according to the income census, they are entitled to them. We propose that the competent ministry resolve this situation when drafting the new Housing Act.

**In July 2015, the Human Rights Ombudsman of the Republic of Slovenia filed a request for a constitutional review of Article 25 of the Act Regulating Measures Aimed at the Fiscal Balance of Municipalities in connection with Article 8 of the Exercise of Rights from Public Funds Act with the Constitutional Court of the Republic of Slovenia with a proposal to suspend execution of the challenged legal provision and a proposal for absolute priority discussion. The Constitutional Court has not decided yet on this matter.**

We provide an example below in which a municipality did not want to disburse a rent subsidy and execute a decision in spite of the enforceability of the decision of a competent social work centre. How can an individual trust in the rule of law if the authorities provide such a poor example?

Example:

### Enforcement against a municipality which refuses to disburse rent subsidies

A complainant contacted the Ombudsman and informed us of the decision of a social work centre (CSD) which stated that the complainant was entitled to a subsidised market rent for the apartment in which he resided with his large family. The subsidy was supposed to have been paid by the municipality in which the complainant and his family live. The complainant claimed that the municipality did not meet the obligations stated in the relevant CSD's decision, due to which his large family was at risk of eviction.

When discussing the complaint, it was established that the municipality was not meeting the obligations stated in the CSD's decision although the decision was enforceable. The municipality did not agree with the decision, which it stated in its preliminary opinion, and it also contested the amount of the subsidy and the eligibility for rent subsidy.

Regarding the CSD's activities, they explained that they could not take any legal action against the municipality, which refuses to disburse the rent subsidy. We informed the CSD that we did not agree with the aforementioned, because it was understood from the clarifications received from the Ministry of Labour, Family, Social Affairs and Equal Opportunities in another case that the CSD was obliged to file an enforcement proposal to the Financial Administration of the Republic of Slovenia (FURS) at the request of a client or enter such a request in an e-enforcement application. The CSD was informed thereof.

In its additional reply, the CSD explained that they had received instructions from the Ministry of Labour, Family, Social Affairs and Equal Opportunities after our intervention that the authority issuing the decision

must file an enforcement proposal to the FURS. The CSD added that it would immediately commence the enforcement procedure as per the new instructions from the Ministry and as per the law.

Regarding the above, we establish that the complaint submitted to the Ombudsman was justified, and that our intervention was successful because the CSD began the enforcement procedure only after our intervention.  
**9.2-7/2015**



# 2.10

## EMPLOYMENT RELATIONS

FIELD OF WORK	CASES CONSIDERED			RESOLVED AND FOUNDED		
	2014	2015	Index 15/14	NO. OF RESOLVED	NO. OF FOUNDED	PERCENTAGE OF FOUNDED AMONG RESOLVED
<b>10. Labour law matters</b>	<b>270</b>	<b>248</b>	<b>91.9</b>	<b>208</b>	<b>32</b>	<b>15.4</b>
10.1 Employment relations	133	116	87.2	100	10	10
10.2 Workers in state authorities	89	79	88.8	66	14	21.2
10.3 Scholarships	30	30	100	25	3	12
10.4 Other	18	23	127.8	17	5	29.4

### 2.10.1 General observations

Fewer complaints were considered in 2015 compared to 2014, i.e. by about eight per cent. However, this is still more cases than were discussed before 2013.

**The key issues include the non-payment of salaries and social security contributions, chaining of companies, employment in precarious (uncertain) forms of work, ill-treatment, bullying, mobbing and other forms of violence at work, the conduct of inspection procedures, placement abroad, voluntary traineeship and the problem of foreign migrant workers.**

### 2.10.2 Realisation of the Ombudsman's recommendations

**Regarding the Government's response report to our recommendations, we highlight the following:** The Government failed to state its position on our recommendation that measures for prompt supervision of the payment of salaries and all other contributions must be adopted immediately. We are uncertain about the Government's awareness of the great extent of this problem. It is also not clear why, in its efforts to protect employees, who are on the weaker side in an employment relationship, the Government fails to take action to accelerate procedures at all supervisory institutions. The number of labour inspectors is too low. Expert assistants introduced by the Labour Inspection Act (applicable as of 1 April 2014) did not contribute to hastening inspection procedures in any way, since, according to Nataša Trček, Chief Labour Inspector of the Labour Inspectorate of the Republic of Slovenia, they had not yet been employed. We expect responsible conduct of the Government in this matter; after all, the Government committed to hire additional labour inspectors in the Coalition Agreement on Cooperation in the Government of the Republic of Slovenia for the 2008–2012 Term.

The response report did not contain the anticipated amendments to the Civil Servants Act (ZJU); therefore, the question of paid legal aid or the amendment to Article 15 of the relevant act with content similar to Article 96 of the State Prosecutor Act remains unresolved.

The Government failed to state an explicit opinion on our findings on violations of drivers' rights, which is unsatisfactory. The problems and ignorance of state authorities were evident again in 2015 in the matter of the difficulties of Slovenian road hauliers in Calais, where our intervention was required in order to obtain a response from the competent state authorities. The safety of road users has also yet to be dealt with.

The Government responded to the mass chaining of companies with the aforementioned amendments to the ZGD-1I. We hope that dishonest employers are prevented from further doing business by means of new organisational forms, including unlimited exploitation of their staff.

To the Ombudsman's proposal on amendments that are required to the Financial Operations, Insolvency Proceedings and Compulsory Winding-up Act, which would consider non-payments for work which workers must perform before they submit an extraordinary termination of employment relationship as priority claims, the Government explains that such workers may request the repayment of their claims by means of an enforcement procedure. For cases in which workers must first file a suit at the court (because they failed to receive even a written payslip on the basis of which an enforcement could be initiated), the Government anticipates amendments to the Court Fees Act which would facilitate access to the courts. The Government anticipates the possibility of additional protection of such workers, and also stated its opinion on voluntary traineeship, which it opposes; a decision was adopted in this regard at the end of 2014 and the competent ministries were instructed to prepare amendments to sector-specific acts. The Ministry of Public Administration drafted an amendment to the Public Servants Act which would prevent voluntary traineeship; the amendment has not been adopted yet. The observation of the Ombudsman's recommendations on bar exams was anticipated by the Ministry of Justice. The Ministry of Education, Science and Sport also discontinued publication of voluntary traineeships. The Ministry of Labour, Family, Social Affairs and Equal Opportunities did not explicitly state its opinion on voluntary traineeship, which is mandatory in social protection.

#### Non-payment of salaries and social security contributions

Several complainants claimed that they had not been paid for work they had done; that their social security contributions were not paid, and that they received payments in cash, which were not registered accordingly. If the chaining of companies and the bankruptcy of companies with no assets or bankruptcy estate were also involved, the despair and uncertain situation of the employees were even greater. Unfortunately, the state has been unsuccessful in establishing a system to ensure employees' dignity and minimum wages and prevent situations and cases in which employees work and fail to receive payment, and it is only when employees wish to retire that they discover that their social security contributions have not been settled and they will be deprived of higher pensions.

### 2.10.3 Round table: Let us open the doors to young people – enforcing labour rights

On the occasion of Human Rights Day, we prepared a round table with the Slovene Ethnographic Museum at their premises on the topic of employment and employment relationships of young people. With representatives of the National Youth Council of Slovenia, the Mladi Plus Trade Union, the Labour Inspectorate of the Republic of Slovenia, the Financial Administration of the Republic of Slovenia, the Health Insurance Institute of Slovenia, the Chamber of Commerce and Industry of Slovenia, the Faculty of Social Sciences and the Faculty of Social Work, we discussed problems encountered by the young when leaving the education system and seeking employment. We dedicated special attention to uncertain forms of work due to which the young cannot become independent and are forced to live with their parents; they are unable to start their own families and their dignity is affected.

#### The conclusions of the round table include:

- Unpaid traineeships and flexible forms of work with the preferred option of self-employment are used to exploit young people.

- The state must improve its supervision of insecure forms of work, including the payment of social security contributions; otherwise intergenerational solidarity will be at risk.
- Coherence between education and training programmes and the needs of the labour market must be increased. Because coherence is lacking, young people are forced to create their own workplaces. With active employment policy measures, the Employment Service of Slovenia is trying to help and adjust to different needs.
- Systemic changes are required to improve the situation; the young expect the Government to devise a youth employment strategy.
- The transfer from education to employment is of the utmost importance, and in this regard, traineeship and apprenticeship must not be neglected.
- Voluntary traineeship must be condoned, since it is a form of an extreme form of exploitation.
- In a society in which insecure work forms prevail, where there is no job security, where payment for work is uncertain and the position of a worker compared to the employer is even weaker than in permanent forms of work, the organisation of trade unions and collective enforcement of rights are very important.
- Economic marginalisation leads to social marginalisation and isolation from political action and public attention. Some manage, while others go to the wall. Is the Government aware that its inactivity enables the loss of the potential in young people?

**We published a special bulletin on exercising labour rights on the occasion of Human Rights Day**, which is available both in paper form and also electronically on the Ombudsman's website. The bulletin addresses many issues related to unemployment and employment. It also contains recommendations for changes which are required and have not been addressed yet, and cases that we discussed in the field of labour law.

### 2.10.4 Problem of issuing A1 forms for workers posted abroad

On its own initiative, the Ombudsman discusses the issue of workers seconded to temporary work abroad. We are familiar with cases from the media in which workers were posted abroad by Slovenian employers and received no payment, while their social security contributions were also not paid. Many even had no means to return home. It was later revealed that such employers were frequently 'shell companies', which nevertheless had no problems when obtaining A1 forms prior to seconding workers abroad from the competent Health Insurance Institute of Slovenia (ZZZS), by means of which workers abroad prove that during their work abroad they are still insured in the social security system of the country from which they were posted abroad. Later on, it is frequently revealed that their insurances were not covered. Trade unions have already expressed the need to regulate this field. We submitted inquiries to the MDDSZ, the FURS and the ZZZS; we also met their representatives in person. We wrote to the Government, which explained that the MDDSZ and the Ministry of Health would immediately begin preparing a government decree on the implementation of EU regulations on social security coordination; this would regulate all issues concerning the implementation of EU regulations, which require the insurance providers to verify the conditions for issuing an A1 form, which also provide a direct basis for recalling the form. Since there is no direct connection between the ZZZS and FURS databases, which is needed to verify that employers meet the requirements for receiving A1 forms, it is necessary to examine if regulations provide a legal basis for such a connection. Due to the lack of connection, the ZZZS has been issuing A1 forms without fully verifying the conditions for issuing them.

At the beginning of 2016, the MDDSZ prepared a draft act on posting workers abroad. The document anticipates stricter conditions for issuing A1 forms, particularly relating to verifying that employers actually conduct a significant share of their activities in Slovenia. The objective of the proposal is to prevent posting by 'shell companies'. The Ombudsman commends the regulation of the matter of posting workers of foreign employers to Slovenia and the posting of workers of Slovenian employers abroad. The proposed act will be examined thoroughly and we will submit any possible comments to the relevant authorities.

## 2.10.5 Inspection procedures

Cooperation with the Labour Inspectorate of the Republic of Slovenia (IRSD) and the Public Sector Inspectorate was good; our communication usually took place in writing. We had meetings with the Chief Labour Inspector and the Chief Inspector of the Public Sector Inspectorate.

We established that several cases occur and situations arise in which individual inspectorates declare themselves incompetent and 'send individuals from door to door'. In this regard, we emphasise the role of the Inspection Board, which should coordinate and ensure cooperation between all inspection services.

We must again mention the shortage of staff in the inspection services. Due to their limited number, inspectors are unable to respond efficiently to reports or to their own observations and findings, so violations are not eliminated, while the preventive effect of inspection procedures is also questionable. We again point to the obligation of inspection services to inform reporters of the receipt of their reports no later than within 15 days, in accordance with the Decree on administrative operations and principles of good administration, and also of the fact that reporters will be informed about measures taken by the inspector only if they explicitly request to be informed of the result of the inspection as per Article 24 of the Inspection Act.

Example:

### **The Labour Inspectorate of the Republic of Slovenia (IRSD) supposedly failed to respond to a report for over one year**

A trade union contacted the Human Rights Ombudsman about the lack of response from the Labour Inspectorate of the Republic of Slovenia to a report claiming irregularities in a private company regarding a union member.

The complainant attached to his complaint the report addressed to the IRSD of 20 December 2013, from which it was evident that the complainant also requested that the IRSD informs him of its findings. According to the complainant's claims, the IRSD failed to respond to this request.

We asked the IRSD to reply to the complainant, and the IRSD complied with our request.

The complaint was justified. **4.1-11/2015**

## 2.10.6 Workers in the public sector

In 2015, we considered 79 complaints in this field, somewhat less than in 2014, when we examined 89 complaints. However, the merits of resolved complaints increased in 2015, amounting 21.1 per cent and 20.3 per cent in 2014.

Several cases involved mobbing, ill-treatment and bullying at work; many letters were anonymous, since the complainants refused to provide their names out of fear of retaliation and possible loss of employment. We have mentioned the unsuitable legal arrangements and that jurisdiction for taking action in such situations is divided between the IRSD, the Public Sector Inspectorate, the Defence Inspectorate and the Advocate of the Principle of Equality in several annual reports in the past, and demanded suitable solutions for victims of ill-treatment, bullying and mobbing.

We cannot avoid the **situation in Slovenian prisons**. The Ombudsman and the current Minister of Justice and his colleagues discussed this pressing issue at a meeting at the end of 2014. This topic was also addressed at a meeting with the representatives of the Union Confederation of the Prison Administration in June 2015 at the Ombudsman's head office, where staffing, insufficient expert training of judicial police officers, their unsuitable equipment, hindrance of the Union's work, the rights of occupational therapists as per the Pension

and Disability Insurance Act, bullying, the problem of a single public utility institute and its efficiency were also discussed. The Ombudsman still expects clarifications from the Ministry of Justice.

## 2.10.7 Violations of employees' rights in Slovenian Armed Forces

The misuse of management and command acts for decision making on employment rights, early old age retirement of military personnel, the right to collective representation and to conclude collective agreements, the discharging of ill and injured members of the armed forces, the payment of allowances for regular standby duty, conclusion of fixed-term employment contracts and age limitation of 45 years, mobbing, bullying and low wages were issues discussed particularly in connection with employees in the Slovenian Armed Forces. We discussed these matters with Andreja Katič, the Minister of Defence, and Dr. Andrej Osterman, the Chief of the General Staff of the Slovenian Armed Forces.

We have been monitoring the above issues for some time, and made special mention of them in the 2012 annual report.

# 2.11

## PENSION AND DISABILITY INSURANCE

FIELD OF WORK	CASES CONSIDERED			RESOLVED AND FOUNDED		
	2014	2015	Index 15/14	NO. OF RESOLVED	NO. OF FOUNDED	PERCENTAGE OF FOUNDED AMONG RESOLVED
<b>11. Pension and disability insurance</b>	<b>147</b>	<b>163</b>	<b>110.9</b>	<b>156</b>	<b>14</b>	<b>9.0</b>
11.1 Pension insurance	101	109	107.9	103	8	7.8
11.2 Disability insurance	46	54	117.4	53	6	11.3

### 2.11.1 General observations

The number of complaints involving pension and disability insurance increased in 2015 compared to 2014, while the share of justified complaints declined from 17.3 to nine percentage points. Many complaints referred to the constitutional review of certain provisions of the Pension and Disability Insurance Act (ZPIZ-2), which began in summer 2015. Individuals whose possible retirements were 'postponed' by statutory provisions requested information from the Ombudsman about when the Constitutional Court would make its decision, and they expected the Ombudsman to accelerate the decision-making process. Such expectations are unfounded since the Ombudsman cannot affect the decision making of the Constitutional Court, which is not legally bound to reach decisions within a time limit.

Certain complainants also pointed to the unconstitutionality of provisions of the ZPIZ-2, which enable people to undertake certain activities also after retiring, but limit the finally established right to retirement in the relevant period. When they receive a decision reducing their pension, the affected complainants can pursue legal remedies and exercise their legal interest with a constitutional complaint or a request for a review of constitutionality of disputable legal provisions. Therefore, the Ombudsman chose not to request a constitutional review, although we assess that an encroachment on the right of insured persons arising from compulsory pension insurance is not suitable, since any possible anomalies in the activities of pensioners could be prevented or eliminated with suitable tax arrangements which have precisely the same effect on public resources.

Another aspect of the issue, i.e. unequal treatment of disabled people, is discussed in the chapter on discrimination; this section includes only issues that refer to disability insurance.

### 2.11.2 Pension insurance

Most of the complaints in this field referred to the conditions for enforcing the right to a pension, which the ZPIZ-2 severely limits. People were formerly able to purchase the insurance period to enable early retirement, and they are now outraged by the provisions of the Act, which enables such purchase only in the case of old-age retirement. They assess that the Act, which entered into force on 1 January 2013, encroaches upon their anticipated rights, and some also claim that the Act applies retroactively. Some people demanded the

reimbursement of funds with which they purchased the insurance period from the Pension and Disability Insurance Institute of the Republic of Slovenia and which cannot be utilised for the expected purposes because of the new law. Because they would first have to exhaust all legal remedies before filing a constitutional complaint or request for a constitutional review of the disputable legal provisions, they expected the Ombudsman to do this as per Article 24 of the Constitutional Court Act.

The Ombudsman is very strict when deciding on requests to file for a review of constitutionality. When making such decisions, we determine whether a direct violation of human rights is involved, whether the affected persons are able to file the complaint themselves, and if the problem has wider significance. Due to the large number of complainants and the assessment of the number of affected citizens, we assessed that it was not appropriate to expect that they would meet the demanding condition of legal interest required by the Constitutional Court, since in this case they would first have to retire and then apply all the available legal remedies. For this reason, we filed a request for a review of the constitutionality of paragraph four of Article 27, paragraphs one and two of Article 38 and paragraphs one and two of Article 391 of the Pension and Disability Insurance Act in July 2015. Below, we summarise only a section of the justification of the request, which is published in full on our website:

Many complainants contacted the Ombudsman because they had purchased pensionable service for the period when they were students or doing military service in order to be able to retire early, i.e. on the basis of conditions of the Act applicable at the time of their purchase, i.e. the ZPIZ/92 or the ZPIZ-1. This purchase was done by an administrative procedure with a decision of the Pension and Disability Insurance Institute of the Republic of Slovenia (ZPIZ) on the basis of which the pensionable service that was purchased was entered in the employment booklet, subject to the payment of the determined contribution, and recorded in the civil register. On the basis of such a final decision, the purchased pensionable service applied as per the ZPIZ/92 to the same extent, the same manner and with the same effects as the remaining pensionable service, and according to the ZPIZ-1, also to a greater extent than as per the applicable arrangements of the ZPIZ-2.

The ZPIZ-2 encroached on the rights of those who purchased pensionable service on the basis of provisions of the ZPIZ/92 and the ZPIZ-1. The conditions for obtaining old-age pension deteriorated for those who purchased pensionable service after the passage of the ZPIZ-2 in a similar way as for insured persons who had not purchased pensionable service. Whereby, it was not observed that the purchased pensionable service was granted on the basis of a special legal provision with a purchase or direct personal payment of a sum determined by the ZPIZ on the basis of the Act, and that the purchase of pensionable service was determined in a final decision issued by the ZPIZ. Even worse consequences for complainants are attributed to paragraph four of Article 27 of the ZPIZ-2, which states: "Irrespective of the provision of paragraph one of this Article, an insured person (man or woman) who is 60 years old and has 40 years of pensionable service without the purchase of pensionable service shall obtain the right to old-age pension." With this provision, the ZPIZ-2 has severely encroached on the right to purchased pensionable service and on the constitutional rights of those who made such a purchase.

The lowering of pensions is a measure with long-term negative consequences for retired persons, but it is even worse if people are unable to obtain their pensions under the conditions prescribed explicitly for their cases and also approved with final decisions. This not only encroaches on entitlements based on the purchase of pensionable service, but also completely disregards them. In this case, it is impossible to justify the encroachment on the position of complainants with the argument that purchased pensionable service must be treated the same as pensionable service obtained on other legal bases, since this constitutes severely unequal treatment of purchased pensionable service and those insured persons who purchased it.

The Constitutional Court informed us that the Ombudsman's request would be discussed according to the order of other previously filed complaints or requests, which meant that the Ombudsman's request would not be treated with priority.

We had already received the opinions of the Government of the Republic of Slovenia and the National Assembly of the Republic of Slovenia, which believed that the Ombudsman's request was unfounded. We hope that a decision on the matter will be made this year.

We are pleased to note that the problem of the pensions of public employees in former federal authorities, which was discussed in the 2014 annual report, has been resolved. The Government acted on the Ombudsman's proposal and settled open issues with the Act Regulating the Settlement of the Liabilities of the Republic of Slovenia Arising from Pension and Disability Insurance, which was passed by the National Assembly in January 2016.

### 2.11.3 Disability insurance

We received several complaints relating to the activities of various disabled people's organisations, where certain individuals in leading positions allegedly violated their members' rights. Associations, like civil society organisations, are not subject to the Ombudsman's supervision except in cases when they have public authorisations. While certain irregularities or even violations of members' rights were established in most complaints, we were unable to instigate procedures, and merely informed complainants of ways to enforce their rights. The statutes of individual societies could anticipate a prompt and efficient manner of resolving disputed relations (e.g. mediation), since judicial proceedings are not appropriate in most disputes between members of associations.

Most of the complaints concerning disability insurance still refer to dissatisfaction with the work of disability commissions, which complainants claim work too slowly and are particularly impersonal and unfriendly. Similar complaints concerning the enforcement of rights have already been discussed in previous annual reports, and we thus repeat our proposal to the Pension and Disability Insurance Institute to dedicate more attention to the communication of disability commissions with insured persons.

Unfortunately, it is necessary to mention in every annual report the delays of executive bodies when issuing executive acts. An act, the implementation of which anticipates the adoption of executive acts, is incomplete because it cannot be fully implemented, although it is valid and should be implemented in full. This is contrary to Article 2 of the Constitution of the Republic of Slovenia, and since the Government proposes most legislation, it should ensure that the acts not come into force until all the executive acts needed to implement a new arrangement are passed. The transitional application of repealed acts resolves this issue formally and legally; however, old acts are usually difficult to apply in new conditions, which causes dissatisfaction and mistrust in the rule of law.

The aforementioned arises from the current situation and was highlighted several times. In Article 403, the Pension and Disability Insurance Act (ZPIZ-2) determines that the Ministry of Health in agreement with the ministry responsible for the disabled people define the types and levels of physical impairments, which would serve as the basis for enforcing rights to disability insurance within two years after the entry into force of the Act (i.e. by 1 January 2015). The Ministry of Health has not yet issued an executive act, and the Self-governing Agreement on the List of Physical Impairments (*Samoupravni sporazum o seznamu telesnih okvar*) from 1983 is still in force. The obsolescence of an act enacted 33 years ago needs no further clarification, and the legal extension of applicability of a regulation devised by the former state after more than 20 years of independence (the Act was passed in 2012) is certainly unsuitable and unprecedented for a state governed by the rule of law.

Following the latest reminder, the Ministry of Health ensured that the regulation would be drafted by the end of June 2016.



# 2.12

## HEALTH CARE AND HEALTH INSURANCE



FIELD OF WORK	CASES CONSIDERED			RESOLVED AND FOUNDED		
	2014	2015	Index 15/14	NO. OF RESOLVED	NO. OF FOUNDED	PERCENTAGE OF FOUNDED AMONG RESOLVED
<b>12. Health care and health insurance</b>	<b>144</b>	<b>152</b>	<b>105.5</b>	<b>121</b>	<b>19</b>	<b>15.7</b>
12.1 Health insurance	59	46	78	35	7	20
12.2 Health care	85	106	124.7	86	12	14

### 2.12.1 General observations

The number of complaints involving health is approximately the same as in 2014, whereby the number of complaints concerning health care increased significantly (by 23 per cent), and the number of complaints referring to compulsory health insurance decreased by almost the same percentage. The fact that as many as one-fifth of complaints about health insurance were justified may be of some concern. It could be understood from this fact that the work of the Health Insurance Institute of the Republic of Slovenia must be improved when making decisions on people's entitlements.

In the 2014 annual report, it was determined that the frequent change of health ministers had a negative impact on the adoption of urgent amendments in the health-care and health insurance systems; however, this did not improve significantly in 2015. The Ministry constantly promises the requisite statutory amendments. At the time of writing this Report, these amendments had not even entered public discussion. Extending waiting times, certain irregularities when organising work, alleged expert errors and the unwillingness of the authorities to respond promptly and effectively reduce citizens' trust in health care and lead to complaints about corruption, which has a negative impact on the realisation of the principles of the rule of law and the social state. The problem of a certain group of patients cannot be partially resolved, because comprehensive solutions are required.

The hope that the long-expected reform would happen in 2016 is due particularly to the drafted Resolution on the National Health-Care Plan 2015–2025 and the Government's Legislative Work Programme, which anticipates the passage of key acts by the end of 2016. The Ministry had obviously changed its decision and would not amend the Complementary and Alternative Medicine Act, as was stated in the Government's response report to the 2014 Ombudsman's Annual Report.

In the 2014 report, we assessed that the work of the Ministry of Health was not organised well, and that no one was verifying the responsibility of individual public employees for their lack of performance. It must be said that the Ministry's response to our inquiries improved in 2015, whereby the section of the Ministry which drafted certain new executive acts must be commended. They asked for the Ombudsman's opinion on the relevant acts and then informed us to what extent they had observed our comments and proposals. We expect the Ministry to continue this practice also when drafting new legislation.

## 2.12.2 Health Services Act

The issue of the implementation of health services remains unchanged, since the legal bases were not amended in any way in 2015. The construction of the emergency centre network received a lot of attention and criticism, since its presentation in public was inadequate. Individual municipalities, public institutions and also individual citizens submitted complaints and proposals to the Ombudsman and expressed their concern that response times in emergencies would be longer, which could endanger citizens' health and lives. The Ombudsman submitted queries to the Ministry of Health, and on the basis of its reply assessed that the procedure or reorganisation of emergency medical services was suitable, since it permitted the participation of the public and all interested parties. Therefore, we did not discover any violations of human rights or fundamental freedoms, or an incorrectly conducted procedure with regard to the activities of the Ministry. We highlighted the Ombudsman's expectations that the comments and proposals of municipalities, health institutions and the citizens for whom these services are intended would be taken into account in the preparation of the final concept. We also repeated the opinion that a preliminary notification of the public of reasons for amendments and their basic content is essential for the enforcement of any qualitative amendments, whereby the publication of draft legal acts on the website is not sufficient, and direct forms of presentation must be organised, and in particular replies to issues and dilemmas that are raised must be provided.

## 2.12.3 Ljubljana University Medical Centre ignores the Ombudsman's queries

Similarly to our criticism of the management and work of the Ministry of Health, we can also assess the situation in the largest health institution in Slovenia, Ljubljana University Medical Centre. Problems with finding a management body are clearly displayed in communication with the public and individuals, who see this institution as a public service. We emphasised several times that a prompt reply may frequently prevent further problems and complications, including the dissatisfaction of users who recognise an encroachment upon their dignity in the ignorance of the authorities.

In March 2015, we received letters from the Pulmonary Hypertension Association of Slovenia and the Cystic Fibrosis Association of Slovenia, which described the intolerable treatment conditions of patients in both associations. According to both associations, the conditions described were endangering patients' health and lives and had to be remedied immediately. The public was also informed about the poor conditions, and the Minister of Health explained in her reply to the associations that the issue had to be dealt with by the management of Ljubljana University Medical Centre.

After receiving the complaints, we immediately asked the Director of Ljubljana University Medical Centre to state his position regarding the claims of both associations, and explain when and how the management of Ljubljana University Medical Centre would remedy the situation and ensure suitable treatment for all patients. Since we did not receive a reply for over six months, we submitted an urgent letter to Ljubljana University Medical Centre in November, which also received no reply.

At the beginning of 2016, we sent another urgent letter to the new management of Ljubljana University Medical Centre and stressed that ignorance of letters received is disrespectful to those who contact a public institution, particularly when they point out conditions for which the management of the institution is directly responsible. Complainants who are concerned about the health and lives of their loved ones deserve at least a prompt reply.

We explicitly notified the management of Ljubljana University Medical Centre that their unresponsiveness to the Ombudsman's queries is disrespectful and is considered an obstruction to the Ombudsman's work on the basis of paragraph four of Article 33 of the Human Rights Ombudsman Act. We thus proposed that the responsibility for unfounded delays in drafting replies in the discussed case be established in a prescribed procedure and that such conduct be sanctioned accordingly.

The Council of Ljubljana University Medical Centre discussed our complaint and determined that the poor communication had been due to an administrative complication, and ensured that the measures needed to

improve channels of communication would be taken in cooperation with the institution's management. At the beginning of 2016, we agreed together with institution's management on a method of communication which would prevent further discrepancies.

Example:

### **The Medical Chamber of Slovenia delays a procedure and violates human rights**

A legal representative of a company who asked the Ministry of Health to issue a permit to perform a health-care activity wrote to the Ombudsman because the relevant procedure for issuing the permit was still underway, since by law the Ministry had to obtain the opinion of the Medical Chamber of Slovenia. In the procedure before the Chamber's Professional Medical Committee, it was supposedly established that the applicant for the permit was using treatment methods which did not comply with medical practise, so the case was submitted to the Chamber's arbitration board. The applicant's representative emphasised that the applicant had not been informed of the content of the alleged complaint over his work or information about the current status of his case.

The Ombudsman notified the Chamber that the provisions of the General Administrative Procedure Act must be observed when issuing permits for the implementation of health-care activities, which also determines the (instruction) deadlines for the issue of a competent authority's decision. The statutory deadlines in the relevant case had already expired and we proposed to the Medical Chamber of Slovenia that the procedure be accelerated and to the Ministry of Health that the decision be issued as soon as possible and the procedure completed.

We believe that when the Chamber issued its opinion according to Article 35 of the Health Services Act, it should have issued its opinion within the deadline (60 days), and the opinion did not require a decision by the arbitration board if the contentiousness of the treatment method had already been determined by the relevant Committee. Otherwise, the Chamber would be obliged to observe the deadline of two years from the violation, as per Article 43 of the Rules on Organisation and Work of the Arbitration Board of the Medical Chamber of Slovenia (*Pravilnik o organizaciji in delu razsodišča Zdravniške zbornice Slovenije*). In our opinion, such a situation would constitute an unacceptable delay in the procedure, since, on the basis of the provisions of a general act, the Chamber would actually be obstructing the work of the competent administrative body, which must be based on the Constitution and law (paragraph two of Article 120 of the Constitution of the Republic of Slovenia).

Irrespective of the substantive decision of the Ministry of Health, which is not known to us, we assessed that decision making in this case took unreasonably long (approximately 18 months) and therefore was a violation of the principle of good administration and the complainant's right to equal protection of rights arising from Article 22 of the Constitution of the Republic of Slovenia. We believe this to be an example of a systemic deficiency, i.e. dependence of a state authority's decision making on acquiring an opinion from a professional association, which prevents the administrative body from making a correct and timely decision. We expect the new Health Services Act to contain amendments which prevent such violations of human rights.

## 2.12.4 Patient Rights Act

In 2015, we also organised a joint meeting with all advocates of patients' rights, where we discussed certain open issues relating to their work. The Ombudsman assesses their work to be very beneficial and necessary, and the Ministry of Health should enhance its cooperation with them. Due to the anticipated amendments to legislation, the Ministry should also examine proposals to extend their work to the field of compulsory health insurance. Advocates of patients' rights already frequently deal with issues encountered by patients when claiming rights deriving from compulsory health insurance. Our attention was drawn to decisions of the Health Insurance Institute of the Republic of Slovenia which are sometimes difficult to understand, the unregulated

setting of prices for dental services, which lack supervision, and particularly, doctors' unawareness of the content of individual patients' rights (namely, the patient's choice expressed in advance). The Ombudsman did not receive such complaints, but we mention them as open issues that have to be addressed.

The Ombudsman held a meeting with advocates of the rights of persons with mental disorders, who proposed that the possibility be examined of combining their tasks performed on the basis of the Mental Health Act with the tasks of advocates of patients' rights, which are implemented by the latter according to the Patient Rights Act, since their tasks frequently overlap. The Ombudsman proposed to the Ministry of Health that the possibility of combining these tasks into a single institution in the light of new legislative solutions should be studied.

## 2.12.5 Euthanasia as a human right

A complainant informed us of his mother's suffering due to an incurable illness and proposed that euthanasia be made legally available, so that the next of kin rather the ill person could decide in such cases.

Although we understand that relatives are affected by the medical condition or slow death of their loved ones, we cannot agree to the idea that euthanasia would comprehensively resolve such problems. Everyone has the right to live, and no one may deprive them of this right, which is one of the fundamental achievements of society. Taking an individual's life is criminally prosecuted in all countries, and only a few of them permit exemptions that the lives of patients in the terminal phases of illness may be ended by medical means when all the legal conditions are met. Slovenia has not permitted such arrangements, and the Constitution holds that human life is inviolable (Article 17). It was assessed that the option to end someone's life would lead to numerous moral dilemmas and complicated legal questions, and above all, such conduct could lead to many abuses, the consequences of which could not be rectified.

The question of euthanasia is partly resolved in the Patient Rights Act, which stipulates in Article 34 the manner of observing patient's wishes provided in advance regarding the type of health care he or she does not permit when unable to provide valid consent. We emphasise that the Act grants this right only to patients who are aware of the importance of their decisions, but not to their relatives.

The Ombudsman intends to dedicate special attention to questions relating to euthanasia in 2016, and therefore plan a special consultation session at which various aspects and positions on this topic could be discussed and comprehensively highlight this very sensitive issue. The Ombudsman believes that the prerequisite for offering an opinion on the issue of euthanasia includes the suitable provision and accessibility of palliative care at the national level.

Example:

### **Problems involving a surgical procedure on a member of Jehovah's Witnesses**

Based on the patient's authorisation, the Ombudsman was contacted by the advocate of patients' rights (advocate) because Novo mesto General Hospital refused to perform a surgical procedure on the patient. The reason for the refusal was the patient's refusal to receive blood and blood substitute transfusion even in the event of a life-threatening situation. The patient suffered from associated diseases, including severe allergic reactions to many medicinal products that are administered in a peri-operative period. She was thus allocated to a high-risk group for vital peri-operative complications. The hospital advised the patient to have the procedure in a tertiary institution.

The patient was dissatisfied with being rejected for treatment and sought assistance from the patients' rights advocate. The advocate filed a request for first consideration, as per Article 56 of the Patient Rights Act, subject to the patient's authorisation. An agreement was concluded upon first consideration that the hospital would perform the operation and the patient would be informed about the date of the surgical procedure by mail.

The Ombudsman submitted a query to the hospital, because we wanted to know why the hospital had changed its opinion. In the past, the hospital has conducted several operations on Jehovah's Witnesses, a

member of whom was also the relevant patient, and was familiar with their position on the use of blood and blood substitutes, which is why we were surprised by the initial decision of the hospital. There was also the assumption that the patient's religious affiliation was the reason for the hospital's refusal to operate on her.

As the reason for changing its decision, the hospital provided additional information which was obtained through a dialogue with the patient about her associated diseases. The hospital also obtained information on the medicinal products that could be prescribed to the patient. During the discussion, the patient provided a list of medical products that she could receive when being treated in the hospital, and additional documentation which was examined by the medical director as a specialist in anaesthesiology with reanimation, who assessed that there were no professional reservations to prevent the surgical procedure.

The Ombudsman assessed the complaint as justified with regard enforcing the right to health care. In spite of the hospital's initial refusal to perform surgery on the patient on her terms, a solution acceptable to all was found in the search for the most feasible solution which would also be acceptable in medical profession. The efforts of the advocate and the conduct of the hospital are commendable. The Ombudsman is certain that the described manner of resolving disputes concerning health care could set an example to all health institutions and patients' rights advocates. The case is published here as an example of good practice in the hospital and the efficient work of the patients' rights advocate in Novo mesto. **3.4-61/2015**

## 2.12.6 Health Care and Health Insurance Act

The 2013 and 2014 annual reports included a presentation of a problem in decisions issued by the Health Insurance Institute of Slovenia (ZZZS) regarding the exercise of rights arising from compulsory health insurance. We received a comprehensive reply from the ZZZS, and assess that the Institute improved the quality of its decisions, and also took decisions within the statutory deadlines in most cases. Communication with the ZZZS is good, because they always respond to our queries within the determined deadlines. We also meet once a year to discuss current issues.

A new topic was addressed in 2015 with regard to treatment abroad. A patient may exercise this right only after all treatment options in Slovenia are exhausted, which is decided by a competent expert authority. The case below includes specific complications and procedures, which eventually had a beneficial result for the patient.

The Ombudsman proposes that decision making on the right to treatment abroad be regulated in greater detail, so that it is completely clear which authority and within what time limit the decision is made that treatment in Slovenia is no longer possible. The arrangement must eliminate reasons for the public to determine the suitability of treatment and collect financial resources for treatment in cases when treatment (particularly of children) has not been completed and when all patient's rights are available.

### **Treatment abroad**

A complainant contacted the Ombudsman claiming that the Health Insurance Institute of Slovenia (ZZZS) had unduly delayed decision making on an application to have his daughter's congenital heart disease treated abroad.

Almost simultaneously with the complainant's application, the ZZZS received the opinion of the medical council of Ljubljana University Medical Centre that the options of treating the little girl in Slovenia had been exhausted. Percutaneous or 'mini' surgical closure of ASD was proposed, and the nearest health-care provider abroad was suggested and the anticipated date of admission. Despite this opinion, the ZZZS did not decide on the complainant's application, and he soon received verbal information that the opinion had been changed and that the medical council would hold another session about the little girl's treatment. The ZZZS agreed with Ljubljana University Medical Centre to wait for a new (supplemented) opinion of the medical council. Communication between the ZZZS and Ljubljana University Medical Centre was by telephone only and was not

recorded accordingly. Four months later, the ZZS received a supplemented opinion which was contrary to the first one, i.e. stating that the options for treatment in Slovenia had not been exhausted. On the basis of this opinion, the ZZS rejected the application for treatment abroad five months after it was filed.

On the basis of the chronology of decision making on the treatment of the child of which we were informed by the complainant, the clarifications received from the ZZS and Ljubljana University Medical Centre and other available documentation, we established that surgery on the child had been planned several times at Ljubljana University Medical Centre, but was never performed for various reasons (e.g. also because the surgeon had failed to obtain a work permit in time). At the time, the reorganisation of the treatment of children with a congenital heart disease was underway, and when no surgeon was available at Ljubljana University Medical Centre, the children were sent for treatment abroad. This was also the case with the complainant's daughter; however, a few weeks after the medical council's first opinion and before the anticipated treatment date abroad, Ljubljana University Medical Centre started cooperating with foreign surgeons, which again offered new options for her treatment at Ljubljana University Medical Centre, where she would have been treated by a classic procedure, since, as it was explained to the parents, "surgical closure of the defect through classic midline sternotomy was recommended in her case as the most reliable and least risky method".

Regarding the aforementioned, we assessed that the field of children's cardiac surgery was not regulated appropriately at Ljubljana University Medical Centre but quite the reverse, since patients' treatment depends on too many secondary factors. We did not get into expert justifications about whether classic or catheter surgery was more suitable for the little girl; however, we could not avoid thinking that the procedure concerned adjusted to the skills and knowledge of the surgeon currently available, rather than the patient's needs. It is otherwise difficult to explain the radically changed opinion of the medical council on the treatment and the eligibility of the child's treatment abroad, particularly since the complainant received information that the surgeon who was to perform the classic midline sternotomy on his daughter in Slovenia did not perform the less invasive procedure that was proposed in the medical council's first opinion.

Our findings referred particularly to the conduct (organisation) of the child's medical treatment, not the expert reasoning on why classic or a catheter surgery would have been more suitable for her. Nevertheless, it was impossible to completely avoid this issue in certain sections. In our opinion, certain dilemmas addressed remained open, in spite of the clarifications offered by Ljubljana University Medical Centre. Since they were inseparably linked to the substantive decision, which is (may be) subject to judicial review, we have decided not to discuss the matter further. We informed the ZZS about the deficiencies established in the conduct of procedural and administrative operations, and established that this was a case of undue delay in the decision-making procedure. **3.4-35/2015**

### **The right to parental accompaniment**

The Ombudsman discussed various complaints relating to the rights of persons with special needs in all fields of their everyday lives and participation. One complaint referred to the possibility of parental accompaniment of hospitalised adults with special needs, particularly those with severe or profound mental disorders whose parents are still their legal guardians. We received information that parental accompaniment is not possible in such cases, or depends on the 'good will' of the hospital, which is why we asked Ljubljana University Medical Centre and Maribor University Medical Centre for further clarification of this matter.

Such accompaniment is not a right arising from compulsory health insurance, but it was understood from the replies of both medical centres that they were aware of the importance and role of parents accompanying a hospitalised child with special needs even if the patient is above the age of 18. In such cases, which are rare, they were trying to find the best solution for co-habitation of parents, i.e. accommodation in a special room or at least in a room with the fewest patients according to space available. Parents know their children best and may more easily 'manage' children's unpredictable behaviour. They know how to communicate with them, recognise their needs and feelings, and can participate in the treatment.

The Ombudsman supports such cases of good practice, which not only implement rights determined by law, but also adjust activities to individuals' special needs.

### **Inequality of residents in retirement homes regarding rights arising from compulsory health insurance**

We received a complaint claiming that residents accommodated in institutional care (in retirement homes) were being treated unequally. Residents in homes with no concession in the field of social care were not entitled to the same services from compulsory health insurance as residents in homes with a concession for providing institutional care. The complainant assessed that the Health Care and Health Insurance Act did not comply with the Constitution, since it had no provision ensuring equality of the aforementioned categories of residents in retirement homes. The Act apparently contains a lacuna, and the complainant thus proposed that the Ombudsman file a request for a review of the constitutionality of the Health Care and Health Insurance Act on the basis of paragraph one of Article 23a of the Constitutional Court Act.

This issue was also discussed during several personal interviews. The complainant also submitted the written position of the Health Insurance Institute of Slovenia (ZZS) on why it refused to pay for nursing care or services provided in retirement homes with no concession.

The Ombudsman believes that a concession in institutional care is not determined anywhere in the legislation as a pre-condition for implementing rights arising from compulsory health insurance. We thus assess that refusing to finance health services in these cases has no basis in regulations, but is a contestable interpretation of the regulations of the Health Insurance Institute of Slovenia.

We believe that the aforementioned Article 23 (i.e. indent thirteen of point one) is essential for resolving this issue; however, the Ombudsman's understanding of the Article differs substantially from that of the ZZS. Article 23 ensures insured persons payment (in full) for the following health services: "– home-care visits, treatment and care at home and in social care institutions".

Retirement homes undoubtedly also implement a health-care activity, since paragraph one of Article 16 of the Social Security Act stipulates: "Institutional care according to this Act includes all types of help in institutions, in another family or other organised type of help used to substitute or supplement for entitled persons the functions of their home and their own family, and in particular accommodation, organised meals, care and medical care." On the basis of this Act, retirement homes have the right and duty to organise and ensure health care for their residents. This provision applies to all institutional care providers irrespective of the provider's status and possible concession.

In paragraphs two and three of Article 8, the Health Services Act determines:

*"Social care institutions and special education institutions for children and adolescents with physical and mental disorders provide health care and rehabilitation to their residents within their primary health-care service.*

*Institutions from the preceding paragraph may also organise other primary health care and specialist or consultant activities for their residents in accordance with nature of the institution's activities and the public health network."*

It is clearly understood from the above provisions that all social care institutions provide nursing care and are not limited in this respect by the presence or absence of a concession, since the public health-care network (which requires a concession) is not mentioned in connection with nursing, but to other health services. However, in doing so, social care institutions are limited only to their residents and must not provide their services to others.

The Ministry of Health took this position on providing primary health care in retirement homes in 2014, of which it also informed the ZZS.

We cannot agree with the position that insured persons are entitled to services that are subject to compulsory health insurance in certain cases on the same legal basis and in others they are not entitled to services merely due to the fact that they are not accommodated at the 'right' provider and they continue to pay for all services. We believe that the right arising from indent 13 of point 1 of Article 23 of the Health Care and Health Insurance

Act is an individual right of citizens for which they have to pay an insurance premium and as such it cannot be further burdened.

It does not arise from the aforementioned provision that treatment and care in social care institutions are provided only the case of a concession. The provision is clear: compulsory health insurance gives full and unconditional right to treatment and care to all insured persons. According to the Ombudsman's assessment, the ZZS's interpretation regarding the concession requirement has no legal basis in the Health Care and Health Insurance Act. We believe that the discrimination pointed out by the complainant was not due to the Act, but to a misinterpretation.

Regarding the foregoing, we determined that neither legal amendments nor a review of constitutionality due to a lacuna were needed to resolve the issue. In our opinion, the Act provides a sufficient legal basis for the payment of performed health services subject to compulsory health insurance. To avoid future complications, we propose that the issue be fully clarified in the new Act.

# 2.13

## SOCIAL MATTERS

FIELD OF WORK	CASES CONSIDERED			RESOLVED AND FOUNDED		
	2014	2015	Index 15/14	NO. OF RESOLVED	NO. OF FOUNDED	PERCENTAGE OF FOUNDED AMONG RESOLVED
<b>13. Social security</b>	<b>287</b>	<b>231</b>	<b>80.5</b>	<b>201</b>	<b>41</b>	<b>20.4</b>
13.1 Social benefits and assistance	114	91	79.8	85	17	20
13.2 Social services	18	21	116.7	16	3	18.8
13.3 Institutional care	52	46	88.5	42	12	28.6
13.4 Poverty - general	19	20	105.3	18	3	16.7
13.5 Violence - anywhere	17	9	52.9	9	0	0
13.6 Other	67	44	65.7	31	6	19.4

Surprisingly, the number of complaints referring to social security decreased by almost 20 per cent compared to 2014, whereas the number of complaints involving social services increased significantly, including general issues regarding poverty. In our opinion, such results were not due to citizens' social security improving, but the increasing apathy of individuals whose many years of efforts to improve their standard of living have failed to bear fruit. Certain authorities, to which people refer regarding their problems, do not respond to the letters they receive (which is a violation of the principle of good administration) and other competent authorities delay their decision making (more on this below).

We accept the fact that the reduction in the number of complaints occurred also because people recognise that the Ombudsman cannot help individuals financially or influence the competent authorities to allocate assistance while bypassing regulations. Many complainants receive suitable expert information and advice by phone, which certainly helps reduce the number of complaints. Our staff's work was organised in a way that enabled expert assistants responsible for certain fields to provide basic information by phone, and they can thus advise complainants to instigate suitable procedures or contact the relevant authorities. The fact that one-fifth of complaints relating to social security were founded is still of great concern (27.7 per cent in 2014), and as much as 28.6 per cent concerning institutional care.

In the 2014 annual report, we proposed the adoption of measures to provide fast and qualitative information to citizens on various ways of claiming social rights (recommendation no. 95). This year, we discovered that those in need of help are still not given comprehensive information about all the options available to them. State aid for citizens frequently depends on an expert worker at a social work centre, who in certain cases informs individuals in advance on the inappropriateness of filing certain applications. The decision of individuals about what assistance they should seek is their alone, and expert workers must assist them to do so and furnish them with all the information they need. We thus proposed to the Ministry of Labour, Family, Social Affairs and

Equal Opportunities in the 2014 report that it increase staffing at social work centres (recommendation no. 96). We repeat this recommendation.

The main problem in the field of social security is the poverty of a large group of citizens, the consequences of which affect not only the material situation of individuals, but even more so their attitude to others, their self-image, family relations, and above all, it violates the right to dignity. Social assistance does not ensure survival, and individuals must find other (frequently illegal) ways to survive and support their families. The state allocates substantial funds to mitigate social distress. NGOs also provide their help; nevertheless, individuals are frequently left to the kind-heartedness of others who provide help. By comparing different amounts of assistances allocated to Slovenian citizens and foreigners who arrived in Slovenia during the migrant crisis, an impression was created that the state is parsimonious with some and generous to others. It is imperative that the public and individuals are informed accordingly, and social work centres play the main role in these processes. In last year's response report, the Ministry of Labour, Family, Social Affairs and Equal Opportunities ensured that the reorganisation of social work centres was a priority; however, no changes have been noted in the past year.

For several years, we have emphasised the unacceptable backlogs in resolving complaints concerning decisions on rights relating to public funds, which are undermining people's trust in the social state and state governed by the rule of law. With such delays, the Ministry violates people's right to equal protection of rights, which is guaranteed by Article 22 of the Constitution of the Republic of Slovenia, and also violates the principle of the rule of law and a social state in Article 2 of the Constitution.

### 2.13.1 Unacceptable delay when preparing expert groundwork for the Act on Social Inclusion

The Ombudsman has been contacted by a growing number of individuals, adults with mental disorders or their parents/carers, concerned that persons with mental disorders, in addition to attending occupational activity centres, should be able to work or be included in a regular work environment as per their abilities and wishes. Despite their "inability to live an independent life and work", persons with mental disabilities who claim rights according to the Act Concerning Social Care of Mentally and Physically Handicapped Persons (ZDVDTP) may apply as job seekers at the Employment Service of Slovenia if they are aged between 15 and 65; however, by doing so, they lose the rights arising from their "inability to live an independent life and work". According to the Ombudsman, this arrangement is not suitable or realistic. The possibility of "transferring between statuses" should be provided. Furthermore, persons with recognised rights as per the ZDVDTP usually cannot compete equally on the labour market. Since employment for them means in particular social inclusion and not primarily a means of subsistence, the rights arising from the ZDVDTP should be retained.

Unfortunately, we observe that the Act on Social Inclusion within the framework of which these issues would be resolved has been in preparation for several years with no obvious progress. In 2015, the Ministry of Labour, Family, Social Affairs and Equal Opportunities assured us again that material would be prepared for a government discussion by the end of the calendar year, but it was not.

### 2.13.2 Payment of social transfers

For individuals and families who fully rely on social transfers, it is of the utmost importance that they receive them in full and not reduced by bank charges on bank accounts or other banking activities based on enforcement or security orders. A while ago, a social work centre being aware of beneficiaries' distress and problems, some of whom were even unable to keep their bank accounts open, began resolving this issue by transferring cash payments of social transfers to the centre itself. The situation later became uncontrollable and too dangerous for the employees, and the several hundred beneficiaries who came to the centre each month and queued several hours for the payment. Conflicts and disagreements also arose between people waiting in the line. The centre then decided to end such cash payments and asked the beneficiaries to submit bank account numbers to which transfers would be made in the future. The centre explained that otherwise the transfer would be

executed by means of a postal money order, whereby such payments would be subject to monthly postal fees and delayed by one day.

A beneficiary, a recipient of cash social assistance in the amount of EUR 269.20, who will be receiving assistance by a postal money order because she was unable to open a bank account contacted the Ombudsman. She complained about the fee of EUR 15.83, or as she put it: "*this is equal to the cost of bread to sustain me for 20 days*". The complainant managed to agree with the centre on the payment of cash social assistance without fees. The Ombudsman believes that the search for solutions should not be left to the resourcefulness of beneficiaries and social work centres.

The situation was at least partly resolved by Article 102a of the Claim Enforcement and Security Act, which entered into force on 4 August 2015, i.e. relating to charging fees for implementing activities based on enforcement or security orders. Certain concerns were raised about suitably resolving the problem, since it is probable that banks would start closing debtors' accounts or submit many enforcement proposals for the settlement of outstanding fees and thus additionally burden courts with new cases. Finally, they will also burden debtors, who will have to settle banks' charges together with statutory default interest and enforcement costs.

It may be expected that Article 102a of the Claim Enforcement and Security Act will impose new problems on the socially most disadvantaged individuals and families. The issue of beneficiaries entitled to social transfers who do not have bank accounts has not been addressed yet. The Ombudsman proposes that this problem be resolved comprehensively and with final effect as soon as possible, which was also pointed out to the Ministry of Labour, Family, Social Affairs and Equal Opportunities, which explained that the introduction of so-called social accounts or pre-payment cards was anticipated, which is considered a suitable way to solve this problem.

### 2.13.3 Contentious provisions of the Exercise of Rights from Public Funds Act

In May 2015, the Ombudsman filed a request for a review of the constitutionality of paragraph five of Article 10, point 4 of paragraph one of Article 12 and paragraph one of Article 14 of the Exercise of Rights from Public Funds Act and the constitutionality and legality of paragraph two of Article 7 of the Rules for determining the savings amount and property value and on the value of provision for basic needs with reference to procedures of exercise of rights to public funds based on the provision of paragraph three of Article 17 of the ZUPJS. The entire text of the request is published on our website. Below, we summarise certain findings and assessments relating to the legal presumption that causes many problems in practice and also constitutes a violation of human rights:

"In the provision of paragraph five of Article 10 of the ZUPJS, the legislator defined a legal presumption (*praesumptio iuris*) that non-marital cohabitation exists between parents of a child unless there are grounds for the annulment of the marriage as per the ZZZDR.

We believe that this presumption constitutes an excessive encroachment on privacy and individuals privacy, which is completely disproportionate to the needs to protect the public system from abuse.

The rule of the reversed burden of proof is seldom applied in Slovenian law, e.g. when prosecuting organised crime, determining liability for damage caused by a hazardous object or when assisting victims of subtle forms of systematic violence (bullying in the workplace, discrimination etc.), i.e. when combating the worst forms of crime or protecting weak individuals from significantly stronger opponents. It is thus unacceptable for the reversal of the burden of proof to be applied in relations of the state when dealing with weaker citizens, particularly concerning claims for basic rights needed for the physical survival of people who are often functionally illiterate, and their de facto access to legal protection is frequently exceptionally difficult.

We believe that such arrangements constitute unjustified and unequal treatment of many individuals from certain groups of people, which we substantiate in the following five paragraphs.

Regarding the fact that the contested legal presumption of non-marital cohabitation applies unless one of the reasons for the annulment of marriage as per the ZZZDR is provided (Article 32 of the ZZZDR: Marriage concluded contrary to the provisions of Articles 16, 17, 18, 19, 20 in 21 of this Act is invalid.), the party's claim that there is no interest in joint cohabitation with another person would in our opinion already take precedence over such a presumption, since according to Articles 16 and 17 of the ZZZDR shared intent constitutes an element of marriage and thus also of the legal concept of non-marital cohabitation as per the ZUPJS. Regardless of the existence of such shared intent, competent decision-making bodies request additional evidence from parties concerned, usually in the form of witness statements, and establish the existence of non-marital cohabitation by reversing the burden of proof in the absence of such evidence.

Unequal treatment of persons who are unrelated was established in comparison to relatives as per the provision of Article 21 of the ZZZDR (Marriage may not be concluded between persons who are directly related as brother and sister, half-brother and half-sister, uncle and niece, aunt and nephew, and also not between the children of brothers or sisters, half-brothers or sisters.) since different standards apply to the former. Merely by referencing a family tie, two relatives may avoid establishing the actual existence of a committed relationship, while two people who are not related cannot even claim the absence of shared intent.

A person may be treated unequally compared to another person merely because the former has a child with an unmarried person and the latter with a married one (Article 20 of the ZZZDR: Nobody may conclude a new marriage until their previously concluded marriage is terminated or annulled.) since the reversed burden of proof will be applied in the decision-making procedure on the right of the first person, but not applied in the case of the latter person. The characteristics of a third party affect the right of the first person, but these should not be decisive criteria when claiming rights arising from the social endangerment of the first person.

With regard to enforcing rights to public funds, we believe that there are no justified reasons for differentiating between persons with severe mental disorders or persons with revoked legal capacity (Article 19 of the ZZZDR: Marriage may not be concluded by persons who are seriously mentally disturbed or legally incompetent.) from persons with minor or no mental disorders. Both may conceive offspring and should be in comparable positions when claiming rights relating to their economic situation. It is thus impossible to apply the rule of the reversed burden of proof in paragraph five of Article 10 of the ZUPJS for persons with severe mental disorders or persons with revoked legal capacity, while this rule is applied to persons with minor, or no, mental disorders if they have a child.

Due to the foregoing, we believe that the provision of paragraph five of Article 10 of the ZUPJS is contrary to the principle of equal treatment arising from Article 14 of the Constitution of the Republic of Slovenia when enforcing access to rights to public funds protected by the provisions of Articles 2, 34 and 50 of the Constitution."

The Constitutional Court has not assessed the constitutionality of the contested provisions yet, but has decided that the request will be discussed with absolute priority.

### 2.13.4 Poor records and incorrect clarifications of the Ministry

The complainants often expect clarifications from the Ombudsman about establishing their rights. They state in their letters that clarifications they receive from different social work centres about rights to public funds frequently differ and they wonder which information is actually correct. Appropriate information is essential for understanding and enforcing individual rights, and people who contact social work centres, which decide on these rights, are entitled to expect such information.

Unfortunately, they do not always receive information, as evident from the case below involving the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ). We discussed a case of a compliant who received a reply from the MDDSZ to her letter about the reimbursement of cash social assistance which was utterly unclear and also incorrect. The MDDSZ overlooked that the complainant had not been a recipient of cash social assistance (for over a year) and thus failed to calculate the amount of funds she had to reimburse, but had instead informed her that she had to first waive the right, and also explained that "*following the waiver*

*of the right to cash social assistance, it will be impossible to enforce the right again"*, which is obviously not true.

This was not the only case we discussed. A complainant who contacted the MDDSZ to conclude an agreement on debt relief as per the Conditions for the Implementation of Debt Forgiveness Act, received an incorrect reply from the MDDSZ stating that, according to its records, he did not qualify as a debtor as per point two of Article 2 of the Act (although he did meet the conditions), but failing to inform him that the Ministry could only forgive debt arising from unjustifiably received cash social assistance, pension support or child benefit if these were allocated in 2012 or 2013, but not other debt for which the complainant asked forgiveness.

The Ombudsman believes that such errors by the Ministry are unacceptable and constitute a violation of the principle of good administration. The MDDSZ corrected its clarification in the second case when reminded of this by the complainant, while it submitted the corrected reply to the complainant in the first case only after the Ombudsman's proposal.

### 2.13.5 Ineligible use of social benefits is sanctioned inappropriately

We were informed about the case of a complainant whose application for extraordinary social assistance benefit in cash was rejected by a social work centre because he had failed to prove eligible use of the benefits allocated previously. The complainant received social assistance in the amount of EUR 570, and proved eligible use 'only' for EUR 568.70. The remaining sum, amounting to EUR 1.30, would have to be returned to the budget of the Republic of Slovenia by the legally determined deadline. Since he failed to do this, he lost the right to extraordinary social assistance benefit in cash for 14 months following the receipt of the extraordinary social assistance benefit in cash.

The Ombudsman believes that laws regulating such cases are inadequate, since these are obvious examples of disproportion between the omission of due conduct and the consequences (sanctions). These arrangements are also contrary to the principle of equity. It is unfair to treat and sanction equally recipients of extraordinary social assistance benefit in cash who do not use the benefits accordingly or fail to provide suitable evidence to social work centres, and those who use extraordinary social assistance benefit in cash for a certain purpose and submit evidence in due time, but where discrepancies occur between the allocated benefits and funds used in the amount of few euros. Expert workers would have to warn beneficiaries about minor discrepancies and sanction them only after they failed to justify the eligible use of funds following a warning.

The Ministry of Labour, Family, Social Affairs and Equal Opportunities responded to our notification and sent a circular to all social work centres advising them to apply certain safeguards before and after allocating extraordinary social assistance benefit in cash in order to avoid the allocation of extraordinary social assistance benefit in cash being denied due to ineligible use, non-use or failure to submit evidence within the legally determined period.

Social work centres were advised to be diligent when considering applications if beneficiaries are able to prove the eligible use of funds for the purposes and the amount which they requested. They must also consider the health issues of beneficiaries or their mental problems, which may affect their memory or ability to provide evidence, and where the failure to prove eligible use may be avoided with the allocation of funds in another form. Social work centres should review the evidence they receive on the eligible use of benefits immediately, or as soon as possible, and inform beneficiaries if the evidence is unsuitable or insufficient and inform them also of the option to file a request for reinstatement if for justified reasons the funds are not used within 30 days. In cases when beneficiaries used the funds eligibly and within the legally determined time limit, but not in their entirety, beneficiaries are informed about returning the remaining amount of funds to the budget of the Republic of Slovenia within 45 days after receiving benefits.

### Social work centre failed to appoint a legal guardian in a special case in two years

The Ombudsman discussed the case of a lengthy procedure for appointing a legal guardian in the special case of a woman who was in the process of being evicted. A local court asked the social work centre to appoint the defendant in the contentious proceedings a guardian for a special case. The centre had asked the woman's personal physician, who was to be appointed her guardian, for his opinion or a statement as to whether the woman was able to claim her own benefits, assert rights and interests, express her will and take individual legal actions in the case, or whether another person should be authorised on her behalf; however, the physician did not respond to the centre's request. The centre failed to take any other action; it informed the court twice at the court's request that the procedure was still ongoing and that a medical statement was expected, and asked the court to forward such statement if it had received it already.

In the meantime, the court appointed a temporary legal guardian on the basis of paragraph one of Article 82 of the Civil Procedure Act, of which the centre had not been informed until the Ombudsman informed it thereof while discussing the case. Two and a half years had passed since the court asked the centre to appoint a guardian for a special case. The centre informed us that it would verify with the court whether the appointment of the guardian for a special case was still needed.

The Ombudsman assessed that the procedure for appointing a guardian for a special case was unacceptably lengthy, particularly due to the centre's passivity, and determined that the centre was obliged to determine whether its action was required notwithstanding the physician's activity, or the centre should have informed the court that the centre's action was not needed.

## 2.13.6 Preventing contacts between relatives is a form of violence against the elderly

Complainants wrote to the Ombudsman because their sister had been preventing their contact with their elderly mother, with whom the sister lived and took care of, for a lengthy period. Due to dementia, their mother's legal capacity had been revoked in full, and the tasks of the (then temporary) guardian were conducted by the social work centre.

The complainants also asked the centre for help, which managed to conclude an agreement with all children about when and in what way contacts or visits would take place. The centre's expert worker was even present during a few visits. The situation became complicated after a few months, when it was impossible to visit on an agreed day and also later. The complainants blamed their sister, while she rejected the complaints. The centre had no reason to believe that the daughter who took care of the mother would in any way intentionally prevent contact between the mother and other children, and the provision of care, the suitability of which was questioned by the complainants, was assessed as suitable. It must not be overlooked that the children were in dispute over an inheritance contract and that they all (and the centre) admitted that they were in conflict and that communication between them was poor.

The Ombudsman proposed that the centre examine the possibility of organising and enabling contacts somewhere else if the temporary guardian was unable to ensure visits at the mother's home, and if necessary also provide transport for the mother to the location of the visit. We believed that the children had the right to contact with their mother (and vice versa) and that she alone could decide on such contacts. In the role of temporary guardian, the centre may object to contacts, but only if it is assessed that these are harmful to the person in care. The centre replied to our proposal that transport of the person in care was not possible or would not be beneficial to her because she was bedridden, disoriented and unable to express anything, and such transport would worsen her medical condition.

We informed the complainants of the centre's reply, and explained that they could submit a request to the centre to transfer their mother to institutional care, which would allow them to visit her regularly. We suggested that they contact the centre if they again thought that their mother was not being suitably taken care of by their sister. If their complaints about the care had been justified, the centre could and would have to take action.

Unfortunately, this is not the only case in which a person who is taking care of an elderly relative with dementia has rendered impossible or even prevented contacts with other relatives. Family disputes and self-interest can always be detected in the background, while the rights, benefits and interest of the elderly relative who is fully dependent on the care and help of others are somehow forgotten. This is also a form of violence against the elderly, and the Ombudsman is certain that discussion of such cases demands special diligence. The suitability of care must also be assessed in terms of maintaining the social network and meeting the non-material needs of people in care.

## 2.13.7 Institutional care

In the 2014 annual report (recommendation no. 100), the Ombudsman recommended that the Government prepare a programme to expand the capacities of occupational activity centres and enable persons affected to participate in the service of guidance, care and employment under special conditions.

The Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ) informed us that guidance, care and employment under special conditions for adults with mental and physical disorders were being implemented in 2015, and will be provided by public and private institutions with suitable concessions within a public network to a greater extent than in 2014, i.e. 70 persons were included in this service at public institutions. The MDDSZ also stated:

"The MDDSZ agrees with the Human Rights Ombudsman of the Republic of Slovenia that the preparation of a programme to expand the capacities of occupational activity centres is urgent, and it is necessary that sufficient financial resources be provided from the budget of the Republic of Slovenia for proposed inclusions within the measures provided and anticipated. On the basis of a review of persons waiting to participate in the guidance, care and employment under special conditions, the expansion by 150 places was anticipated within the draft budget. The expansion of the service will extend to approximately 25 per cent of all persons on the waiting list."

In 2015, we received no new complaints regarding the relevant issue, and therefore believe that preliminary assessments on the needs for inclusion in occupational activity centres were also the result of uncoordinated records of the persons concerned.



# 2.14

## UNEMPLOYMENT

FIELD OF WORK	CASES CONSIDERED			RESOLVED AND FOUNDED		
	2014	2015	Index 15/14	NO. OF RESOLVED	NO. OF FOUNDED	PERCENTAGE OF FOUNDED AMONG RESOLVED
14. Unemployment	44	36	81.8	33	14	42.4



### 2.14.1 General observations

In the field of unemployment, we discussed 36 complaints in 2015, which is less than in 2014, when 44 complaints were considered. However, the number of justifiable complaints was very high in 2015, i.e. 42.4 per cent. In 2014, this number was 35.1 per cent and 15.8 per cent in 2013.

**The number of complaints undoubtedly does not reflect the scope of unemployment in Slovenia.** Many complainants contact us also during our field sessions; they ask for advice or clarification and do not file written complaints. The low number of complaints is also the result of the Ombudsman's recording of complaints; complaints are interconnected and thus unemployment issues sometimes remain 'hidden' in other substantive fields (social distress, social benefits, employment relations, housing matters etc.).

**We established the violation of constitutional rights to personal dignity and safety (Article 34 of the Constitution of the Republic of Slovenia) and safety at work (Article 66 of the Constitution of the Republic of Slovenia).**

We add the following to the Government's response report and particularly to the report of the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ). The MDDSZ realised the recommendation on the immediate settlement of all financial liabilities regarding the unemployed; it also supported the recommendation to stop the further reduction of funds for active employment policy measures. Regarding the recommendation that the MDDSZ implement a detailed evaluation of seminars and workshops conducted as measures of the active employment policy, and a detailed analysis of the extent the participation at individual seminars increased individuals' employability, the MDDSZ provided only a general explanation in its response report which was not supported by any facts or evidence. It was stated that participants were generally satisfied with seminars, workshops, lecturers and implementation. We expect concrete and conclusive data. Mere descriptive reporting is insufficient. The same applies to the description of the treatment of the unemployed by the Employment Service of Slovenia (ZRSZ). We expect that the anticipated assessment according to the EFQM Excellence Model would result in concrete improvements.

## 2.14.2 Training and employment of the unemployed

Again we cannot ignore complaints about the selection of workshops, seminars and their providers. Complainants were dissatisfied, since it was not clear when and under which conditions the ZRSZ referred an unemployed person to training or education. It seemed as if the ZRSZ had no advance plan or strategy, and as if preliminary knowledge, competences, interest and motivation of individual participants were irrelevant. Certain complainants stated that the ZRSZ had not offered them any form of additional training or participation at a seminar for several years. For this reason, we repeat the recommendation from 2014 in its entirety.

The fact that the Government adopted the Active Employment Policy Measures Implementation Plan for 2016 and 2017 at its regular session on 21 January 2016 is commendable. EUR 182,570,956.00 (budget of the Republic of Slovenia and the ESF funding) will be earmarked for the active employment policy; a total of 48,905 persons will be included in the programmes. **More than EUR 100 million will be available in 2016, which is 35 per cent more than in 2015 or almost the same as in 2014.**

## 2.14.3 Treatment of the unemployed

Unfortunately, complaints regarding work of the ZRSZ's employees or how they treat unemployed persons were also received in 2015. The unemployed frequently feel deprived of human dignity and feel that they were invited to the ZRSZ's adviser only to meet the requirement of a regular visit to the ZRSZ; whereby, the advice or service which they receive when visiting the ZRSZ is not verified or recorded anywhere. What is even more, if they fail to attend the meeting, they are subject to severe sanctions, i.e. deletion from the register of unemployed persons or the loss of cash social assistance for the time of their unemployment. But what happens to public employees of the ZRSZ if they fail to perform their work well in terms of professionalism and ethics?

Because we noted that dates for meetings are determined some time in advance and it is possible that individuals forget the dates of their appointments and then lose certain rights, we propose to the ZRSZ that they consider additional notification a few days before the anticipated date of the meeting. Furthermore, the effect of frequently replacing advisers assigned to unemployed persons should also be examined.

Example:

### **Decision on the request for the recognition of the right to cash benefits during unemployment made only after the Ombudsman's intervention**

When the Human Rights Ombudsman discussed a case of a complainant (whose rights as an insured person arising from an employment relationship were denied by the Pension and Disability Insurance Institute of the Republic of Slovenia (ZPIZ), although his employer had settled contributions following a court order, because he was settling contributions for voluntary supplementary pension and disability insurance himself for prudential reasons (the Ombudsman pointed out this violation of the rights of a worker with a recognised re-employment right in the 2014 annual report, p. 273) at the time of judicial proceedings when the illegality of the termination of the employment relationship was being examined and was also determined), the Ombudsman also established another violation affecting the complainant subsequently.

Later the complainant's employment relationship was terminated by his employer (judicial proceedings in this case are still underway) and he filed a request for recognition of the right to cash benefits during unemployment. The Employment Service of Slovenia (ZRSZ) rejected his request because he supposedly failed to meet the condition of the insurance period prior to the occurrence of unemployment: the decision was obviously based only on the review of the ZPIZ's record. The complainant filed a complaint about the decision with the Ministry of Labour, Family, Social Affairs and Equal Opportunities. The complaint was approved in April 2014. The decision of the ZRSZ's regional unit was annulled and returned for reconsideration, with the emphasis that the complainant had been successful in judicial proceedings against his employer, and the instruction that the authority of first instance must verify whether the employment relationship was established retrospectively on the basis of the court decision. In May 2015, the Ombudsman was informed that the authority of first instance had still not made a decision after one year, in spite of the simplicity of the case.

The Ombudsman informed the ZRSZ's representatives of the unacceptability of such lengthy decision making at the meeting held on 15 June 2015. They expressed their surprise that the decision was taking so long and immediately ordered the regional unit to resolve the case while observing the Ministry's decision.

Following the Ombudsman's intervention, the complainant finally received at least some funds by means of which he would be able to ensure himself and his family social security. **4.2-13/2015**

# 2.15

## CHILDREN'S RIGHTS

FIELD OF WORK	CASES CONSIDERED			RESOLVED AND FOUNDED		
	2014	2015	Index 15/14	NO. OF RESOLVED	NO. OF FOUNDED	PERCENTAGE OF FOUNDED AMONG RESOLVED
<b>15. Children's rights</b>	<b>464</b>	<b>375</b>	<b>80.8</b>	<b>332</b>	<b>103</b>	<b>31.0</b>
15.1 Contacts with parents	59	46	78	43	5	11.6
15.2 Child support, child benefit, child property management	53	28	52.8	25	5	20
15.3 Foster care, guardianship, institutional care	35	22	62.9	17	2	11.8
15.4 Children with special needs	52	43	82.7	41	19	46.3
15.5 Children of minorities and vulnerable groups	1	3	300	3	0	0
15.6 Family violence against children	30	17	56.7	14	4	28.6
15.7 Violence against children outside a family	20	20	100	19	7	36.8
15.8 Advocacy of children	87	80	92	65	37	56.9
15.9 Other	127	116	91.3	105	24	22.9

### 2.15.1 General observations

The number of complaints about children's rights decreased in 2015 by 20 percentage points compared to the number in 2014. The trend of the continued annual increase in the number of relevant complaints ended in 2014, and decreased even more noticeably in 2015. The decrease was recorded in all sub-fields monitored statistically, except for violence against children outside the family. Whereby it must be added that 286 interviews of expert advisers with complainants were recorded in the field of children's rights. Certain dilemmas and open questions of parents, who later fail to file complaints and are thus not included in the statistics of discussed cases, are frequently resolved during direct discussions in child advocacy.

The number of founded complaints also decreased from index 44.4 in 2014 to 31.0 at the end of 2015. The largest decline was observed in child advocacy (from 58 to 37), which is the result of consistent observance of criteria on which children should be afforded assistance by an advocate. After receiving detailed information by phone, many parents decide not to agree to the appointment of an advocate and apply other means available to them and their children to enforce their rights. In the 2014 annual report, we noted that the above average number of founded complaints "shows that the activities of all competent authorities in this field must be enhanced

to create the situation for children ensured to them by the Constitution, the Convention on the Rights of the Child, and legislation". We would be pleased if the described trend were already the result of such activities.

The nature of the issues in this field remained the same as in previous years. There is a growing need for new family legislation which consistently determines the division of jurisdiction between the executive and judicial branches of power, the obligation to acquire children's opinion in all legal procedures, establishes the prohibition of corporal punishment of children and, above all, ensures prompt and effective action by the competent authorities upon every violation of children's rights.

Slovenia has not yet eliminated the violation of Article 17 of the European Social Charter, which was determined by the European Committee of Social Rights of the Council of Europe (it failed to prohibit corporal punishment of children). The Ombudsman thus recommends that corporal punishment of children be defined by amendments to the Family Violence Prevention Act, which is subject to public discussion at the time of writing this report.

In the 2014 report, we stressed that the Republic of Slovenia was unjustifiably delaying the ratification of the Third Optional Protocol to the Convention on the Rights of the Child, which Slovenia signed on 28 February 2012. The Ombudsman proposed that the Government systematically monitor the signing and ratification of international treaties in the field of children's rights, and order the competent ministries to establish actual and legal barriers to the prompt ratification of treaties (recommendation no. 107). In its response report, the Government failed to clarify substantive reasons for delaying the ratification, but merely partially described the procedure of inter-ministerial cooperation. Such practice displays a lack of seriousness regarding international obligations and the unacceptable practice of state representatives who conclude international agreements to gain political support and then fail to ratify and transpose these policies to the internal legal order. These issues were also discussed at the meeting of the CRONSEE network (Children's Rights Ombudspersons' Network in South and Eastern Europe) in autumn 2015. The majority of the network's member states had already ratified the Optional Protocol.

Cooperation with non-governmental organisations continued regularly within the Centre ZIPOM. In 2015, we anticipated a conference on the participation of children, where the realisation of proposals and requirements of young people formed at the conference in November 2014 would be determined. Due to the complexity of preparing the conference and other obligations at the anticipated time, we rescheduled it for 2016.

In 2015, we also attended discussions in local and regional children's parliaments and at the national children's parliament which addressed the issue of education and vocational orientation. The Ombudsman is certain that children's parliaments are a good way of enforcing children's right to freedom of opinion and expression, and all relevant authorities should pay more attention to them at all levels of discussion.

Our cooperation in the European Network of Ombudspersons for Children (ENOC) was implemented mainly by e-mail; we discussed violence against children at the conference in Amsterdam in September 2015. At the conference of the CRONSEE network in Osijek, we discussed a very interesting aspect of enforcing children's rights: between the interests of parents and obligations of the state.

## 2.15.2 Advocate – A Child's Voice Project

In 2015, the Government again failed to realise the National Assembly's decision in 2013 to draft a special act on advocacy. We thus continued and upgraded the pilot project. It was revealed in practice that more attention must be paid to the work of advocates and their relationship with all participants in the procedure. In addition to supervision and intervision, we also appointed an ethics commission, which assesses individual actions, particularly from the aspect of compliance with the Code of Ethics. The procedure of periodically establishing advocates' competence (licence renewal) will be arranged legally in 2016, and thus, almost all expert groundwork for preparing suitable legal solutions will have been done. It was agreed with the Minister of Justice that we would examine the possibility of including advocacy among the Ombudsman's regular tasks within the anticipated amendments to the Human Rights Ombudsman Act.

At the end of 2015, the project included 51 active advocates; for various reasons, six advocates were inactive.

Since the project began, 490 children have had advocates appointed for them.

In 2015, 55 requests to appoint an advocate were received.

An advocate was appointed in 27 cases to 41 children. The appointment of an advocate was initiated by social work centres in 15 cases (out of 27 appointments), by a primary school in one case and by one of the parents in eleven cases. In six cases, an advocate was appointed by the decision of a social work centre and with parents' consent in remaining cases. At the time of writing this report, the possibility of appointing an advocate is being considered in seven cases.

The majority of appointments, i.e. six, were in the wider Ljubljana area, followed by the Notranjska region, the Karst and the southern Primorska region with five cases. The Gorenjska, Dolenjska, the north-eastern part of Slovenia and the Celje and Koroška regions each had four cases. No advocates were appointed in the Goriška region in 2015. So, in cooperation with Nova Gorica Social Work Centre, we organised a panel discussion for this region at the beginning of 2016, where we introduced the advocacy project to all interested parties. Many people attended the panel; however, no representatives of the judicial branch of power were in attendance.

We were unable to appoint an advocate in 21 cases, because the conditions for appointing one were unfulfilled. The reasons for non-appointment were various and included:

- In three cases, a social work centre required a guardian for a special case, i.e. for a baby in two cases, and once to represent a child in a compensation claim. The social work centres' requests were rejected in these cases, since an advocate would not be able to fulfil their purpose substantively.
- In seven cases, one of the parents refused to consent, and the social work centre did not find it necessary to appoint an advocate with a decision in spite of our appeal.
- An advocate was not appointed in five cases because matters were resolved during the discussion of the request and the child no longer needed an advocate.
- An advocate was not appointed in one case because the adolescent was of age.

More attention was paid to the promoting the project in 2015 and presenting it to the public. We believe that certain social work centres still do not trust advocates and frequently do not know in which situations an advocate can be most beneficial to a child. Another problem lies in the fact that, when appointing a guardian for a special case with a decision, the tasks of the guardian must be defined in detail, since an advocate in the role of guardian is not a suitable representative in court. The role and tasks of the advocate will have to be defined in more detail by an act.

A special introduction of the project to judges is planned for 2016, because many of them have reservations when appointing advocates, while others appoint them frequently and are also pleased with their work and results.

## 2.15.3 Family relationships

In the 2014 report, we recommended that the Ministry of Labour, Family, Social Affairs and Equal Opportunities accelerate the preparation of a new family code (recommendation no. 110). Unfortunately, we established that this work has been suspended due to the amendments to the Marriage and Family Relations Act, which was rejected in a referendum, which in accordance with the law also prevents the National Assembly from taking a different decision on the contents of the Act within one year after the referendum decision. Of course, the referendum decision does not prevent the preparation of expert groundwork from being continued, which should, among other things, divide in more detail the work of social work centres and courts. It has namely been detected in practice that social work centres still decide on contacts between a child and persons the child holds dear. What is more, the Act should also define in more detail decisions related to a child that may not be taken only by the parent to whom the child was entrusted after divorce. Example: in the case of a change of a child's permanent residence, administrative units are usually satisfied by the proposal of one parent, while schools do not request consent from the other parent when enrolling a child.

## Deciding on contacts between parents and children taken into custody

In examining a complaint, the Ombudsman came upon the issue of changing the scope of contacts between parents and children who have been accommodated in an institution providing custody (or placed in the custody of another person) determined by a court. Contacts are “agreed on” in individual project groups (IPS), as defined by the Act Concerning the Pursuit of Foster Care (ZIRD). In our opinion, such a practice encroaches on the rights of underage children. We obtained an opinion on this practice from the Ministry of Labour, Family, Social Affairs and Equal Opportunities of the Republic of Slovenia, and regarding this practice and the Inspection for Social Affairs at the Labour Inspectorate of the Republic of Slovenia (in the remainder of the text below, the opinions of both institutions will be termed ‘the contrary opinion’), which see nothing disputable in the said practice. The said practice has been found in several social work centres.

Our opinion is that any determination or changes to contact lie solely within the jurisdiction of the courts and that without explicit authorisation, no one may decide on this. What is especially important in the said practice is that no legal means are available against such decision-making.

The legal basis for changing the scope, time and manner in which contact is carried out is, according to the contrary opinion, is provided in the provisions of paragraph one and two of Article 27 of the ZIRD and in Article 37 of the Rules on conditions and procedures for the implementation of the Act Concerning the Pursuit of Foster Care (Rules). In the first two paragraphs of Article 27, the ZIRD stipulates that a foster carer must deal with all important issues regarding the care and education of the child in agreement with the child’s parents or guardian and the competent social work centre. For this purpose, he or she must participate in the individual project group appointed by the social work centre for the treatment of an individual child. A foster carer is obliged to consider the instructions of the social work centre and the agreements of the individual project group. In our opinion, such provisions provide no support at any point for the opinion that the child’s parents, foster carer and the social work centre can agree on any substantive issue that is in explicit conflict with what has been previously determined by a court decision. In our opinion, ZIRD relates primarily to the obligations of a foster carer and his or her relationship with the social work centre. If a foster carer who fails to comply with the instructions of the social work centre or the individual project group, this may be grounds for terminating a foster care contract. Meanwhile, the said Article cannot be understood in a way that provides the social work centre or the individual project group with a legal basis for taking arbitrary decisions on the child’s fate.

In our opinion, the only interpretation of the provision of Article 37 of the Rules is that agreements are made by the individual project group necessary for the actual implementation of contacts determined by a court, not for making changes to contacts determined by a court. Even if the said provision was actually meant to allow for the project group to make changes to contacts, such regulation of children’s rights with an implementing regulation is unacceptable. A possible regulation which would allow an individual project group to determine contacts between parents and children on its own, regardless of the decision of the competent court, would not be in accordance with the principle of legality or the principle of equality before the law as per paragraph two of Article 14 of the Constitution.

It is not completely clear how agreements in the individual project group are arrived at. If every agreement must enjoy the consensus of all members of the individual project group, then it could be understood that it is only possible to make an agreement where the explicit consent of the child in custody (under legal working age) and possible other members of the potentially extended individual project group is provided, as envisaged by Article 35 of ZIRD. If full consent is not given, it is not clear what kind of majority is required for an agreement to be considered as adopted.

The contrary opinion always emphasises that agreements made by the individual project group does not constitute decision-making and that there is no outvoting in the process. The contrary opinion emphasises that all members of the individual project group participate in making agreements, although it is clear from the response from the Inspection for Social Affairs that “changing contacts at the individual project group upon agreement made by the social work centre and parents is not disputable”. It can be concluded from the foregoing that two groups of legally determined members of the individual project group – foster carers and children – have no say in this. As an argument that making agreements at the individual project group should not be confused with decision-making, we have also received a statement noting that such agreements are

not enforceable. Although we believe that this argument is not relevant to the basic question, we emphasise that we otherwise agree that an agreement (decision) cannot be considered enforceable as defined by the provisions of the Claim Enforcement and Security Act, but it is actually enforced on the basis of the provisions of ZIRD, which demands that a foster carer – as the person who provides the child with care and education – follow agreements made by the individual project group.

Based on the complaints examined so far, we assess that in many cases children do not attend meetings of the individual project group at all (especially if they are very young, when their absence is understandable). In our opinion, the social work centre has undoubtedly a great influence on the opinions of the individual project group, because a foster carer, for example, as already mentioned, in particular needs to consider the instructions of the individual project group, and he or she will probably find it hard to prevent in practice an ‘agreement’ which is not, in his or her opinion, in the child’s interests. This is particularly problematic in cases when a foster carer wants to retain custody, and other participants in the individual project group (representatives of the competent social work centre) have the power to terminate the custody contract – this certainly puts the foster carer in a subordinate position to a certain extent. In such a case, the social work centre also plays a role in which, at the same time, it protects the right of parents and children to live together if the conditions for this are provided, and the right of children to be separated from parents if the conditions demand this, which greatly hampers the advocacy of the child’s interests exclusively. We believe that the making of agreements by individual project groups is in many cases in fact a form of informal decision-making by experts at the social work centre, while the issue of who or how such decisions may be challenged is not defined at all. No means of legal protection are available against such a decision, which is why parents can also be put in a very subordinate position in the social work centre.

All the possible problems were revealed in one concrete example, with the social work centre being solely responsible for establishing that the children explicitly reject (increased) contact with their parents (this wish is supposed to be a result of the manipulation of children), to which opposition was also explicitly expressed by both foster carers (who are supposed to have a strong interest in including the children in the foster family to the greatest extent and as long as possible). Therefore, although three of the five persons who, in accordance with the provisions of the ZIRD, comprise the project group opposed increased contact, the agreement to extend contact was taken by the project group. This particularly worries us, because in this case the court determined in advance the contact between parents and children in custody on specific days, namely for eight hours in total. The court expressly stressed in the explanatory note why contacts with children spending the night with parents were not appropriate. Contacts were later extended by the project group to several days without interruption, which in our opinion was an encroachment on the court decision not only in terms of scope, but also in terms of substance.

An additional difficulty is that it is not completely clear who, if anyone, represented the interests of the children in the procedure. The children were taken from their parents, so it is possible that the parents represented their interests in the procedure, which perhaps are not consistent with the interests of the children. Foster carers do not have the status of children’s representatives, and cannot bring an action on behalf of a child, and the child cannot do this on his or her own. The social work centre was the institution which actually provided a solution, which in our opinion is an encroachment on the children’s rights. Thus the children had no legal recourse to protect their rights.

We believe that this is a serious problem, which probably concerns in one way or another all children who have been taken from their parents. Such issues should be unambiguously resolved by law, because when the scope and manner of contacts are being determined – as an important right of children and parents – at least the possibility of legal protection, including of the children, must be provided.

### 2.15.4 Position of children in court proceedings

In May 2015, we organised a panel discussion, attended by around 300 participants, which addressed the position of children in judicial proceedings. At the panel discussion, we wanted to find ways to improve the position of children involved against their will in proceedings they do not understand, so that all participants in the proceedings would pursue the best interests of children and also ensure them. In preparing for the panel

discussion, we also wanted to shed light on the question to which many fathers, who feel discriminated against in all proceedings related to divorce, have drawn our attention. The affected parties believe that mothers are privileged in decision-making proceedings before state bodies and bodies exercising public powers regarding the awarding of custody.

### Discrimination of fathers in court decisions?

In the panel discussion, we also presented the results of our own analysis, which is published on our website, and here we summarise only some of the findings. With our analysis, we tried to find any indications of the alleged discrimination with respect to numerous relationships between mothers and fathers regarding final decisions on child custody.

The analysis included all decisions of the Family Justice Department of Ljubljana District Court which became final in 2014 (989 decisions), and selected for review almost ten per cent (95 cases).

The results of the analysis show that decisions on child custody are mainly taken by parents themselves (in 58 per cent of cases, parents reach an agreement in advance; in 37 per cent of cases an agreement is reached in the proceedings, and in 5 per cent of cases, child custody is awarded by a court). Only in one case in which the court decided on child custody did the parent's interests conflict regarding child custody.

Out of all 95 cases, the child was placed in the custody of the father in eight cases (eight per cent), of the mother in 71 cases (75 per cent), while in 15 cases (16 per cent) the court awarded joint custody.

Among the cases in which parents proposed the content of the divorce agreement in advance (55), there were 10 cases (18 per cent) of joint custody, in 42 cases (76 per cent) the mother had custody and in three cases (five per cent) the father had custody.

Among the cases in which an agreement between parents was reached only in proceedings (35), there were six cases (17 per cent) of joint custody, while in 25 cases (71 per cent) the mother had custody. In the five cases in which the **court decided on custody** with a ruling, the share of fathers who took custody was higher (20 per cent) than in the cases referred to in the preceding two paragraphs. Due to the small sample size, the result is statistically insignificant, and the specific circumstances of the cases outweigh it.

What surprised us most in the results of the analysis is the exceptionally high share of court settlements in the field where much conflict had been found. At the same time, this considerably reduced the significance of the results in terms of seeking indications of the alleged discrimination by gender in the proceedings when authorities decide on child custody. Our analysis thus confirms only the most obvious – differences between genders in the implementation of child custody are highly noticeable. However, the analysis does not confirm the alleged discrimination by authorities, but it actually shows that the higher the rate at which authorities become involved in disagreements between parent, the higher the share of men who are awarded child custody, although it is also true that with an increased rate at which the authorities become involved, primarily in rare judgements, the reliability of the results declines due to the small sample size. What also needs to be emphasised is that the analysis does not prove either that there is no alleged discrimination by gender, while it does prove that generalised allegations that female judges and female social workers award custody of all children to mothers do not hold true. At the same time, it is also true that it is obvious that, however the data are interpreted, mothers in general have a great advantage in society when it comes to child custody, while fathers express less interest in having custody of the child (if the 55 cases of agreement reached in advance is deducted from the total number of 95 cases, out of the 40 cases, custody was requested by 15 fathers and 35 mothers). Fathers probably have a more difficult task in proving that they are the more suitable to have custody, but proving such discrimination would require a considerably more precise study of cases in which the wishes of mothers and fathers conflict and child custody is decided by a court.

In most cases, court settlement is probably the best solution of such disputes. In all the files we examined, we found only one case in which the court did not allow a court settlement between the parents. However,

the only reason for the court's reservation was the amount of agreed child support. A court settlement in the proceedings was reached much later which did not significantly change the amount of child support.

Considering that some complainants stated to the Ombudsman that they concluded court settlements because of deception or various pressures, the Ombudsman recommends that court hearings be recorded, because in this way it would be possible to avoid false allegations about what happens in courtrooms.

We again want to warn about the speed of proceedings, especially decisions on interim orders, especially if the proposal implies the reasons for an interim order, from which it is clear that any delay would be contrary to the interests of the child (for example, violence or other problems in the family). While examples where delays of this type were found were very rare, the purpose of an interim order, which can remain unfulfilled due to prolonged decision-making, needs to be emphasised.

Proceedings at the first instance usually took between six and eighteen months. The longest proceedings took a few days less than five years.

The shortest non-litigious case from the sample was resolved in eleven days, and out of all proceedings, the fastest case was resolved in four days.

We believe that expert opinions should precisely define the number and duration of individual meetings with the expert. While the length or number of interviews certainly must not be a criterion for assessing the quality of an opinion, in the most complex cases, when it is very hard to make a decision, such information can help the parties in the judicial proceedings to assess an opinion.

The analysis failed to shed light on all the data available in decision-making procedures in family affairs. It did point to a complex issue which cannot be resolved with drastic simplifications in descriptions of the situation or reasons for it.

#### Example

##### **Only a court can decide on contacts between parents and children in custody**

The Ombudsman is still encountering problems in the implementation of contacts between parents and children who removed from them by a social work centre. We already pointed out this problem in the 2011 annual report.

When a social work centre removes a child from his or her parents, talks start about when and how contacts between the parents and the child should take place. The wishes and readiness of the parents as well the needs of the child should be considered. Parents and children usually do not have contacts immediately after children are separated, after which contact is established gradually. When contact starts and to what extent is decided by social work centres, although they have no legal authority to do this. Due to the absence of a legal basis, social work centres usually do not issue decisions regarding contacts, which is why parents cannot exercise direct legal protection. Social work centres believe that they do not decide on contact, as they only negotiate with parents about contact, and at the same time social work centres inform parents about the possibility of asking a court to decide this matter.

The Ministry of Labour, Family and Social Affairs sent a circular letter to all social work centres in 2011 about determining and implementing contacts in cases when children are taken away from their parents in which it warned social work centres about the need to submit a proposal to a court to determine the scope or limits of contacts.

We repeat our warning that any decision on contact between parents and children taken from them by a social work centre, which has no authority to do so, is an encroachment on the rights of children and parents if a proposal for a suitable arrangement of contact is not filed with a court at the same time, including a proposal for an interim order if necessary. **11.3-17/2015**

## Example

### Child's interests in practice

A complainant has been making an effort since 2014 to see the file of his children (the children were adopted, which severed the legal tie between them and the complainant) at a social work centre (Centre). The Centre rejected this, but the complainant was successful twice with appeals to the competent ministry. After the second final and executable decision of the ministry, the Centre stated that it would not allow the file to be viewed because this would conflict with the best interests of the child, as provided by Article 5.a of the Marriage and Family Relations Act and Article 3 of the Convention of the Rights of the Child. The Centre assessed that there was a high probability that the complainant might abuse the information in the file by publishing it on the Internet, as he had done in the past.

The Ombudsman has no power to decide whether an individual should be allowed to see a file or not. This is why we cannot assess whether there are certain reasons for denying access to a file. However, we believe that referring to the best interests of the child, while the decision is in violation of the valid regulations, cannot justify the decisions of state authorities or bodies exercising public authority. The principle of the best interests of the child demands only that the best interests of the child be examined and that the best solution for the child is actually chosen from the possible solutions, and that the interests of the child take precedence over the interests of other parties. These interests should be pursued by legitimate means and in a lawful way and within the legal framework for resolving individual cases. If one accepts the position of the Centre that the best interests of the child are of intrinsic value, which allows a departure from the valid regulations, then, for example, there is a question of how a family with a child can in any case be denied a right to public funds, even if such a denial is in accordance with the regulations. Such an understanding of the interests of the child would therefore demand that a family be provided funds for which it is otherwise not eligible, because it would be in the best interests of all children that no family has any material limitations.

The interests of the child must be a guideline in decision-making, but can by no means replace all other valid legal norms which place a boundary between the lawful work of an authority or a body exercising public powers and arbitrariness of decision-making which is not in accordance with the requirement of legal certainty.

We also warned the Centre that the danger for children was referred to only after the decision had become final, which had not been found in the proceedings, which is why we assessed that the Centre is merely trying to implement its decision, which had already been overruled twice by the competent body.

We also warned the Centre about the legal means available that it did not use to protect children, and we also forwarded the case to be examined by the Inspection for Social Affairs and the Administrative Inspection.

**11.0-94/2015**

## 2.15.5 Rights of children in kindergartens and schools

The Ombudsman examined 41 new complaints in this field, which is fewer than the year before (75). The complainants complained about allegedly inadequate protection of pre-school children, transportation of primary school children to school, inspection procedures that did not end in accordance with their wishes, decisions of the Ministry of Education, Science and Sport on the suspension of financing of additional professional assistance, allegedly disputable mandatory reading material for the first grades of secondary schools, and controversial screening of films during elective courses, consideration of the result in the national examination as the final mark for a course, complaint about a final mark from an individual course, and other problems occasionally faced by individuals in kindergartens and schools. In the field of sport, we again received several complaints related to compensation for transferring children between clubs. In most cases the complainants were referred to the competent authorities and were acquainted with the available means of appeal.

## Transportation of students to school and home

In three complaints, parents of primary school children turned to the Ombudsman concerning the transportation of students to and from school. They hoped that the Ombudsman would help them in efforts to have transportation continue to the same extent as in previous years. Municipalities made certain changes due to the high costs of transportation in previous years, which parents understood as violations of children's rights. Mayors explained to us the reasons for the changes. Unfortunately, municipalities receive increasingly less funds for their activities, while the scope of their obligations determined by law has not been reduced, but even increased. In no case did the Ombudsman establish that transportation was organised in violation of Article 56 of the Elementary School Act, which regulates such transportation.

## Children of immigrants in primary schools

The Ombudsman was contacted by the head of a primary school, who warned that the integration of children of immigrants was not adequately regulated. She stated that before they learn the Slovenian language well enough, certain rights of these children are violated. She provided some proposals to improve their situation. She had also written a letter to the Ministry of Education, Science and Sport, which replied to the letter. The headmistress was invited to a meeting with the state secretary, at which it was agreed that the relevant departments at the ministry would carefully examine the proposals and gradually include them in the national education system. The Ombudsman commends the ministry for its responsiveness to the proposals.

## Temporary suspension of financing of homework and study help

We received several complaints in which parents expressed their indignation at the decision of the Ministry of Education, Science and Sport to temporarily suspend the financing of homework and study help in inclusive schools for children with deficits in individual fields of learning. They thought that the decision would significantly hinder the inclusion of children with special needs in such schools and thus violate their right to be educated together with their peers.

Homework and study help for these children is recognised with a decision on placement in an educational programme with an equivalent educational standard. Children are being educated in schools together with their peers and this right is provided by the law.

With regard to the problem, we addressed our objection to and disagreement with the Ministry's decision. We said that the Ombudsman was appalled and very concerned with the decision, because no guarantees were given that these and other austerity measures in education would only be short term. In accordance with the Convention on the Rights of the Child, the state is obliged to act in the best interests of children, and is obliged to provide children with education, health care and welfare in accordance with the highest standards, and not only in accordance with its capabilities. It is known that the situation in the country is serious and that it demands a denial of current rights in all fields, which is why the proposed austerity measures should be assessed from all sides and their consequences or effects be comprehensively evaluated. However, we must not consent to reducing the rights of the most vulnerable groups of the population with such an ease. Our opinion was that the state could identify a number of other fields where funds were still being spent without much concern, and above all without adequate supervision.

We thus called on the ministry to carefully rethink the decision to abolish the financing of homework and study help as one of the forms of additional professional assistance to children with special needs and to exclude this from the programme of austerity measures. The Ombudsman is particularly opposed to the idea that schools should be responsible for examining students' eligibility for such help (thereby circumventing the provisions of decisions on placement) and combine homework and study help for multiple students. This would undoubtedly be merely a formal fulfilment of the provisions of decisions on the placement of individuals. Our opinion was that the existing regulations should nevertheless be consistently respected, including decisions on placing children with special needs. The response from the ministry, which we received within the deadline, stated that funds would be provided for homework and study help, which were transferred to schools in March.

## Testing of students for THC

We have examined a complaint from a practical lessons teacher in a secondary technical school in which she asked for the opinion and recommendations of the Human Rights Ombudsman of the Republic of Slovenia (Ombudsman) about testing students for the presence of THC in their saliva. She turned to the Ombudsman with the question of whether the tests would violate any human rights. She also wrote that the testing would take place in a school advisory service room, where at least one additional expert would be present. The school would enter the possibility of the use of THC test kits in the school rules. The purpose of such testing would be exclusively to protect the student who is unable to follow or perform practical training under the influence of drugs and who may thus endanger themselves and others.

The opinion of the Ombudsman was delivered to the complainant. In reviewing the regulations in the field of education as well as the regulations in the field of occupational safety and health, we assessed that there is no legal basis for testing students in schools, although the complainant is convinced that the Occupational Health and Safety Act is a sufficient legal basis for introducing testing in schools. Our opinion was that information about the use of drugs is medical information and that it is sensitive personal information, which should be handled with particular care.

With regard to this problem, we wanted to learn the position of the Ministry of Education, Science and Sport, and we also sent the Ombudsman's opinion to the ministry.

The response of the ministry encouraged us in the opinion that there is a lack of adequate legal basis for testing students in schools in the Vocational Education Act and in the Grammar Schools Act. The use of testing for the presence of drugs or alcohol for individual students is thus permitted only under certain conditions, which the ministry specified in its response. The Ombudsman recommends that the ministry include the regulation of THC testing of secondary school students, including the keeping and processing of personal data, in the planned amendments to education legislation.

## Recognition of last year's result in this year's secondary school graduation examination

We examined a complaint from a secondary school graduate who had addressed an application to the National Commission for General Matura (DK SM) for the recognition of her conditional positive mark in the Slovenian language, which she gained in the last year's spring examination round of the general secondary school graduation examination. She justified the application with a long-term illness of the nervous and muscular system that started at the end of 4th grade, just before the examination. She took the secondary school graduation examination again this year. Due to the illness and based on an expert opinion from the Commission for the placement of children with special needs (KU), she took the examination in two parts. The National Education Institute did not issue a decision on the placement, because the student had completed her secondary school education, it is only that she had not taken the secondary school graduation examination. The commission did not take into account other recommendations from the KU for certain adjustments and did not provide them for the student.

In the 2014/2015 school year, she was successful in four subjects in the examination, while she failed in the Slovenian language. This is why she asked the DK SM to recognise her previous result from the spring round of the examination, when she passed the test in the Slovenian language with a conditional positive mark. The DK SM rejected her application with the explanation that the exception proposed by the student would be in violation of the existing legislation.

The Ombudsman then also asked the DK SM for an explanation. We were interested in learning which article of the Matura Examination Act or other relevant act on secondary education the DK SM had referred to in its decision, or which article expressly prohibits the examination of any extraordinary circumstances over which a person has no control.

In its response to the Ombudsman, the DK SM said that the existing legislation does not allow any exceptions in the examination of individual cases. Students need to take the secondary school graduation examination

under equal conditions, which is a fundamental principle of the examination. The authorities were of the opinion that in order to ensure equality, the relevant legislation should precisely define all possible exceptions, the procedure for their recognition and the body which decides this.

The explanation from the DZ SM was suitable and understandable. Despite this, the Ombudsman believes that the student's application could have been accepted given her exceptional situation without any harm or suspicion that not all candidates were treated equally in the examination, because there is currently no outright prohibition in the legislation on positive decision-making in exceptional cases.

## Screening of films with controversial content to students

We examined a complaint in which a complainant expressed his opposition to the screening as part of an elective course of a film with homosexual and erotic content to students at a grammar school. The selection of the film for the said course, which is mandatory for students, was commented on in the media by the head of the school.

We explained to the complainant that it was a problem of a substantive and expert nature, which falls within the responsibility of an individual school. This is primarily the responsibility of expert workers at the school (teachers, educational consultants and leadership), who decide and include in the annual curriculum of the school whatever elective content they offer to students. The parents' council gives its opinion on the annual curriculum, which is discussed and confirmed by the school council, where parents and students have representatives, which means that they can influence the selection and creation of elective content. Therefore, if individual students or parents do not agree with the content of elective courses, they can appeal to the school council, and eventually also to the Inspectorate of the Republic of Slovenia for Education and Sport. We explained to the complainant that there are several possibilities and means of appeal to the relevant authorities, who can influence the work of schools, including in terms of content.

Example:

### Head lice still a problem in schools

The Ombudsman again examined the problem of head lice infestation in primary school students. Some schools are quite unable to get rid of this pest. A headmaster who warned us about this problem explained that parents want teachers to examine children's scalps. He did not receive adequate information from the relevant ministry or useful instructions in this regard. In his opinion, there is no adequate legal basis for teachers to examine children's scalps. He turned to the Ombudsman with an appeal for advice.

We told the headmaster that the Ombudsman had already dealt with the problem of head lice infestation in schools in 2009, when it also formed its opinion. We assessed back then that the Ministry of Education, Science and Sport (MIZŠ) provides insufficient support to schools. We established that schools which discover head lice infestation act very differently. Some schools paid for an expert examination of all students' scalps, which was entrusted to the community nursing service. The latter does not provide this service as part of the public health care service, which is why parents are expected to pay.

In fact, expert workers in schools are not trained to diagnose or treat infectious diseases, including head lice infestation; they are not allowed to examine students, and that they need to inform parents about their children having head lice. Therefore, when a school detects a head lice infestation, two measures may be taken: for the examination in school to be carried out by a paid expert, or for the school to request certificates from the parents that their children do not have head lice. Medical certificates need to be paid for. With regard to the problem, we turned to the then Public Health Protection Institute of the Republic of Slovenia (now the National Institute for Public Health – NIJZ), which explained that, in accordance with the Contagious Diseases Act, the elimination of head lice is the obligation and responsibility of parents. Parents failing to do anything to eliminate head lice in their children are committing an offence which is penalised with a fine.



Even this answer failed to explain to us how schools are supposed to deal with this problem, which is why we also sent an inquiry to the MIZŠ. The MIZŠ said in a response that it had not sent any circular letters or instructions to schools about how to deal with the issue.

Schools are left to their own devices on this matter. If a school turns to the MIZŠ with a question about the issue, it is referred for information to the Health Protection Institute (ZZV) or the NIJZ. The MIZŠ also believe that expert workers in schools have no legal basis for examining children's scalps. However, since the NIJZ or the ZZV recommend that teachers examine children's scalps at least twice a week, the leadership of schools must inform parents about this and ask for their permission.

We are not satisfied with the answers we received. The Ombudsman is of the opinion that the MIZŠ should issue clear instructions to schools on how to deal with the problem of head lice infestation, where to turn to, and who should establish whether and which students have lice. We recommended that schools be issued adequate instructions on how to act, and that they coordinate their measures with the Ministry of Health (MZ). This is the only way make all schools act the same and prevent unnecessary anger and dissatisfaction on the part of parents. The MIZŠ accepted the Ombudsman's proposal and agreed with the MZ that, given the public health nature of the problem of head lice infestation, it will prepare adequate instructions and proposals for measures for schools.

However, this obviously has not happened (yet), which is why we are pointing to the problem again. We demand that the competent state authorities implement the Ombudsman's recommendation that the MIZŠ prepare adequate instructions for schools on how to act in cases of head lice infestation. In our opinion, the complaint was justified. **11.0-75/2015**

Example:

#### **Handing of invoices for payment of costs to students**

The Ombudsman has received for examination a complaint related to the issuing of invoices for payment of meals in schools. According to the complainant, children receive invoices in (closed) envelopes in school and deliver them (or not!) to parents. She thinks this method of delivering invoices is unacceptable, including because some children open envelopes of their schoolmates and get information that is not their business. Students who have subsidised meals are frequently ridiculed. The complainant wanted the Ombudsman to examine the problem and warn the authorities about it.

Based on information we received from some schools, the handing of invoices is done differently in different schools. Many schools use the method described by the complainant, as this was agreed with parents at the beginning of the school year. Some schools use standing orders, a method that we think is more suitable.

The Ombudsman is of the opinion that it is not suitable for invoices to be delivered to children. However, sending invoices by registered mail cost too much for the particular school. On the other hand, some parents might not claim the registered mail for a lengthy period. This is why we believe that the problem can be solved in schools at the beginning of the school year. In the Ombudsman's opinion, it would make sense for parents to arrange standing orders, on the basis of which banks would charge for the costs of school meals every month, as well as other costs related to school (school excursions, outdoor lessons, trips). Parents would receive invoices only in electronic form. In this way the problems which the complainant points out can be avoided.

According to the information available to us, schools have very different practices in this field, as they are obviously adjusted to local conditions. We believe there is no need for a uniform practice or special instructions from the ministry. In any case, the problem could be discussed by the parents' council and the school council, which could propose an adequate adjustment of the practice which would be respected by parents. **11.0-81/2015**

#### **Who may inspect school bags?**

We were notified about a questionable practice in a secondary school where security guards inspect school bags because they suspect that students are taking prohibited substances or items into school.

Security guards are not authorised to carry out such inspections, even if they were given prior consent by a student, and thus any inspection is a violation of children's right to privacy. Unfortunately, the complainant did not name other school, which we would otherwise have warned about the questionable practice.

#### **Hazing**

The Ombudsman warned in the 2013 annual report about violent initiation rituals in secondary schools, which violate children's right to dignity. We are happy that we can present a case of good practice, with which were acquainted by Nova Gorica social work centre.

In cooperation with the police and the Nova Gorica school centre, the centre prepared various materials (legal bases, leaflets and a form for reporting to safe spots), which were intended to deal with the problem as comprehensively as possible. We assess that all the activities present a case of good practice which can significantly contribute to reducing violence in schools. We believe that this approach to dealing with this issue could be taken by other communities where hazing occurs. We included the information in the Annual Report, because we think that cases of good practice should be given more attention, and that the public should also be acquainted with them.

### **2.15.6 Compensation for the transfer of a child to another sports club**

The Ombudsman again received several warnings about the behaviour of sports clubs upon transfers of underage athletes to other clubs. High amounts of compensation are demanded, which parents find unacceptable.

A complainant acquainted us with the case of his 12-year-old grandson. He said that EUR 600 in compensation had been demanded for his transfer to another club. After a discussion with the president of the club, the amount was reduced to EUR 300. Since the grandfather did not give up, the club reduced the amount once more (to EUR 150) and explained that this was the "final offer".

We explained to the complainant that the Ombudsman had already dealt with the problem of high compensation (in some cases amounting to several thousand euros!) in cases of transfers of underage athletes. The problem was included in the Ombudsman's annual reports (for 2009 and 2010). We advised the complainant to try to make an agreement with the club, because we were not familiar with the contract that was signed between the club and the parents. We do not know if the child joined the sport club under a contract or only with an accession statement. In our opinion, an accession statement alone is a doubtful basis for the requested compensation.

We explained that we have no legal basis to intervene in the basketball club or to influence the branch association to change the rules on the conditions for transferring young athletes to other clubs. The Ombudsman's position on the problem is that the internal regulation of relationships in sport associations without external control is inadequate, and might lead to abuses or at least irregularities.

The complainant thanked the Ombudsman for the answer. He said that he had forwarded our letter to the club and that representatives of the club had further reduced the compensation to EUR 50 for the recovery of administrative costs. In our opinion, this shows that responsible representatives of clubs can freely set the amount of compensation upon the transfer of a young athlete to another club. The Ombudsman thus recommends that the issue of the suitability of compensations for transferring children between sports clubs be regulated in the Sports Act.

## 2.15.7 Scholarships

The number of complaints considered was the same as last year. Particularly noticeable were the issues of (unduly) long procedures for deciding with complaints from individuals about decisions and the issue of refunding of unduly received scholarships. We also examined complaints concerning the first call for applications for the right to scholarships for shortage occupations.

In reviewing the complaints, we established that the deadline determined by law for deciding on complaints at the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ) were considerably exceeded in the cases in question, despite the ministry's hiring of additional staff. The average time in which a decision was made on complaints from 2014 and 2015 was six to eight months, which in the Ombudsman's opinion is still too long for secondary school or university students, who often depend on scholarships. The Ombudsman believes that the procedure is being delayed without justification, and so the MDDSZ is thereby violating the principle of good governance.

The first call for applications for awarding scholarships for shortage occupations had an open deadline, meaning that the scholarship recipients were selected in the order in which complete applications were received, with regard to the date and hour of submission of individual complete applications, until all available funds were spent. In accordance with point 7 of the text of the call for applications, the form should have been available on the website of the Fund on the first day of the deadline for the submission of applications (24 August 2015).

In the Ombudsman's opinion, technical difficulties in providing on-line access to the application form, which should have been anticipated by the Fund, could result in applicants being treated unequally. Applicants who relied on the provision under point 7 of the call for applications and planned to print the application were in disadvantaged position compared to those who received the form at the Fund's headquarters. The fact that the applicants who live in Ljubljana were able to go to immediately to the Fund's head office when they realised that there was a problem with the on-line access could also mean additional unequal treatment, since those people who come from other places did not have this option (within the same time frame).

The Ombudsman sent an inquiry to the Fund in which it was urged to take a position on the alleged discrimination and tell us what measures it would take to ensure that all applicants are treated equally. In a letter sent to the Fund, which was also sent to the MDDSZ, the Ombudsman provided the preliminary opinion that unequal treatment cannot be remedied other than by annulling and repeating the call for applications. This is exactly what happened.

## 2.15.8 Children with special needs

The Ombudsman received and re-examined somewhat fewer complaints from this field (35) than in the year before (43).

More complaints related to the exercise of the right to child care allowance, either because of the parents' conviction that they were eligible for a higher allowance, although their children did not have the most severe types of disorder, or because individuals were convinced that the processing of their complaints about negative decisions took too long.

We also examined a complaint concerning the concurrent exercise of the right to child care allowance and assistance and attendance allowance. Parents of the most severely affected children had tried to exercise the right to both allowances in the past, and in this regard they had turned to the labour and social courts. The latter confirmed their conviction that parents may exercise the right to both allowances already in 2012. However, only in June 2015 did the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ) send to social work centres (CSD) and the Pension and Disability Insurance Institute of Slovenia a relevant circular letter informing them that both rights could be exercised concurrently. Parents thus had to again submit applications to exercise a right that they had to give up in the previous years due to the incorrect interpretation of regulations.

We asked about the matter of backdated payments of child care allowance and assistance and attendance allowance. With regard to the inquiry about the issue that we sent to the MDDSZ, the responsible representatives said that each specific case would be examined separately and that the best possible solution for the beneficiaries would be found. The Ombudsman recommends that the ministry reach a settlement with all affected parties who exercise their rights in judicial proceedings or to remedy the injustices by amending the legislative regulation.

On the basis of the answer from the MDDSZ, we referred the complainant to the competent CSD in order to again exercise the right to child care allowance. The complaint was justified.

In certain complaints, parents expressed their dissatisfaction with the implementation or providers of additional professional assistance to students with special needs in inclusive schools, because they said that this assistance should be provided exclusively by an expert with adequate specialisation (speech therapist for a child with a speech impediment, deaf education teacher for a deaf or hard-of-hearing child etc.).

Two complaints concerned parents' dissatisfaction with a placement decision. In one complaint, the parents could not come to terms with the decision that their daughter should be enrolled in a special primary school. In the second complaint, a social care institution complained to the Ombudsman about the decision to place a boy in a special programme. Experts at the centre thought that the said programme was insufficiently demanding for the boy, as his abilities were higher. Together with the boy's mother, the centre made efforts to have the placement changed, but without success. The Ombudsman could not intervene in any way, because the Ombudsman is not authorised to directly change the expert opinion of the commission competent for the placement of children with special needs, and also cannot take a position on technical issues. It also cannot change a decision of a body of second instance. We nevertheless assessed that the complaint was justified, because the second-instance commission for placement at the Ministry of Education, Science and Sport (MIZŠ) could re-evaluate the boy's abilities, especially if the expert (psychological) opinions of experts of the institute and experts of the commission for placement regarding his abilities differed. The Ombudsman is also of the opinion that all children should be given the opportunity to utilise their abilities to the greatest possible extent, and, in any event, in a way that is in the child's best interests.

The adjustment of lessons to a decision on placement was a problem in two secondary schools. On the basis of information on the existence of the Instructions for the implementation of educational programmes of vocational and professional training with adjusted implementation and additional professional assistance, which the Ombudsman sent to the parents, the parents solved the problem by means of talks with the schools where the said instructions were sent to teachers.

One complaint contained a complaint by the president of the parents' council in an institution for children with special needs to effect that children who attend a special education and schooling programme are not treated equally, depending on the type of institution implementing the programme (a social protection institution or institution in the field of education and schooling). The Ombudsman has been pointing to this problem for years. Whether children with special needs should be given more or fewer rights than they are entitled to should not depend on the type of institution. These rights should be provided to an equal extent within the context of the children's deficiencies and limitations.

The Ombudsman also examined complaints related to the alleged (non)operation of commission for the placement of children with special needs. Allegedly this field is at a standstill, with complainants claiming that placement procedures are not carried out in accordance with the Placement of Children with Special Needs Act (ZUOPP). Several parents and the Association for the rights of sick children warned us about the problem. With regard to the problem, the MIZŠ organised a meeting immediately after receiving the complaints and inquiry from the Ombudsman, at which participants were given a number of explanations.

The standstill in the implementation of placement procedures was due to the reorganisation of the department for the placement of children with special needs at the National Education Institute (ZRSŠ). The main purpose of the reorganisation was to upgrade work on placement procedures. The leadership of the ZRSŠ decided to reorganise also because the terms of all members of the commissions ended in April. There was a significant backlog; all documentation was in hard copies; too many secretaries were servicing the expert service, all of

which extended the time taken for procedures. A computer programme was made and the second-instance commission at the MIZŠ also has computer access to the documents of first-instance commissions. Expert workers now need to perform a number of operations (on the computer) themselves, which has caused a lot of ill will among some of them. The main purpose was to digitalise and upgrade procedures without encroaching upon the ZUOPP or its implementing regulations. Only the instructions on the work of commissions were changed. The responsible persons also informed the participants with information on the backlog for 2014, the number of cases examined in 2015 until the beginning of November and the number of cases that are planned to be examined by the end of the year.

Despite the explanations from the leadership of the ZRSČ, our opinion was that the complaints were justified. Children who are waiting for a decision on placement have the right to a quick procedure, or at least in accordance with the time limits for issuing decisions set by the ZUOPP.

As in previous years, the problems persist in the treatment of children with emotional and behavioural disorders and children with severe psychiatric problems because there are still no suitable accommodation facilities to provide suitable assistance by child psychologists. The Ombudsman had warned about this already in the previous annual reports.

The Ombudsman was asked again to intervene by parents of blind and visually impaired children, who pointed to the inaccessibility of adjusted study material, the issue of a permanent assistant for providing physical assistance and the insufficient number of hours of additional expert assistance for blind pre-school children and secondary school students. Upon our inquiry, the MIZŠ explained that it is well acquainted with the issues, and that better inter-departmental cooperation is required to solve these issues, especially in the field of copyright and preparation of textbooks, as well as with regard to the necessary amendments to the ZUOPP.

At the beginning of 2015, the Slovenian Dystrophy Association acquainted us with the abolition of professional assistance for children with special needs by the Ministry of Education, Science and Sport.

We warned the competent working body of the National Assembly at a session on 20 January 2015 about the advisability of proposed austerity measures in the field of education, and we published the following text on the website:

*“The Human Rights Ombudsman of the Republic of Slovenia (Ombudsman) has received for examination complaints which include warnings and protests against the decision of the Ministry of Education, Science and Sport regarding the ‘temporary’ suspension of financing of homework and study help for children with special needs who are educated in inclusive schools. Homework and study help for these children is recognised with a decision on the placement in an educational programme with an equivalent education standard. Children are being educated in primary and secondary schools together with their peers, and this right is provided by the law. The Ombudsman is appalled and very concerned with the decision, because no guarantees were given that these and other austerity measures in education would only be short term. In accordance with the Convention on the Rights of the Child, the state is obliged to act in the best interests of children, and it is obliged to provide children with education, health care and welfare in accordance with the highest standards.”*

## 2.15.9 Right to participation

In the recent reports on its work, the Ombudsman also wrote about the exercise of children' right to be heard and to participate in decisions concerning them. As an interesting proposal, we mention the proposal that the Ombudsman “launch the procedure for the enactment of a law (and changes to the Constitution), which would stipulate the postponing of Christening, Confirmation and First Communion as well as circumcision to the age at which a young person matures and can decide for themselves about such matters”.

We explained to the complainant that the Ombudsman had no power to table legislation, which is why it cannot directly propose laws or changes to the Constitution as the highest legal act in the country. Only the government, members of parliament and the National Council of the Republic of Slovenia have the power to propose legislation. Individuals who wish existing laws to be changed or propose a new law, can submit a

relevant proposal if they can collect the signatures of at least 5,000 voters who support the proposal (Article 88 of the Constitution of the Republic of Slovenia). Thus far, practice has shown that the fastest way to a new legislative regulation is through the government, because in this case majority support in the National Assembly as the legislator is usually secured.

Thus the Ombudsman usually addresses its proposals and recommendations to the government or relevant ministries, while substantively justifying its proposals. It is not necessary that the executive branch of power accept our arguments, as in preparing an individual legislative proposal, it also must assess all the effects that the proposal could have in various fields.

Amending the Constitution as the fundamental legal act of the country is an extremely sensitive and demanding procedure, as this usually changes the fundamental relationships and basic legal principles on which the organisation of the state is based. The Ombudsman has assessed that the Slovenian Constitution is general enough and open for the development of democratic society and that it does not require additional provisions on the exercise of freedom of profession of religion or a more detailed division of religious and state tasks. That is to say, the complainant's proposals encroach on freedom of conscience (Article 41 of the Constitution), while at the same time they do not encroach on human rights and fundamental freedoms in the same way, as they do not have the same or comparable consequences. Some religious customs mentioned by the complainant may affect a person's dignity alone, while the circumcision of boys also violates their physical integrity. The Ombudsman has already discussed the circumcision of boys as a violation of children's rights and reported on this in the 2011 annual report. We told the complainant that we did not accept his proposals.

## 2.15.10 Children in the media

At the end of 2015, we received a report of alleged abuse of children for political purposes. The complainant assessed a video clip published on the Internet as political propaganda and scaremongering among voters concerning a referendum that was about to be held.

We wrote separately about the issue of participation of children in political propaganda in the 2011 annual report (page 308), while in the 2013 annual report in relation to the issue of children in the media we also published our conclusions and proposals (pages 317 and 318), which demand in point 12 “*that all forms of abuse of children for political propaganda, promotion of politicians or political parties should be prevented*”.

We usually address our warnings to the media and editors and journalists, who might not necessarily recognise violations of children's right to privacy in their articles. Very rarely do we face cases in which parents do not respect the rights of their children and allow their personal information to be published (especially photographs) without assessing the possible harmful consequences of such publication in the future, when the children become adults. We assessed that, in the case concerned, the children appeared in the video clip with the consent of their parents, and that, in our opinion, possible reporting of the parents to the competent social work centre would not be sensible. A social work centre may take measures against parents or guardians only if their actions undermine the child's development, which would be very hard to show in this case. In our assessment, the children in this case were abused for political propaganda, but this fact would warrant a possible intervention by the competent authorities only in the context of other (additional) circumstances on the basis of which greater endangerment of the children could be anticipated.

In our opinion, we informed the complainant that the aforementioned video clip could be problematic from the aspect of compliance with the provisions regulating election and referendum campaign, which is why we proposed that the report be sent to the Ministry of the Interior as the competent ministry. The ministry can discover who made the video clip, on which the legal definition of the disputable act also depends.

# 2.16

## OTHER



FIELD OF WORK	CASES CONSIDERED			RESOLVED AND FOUNDED		
	2014	2015	Index 15/14	NO. OF RESOLVED	NO. OF FOUNDED	PERCENTAGE OF FOUNDED AMONG RESOLVED
<b>16. Other</b>	<b>325</b>	<b>307</b>	<b>94.5</b>	<b>275</b>	<b>11</b>	<b>4.0</b>
16.1 Legislative complaints	26	31	119.2	22	2	9.1
16.2 Remedy of injustice	7	7	100.0	6	0	0
16.3 Personal problems	24	24	100.0	24	0	0
16.4 Explanations	234	221	94.0	201	6	3
16.5 For information	18	10	55.6	9	1	11.1
16.6 Anonymous complaints	16	14	87.5	13	2	15.4
16.7 Ombudsman	0	0	-	0	0	-

The Ombudsman received a total of 307 various letters in 2015 which for various reasons could not be classified as complaints in the sense of Article 27 of the Human Rights Ombudsman Act. Such letters are kept in the "Other" file and cover a wide range of topics that demand very different methods of examination.

Among the so-called legislative complaints, we include proposals from individuals for legislative or normative regulation of a certain field or open question, or proposals for existing regulation to be amended. We usually tell complainants which state body is competent to draft normative changes, and also acquaint them with the Ombudsman's activities in the field in question. Depending on the content of proposed normative changes, we also sometimes acquire an opinion from the competent body which we forward to the complainant.

Most of the work on legislative complaints consists of reviewing the draft acts and implementing regulations sent by competent state bodies (usually in the procedure of so-called inter-ministerial coordination). Our comments and proposals are limited to the question of how the proposed changes would affect the implementation of human rights and fundamental freedoms, but even this requires a thorough examination of all the proposed solutions, and frequently also special coordination meetings with the producers of regulations.

The complaints that we examine to redress injustice are very rare, because most such complaints are classified according to the substantive issues concerned (for example, the issue of the erased, reduction of pensions on the basis of the Fiscal Balance Act etc.).

Among complaints concerning personal problems, we include letters sent to us in situations of distress by individuals who usually have certain medical problems. In such cases, we usually do not initiate a procedure, but we try to help complainants with explanations and by referring them to the competent services.

The biggest share of complaints in the field in question is comprised of “explanations” (221 of 307). In their letters, individuals do not state violations of their rights or fundamental freedoms, but only ask for additional explanations of various letters from state bodies, for information about the normative regulation of certain issues, for information about competences and similar. The Ombudsman always explains that the interpretation of regulations is not in its jurisdiction and refers complainants to competent state bodies or directs them to adequate legal procedures, while it also acquaints complainants with its position, if the content of the case has already been examined.

Even in cases of complaints that it only “takes note of”, the Ombudsman tries to establish whether it is possible to examine the case within the scope of its tasks. If we establish that certain procedures are already under way, such complaints usually help us to monitor the resolution of issues without our intervention.

If a complaint is anonymous, it does not mean that that it should not be examined, especially if it warns about certain violations of human rights. We try to respond to complaints that we receive by e-mails which do include the personal information of the senders, and the senders usually provide this later and thank us for our reply. In accordance with point 4 of paragraph one of Article 28 of the Human Rights Ombudsman Act, we usually decline complaints that are considered insulting, but they are kept in the records.



# 3

## INFORMATION ABOUT THE OMBUDSMAN'S WORK

### 3.1 Starting points for the Ombudsman's work

#### 3.1.1 History of the institution's work

The Human Rights Ombudsman of the Republic of Slovenia (Ombudsman) formally began implementing its work on 1 January 1995, when the staff, premises and other material conditions needed for work were provided (paragraph one of Article 57 of the Human Rights Ombudsman Act (ZVarCP)). The year 2015 thus marked the twentieth anniversary of our work. The first Ombudsman, mag. Ivan Bizjak, was elected Ombudsman in September 1994, and as he ascertained in his contribution published in *20 Years of the Operation of the Human Rights Ombudsman of the Republic of Slovenia 1994–2014*, he started his work almost from scratch. From the Council for the Protection of Human Rights, which functioned on the basis of the Act on the Council for the Protection of Human Rights and Fundamental Freedoms (*Zakon o svetu za varstvo človekovih pravic in temeljnih svoboščin*), he received two employees and two offices at the premises of the National Assembly of the Republic of Slovenia. Unresolved complaints (some 40 complaints) were also waiting for him. A lot of work had to be done before the formal start of the Ombudsman's office. In addition to technical, organisational, spatial and staffing issues, working methods had to be determined and agreed on. The fundamental challenge was to make the institution function quickly and efficiently and gain people's trust in it. The public had great expectations of the newly established institution. Only a few people then knew what the Human Rights Ombudsman was and how it worked in practice. More on this and the beginning of the work of the Ombudsman was included in a publication issued to mark our twentieth anniversary, *20 Years of the Operation of the Human Rights Ombudsman of the Republic of Slovenia 1994–2014*, issued in 2014 in Ljubljana. The publication is available from the Ombudsman's website: [www.varuh-rs.si](http://www.varuh-rs.si).

#### 3.1.2 The Ombudsman as a constitutional category

The Ombudsman is an informal form for protecting the rights of individuals in relation to holders of power. In the Constitution of the Republic of Slovenia it is classified under the chapter on constitutionality and legality. The constitutional organisation assigns a constitutional category to this institution and also great significance. The subjects of protection are the human rights and fundamental freedoms of individuals in relation to the authorities. The Ombudsman supplements the protection of human rights in relation to holders of power. It has no power to make decisions, but with its proposals, opinions, criticisms and recommendations, it has an effect on the consistent observance of human rights and fundamental freedoms by the competent authorities and holders of public authorisations. In cases when a complaint is investigated, the Ombudsman may ask the competent authorities for clarifications and additional information and determine a deadline by which the authority must provide clarifications and information. This deadline must not be less than eight days (paragraph two of Article 33 of the ZVarCP). If the authority fails to provide clarifications or information by the deadline, it must immediately explain to the Ombudsman why its request has not been granted. A refusal or disrespect for the Ombudsman's request is considered an obstruction to the Ombudsman's work. In relation to its work, the Ombudsman has the right to access all information and documents pertaining to the competence of state authorities. The Ombudsman's actions are not only restricted to direct violations of the human rights

and fundamental freedoms stated in the Constitution of the Republic of Slovenia, but may also act in cases of violations of any human right by power holders. In its work, the Ombudsman complies with the provisions of the Constitution and international legal acts on human rights and fundamental freedoms. When intervening, the Ombudsman must invoke the principles of fairness and good administration. Thus the Ombudsman also supervises good administration.

### 3.1.3 Election and position of the Ombudsman and her Deputies

On 1 February 2013, Vlasta Nussdorfer was elected the Human Rights Ombudsman of the Republic of Slovenia with a majority of 82 votes in the National Assembly of the Republic of Slovenia; she took up her 6-year term on 23 February 2013. As the holder of this position, the Ombudsman draws her strength from the reputation and position of this institution in society. The Ombudsman is elected for a term of six years by the National Assembly at the proposal of the President of the Republic with a two-thirds majority vote of all deputies. At the end of this term, the Ombudsman may be re-elected for another. This exceptionally demanding method of election contributes to the greater authority of, and broader political support for, the Ombudsman. Only a citizen of the Republic of Slovenia may be elected Ombudsman. During the candidacy, the provisions of the Constitutional Court Act which govern candidacies of constitutional court judges apply by analogy. The function of the Ombudsman is incompatible with functions in state and local authorities, bodies of political parties and trade unions or other functions and activities which, according to the law, are not compatible with implementation of a public function. A function which is not compatible with the function of the Ombudsman ceases when the Ombudsman takes office or is suspended if so determined by the law. If the Ombudsman fails to suspend a gainful activity which is incompatible with the Ombudsman's function by law, the latter function is terminated within 30 days from the day the relevant committee of the National Assembly establishes incompatibility. The Ombudsman cannot be held liable for opinions or proposals stated during the implementation of his or her function, and also cannot be detained during a criminal procedure initiated against him or her regarding the implementation of his or her function without the consent of the National Assembly. Early dismissal of the Ombudsman is subject to the Ombudsman's own request, or if the Ombudsman is convicted of a criminal offence subject to a custodial sentence with imprisonment or due to the permanent loss of the capacity to perform his or her function. The procedure for dismissing the Ombudsman commences at the proposal of one third of deputies. The National Assembly dismisses the Ombudsman if two thirds of the attending deputies vote for his or her dismissal.

The Ombudsman has a minimum of two and a maximum of four deputies. At the proposal of the Ombudsman, deputies are appointed by the National Assembly. In the case of absence, death, termination of the term, permanent or temporary loss of capacity to perform his or her function, the Ombudsman is replaced by his or her deputies, i.e. according to the order of replacement determined by the Ombudsman.

In 2015, the Deputy Ombudsmen were: **Jernej Rovšek** (responsible for constitutional rights, discrimination and intolerance, personal data protection, citizenship, aliens, remedy of injustices, international cooperation), **Tone Dolčič** (responsible for protection of children's rights, social security, social activities, Advocate – A Child's Voice Project), **Ivan Šelih** (responsible for limitations of personal freedom, judicial proceedings, National Preventive Mechanism) and mag. **Kornelija Marzel** (responsible for labour law matters, administrative matters, the environment and spatial planning, public utility services and housing issues).

After working at the Ombudsman's office for 21 years, Deputy Jernej Rovšek retired on 1 March 2016. Since he decided to retire before the termination of the 6-year term, the Ombudsman began to look for a new deputy. She decided not to look for new candidates, because she assessed that a suitable candidate for this function was among the present staff, i.e. Miha Horvat. The Ombudsman's proposal for his appointment was submitted to the National Assembly at the time of writing this report.

### 3.1.4 Legal bases for the Ombudsman's work

The fundamental legal acts for the Ombudsman's work are the **Constitution of the Republic of Slovenia** (Article 159) and the **Human Rights Ombudsman Act** (ZVarCP). Another legal basis for the Ombudsman's work is the Act Ratifying the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (**Optional Protocol**) that entered into force on 1 January 2007. The Act stipulates that the Ombudsman shall also carry out the tasks of the National Preventive Mechanism against torture and other cruel, inhuman or degrading treatment or punishment (NPM). The Ombudsman carries out these tasks in cooperation with non-governmental organisations selected on the basis of a tender. In 2015, the Ombudsman implemented the NPM tasks in cooperation with the following non-governmental organisations: SKUP – Community of Private Institutes, Humanitarno društvo Pravo za vse, Novi paradoks, the Association for Developing Voluntary Work Novo mesto, the Peace Institute, the Slovenian Federation of Pensioners' Associations, Caritas Slovenia, and Legal-Informational Centre for NGOs – PIC. Since selected NGOs cannot provide certain other suitable experts and because the Ombudsman does not dispose of an expert in the field of medical care, certain outside experts had to be engaged. In its role as the NPM, the Ombudsman also engages certain external experts who have the broadest range of recommended special knowledge and skills.

The legal framework for the Ombudsman's work is also provided by other acts, e.g. the **Constitutional Court Act**. The Ombudsman as defined in the Constitution of the Republic of Slovenia and the ZVarCP has no direct powers in relation to the courts. The Ombudsman may examine only cases regarding unduly delays in proceedings or abuses of power. The only exceptions are the Ombudsman's competences in relation to the Constitutional Court of the Republic of Slovenia, which are stipulated by the Constitutional Court Act (ZUstS), not the ZVarCP. Article 23a of the ZUstS also includes the Human Rights Ombudsman among proposers who may initiate a procedure for the review of the constitutionality or legality of regulations or general acts issued for the exercise of public authority if it is deemed that a regulation or general act issued for the exercise of public authority unacceptably interferes with human rights or fundamental freedoms. Prior to the introduction of amendments to the ZUstS, which entered into force on 15 July 2007, the Ombudsman was able to file a request for a review of the constitutionality or legality of regulations only with regard to the individual case it was discussing. In practice, the Constitutional Court occasionally insisted that a case examined by the Ombudsman had to be directly related to the challenged regulation. Therefore, such a regulation constituted in practice a restriction of access to a constitutional review of regulations. This obligation was abolished with the introduction of amendments to the ZUstS in 2007. The Ombudsman may initiate a procedure with a request if it is believed that a regulation or general act unacceptably interferes with human rights or fundamental freedoms. This greatly expanded the Ombudsman's ability to file requests, especially by taking into account the provisions of the ZVarCP that enable the Ombudsman to consider cases at its own initiative and wider issues relevant to the protection of human rights and fundamental freedoms and legal security of citizens. The amendment is also relevant in view of amendments to the whole of ZUstS, which significantly restricted access to the Constitutional Court for complainants. Limiting public interest in filing requests for a review of the constitutionality of regulations particularly limited options for individuals.

On the basis of Article 23a, three requests were filed in 2015, i.e.:

- a request for a review of the constitutionality of paragraph five of Article 10, point 4 of paragraph one of Article 12 and paragraph one of Article 14 of the Exercise of Rights from Public Funds Act and the constitutionality and legality of paragraph two of Article 7 of the Rules determining savings amounts and property values and on the value of the provision for basic needs with reference to procedures to exercise rights to public funds with a proposal for suspension filed on 20 May 2015;
- a request for a review of the constitutionality of paragraph four of Article 27, paragraphs one and two of Article 38 and paragraphs one and two of Article 391 of the Pension and Disability Insurance Act (Official Gazette of the Republic of Slovenia, [Uradni list RS], No. 96/2012 of 14 December 2012 and No. 39/2013 of 6 May 2013; hereinafter: ZPIZ-2) filed on 20 May 2015, and
- a request for the review of constitutionality of Article 25 of the Act Regulating Measures Aimed at Fiscal Balance of Municipalities in connection with Article 8 of the Exercise of Rights to Public Funds Act with a proposal for the suspension of execution of the challenged legal provision and a proposal for absolute priority discussion.

At the time of writing this report, the Constitutional Court had not yet decided on any of the requests.

The second option provided to the Ombudsman by the ZUstS (paragraph two of Article 50) is **to file a constitutional complaint** due to the violation of human rights or fundamental freedoms of a person or legal entity by an act of a state authority, local community authority or holder of public authority. The Ombudsman may file a constitutional complaint only with the consent of the person affected and under the conditions stipulated by the ZUstS. A constitutional complaint may be filed after all ordinary and extraordinary legal remedies have been exhausted within 60 days of the issue of the final document. The Ombudsman rarely uses this option, since it does not wish to act as an additional legal remedy when all possibilities of appeals have been exhausted. More frequently, we submit our opinion to the Constitutional Court from the aspect of the protection of human rights and fundamental freedoms in the role of an *amicus curiae*, which is facilitated by Article 25 of the ZVarCP (the Ombudsman may submit its opinion to any authority from the viewpoint of human rights and fundamental freedoms in a case under consideration, regardless of the type or level of procedure before these authorities). With the consent of the person affected, we submitted one constitutional complaint in 2015 (complaint no. 6.0-30/2015; the Constitutional Court of the Republic of Slovenia registered it under no. Up 563/15). The constitutional complaint was submitted on 13 July 2015; the Constitutional Court has not yet decided on it.

Since the position was established, the Ombudsman has filed a total of 27 requests for a review of constitutionality and three constitutional complaints. The Constitutional Court has not yet decided in four cases, which also include the oldest request for a review of constitutionality of Articles 15, 32 and 37 of the Act Amending the Banking Act – ZBan-1 (Official Gazette of the Republic of Slovenia, [Uradni list RS], No. 96/13), no. U-I-295/13, which was filed on 16 December 2013. The Constitutional Court decided on two constitutional complaints, and has not yet made a decision on the constitutional complaint filed on 31 July 2015.

### 3.1.5 The Ombudsman's work is also determined by other acts

The Ombudsman's competences are also defined in the following acts: the Integrity and Prevention of Corruption Act, Patient Rights Act, Defence Act, Consumer Protection Act, Environmental Protection Act, Personal Data Protection Act, Criminal Procedure Act, State Prosecutor Act, Courts Act, Judicial Service Act, Equal Opportunities for Women and Men Act, Police Tasks and Powers Act, Attorneys Act, Enforcement of Penal Sentences Act, Administrative Fees Act, Classified Information Act, Infertility Treatment and Procedures of Biomedically-Assisted Procreation Act, Civil Servants Act, Public Sector Salary System Act, Passports of the Citizens of the Republic of Slovenia Act, and the Rules on Service in the Slovene Army. Summaries of all the sections of these acts that refer to the Ombudsman's work were presented in a publication issued by the Ombudsman in December 2013 on the occasion of the 20th anniversary of the adoption of the Human Rights Ombudsman Act (ZVarCP). The publication is available from the Ombudsman's website: [www.varuh-rs.si](http://www.varuh-rs.si).

### 3.1.6 Operation of the Ombudsman as the National Preventive Mechanism (NPM)

The tasks of the NPM have been carried out by the Ombudsman since 2008. When carrying out the tasks and exercising the powers of the NPM, the Ombudsman visits all places of deprivation of liberty in the Republic of Slovenia, and thereby monitors the treatment of persons deprived of liberty on the basis of an act by the authorities. The purpose of the execution of these tasks is to enhance the protection of persons with limited freedom of movement against torture and other cruel, inhuman or degrading treatment or punishment. In the role of the NPM, the Ombudsman provides recommendations to the competent authorities to improve the conditions and treatment of people, and eliminate inappropriate treatment. At the end of 2014, we decided to organise the Ombudsman's work in the role of the NPM in 2015 as an organisational unit which will not discuss individual complaints, but only make visits to premises where individuals whose freedom of movement has been limited are held on the basis of an act by the authorities. The unit is led by Deputy Ombudsman Ivan Šelih. In addition to him, the unit also includes three other officials: a graduate in criminal justice and security who is a specialist in criminal investigation responsible for visiting prisons, police stations, aliens and asylum centres; law M.A. responsible for visiting social care institutions and psychiatric hospitals; and a professor of defectology

for behavioural and personality disorders and institutional education science responsible for visiting juvenile institutions and partly for visiting social care institutions. Both of the Ombudsman's activities (preventive, including NPM duties, and reactive, including the examination of individual complaints) were thus completely separated. Such separation is also stipulated explicitly in Point 32 of the Guidelines on national preventive mechanisms, SPT, adopted in Geneva in November 2010 (available at <http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/NationalPreventiveMechanisms.aspx>), which determines that "where the body designated as the NPM performs other functions in addition to those under the Optional Protocol, its NPM functions should be located within a separate unit or department with its own staff and budget".

The Ombudsman issues annual reports on the execution of tasks of the NPM. The 2015 report will be the eighth since the passage of this Act. It will be printed as a separate publication, but it nevertheless represents part of the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2015 and will also be published on the Ombudsman's website.

### 3.1.7 Advocate – A Child's Voice Project

Since 2007, the Ombudsman has been carrying out a pilot project **Advocate – A Child's Voice Project**, which was designed in 2006, and was supposed to be carried out in 2007 and 2008. Due to the inefficient response of the state and failure of the family code at the referendum, the implementation of the project was extended from 2014 to the end of 2015 in accordance with a recommendation of the National Assembly of the Republic of Slovenia of 8 May 2013 and Decision of the Government of the Republic of Slovenia no. 07003-1/2014/4 of 12 June 2014. Thus the project was also implemented by the Ombudsman in 2015. The partner in the project is the Ministry of Labour, Family, Social Affairs and Equal Opportunities, which provides financial support. In 2015, the Ministry provided EUR 15,000 for the smooth implementation of the project. These funds were allocated for the fixed-term employment of one worker on the project. Most funds for the implementation of the project have been provided by the Ombudsman throughout. A partner institution in the implementation of the project is the Faculty of Social Work of the University of Ljubljana. More on the Advocate – A Child's Voice Project can be found in the sub-chapter Advocate – A Child's Voice Project of the chapter on children's rights.

## 3.2 THE METHODS OF THE OMBUDSMAN'S WORK

### 3.2.1 Accessibility of the institution

By resolving complaints, we help eliminate concrete violations and prevent potential future violations. These frequently overlap, so it is essential that the Ombudsman be accessible to all who wish to contact it. Various solutions regarding the method of the Ombudsman's work follow this principle. Therefore, a complaint may be submitted during working hours, and complainants may speak to an employee who communicates information referring to the Ombudsman's work. The Ombudsman, deputies and advisers hold discussions on the basis of a preliminary appointment. In other cases, expert workers are available to complainants. During meetings outside the head office, the Ombudsman speaks to complainants and receives new complaints. Soon after the institution opened, we introduced a toll-free telephone number (080 15 30), where callers receive clarifications, advice and information on complaints filed. Complaints may also be filed by e-mail (to [info@varuh-rs.si](mailto:info@varuh-rs.si)) or on the Ombudsman's website ([www.varuh-rs.si](http://www.varuh-rs.si)). The Ombudsman operates in Slovenian; however, the Ombudsman's Rules of Procedure also determine that those not skilled in Slovenian may also submit complaints in their own language.

The Ombudsman is also available at numerous other occasions: during meetings with civil society, ministers and representatives of various institutions; at expert conferences, round tables, press conferences; in communication

with various types of public on a daily basis; during meetings with complainants; in participation with faculties and schools; via the Ombudsman's website and website for children, and also Facebook.

### 3.2.2 Meetings outside the head office

The Ombudsman's Rules of Procedure determine that the Human Rights Ombudsman may also conduct its work outside its head office. This does not refer to the establishment of an organisational form of operations outside the head office, but a working method.

This enables us to:

- make our work as accessible to citizens as possible,
- meet people in their own environment,
- enable direct contact with the Ombudsman, her deputies and advisers who participate in such operations,
- help people save time and money,
- at least clarify, if not eliminate, certain problems related to the unsuitable work of state and local authorities in the town visited through interventions during visits.

The Ombudsman also has a preventive impact on the work of state and local authorities in towns that are visited. The visits are important for promoting the institution or familiarising individuals with the competences and work of the Ombudsman.

**In 2015, we held 12 meetings outside our head office**, i.e. in Novo mesto, Vipava, Maribor, Moravske Toplice, Dravograd, Luče, Železniki, Radeče, Hrpelje-Kozina, Celje, Ivančna Gorica and Vranksko. With the exception of the municipalities of Novo mesto, Maribor and Celje, our meetings in 2015 were held in municipalities which the Ombudsman visited for the first time when working outside the head office. All the meetings outside the head office were enabled free of charge by mayors at head offices of municipalities. When organising meetings, we pay special attention to vulnerable groups and make sure that access and discussion are also enabled for disabled persons in a suitable manner.

At these meetings, we conducted 217 personal interviews and opened 45 new complaints on their basis. **We reactivated eight complaints**, and provided clarifications on 33 reactivated complaints, so that these complaints remained closed. We carried out 19 discussions in cases we had already been considering. In 112 interviews, the complainants received replies during the discussion itself, so these were recorded in a collection of official notes.

The visits were always announced in advance in local newsletters, and if possible, information on the meetings outside the head office was published in municipal newspapers that are distributed free of charge. The information is also always published on the Ombudsman's website allowing interested individuals to apply in time for a personal interview. An appointment is made for those wishing to have a personal interview in order to avoid unnecessary overcrowding and waiting. The greatest response was in Maribor, where we held interviews with 51 complainants. On the basis of the discussions, we opened 14 new complaints, which means that these complainants pointed out problems that required the Ombudsman's consideration. We were able to provide suitable clarifications and instructions to 22 complainants, so that further discussion of these issues was not necessary.

All visits were carefully planned and took place in three parts. In 2015, we changed our practice, which proved successful and effective. Unlike in previous years, when meetings outside the head office began with a discussion between the Ombudsman and her deputies with mayors, we started our meetings in 2015 with personal interviews with complainants. We were thus able to clarify or even resolve many problems highlighted by complainants in later discussions with the mayors.

The discussions with complainants (each of whom is given half an hour) form the main part of the visit. The discussions are attended by persons who have filed complaints with the Ombudsman and wish to present them in more detail or only need information about the progress of their complaint. Many need only advice. During

meetings outside the head office, the Ombudsman exceptionally also visits complainants at their homes. For example in Novo mesto, the Ombudsman also visited a Roma family concerning their access to water.

The statistical breakdown of problems presented at meetings outside the head office is similar to the problems noticed in complaints received by mail. Problems relating poverty predominate, since they intervene in human dignity and result in other consequences affecting people's lives. These are revealed in the poor health of complainants, who, in their distress also encounter problems in the health system, which is not always open and accessible. The violation of workers' rights is a very frequent issue in complaints. Dissatisfaction with court decisions and unduly slow resolution of cases and matters before courts and administrative authorities were also noted. Many complaints refer to procedures relating to rights to social transfers. At almost every meeting outside the head office, environmental issues were raised, which points to the fact that citizens are becoming increasingly aware of their right to a healthy living environment. The complainants claim insufficient supervision of many fields and emphasise the need for effective free legal aid for socially disadvantaged persons. We are also frequently informed about the inappropriate behaviour of public employees.

The second part of the meetings held outside the head office include a discussion between the Ombudsman and her colleagues with the mayors of the relevant municipalities. The Ombudsman highlights the problems arising from the interviews with residents of the municipalities and concrete complaints regarding the work of the municipality. These discussions are extremely important, since they may clarify or even resolve issues arising from concrete complaints. The Ombudsman always emphasises such issues as: housing matters, residential units; assistance for homeless residents; social distress; municipal aid; unemployment; public works (also in companies where the municipality is the (co)founder); care for socially endangered persons; debt write-off; care for disabled persons (including architectural barriers); property law matters; problems in the field of pre-school and primary school education; availability of the mayor (discussions with residents); public health care services; social security; friendliness of the municipality towards elderly persons and children; spatial planning; environmental issues; ownership relations connected with the categorisation of roads (the manner of resolution, purchases, expropriations, disputes, etc.); municipal inspection services; free legal aid and mediation. At the same time, we are informed about systemic problems encountered by local communities and their residents. This part of the discussion was in some cases attended by representatives of other authorities or organisations, who could present the situation in their own local communities. This was the case in Vranksko. Some municipalities may pride themselves on not having evictions, e.g. Vranksko and Radeče, and others on the accessibility of their mayors (the Mayor of Dravograd was said to be always available), while others boast of having no housing issues. The Municipality of Moravske Toplice even owns an empty apartment intended for social housing. Many municipalities visited in 2015 provide free legal aid for their residents, e.g. Vranksko, Ivančna Gorica, Luče, Maribor, including the Municipality of Moravske Toplice. Unfortunately, some municipalities have very high unemployment, e.g. 19 per cent in Maribor, and severe social distress; other municipalities, such as Vipava, have no unemployed persons, or have low unemployment rates, i.e. Železniki (five per cent). The categorisation of roads is a major problem in many municipalities, and it is necessary to mention a case of good practice, i.e. the Municipality of Luče, which was one of the first municipalities to survey municipal roads; it has some 140 kilometres of categorised roads.

We also dedicate special attention to the media during meetings outside the head office. We always organise a press conference in the towns we visit in order to point out cases of violations which arise from the complaints we received during meetings. Furthermore, the Ombudsman issues several statements and also gives interviews to the local media. After meetings outside the head office, we publish news of the visit on the Ombudsman's website.

### 3.2.3 Discussion of complaints

The Human Rights Ombudsman of the Republic of Slovenia conducts its tasks by considering individual complaints sent by complainants in which they claim that their human rights have been violated. All procedures conducted by the Ombudsman are confidential, informal and free-of-charge for the parties involved. The Ombudsman must conduct procedures impartially and acquire the positions of all the affected parties in each case. Anyone who believes that their human rights or fundamental freedoms have been violated by an act or action of a state authority, local community authority or holder of public authority may initiate a complaint



procedure. The Ombudsman may also initiate a procedure of its own accord. The consent of the person affected is required to initiate the procedure if such a procedure is initiated or filed in the name of the person affected. The Ombudsman may also address wider issues relevant to the protection of human rights and fundamental freedoms, and to the legal security of citizens in the Republic of Slovenia. This enables the Ombudsman to raise and consider systemic and current issues that may not be perceived by complainants. The latter also enables the Ombudsman to implement preventive and promotional activities in the same manner as national institutions for the protection of human rights established on the basis of the Paris Principles adopted by the UN.

The Ombudsman does not consider cases subject to court or other legal procedures unless they involve undue delays or clear abuses of power. The Ombudsman does not take action if the action or the last decision of the authority concerned took place more than a year before the complaint was filed unless it is deemed that the complainant missed the deadline for unavoidable reasons or that the case is of such importance that it warrants the Ombudsman's action regardless of the time elapsed.

In 2015, it was decided that complaints received would be processed in departments established in fields of work which are under the professional responsibility of the Ombudsman's deputies. These fields of work are determined in Article 11 of the Ombudsman's Rules of Procedure, except the tasks of the National Preventive Mechanism (NPM), carried out by the Ombudsman since 2008 pursuant to the Act ratifying the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, or in cooperation with non-governmental organisations selected at a tender, including the Advocate – A Child's Voice Project, which has been implemented by the Ombudsman since 2007. Each field is the professional responsibility of one of the Ombudsman's deputies. A more detailed division of individual fields is determined by the Ombudsman by taking into account substantive connections between problems, the organisation and type of procedures of state and other authorities which are under the Ombudsman's jurisdiction, and the cohesion of professional fields. The Rules of Procedure determine that deputies have all the powers provided to the Ombudsman by the law in the fields under their responsibility.

Each deputy is responsible for several fields. The latter are also the basis for the classification of complaints received. Anyone who believes that their human rights or fundamental freedoms have been violated by an act of an authority may initiate a procedure with the Ombudsman. The ZVarCP and the Ombudsman's Rules of Procedure determine the conditions which a complaint must meet in order to be discussed. All complaints addressed to the Ombudsman must be signed and marked with the complainant's personal information, and must contain the circumstances, facts and evidence regarding the complaint in order for a procedure to be initiated. The complainant must also state whether legal remedies have been sought in the matter, and if so, which ones. The procedure may be initiated in written form. Formality or a lawyer's assistance are not required to submit a complaint. Persons deprived of their freedom have the right to send a complaint to the Ombudsman in a closed envelope. In urgent cases, we also accept complaints by telephone or during a face-to-face discussion. Certain complaints are received by the Ombudsman's representatives during discussions with prisoners when visiting prisons or detention facilities, psychiatric hospitals, social care institutions and other institutions accommodating persons who have been deprived of their freedom of movement.

When the Ombudsman receives a complaint, all the required enquires are carried out. On this basis, the Ombudsman decides whether to consider the matter by a summary procedure, start an investigation or reject the complaint, or to not consider it as it is anonymous, late, offensive or constitutes an abuse of the right to complain. If the Ombudsman rejects a complaint and does not consider it for the aforementioned reasons, the complainant must be notified thereof as soon as possible. The reasons for the rejection must be explained, and if possible, the complainant must be informed of other ways of resolving the matter.

The Ombudsman decides on the matter by a summary procedure (point one of paragraph one of Article 28 of the ZVarCP), especially when the current situation and positions of the parties affected are evident from the documentation accompanying the complaint.

Between 1 January and 31 December 2015, we opened 2,785 complaints (3,081 in 2014, and 3,371 in 2013). Most complaints were received directly from complainants in writing, i.e. 2,445 or 87.8 per cent of all complaints received. We received 45 complaints during meetings outside the head office, six by phone and 19 from official

notes. Of its own accord, the Ombudsman opened 19 complaints (cases when the Ombudsman initiates a procedure of its own accord or a complaint is filed in the name of the person affected. In such cases, the consent of the person affected is required to initiate the procedure), and 47 complaints were considered as wider issues (these include issues relevant to the protection of human rights and fundamental freedoms, and the legal security of citizens in the Republic of Slovenia). We received courtesy copies of 136 complaints and 64 anonymous complaints, and four complaints were forwarded to the competent authorities. We received and replied to 9,611 phone calls. The majority of calls concerned information about the Ombudsman's work, the discussion of complaints and the provision of various information about complaints. In connection with complaints, we received a total of 11,307 documents (this number includes documents on the basis of which we discussed complaints, and documents referring to the supplementation of complaints and clarifications of authorities to which we submitted inquiries related to resolving complaints). In addition to the above documents, we also received 4,628 documents in 2015, which referred to other Ombudsman's operations (excluding documents related to e-invoices).

Certain complaints are incomplete, as they do not include all the facts relevant to the problem or not all the required documents are attached. Regardless of the type of shortcoming, we ask complainants to supplement their complaints or we contact the competent authority with an enquiry as to whether the complaint clearly indicates the type of procedure and the competent authority. Certain complaints are found not to be within the Ombudsman's competence, or the conditions for their handling are not met. In such cases, we advise complainants on whom to contact if other options are available, or which legal remedies to use before complaints can be considered by the Ombudsman. Complaints which are not within the Ombudsman's competence frequently involve disputes between individuals which cannot be resolved in any other manner than amicably, and if this is not possible, before the courts.

### 3.2.4 Communication with state and local authorities

In relation to its work, the Ombudsman has the right to access all information and documents pertaining to the competence of state and local authorities. The regulations on the confidentiality of data are binding on the Ombudsman, the deputies and other staff. The Ombudsman or persons authorised by the Ombudsman may enter the official premises of any state authority, local community authority or holder of public authority. They may carry out inspections of prisons, other premises where persons deprived of their freedom are held, and other institutions with limited freedom of movement, and have the right to hold conversations with persons in these institutions without the presence of other persons. The Ombudsman may submit to the National Assembly and the Government initiatives to amend acts and other regulations under their jurisdiction.

State authorities, institutions and organisations with public authority are sent proposals for improvement to their operations, efficiency or treatment of clients. The Ombudsman or persons authorised by the Ombudsman may submit their opinion on the protection of human rights and fundamental freedoms to any authority in a case under consideration, regardless of the type or level of procedure before these authorities. All state authorities must provide suitable assistance to the Ombudsman in the implementation of any investigation.

All officials and public employees referred to in Article 6 of the ZVarCP must respond to the Ombudsman's request to participate in an investigation and to provide explanations. The Ombudsman may invite anyone as a witness or an expert for a discussion in a case under consideration. The invited person must respond to the invitation.

At the Ombudsman's request, the President of the National Assembly, the Prime Minister and ministers must accede to a meeting with the Ombudsman within 48 hours (Article 46 of the ZVarCP). On the basis of this provision of the ZVarCP, the Ombudsman requested an urgent meeting with Prime Minister Dr. Miro Cerar on 4 November 2015. She assessed that the situation with regard to the refugee crisis was so serious that a conversation with the Prime Minister was necessary. The meeting was held at the premises of the Government of the Republic of Slovenia on Friday, 6 November 2015, and was also attended by the Ombudsman's Deputies, Jernej Rovšek and Ivan Šelih. The Ombudsman informed the Prime Minister of all of the monitoring visits that the Ombudsman's office had performed since the onset of the crisis, presented the findings of work in the field and made numerous recommendations to the Government. She also stated that the representatives of institutions, non-governmental

and humanitarian organisations and numerous volunteers participating in the humanitarian crisis and unselfishly providing their help deserved recognition for their exceptionally selfless work.

To clarify all the circumstances regarding the complaints considered, we generally acquire an opinion from the other party, since, as aforementioned, the Ombudsman must conduct procedures impartially and acquire the positions of all the affected parties in each case. Therefore, we make enquiries at the authority to which the complaint refers. The matters considered are very diverse, so the methods of conducting enquiries are also very diverse. We usually submit to the competent authority a short summary of the alleged irregularity or a description of the problem, and request detailed information. Sometimes, e.g. when it is claimed that a procedure is taking too long, we express our opinion by assuming that the complainant's statements are completely true. We also determine a deadline for a reply, which depends on the urgency and complexity of the matter; this deadline may not be longer than 30 days or shorter than 8 days, in accordance with the ZVarCP. If an authority does not send the Ombudsman explanations or information by the requested deadline, the authority is warned and informed in accordance with paragraph two of Article 33 of the ZVarCP that they must immediately explain to the Ombudsman why the request was not met. The Ombudsman may notify the relevant superior authority directly about the missed deadline. A refusal or disrespect for an Ombudsman's request is considered obstruction to the Ombudsman's work. In such cases, the Ombudsman may send a special report to the competent working body of the National Assembly or the National Assembly, or notify the public.

When an authority avoids responding to questions, we request a review of the entire file relevant to the complaint. As stated before, the Ombudsman has the right to review data and documents which are in the competence of all state authorities. If wider issues need to be clarified, the head or representative of the authority is invited for an interview. When persons in detention or prisoners complain about inappropriate administrative procedures or inappropriate living conditions, we have a discussion with the management and visit the detainee or prisoner. We act in the same way when the Ombudsman is contacted by persons in other institutions with limited freedom of movement. When we have collected all the required information, we decide on further procedures. Sometimes, the authority's reply resolves the complainant's problem, e.g. data on when a procedure which the complainant believes has been unreasonably delayed will continue and end. In such cases, the procedure is concluded and the complainant is invited to contact us again if the authority fails to fulfil its guarantees with regard to the procedure in question. When a complaint is founded, we continue to work on disputable issues until they are resolved.

We are aware that it is most important for a complainant to obtain a solution to his/her problem. This is the starting point for our decision making regarding the application of the most appropriate measure from among those we are authorised to take. When a procedure is unduly long, we act to accelerate the matter if the rational or legally determined deadline for taking a decision has been exceeded and if this does not violate the order in which matters are considered.

We may propose a solution to the problem in an amicable manner to any given authority if this is also agreed by the complainant. If irregularities cannot be eliminated, we propose to the authority that it apologise to the complainant. Initiatives for amendments to regulations are usually proposed in recommendations in annual reports, which are passed by the National Assembly after consideration.

The Ombudsman's findings when considering complaints or wider issues important for the protection of human rights and fundamental freedoms are presented during discussions with representatives of state and local community authorities. We present findings, expectations and the Ombudsman's recommendations to eliminate established violations of human rights and fundamental freedoms. Ombudsman Vlasta Nussdorfer, the competent deputy and the Ombudsman's advisers who discuss matters from the relevant field of work are usually present at such meetings.

The table below includes meetings, discussions, sessions and other forms of cooperation with state authorities in 2015.

	Date	Description of event
1.	13 January 2015	The Ombudsman, Deputy mag. Kornelija Marzel, and Martina Ocepek, Director of the Expert Service, and the Ombudsman's advisers held a meeting with Irena Majcen, Minister of the Environment and Spatial Planning, and her colleagues at the Ombudsman's head office.
2.	14 January 2015	The Ombudsman met Mayor Gregor Macedoni during her meeting outside the head office in the Municipality of Novo mesto.
3.	20 January 2015	The Ombudsman and Deputy Tone Dolčič attended the 7th emergency session of the Committee on Education, Science, Sport and Youth, at which savings in education were discussed, which particularly affects children with special needs.
4.	21 January 2015	At the Ombudsman's head office, the Ombudsman, her deputies and the Director of the Expert Service met the Senate of the Commission for the Prevention of Corruption.
5.	21 January 2015	The Ombudsman and Deputy Tone Dolčič attended a joint session of the Committee on Labour, Family, Social Affairs and Disability and the Committee on Education, Science, Sport and Youth, at which the impact of the recession on the situation of children was discussed.
6.	21 January 2015	Deputy Ombudsman Jernej Rovšek attended the 5th session of the Committee on the Interior, Public Administration and Local Self-Government, which discussed the situation of the Roma community in Slovenia.
7.	22 January 2015	The Ombudsman and Deputy Jernej Rovšek attended the 4th session of the Commission for Petitions, Human Rights and Equal Opportunities, at which the Second National Report of the Republic of Slovenia for the Universal Periodic Review was discussed.
8.	22 January 2015	The Ombudsman attended the 5th regular session of the Commission for Public Office and Elections, at which a proposal on appointing Deputy Ombudsman was discussed.
9.	27 January 2015	The Ombudsman and her colleagues met Mojca Prelesnik, Information Commissioner, and her colleagues at the Ombudsman's head office.
10.	4 February 2015	The Ombudsman met Mayor mag. Ivan Princes during her meeting outside the head office in the Municipality of Vipava.
11.	4 February 2015	Deputy Ombudsman Tone Dolčič attended the 9th emergency session of the Committee on Education, Science, Sport and Youth; the topics included the introduction of civic and patriotic education and ethics as subjects in secondary schools.
12.	5 February 2015	The Ombudsman and Deputy Jernej Rovšek attended the 5th session of the Commission for Petitions, Human Rights and Equal Opportunities, at which threats made to journalists due to their work were discussed.
13.	7 February 2015	The Ombudsman attended the ceremony on the occasion of Slovenian Culture Day in Cankarjev dom in Ljubljana.
14.	13 February 2015	The Ombudsman and Deputy Jernej Rovšek attended the continuation of the 6th emergency session of the Commission for Petitions, Human Rights and Equal Opportunities, at which supervision of the work of the security and intelligence services was discussed.
15.	19 February 2015	At the Ombudsman's head office, the Ombudsman and her colleagues met Boris Koprivnikar, Minister of Public Administration, and his colleagues.
16.	2 March 2015	The Ombudsman, Deputies mag. Kornelija Marzel and Jernej Rovšek, and Martina Ocepek, Director of the Expert Service, held a meeting at the Ombudsman's head office with Nina Gregori, Director-General of the Internal Administrative Affairs, Migration and Naturalisation Directorate at the Ministry of the Interior, on the issue of the erased.
17.	4 March 2015	The Ombudsman met Mayor Dr. Andrej Fištravec during her meeting outside the head office in the Municipality of Maribor.

	Date	Description of event
18.	<b>10 March 2015</b>	The Ombudsman and Deputy mag. Kornelija Marzel attended a discussion at the President of the Republic of Slovenia on the situation of foreign migrant workers.
19.	<b>11 March 2015</b>	Gašper Adamič, the Ombudsman's adviser, attended a panel discussion of representatives of religious communities organised at the Ministry of Culture by the Office for Religious Communities.
20.	<b>12 March 2015</b>	Deputy Ombudsman Tone Dolčič attended the 6th session of the Commission for Petitions, Human Rights and Equal Opportunities, at which violence against women, the Istanbul Convention and human trafficking were discussed.
21.	<b>18 March 2015</b>	At the Market Inspectorate of Republic of Slovenia, the Ombudsman, Deputy mag. Kornelija Marzel and Martina Ocepek, Director of the Expert Service, met Chief Market Inspector Andrejka Grlič.
22.	<b>19 March 2015</b>	Deputy Ombudsman Tone Dolčič attended the 8th joint regular session of the Committee on Labour, Family, Social Affairs and Disability and the 3rd session of the Committee on Health, at which the issue of the systemic arrangement of a comprehensive discussion of children with special needs was discussed.
23.	<b>7 April 2015</b>	The Ombudsman and Deputy mag. Kornelija Marzel, attended the state ceremony in Cankarjev dom, held on the occasion of the 25th anniversary of democratic multi-party elections.
24.	<b>14 April 2015</b>	Deputy Ombudsman Tone Dolčič attended the 10th session of the Committee on Labour, Family, Social Affairs and Disability, at which the need for a comprehensive aid system for victims of violence was discussed.
25.	<b>15 April 2015</b>	The Ombudsman met Deputy Mayor Dušan Grof, Martina Vink Kranjec, Director of the Municipal Administration, and representatives of the Hungarian community during her meeting outside the head office in the Municipality of Moravske Toplice.
26.	<b>6 May 2015</b>	The Ombudsman met Mayor Marijana Cigala and Deputy Mayor Anton Preksavec during her meeting outside the head office in the Municipality of Dravograd.
27.	<b>11 May 2015</b>	At the Ombudsman's head office, the Ombudsman, Deputy mag. Kornelija Marzel, Martina Ocepek, Director of the Expert Service, and the Ombudsman's advisers, Jožica Matjašič, Barbara Kranjc and Živan Rejc, met representatives of the Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning.
28.	<b>15 May 2015</b>	The Ombudsman, Deputy mag. Kornelija Marzel, Martina Ocepek, Director of the Expert Service, and the Ombudsman's advisers had a working meeting with representatives of the Ministry of the Environment and Spatial Planning.
29.	<b>18 May 2015</b>	The Ombudsman, Deputy Tone Dolčič and the Ombudsman's advisers met representatives of the Pension and Disability Insurance Institute of Slovenia at the Ombudsman's head office.
30.	<b>25 May 2015</b>	The Ombudsman received mag. Olga Karba, Mayor of Ljutomer, and her delegation at the Ombudsman's head office.
31.	<b>5 June 2015</b>	The Ombudsman and Gašper Adamič, the Ombudsman's adviser, attended a meeting with the members of the National Assembly's Commission for Petitions, Human Rights and Equal Opportunities, at which current topics discussed by the Ombudsman and the Commission were addressed.
32.	<b>11 June 2015</b>	Deputy Ombudsman Jernej Rovšek received representatives of the Municipality of Križevci and informed them on the functioning of the Ombudsman's institution.
33.	<b>17 June 2015</b>	The Ombudsman met Mayor Ciril Rosc during her meeting outside the head office in the Municipality of Luče.
34.	<b>19 June 2015</b>	The Ombudsman handed over the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2014 and the Report of the National Preventive Mechanism for 2014 to Dr. Milan Brglez, President of the National Assembly of the Republic of Slovenia.
35.	<b>19 June 2015</b>	Ombudsman's adviser Andreja Srebotnik attended an interministerial working meeting at the Ministry of the Interior on the question of conducting procedures involving minors when imposing educational and security measures, which was convened by the Ministry of the Interior.

	Date	Description of event
36.	<b>22 June 2015</b>	The Ombudsman and Deputies Jernej Rovšek, Ivan Šelih and mag. Kornelija Marzel handed over the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2014 and the Report of the National Preventive Mechanism for 2014 to Borut Pahor, President of the Republic of Slovenia.
37.	<b>23 June 2015</b>	The Ombudsman and Deputy mag. Kornelija Marzel attended the ceremony upon the unveiling of the installation site for the monument to all war and war-related victims in the territory of the Republic of Slovenia in Congress Square in Ljubljana.
38.	<b>24 June 2015</b>	The Ombudsman attended the formal session of the National Assembly of the Republic of Slovenia convened by Dr. Milan Brglez, President of the National Assembly, on the occasion of Statehood Day.
39.	<b>24 June 2015</b>	The Ombudsman and Deputy mag. Kornelija Marzel attended the official ceremony on the occasion of Statehood Day in Congress Square on Ljubljana.
40.	<b>27 June 2015</b>	The Ombudsman attended the 25th meeting of statesmen under the Najevnik lime tree above Črna na Koroškem.
41.	<b>30 June 2015</b>	The Ombudsman handed over the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2014 and the Report of the National Preventive Mechanism for 2014 to Dr. Miro Cerar, Prime Minister of the Republic of Slovenia.
42.	<b>30 June 2015</b>	The Ombudsman attended the 11th emergency session of the Commission for Petitions, Human Rights and Equal Opportunities.
43.	<b>1 July 2015</b>	At the Ombudsman's head office, the Ombudsman, her deputies and advisers received Dr. Maja Makovec Brenčič, Minister of Education, Science and Sport, and her colleagues to a working meeting.
44.	<b>1 July 2015</b>	The Ombudsman attended the celebration of the municipal holiday of the Municipality of Vipava at Lanthieri Mansion.
45.	<b>7 July 2015</b>	At the Ombudsman's head office, the Ombudsman and Deputies Tone Dolčič and Ivan Šelih met Milojka Kolar Celarc, Minister of Health, and Dr. Anja Kopač Mrak, Minister of Labour, Family, Social Affairs and Equal Opportunities.
46.	<b>8 July 2015</b>	The Ombudsman met Mayor mag. Anton Luznar during her meeting outside the head office in the Municipality of Železniki.
47.	<b>16 July 2015</b>	At the Ombudsman's head office, Deputy Ombudsman mag. Kornelija Marzel, Martina Ocepek, Director of the Expert Service and Jožica Matjašič, the Ombudsman's adviser, met representatives of the Ministry of Infrastructure, the Proteus Association – the Bela Krajina environmental movement and the civil initiative against the construction of transmitters in various settlements in Slovenia.
48.	<b>17 July 2015</b>	Deputies mag. Kornelija Marzel and Tone Dolčič, Martina Ocepek, Director of the Expert Service and Ombudsman's advisers Jožica Matjašič and Lan Vošnjak received representatives of the Public Sector Inspectorate at the Ombudsman's head office.
49.	<b>5 August 2015</b>	The Ombudsman met Mayor Tomaž Režun during her meeting outside the head office in the Municipality of Radeče.
50.	<b>6 August 2015</b>	Martina Ocepek, Director of the Expert Service, attended the formal session of the municipal council to mark the municipal holiday of the Municipality of Zagorje ob Savi.
51.	<b>2 September 2015</b>	The Ombudsman attended the awarding of state decorations at the Presidential Palace to Prof. Dr. Vinko Dolenc in neurosurgery and Dr. Aleksander Doplihar for establishing and operating a pro bono out-patient clinic.
52.	<b>7 September 2015</b>	Deputy Ombudsman Ivan Šelih and the Ombudsman's advisers Miha Horvat and Robert Gačnik met Jože Podržaj, Director General of the Prison Administration of the Republic of Slovenia and his colleagues.
53.	<b>7 September 2015</b>	The Ombudsman and Deputy Tone Dolčič received Dr. Andrej Možina, President of the Medical Chamber of Slovenia, and Brane Dobnikar, Secretary General, at the Ombudsman's head office.

	Date	Description of event
54.	<b>9 September 2015</b>	The Ombudsman met Mayor Saša Likavec Svetelšek during her meeting outside the head office in the Municipality of Hrpelje-Kozina.
55.	<b>9 September 2015</b>	Deputy Ombudsman Tone Dolčič attended the joint session of the Commission for State Organisation and the Commission for Social Care, Labour, Health and Disabled of the National Council of the Republic of Slovenia, at which the 20th Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2014 was discussed.
56.	<b>9 September 2015</b>	Deputy Ombudsman Ivan Šelih attended the 10th session of the Committee on Justice of the National Assembly of the Republic of Slovenia, at which the findings of the European Court of Human Rights on the violations of human rights in Slovenia were discussed.
57.	<b>10 September 2015</b>	At the Ombudsman's head office, the Ombudsman, Deputy mag. Kornelija Marzel, Martina Ocepek, Director of the Expert Service, and Gašper Adamič, Ombudsman's adviser, met Dr. Ivan Žagar, President of the Association of Municipalities and Towns of Slovenia, and his colleagues.
58.	<b>10 September 2015</b>	Deputy Ombudsman Jernej Rovšek attended the 3rd session of the Commission for the National Communities of the National Assembly of the Republic of Slovenia, at which inter alia the 20th Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2014 was discussed.
59.	<b>16 September 2015</b>	The Ombudsman attended the 32rd session of the National Council of the Republic of Slovenia, at which the 20th Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2014 was discussed.
60.	<b>21 September 2015</b>	The Ombudsman's adviser Liana Kalčina attended the 9th session of the Inter-ministerial Commission on Human Rights at the Ministry of Foreign Affairs, at which the reporting of the Republic of Slovenia according to the instruments of the UN and the Council of Europe was reviewed.
61.	<b>22 September 2015</b>	The Ombudsman, Deputy mag. Kornelija Marzel, Martina Ocepek, Director of the Expert Service, and the Ombudsman's advisers met Samo Fakin, General Manager of the Health Insurance Institute of Slovenia, and his colleagues at the Ombudsman's head office.
62.	<b>23 September 2015</b>	The Ombudsman, Deputy mag. Kornelija Marzel, Martina Ocepek, Director of the Expert Service, and the Ombudsman's advisers met Nataša Trček, Chief Labour Inspector of the Labour Inspectorate of the Republic of Slovenia, and Jana Ahčin, Director-General of the Financial Administration of the Republic of Slovenia, at the Ombudsman's head office.
63.	<b>28 September 2015</b>	The Ombudsman, Deputy mag. Kornelija Marzel, mag. Bojana Kvas, Secretary General of the Ombudsman, and Martina Ocepek, Director of the Expert Service, attended a consultation session of the Information Commissioner of the Republic of Slovenia at the National Council of the Republic of Slovenia on the occasion of International Right to Know Day.
64.	<b>1 October 2015</b>	The Ombudsman and her Deputies Jernej Rovšek, Ivan Šelih and mag. Kornelija Marzel attended the session of the Commission for Petitions, Human Rights and Equal Opportunities of the National Assembly of the Republic of Slovenia, at which the 20th Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2014 was discussed.
65.	<b>8 October 2015</b>	Deputy Ombudsman Jernej Rovšek attended the session of the Committee on the Interior, Public Administration and Local Self-Government of the National Assembly of the Republic of Slovenia, at which the 4th report on the situation of the Roma community in Slovenia was discussed.
66.	<b>8 October 2015</b>	The Ombudsman presented the 20th Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2014 at the session of the Government of the Republic of Slovenia.
67.	<b>14 October 2015</b>	The Ombudsman met Deputy Mayor mag. Darja Turk and Tina Kramer, Director of the Municipal Administration, during her meeting outside the head office in the Municipality of Celje.

	Date	Description of event
68.	<b>22 October 2015</b>	The Ombudsman and her Deputies attended the regular session of the National Assembly of the Republic of Slovenia, at which the 20th Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2014 was discussed.
69.	<b>23 October 2015</b>	The Ombudsman attended the commemorative session at the National Assembly of the Republic of Slovenia to honour the memory of Dr. France Bučar.
70.	<b>3 November 2015</b>	The Ombudsman, Deputies Jernej Rovšek and mag. Kornelija Marzel and Martina Ocepek, Director of the Expert Service, met Andreja Katič, Minister of Defence, at the Ministry of Defence.
71.	<b>6 November 2015</b>	The Ombudsman and her Deputies Jernej Rovšek and Ivan Šelih met Prime Minister Dr. Miro Cerar at the premises of the Government of the Republic of Slovenia to discuss the refugee issue.
72.	<b>13 November 2015</b>	Deputy Ombudsman Tone Dolčič attended the 9th session of the Commission for Petitions, Human Rights and Equal Opportunities of the National Assembly of the Republic of Slovenia, at which violence in society, the family and against individuals was discussed.
73.	<b>20 November 2015</b>	The Ombudsman met Mayor Dušan Strnad and Irena Lavrih, Director of the Municipal Administration, during her meeting outside the head office in the Municipality of Ivančna Gorica.
74.	<b>3 December 2015</b>	Deputy Ombudsman Ivan Šelih attended the 12th emergency session of the Commission for Petitions, Human Rights and Equal Opportunities of the National Assembly of the Republic of Slovenia.
75.	<b>3 December 2015</b>	The Ombudsman attended the reception hosted by Borut Pahor, President of the Republic of Slovenia, on the occasion of the International Day of Persons with Disabilities at the Presidential Palace.
76.	<b>7 December 2015</b>	The Ombudsman, Deputies Jernej Rovšek and Tone Dolčič, and mag. Bojana Kvas, Secretary General of the Ombudsman, met Karl Erjavec, Minister of Foreign Affairs, at the Ministry of Foreign Affairs.
77.	<b>10 December 2015</b>	To honour International Human Rights Day, the Ombudsman received the highest representatives of state authorities, non-governmental organisations and civil society, the expert public and individuals actively involved in the field of human rights protection at the castle in Brdo pri Kranju.
78.	<b>14 December 2015</b>	The Ombudsman's adviser Liana Kalčina attended the 10th session of the Inter-ministerial Commission on Human Rights at the Ministry of Foreign Affairs.
79.	<b>16 December 2015</b>	The Ombudsman met Mayor Franc Sušnik during her meeting outside the head office in the Municipality of Vransko.
80.	<b>17 December 2015</b>	The Ombudsman attended the ceremony on the occasion of Constitutionality Day at the Constitutional Court of the Republic of Slovenia.
81.	<b>17 December 2015</b>	The Ombudsman attended the New Year's reception hosted by mag. Goran Klemenčič, Minister of Justice, at the castle in Brdo pri Kranju.
82.	<b>22 December 2015</b>	At the Ombudsman's head office, the Ombudsman, Deputy mag. Kornelija Marzel, Martina Ocepek, Director of the Expert Service, and Sabina Dolič, Ombudsman's adviser, met mag. Darko Krašovec, Secretary General of the Government of the Republic of Slovenia.
83.	<b>23 December 2015</b>	The Ombudsman attended the formal session of the National Assembly of the Republic of Slovenia on the occasion of the Independence and Unity Day.
84.	<b>23 December 2015</b>	The Ombudsman attended the holy mass for the homeland at the Cathedral of St. Nicholas in Ljubljana on the occasion of Independence and Unity Day.
85.	<b>23 December 2015</b>	in Cankarjev Dom in Ljubljana, the Ombudsman and Deputy mag. Kornelija Marzel attended the national ceremony in honour of Independence and Unity Day and the 25th anniversary of the plebiscite on the independence of Slovenia.

### 3.2.5 Communication with non-governmental organisations and civil society

In 2015, the Ombudsman continued its active cooperation with non-governmental organisations (NGOs), which constitute a unique voice of citizens. These organisations are the fastest to respond to changing social circumstances and people's needs. They detect individual and systemic forms of human rights violations and strive to eliminate them. The Ombudsman had meetings with NGOs in order to exchange information in a direct dialogue on achievements and more particularly problems with enforcing human rights, democracy and the rule of law. The Ombudsman's cooperation with NGOs in the field of the environment and spatial planning is particularly active. In 2015, eight meetings were organised; six at the Ombudsman's head office and two elsewhere, i.e. one in Ankaran and one in Vrhnika. A detailed review of the meetings is provided in the table below.

#### Overview of meetings with non-governmental organisations and civil society

	Date	Description of event
1.	<b>9 January 2015</b>	The Ombudsman's adviser Brigita Urh attended the presentation of the Deafblind Association of Slovenia DLAN at a mansion in Brdo pri Lukovici and the signing of the document on cooperation on the project.
2.	<b>21 January 2015</b>	The Ombudsman attended a discussion on the occasion of the 20th anniversary of the Ombudsman's institution and the 66th anniversary of the adoption of the Universal Declaration of Human Rights, organised by Forum 21 at the City Hall in Ljubljana.
3.	<b>27 January 2015</b>	The Ombudsman presented the work of the Human Rights Ombudsman of the Republic of Slovenia to members of Lions Club Domžale in Domžale Library and spoke about human rights in Slovenia.
4.	<b>29 January 2015</b>	The Ombudsman organised the first regular meeting with representatives of civil society in the field of the environment and spatial planning; the guest at the event was Dr. Jože Šrekl from the Chair of Occupational, Process and Fire Safety of the Faculty of Chemistry and Chemical Technology of the University of Ljubljana.
5.	<b>3 February 2015</b>	The Ombudsman, Deputy Tone Dolčič and the Ombudsman's advisers met representatives of NGOs who are members of the Centre for Advocacy and Information on the Rights of Children and Youth (Centre ZIPOM) as part of their regular sessions at the Ombudsman's head office.
6.	<b>6 February 2015</b>	The Ombudsman, Deputy Tone Dolčič and Ombudsman's adviser Dr. Ingrid Russi Zagožen met representatives of members of the initiative of Sožitje Škofja Loka Society.
7.	<b>10 February 2015</b>	The Ombudsman and the former President of the Republic of Slovenia, Dr. Danilo Türk, were guests at a discussion organised by the SheXO Club – Women in Business at Grand Hotel Union.
8.	<b>11 February 2015</b>	The Ombudsman, Deputy Jernej Rovšek and General Secretary mag. Bojana Kvas met representatives of Transparency International Slovenia at the Ombudsman's head office.
9.	<b>17 February 2015</b>	The Ombudsman and her Deputy Tone Dolčič met Renata Brunskole, Secretary General of the Slovenian Red Cross, at the Ombudsman's head office.
10.	<b>2 March 2015</b>	At the Ombudsman's head office, the Ombudsman, Deputies mag. Kornelija Marzel and Jernej Rovšek, and the Ombudsman's advisers met Dr. Neža Kogovšek Šalomon from the Peace Institute on the issue of the erased.
11.	<b>5 March 2015</b>	The Ombudsman, Deputies Ivan Šelih and Tone Dolčič and other colleagues received representatives of the rights of people with mental illness for their first meeting at the Ombudsman's head office.
12.	<b>5 March 2015</b>	Neva Železnik, journalist and Vice-President of Spominčica, Alzheimer Slovenia – the Slovenian association for help with dementia, gave a lecture on dementia to expert colleagues of the Ombudsman.

	Date	Description of event
13.	<b>10 March 2015</b>	The Ombudsman addressed participants at a ceremony celebrating International Women's Day organised by the Association of War Invalids Ljubljana.
14.	<b>11 March 2015</b>	The Ombudsman gave a lecture to volunteers of the Beli Obroč Society.
15.	<b>18 March 2015</b>	The Ombudsman attended the 17th regular annual meeting of Europa Donna, Slovenian Breast Cancer Association.
16.	<b>19 March 2015</b>	Information Commissioner Mojca Prelesnik and her adviser Alenka Žaucer were the guests at the 41st meeting with representatives of civil society in the field of the environment and spatial planning at the Ombudsman's head office.
17.	<b>23 March 2015</b>	Ombudsman's advisers Brigita Urh and Dr. Ingrid Russi Zagožen attended a round table of the Down Syndrome Slovenia Society, which was held in the National Council of the Republic of Slovenia.
18.	<b>23 March 2015</b>	Ombudsman's advisers Brigita Urh and Dr. Ingrid Russi Zagožen attended a round table entitled 'Open problems of the situation of people with mental disorders' prepared by the Down Syndrome Slovenia Society, which was held in the National Council of the Republic of Slovenia.
19.	<b>20 April 2015</b>	The Ombudsman accepted the invitation of Rotary Club Idrija and the Association of Friends of Youth Idrija to a joint meeting where they discussed the issue of violating children's and family rights in present times.
20.	<b>24 April 2015</b>	As an honorary sponsor, the Ombudsman addressed participants at a ceremony to mark the 50th anniversary of Maribor Sožitje Association.
21.	<b>30 April 2015</b>	The Ombudsman and her colleagues attended the third regular meeting with representatives of civil society in the field of the environment and spatial planning which was in Mežica.
22.	<b>9 May 2015</b>	The Ombudsman welcomed the participants of the charity event 'Walk a kilometre in my shoes' in Podčetrtek and participated actively at the event, organised by Debra Slovenia, which joins patients with Epidermolysis bullosa.
23.	<b>19 May 2015</b>	General Secretary mag. Bojana Kvas and one of the Volunteers of the Year, Matevž Pavčnik, who is employed at the Human Rights Ombudsman of the Republic of Slovenia, attended a ceremony of Slovene Philanthropy on the occasion of Slovenian Volunteer Day in Škofja Loka.
24.	<b>28 May 2015</b>	The Ombudsman hosted the fourth meeting with representatives of civil society in the field of the environment and spatial planning; the guest was Dr. Dušan Plut.
25.	<b>2 June 2015</b>	As an honorary sponsor, the Ombudsman addressed participants at a ceremony marking the 20th anniversary of the Projekt Človek Association in Škofja Loka.
26.	<b>10 June 2015</b>	At the Ombudsman's head office, the Ombudsman met NGOs that provide help to victims of criminal offences.
27.	<b>13 June 2015</b>	The Ombudsman attended the official announcement of the results of competitions organised by the Association for Technical Culture of Slovenia (ZOTKS) in Cankarjev dom and a meeting of young researchers of ZOTKS talents.
28.	<b>16 June 2015</b>	At the Ombudsman's head office, the Ombudsman and her colleagues received representatives of civil society working in the field of homelessness at a working meeting.
29.	<b>16 June 2015</b>	The Ombudsman and Ombudsman's adviser Simona Mlinar spoke with complainants from the OZA Association (Asbestos Patients Association) at the Ombudsman's head office.
30.	<b>18 June 2015</b>	In Grand Hotel Union, the Ombudsman attended the official announcement of the Heralds of Hope, a campaign in which cancer patients and their relatives commend health-care workers who particularly stand out due to their valour, understanding and warmth.
31.	<b>22 June 2015</b>	At the Ombudsman's head office, the Ombudsman and her Deputy Tone Dolčič met Maja Plaz from the Association SOS Help-line for Women and Children – Victims of Violence.

	Date	Description of event
32.	<b>27 June 2015</b>	The Ombudsman addressed the competitors and audience at the national dance championship in Medvode Sports Hall, which was organised by the DanceSport Federation of Slovenia, and handed out the awards to the winners.
33.	<b>30 June 2015</b>	Deputy Ombudsman mag. Kornelija Marzel met representatives of the Trade Union of Slovenian Mobile Workers at the Ombudsman's head office.
34.	<b>2 July 2015</b>	The regular monthly meeting with representatives of civil society in the field of the environment and spatial planning took place in Ankaran, focusing on environmental issues on Slovenia's coast.
35.	<b>16 July 2015</b>	At the Ombudsman's head office, Deputy Ombudsman mag. Kornelija Marzel, Martina Ocepek, Director of the Expert Service, and Jožica Matjašič, the Ombudsman's adviser, met representatives of the Ministry of Infrastructure, the Proteus Association – the Bela Krajina environmental movement and the civil initiative against the construction of transmitters in various settlements in Slovenia.
36.	<b>23 July 2015</b>	The Ombudsman and her Deputy Tone Dolčič met representatives of NGOs, which detect certain deficiencies in providing comprehensive child care at a regular meeting with the Centre for Advocacy and Information on the Rights of Children and Youth (Centre ZIPOM).
37.	<b>29 July 2015</b>	The Ombudsman and Deputy Tone Dolčič held an introductory meeting with the new President of the Slovenian Federation of Pensioners' Associations, Anton Donko, and Vice-President Vera Pečnik.
38.	<b>2 September 2015</b>	Human Rights Ombudsman Vlasta Nussdorfer, Deputy Tone Dolčič, the Executive Director of UNICEF Slovenia, Tomaž Bergoč, and promoter Boštjan Gorenc - Pižama presented UNICEF safe points at UNICEF's press conference held at the Ombudsman's head office.
39.	<b>8 September 2015</b>	The Ombudsman attended the panel discussion entitled 'For safe old age', which was organised by Alma Mater Europaea – ECM in Maribor.
40.	<b>10 September 2015</b>	The Ombudsman was a guest as part of the 'NE-ODVISEN.SI – Those two words' programme at Ipavec Cultural Centre in Šentjur pri Celju.
41.	<b>16 September 2015</b>	The Ombudsman was a guest as part of the 'NE-ODVISEN.SI – Those two words' programme in Slovenske Konjice.
42.	<b>19 September 2015</b>	The Ombudsman attended a charity concert in Cankarjev dom for the Slovenian Red Cross and the Blood Transfusion Centre of Slovenia.
43.	<b>25 September 2015</b>	The Ombudsman, Deputies Jernej Rovšek and Ivan Šelih, the Director of the Expert Service, Martina Ocepek, and the Ombudsman's advisers met with representatives of civil society dealing with the issue of aliens and refugees.
44.	<b>26 September 2015</b>	The Ombudsman attended a formal event to mark the 20th anniversary of the Association of Patients with Blood Diseases in Mengeš Cultural House.
45.	<b>15 October 2015</b>	The Ombudsman greeted the participants at a ceremony marking the 15th anniversary of the VIZIJA – the Association of the Physically Disabled in the House of Culture in Slovenske Konjice.
46.	<b>20 October 2015</b>	The Ombudsman, Deputy mag. Kornelija Marzel and the Director of the Expert Service, Martina Ocepek, hosted a meeting of civil society dealing with the environment and spatial planning; the special guest was Irena Majcen, Minister of the Environment and Spatial Planning.
47.	<b>29 October 2015</b>	As part of the European Year for Development project, Deputy Ombudsman Jernej Rovšek lectured on international institutions and mechanisms for human rights protection in Trubar Literature House in Ljubljana.
48.	<b>19 November 2015</b>	The Ombudsman, Deputy mag. Kornelija Marzel and the Director of the Expert Service, Martina Ocepek, attended a meeting of civil society dealing with the environment and spatial planning, which took place in Vrhnika.
49.	<b>23 November 2015</b>	The Ombudsman, Deputy Tone Dolčič and Ombudsman's adviser mag. Simona Mlinar met representatives of the Cystic Fibrosis Association of Slovenia at the Ombudsman's head office.

	Date	Description of event
50.	<b>23 November 2015</b>	The Ombudsman addressed the participants of the bazaar of the Centre KORAK for Persons with Acquired Brain Injury at Brdo Congress Centre.
51.	<b>26 November 2015</b>	Deputy Ombudsman mag. Kornelija Marzel attended a round table in Koper entitled 'Homelessness Here and Now'.
52.	<b>28 November 2015</b>	The Ombudsman opened the 22nd International Charity Bazaar SILA at Ljubljana Exhibition and Convention Centre.
53.	<b>3 December 2015</b>	The Ombudsman attended a reception at the Presidential Palace hosted by Borut Pahor, President of the Republic of Slovenia, to mark the International Day of Persons with Disabilities.
54.	<b>8 December 2015</b>	Deputy Ombudsman Tone Dolčič gave a lecture at a panel discussion on violence against the disabled, which was organised by the VIZIJA – the Association of the Physically Disabled.
55.	<b>9 December 2015</b>	Deputy Ombudsman Jernej Rovšek attended a celebration organised by the United Nations Association of Slovenia to mark Human Rights Day.
56.	<b>15 December 2015</b>	At the Ombudsman's head office, the Ombudsman received the Peace Light of Bethlehem from representatives of the Slovenian Catholic Girl Guides and Boy Scouts Association.
57.	<b>18 December 2015</b>	The Ombudsman attended a reception at the Presidential Palace for representatives of humanitarian organisations, which was organised by Borut Pahor, President of the Republic of Slovenia.
58.	<b>23 December 2015</b>	At the Ombudsman's head office, the Ombudsman, Deputy mag. Kornelija Marzel, Martina Ocepek, Director of the Expert Service, and Sabina Dolič, Ombudsman's adviser, met representatives of civil society dealing with the environment and spatial planning.

### 3.3 MEDIA AND THE PUBLIC

The Human Rights Ombudsman of the Republic of Slovenia is aware of the role of the media when disseminating information on the Ombudsman's work and raising public awareness of the importance of enforcing human rights. We know that media relations should be based on a long-term relationship. We try to be a partner to the media, while nurturing two-way relations and providing information which helps people when enforcing their rights. The media enable the Ombudsman to realise the right of the public to information.

By forwarding information to the media, we also enforce the right of the public to obtain information of a public nature. Public authorities must provide information about their work to the media and journalists without discrimination so that the public are informed about all matters of public significance, which is a standard in democratic societies.

The Ombudsman protects individuals against unacceptable encroachments by holders of authority on their fundamental rights; however, the Ombudsman cannot act in cases when rights are violated by legal entities governed by private law, which also include some media. These can also violate human rights. More about this can be found in the section on ethics of public discourse. The Ombudsman also protects the rights of employees in the national media institution with regard to labour law legislation and the aspect of freedom of expression and the independence of media.

Interaction with the media in 2015 was intensive and took place daily. In 255 working days, we received about 300 questions from journalists or invitations to various forms of cooperation. Furthermore, the Human Rights Ombudsman made statements and replied to dozens of questions on numerous occasions. Unfortunately, statistics cannot be kept on this matter, so no precise number can be given.

In 2015, 19 press conferences were held; seven were held at the head office in Ljubljana and 12 in different towns in Slovenia during meetings outside the head office. After each meeting with the most senior representatives of

various authorities, particularly ministers, we usually held a short press conference at the Ombudsman's head office, where we informed the public about the results of our discussions.

The Ombudsman responded to many invitations from media organisations; she spoke at Radio Europa05 regularly every month about current issues. We also cooperate regularly with *Pravna praksa* (Legal Practice Journal). In 2015, the Ombudsman regularly published her column every two weeks at the IUS INFO legal portal.

The Ombudsman also has two profiles on Facebook and two websites: one for children and the adults who take care of them, and the other for information on the exceptionally multi-layered work of the Ombudsman, on which the public is also informed through press releases or at individual events. We inform the media and interested public about our work via newsletters every Friday.

The media are a source of information for the Ombudsman's actions. Due to mistrust of institutions or a lack of information on whether the Ombudsman might help, many people turn to the media and share their difficult stories with them. The Ombudsman perceives information from the media as a source of information about possible violations. It assesses and studies the appropriateness of initiating a complaint of our own accord and if it meets the conditions for our taking action.

The Ombudsman ensures a qualitative, professionally justified, fair and prompt response to complaints from the media and their questions. The Ombudsman responds publicly when this is deemed necessary in the light of its role and powers. The Ombudsman responds to individual cases when all the relevant information from the competent authorities has been collected and when an opinion has been formed on the basis of the information. Due to the principle of confidentiality in this process, the Ombudsman always acquires the consent of complainants prior to disclosing any details about individual cases. Without such consent, only general opinions are provided about a certain problem.

### Questions from journalists

Most written inquiries from journalists in 2015 concerned constitutional rights and discrimination (over 80 in all) and children's rights (more than 40), followed by social matters (17), the judiciary (21), health care and health insurance (21) and employment relationships (9), pension and disability insurance (5), restriction of personal freedom (3), the environment (5), police procedures, administrative matters, housing issues and discrimination (1). This merely informative overview does not include all of the questions that the Ombudsman and her deputies were asked on various occasions.

The exceptional increase in the field of constitutional rights and discrimination is the result of events relating to amendments to the Marriage and Family Relations Act and the refugee crisis in the second part of the year. Constitutional rights usually receive a lot of attention every year because they also include the ethics of public discourse (communication, hate speech etc.), privacy and the rights of homosexuals, the Roma and vulnerable groups.

In relation to the **amendments to the Marriage and Family Relations Act**, we encountered an interesting question posed by a journalist as to whether an invitation to express personal opinions and beliefs in a workplace is considered mobbing. The Director of the Municipal Administration in the Municipality of Ljubljana was said to have invited her colleagues and subordinate employees to a group photo session to support the Act if this action complied with their beliefs.

Although the case was not presented to us in the form of a complaint and we did not verify the journalist's claims, we made certain general observations. We stated that an invitation to express one's world view could lead to discrimination, but not necessarily. The employer's motives would have to be determined. Article 46 of the Employment Relationship Act (ZDR-1) stipulates the employer's obligation to protect and respect an employee's personality, and to observe and protect the employee's privacy. An invitation to express one's world view at a workplace could be considered a form of mobbing only on the assumption that other elements defining mobbing were also present.

We received many questions throughout the year about the amendments to the Act, and journalists were particularly interested in our actions. More on the Ombudsman's measures presented to the public as replies to questions by means of press releases or at press conferences can be found in the chapter on discrimination and equal opportunities relating to sexual orientation.

The Ombudsman publicly **commended the passage of the Marriage and Family Relations Act** and thus the equalising of same-sex relationships with heterosexual ones. The Ombudsman assessed that homosexual persons would thus be granted the same rights, since they had been previously discriminated against in certain fields, contrary to Article 14 of the Constitution of the Republic of Slovenia. During the campaign, the Ombudsman called for a debate based on verified facts and excluding intolerance of people with contrary opinions. The Constitutional Court permitted a referendum. Following the rejection of the amendments to the Act, the Ombudsman in cooperation with NGOs began studying the need for, and possibilities of, filing requests for a review of the constitutionality and legality of regulations which preclude persons in same-sex partnerships from having equal rights.

Within the context of the amendments to the Act, we were also asked about the abuse of children for political purposes, since children were included in a video against same-sex relationships and efforts to acquire equal rights. More on this can be found in Chapter 2.16.10 Children in the media.

### Expressions of hatred against refugees made by leading political representatives

In autumn 2015, journalists asked the Ombudsman how to deal with the growing number of expressions of hatred directed against refugees. We provided clarifications in this regard in our press release. More on this topic can also be found in Chapter 2.1.4 Ethics of public discourse.

We were informed about a case of supposed hate speech on social networks by a sister of a deputy of the National Assembly and a journalist. We explained that we do not follow communications on social networks on a daily basis and do not express an opinion on everything appearing there, particularly because the Ombudsman's responsibility lies in protecting human rights and fundamental freedoms relating to the authorities, and we are thus unable to discuss examples in which individuals express their opinions and positions on social networks which could denote hate speech or intolerance.

Due to the directness and severity of the statement, the Ombudsman was able to assess that the journalist's statement undoubtedly exceeded the limits of freedom of expression and constituted a violation of Article 63 of the Constitution of the Republic of Slovenia which defines any incitement to violence as unconstitutional. The Ombudsman condemned the statement, since it very directly proposed the killing of refugees as a solution to the refugee crisis. That human life is inviolable is stated in Article 17 of the Constitution of the Republic of Slovenia. Life is the most protected social value and an absolutely protected human right, and any appeal to take it is unlawful and immoral.

The Ombudsman expressed the understanding that the occurrence of an exceptional increase in the number of refugees raises important social questions and concern among citizens. However, any participant in the public discussion who does not have sufficient decency and compassion for a person in distress should at least observe the legally permissible boundaries when proposing ways to overcome the migration crisis.

### ZLOvenija

The **ZLOvenija** project received a lot of attention. An unknown author published statements and photographs of Slovenians with xenophobic content about what bad should happen or be done to refugees. Some people approved of it, and it was assessed as a good method for combating hate speech or as an effective way of responding to cases of hate speech on the Internet. It initiated a substantive discussion on what hate speech was and how to respond to it. In this regard, questions of intervening in the privacy of people who publicly spread intolerance on their social profiles were raised. The Ombudsman assessed that the Internet is also a public space if content is easily accessible to an undetermined number of people, and that spreading

intolerance publicly may be subject to certain sanctions; which sanctions these should be must be determined by the competent authorities.

Regarding use of personal data of people who spread intolerance on the Internet, the Ombudsman believes that an individual who decides to have a public profile can no longer claim privacy and anonymity in relation to certain content. One cannot be anonymous only when this is convenient. We also explained that publishing personal information on flyers in public or posting them on utility poles may be defined legally as a form of 'self-help' which is usually unacceptable, since unacceptable conduct in regulated states governed by the rule of law must be sanctioned by state authorities. With such conduct, individuals actually assume a role which is supposed to be taken by the state. But as stated above, the state almost never sanctions cases of hate speech and does not indicate that it is unacceptable or may even be dangerous in the current conditions, such 'self-help' of civil society must also be looked upon from this perspective.

### Attempt to burn the Quran

We received questions relating to an attempt to burn the Quran in front of the National Assembly. We assessed it as an obvious attempt at provocation which was stopped on time. The action was entirely inappropriate, because such disrespectful treatment of religious symbols offends the religious sensibilities of certain groups of citizens. Such acts prompt and maintain hateful and intolerant feelings, which may escalate into physical violence and disturbances of public order and peace. We stressed that politicians should assess for themselves whether to respond to such provocations or not. If they respond, they should emphasise the inappropriateness of inciting hatred and intolerance, which abuses religious feelings and symbols. When publishing information on such provocations, the media should also act with due responsibility. They should report on such acts responsibly; merely informing on such provocations with no suitable comment or context may only contribute to further hatred and intolerance.

### Wearing of burqas

With the arrival of refugees, a wave of intolerance towards them began to spread, which was also displayed in a completely legitimate manner: one of the opposition parties presented a bill in Parliament on whether it was permissible to wear a **burqa**. The Ombudsman was requested to give an opinion.

The Ombudsman explained to journalists that manner of dress and visual presentation depend on individual choice if this does not interfere with the rights of others or endanger oneself and others. The wearing of the burqa is an expression of a (religious) belief, which is protected constitutionally at least with the general freedom of action guaranteed in Article 35 of the Constitution of the Republic of Slovenia, and a general prohibition on wearing the burqa in public could be an infringement on this human right. Human rights may be limited by law only if this protects other constitutional and human rights or values (e.g. protection of people and property, public order etc.). Legislators must thus carefully consider constitutionally protected values before passing an act that imposes a possible prohibition or limitation on wearing burqas in public.

The migration crisis also led to **protests against the razor-wire fence and the amendments to the Defence Act, which in Article 37a** gives the armed forces the same powers as those held by the police, to which a part of the public objected. At the request of Radio Študent, the Ombudsman also filed a request for a constitutional review of this Article. The media also inquired about the **restrictions on the movement of refugees** and the **treatment of refugees by police officers**. More on this can be found in Chapter 2.3.7 Aliens and applicants for international protection.

### Problems affecting the Roma people

In 2015, we received only a few questions relating to the **Roma**, all of which referred to concrete cases. A journalist at Delo newspaper discovered that the Government wrote in the documents being discussed that the issue of drinking water in Goriča vas was not problematic. He inquired about our opinion. We replied that

the Government had obviously not acted on either of the two Ombudsman's proposals, and we regretted their decision. Residents also confirmed that a (temporary) water supply had not been provided. Although the Government stated in 2011 that the observance of the right to drinking water, which derives from the national and international legislation, means the provision of public access or access to a public connection, it is the Ombudsman's opinion that the Government 'took a step back' in 2015 relating to already established human rights protection. It was impossible to discover the reasons from the letter received from the Government as to why the established policy had not been implemented.

### Discrimination against the blind and visually impaired

We received an inquiry from journalists as to whether the blind and visually impaired were really discriminated against in the education process. We agreed with the assertions of parents who passed on information to the media on the situation of this group of children. We also stated that we would again remind the Ministry of Education, Science and Sport and the Ministry of Health of the issues concerning the needs of comprehensive and systemic early treatment of pre-school blind and visually impaired children: just provision of additional expert assistance relating to a heterogeneous group; provision of equal opportunities for education and thus related financing of additional services or equipment; the provision of textbooks; the right of primary school pupils and secondary school students to participate in all parts of the educational process; training of expert staff and the rights of blind children to an additional teacher or a coordinator upon inclusive education. We asked the competent authorities to submit information on whether they were dealing with the issue and the deadlines on when and how the situation in each segment would be addressed. More on this issue may be found in Chapter 2.2.7 Equal opportunities relating to physical or mental disabilities (invalidity).

### Did applicants have the same opportunities when accessing the call for shortage occupation scholarships?

In the field of social activities, the call for shortage occupation scholarships caused quite a controversy. We received inquiries about whether applicants had had equal opportunities upon the repeated call. The Ombudsman did not receive any complaints claiming that someone did not have equal opportunities relating to access or filing the application. Nevertheless, the Ombudsman assessed that the criterion for considering of applications according to the order of the arrival of complete applications as per the date and time of filing an individual application was unsuitable. The Ombudsman also assessed that this legal criterion does not enable the scholarships to achieve their purpose. The time when the call was implemented was in itself problematic. It is impossible to promote enrolment in programmes for shortage occupations in mid-September, since the enrolment had already closed. The Ministry of Labour, Family, Social Affairs and Equal Opportunities planned to amend the legislation, and the Ombudsman thus decided to monitor further developments. On that note, the Ombudsman also highlighted that the issue discussed reveals the importance of drafting high-quality regulations and particularly the assessment of all the consequences arising from new legal arrangements. More on this issue may be found in Chapter 2.2.7 Equal opportunities relating to physical or mental disabilities (invalidity).

### Various questions on the invasion of privacy

Every year, we also receive a few questions on the invasion of privacy. Journalists inquired again on how to protect children from invasion of privacy on social networks. We emphasised the responsibility of administrators and the need to assess the risk of the consequences. If a child is at risk, the state must intervene with its apparatus to protect the child.

We were asked about how to avoid video surveillance and if the introduction of certified cash registers interferes with consumers' privacy. The invasion of privacy was also relevant in the case of an incident regarding arbitration when it was discovered by means of phone tapping that the two parties involved in arbitration were negotiating possible solutions. More on this can be found below.



### **Certified cash registers and the invasion of privacy**

A journalist wanted to know if the legislator justifiably or excessively encroached upon individual privacy with Articles 12 and 17 of the Fiscal Verification of Invoices Act, which refers to verification of consumers.

We explained that the Ombudsman had not yet considered a complaint in which an individual would claim the unconstitutionality of the relevant statutory provisions, since the Act had not yet been in force. We referred the journalist to the Information Commissioner of the Republic of Slovenia for further information, since the question also related to personal data protection, not only to the protection of individuals' privacy.

We stated that the question about possible excessive encroachment on individual privacy touches on many fields in a person's life and it is thus impossible to provide a clear uniform answer. For example, it refers to the provision of services in the most intimate field of a person's life (medically assisted reproduction, other health service, attorney services etc.) and also to everyday purchases and payments.

When assessing whether a concrete case involves an excessive invasion of privacy, it is necessary to strike a balance between the right to privacy (Article 35 of the Constitution of the Republic of Slovenia) and the protection of personal data (Article 38 of the Constitution of the Republic of Slovenia) on the one hand and public interest in the provision of effectively collecting mandatory taxes on the other. When discussing the relevant case, it may be determined if a certain action or an act by the authorities is compliant with the principle of proportionality. In accordance with this principle, the encroachment on human rights is permitted only if the intervention is necessary (the objective cannot be attained with a less intrusive intervention: the provision of effective collection of mandatory duties, in this case); if this intervention is suitable (the intervention enables the attainment of the objective), and if the intervention is proportionate in a narrower sense (striking a balance between the importance of the affected right and the significance of the objective being pursued).

### **Telephone tapping two parties involved in the arbitration process**

A journalist asked whether the case of eavesdropping on employees of the judiciary or the Ministry of Foreign Affairs constituted a violation of their rights, particularly the right to privacy. Since the Ombudsman was informed about the case only from the media, a general reply was given.

The right to communication privacy, which derives from the right to respect for private and family life, is determined in Article 12 of the Universal Declaration of Human Rights, Article 17 of the International Covenant on Civil and Political Rights and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Constitution of the Republic of Slovenia protects the right to privacy in Article 35, and the privacy of correspondence and other means of communication in Article 37. According to this constitutional provision, communication privacy may be encroached on only on the basis of an act which may determine that the privacy of communication and other means of communication and the inviolability of a person's privacy may be suspended for a certain period if this is needed for implementation or the course of criminal proceedings or state security. On this basis, it is clear that interventions in communication privacy contrary to this constitutional provision are violations of human rights. In Article 137, the Criminal Code defines unlawful eavesdropping and sound recording as a criminal offence. The law enforcement authorities must discover who was responsible for the relevant acts and whether their actions are contrary to law.

### **How to communicate?**

With regard to public discourse, in addition to the aforementioned hostility to homosexuals, members of religious communities and refugees, we also received a question on methods of communicating and restrictions with respect to civil society activism and in judicial proceedings. In the first case, we gave a comprehensive reply to questions about the boundary between freedom of speech and insulting a public figure; the extent and limitation of someone's right to reveal personal data; the recommended method and wording when

alleged criminal offences have been committed by public officials, and the manner in which public figures communicate.

In the latter case, we stressed the clarity and unambiguity of communications in all procedures, and in a manner which does not allow several interpretations and does not convey falsehoods.

We also received a question relating to supposed hate speech in the satirical and informative television show, 'This week with Jure Godler'. The question was discussed as a complaint, since we assessed that it required further analysis. This complaint is discussed in more detail in Chapter 2.1.4 Ethics of public discourse. At this point, we give part of the reply submitted to the journalist.

We assessed that in order to determine when a statement is understood as hate speech, it is necessary to observe who made the statement, in what context was it expressed, what the format of the contribution and the media were, and what the consequences of the statement may be for certain individuals or groups. From the question itself, it was evident that the statement was made in a satirical broadcast and by a comedian. A satirical format of media communications has certain features which allow it broader freedom of expression than is acceptable in a so-called 'serious' media context. Humour frequently exploits certain established stereotypes which are recognised by listeners and viewers even if not stated explicitly. The case to which the journalist draw our attention was considered as such.

### **Debt write-off, termination of subsidies to tenants of market dwellings and homelessness**

The issue of writing off debt was topical at the beginning of the year, the example being set by neighbouring Croatia. Before the Ministry of Labour, Family, Social Affairs and Equal Opportunities took action based on the Croatian example, a journalist was interested in knowing if the Ombudsman had received complaints about debt write-offs, if a similar solution was also proposed in Slovenia, and if such a proposal was sensible at all. We were not familiar with the solutions applied in Croatia, but we explained to the journalist in detail the already existing possibilities in Slovenia. Although our proposal was not submitted to the authorities, we expressed our commitment to insisting on the efficient implementation of applicable systemic solutions and the qualitative work of social work centres when assisting people in social distress. We received no written questions relating to the proposal of the Ministry of Labour, Family, Social Affairs and Equal Opportunities. The journalists merely inquired about our opinion on various occasions.

A reporter from the national radio informed us that the Government was planning to terminate subsidies to tenants in market dwellings. We expressed our concern and undertook to study the case in detail. Later, we filed a request for a review of constitutionality in this regard. More about this can be found in Chapter 2.9.4 Subsidising rents.

Social issues are closely related to housing issues. We received questions on homeless persons, the arrangement of permanent residence or evictions. More on the Ombudsman's positions may be read in Chapters 2.9 Housing matters and 2.15 Social matters.

The Ombudsman also held a press conference on homelessness in October 2015.

### **Questions on labour rights**

In the field of employment relationships, we informed a journalist about the extensive activities of the Ombudsman relating to public works in 2014, and another journalist on the Ombudsman's opinion about precarious work. We stated that we were not satisfied with the state's activities in this field. We assessed the chaining of companies, which to a certain extent is permitted by the Employment Relationship Act (ZDR-1) and the Companies Act (ZGD), as impermissible, and also denotes an open form of precarious work (for example, an employer may establish several companies which have no ownership links). We determined that the Companies Act (ZGD-1) should be amended in order to prevent the establishment of companies by employers who had already been convicted with a final decision for certain violations. A consideration about the amount

of initial capital required for the establishment of a company would also be suitable. We also pointed out several forms of insecure employment relationships and covert employment relationships. We emphasised that the Ombudsman had been exceptionally critical about all forms of precarious work for a long time, and drawing the attention of competent ministers and authorities to the problem and calling upon changes with various recommendations. On this topic, the Ombudsman also organised a panel discussion entitled 'How did work lose its dignity?' in 2014 (further information is available on the Ombudsman's website under Projects).

We were unable to provide a reply to the journalist's question about how many criminal violations of labour rights we had discussed, because we do not keep separate statistics on this subject. This issue is in the domain of the courts. However, we provided a detailed description of our efforts in the field of employment relationships.

The Ombudsman informed a journalist that it was discussing on its own initiative the issue of workers seconded to temporary work abroad. More on this is written in Chapter 2.10.4.

**The financing of Info point for foreigners at the Employment Service of Slovenia was also terminated** last year. In our public statement, we assessed that by terminating the financing of the project aliens, migrants and asylum seekers, who are especially vulnerable, would have no urgently required advocacy and consulting and would be pushed even further to the edge of the society and onto a path of illegal exploitation in our country. All of the above was taking place when the migrant crisis was at its height. We also added that the state should find financial resources to continue the project.

### Base stations and the right to water

In the field of the environment, we received a question about whether the Human Rights Ombudsman was considering filing a request for a constitutional review of the Railway Traffic Safety Act (ZVZelP). We did not file a request, but stated our position that the right to water as a fundamental human right must be enshrined in Slovenian legislation. Management of the right to water must be uniform and not as it is now, when each municipality individually determines the conditions for disconnecting the drinking water supply. The right to water is also inseparably connected with the right to life, dignity and health. The Ombudsman assessed again that the right to water is one of the rights which are basic for people's life. The quality of life, particularly of vulnerable groups, may deteriorate significantly if this right is violated. The Ombudsman thus called on the state to regulate this right at the highest level, i.e. to enter it in the Constitution, and also arrange sectoral legislation (e.g. determine drinking water supply at the national level in the Environmental Protection Act and no longer only at the local level as it is now, when the supply of drinking water is a mandatory municipal utility service of environment protection).

### Great concern for children's rights

The field of children's rights also received a lot of attention from the media. We publicly expressed our outrage at the termination of study assistance for children with special needs. The Ombudsman was concerned because no guarantees were given that these and other austerity measures in education were only temporary. The Ombudsman never agrees with any limitation of the rights of the most vulnerable groups of citizens and thus asked the state to find other ways to make savings. It also disagreed with the idea that schools themselves should assess the pupils eligibility for this assistance (i.e. ignoring the provisions of decisions on placement) and combine study assistance for more pupils, which would undoubtedly amount to merely formal fulfilment of the provisions of decisions on the placement of individuals. We also called for the consistent observance of applicable regulations, which also include decisions on the placement of children with special needs. More on this issue and its positive resolution can be found in Chapter 2.16 Children's rights.

We informed the public about our position on the transportation of persons with disabilities, outlined in detail our work regarding children with emotional and behavioural disorders, and repeated our established position on home schooling. Regarding the latter, the criteria of home schooling must be defined more thoroughly. We also expect greater supervision to prevent violations of children's rights to education, more frequent testing of knowledge to enable a prompt determination of children's progress or regression, including the seeking of

optimum conditions for children's development. The Ombudsman also expects the introduction of qualification criteria for home teachers to be considered.

A teacher's proposal about THC testing of secondary school students received a lot of attention. We discussed and published it, unattributed, on our website. A practical lessons teacher in a secondary technical school asked for our opinion and recommendations about testing students on the presence of THC in their saliva. She required the Ombudsman's opinion on whether the application of tests would constitute a violation of any human rights. She also added that the testing would take place in a school advisory service room and that at least one additional expert colleague would be present. The purpose of such testing would be solely to protect students unable to follow or perform practical training under the influence of drugs and who thus endanger themselves and others. We submitted our reservations to the complainant. More on the issue can be found in Chapter 2.15 Children's rights.

Since violence is still present in Slovenian society in all its forms, and children are its frequent victims, certain journalists expressed their concern about the arrangement of psychological support offered to them. The public was outraged about cases of children being seized. More on this topic can be found below.

In May 2015, the European Committee of Social Rights of the Council of Europe determined that the Republic of Slovenia was violating Article 17 of the **European Social Charter** because it had not yet prohibited the **corporal punishment of children**. The Ombudsman repeated publicly that this issue must be regulated legally as soon as possible, either by amending the Family Violence Prevention Act or in the new Family Code.

We were also asked about our opinion on begging or the economic exploitation of children. The Ombudsman assessed that the regulatory framework preventing the economic exploitation of children is adequate in the Republic of Slovenia, whereby we are aware that it is very difficult to detect such conduct within a family and even harder to sanction it. Furthermore, certain reasons for economic exploitation of children and child labour could be eliminated with efficient mechanisms to abolish poverty.

A case of peer **mobbing based on nationality of a 10-year old boy in Deskle** received a lot of attention in 2014. The Ombudsman said that the fact that the incident which had taken place at school is reprehensible, and required thorough and responsible consideration by representatives and other expert workers at the school, and especially by the parents of the children involved. The Ombudsman also recommended several measures to be taken by the school's bodies.

### Seizures of children

The public was outraged about cases of children being seized. The Ombudsman could not comment on the events, since it lacked authorisation and sufficient objective information. We stated that seizure is only one of the pressures to which a child is exposed and which most clearly shows that children are always the victims of parental disagreements. Therefore, all state authorities and holders of public authorisations should particularly note the requirement that a child's benefit should be the main consideration in decision making procedures. The expert workers of social work centres would have to prepare both parents in advance for the seizure and its consequences and not merely observe the child's reaction to a (physical) seizure in the last phase of the procedure. Unfortunately, the seizure proves that parents were unable to agree on minimum cooperation in the upbringing and care of their child, and frequently also to the fact that the legal remedies applied were not efficient. We believe that legislation should provide more remedies to enforce observance of competent authorities' decisions, which would enable prompt and effective reactions in all cases when one of the parents fails to comply with a court decision.

In other cases, the Ombudsman assessed that schools are not an appropriate place for the enforcement of seizure, especially if the latter may be carried out in another place and does not harm the child. The Ombudsman also ascertained that legal provisions regulating the enforcement of final and executable court decisions relating to the care and education of children and personal contacts comply with the principle of the best interests of the child and that regulatory changes are not required in this regard. However, it would

be helpful to address the issue of why or because of whom the assistance of the state is needed to enforce a certain final court decision, and what the state could do so that its intervention is not be required.

In this regard, we also noticed information of the Movement of Conscious Citizens of Slovenia on a web portal that "kidnapping children from primary families by means of enforcements of social work centres is a direct violation of Article 9 of the UN Convention on the Rights of the Child". The case was discussed as a complaint, and we informed the public that the regulation does not contravene to the Convention on the Rights of the Child, but the section of the Convention was translated incorrectly and does not comply with the English original, thus permitting different interpretations. We again highlighted the problematic exposure of minors' names and surnames.

### International child adoption

We were also surprised by the **case of an adopted girl from Ghana** whose parents grew tired of her and left her at Ljubljana Paediatric Clinic. We assessed that adoption should not be treated as a right of parents, but exclusively the right of a child. The above case should be considered as a criminal offence according to Article 192 of the Criminal Code, which governs the neglect and maltreatment of children, and Article 193 of the Criminal Code governing the violation of family obligations. We also stated that if a victim of a criminal offence is a child, anyone, and particularly expert staff in health care, must immediately inform the competent authorities (social work centres, police and prosecution service) of this, irrespective of the provisions on protecting professional secrecy.

### Slovenia: the worst record according to the number of human rights violations per one million citizens

In the middle of summer of 2015, we received several inquiries from journalists about Slovenia's position as the worst violator of human rights with respect to its share (per the number of citizens) of rulings against it in the European Court of Human Rights (ECHR). We replied that we monitor the work of the relevant Court and respond to its findings, particularly in annual reports that are discussed in the National Assembly. It was assessed that the data were very revealing. However, we also added that it was not possible to simply claim that Slovenia was among the worst violators of fundamental human rights and freedoms without an in-depth analysis and merely on the basis of the share of judgements of conviction. More on this issue can be found in Chapter 2.4 Justice.

### Request for electric paralyzers, treatment of refugees by the police and negotiations with the Government

Journalists were disturbed by news of an **attempt to introduce electric paralyzers**; they inquired about the Ombudsman's opinion on the matter. The Ombudsman has always had reservations about the use of paralyzers. We expressed our concern that they could be used more frequently than necessary, and we emphasised that the conditions for use should be similar to those for firearms. We mentioned some tragic cases that have occurred around the world, and provided certain reservations of the CPT on conflicting opinions about their use and also possible negative effects of this coercive measure on health and its possible abuse. More on this issue can be found in Chapter 2.5 Police procedures.

The journalists also monitored the arrival or **passage of refugees and their treatment by the police**. We submitted information to the media on police conduct, which was determined in the Ombudsman's findings when monitoring.

In our press release, we also emphasised that the **negotiations between the police and the Government** may be an opportunity to obtain comprehensive information on the work and working conditions of police officers in the light of the principle of good administration, and for taking suitable action to make improvements. The respect for dignity and suitable working conditions of police officers also contribute to the better treatment of people and protection of their rights, which is of the utmost importance when the number of refugees is increasing.

### Patria

The Ombudsman was asked publicly to respond to the decision of the Constitutional Court of the Republic of Slovenia in the Patria case. The Ombudsman replied that it was familiar with the events of this case only through publicly available information, since no one from the affected parties had contacted us. We added that we have emphasised several times the importance of qualitative, fair and independent decision making, which is the duty of the judicial branch of power. Effective protection of human rights cannot be guaranteed without a judiciary whose decisions provide formal protection of human rights. Therefore, it is important that judicial proceedings be legitimate, without undue delay and that they observe all guarantees of a fair and unbiased procedure as determined by the Constitution, international treaties and acts, because only such proceedings can yield a fair decision. The Ombudsman also expressed the need to issue high-quality court decisions (and guaranteed trials without undue delay) which is stressed in its annual reports, and added that it encouraged further enhancing the efficiency of judicial and supervisory bodies, including their improved transparency and public functioning.

### On compulsory vaccination

The public was concerned about the notification of Andrej Baričič, candidate for director of Ljubljana University Medical Centre, on compulsory vaccination of the medical staff at the Centre against influenza. The Ombudsman spoke about this subject at a press conference on 29 October 2015. More on this can be found below.

We also received an inquiry from a journalist about whether parents are entitled to a wage compensation for the time their child is being treated in a hospital. We assessed that this right could apply only in exceptional cases, which would have to be determined in advance by law, whereby experts should provide more detailed explanations. In fact, parents are entitled to wage compensation for sick leave due to child care and nursing; however, health care is provided by a hospital when a child is in the hospital. The same applies for rehabilitation in a health resort.

### Dog on the Ombudsman's premises

We also received a question **if we had a dog at the Ombudsman's head office**. A complainant saw it and informed a journalist about it. We replied that none of the staff had a dog permanently in their office. However, a person with special needs was doing 14 days of practical training at the Ombudsman and a colleague brought his therapy dog to work, which he frequently takes on visits to people in hospice care for the purposes of therapy, which he does as a volunteer.

### Sexual extortion of women relating to the workplace

Certain journalists who were insufficiently informed about the Ombudsman's work asked us about appointments to certain bodies. We explained that it was not the Ombudsman's task to assess the suitability of candidates for certain positions or workplaces, and expressed our hope that this could be resolved accordingly by the competent services and bodies which, in compliance with the law, participate in selection procedures.

Towards the end of the year, a journalist asked us about our **position on the sexual extortion of women relating to workplace and how we respond to such cases**; the inquiry was based on an assumed relationship of Ljubljana mayor with a pharmacist. We explained that the Ombudsman had never received any complaints referring to sexual extortion of women. The information on such cases could be provided by law enforcement authorities (police and prosecution service). Due to the lack of such complaints, the Ombudsman was unable to give information on whether the victims contact suitable institutions.

## Press conferences

In 2015, the Ombudsman organised 19 press conferences; seven were held at the head office in Ljubljana and 12 in different towns in Slovenia during meetings outside the head office. Brief press conferences were also convened after meetings with ministers in order to make joint statements. At press conferences held during meetings outside the head office, the Ombudsman usually presented the main findings and topics of discussions held with mayors. At this point, we will not give further details, but we invite all interested readers to find more information on the Ombudsman's website under Media Centre/Work and news (<http://www.varuh-rs.si/index.php?id=48&L=6>).

We also do not include joint statements made after meetings with esteemed guests. With ministers, we usually discussed open issues, the content of complaints and the Ombudsman's recommendations, which are presented in more detail in Chapter 2 of the Report.

Below we provide certain main topics that were addressed at press conferences which were held at the Ombudsman's head office. These press conferences were convened if we assessed that complex content required detailed clarification or direct public debate with the media in order to dispel possible confusion. All press conferences were audio recorded.

### **The Ombudsman requests a constitutional review of several provisions of the Exercise of Rights from Public Funds Act**

On 20 May 2015, Human Rights Ombudsman Vlasta Nussdorfer filed a request at the Constitutional Court of the Republic of Slovenia for a constitutional review of three provisions of the Exercise of Rights from Public Funds Act and a review of a provision of the Rules referring to the Act. At the press conference, the Ombudsman and Deputy Tone Dolčič stated that it was the Ombudsman's view that the provisions infringe unacceptably on the rights of the most vulnerable groups, particularly children. The Ombudsman had been drawing the attention of the Ministry of Labour, Family, Social Affairs and Equal Opportunities to the problems since the passage of the legislation at the beginning of 2013; however, no changes were made. The request was presented by the Ombudsman's adviser, Lan Vošnjak.

The Ombudsman contested the provision according to which child maintenance is included in family income up to the amount of the minimum income. The second contested provision referred to the establishment of cohabitation. The Ombudsman also contested the provision governing the establishment of the income of sole proprietors. Furthermore, it requested that the Constitutional Court of the Republic of Slovenia examine the provision of the Rules for determining the savings amount and property value and on the value of provision for basic needs with reference to procedures of exercise of rights to public funds.

### **The Ombudsman admonishes the state for failing to implement the Ombudsman's recommendations**

On Friday, 19 June 2015, Human Rights Ombudsman Vlasta Nussdorfer handed over the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2015 to Dr. Milan Brglez, President of the National Assembly of the Republic of Slovenia, at the premises of the National Assembly of the Republic of Slovenia.

Following the handover, the Ombudsman and Deputies Tone Dolčič and mag. Kornelija Marzel presented the main issues discussed in the Annual Report at the press conference in the conference room at the Ombudsman's head office. The Ombudsman emphasised that the economic crisis was still used too frequently as an excuse for violating rights, which was unacceptable. It was time to stop talking and start taking action, she said. She also emphasised that human rights are birthrights, and the first task of governments is to realise them.

The Ombudsman submitted as many as 114 recommendations, although most those from 2013 had not yet been implemented. "The Ombudsman will insist on their realisation," she said, and added that she intended

to meet every minister individually in the autumn and review again the possibilities of implementing the Ombudsman's recommendations.

### **The Ombudsman challenged the intervention in the rent subsidies at the Constitutional Court of the Republic of Slovenia and requested supervision of the work of judges at Celje District Court**

At a press conference on Friday, 31 July 2015, Human Rights Ombudsman Vlasta Nussdorfer and Deputies mag. Kornelija Marzel and Ivan Šelih presented a request for a constitutional review of the Act Regulating Measures Aimed at the Fiscal Balance of Municipalities (ZUUJFO) and spoke about the death of a 92-year old patient accommodated at the Unit for Forensic Psychiatry of the Department of Psychiatry at Maribor University Medical Centre.

Deputy Marzel said that not all municipalities had a sufficient stock of so-called non-profit apartments and thus not all eligible individuals are granted one although they meet the criteria. Prior to the Act's provisions, people were able to obtain an apartment on the market and receive a subsidy making up the difference between a profit and market rent, and also a subsidy for a non-profit part of the rent. The Act Regulating Measures Aimed at the Fiscal Balance of Municipalities terminated the additional subsidy up to the amount of the recognised non-profit rent. By doing so, the Act caused further distress to the socially weakest people and also made homelessness more likely.

Deputy Ivan Šelih presented the case of a violation of a terminally ill patient's rights. He assessed that Celje District Court had not responded appropriately to the warnings of the Unit for Forensic Psychiatry of the Department of Psychiatry at Maribor University Medical Centre on the seriousness of the patient's condition and thus failed to respect his personality and dignity. Due to the court's dilatoriness, the Ombudsman filed a request for official supervision with the President of Celje District Court on the basis of Article 7 of the Human Rights Ombudsman Act (ZVarCP) and paragraph one of Article 79b of the Judicial Service Act (ZSS). More on this case can be found in Chapter 2.3. Restriction of personal liberty.

### **UNICEF and the Ombudsman invite children to speak at UNICEF safe points about their problems**

At the beginning of the new school year, UNICEF Slovenia and the Human Rights Ombudsman reminded children that if they have problems, they can find refuge at UNICEF safe points. One of these points is located at the Human Rights Ombudsman of the Republic of Slovenia.

Tomaž Bergoč, Executive Director of UNICEF Slovenia, invited children to talk about their problems with parents, friends, at school or at UNICEF safe points without any fear. The Ombudsman stressed that the institution had become one of UNICEF safe points a year ago, as an institution which strives to protect children's rights and participates in creating a safer environment for children. In 13 years, 566 safe points were established in 74 Slovenian towns, which involve over 1,200 kind people who voluntarily help children in distress.

### **On homelessness through the eyes of the Ombudsman before World Homeless Day and the network for the homeless**

Homelessness was no longer limited only to middle-aged men, but had also spread to women and children, Human Rights Ombudsman Vlasta Nussdorfer emphasised at a press conference before 10 October, World Homeless Day. At the press conference of 6 October 2015, Deputy mag. Kornelija Marzel presented the main issues that the Human Rights Ombudsman had identified in this field. She said that the Ombudsman had received 12 complaints about evictions in 2015. Deputy Marzel said that people usually contact the Ombudsman at later stages, and also highlighted the problematic registering of residence. If a person is unable to register a residence, they lose numerous rights, i.e. social assistance and health insurance. Boštjan Cvetič, President of the Slovenian Network of Organisations Working with the Homeless, outlined issues encountered in the field and the basic guidelines for the formation of the Homelessness Strategy in Slovenia. This would be the first such document in the country, he stated, and also expressed the need for an ombudsman of homeless people.

Suzi Kvas, Vice-President of the Slovenian Network of Organisations Working with the Homeless, spoke about problems found by NGOs. She emphasised that one of the problems of homeless families was that they could not be accommodated together due to the lack of suitable residential units, and so families were frequently separated. There was a need for some 800 residential units, and municipalities do not have a uniform method for obtaining apartments, said the speakers.

#### **On the migrant crisis, the decision of the Constitutional Court of the Republic of Slovenia, vaccination and other issues at the press conference**

At a press conference on 29 October 2015 at the Ombudsman's premises, Human Rights Ombudsman Vlasta Nussdorfer, Deputies Jernej Rovšek and Tone Dolčič, and the Ombudsman's adviser Miha Horvat spoke about the Ombudsman's activities regarding the migration crisis, and presented the Ombudsman's opinion on the decision of the Constitutional Court of the Republic of Slovenia on the admissibility of a referendum and the position on the compulsory vaccination of medical staff at Ljubljana University Medical Centre. The public was also informed about the findings of the official supervision relating to the death of a 92-year old patient at the Unit for Forensic Psychiatry of Maribor University Medical Centre, which was discussed at a press conference in July.

## 3.4 INTERNATIONAL COOPERATION

#### **Farewell to American Ambassador Joseph A. Mussomeli**

On 16 January 2015, Human Rights Ombudsman Vlasta Nussdorfer and Deputy Jernej Rovšek attended a farewell meeting for the American Ambassador, His Excellency Joseph A. Mussomeli, at the premises of the American Embassy.

#### **Joint European initiative (platform) against hate crimes**

Between 9 and 11 February 2015, Deputy Tone Dolčič attended a conference in Leeds, in the UK, accompanied with workshops entitled "Access to Justice for Children with Mental Disabilities".

#### **The 25<sup>th</sup> anniversary of the CPT**

Deputy Ivan Šelih and Ombudsman's adviser mag. Jure Markič attended a conference on the occasion of the 25<sup>th</sup> anniversary of the CPT – European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment entitled "The CPT at 25: taking stock and moving forward", which was held at the Palace of Europe in Strasbourg, France, between 1 and 3 March 2015.

#### **Exchange of experience with a New Zealand judge**

On 3 March 2015, Human Rights Ombudsman Vlasta Nussdorfer and Deputy Tone Dolčič received Claire Ryan, District Court Judge from Auckland in New Zealand, who presented her work on juvenile delinquency and as a world-renowned international judge at debating tournaments. She was particularly interested in the Ombudsman's work in the field of children's rights and inquired about the Advocate – A Child's Voice Project.

#### **Reception by the Ambassador of Ireland**

On the occasion of St. Patrick Day, the Irish national holiday on 17 March 2015, Human Rights Ombudsman Vlasta Nussdorfer attended a reception hosted by the Irish Ambassador, His Excellency Pat Kelly.

#### **The Ombudsman receives the new Ambassador of the United States of America**

On 18 March 2015, Human Rights Ombudsman Vlasta Nussdorfer and Deputy Jernej Rovšek received the new Ambassador of the United States of America, His Excellency Brent Robert Hartley.

#### **Meeting of Ombudsmen in the Czech Republic**

Between 25 and 27 March 2015, Human Rights Ombudsman Vlasta Nussdorfer and Deputies mag. Kornelija Marzel and Jernej Rovšek attended an international conference on the occasion of the 15<sup>th</sup> anniversary of the Public Defender of Rights of the Czech Republic in Brno, where they spoke to colleagues from other countries about the work of their institutions, public relations in such institutions and the impact of ombudsmen on the adoption of legislation.

#### **Joint European initiative (platform) against hate crimes**

Deputy Jernej Rovšek attended a meeting in Riga, Latvia, between 30 and 31 March 2015, where hate crimes and hate speech were discussed (CoE-FRA-ENNHRI-Equinet Platform on Hate crime. A meeting between FRA, the Council of Europe, Equality Bodies, National Human Rights Institutions and Ombudsperson institutions). Projects and good practices for preventing or reducing criminal offences conducted due to hostile inclinations and hate speech were presented, and the following topics were discussed: racist, xenophobic, anti-Semitic and anti-Islamic speech; raising awareness of victims of such hostile acts; joint activities of competent bodies at the European level; collecting and exchanging information; promoting complaint channels and data exchange between non-governmental and governmental bodies.

#### **Reception of the Honorary Consul of Jordan**

On 1 April 2015, Human Rights Ombudsman Vlasta Nussdorfer and General Secretary mag. Bojana Kvas received Samir Amarin, Honorary Consul General of the Hashemite Kingdom of Jordan, at the Ombudsman's head office.

#### **Transfer of experience of the Slovenian NPM**

Deputy Ivan Šelih presented the methodology of implementing tasks of the Montenegrin National Preventive Mechanism (prepared by Ivan Šelih) between 7 and 8 April 2015 in Podgorica, Montenegro. The seminar took place within the framework of the 'Support for the Ombudsperson's Office and the Constitutional Court of Montenegro in applying European human rights standards' (SOCCER), co-organised by the Council of Europe.

#### **On human rights protection with representatives from Azerbaijan**

On 21 April 2015, Deputies Jernej Rovšek and Ivan Šelih, and Liana Kalčina, the Ombudsman's Adviser on International Relations, Publishing, Analysis and Surveys, received the representatives of the Azerbaijan Institute for Democracy and Human Rights (AIDHR). This non-governmental organisation was established in 2014 with the objective of ensuring observance of human rights, democracy and freedom and the preparation of various projects for the empowerment of citizens. The head of the delegation, Dr. Ahmad Shahidov, presented the functioning of the Institute and the implementation of human rights in Azerbaijan. Guests were interested in the experience of the Slovenian Human Rights Ombudsman, and the work and cooperation methods of the Ombudsman with state and local authorities.

#### **Meeting of ombudsmen in Poland**

Between 26 and 28 April 2015, Human Rights Ombudsman Vlasta Nussdorfer and Deputy Jernej Rovšek attended the 10<sup>th</sup> national seminar of the European Ombudsman Institute in Warsaw, Poland, where they presented the activities of the Human Rights Ombudsman of the Republic of Slovenia. The hosts of the seminar were Polish Human Rights Defender Prof. Irena Lipowicz and European Ombudsman Emily O'Reilly. The seminar was entitled 'Ombudsmen against Discrimination' and enabled an exchange of experience and ideas of national ombudsmen from 30 European countries. It focused on topics such as the rights of persons with disabilities,

of elderly people and national minorities. Each of the main topics was discussed in more detail in individual working groups. Deputy Rovšek led the group on national minorities.

### On strategic communication

Ombudsman's Adviser Liana Kalčina attended a meeting organised by the European Union Agency for Fundamental Rights (FRA) in cooperation with EQUINET (European Network of Equality Bodies), which was held in Vienna, Austria, between 4 and 5 May 2015. The participants paid particular attention to the issues of strategic communication at the national and European level in ombudsman institutions and other related bodies in EU countries.

### ECRI: How to deal with discrimination and hate crimes?

Deputy Jernej Rovšek attended a regular annual seminar of the European Commission against Racism and Intolerance (ECRI) held from 27 to 29 May 2015 in Strasbourg. The central topic of the seminar was the role of independent institutions of human rights protection dealing with discrimination and hate crimes.

### Meeting of Children's Rights Ombudspersons – CRONSEE

Deputy Tone Dolčič and Ombudsman's adviser Lan Vošnjak attended a conference of the Children's Rights Ombudspersons' Network in South and Eastern Europe (CRONSEE) that was held in Zagreb, Croatia, between 28 and 29 May 2015. The meeting focused on the implementation of children's rights and their benefits in cases when children's interests are in conflict with the interests of their parents.

### Reception by the Ambassador of Italy

On 2 June 2015, Human Rights Ombudsman Vlasta Nussdorfer attended a reception hosted by the Ambassador of the Italian Republic, Her Excellency Rossella Franchini Sherifis, at the City Museum of Ljubljana.

### European Commission on the protection of children's rights

Between 3 and 4 June 2015, Deputy Tone Dolčič attended the 9<sup>th</sup> European Forum on the rights of the child, organised by the European Commission in Brussels, Belgium, in order to exchange experience on coordination and cooperation in integrated child protection systems.

### Implementation of preventive tasks of National Preventive Mechanisms

On 4 June 2015, Deputy Ivan Šelih attended a working meeting entitled 'Implementing the preventive mandate: Ombuds institutions designated as National Preventive Mechanisms in the OSCE region' in Warsaw, Poland. The meeting was organised by APT – the Association for the Prevention of Torture (Geneva, Switzerland) and OSCE (Organisation for Security and Cooperation in Europe).

### Reception by the Ambassador of the Russian Federation

Human Rights Ombudsman Vlasta Nussdorfer responded to the invitation of the Ambassador of the Russian Federation, His Excellency Dr. Doku Zavgajev, and attended a ceremony on the occasion of Russia Day on 11 June 2015.

### Exchange of experience between National Preventive Mechanisms

Deputy Ivan Šelih and Ombudsman's adviser Robert Gačnik attended a workshop of the International Ombudsman Institute (IOI) for National Preventive Mechanisms (NPM) entitled 'Implementing a preventive mandate', which was held in Riga, Latvia, from 16 to 19 June 2015. The workshop was organised by the Latvian Ombudsman, the International Ombudsman Institute (IOI) and the Association for Prevention of Torture (APT).

### Supervision of centres for illegal immigrants and asylum seekers

On 26 June 2015, Deputy Ivan Šelih shared the experience of the Slovenian National Preventive Mechanism with participants at a round table or a workshop in Skopje, Macedonia. The round table was organised by the Ombudsman of the Republic of Macedonia, the Austrian Ombudsman and the Ludwig Boltzmann Institute of Human Rights. The participants discussed the monitoring of facilities with limited freedom of movement and centres for illegal immigrants and asylum seekers. They particularly focused on the situation and challenges involving illegal immigrants and asylum seekers in Macedonia. On this occasion, Ivan Šelih made a statement which received a lot of attention in the Macedonian media.

### Health care of persons deprived of liberty

On 28 June 2015, Deputy Ivan Šelih and Milan Popović, a specialist of the Slovenian National Preventive Mechanism, attended a workshop of the South Eastern Europe NPM Network organised in Tirana, Albania. The main topic of discussions was access to health care for persons deprived of their liberty in the SEE region.

### Visit to the National Preventive Mechanism of the Republic of Austria

Members of the National Preventive Mechanism Deputy Ivan Šelih and Ombudsman's advisers Robert Gačnik and mag. Jure Markič made a one-day working visit to the National Preventive Mechanism of the Republic of Austria on 30 June 2015. The primary purpose of the visit was to exchange practical experience of implementing preventive visits. To this end, representatives of the NPM of the Republic of Austria conducted an unannounced visit to a prison in Klagenfurt in which members of the NPM of the Republic of Slovenia participated as observers. Such cooperation and exchanges of experience of implementing preventive visits within the SEE Network proved useful in the past, and will continue, since we expect the members of the National Preventive Mechanism of the Republic of Austria to participate in a similar visit to the Republic of Slovenia in 2016.

### Reception by the American Ambassador

Human Rights Ombudsman Vlasta Nussdorfer and Deputy Jernej Rovšek attended an official reception to mark the Independence Day of the United States of America hosted by the U.S. Ambassador to the Republic of Slovenia, His Excellency Brent R. Hartley, on 2 July 2015.

### Reception of the Swiss Ambassador

On 9 July 2015, Human Rights Ombudsman Vlasta Nussdorfer and Deputy Jernej Rovšek received the Ambassador of Switzerland, His Excellency Pierre-Yves Fux, at the Ombudsman's head office.

### Visit by the Montenegrin Ombudsman

The delegation of the Montenegrin Ombudsman (Protector of Human Rights and Freedoms of Montenegro – Ombudsman) led by Ombudsman Šučko Baković visited Human Rights Ombudsman Vlasta Nussdorfer on 3 August 2015. The delegation included Deputy Zdenka Perović, the Ombudsman's advisers, Marica Nišavić and Dragan Radović, and Boris Ristović, Project Officer at the Office of the Council of Europe in Podgorica, Montenegro. The working discussions were also attended by Deputies Ivan Šelih, Jernej Rovšek and Tone Dolčič, and mag. Bojana Kvas, Secretary General of the Ombudsman. The main focus was on the operations of the National Preventive Mechanism according to the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The programme for the visitors included a visit to Begunje Psychiatric Hospital, Piran Police Station, Radeče Juvenile Correctional Facility and Vrhnika Retirement Home.

### International Ombudsman Symposium in Turkey

Between 16 and 17 September 2015, Deputy Jernej Rovšek attended the 3<sup>rd</sup> International Symposium on Ombudsman Institutions in Ankara, Turkey. At the Symposium, Deputy Rovšek presented the discussion of the substantive field of discrimination, individual cases and experience with Ombudsman's reports being discussed by the Parliament.

### **A child in the labyrinth of criminal proceedings**

On 18 September 2015, Human Rights Ombudsman Vlasta Nussdorfer gave a lecture entitled 'A child in the labyrinth of criminal proceedings – how the situation is and how it should be' during the 22<sup>nd</sup> Pannonian Lawyers' Symposium in Stegersbach, Austria. The organisers were the Austrian Federal Ministry of Justice and the Burgenland Legal Association.

### **Children's Ombudsmen on violence against children**

Deputy Tone Dolčič attended the 19<sup>th</sup> Annual Conference of the European Network of Ombudspersons for Children (ENOC) on Violence against Children, which was held in Amsterdam, the Netherlands, between 21 and 25 September 2015. The conference focused on combating violence against children and the role of children's ombudsmen in this field. The members of the ENOC were able to exchange best practices and information on the activities and strategies of individual ombudsmen when combating violence against children.

### **Exchange of experience between the Ombudsman and the Ombudsman of the Republic of Croatia**

Human Rights Ombudsman Vlasta Nussdorfer and her colleagues, Deputies Jernej Rovšek, mag. Kornelija Marzel, Tone Dolčič and Ivan Šelih, General Secretary mag. Bojana Kvas and Martina Ocepek, Director of the Expert Service, welcomed Croatian Ombudsman Lora Vidović, and her Deputies, Lidija Lukina Kezić and Mario Krešič. The one-day visit of the highest representatives of the Ombudsman of the Republic of Croatia was an opportunity to discuss current work issues of both institutions, to present work and organisation, and to exchange information, experience and findings. Ombudsman Lora Vidović familiarised the expert board of the Human Rights Ombudsman of the Republic of Slovenia with the functioning and achievements of the Croatian Ombudsman. In 2008, the Croatian Ombudsman as an independent national institution acquired status A according to the so-called Paris Principles (Principles relating to the Status of National Institutions for Promotion and Protection of Human Rights). The Croatian Ombudsman is both the central body combating discrimination and also the National Preventive Mechanism for the prevention of torture and other forms of cruel, inhuman or degrading treatment or punishment.

### **Improving measures relating to detention conditions at EU level**

Deputy Ivan Šelih attended a seminar entitled 'Improving measures related to detention conditions at the EU level' held in Trier, Germany, between 14 and 16 October 2015. Deputy Šelih presented the role of the Human Rights Ombudsman of the Republic of Slovenia when discussing complaints by persons in detention and visiting prisons in the role of the National Preventive Mechanism. The seminar was organised by the Council of Europe and the Academy of European Law in cooperation with FTI – Fair Trials International.

### **On European Asylum Law**

On 21 October 2015, Ombudsman's adviser Mojca Valjavec attended the Annual Conference on European Asylum Law 2015, which was held in Trier, Germany.

### **Meeting of ombudsmen for the supervision of armed forces**

Deputy Jernej Rovšek attended the 7<sup>th</sup> International Conference of Ombuds Institutions for the Armed Forces – ICOAF, which was held in Prague, the Czech Republic, from 25 to 27 October 2015. The ombudsmen implement control of armed forces and research actions which are subject to complaints submitted to the ombudsmen about armed forces. Countries have different supervisory mechanisms: as independent ombudsmen for armed forces, ombudsmen included in military structures (as inspectors in the USA), or general ombudsmen having jurisdiction over the armed forces (as in Slovenia). The objective of the ICOAF is to establish best practices and exchange experience relating to the tasks, powers and functioning of these institutions.

### **On the Convention on the Rights of Persons with Disabilities at an international meeting**

Between 26 and 27 October 2015, Deputy Tone Dolčič attended the 11<sup>th</sup> meeting and seminar in Zagreb, Croatia, on Article 12 of the Convention on the Rights of Persons with Disabilities (Equal recognition before the law),

which inter alia binds States Parties to take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

### **Ombudsmen on the Third Optional Protocol to the Convention on the Rights of the Child**

Deputy Tone Dolčič and Ombudsman's adviser Lan Vošnjak attended the meeting of the Children's Rights Ombudspersons' Network in South and Eastern Europe (CRONSEE) held in Osijek, Croatia, on 28 October 2015, where the participants discussed the Third Optional Protocol on the collective protection of children's rights, including the refugee crisis and children's rights protection. The meeting was organised by the Croatian Ombudsman for Children and Save the Children (international non-governmental organisation for children's rights).

### **Formation of joint standards relating to asylum seekers, refugees and migrants**

Ombudsman's advisers Robert Gačnik and Mojca Valjavec attended the Tirana Jurisprudence Workshop and Conference – Asylum Seekers, Refugees and Return Migrants Treatment in South East Europe: Discussing Common Concerns and Establishing Common Monitoring Standards, which was held in Tirana, Albania, between 29 and 30 October 2015.

### **Visit of the National Preventive Mechanism to Croatia**

Between 3 and 4 November 2015, Deputy Ivan Šelih and colleagues within the framework of the NPM, mag. Jure Markič, Robert Gačnik and Lili Jazbec visited the Croatian NPM, which is being implemented by the Croatian Human Rights Ombudsman (in cooperation with NGOs and other representatives of civil society) as is the case in Slovenia. The representatives of the Slovenian NPM learned about the working methods of the Croatian NPM, particularly their visits to prisons, police stations and psychiatric hospitals. Together with their Croatian colleagues, the Slovenian delegation visited a prison, a police detention centre and Vrapče Psychiatric Hospital in Zagreb, and saw certain interesting solutions, e.g. the supervisor of police detention and a diagnostics centre for prisoners serving sentence in confinement. At the request of the Croatian NPM, the representatives of the Slovenian NPM presented the provision of health care for prisoners within the public health network, its advantages and shortcomings. The interest in the experience of the Slovenian NPM was great, since the Republic of Croatia was planning to implement the provision of health care in the same manner in the future.

### **Various experiences of ombudsmen when cooperating with Constitutional Courts**

Human Rights Ombudsman Vlasta Nussdorfer and Deputy Jernej Rovšek attended the 13<sup>th</sup> International Conference of Ombudsmen Institutions entitled 'The Role of Cooperation between National and International Stakeholders in Ensuring Constitutional Rights and Freedoms' on experiences with Constitutional Courts in the field of providing and protecting human rights, which was held in Baku, Azerbaijan, between 10 and 15 November 2015. The Slovenian representatives spoke about the work of the Human Rights Ombudsman of the Republic of Slovenia in relation to state authorities and the Constitutional Court of the Republic of Slovenia.

### **Rapporteur of the Parliamentary Assembly of the Council of Europe visits the Ombudsman**

On 13 November 2015, Deputy Ivan Šelih and his colleagues received Tineke Strik, Rapporteur of the Committee on Migration, Refugees, and Displaced Persons of the Parliamentary Assembly of the Council of Europe, and her two colleagues. Deputy Šelih presented to the Rapporteur the activities and findings of the Ombudsman regarding the refugee problem.

### **Georgian Human Rights Committee visits the Ombudsman**

Human Rights Ombudsman Vlasta Nussdorfer and Deputies Jernej Rovšek and Ivan Šelih received the delegation of the Georgian Human Rights Committee, who were on a study visit to Slovenia on 16 November 2015.

### Ombudsman condemns the terrorist attacks in Paris

On 17 November 2015, Human Rights Ombudsman, Vlasta Nussdorfer signed the book of condolence at the French Embassy following the tragic events that took place in Paris. France was shocked by terrorist attacks on 13 November 2015, in which over 130 people were killed and many were injured. The attacks were carried out at six locations in Paris, with the attack in the Bataclan Club accounting for the highest number of casualties.

### Meeting of the Fundamental Rights Agency (FRA) in Vienna

Deputy Jernej Rovšek attended a meeting of the Fundamental Rights Agency (FRA) with national institutions for human rights and ombudsmen, which was held in Vienna, Austria, between 17 and 20 November 2015. The meeting was also attended by representatives of the Council of Europe, the Equinet (European Network of Equality Bodies) and liaison officers within governmental structures, parliaments and NGOs. The main activity of the FRA is advising EU bodies on matters of its jurisdiction on the basis of its own findings and research. Since the EU has little information or few mechanisms for collecting data on fundamental rights protection, the FRA collects data and implements its own research for its advisory role. Until recently, the Peace Institute was the contractual partner for collecting data, but this role has now been taken over by the Institute of Criminology at the Faculty of Law of the University of Ljubljana.

### The role of ombudsmen in the migration crisis

Deputy Jernej Rovšek participated at the conference, 'Ombudsman/National Human Rights Institution – Challenges to Human Rights in Refugee/Migrant's Crisis', which was held in Belgrade, Serbia on 22 November 2015. The conference was organised by the Serbian Ombudsman.

### Ombudsman receives the Ambassador of the Republic of Poland

On 27 November 2015, Human Rights Ombudsman Vlasta Nussdorfer received the Ambassador of the Republic of Poland, His Excellency Paweł Czerwiński.

### ENNHRI meeting in the Netherlands

Deputy Jernej Rovšek attended the General Assembly of the European Network of National Human Rights Institutions (ENNHRI), which was held in Utrecht, the Netherlands, between 30 November and 1 December 2015.

### Representatives of the Ukrainian NPM visit the Ombudsman

Representatives of the Ukrainian NPM visited the Human Rights Ombudsman of the Republic of Slovenia or the Slovenian National Preventive Mechanism. The delegation consisted of Yuriy Belousov, Kostiantyn Zaporozhtsev, Valentyna Obolentseva, Andriy Chernousov, Svitlana Shcherban, Mariia Kolokolova and Ivanna Dzhyrna. The guests were received and greeted by Human Rights Ombudsman Vlasta Nussdorfer. The programme of the visit was prepared and implemented by Deputy Ivan Šelih, and Ombudsman's advisers, mag. Jure Markič, Robert Gačnik and Lili Jazbec. The guests visited Ig Prison, Ormož Psychiatric Hospital and Ljubljana Police Detention Centre, and presented their work, experience and the findings of the Ukrainian NPM to the expert board of the Slovenian NPM and vice versa.

### Ombudsman receives the Ambassador of Slovenia in Belgrade

Human Rights Ombudsman Vlasta Nussdorfer received His Excellency Vladimir Gasparič, Slovenian Ambassador in Belgrade, at the Ombudsman's head office on 11 December 2015.

### Reception by the Ambassador of Italy

Human Rights Ombudsman Vlasta Nussdorfer and General Secretary mag. Bojana Kvas attended a farewell reception for the Italian Ambassador, Her Excellency Rossella Franchini Sherifis, at the head office of the Embassy of the Italian Republic on 15 December 2015.

## 3.5 SERVICE OF THE OMBUDSMAN

Article 10 of the Human Rights Ombudsman Act (ZVarCP) stipulates that the Ombudsman's head office should be in Ljubljana, and that the organisation and work are to be regulated by the Rules of Procedure and other general acts. The service of the Ombudsman is regulated by Chapter VI of the ZVarCP. The ZVarCP stipulates that the Ombudsman's head office should be in Ljubljana, but we arranged our operations with the Rules of Procedure so that the Ombudsman may also be present in other regions of Slovenia. We commenced working in this manner in 1995 and continue to do so. Paragraph two of Article 52 of the ZVarCP stipulates that the Ombudsman must have an office managed by the Secretary General. The Ombudsman determined in the Rules of Procedure that the service was to be organised as an office comprised of expert services and a service of the secretary general.

### Employees

As of 31 December 2015, the Ombudsman employed 41 persons: six officials (the Ombudsman, four Deputies and the Secretary General), 24 clerks, eight technical public employees and three fixed-term employees. Fixed-term employees include an employee employed for the duration of the Advocate – A Child's Voice Project (presumably by the end of 2017 or the end of the Project), and two public employees to replace two employees on maternity and child care leave. The average number of employees in 2015 was 38.

Twenty-nine employees have university education (including one doctorate and four M.A.s), nine have higher professional education (two are specialists), one employee has higher education and two have secondary education.

As of 31 December 2015, expert services employed 21 employees, comprising 19 clerks and two fixed-term employees. Expert services carry out expert tasks for the Ombudsman and their deputies in individual fields within the Ombudsman's remit, classify complaints, manage the handling of complaints, discuss complaints and prepare opinions, proposals and recommendations, carry out investigations and prepare reports on their findings regarding complaints, and provide information to complainants on their complaints. Expert services are managed by the Director of Expert Services.

At the end of 2015, the service of the Secretary General employed 14 persons, including five clerks and nine technical public employees. The service of the Secretary General, independently or in cooperation with external workers, carries out all tasks in the organisational, legal, material, financial and human resources fields, and administrative, technical, information and other tasks required for the Ombudsman's operation.

The employment relationship of the public employee who was transferred to the Ombudsman from the Sector for complaints against the Police of the Police and Security Directorate at the Ministry of the Interior on 1 December 2014 on the basis of Article 53 of the ZVarCP in order to train for the implementation of the NPM tasks and powers of the Ombudsman in the field of police procedures for three months was terminated on 28 February 2015. The employment contracts of two public employees who replaced two employees for the duration of maternity and child care leave ended on 18 January and 28 March 2015 respectively.

On the basis of tripartite contracts, we enabled student practice for a first year university programme student of the Faculty of Criminal Justice and Security of the University of Ljubljana, i.e. from 27 July to 7 August 2015, and a first-level higher education programme student of the Faculty of Administration in Ljubljana between 28 September and 28 October 2015, and two weeks of practice for two secondary school students with special needs. The first student was attending CIRIUS Kamnik and did her student practice between 2 and 13 February 2015; the second student was attending the Janez Levec Training Institute in Ljubljana, and did her practice from 1 to 14 December 2015.

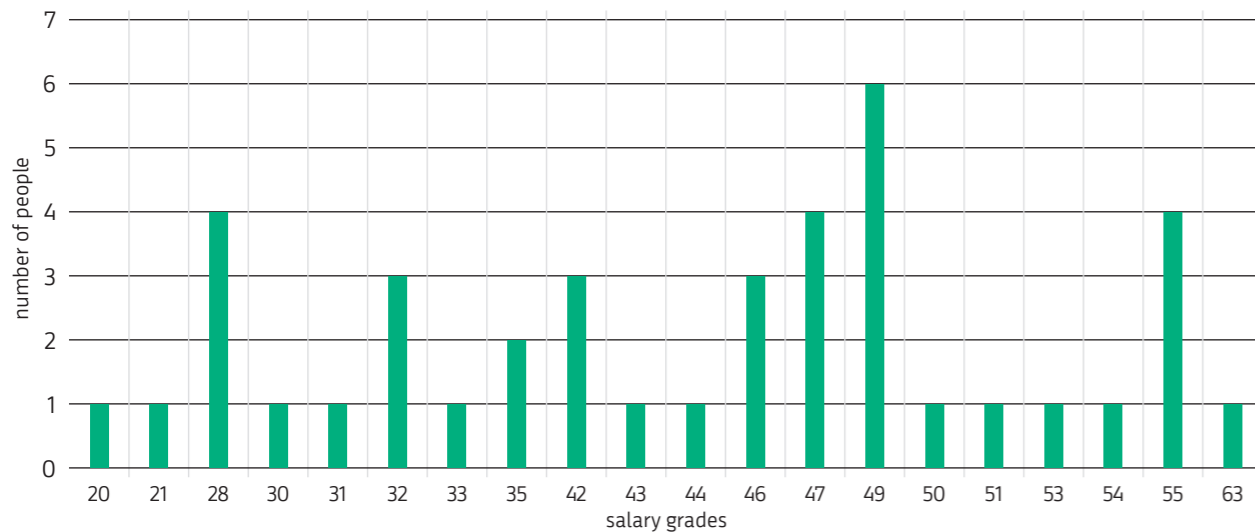
The total number of sick leaves in 2015 amounted to 501.5 days, the highest percentage of which was attributed to individuals with 97.5 days (38.23-per cent annual leave), 84 days (32.94-per cent annual leave), 42 days (16.47-per cent annual leave), and 32 days (12.55-per cent annual leave) of sick leave. The total of sick leaves



compared to the total number of working days in 2015 was 4.92 per cent. Four employees were on maternity leave for a total of 181 days, of which individually for 63, 61, 46 and 11 days.

On 1 April 2015, 12 public employees were promoted to higher salary grades, two of whom were also promoted to a higher title, while one was promoted to a higher title on 1 May 2015. While observing paragraph one of Article 7 of the ZUPPJS15, public employees who were promoted to a higher salary grade, title or higher title in 2015 obtained the right to salary as per the higher salary grade and the title obtained or higher title as of 1 December 2015. They were promoted to a higher title on 1 May 2015.

The breakdown of employees as per salary grades is shown below.



Funds paid for overtime work as per budget item 3095 – Salaries amounted to EUR 4,729.44 (with contributions). Most overtime work was related to the Ombudsman's transport for official or protocol purposes in the afternoon, on Saturdays, Sundays or other work-free days, the preparation and inventory of material in the general application of the Ombudsman's cases due to absence from the Ombudsman's office when maintenance works, painting, installation and the arrangement of additional air-conditioning were being implemented (on work-free days).

Some EUR 5,502.97 (with contributions) were paid for work performance due to the increased workload from budget item 3095 – Salaries in 2015, and EUR 3,408.67 (with contributions) from budget item 9452 – Advocate – A Child's Voice Project.

It was decided with a Decision of the Government of the Republic of Slovenia (no. 07003-1/2014/4 of 12 June 2014) that the pilot project, Advocate – A Child's Voice Project, implemented by the Human Rights Ombudsman of the Republic of Slovenia was to be extended until the end of 2015 as per the recommendation of the National Assembly of the Republic of Slovenia of 8 May 2013. The Ministry of Labour, Family, Social Affairs and Equal Opportunities transferred funds in the amount of EUR 15,000.00 for the wages of the colleague conducting expert work and tasks in the field of advocacy on a fixed-term employment.

Ombudsman's advisers Lan Vošnjak and Barbara Kranjc and Barbara Friedl, a fourth-year student at the Faculty of Law of the University of Ljubljana, received the awards Mentor and Referenca at the 2<sup>nd</sup> Academic and Economic Congress – AEC 2015 at Brdo pri Kranju on 3 June 2015. They received the awards for their 'Analysis of court decision making on child care and protection' (Analiza odločanja sodišč o vzgoji in varstvu otrok) prepared under the mentorship of Lan Vošnjak. The Referenca Award was given by Human Rights Ombudsman Vlasta Nussdorfer, who was selected as an Ambassador of Knowledge in 2014. The Ambassadors of Knowledge are established and renowned persons who possess knowledge in their chosen fields and work in private companies or public institutions. Their role is to select the best young talent from among the young people in a company or an institution on the basis of certain rules and reward them with the Referenca Award. The

Ambassadors of Knowledge meet high ethical criteria. The Ambassadors of Knowledge Project was organised by Life Learning Academia.

### Staff training and education

The Ombudsman carefully plans the expert education and training of its employees in order to cover diverse needs for new or in-depth knowledge, information and skills, and enable staff to participate in various forms of education and training within and outside the institution. For individual work in the Ombudsman's library, the institution provides a collection of national and international publications on human rights and Slovenian and foreign expert magazines covering different fields. The purpose of the established daily practice of morning meetings of all employees, which are usually convened by the Ombudsman or her Deputy in the event of her absence, is to exchange information, knowledge and skills on issues which were discussed at events that the employees attended the previous day, familiarisation with the anticipated obligations and events of the current day and informing staff on issues stressed by complainants in phone calls received the previous day.

Regular weekly expert board meetings convened by the Director of the Expert Service are also held. These meetings enable in-depth discussion of a current topic and the exchange of expert opinions and positions on individual issues, frequently involving professional dilemmas when discussing individual complaints. Staff regularly attend seminars and training held by external providers. The content and number of participants are given in the review of activities at the end of each substantive chapter. The Ombudsman organises an expert excursion for its employees once a year. In 2015, we visited the Resia Valley in Italy and met representatives of the 'Rozajanski Dum' Cultural Association.

The Ombudsman has been cooperating with the Faculty of Law in Ljubljana for several years on the Legal Clinic for Refugees and Foreigners project, which has been implemented by the Faculty of Law for 15 years.

## 3.6 STATISTICS

This sub-chapter presents statistical data on cases considered by the Human Rights Ombudsman in the period from 1 January to 31 December 2015.

### 1. Cases considered in 2015 include:

- **open cases** in 2015:
  - complaints sent to the Ombudsman's address,
  - complaints discussed by the Ombudsman of its own accord, and
  - complaints discussed as broader issues;
- **transferred cases** – ongoing cases from 2014, which the Ombudsman discussed in 2015;
- **reopened cases** – cases for which the procedure at the Ombudsman as at 31 December 2014 had been concluded, but which were again subject to consideration due to new substantive facts and circumstances in 2015; since these cases included new procedures in the same cases, new files were not opened.

### 2. Closed cases:

Includes all cases considered in 2015 which were resolved by 31 December 2015.

### Cases considered

In 2015, the Ombudsman **considered 3,418 cases**, of which 2,785 cases were opened in 2015 (81.5 per cent); 546 cases were transferred from 2014 (16 percent) and there were 87 reopened cases (2.5 per cent). Table 3.6.2 indicates that there were 8.3 per cent fewer cases considered in 2015 in comparison with 2014.

**Table 3.6.1:** The number of cases discussed by the Human Rights Ombudsman of the Republic of Slovenia in 2015

FIELD OF WORK	NUMBER OF CASES CONSIDERED				Share by fields of work
	Open cases in 2015	Transfer of cases from 2014	Reopened cases in 2015	Total cases considered	
1. Constitutional rights	163	25	2	190	5.56%
2. Restriction of personal freedom	130	43	3	176	5.15%
3. Social security	455	84	7	546	15.97%
4. Labour law matters	242	36	6	284	8.31%
5. Administrative matters	334	65	16	415	12.14%
6. Judicial and police proceedings	511	137	29	677	19.81%
7. Environment and spatial planning	138	38	2	178	5.21%
8. Public utility services	59	4	7	70	2.05%
9. Housing matters	109	10	5	124	3.63%
10. Discrimination	65	9	2	76	2.22%
11. Children's rights	310	61	4	375	10.97%
12. Other	269	34	4	307	8.98%
<b>TOTAL</b>	<b>2,785</b>	<b>546</b>	<b>87</b>	<b>3,418</b>	<b>100.00%</b>

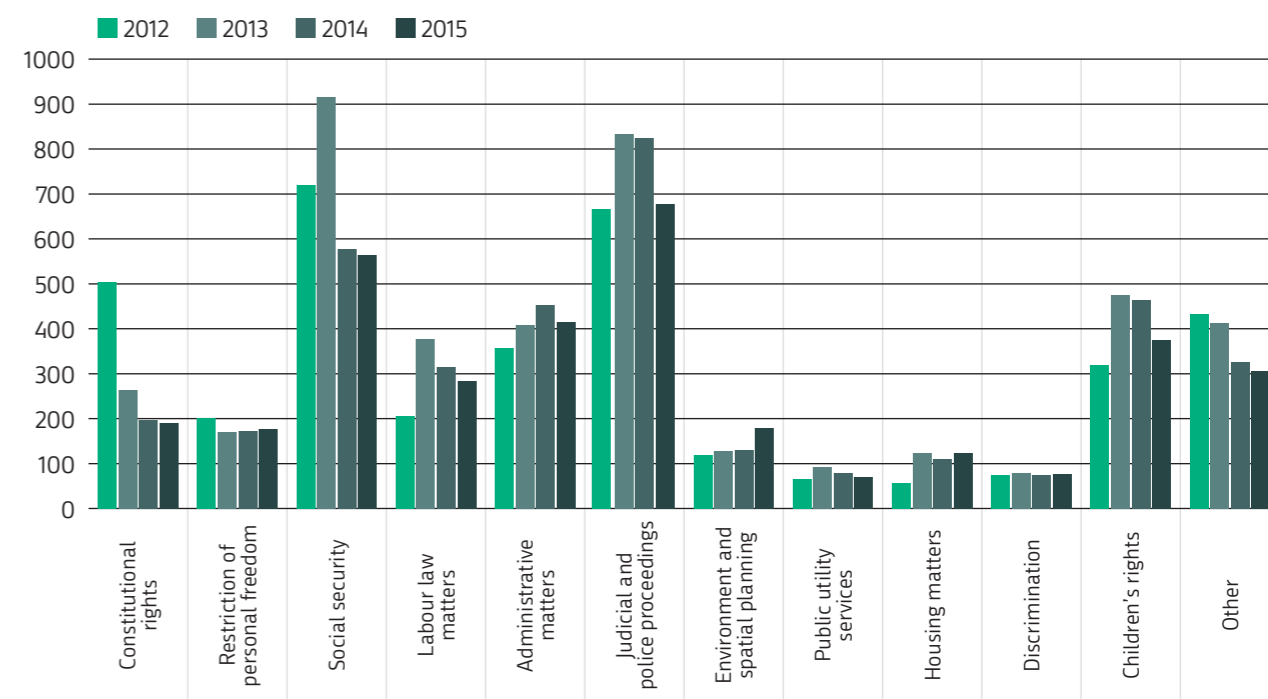
In 2015, the Ombudsman opened or received 2,785 cases (3,081 in 2014). Most complaints were received directly from complainants in written form (2,445 or 87.8 per cent), 45 during meetings outside the head office, six by telephone and 19 from official notes. Of its own accord (to initiate a procedure, the person affected must give their consent), the Ombudsman opened 19 complaints; 47 complaints were considered as broader issues (issues related to the protection of human rights and fundamental freedoms, and for the legal protection of the wider population in the Republic of Slovenia). We received courtesy copies of 136 complaints and 64 anonymous complaints. Four complaints were referred by the Ombudsman to other authorities.

It must be stressed that statistical data in this chapter of the Annual Report do not include cases which were considered within the framework of the National Preventive Mechanism due to the traceability and continuity of presenting annual statistical information on the Ombudsman's work. Information on the work of the National Preventive Mechanism and the number of cases discussed in this field are presented in more detail in a special report of the National Preventive Mechanism for 2015 (separate publication, which is part of the Ombudsman's report for 2015).

**Table 3.6.2:** Comparison between the number of cases considered by the Human Rights Ombudsman of the Republic of Slovenia by individual fields in the period 2012–2015

FIELD OF WORK	CASES CONSIDERED								Index 2015/2014
	2012		2013		2014		2015		
	No.	Share	No.	Share	No.	Share	No.	Share	
1. Constitutional rights	504	13.5%	263	6.1%	198	5.3%	190	5.6%	96.0
2. Restriction of personal freedom	201	5.4%	171	4.0%	173	4.6%	176	5.1%	101.7
3. Social security	720	19.3%	915	21.4%	578	15.5%	546	16.0%	94.5
4. Labour law matters	205	5.5%	378	8.8%	314	8.4%	284	8.3%	90.4
5. Administrative matters	358	9.6%	409	9.6%	453	12.2%	415	12.1%	91.6
6. Judicial and police proceedings	667	17.9%	833	19.5%	825	22.1%	677	19.8%	82.1
7. Environment and spatial planning	120	3.2%	127	3.0%	131	3.5%	178	5.2%	135.9
8. Public utility services	65	1.7%	92	2.2%	80	2.1%	70	2.0%	87.5
9. Housing matters	56	1.5%	124	2.9%	111	3.0%	124	3.6%	111.7
10. Discrimination	74	2.0%	80	1.9%	75	2.0%	76	2.2%	101.3
11. Children's rights	318	8.5%	474	11.1%	464	12.4%	375	11.0%	80.8
12. Other	434	11.7%	413	9.7%	325	8.7%	307	9.0%	94.5
<b>TOTAL</b>	<b>3,722</b>	<b>100.0%</b>	<b>4,279</b>	<b>100.0%</b>	<b>3,727</b>	<b>100.0%</b>	<b>3,418</b>	<b>100.0%</b>	<b>91.7</b>

Table 3.6.2 reveals that the greatest number of cases dealt with in 2015 involved judicial and police proceedings (677 cases or 19.8 per cent), social security (546 cases or 16 per cent) and administrative matters (415 cases or 12.1 per cent). In comparison with 2014, the number of cases considered grew most significantly in the field of the environment and spatial planning (from 131 to 178 or by 35.9 per cent), and reduced in the field of children's rights (from 464 to 375 or by 19.2 per cent), and judicial and police proceedings (from 825 to 677 or by 17.9 per cent).



**Figure 3.6.1:** Comparisons between the number of cases discussed by individual fields of work of the Human Rights Ombudsman of the Republic of Slovenia in the period 2012–2015

## Cases by stage of handling

In 2015, 3,418 cases were considered, of which **3,008 or 88 per cent of cases had been resolved** as of 31 December 2015, and 410 cases (12 per cent) remained to be resolved.

**1. Closed cases:** cases the discussion of which was completed by 31 December 2015.

**2. Cases being considered:** cases that were being discussed as of 31 December 2015.

**Table 3.6.3:** Comparison of the number of cases considered by the Human Rights Ombudsman of the Republic of Slovenia according to the stage of the procedure in the period 2012–2015 (at the end of the calendar year)

STAGE OF PROCESSING CASES	2012 (situation on 31 December 2012)		2013 (situation on 31 December 2013)		2014 (situation on 31 December 2014)		2015 (situation on 31 December 2015)		Index (15/14)
	No.	Share	No.	Share	No.	Share	No.	Share	
Closed	3,004	80.7%	3,737	87.3%	3,181	85.4%	3,008	88.0%	94.6
Being considered	718	19.3%	542	12.7%	546	14.6%	410	12.0%	75.1
<b>TOTAL</b>	<b>3,722</b>	<b>100.0%</b>	<b>4,279</b>	<b>100.0%</b>	<b>3,727</b>	<b>100.0%</b>	<b>3,418</b>	<b>100.0%</b>	<b>91.7</b>

### A detailed review of cases by field of work is shown in Table 3.6.4.

In field **1 Constitutional rights**, 190 cases were considered in 2015 (4 per cent less than in 2014). The reduction in the number of cases in this field was due to the smaller number of cases in the sub-field of the right to vote, where the number of cases in 2014 (14) dropped to four in 2015, and in the sub-field of the protection of personal data from 66 in 2014 to 61 in 2015. A substantial increase in individual sub-fields was not noted; however, the sub-field of ethics of public discourse may be mentioned at this point, where the number of complaints discussed in both comparative years was almost the same (87 in 2015 and 89 in 2014).

The number of cases in field **2 Restriction of personal freedom** in 2015 (176) did not significantly change in comparison with 2014 (173). The reduction in the sub-field of psychiatric patients (from 29 to 21 in 2015) was more significant within this field. A minor increase was noticed in the sub-fields of prisoners (from 95 to 101) and detainees (from 19 to 21 in 2015).

As evident in previous years, the second largest field according to the number of cases discussed in 2015 is field **3 Social security** with 546 cases. The number of cases in 2015 declined by 5.5 per cent (from 578 to 546) in comparison with 2014. The most significant contribution to the reduction was a drop in the number of cases related to social benefits and relief (from 114 to 91) and health insurance (from 59 to 46). The reduction was also noticed in the sub-fields of violence – general (from 17 to 9) and institutional care (from 52 to 46), while an increase was seen in the sub-fields of health care (from 85 to 106) and disability insurance (from 46 to 54).

In field **4 Labour law matters**, the number of cases in 2015 (284) declined slightly in comparison with 2014 (314), i.e. by 9.6 per cent. This was seen in almost all sub-fields; employment relations are the most noted, where case declined by 12.8 per cent (133 in 2014 and 116 in 2015). A slight increase in cases (from 18 to 23) may be seen only in the sub-field of other matters, where cases that cannot be classified under other sub-fields within labour law matters are placed.

In field **5 Administrative matters**, the number of cases in 2015 (415) fell in comparison with 2014 (453), i.e. by 8.4 per cent. The biggest reduction in the number of cases is noticed in social activities from 82 to 56.

The field with the highest number of cases in 2015 is **6 Judicial and police proceedings**. In 2015, the Ombudsman discussed 677 cases in this field, or 17.9 per cent less than in 2014 (825). This field comprises matters related to the police, pre-litigation, criminal and civil proceedings, proceedings in labour and social disputes, minor offence proceedings, administrative court proceedings, matters in relation to the services of lawyers and notaries, and others. With the exception of the sub-field of administrative court proceedings, the number of cases in all other sub-fields reduced significantly. According to the number of cases considered, the sub-field of civil procedures and relations with 283 cases (335 in 2014) is the most notable. The sub-field of lawyers and notaries, where the percentage of cases discussed dropped by 41 per cent (from 39 to 23), should also be highlighted.

In field **7 Environment and spatial planning**, the number of cases processed increased by 35.9 per cent in 2015 (from 131 to 178) in comparison to 2014. The increase in cases discussed was noticed in all three sub-fields under the field of the environment and spatial planning, particularly in the sub-field of spatial planning, i.e. 58.6 per cent (from 29 to 46).

The number of cases in 2015 compared to 2014 relating to the area of work **8 Public utility services** decreased by 12.5 per cent (from 80 to 70). A reduction can be seen in the sub-fields of communication (from 13 to 9) and transport (from 20 to 17), while an increase may be noticed in energy (from 14 to 19).

Field **9 Housing matters** is the second field in 2015 where the highest growth index was noticed in comparison with 2014, i.e. 111.7 (124 in 2015 and 111 in 2014). While the number of cases increased in the sub-field of housing relations (from 59 to 61), the number of cases in the field of housing economics declined (from 59 to 46).

The number of cases considered under **10 Discrimination** in 2015 remained almost the same compared to 2014 (75 in 2014 and 76 in 2015). The number of cases in the sub-field of national and ethnic minorities decreased from 33 to 24, while the number of cases in the sub-field of equal opportunities relating to sexual orientation increased from 1 to 6.

In field **11 Children's rights**, the number of cases in 2015 decreased by 19.2 per cent in comparison with 2014 (464 in 2014 and 375 in 2015). This field also includes the sub-field of child advocacy, where we noted a slight decline in cases considered (from 88 to 81). The number of cases in the sub-fields of child support, child benefit, child property management (from 53 to 28), and foster care, guardianship and institutional care (from 35 to 22) decreased.

Field **12 Other** includes cases that cannot be classified under any of the defined fields. In 2015, we dealt with 307 such cases, which is 5.5 per cent less than a year earlier, or 8.9 per cent of all cases discussed.

**Table 3.6.4:** Comparison of cases considered by the Human Rights Ombudsman of the Republic of Slovenia in 2014 and 2015 by fields of work

FIELD/SUB-FIELD OF THE OMBUDSMAN'S WORK	Cases considered in 2014	Cases considered in 2015	Index (15/14)	FIELD/SUB-FIELD OF THE OMBUDSMAN'S WORK	Cases considered in 2014	Cases considered in 2015	Index (15/14)
<b>1 Constitutional rights</b>	<b>198</b>	<b>190</b>	<b>96.0</b>	1.7 Access to public information	6	3	50.0
1.1 Freedom of conscience	2	6	300.0	1.8 Other	13	20	153.8
1.2 Ethics of public discourse	89	87	97.8	<b>2 Restriction of personal freedom</b>	<b>173</b>	<b>176</b>	<b>101.7</b>
1.3 Assembly and association	6	8	133.3	2.1 Detainees	19	22	115.8
1.4 Security services	2	1	50.0	2.2 Prisoners	95	101	106.3
1.5 Right to vote	14	4	28.6				
1.6 Personal data protection	66	61	92.4				

FIELD/SUB-FIELD OF THE OMBUDSMAN'S WORK	Cases considered in 2014	Cases considered in 2015	Index (15/14)	FIELD/SUB-FIELD OF THE OMBUDSMAN'S WORK	Cases considered in 2014	Cases considered in 2015	Index (15/14)
2.3 Psychiatric patients	29	21	72.4	5.6 Customs duties	4	4	100.0
2.4 Persons in social care institutions	12	12	100.0	5.7 Administrative procedures	130	123	94.6
2.5 Youth homes	1	2	200.0	5.8 Social activities	82	56	68.3
2.6 Illegal aliens and asylum seekers	0	1	200.0	5.9 Other	24	27	112.5
2.7 Persons in police custody	0	1	200.0	<b>6 Judicial and police proceedings</b>	825	677	82.1
2.8 Forensic psychiatry	13	13	100.0	6.1 Police proceedings	100	81	81.0
2.9 Other	4	3	75.0	6.2 Pre-litigation proceedings	38	31	81.6
<b>3 Social security</b>	<b>578</b>	<b>546</b>	<b>94.5</b>	6.3 Criminal proceedings	103	95	92.2
3.1 Pension insurance	101	109	107.9	6.4 Civil proceedings and relations	335	283	84.5
3.2 Disability insurance	46	54	117.4	6.5 Proceedings before labour and social courts	31	28	90.3
3.3 Health insurance	59	46	78.0	6.6 Minor offence proceedings	92	61	66.3
3.4 Health care	85	106	124.7	6.7 Administrative judicial proceedings	2	4	200.0
3.5 Social benefits and relief	114	91	79.8	6.8 Attorneys and notaries	39	23	59.0
3.6 Social services	18	21	116.7	6.9 Other	85	71	83.5
3.7 Institutional care	52	46	88.5	<b>7 Environment and spatial planning</b>	131	178	135.9
3.8 Poverty – general	19	20	105.3	7.1 Activities in the environment	60	75	125.0
3.9 Violence – in all contexts	17	9	52.9	7.2 Spatial planning	29	46	158.6
3.10 Other	67	44	65.7	7.3 Other	42	57	135.7
<b>4 Labour law matters</b>	<b>314</b>	<b>284</b>	<b>90.4</b>	<b>8 Public utility services</b>	80	70	87.5
4.1 Employment relationship	133	116	87.2	8.1 Municipal utility services	24	22	91.7
4.2 Unemployment	44	36	81.8	8.2 Communications	13	7	53.8
4.3 Workers in state authorities	89	79	88.8	8.3 Energy sector	14	19	135.7
4.4 Scholarships	30	30	100.0	8.4 Transport	20	17	85.0
4.5 Other	18	23	127.8	8.5 Concessions	6	4	66.7
<b>5 Administrative matters</b>	<b>453</b>	<b>415</b>	<b>91.6</b>	8.6 Other	3	1	33.3
5.1 Citizenship	7	8	114.3	<b>9 Housing matters</b>	111	124	111.7
5.2 Aliens	65	63	96.9	9.1 Housing relations	61	53	86.9
5.3 Denationalisation	14	11	78.6	9.2 Housing economics	46	62	134.8
5.4 Property law matters	42	43	102.4				
5.5 Taxes	85	80	94.1				

FIELD/SUB-FIELD OF THE OMBUDSMAN'S WORK	Cases considered in 2014	Cases considered in 2015	Index (15/14)	FIELD/SUB-FIELD OF THE OMBUDSMAN'S WORK	Cases considered in 2014	Cases considered in 2015	Index (15/14)
9.3 Other	4	9	225.0	11.4 Children with special needs	52	43	82.7
<b>10 Discrimination</b>	<b>75</b>	<b>76</b>	<b>101.3</b>	11.5 Children in minorities and vulnerable groups	1	3	300.0
10.1 National and ethnic minorities	33	24	72.7	11.6 Family violence against children	30	17	56.7
10.2 Equal opportunities by gender	4	1	25.0	11.7 Violence against children outside the family	20	20	100.0
10.3 Equal opportunities in employment	6	5	83.3	11.8 Child advocacy	87	80	92.0
10.4 Equal opportunities relating to sexual orientation	1	6	600.0	11.9 Other	127	116	91.3
10.5 Equal opportunities relating to physical or mental disability (invalidity)	25	22	88.0	<b>12 Other</b>	<b>325</b>	<b>307</b>	<b>94.5</b>
10.6 Other	6	18	300.0	12.1 Legislative initiatives	26	31	119.2
<b>11 Children's rights</b>	<b>464</b>	<b>375</b>	<b>80.8</b>	12.2 Remedy of injustice	7	7	100.0
11.1 Contacts with parents	59	46	78.0	12.3 Personal problems	24	24	100.0
11.2 Child support, child benefit, child property management	53	28	52.8	12.4 Explanations	234	221	94.4
11.3 Foster care, guardianship, institutional care	35	22	62.9	12.5 For information	18	10	55.6
				12.6 Anonymous complaints	16	14	87.5
				12.7 Ombudsman	0	0	-
				<b>TOTAL</b>	<b>3,727</b>	<b>3,418</b>	<b>91.7</b>

### Closed cases

In 2015, **3,008 cases were closed**, which is **5.4 per cent less** than in 2014. **According to the comparison of the number of these cases (3,008) with the number of open cases in 2015 (2,785), we establish that 8 per cent more cases were closed than opened in 2015.**

**Table 3.6.5:** Comparison of the number of closed cases classified according to the Ombudsman's field of work in the period 2012–2015

FIELD OF THE OMBUDSMAN'S WORK	2012	2013	2014	2015	Index (15/14)
1. Constitutional rights	492	255	173	185	106.9
2. Restriction of personal freedom	166	150	130	151	116.2
3. Social security	433	844	494	478	96.8

FIELD OF THE OMBUDSMAN'S WORK	2012	2013	2014	2015	Index (15/14)
4. Labour law matters	163	334	278	241	86.7
5. Administrative matters	301	342	388	344	88.7
6. Judicial and police proceedings	552	678	688	601	87.4
7. Environment and spatial planning	100	110	93	154	165.6
8. Public utility services	61	87	76	62	81.6
9. Housing matters	50	117	101	117	115.8
10. Discrimination	54	59	66	68	103.0
11. Children's rights	248	380	403	332	82.4
12. Other	384	381	291	275	94.5
<b>TOTAL</b>	<b>3,004</b>	<b>3,737</b>	<b>3,181</b>	<b>3,008</b>	<b>94.6</b>

### Cases closed by being founded/unfounded

**Founded case:** Cases with a violation of rights or other irregularities in all statements of the complaint.

**Unfounded case:** We find no violations or irregularities regarding any statements in the complaint.

**No conditions for considering the case:** Legal proceedings are ongoing, with no noticeable delays or greater irregularities in the case. We have provided the complainant with information, explanations and guidelines for the exercise of rights in an open procedure. This group also includes tardy, anonymous and insulting complaints, and complaints for which procedures had been suspended due to the complainant's non-cooperation or the withdrawal of the complaint.

**Not within the Ombudsman's competence:** The subject of the complaint does not fall within the competence of the institution. Complainants are presented with other options to exercise their rights.

**Table 3.6.6:** Classification of cases closed according to whether they were founded/unfounded

GROUNDS FOR CASES	CLOSED CASES				Index (15/14)
	2014		2015		
	Number	Share	Number	Share	
1. Founded cases	684	21.5	457	15.2	66.7
2. Unfounded cases	550	17.3	637	21.2	115.8
3. No conditions for considering the case	1514	47.6	1540	51.2	101.8
4. Lack of authority of the Ombudsman	433	13.6	374	12.4	86.4
<b>TOTAL</b>	<b>3,181</b>	<b>100.0</b>	<b>3,008</b>	<b>100.0</b>	<b>94.6</b>

The share of founded cases in 2015 (15.2 per cent) decreased in comparison with 2014 (21.5 per cent).

### Closed cases by sectors

**Table 3.6.7:** Closed cases discussed by the Human Rights Ombudsman of the Republic of Slovenia in the period 2012–2015 by fields of work of state authorities

FIELD OF WORK OF STATE AUTHORITIES	CLOSED CASES								Index (15/14)
	2012		2013		2014		2015		
	Number	Share	Number	Share	Number	Share	Number	Share	
1. Labour, family and social affairs	744	24.77	1407	37.65	1040	32.69	928	30.85	89.2
2. Finance	30	1.00	77	2.06	86	2.70	71	2.36	82.6
3. Economy	35	1.17	30	0.80	64	2.01	56	1.86	87.5
4. Public administration	26	0.87	23	0.62	19	0.60	21	0.70	110.5
5. Agriculture, forestry and food	8	0.27	6	0.16	7	0.22	7	0.23	100.0
6. Culture	25	0.83	17	0.45	28	0.88	24	0.80	85.7
7. Internal affairs	209	6.96	245	6.56	198	6.22	187	6.22	94.4
8. Defence	5	0.17	2	0.05	1	0.03	1	0.03	100.0
9. Environment and spatial planning	231	7.69	366	9.79	300	9.43	341	11.34	113.7
10. Justice	638	21.24	784	20.98	747	23.48	688	22.87	92.1
11. Transport	29	0.97	16	0.43	30	0.94	28	0.93	93.3
12. Education and sport	118	3.93	133	3.56	139	4.37	125	4.16	89.9
13. Higher education, science and technology	23	0.77	22	0.59	12	0.38	17	0.57	141.7
14. Health care	126	4.19	156	4.17	164	5.16	148	4.92	90.2
15. Foreign affairs	6	0.20	5	0.13	11	0.35	3	0.10	27.3
16. Government services	3	0.10	3	0.08	4	0.13	0	0.00	0.0
17. Local self-government	37	1.23	31	0.83	40	1.26	38	1.26	95.0
18. Other	711	23.67	414	11.08	291	9.15	325	10.80	111.7
<b>TOTAL</b>	<b>3,004</b>	<b>100.00</b>	<b>3,737</b>	<b>100.00</b>	<b>3,181</b>	<b>100.00</b>	<b>3,008</b>	<b>100.00</b>	<b>94.6</b>

Table 3.6.7 shows the classification of cases closed in 2015 by fields as considered by state authorities and which do not fall within fields of the Ombudsman's work. An individual case is classified in a relevant field of work with regard to the nature of the problem which the complainant submits to the Ombudsman and for which enquiries have been made.

It is evident from the table below that the highest number of closed cases in 2015 referred to:

- labour, family and social affairs (928 cases or 30.85 per cent);
- justice (688 cases or 22.87 per cent);
- environment and spatial planning (341 cases or 11.34 per cent), and
- internal affairs (187 cases or 6.22 per cent).

The number of closed cases in 2015 in comparison with 2014 increased most in the field of the environment and spatial planning (by 41 cases or 13.7 per cent), and decreased most in the field of labour, family and social affairs (by 112 cases or 10.8 per cent).

**Table 3.6.8:** Analysis of founded/unfounded cases closed in 2015

FIELD OF WORK OF STATE AUTHORITIES	CLOSED CASES	NUMBER OF FOUNDED CASES	SHARE OF FOUNDED CASES AMONG CLOSED CASES
1. Labour, family and social affairs	928	194	20.9
2. Finance	71	9	12.7
3. Economy	56	2	3.6
4. Public administration	21	10	47.6
5. Agriculture, forestry and food	7	2	28.6
6. Culture	24	0	0.0
7. Internal affairs	187	27	14.4
8. Defence	1	1	100.0
9. Environment and spatial planning	341	51	15.0
10. Justice	688	58	8.4
11. Transport	28	5	17.9
12. Education and sport	125	36	28.8
13. Higher education, science and technology	17	2	11.8
14. Health care	148	28	18.9
15. Foreign affairs	3	0	0.0
16. Government services	0	0	-
17. Local self-government	38	12	31.6
18. Other	325	20	6.2
<b>TOTAL</b>	<b>3,008</b>	<b>457</b>	<b>15.2</b>

Table 3.6.8 provides an overview of founded cases by individual fields of activity of state authorities. Based on these data, we may determine in which fields most violations were found in 2015.

If we focus only on areas in which 100 or more cases were classified, it can be established that the share of founded cases is highest in the field of education (28.8 per cent), labour, family and social affairs (20.9 per cent), followed by health care (18.9 per cent) and the environment and spatial planning (15 per cent). More on violations in specific fields can be found in the substantive part of the Report.

## 3.7 FINANCES

Paragraph two of Article 5 of the Human Rights Ombudsman Act (ZVarCP) stipulates that the funds for the Ombudsman's work are to be allocated by the National Assembly of the Republic of Slovenia from the national budget. At the Ombudsman's proposal, the National Assembly of the Republic of Slovenia set funds for the work of the institution from the national budget for 2015 at EUR 1,967,085. The funds were divided into three sub-programmes, i.e.:

- **Protection of human rights and fundamental freedoms;**
- **Implementation of tasks and powers of the NPM** (the work of the National Preventive Mechanism – NPM);
- **Advocate – A Child's Voice Project.**

The Ombudsman transferred funds in the amount of EUR 180 to the 2015 budget (funds from received compensations). We received EUR 15,000 from the Ministry of Labour, Family, Social Affairs and Equal Opportunities in June 2015 to smoothly carry out the Advocate – A Child's Voice Project.

On the basis of the Decision of the Government of the Republic of Slovenia no. 41012-93/2015/3 of 23 December 2015, the Ombudsman returned EUR 17,056 to the state budget for the coverage of legal obligations (obligations arising from arbitration decision in the arbitration process HEP v. the Republic of Slovenia due to unsupplied electricity and NEK in the period from 1 July 2002 to 18 April 2003).

With the observance of the aforementioned, the applicable budget of the Ombudsman for 2015 amounted to EUR 1,965,029.

Due to budgetary constraints and austerity measures, the Ombudsman returned to the budget EUR 21,060 (EUR 17,056 during the year and EUR 4,004 at the end of the year).

In 2015, the Ombudsman disbursed a total of EUR 1,961,205.

### Funds spent on the sub-programme Protection of human rights and fundamental freedoms

**In 2015, EUR 1,310,819 were spent on wages and other staff expenses.** Wages and benefits amounted to EUR 1,067,976, the annual leave allowance to EUR 7,261, and reimbursement and compensation to EUR 60,064; payments for work performance for increased workload amounted to EUR 4,410; funds for overtime work to EUR 4,074; other expenses for employees to EUR 433, while employer's social security contributions amounted to EUR 164,431. Some EUR 2,170 were spent on premiums for collective supplementary pension insurance as per the Collective Supplementary Pension Insurance for Public Employees Act.

**In 2015, EUR 384,042 were spent on material costs.** Some EUR 154,253 were spent on office and general material and services (the largest amount was earmarked for the design and printing of the Ombudsman's Annual Report, which was published in Slovenian and English; the costs of printing and design of the publication on the occasion of the 20<sup>th</sup> anniversary of the operations of the Human Rights Ombudsman of the Republic of Slovenia and the bulletin, Let us Open the Door (Odprimo vrata); the costs of translation of the Annual Report, various correspondence and complaints submitted to the Ombudsman by complainants in foreign languages, studies, contributions and articles). We spent EUR 5,168 on special material and services; EUR 9,597 on transportation; EUR 50,050 on electricity, water, municipal services and communications; EUR 11,316 on business trips; EUR 34,077 on regular maintenance; EUR 103,251 on business rents and leases, and EUR 16,330 on other operating costs. The funds intended for maintenance of the Bežigranski dvor office building and the Ombudsman's business premises must also be highlighted within current maintenance work. Ownership business premises were fully repainted in order to maintain suitable working and living conditions and prevent early wear of individual sections of business premises.

**In 2015, EUR 50,182 were spent on investment expenses.** The largest share of investment funds in 2015 was earmarked for the installation of additional air-conditioning at the Ombudsman's business premises. Since the existing heating and cooling system in the Bežigranski dvor office building did not enable suitable climatic working conditions, an additional VRF air-conditioning system was installed in the conference room, the reception office and six other south-facing offices. A minor rearrangement of office premises (costing EUR 7,031) was implemented to improve the functionality of offices and effective implementation of key work tasks. Furthermore, investments were also made in computer, printing and communication equipment (EUR 39,548). Six laptops and two multi-function network devices were purchased. Network switches were replaced to speed up access to the Ombudsman's server infrastructure and a disk unit for backup data storage was purchased. EUR 3,603 were spent on purchasing Event Track licensed software to ensure the traceability of personal data processing, which is of the utmost importance for detecting unauthorised access to personal data collections and subsequent abuse of thus obtained personal data (e.g. public disclosure and similar).

### Funds spent on the sub-programme Implementation of tasks and powers of the NPM

**In 2015, EUR 106,388 were spent on wages and other staff expenses.**

Wages and benefits amounted to EUR 87,049, annual leave allowance to EUR 250, and reimbursement and compensation to EUR 4,602; other expenses for employees amounted to EUR 289 and employer's social security contributions to EUR 14,015. EUR 183 were spent on premiums of collective supplementary pension insurance as per the Collective Supplementary Pension Insurance for Public Employees Act.

**Based on the item of material costs of the Optional Protocol, EUR 7,503 were spent in 2015,** i.e. EUR 95 on office and general material and services, EUR 503 on communication services, EUR 1,799 on business trips and EUR 5,106 on other operating costs.

**From the funds earmarked for cooperation with NGOs, EUR 11,666 were spent in 2015,** of which EUR 7,149 on other operating costs and EUR 4,517 on current transfers to NGOs and institutions.

### Funds used for the sub-programme Advocate – A Child's Voice Project

**In 2015, EUR 90,604 were spent on the Advocate – A Child's Voice Project.**

In 2015, EUR 18,282 were spent on wages and other staff expenses. Wages and benefits amounted to EUR 11,753, reimbursement and compensations to EUR 788, and payments for work performance for increased workload to EUR 3,266, while employer's social security contributions amounted to EUR 2,447. EUR 28 were spent on premiums of collective supplementary pension insurance as per the Collective Supplementary Pension Insurance for Public Employees Act.

In 2015, EUR 73,322 were spent on material costs, of which EUR 1,676 were spent on office material and services, EUR 310 on communication services and business trips, and EUR 71,336 on other operating costs (advocates' expenses, supervisions, consultation sessions).

**Table 3.71:** Financial resources of the Ombudsman in 2015

	Funds allocated in EUR	Current budget in EUR	Funds used in EUR	Remaining funds as per current budget in EUR
<b>Human Rights Ombudsman of the Republic of Slovenia</b>	<b>1,985,190</b>	<b>1,868,206</b>	<b>1,851,108</b>	<b>17,098</b>
<b>SUB-PROGRAMMES</b>				
<b>Protection of human rights and fundamental freedoms</b>	<b>1,747,319</b>	<b>1,655,280</b>	<b>1,645,402</b>	<b>9,878</b>
Wages	1,297,319	1,269,479	1,263,396	6,083
Material costs	407,000	359,121	355,326	3,795
Investments	43,000	26,680	26,680	0
<b>Implementation of tasks and powers of the NPM</b>	<b>133,914</b>	<b>120,159</b>	<b>114,722</b>	<b>5,437</b>
Wages	112,914	105,151	100,105	5,046
Material costs	13,000	10,440	10,250	190
Cooperation with NGOs	8,000	4,568	4,367	201
<b>Advocate – A Child's Voice Project</b>	<b>90,000</b>	<b>78,810</b>	<b>77,027</b>	<b>1,783</b>
Increased workload and contributions	1,461	1,448	1,448	0
Material costs	88,539	77,362	75,579	1,783
<b>Earmarked funds</b>	<b>13,957</b>	<b>13,957</b>	<b>13,957</b>	<b>0</b>
Compensation funds	9,322	9,322	9,322	0
Funds from the sale of state assets	4,635	4,635	4,635	0



# 4

## COMPILATION OF THE OMBUDSMAN'S RECOMMENDATIONS IN 2015

### CONSTITUTIONAL RIGHTS

- 1.** The Ombudsman recommends that the Ministry of Education, Science and Sport anticipate sanctions against violating the prohibition on implementing confessional activities in public kindergartens and schools when drafting amendments to the Organisation and Financing of Education Act.
- 2.** The Ombudsman recommends that all who participate in public discussions, particularly politicians in their statements and writing, avoid inciting hatred or intolerance on the basis of any personal circumstance, and when such cases occur, to respond and condemn them immediately.
- 3.** The Ombudsman recommends that state authorities promote and support (through public calls) self-regulatory mechanisms for responding to hate speech.
- 4.** The Ombudsman recommends that the National Assembly adopt a code of ethics and form an arbitration panel to respond to individual cases of hate speech in politics.
- 5.** The Ombudsman recommends that state authorities and local authorities state their position on the content of petitions within their competences and provide reasons for their decisions in their reply.

- 6.** The Ombudsman recommends that the enforcement of the right to petition of Article 45 of the Constitution of the Republic of Slovenia be regulated by law. The method of enforcing this right may not be regulated or limited by instruments which are not legal acts.
- 7.** The Ombudsman recommends that the Government re-examine the compliance of the current arrangement on the limitation of the right to vote of the disabled with the UN Convention on the Rights of Persons with Disabilities when drafting amendments to the National Assembly Elections Act.

### DISCRIMINATION

- 8.** The Ombudsman recommends the prompt adoption of legislative solutions to ensure impartial, independent and effective discussion of violations of the prohibition of discrimination and establish an independent advocate of the principle of equality.
- 9.** The Ombudsman again highlights the lack of a national human rights institution with full authorisation functions on the basis of the Paris Principles. The Ombudsman thus expresses its willingness to supplement the Ombudsman's institution in this regard on the basis of already established models in Europe.

- 10.** The Ombudsman recommends that state authorities and local authorities in bilingual areas consistently implement regulations on the use of the languages of national communities.
- 11.** The Ombudsman recommends that the Government prepare amendments to the Roma Community Act to remedy the shortcomings identified in the Act.
- 12.** The Ombudsman recommends that the Government provide access to drinking water and sanitary facilities as an element of enforcing human rights and human dignity if these are not provided by local communities.
- 13.** The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities and the Ministry of Education, Science and Sport prepare a proposal of amendments to disputed regulations to eliminate discrimination relating to the right to the free transport of persons with mental disorders aged between 18 and 26 who are participating in special education programmes as soon as possible and no later than by the beginning of the school year 2016/17.
- 14.** The Ombudsman recommends that state authorities, local self-government bodies and public service contractors consistently observe their obligations regarding the provision of assistance or interpreters for sensory impaired and/or physically disabled persons.
- 15.** The Ombudsman recommends that the Commission for the Prevention of Corruption (KPK) notify applicants requesting its assistance that the KPK received their requests and inform them of the time needed for discussion of their requests as per the principle of good administration on the basis of paragraph two of Article 25 of the Integrity and Prevention of Corruption Act (ZIntPK) (Measures to protect the reporting person) within 15 days (also by means of an automatic reply to requests received by e-mail). In these cases, the reporting person should also be informed about the KPK's final decision on the matter.

### RESTRICTION OF PERSONAL FREEDOM

- 16.** The Ombudsman recommends that the Prison Administration of the Republic of Slovenia adopt additional measures to provide useful and meaningful activities for prisoners, particularly possibilities for work.
- 17.** The Ombudsman recommends that the Ministry of Justice and the Prison Administration of the Republic of Slovenia adopt staffing norms for work in prisons.
- 18.** The Ombudsman again recommends that the Ministry of Health, in addition to current recommendations appealing to doctors to record data correctly in the medical records of detainees, prisoners and persons in social care institutions, particularly in the event of injuries and claimed ill-treatment, also prepare a suitable form for medical reports, while observing the guidelines of the Istanbul Protocol, and submit the form to all competent institutions which request that doctors complete the reports consistently.
- 19.** The Ombudsman recommends the prompt provision of premises or wards adjusted to disabled persons in prisons, as per Article 60 of the ZIKS-1.
- 20.** The Ombudsman recommends particularly careful consideration of all circumstances which prevent the approval of the benefits of temporary absence from prison, particularly for prisoners convicted of domestic violence.
- 21.** The Ombudsman recommends that the Ministry of Justice (in cooperation with the Ministry of Health if necessary) again consider the issue of the legal basis for measures taken by health care providers when forcibly eliminating or managing the dangerous behaviour of prisoners who endanger their own life or the lives of others or pose a serious threat to their health or the health of others or cause severe material damage to themselves or others.
- 22.** The Ombudsman expects that findings, and particularly warnings and proposals to amendments provided by the project group, will be carefully considered for the further development of forensic psychiatry in Slovenia.



23.

The Ombudsman calls on the Ministry of Labour, Family, Social Affairs and Equal Opportunities to promptly adopt all necessary measures to realise the recommendations in this field in cooperation with other competent authorities, and to ensure sufficient facilities and suitability of institutions for the accommodation of persons in social care institutions on the basis of court decisions.

24.

The Ombudsman expects that the Ministry of Health will prepare suitable amendments to the ZDZdr relating to the admission of persons with revoked legal capacity to secure wards of social care institutions as soon as possible.

25.

The Ombudsman supports the organisation of an annual meeting of all stakeholders implementing the ZDZdr.

26.

The Ombudsman recommends the consideration of the issue of the payment of costs for the care of persons in secure wards of social care institutions accommodated on the basis of court decisions.

27.

The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities in cooperation with other competent bodies promptly provide suitable conditions for the accommodation of minors in secure wards of social care institutions according to the provisions of the ZDZdr.

28.

The Ombudsman recommends that the Ministry of Education, Science and Sport in cooperation with other competent bodies find solutions to enable the comprehensive treatment of children and adolescents, including more problematic ones.

29.

The Ombudsman recommends that social and educational professionals from all institutions prepare expert groundwork and uniform guidelines for an educational plan in educational institutions for the suitable and uniform treatment of adolescents with explicitly deviant behaviour, with instructions on suitable educational measures to prevent major differences between adolescents who violate house rules.

30.

The Ombudsman recommends that the Government of the Republic of Slovenia adopt measures to enhance respect for the best interests of alien minors by improving their accommodation possibilities in institutions suitable for the accommodation of minors, instead of the Aliens Centre.

31.

The Ombudsman recommends that police officers pay special attention to their verbal behaviour in procedures with aliens.

## JUSTICE

32.

The Ombudsman recommends that all courts take necessary measures to ensure the actual observance of deadlines which were determined for decision making as per the ZVPSBNO.

33.

In dialogue with the judicial authority and the expert public, the Ministry of Justice should continue to take well-considered legislative measures to ensure the protection of the right to trial without undue delay.

34.

The Ombudsman again encourages further strengthening of the efficiency of supervisory authorities to ensure high quality in the work of court and of trials. The Ombudsman also recommends that the Ministry of Justice and courts study the existing mechanisms for the supervision of the work of judges, especially their efficiency, and on this basis, take possible additional measures to improve the work of the courts and their integrity.

35.

The Ombudsman recommends that the Ministry of Justice examine whether the existence of a serious risk of violations of the prohibition of torture is to be entered in the ZSKZDČEU-1 as one of the reasons for refusing to surrender a person.

36.

The Ombudsman recommends that an amendment to a regulatory basis be considered so that a proposer of a disciplinary procedure against an enforcement agent is also informed about the status of their proposal.

37.

The Ombudsman recommends that courts diligently consider cases for judicial protection. The courts and all other minor offence authorities should consistently comply with fundamental constitutional guarantees of fair trial during their decision making.

38.

The Ombudsman further encourages the prosecution service to continue to provide speedy and effective criminal prosecution of perpetrators of criminal offences, and to adequately inform injured parties of clear reasons for decisions for the potential rejection of indictments or suspension of prosecutions.

39.

The Ombudsman recommends greater involvement of state prosecutors when directing police officers during investigating and securing traces of criminal offences and when implementing other activities necessary for state prosecutors to make decisions. Furthermore, the state is obliged to provide conditions for the efficient functioning of law enforcement authorities (including suitable staff).

40.

The Ombudsman calls on the Bar Association of Slovenia to further ensure an effective response to irregularities among their own members by taking efficient action in their disciplinary bodies and providing swift and objective decision making on reports filed against attorneys.

41.

The Ombudsman recommends reviewing the provisions of the Notary Act on the disciplinary responsibility of notaries.

## POLICE PROCEDURES

42.

The Ombudsman expects the Government of the Republic of Slovenia to make suitable improvements to the working conditions of police officers.

43.

The Ombudsman recommends that the Ministry of the Interior and the Police further encourage police officers to respect the personality and dignity of persons when implementing police tasks and treat persons who require additional attention with special care. Police officers must be fair in their relationships with persons in procedures (also verbally), and their procedures (also in minor offence cases) must be professional and lawful at all times.

44.

The Ombudsman expects the Ministry of the Interior to observe the Ombudsman's comments or state its position on them when continuing the preparation of amendments to the ZNPPol.

45.

The Ombudsman recommends the Ministry of the Interior and the Police to verify in practice the receipt of complaints against the work of police officers and then adopt any measures needed to improve the situation.

46.

The Ombudsman encourages the Ministry of the Interior to continue devoting the required attention to monitoring conciliation procedures and training its providers.

47.

The Ombudsman recommends that the Ministry of the Interior always carefully consider and substantively justify decisions on not discussing complaints at the senate session.

48.

The Ombudsman already recommended that the Ministry of the Interior prepare such amendments to Article 58 of the ZZasV-1 upon its first amendment so that various interpretations are not permitted when dealing with a criminal offence that is being prosecuted on a basis of an order.

## ADMINISTRATIVE MATTERS

49.

The Ombudsman requires that the Ministry of the Interior promptly prepare amendments to the Residence Registration Act, and regulate the field of legal residence anew to prevent individuals who have lost their dwellings from also losing their registration of residence and all other related rights.

50.

The Ombudsman again calls on the Government of the Republic of Slovenia to adopt a suitable strategy and schedule specific measures to enable a regulated and lawful situation regarding the general issue of municipal and state roads.

51.

The Ombudsman recommends that the Government drafts statutory amendments as soon as possible which will prevent the registration of illegal structures in the land register. The state must

assume responsibility for illegal structures, and prosecute all builders of illegal structures.

**52.**

The Ombudsman recommends that the Ministry of the Interior examine the possibility of amending the Citizenship of the Republic of Slovenia Act in order to enable the filing of an application for citizenship of a child by a parent who is not a Slovenian citizen or by the child through its legal representative.

## ENVIRONMENT AND SPATIAL PLANNING

**53.**

The Ombudsman demands that the Ministry of Education, Science and Sport and the Ministry of Health actively approach the renovation of buildings of kindergartens and schools, and the Government of the Republic of Slovenia must see to the immediate harmonised inter-ministerial approach (Ministry of Education, Science and Sport and the Ministry of Health) to resolve the issue systemically. Whereby, the health of children and the staff must be observed.

**54.**

The Ministry of the Environment and Spatial Planning should draft a regulation to govern noxious odours (smell) in the environment.

**55.**

The Ombudsman recommends that the Ministry of the Environment and Spatial Planning monthly monitor the dynamics of the resolution of cases in the field of water rights and ownership relations on land with access to water, and report the results to the Government.

**56.**

The Ministry of the Environment and Spatial Planning should prepare a systemic solution for the acquisition of authorisations for measuring emissions into the air, and ensure independent supervision and the financing of measurements.

**57.**

The Ombudsman recommends that the Government determine priority tasks (priorities) of inspection services in a regulation which must be made public, as this is the only way to ensure transparency and the impartiality of inspectors.

**58.**

The Ombudsman recommends that the Government ensure all conditions (material, staffing and financial) for the Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning to conduct inspection procedures efficiently.

## PUBLIC UTILITY SERVICES

**59.**

The Ombudsman recommends that the Government prepare and propose a new act on cemetery and burial activities which is adjusted to the currently accepted consensus on attitudes to the deceased, and to regulate in a more suitable manner a non-uniform practice in relation to the right to the (continuation) of the lease of graves.

**60.**

The Ombudsman recommends that the right to water be included in the legal system of the Republic of Slovenia as a fundamental human right.

**61.**

The Ombudsman recommends that the Ministry of the Environment and Spatial Planning promptly prepare amendments to regulations on chimney sweeping services in order to facilitate greater competition and improve the quality of chimney sweeping services.

## HOUSING MATTERS

**62.**

The Ministry of the Environment and Spatial Planning should promptly prepare amendments to the Housing Act which clearly define the obligations of municipalities to ensure a certain number of residential units (taking into account the number of residents) of a suitable standard of living, and publish tenders for allocating non-profit dwellings for rent at certain intervals (e.g. annually).

**63.**

We require the Ministry of the Environment and Spatial Planning to thoroughly analyse the management of multi-dwelling buildings and make amendments to the legislation on this basis, and especially to constantly supervise the work of managers of multi-dwelling buildings.

**64.**

The Ministry of the Environment and Spatial Planning should enhance housing inspection services, and define their competences in the Housing Act anew, so that housing inspection services have certain powers for taking action in the management of multi-dwelling buildings and the implementation of regulations on housing relations, regardless of the ownership of multi-dwelling buildings.

## EMPLOYMENT RELATIONS

**65.**

The Government of the Republic of Slovenia must immediately take measures to ensure transparent, efficient and fast supervision system for the payment of salaries, i.e. for net amounts and all deductions.

**66.**

The Government should ensure that procedures in all supervisory institutions are carried out within reasonable time limits. We propose strengthening the human resources of inspection services where ever possible, also by reassigning public employees.

## PENSION AND DISABILITY INSURANCE

**67.**

The Ombudsman recommends that the National Assembly of the Republic of Slovenia request from the proposer an insight into the draft of anticipated implementing regulations when discussing individual proposals for acts.

**68.**

The Ombudsman recommends that the Pension and Disability Insurance Institute improve the communication of disability commissions with insured persons.

**69.**

The Ministry of Health, in agreement with the Ministry of Labour, Family, Social Affairs and Equal Opportunities, should immediately determine the types and levels of physical impairments which serve as the basis for enforcing rights to disability insurance.

## HEALTH CARE AND HEALTH INSURANCE

**70.**

Preliminary notification of the public of reasons for amendments and their fundamental content is mandatory for the enforcement of any qualitative amendments.

**71.**

Upon an anticipated amendment to the legislation, the Ministry of Health should also examine proposals for the work of advocates of patients' rights to be expanded to the field of compulsory health insurance.

**72.**

The Ombudsman recommends that the Ministry of Health examine the possibility of combining the tasks of advocates of patients' rights and representatives of persons with mental disorders in the light of new legislative solutions.

**73.**

The Ombudsman recommends that the procedures with respect to the right to medical treatment abroad be regulated in more detail.

## SOCIAL MATTERS

**74.**

The Ministry of Labour, Family, Social Affairs and Equal Opportunities should enhance staffing at social work centres.

**75.**

The Ministry of Labour, Family, Social Affairs and Equal Opportunities should draft a programme for the elimination of backlogs, which it should then publish, and monitor its realisation on an ongoing basis.

## UNEMPLOYMENT

**76.**

We propose that the Ministry of Labour, Family, Social Affairs and Equal Opportunities examine the selection of seminars and workshops available for unemployed persons within active employment policy measures, and especially to carry out evaluations after the conclusion of seminars which will serve as the basis for possible repeated participation. A thorough analysis must be carried out as to whether attendance at seminars,

workshops and other forms of education and training has improved the employability of the participants.

77.

The Ombudsman again proposes that the Government analyse the efficiency of services of the Employment Service of Slovenia and, considering the findings made, adopt organisational, staffing and other measures which will contribute to speeding up responses to the needs of unemployed persons.

#### PROTECTION OF CHILDREN'S RIGHTS

78.

The Ombudsman recommends that the prohibition of corporal punishment of children be determined in an amendment to the Family Violence Prevention Act.

79.

The role and tasks of the advocate of child's rights should be determined in more detail in an amendment to the Human Rights Ombudsman Act.

80.

The Ombudsman recommends that court hearings be video recorded.

81.

The Ombudsman recommends that the Ministry of Education, Science and Sport include a requirement for THC testing of secondary school students, including the keeping and processing of pertinent personal data, among the anticipated amendments to school legislation.

82.

The Ombudsman recommends that the issue of the suitability of compensations for the transfer of children between sports clubs be regulated in the Sports Act.

83.

The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities conclude a settlement with all injured parties who enforce their rights to child care allowance and the assistance and attendance allowance in judicial proceedings, or rectify the injustices caused by amending legal arrangements.



# 5

## IMPLEMENTATION OF DUTIES AND POWERS OF THE NATIONAL PREVENTIVE MECHANISM

### 5.1 General

In 2006 in accordance with the Act ratifying the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>1</sup> the Human Rights Ombudsman assumed important **duties and powers of the National Preventive Mechanism (NPM)**. By being entrusted with the tasks and powers of the NPM, the Ombudsman became an integral part of a generally applicable system under the auspices of the United Nations (UN), which enforces (additional) mechanisms for the prevention of torture and other forms of ill-treatment of people deprived of liberty at the international and national level. This system is particularly based on regular visits to places of detention. These are preventive visits, the purpose of which is to prevent torture or other ill-treatment before it occurs. In addition to the Sub-Committee on Prevention against Torture (SPT) established by the United Nations, the Optional Protocol introduces the so-called NPM, whose task is to regularly visit all, or any, places suspected of deprivation of liberty where persons are, or could be, accommodated

### 5.2 Act ratifying the Optional Protocol

The Act ratifying the Optional Protocol (Article 5) determines that the **duties and powers of the NPM are to be implemented by the Ombudsman. It also stipulates that non-governmental organisations (NGOs) registered in the Republic of Slovenia and organisations which hold the status of humanitarian organisations in the Republic of Slovenia and which deal with the protection of human rights or fundamental freedoms, particularly in the field of preventing torture and other cruel, inhuman or degrading treatment or punishment, may participate with the Ombudsman in the supervision of places of detention and examination of the treatment of persons deprived of their liberty.** These organisations are selected on the basis of a public procurement published by the Ombudsman, who also decides on the selection of organisations. The Act ratifying the Optional Protocol also stipulates that persons from selected organisations which will be participating in the implementation of duties and powers of the NPM have to provide a preliminary written statement that when implementing these duties and powers they will observe the Ombudsman's instructions and regulations on the protection of personal and confidential data, as also applicable to the Ombudsman, her deputies and staff. The costs of, and remuneration of, persons from organisations conducting tasks or implementing powers are covered by the Ombudsman from its budget headings according to the rules issued on the basis of the prior consent of the minister responsible for finance. The rules are published in the Official Gazette of the Republic of Slovenia. On this basis, the Ombudsman issued the **Rules on the reimbursement of costs and remuneration of persons from organisations performing tasks or executing authorisations according to the**

<sup>1</sup> Official Gazette of the Republic of Slovenia, no. 114/06 – International Treaties, no. 20/06.

## Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>2</sup>

The Ombudsman published a (new) public procurement no. 12.1-4/2014-1 in the Official Gazette of the Republic of Slovenia, no. 92/2014 of 19 December 2014 for the selection of NGOs willing to cooperate with the Ombudsman in the implementation of duties and powers of the NPM for the 2015–2017 period, with the possibility of an extension for an additional year.

Eight NGOs applied to the public procurement (including some new ones), i.e. Novi paradoks (NP), the Association for Developing Voluntary Work Novo mesto (Association), Humanitarno društvo Pravo za vse (Pravo za vse), Caritas Slovenia (Caritas), SKUP – Community of Private Institutes (SKUP), the Legal-Informational Centre for NGOs (PIC), the Peace Institute (MI) and the Slovenian Federation of Pensioners' Associations (ZDUS). All bids were timely and met the criteria determined in the public procurement, and were all selected for cooperation with the Ombudsman in the implementation of duties and powers of the NPM. The Ombudsman also cooperated with representatives of these organisations in 2015 during the implementation of the duties and powers of the NPM.

It was thus decided at the end of 2014 that a special NPM unit would be established in 2015, which will not discuss individual complaints, but only conduct visits and other NPM duties. In addition to the Deputy Ombudsman, Ivan Šelih, who is the head of the NPM, the unit also includes Robert Gačnik, (B.A. (Criminal Justice and Security), specialist in criminal investigation), the Ombudsman's adviser/councillor (responsible particularly for visiting prisons, police stations, aliens and asylum centres), mag. Jure Markič, the Ombudsman's adviser/senior councillor, (B.A. (Law)) (responsible for visiting social care institutions and psychiatric hospitals) and Lili Jazbec, the Ombudsman's adviser/councillor, professor of defectology for behavioural and personality disorders and institutional education science (responsible for visiting juvenile institutions and jointly responsible for social care institutions). **Both of the Ombudsman's activities (preventive, including NPM duties, and reactive, including the examination of individual complaints) were thus completely separated.** The need for this separation is explicitly stipulated in Item 32 of the Guidelines on national preventive mechanisms (SPT)<sup>3</sup> adopted in Geneva in November 2010, which determines that "where the body designated as the NPM performs other functions in addition to those under the Optional Protocol, its NPM functions should be located within a separate unit or department, with its own staff and budget".

We find that the decision for this division of the Ombudsman's activities was appropriate. The implementation of tasks and powers of the NPM is now much more effective, which is also reflected in the number of visits to different locations (for example, we conducted 39 visits in the role of NPM in 2014 and as many as 67 visits in 2015). The improved organisation of work contributes to better preparation for the implementation of a visit, its execution and drafting of the report on the visit. Due to the different distribution of work, an adviser on discussing individual complaints will have to be replaced. Furthermore, a higher number of visits also incurs higher costs (for cooperation with the selected NGOs and the execution of visits). The need to improve the participation of doctors/experts on individual NPM visits also requires an increase of funds.

### 5.3 Activities of the NPM

When implementing its duties and powers, the NPM visits (while conducting its annual programme of visits) all locations in the Republic of Slovenia where persons are deprived of their liberty and inspects how such persons are treated, in order to strengthen their protection against torture and other forms of cruel, inhuman or humiliating treatment or punishment. While observing suitable legal norms, the NPM makes recommendations to the relevant authorities to improve the conditions and treatment of people and prevent torture and other forms of cruel, inhuman or degrading treatment or punishment. In this regard, it may also submit proposals and comments on applicable or drafted acts.

<sup>2</sup> The Rules were published in the Official Gazette of the Republic of Slovenia, no. 17/2008. The Rules were partly amended in 2011 (Official Gazette of the Republic of Slovenia, no. 20/2011).

<sup>3</sup> Available at: <http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/NationalPreventiveMechanisms.aspx>.

Official places of deprivation of liberty in the Republic of Slovenia include in particular:

- prisons and all their units and Radeče Juvenile Correctional Facility,
- educational institutions,
- certain social care institutions – retirement homes and special social care institutions,
- psychiatric hospitals,
- detention rooms at police stations and Ljubljana Police Detention Centre,
- the Aliens Centre and the Asylum Centre,
- detention rooms operated by the Slovenian Armed Forces, and
- all other locations as per Article 4 of the Optional Protocol (for example, police intervention vehicles, etc.).

As the NPM, the Ombudsman engages experts with the widest range of recommended specialist knowledge. Since selected NGOs cannot provide certain other suitable experts and because the Ombudsman does not dispose of an expert in the field of medical care, certain experts had to be engaged externally. At the beginning of 2014, a notification on the call for proposals for the purpose of recruiting doctors/expert specialists to help the Ombudsman to establish, clarify or evaluate evidence of torture or other forms of cruel, inhuman or degrading treatment or punishment, or to support the Ombudsman during visits to places of deprivation of liberty with suitable expert knowledge which the Ombudsman lacks, was published on the Ombudsman's website and in the ISIS publication of the Medical Chamber of Slovenia. Three proposals were received, i.e. from Dr. Peter Pregelj, specialist/psychiatrist, Dr. Milan Popovič, specialist in general surgery and Dr. Zdenka Čebašek-Travnik, specialist in psychiatry (former Human Rights Ombudsman). Since all proposals met the requirements, all three doctors were recruited as physician experts and agreements on cooperation were concluded with them. An individual expert selected from the list by the Ombudsman as per the type and place of an individual visit performs the tasks according to the orders and instructions of the Ombudsman and in cooperation with the Ombudsman's expert colleagues by participating in planned visits and providing written replies to the Ombudsman's questions in the role of the NPM and providing their own findings, particularly on the suitability of medical care and the treatment of people deprived of liberty.

The selected NGOs implement their tasks and powers with persons qualified for individual fields of supervision as members in a group appointed by the Ombudsman to implement supervision in places of deprivation of liberty and the examination of treatment of people deprived of liberty. **The group implementing supervision is thus composed of the Ombudsman's representatives and selected organisations who observe the programme of visits adopted by the Ombudsman in cooperation with the selected organisations. If necessary, other circumstances demanding an immediate visit are also taken into account.**

The NPM drafts a comprehensive (final) report on the findings established at the visited institution after each visit. The report also covers proposals and recommendations for the elimination of established irregularities and to improve the situation, including measures to reduce the possibilities of improper treatment in the future. The Ombudsman's representatives and the representatives of the selected NGOs participate in drafting the report on the visit. All participants, including NGO representatives, must prepare a brief report on their findings, together with proposals, which form part of the report on the implemented supervision. The report is submitted to the competent authority (i.e. the superior body of the visited institution) with a proposal that the authority take a position on the statements or recommendations in the report and submit it to the Ombudsman by a determined deadline. A representative of the Ombudsman is usually responsible for preparing the report, although a person from a selected NGO may also be appointed for this purpose. On the basis of the report, the response of the competent authority and possible additional observations of the NPM, a **brief report** is published online after each visit.<sup>4</sup>

### 5.4 Brief statistics on NPM visits in 2015

In 2015, the NPM conducted 67 visits to different places of deprivation of liberty which included:

- 23 detention rooms at police stations,
- 21 social care institutions,

<sup>4</sup> See: <http://www.varuh-rs.si/o-instituciji/podrocja-dela-varuha/varuh-kot-drzavni-preventivni-mehanizem/>.

- 9 prisons (including Radeče Juvenile Correctional Facility),
- 5 special social care institutions,
- 4 educational institutions treating children and adolescents with emotional and behavioural disorders,
- 3 psychiatric hospitals, and
- 2 locations of deprivation of liberty of aliens.

All of the above visits took one day, **with the exception of visits to three prisons (Koper, Dob pri Mirni and Maribor) and one special social care institution (PSVZ Hrastovec) which took two days, i.e. four in total** (the second day in the latter prison included only the concluding discussion with the Ombudsman's representative).

**In six cases, the visits were thematic** (all conducted in social care institutions),<sup>5</sup> **and in nine cases the visits were for control purposes**<sup>6</sup> (6 social care institutions, 2 psychiatric hospitals and Radeče Juvenile Correctional Facility<sup>7</sup>). With regard to visits of special types, most visits to social care institutions were either exclusively thematic or for control purposes. The majority of visits were conducted **without prior notice (60); only seven were conducted on the basis of a prior announcement**<sup>8</sup>, of which one was a control visit.<sup>9</sup>

The **contractual expert was engaged in eight cases** (in four cases for the needs of a visit to a special social care institution, in two cases for the needs of a visit to a prison, and once for the needs of a visit to a psychiatric hospital and a social care institution).

The following facts may be established concerning the participation of registered non-governmental organisations or organisations with the status of a humanitarian organisation:

- **SKUP – Community of Private Institutes** participated in visits to **34** various places of deprivation of liberty (on one visit,<sup>10</sup> it participated with two representatives and in three thematic and two control visits);
- **Humanitarno društvo Pravo za vse** participated in the visits to **18** various places of deprivation of liberty (on four visits,<sup>11</sup> it participated with two representatives and in three thematic and one control visit);
- **Novi Paradoks** participated in visits to **10** various places of deprivation of liberty (two of which were control visits);
- **Association for Developing Voluntary Work Novo mesto** participated in visits to **eight** different places of deprivation of liberty (one of which was a control visit);
- **the Peace Institute** participated in visits to **seven** different places of deprivation of liberty;
- **ZDUS – the Slovenian Federation of Pensioners' Associations** participated in visits to **five** different places of deprivation of liberty (two of which were control visits);
- **Caritas Slovenia** participated in visits to **four** different places of deprivation of liberty; and
- **PIC – Legal-Informational Centre for NGOs** participated in visits to **three** different places of deprivation of liberty.

It may be further established **that the representatives of the participating registered non-governmental organisations or organisations with a status of humanitarian organisations were engaged to prepare reports on the majority (53 per cent) of visits to places of deprivation of liberty, i.e. for 35 (out of a total of 66) visited**

<sup>5</sup> These included the Dom pod Gorco Retirement Home in Maribor, the Sončni dom Retirement Home in Maribor, Ptuj Retirement Home, the Dom Petra Uzarja Retirement Home in Tržič, the Centre for the Blind, Visually Impaired and Elderly in Škofja Loka and Preddvor Retirement Home. As stated in the relevant report: "The purpose of thematic visits of the NPM to several retirement homes was (merely) to examine changes on dementia wards after the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ) removed so-called supervision wards from the Guidelines on working with persons with dementia (Guidelines). /.../ During these visits, the NPM also observed indications suggesting that torture and other forms of cruel, inhuman or degrading treatment or punishment occur at the places of deprivation of liberty (as defined in Article 4 of the MOPPM). On the basis of findings from their visits, the aim of the NPM was to recommend that the competent authorities, MDDSZ in particular, (legally) determine wards which meet all conditions of secure wards as per the ZDZdr, and thus improve the safety of persons deprived of their liberty."

<sup>6</sup> These included Radeče Juvenile Correctional Facility, Begunje Psychiatric Hospital, the OLMO Unit at Ptuj Retirement Home, Lucija Retirement Home, Ilirska Bistrica Retirement Home, Cerknica Retirement Home, Novo mesto Retirement Home and Ormož Psychiatric Hospital.

<sup>7</sup> The latter institution was the only one to which a regular visit was first made in 2015, followed by a control visit.

<sup>8</sup> Dob pri Mirni Prison, Ig Prison, Piran Police Station, Ljubljana Police Detention Centre, Vrhnika Retirement Home and Planina Residential Treatment Institution.

<sup>9</sup> Radeče Juvenile Correctional Facility.

<sup>10</sup> Dob pri Mirni Prison.

<sup>11</sup> Dom Svetega Lenarta Retirement Home, the Muretinci Unit of Ptuj Retirement Home, Maribor Prison and Ig Prison.

**places, and they thus prepared five reports more than were drafted by the Ombudsman's representatives (31). Namely:**<sup>12</sup>

- **SKUP – Community of Private Institutes** prepared reports on visits to **26** different places<sup>13</sup> of deprivation of liberty;
- **the Peace Institute** prepared reports on visits to **five** different places<sup>14</sup> of deprivation of liberty;
- **Humanitarno društvo Pravo za vse** prepared reports on visits to **three** different places;<sup>15</sup>
- **Novi Paradoks** prepared a report on the visit to **one** place of deprivation of liberty.<sup>16</sup>

Furthermore:

- relating to 23 places classified as police detention rooms, **in all 23 cases (100 per cent) the report was prepared by a representative** of a participating registered non-governmental organisation or an organisation with the status of a humanitarian organisation **(and never by a representative of the Ombudsman)**;
- relating to nine places classified as prisons (including Radeče Juvenile Correctional Facility), **in five cases (56 per cent) the report was prepared by a representative** of a participating registered non-governmental organisation or an organisation with the status of a humanitarian organisation **(and four times by a representative of the Ombudsman)**;
- relating to three places classified as locations of deprivation of liberty of aliens, **in two cases (67 per cent) the report was prepared by a representative** of a participating registered non-governmental organisation or an organisation with the status of a humanitarian organisation **(and once by a representative of the Ombudsman)**;
- relating to four places classified as special social care institutions, **in two cases (50 per cent) the report was prepared by a representative** of a participating registered non-governmental organisation or an organisation with the status of a humanitarian organisation **(and twice by a representative of the Ombudsman)**;
- relating to four places classified as educational institutions treating children and adolescents with emotional and behavioural disorders, **in one case (25 per cent) the report was prepared by a representative** of a participating registered non-governmental organisation or an organisation with the status of a humanitarian organisation **(and three times by a representative of the Ombudsman)**;
- relating to 21 places classified as social care institutions, **in two cases (10 per cent) the report was prepared by a representative** of a participating registered non-governmental organisation or an organisation with the status of a humanitarian organisation **(and 19 times by a representative of the Ombudsman)**, and
- relating to three places classified as psychiatric hospitals, **the report was never prepared by a representative** of a participating registered non-governmental organisation or an organisation with the status of a humanitarian organisation **(in all three cases, the report was prepared by a representative of the Ombudsman)**.

Representatives of the participating registered non-governmental organisations or organisations with the status of a humanitarian organisation thus **prepared reports on visits conducted in 2015 according to individual categories of places of deprivation of liberty as follows:**

- reports on police stations were prepared **exclusively by representatives of organisations**;
- **representatives of organisations prepared more reports** on prisons and locations of deprivation of liberty of aliens **than the representatives of the Ombudsman**;
- **representatives of organisations prepared the same number of reports** on special social care institutions **as the representatives of the Ombudsman**;
- **representatives of organisations prepared less reports (one in four) on educational institutions** treating children and adolescents with emotional and behavioural disorders or **the representatives of organisations prepared significantly fewer reports (only two out of a total of 21) on social care institutions** than the representatives of the Ombudsman; and
- **representatives of organisations prepared none of the reports on psychiatric hospitals; all three reports were prepared by the Ombudsman's representative.**

<sup>12</sup> Neither the representatives of ZDUS – the Slovenian Federation of Pensioners' Association, PIC – Legal-Informational Centre for NGOs, Caritas Slovenia or the Association for Developing Voluntary Work Novo mesto prepared reports on any of the visits in 2015.

<sup>13</sup> For 20 police stations, two prisons and one control visit to Radeče Juvenile Correctional Facility, two reception centres and one visit to a special social care institution.

<sup>14</sup> For three police stations, one prison and one visit to Radeče Juvenile Correctional Facility.

<sup>15</sup> Two social care institutions and one special social care institution.

<sup>16</sup> One residential treatment institution.

The NPM may also submit proposals and comments regarding applicable or draft acts (Article 19 of the Optional Protocol). In 2015, our comments were observed in a draft act which will regulate procedures involving minors when imposing educational and security measures; amended Rules on the implementation of security measures of compulsory psychiatric treatment and care in a health establishment of compulsory psychiatric treatment at liberty and compulsory treatment of alcoholics and drug addicts; Act on the Treatment of Juvenile Delinquents; Act amending the Enforcement of Penal Sentences Act (ZIKS-1); proposed Act Amending the Criminal Code (KZ-1C); latest amendments to ZP-1); draft amending the State Border Control Act; draft amending the Police Tasks and Powers Act; amended Rules on exercising the powers and duties of judicial police officers; amended Rules on the implementation of prison sentences and the Rules on payments for the work of sentenced persons.

## 5.5 Realisation of NPM recommendations

Implementing NPM recommendations is a commitment of the State Party to the Optional Protocol. According to Article 22 of the Optional Protocol, the competent authorities of the State Party must address NPM recommendations and establish a dialogue with it on possible measures to realise the recommendations. The success of implementing recommendations arising from NPM visits is annually presented in the **Ombudsman's Annual Report and also in a separate publication**<sup>17</sup> in the form of a synthesis of our findings and recommendations and responses from the competent authorities in the report to visits to individual institutions. **Thus from a total of 600 recommendations issued by the NPM after 67 visits in 2015, 211 have already been realised; 286 have been accepted, and 51 rejected, and the institutions visited or ministries have not taken a position on 52 of these recommendations as of the start of drafting this report.**

INSTITUTIONS VISITED	Number of locations	RECOMMENDATIONS				TOTAL
		Realised	Accepted	Rejected	No data available	
police stations	23	84	52	8	2	146
Aliens Centre	1	3	6	3	/	12
psychiatric hospitals	3	29	22	4	1	56
social care institutions	21	29	84	2	/	115
special social care institutions	5	15	25	10	37	87
prisons and the juvenile correctional facility	7 + 1 twice	45	59	15	/	119
residential treatment institutions	4	3	32	1	12	48
entry and reception centre for refugees/migrants	1	3	6	8	/	17
<b>TOTAL</b>	<b>67</b>	<b>211</b>	<b>286</b>	<b>51</b>	<b>52</b>	<b>600</b>

In addition to the most important preventive effect of these visits, whose purpose is to prevent torture or other ill-treatment before it occurs, we also discovered that the living conditions and treatment of persons deprived of liberty improved in many institutions due to our recommendations.

Regarding visits to **police stations**, it may be highlighted that police stations have, if necessary: improved living conditions in detention rooms; numbered detention rooms; improved the provision of information on rights to persons detained (with a brochure on the rights of detained persons in different languages and a poster including the rights of detained persons in several languages); updated the list of lawyers; improved the lighting of premises also with the installation of brighter or more suitable lighting in certain detention rooms; installed beds for overnight accommodation; provided missing notices stating that the premises are under video surveillance or the suitable installation of a video surveillance system and notices stating that surveillance does not include toilet facilities at the detention premises; removed "lunch packages" with expired dates and provided suitable control of food storage; more consistently recorded data on the manner

<sup>17</sup> See: <http://www.varuh-rs.si/publikacije-gradiva-izjave/porocila-varuha-v-vlogi-dpm/>.

of notifying persons of their rights on forms necessary for detention; improved the provision of medical assistance; improved the provision of food and water or access to drinking water (e.g. with water bottles); improved storage of temporarily seized items; more suitably arranged access to police stations for persons with disabilities; eliminated deficiencies and established irregularities in recording individual detention cases, and ensured measures to consistently observe regulations and guidelines on detention.

On the basis of NPM recommendations, the **Aliens Centre** now translates menus and their notification in the dining hall and common rooms where aliens are accommodated into English; the time for dinner was changed; showering facilities in the men's unit have improved; a telephone was replaced; use of the Internet during the week (and not only at weekends); the recording system of measures implemented by the medical service was modified and more prompt and detailed writing of reports by expert services was ensured; more attention is paid to the organised activities of aliens, and additional psychiatric assistance for aliens during their accommodation at the centre was also provided.

On the basis of our recommendations, the **Asylum Centre** also eliminated deficiencies at the living premises of the reception unit and malfunctioning or damaged equipment and facilities. They translated the asylum legislation, menus and the schedule of activities into some other languages, enabled direct Internet access and improved the medical care of aliens.

On the basis of NPM recommendations, **residential treatment (educational) institutions** updated and improved their websites and published their house rules. The NPM recommendation that an individualised plan should be signed by adolescents is also being acted on. The educational institutions also provided a more suitable arrangement of adolescents' personal files. The NPM proposal to draft a special act on the field of educational institutions was accepted, including the proposal for the preparation of guidelines for an educational plan in educational institutions and thus clearer rules on living in them.

On the basis of NPM recommendations, **prisons and Radeče Juvenile Correctional Facility** have updated house rules in individual facilities; enabled access to regulations on the enforcement of criminal sanctions and protection of human rights; repaired damaged equipment and devices in order to prevent greater damage; replaced used and worn out equipment, and ensured the keeping of prompt records on the occurrence and elimination of malfunctions; generally improved living conditions at places of deprivation of liberty, which is encouraging and also confirms the purpose of our operations. The institutions provided prisoners with significantly more opportunities for making calls and have taken measures to improve the quality of incarceration. They provided more organised activities, stimulated the development of educational activities at the facilities, and provided new programmes and motivation for prisoners to participate in them. Some institutions replaced cutlery and started completing items in individual records more consistently. They arranged records on decisions relating to accommodation in stricter regimes, adopted measures for the more optimal use of patient rooms, improved the medical care of prisoners and generally more humane treatment of prisoners.

On the basis of NPM recommendations, **psychiatric hospitals** provided more consistent observance of provisions of the Mental Health Act (ZDZdr) upon the admission of persons and their detention in secure wards; eliminated errors when implementing and recording special protection measures; improved the provision of information on patients' rights; improved the appearance of secure wards or provision of patient-friendly premises; installed boxes for collecting complaints, and established appropriate procedures upon a patient's death.

**Retirement homes and special social care institutions** also ensured more consistent observation of the ZDZdr provisions upon the admission and accommodation of persons in secure wards. On the basis of our recommendations, the legal bases for accommodating residents in secure wards were defined in more detail and more accurately. The concept of discussing people suffering from dementia was further developed. The retirement homes provided a more friendly appearance for secure wards, prepared relevant individual plans with which they observed the needs and wishes of their residents; improved the provision of information on residents' rights (also by brochures); installed boxes for collecting complaints; eliminated errors when implementing and recording special protection measures (also by changing and amending the forms); arranged smoking facilities, and installed alarms to improve response times for calls from the secure ward.

In its **detention rooms**, the Slovenian Armed Forces supplemented the detention records and marked detention and interrogation rooms with labels. A working group was appointed at our proposal to prepare a proposal to amend the Rules on the construction of detention facilities for the Slovenian Armed Forces or military police in order to harmonise standards required as per the Rules on the actual condition of detention rooms used by military police.

## 5.6 International and other activities of the NPM

In addition to visiting places of deprivation of liberty, the NPM also conducts many other activities, such as preparing proposals and comments to applicable or drafted acts, preparing and giving presentations to foreign delegations or visitors (in 2015, we hosted representatives of the NPMs from Montenegro and Ukraine), preparing replies to questions from different NPM networks, participating at meetings etc. NPM members participate at various national and international events by presenting our operations and current experience. We also organise discussions with representatives of individual state authorities (also ministers) and also present the Ombudsman's work in this field elsewhere (the Police Academy in Tacen, Faculty of Criminal Justice and Security, press conferences). Different forms of training and work meetings are organised for all NPM members (including participating NGOs) at which we discuss aspects of our joint operations with the NGOs.

The NPMs of so-called south-eastern Europe formed a network called **South-East Europe NPM Network** (SEE NPM Network),<sup>18</sup> in Belgrade (Serbia) on **26 March 2013**, the purpose of which is *inter alia* to establish better cooperation, exchange experience and implement numerous joint activities to improve the efficiency of performing duties and powers of the NPM in the relevant field which derive from the Optional Protocol. On this occasion, representatives of the NPM from Albania, Montenegro, Croatia, Macedonia, Slovenia and Serbia (and also one of the ombudsmen from Bosnia and Herzegovina) adopted a Declaration on Cooperation, elected management and set their first objectives. As a sign of recognition of the current work of the Ombudsman in this field, the first presidency of the network was entrusted to the NPM Slovenia. The NPMs of Austria and Bulgaria later joined the network. The presidency of the network is currently held by the NPM Austria.

Within the network, two study visits were implemented in 2015, i.e. to the NPMs in Austria and Croatia. The primary purpose of the visit was to exchange practical experience of implementing preventive visits. Such cooperation and exchanges of experience of implementing preventive visits within the SEE Network proved useful in the past, and we will also do this in the future, since we expect the members of the National Preventive Mechanism of the Republic of Austria to participate in a similar visit to the Republic of Slovenia in 2016.

## 5.7 Conclusion

We believe that **the Ombudsman ensured the efficient implementation of duties and powers of the NPM by implementing the Optional Protocol. By including non-governmental and humanitarian organisations in the implementation of duties and powers of the NPM, the transparency of the Ombudsman's operations in this field increased, which ensures even better implementation of the duties assumed upon the ratification of the Optional Protocol. This solution is a novelty in the Republic of Slovenia in the implementation of public-private partnership and may serve as an example for further changes in the operations of other state authorities, and in international terms, it may present one of possible and successful models for implementing the Optional Protocol.**

On the whole, we are pleased with the response of the relevant authorities (particularly visited institutions) to our findings and recommendations for improving situations, since they show a readiness to cooperate. We particularly note that the institutions visited are trying to take all the measures needed to make improvements which are in their domain. We are pleased to establish that the findings, proposals and recommendations for improvements made by the Ombudsman within its duties and powers of the NPM frequently do result in an improvement in conditions and the treatment of persons deprived of liberty. We strive to enhance and deepen cooperation with the relevant ministries, particularly regarding issues which demand systemic changes in the field.

<sup>18</sup> See: <http://www.varuh-rs.si/o-instituciji/podrocja-dela-varuha/varuh-kot-drzavni-preventivni-mehanizem/south-east-europe-npm-network/>.

**In conclusion, we highlight that the NPM's operations significantly contribute to improving the situation of persons deprived of liberty.** This was also noted by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) when visiting Slovenia in 2012 (see report on this visit, p. 10).<sup>19</sup> Assessments of successful work have also come from experts,<sup>20</sup> since the findings of the NPM have also been quoted by the European Court for Human Rights<sup>21</sup> in its judgements and are also the subject of many diploma and MA theses.

## 5.8 Review of NPM visits in 2015

Seq. no.	Date	Place	Participants	Description of event	Organiser
1.	12 March 2015	Petrovo Brdo	The visit was conducted by the Ombudsman's representatives, mag. Jure Markič and Liljana Jazbec, the Ombudsman's advisers, and representatives of non-governmental organisations: Jure Trbič (SKUP – Community of Private Institutes) and Sonja Škrabec Štefančič (Novi paradoks). On 14 March 2015, the unit was also visited by an external expert, Dr. Peter Pregelj, specialist/psychiatrist, in order to examine medical and health care.	Visit to Petrovo Brdo Unit of Podbrdo Retirement Home	Human Rights Ombudsman of the Republic of Slovenia
2.	11 March 2015	Cerknica	The visit was conducted by Robert Gačnik, the Ombudsman's adviser, and NGO representative Primož Križnar (SKUP – Community of Private Institutes).	Visit to Cerknica Police Station	Human Rights Ombudsman of the Republic of Slovenia
3.	11 March 2015	Postojna	The visit was conducted by Robert Gačnik, the Ombudsman's adviser, and NGO representative Primož Križnar (SKUP – Community of Private Institutes).	Visit to Postojna Police Station	Human Rights Ombudsman of the Republic of Slovenia
4.	11 March 2015	Ilirska Bistrica	The visit was conducted by Robert Gačnik, the Ombudsman's adviser, and NGO representative Primož Križnar (SKUP – Community of Private Institutes).	Visit to Ilirska Bistrica Police Station	Human Rights Ombudsman of the Republic of Slovenia
5.	23 March 2015	Celje	The visit was conducted by the Ombudsman's representatives, mag. Jure Markič and Liljana Jazbec, the Ombudsman's advisers, and representatives of non-governmental organisations: Stanka Radojčič (Slovenian Federation of Pensioners' Associations) and Barbara Pirnat (Caritas Slovenia).	Visit to Saint Joseph Home in Celje	Human Rights Ombudsman of the Republic of Slovenia

<sup>19</sup> See: <http://www.cpt.coe.int/documents/svn/2013-16-inf-eng.pdf>.

<sup>20</sup> See e.g. Korošec, Damjan: *Poročilu Varuha človekovih pravic o izvajanju nalog državnega preventivnega mehanizma na pot*, in *Pravna praksa*, no. 47, 8 December 2011.

<sup>21</sup> See e.g. case *Mandić and Jović v. Slovenia* and *Štručl Jakob and Others v. Slovenia*.

Seq. no.	Date	Place	Participants	Description of event	Organiser
6.	23 March 2015	Novo mesto	The visit was conducted by Robert Gačnik, the Ombudsman's adviser, and representatives of non-governmental organisations: Katja Piršič (SKUP – Community of Private Institutes) and Branka Bukovec (Association for Developing Voluntary Work Novo mesto).	Visit to Novo mesto Unit of Ljubljana Prison	Human Rights Ombudsman of the Republic of Slovenia
7.	24 March 2015	Ljubljana	The visit was conducted by Liljana Jazbec and mag. Jure Markič, the Ombudsman's advisers, and Ana Repič (Legal-Informational Centre for NGOs – PIC) and Mirjam Hribar (Association for Developing Voluntary Work Novo mesto).	Visit to Malči Beličeve Youth Care Centre	Human Rights Ombudsman of the Republic of Slovenia
8.	2 April 2015	Žalec	The visit was conducted by mag. Jure Markič and Liljana Jazbec, the Ombudsman's advisers, and representatives of non-governmental organisations: Jan Irgel (Humanitarno društvo Pravo za vse) and Ana Cajnko (Slovenian Federation of Pensioners' Associations). On 7 April 2015, the centre was also visited by the external expert, Dr. Zdenka Čebašek-Travnik, specialist/psychiatrist, in order to examine medical and health care.	Visit to Nina Pokorn Grmovje Home	Human Rights Ombudsman of the Republic of Slovenia
9.	9 April 2015	Velenje	The visit was conducted by Robert Gačnik, the Ombudsman's adviser, and representatives of non-governmental organisations: Primož Križnar (SKUP – Community of Private Institutes) and Dominika Mendaš (Humanitarno društvo Pravo za vse).	Visit to Velenje Police Station	Human Rights Ombudsman of the Republic of Slovenia
10.	9 April 2015	Šmarje pri Jelšah	The visit was conducted by Robert Gačnik, the Ombudsman's adviser, and representatives of non-governmental organisations: Primož Križnar (SKUP – Community of Private Institutes) and Dominika Mendaš (Humanitarno društvo Pravo za vse).	Visit to Šmarje pri Jelšah Police Station	Human Rights Ombudsman of the Republic of Slovenia
11.	9 April 2015	Rogaška Slatina	The visit was conducted by Robert Gačnik, the Ombudsman's adviser, and representatives of non-governmental organisations: Primož Križnar (SKUP – Community of Private Institutes) and Dominika Mendaš (Humanitarno društvo Pravo za vse).	Visit to Rogaška Slatina Police Station	Human Rights Ombudsman of the Republic of Slovenia
12.	14 April 2015	Veržej	The visit was conducted by Liljana Jazbec, the Ombudsman's adviser, and representatives of non-governmental organisations: Zerina Repič (Novi paradoks) and Barbara Pirnat (Caritas Slovenia).	Visit to Veržej Residential Treatment Institution of Veržej Primary School	Human Rights Ombudsman of the Republic of Slovenia
13.	15 April 2015	Maribor	The visit was conducted by mag. Jure Markič, the Ombudsman's adviser, and NGO representative Eva Šmirmaul (Humanitarno društvo Pravo za vse).	Visit to the Dom pod Gorco Retirement Home in Maribor	Human Rights Ombudsman of the Republic of Slovenia

Seq. no.	Date	Place	Participants	Description of event	Organiser
14.	15 April 2015	Maribor	The visit was conducted by mag. Jure Markič, the Ombudsman's adviser, and NGO representative Eva Šmirmaul (Humanitarno društvo Pravo za vse).	Visit to the Sončni dom Retirement Home in Maribor	Human Rights Ombudsman of the Republic of Slovenia
15.	15 April 2015	Ptuj	The visit was conducted by mag. Jure Markič, the Ombudsman's adviser, and NGO representative Eva Šmirmaul (Humanitarno društvo Pravo za vse).	Visit to Ptuj Retirement Home	Human Rights Ombudsman of the Republic of Slovenia
16.	16 April 2015	Tržič	The visit was conducted by mag. Jure Markič, the Ombudsman's adviser, and NGO representative Ajda Vodnjov (SKUP – Community of Private Institutes).	Visit to the Dom Petra Uzarja Retirement Home in Tržič	Human Rights Ombudsman of the Republic of Slovenia
17.	16 April 2015	Škofja Loka	The visit was conducted by mag. Jure Markič, the Ombudsman's adviser, and NGO representative Ajda Vodnjov (SKUP – Community of Private Institutes).	Visit to Škofja Loka Centre for the Blind, Visually Impaired and Elderly	Human Rights Ombudsman of the Republic of Slovenia
18.	16 April 2015	Preddvor	The visit was conducted by mag. Jure Markič, the Ombudsman's adviser, and NGO representative Ajda Vodnjov (SKUP – Community of Private Institutes).	Visit to Preddvor Retirement Home	Human Rights Ombudsman of the Republic of Slovenia
19.	21 April 2015	Laško	The visit was conducted by Liljana Jazbec, the Ombudsman's adviser, and representatives of non-governmental organisations: Kristina Čigler (Association for Developing Voluntary Work Novo mesto) and Jan Irgel (Humanitarno društvo Pravo za vse).	Visit to Laško Retirement Home	Human Rights Ombudsman of the Republic of Slovenia
20.	23 April 2015	Radeče	The visit was conducted by Ivan Šelih, Deputy Ombudsman, Robert Gačnik, the Ombudsman's adviser, and representatives of non-governmental organisations: Eva Šmirmaul (Humanitarno društvo Pravo za vse) and Katarina Vučko (Peace Institute).	Visit to Radeče Juvenile Correctional Facility	Human Rights Ombudsman of the Republic of Slovenia
21.	5 May 2015	Štore	The visit was conducted by mag. Jure Markič, the Ombudsman's adviser, and representatives of non-governmental organisations: Milena Križaj (Slovenian Federation of Pensioners' Associations) and Mateja Veingerl (Humanitarno društvo Pravo za vse).	Visit to Lipa Retirement Home in Štore	Human Rights Ombudsman of the Republic of Slovenia
22.	7 May 2015	Sežana	The visit was conducted by Robert Gačnik, the Ombudsman's adviser, and NGO representative Primož Križnar (SKUP – Community of Private Institutes).	Visit to Sežana Police Station	Human Rights Ombudsman of the Republic of Slovenia



Seq. no.	Date	Place	Participants	Description of event	Organiser
23.	7 May 2015	Koper	The visit was conducted by Robert Gačnik, the Ombudsman's adviser, and NGO representative Primož Križnar (SKUP – Community of Private Institutes).	Visit to Koper Police Station	Human Rights Ombudsman of the Republic of Slovenia
24.	7 May 2015	Izola	The visit was conducted by Robert Gačnik, the Ombudsman's adviser, and NGO representative Primož Križnar (SKUP – Community of Private Institutes).	Visit to Izola Police Station	Human Rights Ombudsman of the Republic of Slovenia
25.	12 May 2015	Planina	The visit was conducted by Liljana Jazbec, the Ombudsman's adviser, and representatives of non-governmental organisations: Barbara Pirnat (Caritas Slovenia) and Mirjam Hribar (Association for Developing Voluntary Work Novo mesto).	Visit to Planina Residential Treatment Institution	Human Rights Ombudsman of the Republic of Slovenia
26.	18 May 2015	Lenart	The visit was conducted by mag. Jure Markič, the Ombudsman's adviser, and representatives of a non-governmental organisation: Tamara Žajdela and Miha Biderman (Humanitarno društvo Pravo za vse).	Visit to a social care institution, Dom starejših občanov Lenart, družba za storitve, d. o. o.	Human Rights Ombudsman of the Republic of Slovenia
27.	19 and 20 May 2015	Koper	On 19 May 2015, the visit was conducted by Ombudsman Vlasta Nussdorfer, Deputy Ombudsman Ivan Šelih, Robert Gačnik, the Ombudsman's adviser, and representatives of non-governmental organisations: Katja Piršič (SKUP – Community of Private Institutes) and Boris Nusdorfer (Legal-Informational Centre for NGOs – PIC); the external expert, Dr. Milan Popovič, specialist in general surgery, conducted his visit on 22 May 2015 when inspecting the provision of medical and health care in the institution.	Visit to Koper Prison	Human Rights Ombudsman of the Republic of Slovenia
28.	27 May 2015	Vojnik	The visit was conducted by mag. Jure Markič and Liljana Jazbec, the Ombudsman's advisers, and representatives of non-governmental organisations: Nika Mori (Novi paradoks) in Maja Ladić (Peace Institute). On 30 May 2015, the hospital was also visited by an external expert, Dr. Peter Pregelj, specialist/psychiatrist, in order to examine medical and health care.	Visit to Vojnik Psychiatric Hospital	Human Rights Ombudsman of the Republic of Slovenia
29.	2 June 2015	Celje	The visit was conducted by Liljana Jazbec, the Ombudsman's adviser, and representatives of non-governmental organisations: Mateja Markovič (Novi paradoks) and Anja Kirn Hrovat (Association for Developing Voluntary Work Novo mesto).	Visit to a social care institution, Dom ob Savinji Celje	Human Rights Ombudsman of the Republic of Slovenia
30.	3 June 2015	Lenart	The visit was conducted by Robert Gačnik, the Ombudsman's adviser, and NGO representative Primož Križnar (SKUP – Community of Private Institutes).	Visit to Lenart Police Station	Human Rights Ombudsman of the Republic of Slovenia

Seq. no.	Date	Place	Participants	Description of event	Organiser
31.	3 June 2015	Ruše	The visit was conducted by Robert Gačnik, the Ombudsman's adviser, and NGO representative Primož Križnar (SKUP – Community of Private Institutes).	Visit to Ruše Police Station	Human Rights Ombudsman of the Republic of Slovenia
32.	3 June 2015	Podlehnik	The visit was conducted by Robert Gačnik, the Ombudsman's adviser, and NGO representative Primož Križnar (SKUP – Community of Private Institutes).	Visit to Podlehnik Police Station	Human Rights Ombudsman of the Republic of Slovenia
33.	8 and 9 June 2015	Dob	The visit was conducted by Ombudsman Vlasta Nussdorfer, her Deputies, Ivan Šelih and mag. Kornelija Marzel, mag. Bojana Kvas, Secretary General of the Ombudsman, the Ombudsman's advisers, Robert Gačnik and Miha Horvat, and representatives of NGOs: Katja Piršič and Primož Križnar (SKUP – Community of Private Institutes), Anja Kirn Hrovat (Association for Developing Voluntary Work Novo mesto) and Mateja Veingerl (Humanitarno društvo Pravo za vse);  on 9 June 2015, the visit was conducted by the Ombudsman's advisers, Robert Gačnik and Miha Horvat, and representatives of NGOs: Katja Piršič and Primož Križnar (SKUP – Community of Private Institutes), Anja Kirn Hrovat (Association for Developing Voluntary Work Novo mesto) and Mateja Veingerl (Humanitarno društvo Pravo za vse);  on 12 June and 15 September 2015, the prison was also visited by an external expert, Dr. Zdenka Čebašek-Travnik, specialist/psychiatrist, in order to examine medical and health care.	Visit to Dob Prison (closed prison section)	Human Rights Ombudsman of the Republic of Slovenia
34.	11 June 2015	Muretinci	The visit was conducted by mag. Jure Markič, the Ombudsman's adviser, and representatives of a non-governmental organisation: Marko Štante and Tamara Žajdela (Humanitarno društvo Pravo za vse).	Visit to Muretinci Unit of Ptuj Retirement Home	Human Rights Ombudsman of the Republic of Slovenia
35.	2 July 2015	Dutovlje	The visit was conducted by mag. Jure Markič, the Ombudsman's adviser, and representatives of non-governmental organisations: Slavka Smrtnik (Novi paradoks) and Jure Trbič (SKUP – Community of Private Institutes within the framework of Inštitut Primus); on 5 July 2015, the institution was also visited by an external expert, Dr. Peter Pregelj, specialist/psychiatrist, in order to examine medical and health care.	Visit to Dutovlje Special Social Care Institution	Human Rights Ombudsman of the Republic of Slovenia

Seq. no.	Date	Place	Participants	Description of event	Organiser
36.	22 July 2015	Ljutomer	The visit was conducted by Robert Gačnik, the Ombudsman's adviser, and NGO representative Katarina Vučko (Peace Institute).	Visit to Ljutomer Police Station	Human Rights Ombudsman of the Republic of Slovenia
37.	22 July 2015	Murska Sobota	The visit was conducted by Robert Gačnik, the Ombudsman's adviser, and NGO representative Katarina Vučko (Peace Institute).	Visit to Murska Sobota Police Station	Human Rights Ombudsman of the Republic of Slovenia
38.	22 July 2015	Lendava	The visit was conducted by Robert Gačnik, the Ombudsman's adviser, and NGO representative Katarina Vučko (Peace Institute).	Visit to Lendava Police Station	Human Rights Ombudsman of the Republic of Slovenia
39.	23 June 2015	Ljubljana	The visit was conducted by Liljana Jazbec, the Ombudsman's adviser, and representatives of non-governmental organisations: Slavica Smrtnik (Novi paradoks) and Ana Repič (Legal-Informational Centre for NGOs – PIC).	Visit to a social care institution, Dom Janeza Krstnika Trnovo in Ljubljana	Human Rights Ombudsman of the Republic of Slovenia
40.	4 August 2015	Radeče	The visit was conducted by Robert Gačnik, the Ombudsman's adviser, and NGO representative Primož Križnar (SKUP – Community of Private Institutes); a representative of the NPM Montenegro participated in the visit as an observer.	Control visit to Radeče Juvenile Correctional Facility	Human Rights Ombudsman of the Republic of Slovenia
41.	4 August 2015	Vrhnika	The visit was conducted by Liljana Jazbec, the Ombudsman's adviser, and NGO representative Barbara Pirnat (Caritas Slovenia); Marica Nišavić also participated in the visit as the observer of the NPM Montenegro.	Visit to Vrhnika Retirement Home	Human Rights Ombudsman of the Republic of Slovenia
42.	5 August 2015	Begunje na Gorenjskem	The visit was conducted by mag. Jure Markič, the Ombudsman's adviser, and NGO representative Jure Trbič (SKUP – Community of Private Institutes), and was also attended by Marica Nišavić as the observer of the NPM Montenegro.	Control visit to Begunje Psychiatric Hospital	Human Rights Ombudsman of the Republic of Slovenia
43.	5 August 2015	Piran	The visit was conducted by Deputy Ombudsman Ivan Šelih and NGO representative Katja Piršič (SKUP – Community of Private Institutes); the visit was also attended by two observers, a representative of the NPM Montenegro and a representative from the Montenegro Office of the Council of Europe.	Visit to Piran Police Station	Human Rights Ombudsman of the Republic of Slovenia
44.	11 August 2015	Dob	The visit was conducted by Robert Gačnik, the Ombudsman's adviser, and NGO representative Maja Ladič (Peace Institute).	Visit to Puščava Open Prison Unit of Dob Prison	Human Rights Ombudsman of the Republic of Slovenia

Seq. no.	Date	Place	Participants	Description of event	Organiser
45.	18 August 2015	Metlika	The visit was conducted by mag. Jure Markič, the Ombudsman's adviser, and representatives of non-governmental organisations: Mirjam Hribar (Association for Developing Voluntary Work Novo mesto) and Mateja Markovič (Novi paradoks).	Visit to Metlika Retirement Home	Human Rights Ombudsman of the Republic of Slovenia
46.	9 September 2015	Ljubljana	The visit was conducted by Robert Gačnik, the Ombudsman's adviser, and NGO representative Primož Križnar (SKUP – Community of Private Institutes).	Visit to Ljubljana–Center Police Station	Human Rights Ombudsman of the Republic of Slovenia
47.	9 September 2015	Ribnica	The visit was conducted by Robert Gačnik, the Ombudsman's adviser, and NGO representative Primož Križnar (SKUP – Community of Private Institutes).	Visit to Ribnica Police Station	Human Rights Ombudsman of the Republic of Slovenia
48.	9 September 2015	Kočevje	The visit was conducted by Robert Gačnik, the Ombudsman's adviser, and NGO representative Primož Križnar (SKUP – Community of Private Institutes within Inštitut Primus).	Visit to Kočevje Police Station	Human Rights Ombudsman of the Republic of Slovenia
49.	10 September 2015	Sevnica	The visit was conducted by Robert Gačnik, the Ombudsman's adviser, and NGO representative Jan Irgel (Humanitarno društvo Pravo za vse); the institution was later, i.e. on 19 September 2015 also visited by an external expert, Dr. Peter Pregelj, specialist/psychiatrist, in order to examine the provision of medical and health care.	Visit to Impoljca Retirement Home in Sevnica	Human Rights Ombudsman of the Republic of Slovenia
50.	16 September 2015	Maribor	The visit was conducted by Deputy Ombudsman Ivan Šelih, Robert Gačnik, the Ombudsman's adviser, and representatives of a non-governmental organisation: Tamara Žajdela and Marko Štante (Humanitarno društvo Pravo za vse).	Visit to Maribor Prison	Human Rights Ombudsman of the Republic of Slovenia
51.	29 September 2015	Kranj	The visit was conducted by Liljana Jazbec, the Ombudsman's adviser, and NGO representative Nika Mori (Novi paradoks).	Visit to Kranj Residential Treatment Institution	Human Rights Ombudsman of the Republic of Slovenia
52.	1 October 2015	Koper	The visit was conducted by mag. Jure Markič, the Ombudsman's adviser, and NGO representative Nives Jakomin Škrli (Slovenian Federation of Pensioners' Associations).	Control visit to Olmo Unit of Ptuj Retirement Home	Human Rights Ombudsman of the Republic of Slovenia
53.	1 October 2015	Lucija	The visit was conducted by mag. Jure Markič, the Ombudsman's adviser, and NGO representative Nives Jakomin Škrli (Slovenian Federation of Pensioners' Associations).	Control visit to Lucija Centre for the Elderly	Human Rights Ombudsman of the Republic of Slovenia

Seq. no.	Date	Place	Participants	Description of event	Organiser
54.	6 October 2015	Grosuplje	The visit was conducted by Robert Gačnik, the Ombudsman's adviser, and NGO representative Primož Križnar (SKUP – Community of Private Institutes within Inštitut Primus).	Visit to Grosuplje Police Station	Human Rights Ombudsman of the Republic of Slovenia
55.	6 October 2015	Metlika	The visit was conducted by Robert Gačnik, the Ombudsman's adviser, and NGO representative Primož Križnar (SKUP – Community of Private Institutes).	Visit to Metlika Police Station	Human Rights Ombudsman of the Republic of Slovenia
56.	6 October 2015	Črnomelj	The visit was conducted by Robert Gačnik, the Ombudsman's adviser, and NGO representative Primož Križnar (SKUP – Community of Private Institutes).	Visit to Črnomelj Police Station	Human Rights Ombudsman of the Republic of Slovenia
57.	15 October 2015	Slovenska vas	The visit was conducted by Robert Gačnik, the Ombudsman's adviser, and NGO representative Katja Piršič (SKUP – Community of Private Institutes).	Visit to Slovenska vas Semi-open Prison Section of Dob Prison	Human Rights Ombudsman of the Republic of Slovenia
58.	22 October 2015	Ilirska Bistrica	The visit was conducted by mag. Jure Markič, the Ombudsman's adviser, and NGO representative Sonja Škrabec Štefančič (Novi paradoks).	Control visit to Ilirska Bistrica Retirement Home	Human Rights Ombudsman of the Republic of Slovenia
59.	22 October 2015	Cerknica	The visit was conducted by mag. Jure Markič, the Ombudsman's adviser, and NGO representative Sonja Škrabec Štefančič (Novi paradoks).	Control visit to Cerknica Retirement Home	Human Rights Ombudsman of the Republic of Slovenia
60.	11 and 12 November 2015	Hrastovec	The visit was conducted by mag. Jure Markič, the Ombudsman's adviser, and NGO representative Mateja Veingerl (Humanitarno društvo Pravo za vse); on 27 November 2015, the institution was also visited by an external expert, Dr. Zdenka Čebašek-Travnik, specialist/psychiatrist, in order to examine the provision of medical and health care.	Visit to Hrastovec Social Care Institution	Human Rights Ombudsman of the Republic of Slovenia
61.	13 November 2015	Dobova	The visit was conducted by Robert Gačnik, the Ombudsman's adviser, and NGO representative Jure Trbič (SKUP – Community of Private Institutes within Inštitut Primus).	Visit to Dobova Migrant Reception Centre	Human Rights Ombudsman of the Republic of Slovenia
62.	24 November 2015	Postojna	The visit was conducted by Deputy Ombudsman Ivan Šelih, the Ombudsman's advisers, Robert Gačnik and Mojca Valjavec, and NGO representative Maja Ladič (Peace Institute).	Visit to the Aliens Centre	Human Rights Ombudsman of the Republic of Slovenia

Seq. no.	Date	Place	Participants	Description of event	Organiser
63.	25 November 2015	Novo mesto	The visit was conducted by the Ombudsman's representative, mag. Jure Markič, senior councillor, and NGO representative Mirjam Hribar (Association for Developing Voluntary Work Novo mesto).	Control visit to Novo mesto Retirement Home	Human Rights Ombudsman of the Republic of Slovenia
64.	1 December 2015	Ig pri Ljubljani	The visit was conducted by Deputy Ombudsman Ivan Šelih, the Ombudsman's advisers, Robert Gačnik and Andreja Srebotnik, and representatives of non-governmental organisations: Katja Piršič (SKUP – Community of Private Institutes), and Tamara Žajdela and Marko Štante (Humanitarno društvo Pravo za vse); representatives of the NPM Ukraine were also present as observers.	Visit to Ig Prison	Human Rights Ombudsman of the Republic of Slovenia
65.	1 December 2015	Ormož	The visit was conducted by mag. Jure Markič, the Ombudsman's adviser, and NGO representative Jan Irgel (Humanitarno društvo Pravo za vse); representatives of the NPM Ukraine also attended the visit.	Control visit to Ormož Psychiatric Hospital	Human Rights Ombudsman of the Republic of Slovenia
66.	2 December 2015	Ljubljana	The visit was conducted by Deputy Ombudsman Ivan Šelih, Robert Gačnik, the Ombudsman's adviser, and NGO representative Primož Križnar (SKUP – Community of Private Institutes); representatives of the NPM Ukraine were also present as observers.	Visit to Ljubljana Police Detention Centre	Human Rights Ombudsman of the Republic of Slovenia
67.	22 December 2015	Rakičan	The visit was conducted by mag. Jure Markič, the Ombudsman's adviser, and NGO representative Tamara Žajdela (Humanitarno društvo Pravo za vse).	Control visit to Rakičan Retirement Home	Human Rights Ombudsman of the Republic of Slovenia

## 5.9 Review of other NPM activities in 2015

Date	Place of the event	Participants	Description of event	Organiser
1. 28 January 2015	Ljubljana	Ivan Šelih, Deputy Ombudsman, and mag. Jure Markič, the Ombudsman's adviser	Meeting at the Ministry of Health on forensic psychiatry and a discussion of working material on the Rules on the implementation of security measures of compulsory psychiatric treatment and care in a health establishment of compulsory psychiatric treatment at liberty.	Ministry of Health
2. 5 February 2015	At the head office of the Human Rights Ombudsman of the Republic of Slovenia	Ivan Šelih, Deputy Ombudsman, the Ombudsman's advisers, mag. Jure Markič and Robert Gačnik; the meeting was also attended by the following NGO representatives: Miha Biderman, Eva Šmirmal, Tamara Žajdela, Miha Senica and Mateja Veingerl (Humanitarno društvo Pravo za vse); Slavica Smrtnik and Zerina Ferlič (Novi paradoks); Stanka Radojčić (Slovenian Federation of Pensioners' Associations); Katarina Bervar Sternad (Legal-Informational Centre for NGOs – PIC); Maja Ladič and Mojca Frelj (Peace Institute); Barbara Pirnat (Caritas Slovenia); Ajda Vodnjov and Katja Piršič (SKUP – Community of Private Institutes).	The members of the NPM met at their annual meeting with the selected non-governmental organisations and reviewed the draft programme of visits to institutions and places accommodating persons deprived of their liberty. They analysed their past work and agreed on future substantive guidelines and the schedule of visits to institutions.	Human Rights Ombudsman of the Republic of Slovenia

Date	Place of the event	Participants	Description of event	Organiser
3. 19 February 2015	At the head office of the Human Rights Ombudsman of the Republic of Slovenia	Human Rights Ombudsman Vlasta Nussdorfer and Deputy Ombudsman Ivan Šelih	Public signing of the contract on cooperation with NGOs and societies which were selected to implement tasks and powers of the National Preventive Mechanism according to the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The contract was concluded with the Association for Developing Voluntary Work Novo mesto, the Peace Institute, Novi paradoks, Legal-Informational Centre for NGOs – PIC, Humanitarno društvo Pravo za vse, Caritas Slovenia, SKUP – Community of Private Institutes and the Slovenian Federation of Pensioners' Associations.	Human Rights Ombudsman of the Republic of Slovenia
4. 1–3 March 2015	At the headquarters of the Council of Europe in Strasbourg, France	Ivan Šelih, Deputy Ombudsman, and mag. Jure Markič, the Ombudsman's adviser	Attendance at a conference on the occasion of the 25th anniversary of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) entitled "The CPT at 25: taking stock and moving forward".	Council of Europe
5. 5 March 2015	At the head office of the Human Rights Ombudsman of the Republic of Slovenia	The Human Rights Ombudsman, her Deputies Ivan Šelih and Tone Dolčič, and the Ombudsman's advisers	Meeting with representatives of persons with mental disorders.	
6. 15 March 2015	At the head office of the Human Rights Ombudsman of the Republic of Slovenia	Ivan Šelih, Deputy Ombudsman, and mag. Jure Markič, the Ombudsman's adviser	Meeting of the Ombudsman with representatives of mental health rights.	Human Rights Ombudsman of the Republic of Slovenia
7. 26 March 2015	At the head office of the Slovenian Federation of Pensioners' Associations	Mag. Jure Markič	Education of representatives of the Slovenian Federation of Pensioners' Associations (ZDUS) who cooperate with the NPM.	The Human Rights Ombudsman of the Republic of Slovenia and ZDUS

Date	Place of the event	Participants	Description of event	Organiser
8. 1 April 2015	At the head office of the Human Rights Ombudsman of the Republic of Slovenia	Deputy Ombudsman Ivan Šelih, mag. Bojana Kvas, Secretary General of the Ombudsman, the Ombudsman's advisers Robert Gačnik, mag. Jure Markič and Lili Jazbec, including Tanja Kadunc	Meeting with NGOs about organisational and financial aspects (enforcement of claims for the reimbursement of costs and bonuses for participating in the work of the NPM). The meeting was attended by representatives of the following non-governmental organisations: Caritas Slovenia, the Association for Developing Voluntary Work Novo mesto, the Peace Institute and the Legal-Informational Centre for NGOs – PIC.	Human Rights Ombudsman of the Republic of Slovenia
9. 7-8 April 2015	Podgorica, Montenegro	Ivan Šelih, Deputy Ombudsman	Lecture held for the members of the Montenegrin National Preventive Mechanism with a presentation of the methodology for implementing the duties and powers of the NPM.	Ombudsman of the Republic of Montenegro in cooperation with the Council of Europe and the EU
10. 14 April 2015	Brdo pri Kranju	Deputy Ombudsman Ivan Šelih, and the Ombudsman's advisers, mag. Jure Markič and Dr. Ingrid Russi Zagožen	Attendance at the 13th conference of the Labour Inspectorate of the Republic of Slovenia entitled "Challenges of coexistence with individuals and groups with mental disorders".	Labour Inspectorate of the Republic of Slovenia
11. 16 April 2015	Hrastovec	Ivan Šelih, Deputy Ombudsman, and Lili Jazbec, the Ombudsman's adviser	Participation at a consultation intended for all stakeholders who participate in any way in the establishment and provision of institutional forms of care for persons with mental disorders.	Hrastovec Social Care Institution
12. 21 April 2015	At the head office of the Human Rights Ombudsman of the Republic of Slovenia	Deputy Ombudsmen Jernej Rovšek and Ivan Šelih, and Liana Kalčina, the Ombudsman's adviser; the AIDHR delegation was led by Dr. Ahmad Shahidov.	Reception of representatives of the Azerbaijan Institute for Democracy and Human Rights (AIDHR). The AIDHR is a non-governmental organisation established in 2014. The guests were interested in the experience of the Slovenian Human Rights Ombudsman, and the work and cooperation methods of the Ombudsman with state and local authorities.	Human Rights Ombudsman of the Republic of Slovenia
13. 28 April 2015	House of the European Union in Vienna, Austria	Miha Horvat, the Ombudsman's adviser	Participation in a meeting entitled "Strengthening the follow-up on NPM recommendations in the EU: strategic development, current practices and the way forward".	Ludwig Boltzmann Institute Human Rights Implementation Centre (University of Bristol)
14. 3-4 June 2015	Warsaw, Poland	Ivan Šelih, Deputy Ombudsman	Participation in the APT workshop (Association for the Prevention of Torture), where the heads of National Preventive Mechanisms (NPM) exchanged their experience and findings.	APT (Association for the Prevention of Torture)

Date	Place of the event	Participants	Description of event	Organiser
15. 9 June 2015	Ljubljana	Ivan Šelih, Deputy Ombudsman	Attendance at a session of the Expert Council on Police Law and Powers.	Ministry of the Interior
16. 10 June 2015	At the head office of the Human Rights Ombudsman of the Republic of Slovenia	Human Rights Ombudsman Vlasta Nussdorfer, Ivan Šelih, Deputy Ombudsman, and Andreja Srebotnik, the Ombudsman's adviser	Meeting with civilian societies engaged in the provision of assistance to victims of criminal offences. The meeting was attended by representatives of six NGOs from the relevant field, i.e.: Beli Obroč Society, Association against Sexual Abuse, Association SOS Help-line, Section for safe houses, Legal-Informational Centre for NGOs – PIC and the Slovenian Association of Friends of Youth.	Human Rights Ombudsman of the Republic of Slovenia
17. 1 June 2015	Ljubljana	Ivan Šelih, Deputy Ombudsman	Attendance at the 16th Days of Criminal Justice and Security.	Faculty of Criminal Justice and Security of the University of Maribor
18. 1 June 2015	At the head office of the Human Rights Ombudsman of the Republic of Slovenia	Ivan Šelih, Deputy Ombudsman, and the Ombudsman's advisers	Meeting with the Police and Security Directorate at the Ministry of the Interior on topical issues of cooperation.	Police and Security Directorate in cooperation with the Ombudsman
19. 4 June 2015	Warsaw, Poland	Ivan Šelih, Deputy Ombudsman	Working meeting entitled "Implementing the Preventive Mandate: Ombuds institutions designated as National Preventive Mechanisms in the OSCE Region".	APT – Association for the Prevention of Torture (Geneva, Switzerland) and OSCE (Organisation for Security and Cooperation in Europe)
20. 16-19 June 2015	Riga, Latvia	Ivan Šelih, Deputy Ombudsman, and Robert Gačnik, the Ombudsman's adviser	Attendance at a workshop of the International Ombudsman Institute (IOI) for National Preventive Mechanisms (NPMs) entitled "Implementing a preventive mandate".	Latvian Ombudsman, IOI – International Ombudsman Institute and APT – Association for the Prevention of Torture
21. 19 June 2015	National Assembly of the Republic of Slovenia	Human Rights Ombudsman Vlasta Nussdorfer and her Deputies	Hand-over of the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2014 and the Report of the National Preventive Mechanism for 2014 to Dr. Milan Brglez, President of the National Assembly.	President of the National Assembly of the Republic of Slovenia

Date	Place of the event	Participants	Description of event	Organiser
22. 22 June 2015	Presidential Palace	Human Rights Ombudsman Vlasta Nussdorfer, and her Deputies, Ivan Šelih, Jernej Rovšek and mag. Kornelija Marzel	Hand-over of the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2014 and the Report of the National Preventive Mechanism for 2014 to Borut Pahor, President of the Republic of Slovenia.	President of the Republic of Slovenia
23. 24 June 2015	Ljubljana	Ivan Šelih, Deputy Ombudsman	Attendance at the first meeting of the task force for renewing the organisation of forensic psychiatry in Slovenia (drafted in 2011).	Ministry of Justice of the Republic of Slovenia
24. 26 June 2015	Skopje, Macedonia	Ivan Šelih, Deputy Ombudsman	A workshop entitled "The Situation and the Challenges with Illegal Migrants and Asylum Seekers in Macedonia – International Day in Support of Victims of Torture" took place within the EU Twinning Light Project. The monitoring of facilities with limited freedom of movement and centres for illegal immigrants and asylum seekers was discussed at the workshop.	Macedonian Ombudsman in cooperation with the Austrian Ombudsman and the Ludwig Boltzmann Institute of Human Rights
25. 28–29 June 2015	Tirana, Albania	Ivan Šelih, Deputy Ombudsman, and Dr. Milan Popović, the NPM external expert	Attendance at a workshop entitled "Health care access of people deprived from their liberty in the SEE region: Shortcomings and best practices observed while exercising the NPM mandate, with a focus on preventing ill-treatment during restraint and seclusion".	Albanian Ombudsman and APT, Geneva
26. 30 June 2015	At the premises of the Prime Minister of the Republic of Slovenia	Vlasta Nussdorfer	Hand-over of the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2014 and the Report of the National Preventive Mechanism for 2014 to Dr. Miro Cerar, Prime Minister of the Republic of Slovenia.	Prime Minister of the Republic of Slovenia
27. 30 June 2015	Klagenfurt, Austria	Ivan Šelih, Deputy Ombudsman, and the Ombudsman's advisers, Robert Gačnik and mag. Jure Markič	One-day working visit to the National Preventive Mechanism of the Republic of Austria. The basic purpose of the visit was to exchange practical experience of implementing preventive visits. To this end, representatives of the NPM of the Republic of Austria conducted an unannounced visit to a prison in Klagenfurt in which members of the NPM of the Republic of Slovenia participated as observers.	NPM Austria

Date	Place of the event	Participants	Description of event	Organiser
28. 1 July 2015	At the head office of the Human Rights Ombudsman of the Republic of Slovenia	Human Rights Ombudsman Vlasta Nussdorfer, her Deputies, Ivan Šelih, Tone Dolčič and Jernej Rovšek, Martina Ocepek, Director of the Expert Service, and the Ombudsman's advisers, Brigita Urh, Lili Jazbec, Gašper Adamič, Nataša Kuzmič and Liana Kalčina; representatives of the Ministry of Education, Science and Sport: Minister Dr. Maja Makovec Brenčič, mag. Gregor Mohorčič, Iztok Žigon, mag. Polona Šoln Vrbinc, Dr. Erika Rustja and Sebastijan Magdič	Working meeting with the Minister and her colleagues. The discussion also referred to the requirements for amending the Placement of Children with Special Needs Act (ZUOPP) or the adoption of another suitable regulation which would determine the operations of educational institutions also in extraordinary weather conditions or in the case of natural disasters.	Human Rights Ombudsman of the Republic of Slovenia
29. 7 July 2015	At the premises of the Human Rights Ombudsman of the Republic of Slovenia	Human Rights Ombudsman Vlasta Nussdorfer, her Deputy and Head of the National Preventive Mechanism (NPM) Ivan Šelih, mag. Jure Markič, the Ombudsman's adviser, and representatives of several NGOs participating with the Ombudsman within the NPM	Press conference upon the hand-over of both reports. Deputy Ombudsman Ivan Šelih provided the media with the main findings of the National Preventive Mechanism in Slovenia.	Human Rights Ombudsman of the Republic of Slovenia

Date	Place of the event	Participants	Description of event	Organiser
30. 7 July 2015	At the premises of the Human Rights Ombudsman of the Republic of Slovenia	Representatives of the Human Rights Ombudsman of Slovenia: Ombudsman Vlasta Nussdorfer, her Deputies, Tone Dolčič and Ivan Šelih, and Liana Kalčina, the Ombudsman's adviser; representatives of the Ministry of Health: Minister Milojka Kolar Celarc, and her colleagues, Irena Kirar Fazarinc, Mojca Grabar, Špela Glušič, mag. Nadja Čobal and Majda Hostnik; representatives of the Ministry of Labour, Family, Social Affairs and Equal Opportunities: Minister Dr. Anja Kopač Mrak and her colleagues, mag. Ružica Boškič, Janja Romih, Mojca Faganel and Polona Križnar	Meeting with Minister Milojka Kolar Celarc and representatives of the Ministry of Health and Minister Dr. Anja Kopač Mrak and representatives of the Ministry of Labour, Family, Social Affairs and Equal Opportunities. The discussion was on the issues of placing children in special social care institutions on the basis of court decisions (and also on the basis of the Mental Health Act), which constitute unsuitable accommodation (Hrastovec Social Care Institution and Dom Lukavci Special Social Care Institution). The state has no suitable facility for placing children and adolescents in need of hospitalisation. The need to amend the Mental Health Act and the urgent need to adopt measures to reduce temperatures in summer in institutions where persons with limited freedom of movement are accommodated were also discussed.	Human Rights Ombudsman of the Republic of Slovenia
31. 3–6 August 2015	Ljubljana and locations of institutions visited	Human Rights Ombudsman Vlasta Nussdorfer, her Deputies Ivan Šelih, Tone Dolčič and Jernej Rovšek, mag. Bojana Kvas, Secretary General of the Ombudsman, and the Ombudsman's advisers; Ombudsman Šučko Baković, who was also the head of the delegation, which included his Deputy, Zdenka Perović, the Ombudsman's advisers, Marica Nišavić and Dragan Radović, and Boris Ristović, Project Officer at the Office of the Council of Europe in Podgorica, Montenegro	Reception and discussion with the delegation of the Montenegro Ombudsman (Protector of Human Rights and Freedoms). The focus was on the operations of the National Preventive Mechanism according to the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and for this reason they also visited several institutions in Slovenia.	Human Rights Ombudsman of the Republic of Slovenia

Date	Place of the event	Participants	Description of event	Organiser
32. 18 August 2015	General Police Directorate in Ljubljana	Ivan Šelih, Deputy Ombudsman	Attendance at a coordination meeting relating to comments on the draft amending the State Border Control Act.	Ministry of the Interior of the Republic of Slovenia, General Police Directorate
33. 1 August 2015	Ministry of the Interior of the Republic of Slovenia	Ivan Šelih, Deputy Ombudsman	Attendance at the presentation of the draft amendments to the Police Tasks and Powers Act.	Ministry of the Interior of the Republic of Slovenia
34. 3 September 2015	Portorož	Ivan Šelih, Deputy Ombudsman, and the Ombudsman's advisers, mag. Jure Markič, Dr. Ingrid Russi Zagožen and Lili Jazbec	Lecture and active participation at a two-day consultation on the Mental Health Act.	Ministry of Justice of the Republic of Slovenia, Judicial Training Centre
35. 7 September 2015	At the head office of the Human Rights Ombudsman of the Republic of Slovenia	Representatives of the Human Rights Ombudsman: Ombudsman Vlasta Nussdorfer and the Ombudsman's advisers, Robert Gačnik and Miha Horvat; representatives of the Prison Administration of the Republic of Slovenia: Jože Podržaj, Tadeja Glavica and Lucija Božikov	Meeting with Jože Podržaj, Director General of the Prison Administration of the Republic of Slovenia (URSIKS); the main topic was the agreement on the transparency of the work of the National Preventive Mechanism and thus related procedure for informing prisoners of its findings in the institutions visited.	Human Rights Ombudsman of the Republic of Slovenia
36. 8 September 2015	Ljubljana Castle	Ivan Šelih, Deputy Ombudsman	Participation at a round table as part of the travelling exhibition of torture devices entitled "Barbarism of Torture". The Deputy presented the operations of the National Preventive Mechanism (NPM), which are aimed at preventing torture and other humiliating treatment.	Ljubljana Castle
37. 28 September 2015	At the head office of the Human Rights Ombudsman of the Republic of Slovenia	Ombudsman Vlasta Nussdorfer, her Deputies, Ivan Šelih and Jernej Rovšek, Martina Ocepek, Director of the Expert Service, and the Ombudsman's advisers, Mojca Valjavec, Gašper Adamič, Miha Horvat, Robert Gačnik, Nataša Kuzmič and Liana Kalčina	Meeting with non-governmental and humanitarian organisations and other representatives of civil society working in the field of refugees and aliens. The meeting was attended by representatives of the following organisations: the Jesuit Refugee Association of Slovenia, Caritas Slovenia, the Slovenian Foundation for UNICEF, the Peace Institute, the Slovenian Red Cross, Slovenian Philanthropy, Amnesty International Slovenia and the Institute for African Studies.	Human Rights Ombudsman of the Republic of Slovenia

Date	Place of the event	Participants	Description of event	Organiser
38. 30 September 2015	Vienna, Austria	Ivan Šelih, Deputy Ombudsman, and the Ombudsman's advisers, Robert Gačnik and mag. Jure Markič	One-day working visit to the National Preventive Mechanism of the Republic of Austria. The primary purpose of the visit was to exchange practical experience of implementing preventive visits. To this end, representatives of the NPM of the Republic of Austria conducted an unannounced visit to a prison in Klagenfurt in which members of the NPM of the Republic of Slovenia participated as observers.	National Preventive Mechanism of the Republic of Austria
39. 1 October 2015	National Assembly of the Republic of Slovenia	Human Rights Ombudsman Vlasta Nussdorfer, and her Deputies, Jernej Rovšek, Ivan Šelih and mag. Kornelija Marzel	Attendance at the 8th regular session of the Commission for Petitions, Human Rights and Equal Opportunities, where the 20th Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2014 and the Report of the National Preventive Mechanism for 2014 was discussed.	National Assembly of the Republic of Slovenia
40. 20 October 2015	Ljubljana	Ivan Šelih, Deputy Ombudsman	Attendance at the second meeting of the task force for renewing the organisation of forensic psychiatry in Slovenia (drafted in 2011).	Ministry of Justice of the Republic of Slovenia
41. 21 October 2015	Gotenica	Ivan Šelih, Deputy Ombudsman, and Robert Gačnik, the Ombudsman's adviser	Presentation of the institute of the Human Rights Ombudsman of the Republic of Slovenia to newly employed judicial police officers.	Ministry of Justice of the Republic of Slovenia
42. 23 October 2015	Ljubljana	Liljana Jazbec, the Ombudsman's adviser	Attendance at the presentation of the monograph, Moči, izzivi in vizije vzgojnih zavodov (Powers, Challenges and Visions of Educational Institutions) by Dr. Alenka Kobolt and her colleagues at the Faculty of Education of the University of Ljubljana.	Faculty of Education of the University of Ljubljana
43. 14-15 October 2015	Trier, Germany	Ivan Šelih, Deputy Ombudsman	Attendance at the seminar entitled "Improving measures related to detention conditions at EU level – Best practice, legislation and the European Commission's Green Paper".	Council of Europe and the Academy of European Law in cooperation with FTI – Fair Trials International
44. 14 October 2015	At the head office of the Human Rights Ombudsman of the Republic of Slovenia	Ivan Šelih, Deputy Ombudsman, and mag. Jure Markič, the Ombudsman's adviser	Meeting with NGOs working in the field of mental health and joint discussion of specific features, open issues and how they might be resolved in the field of mental health.	Human Rights Ombudsman of the Republic of Slovenia

Date	Place of the event	Participants	Description of event	Organiser
45. 28 October 2015	Tirana, Albania	Robert Gačnik and Mojca Valjavec, the Ombudsman's advisers	"Tirana Jurisprudence Workshop and Conference October 29-30, 2015"	Albanian NPM within the framework of the Presidency of the SEE Health Network
46. 3-4 November 2015	Zagreb, Vrabče	Ivan Šelih, Deputy Ombudsman, and the Ombudsman's advisers, mag. Jure Markič, Robert Gačnik and Lili Jazbec	Visit to the Croatian National Preventive Mechanism implemented by the Croatian Ombudsman in cooperation with NGOs. Together with their colleagues from the Croatian NPM, the delegation of the Slovenian NPM visited a prison, a police detention centre and Vrapče Psychiatric Hospital in Zagreb.	Croatian Ombudsman
47. 10 November 2015	Hall of the National Council of the Republic of Slovenia, Ljubljana	Ivan Šelih, Deputy Ombudsman, and the Ombudsman's advisers mag. Jure Markič, Miha Horvat, Nataša Bratož and Liljana Jazbec	The first whole-day consultation on representation on secure wards in psychiatric hospitals. The consultation was attended by representatives of psychiatric patients' rights, psychiatrists, and representatives of the Ministry of Labour, Family, Social Affairs and Equal Opportunities and the Ministry of Health.	Human Rights Ombudsman of the Republic of Slovenia in cooperation with the Ministry of Labour, Family, Social Affairs and Equal Opportunities and the Ministry of Health
48. 12 November 2015	At the head office of the Human Rights Ombudsman of the Republic of Slovenia	Ivan Šelih, Deputy Ombudsman, and the Ombudsman's advisers, Robert Gačnik and Mojca Valjavec	Meeting with the selected NGOs which participate in the implementation of NPM tasks on the topic of monitoring accommodation centres for refugees.	Human Rights Ombudsman of the Republic of Slovenia
49. 13 November 2015	At the premises of the Human Rights Ombudsman of the Republic of Slovenia	Ivan Šelih, Deputy Ombudsman, and the Ombudsman's advisers, Miha Horvat and Mojca Valjavec	Meeting with the Rapporteur of the Committee on Migration, Refugees, and Displaced Persons of the Parliamentary Assembly of the Council of Europe, Tineke Strik, and David Milner.	National Assembly of the Republic of Slovenia
50. 16 November 2015	Šiška Library, Ljubljana	Ivan Šelih, Deputy Ombudsman	Lecture on the implementation of the duties and powers of the National Preventive Mechanism (NPM).	Oton Župančič Library, Ljubljana
51. 24 November 2015	Trubar Literature House, Ljubljana	Miha Horvat, the Ombudsman's adviser	Lecture on torture, inhuman and degrading treatment in Slovenian institutions limiting freedom of movement, within the project 'European Year for Development'.	Oton Župančič Library, Ljubljana



Date	Place of the event	Participants	Description of event	Organiser
52. 30 November 2015	At the premises of the Human Rights Ombudsman of the Republic of Slovenia	Human Rights Ombudsman Vlasta Nussdorfer, her Deputy Ivan Šelih, and the Ombudsman's advisers, mag. Jure Markič, Robert Gačnik and Lili Jazbec	Reception of representatives of the Ukrainian National Preventive Mechanism, with the following delegation members: Yuriy Belousov, Kostiantyn Zaporozhtsev, Valentyna Obolentseva, Andriy Chernousov, Svitlana Shcherban, Mariia Kolokolova, and Ivanna Dzhyma.	Human Rights Ombudsman of the Republic of Slovenia
53. 14 December 2015	Grmovje	Ivan Šelih, Deputy Ombudsman, and the Ombudsman's advisers, mag. Jure Markič and Lili Jazbec	Attendance at the consultation entitled "Modern expert challenges and the openness of Nina Pokorn Grmovje Home to the local community".	Nina Pokorn Grmovje Home
54. 17 December 2015	Ljubljana	Ombudsman Vlasta Nussdorfer, her Deputy, Ivan Šelih, the Ombudsman's advisers, Robert Gačnik, mag. Jure Markič and Lili Jazbec, including Katarina Bervar Sternad and Ana Repič (from PIC, who also represented the Peace Institute, whose representatives could not attend the meeting due to other engagements), Katja Piršič (SKUP), Zerina Ferlič (Novi paradoks) and Stanka Radojčić (ZDUS)	Meeting with representatives of NGOs which participate in visits within the framework of implementing the tasks and duties of the National Preventive Mechanism (NPM).	Human Rights Ombudsman of the Republic of Slovenia
55. 21 December 2015	Ljubljana	Ivan Šelih, Deputy Ombudsman	Attendance at the third meeting of the task force for renewing the organisation of forensic psychiatry in Slovenia (drafted in 2011).	Ministry of Justice of the Republic of Slovenia

The Annual Report of the Human Rights Ombudsman  
of the Republic of Slovenia  
for 2015

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