

**REPUBLIC OF CROATIA  
THE OMBUDSMAN**

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**REPORT ON THE WORK ACTIVITIES  
FOR THE YEAR OF 2003**

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Zagreb, March 2004

## SECTION ONE

### INTRODUCTORY REMARKS

#### 1.

The report on the work activities of the Ombudsman is a regular annual report that is submitted to the Croatian Parliament by the Ombudsman for the previous year. This is the seventh report that the Ombudsman, Mr. Ante Klarić, has submitted during his term in office. Each year in the governing bodies and at the plenary session of the Croatian Parliament there was an extensive discussion – not only regarding the Ombudsman’s annual report itself, but also regarding the evaluations he presented and general issues of promotion and protection of human rights in the Republic of Croatia. In lieu of the Report on the work activities for the year of 2003, the Croatian Parliament held an extensive discussion, after which by the majority of votes (74 in favor, 1 against and 2 abstaining) a conclusion was reached by which the Report on the work activities of the Ombudsman for the year of 2002 was taken note of. In accordance with the proposal of the Committee for Family, Youth and Sports, the following conclusions were reached (by the majority of votes; 48 in favor, 8 against and 26 abstaining):

(1) The Government of the Republic of Croatia commits itself to - as soon as possible - review and improve the life conditions within departments of institutions for minors at which the freedom of movement in the Republic of Croatia is limited.

(2) Within an appropriate amount of time it is necessary to ensure additional funding in order to enable efficient functioning of the Ombudsman of the Republic of Croatia.

(3) The Government of the Republic of Croatia commits itself to make a statement regarding the proposal of the Ombudsman of the Republic of Croatia for the recognition of reimbursement rights to children of former political prisoners for those days that their parents spent in prison or jail.

Compliant to the proposal of the HDZ Club of Representatives, by the majority of votes (73 in favor, 1 against and 3 abstaining), also reached was the conclusion according to which the Government of the Republic of Croatia commits itself to proposing additional funding within the Government budget for the year of 2004 towards the activities of the Ombudsman Office.

## 2.

With regards to the problems that the Ombudsman has encountered during work for several years now, in April 2003 the Office for Democratic Institutions and Human Rights of the Organization for European Security and Cooperation (ODIHR/OESS) and the OESS Mission to Croatia have engaged professor John Hucker, an independent professional, to prepare an analysis of the current legal and political circumstances that surround the institution of the Ombudsman in Croatia. The purpose of this analysis is to identify legal, financial or logistic limitations that affect the work of the Ombudsman, as well as the proposal of measures that are to be taken in order to reinforce the position of the institution. In the mentioned analysis, which is enclosed with this report in its entirety, the following was recommended:

- 1) The Government should review the current budget of the Ombudsman Office with the goal of increasing the funding to a higher level. This revision should be performed by an independent auditor, or in cooperation with one. The Ombudsman should be continually consulted with during each phase of the revision. The means that are to be allocated should be sufficient for the Ombudsman to establish presence at the largest centers outside of Zagreb and to strengthen analytical capacities.
- 2) The Ombudsman should secure the existence of strategic and operative plans that would serve as input for the revision of funding that is proposed in point 1 (It is not realistic to expect the Government to allocate a significant amount of new financial means without a clear explanation of the manner in which the means are to be spent).
- 3) The Government of the Republic of Croatia – with the help of the international community if necessary – should allocate the means for the support of a short-term (3 to 6 months) capacity building program for the Ombudsman Office. In this way attention could be paid to issues such as structure/organization, planning and the application of alternative operative techniques, including field research and mediation. This measure would correspond well with those proposed in points 1 and 2.
- 4) The Government should secure office accommodation for the Ombudsman, one that better suits the function of an agency that receives complaints and deals with the general public on a daily basis. The location should be selected considering availability of public transportation and should be completely accessible to disabled persons. The necessity of new accommodation is urgent.

5) The Government should re-consider the existing Law concerning the Ombudsman with the goal of providing more power to his mandate in protecting human rights. Such a revision should include purposeful consultations with groups that deal with issues of human rights and minorities, as well as with the Ombudsman. Each new regulation should be made by taking into account the Principles of National Institutions for Human Rights from Paris. Concrete amendments in the Law that should be considered include the following: change of the title into Ombudsman for Human Rights (important symbolic change); shorter mandate term, a period of 4 or 5 years along with a possibility of re-election; and a demand that necessary attention be paid to the issue of securing the representation of national minorities during the election of the Ombudsman or the deputy.

6) The proposed Ombudsman for children, as well as any other specialized Ombudsman that would be elected, should act as a part of the existing Ombudsman Office – instead of being a separate parallel organization.

7) The Ombudsman should adopt a more pro-active approach to communication. He should more frequently attend Parliament meetings, hold interviews with the media, write short reports and press releases.

8) The Ombudsman should participate to a greater extent in local and international networks of similar agencies for human rights. The Office has participated in some local meetings, yet it would have more use from an increased possibility of idea and experience exchange with nearby agencies. (It is understood that this may demand additional funds. However, if there is true interest for this activity, sources for funding can oftentimes be found).

9) The Government's Committee for Human Rights should re-examine its function that is similar to that of the Ombudsman, as a response to the complaints it receives, and consider the possibility of forwarding such complaints to the Ombudsman. The least that the two agencies should do is to exchange information in order to make sure there is no overlapping, i.e. dual responsibility. The Government's Committee should also establish a regular plan of meetings with the Ombudsman. These meetings would be valuable for the exchange of information between the two agencies with mandates for dealing with human rights. The Ombudsman could warn the Government's Office of trends or special problems that he encounters with ministries. The Government's Committee should be prepared to provide the Ombudsman with advice regarding Government's planned activities concerning human rights

issues and, when appropriate, to ask the Ombudsman for comments or advice. It is believed that such meetings would not compromise the independence of the Ombudsman.

10) The Government's Office for Human Rights should take the necessary steps in order to secure a wider understanding of the precise role and status of county «coordinations» that have recently been founded, from which it is expected that they submit reports concerning the protection of human rights in their region.

11) The Center for Human Rights should continue to receive support. It can play a useful role in helping to promote public understanding and acceptance of human rights principles. The Ombudsman should be invited to join the Management Board of the Center.

### 3.

The report on the work activities of the Ombudsman for the year of 2003 has been drafted in the same way as earlier reports, so that data could be compared. However, this report includes also the report regarding the results of field visits to ten counties that the Ombudsman had visited during 2003 with his associates. The visits to counties, i.e. to particular cities and settlements in ten counties, which included discussions with local and county heads, as well as the reception of those who submitted complaints, was made possible by a **generous donation of the Kingdom of Norway and the whole-hearted help of the OESS Mission to Croatia**. Field work proved to be very useful –not only because it made it possible for citizens of a lower social-economic status to reach the Ombudsman more easily– but also because it made possible a direct insight into problems that citizens of particular cities and counties in the Republic of Croatia encounter, as well as a direct insight into problems of regional Government bodies and problems of local self-administration units. Unfortunately, due to the lack of space that prevents employment of new employees, last year as well no new state employee was hired. This resulted in somewhat greater arrears in work, due to a significant increase in the scope of work. For this very reason, in this introductory part the Ombudsman reinstates that it is necessary to employ 4-5 new highly professional state employees, and to execute a reorganization of the Ombudsman Office in order to satisfy the needs of citizens. For reasons of a more effective and frequent informing of the Croatian Parliament regarding the noted irregularities in the activities of administrative bodies and bodies vested with public powers, along with the analytical service, the following very necessary departments should also be established: (1) for monitoring the realization of human rights

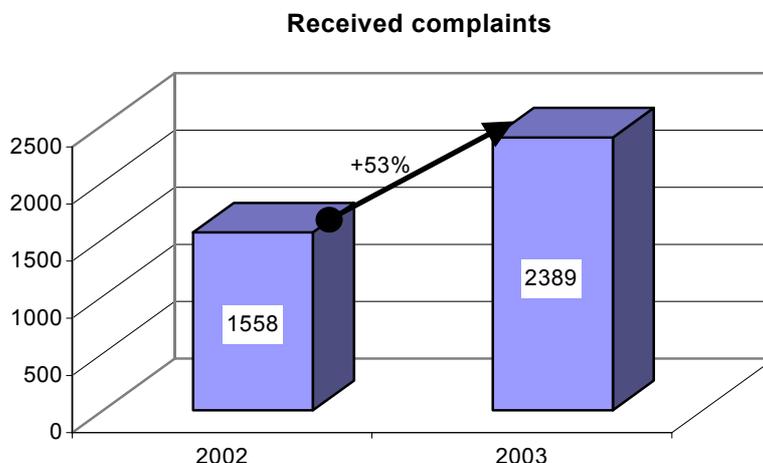
guaranteed by international universal and regional conventions that the Republic of Croatia adheres to, (2) for analysis and preparation of stipulation for possible amendments of laws and other regulations that regulate issues significant for the realization of human rights, (3) for informing the public on the activities of the Ombudsman, and (4) for international cooperation. Field visits to counties, i.e. the reception of persons who file complaints indicate that also the following should be done as soon as possible; either (1) securing funds for regular field visits, or (2) establishing four to five regional Ombudsman offices in counties where most complaints are filed.

## SECTION TWO

### INDICATORS ON THE OMBUDSMAN'S WORK ACTIVITIES IN 2003

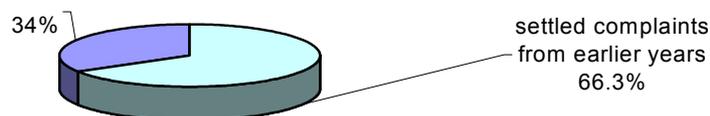
#### I. GENERAL INDICATORS

During the year of 2003 the Ombudsman received **in total 2389** complaints, which in relation to the previous year represents a significant **increase** (by 53.34%), but also a significant increase (44.79%) in relation to the several years' average of 1650 new case files. The number of complaints was increased due to, among other reasons, the opportunity for citizens to directly contact the Ombudsman or his deputies during the visits to counties. At that time as many as 774 persons asked for help from the Ombudsman, which resulted in the reception of **641 new** complaints. Regardless of these complaints the number of citizen complaints increased (not including the complaints from field work the number of newly received would amount to 1748, which exceeds the several years' average).



An increase in complaints occurred despite the fact that during the year of 2003 as well the Ombudsman had to limit the reception of new complaints due to insufficient staff and financial capacities of his professional services. The limiting of new complaint receipt was also in 2003 conducted including preventive measures, i.e. in such a way that persons who came to file a complaint in person (1154 + 774 persons) to the Ombudsman's Office during working hours in the visited counties, were verbally given legal advice or instructions on how to protect their rights that they felt were endangered, or they were offered explanations regarding why the Ombudsman is not authorized to question those violations of rights whose protection is secured by means of court proceedings (in those cases as well citizens were instructed in how to realize court protection, and those of a low income were told how they can obtain free legal aid). Also, due to limited staff, technical and material capacities, the processing of a certain (low) number of unresolved case files from previous years had to be suspended.

In addition to 2389 newly received complaints in 2003, there were **679** complaints from previous years. From those 679 complaints, 260 were complaints from 2002 that were not resolved and remained filed from earlier years. **Of the carried over case files, 450 (66.27%) were concluded.**

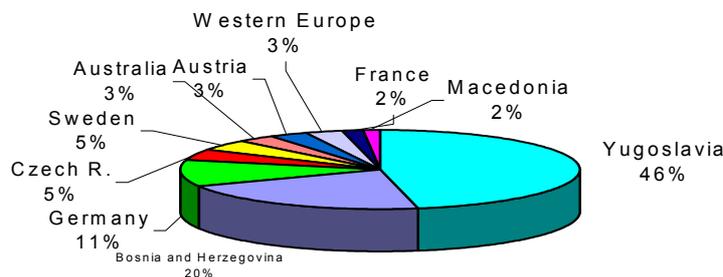


Here it should be mentioned that in the Ombudsman practice it so happens that a case file that is considered concluded –from the point of view of the Ombudsman's duty to assess whether or not someone's rights have been violated or threatened– and by reaching the assessment it really does get concluded, it may once again become current after a certain amount of time because in truth the person who filed the complaint was not able to solve his/her problem. Thus, for example, when the Administrative Court of the Republic of Croatia reaches a decision by which it takes into consideration the claim of the person who files the complaint, the case is considered as concluded. However, if the competent administrative authorities whose administrative decision was annulled do not reach a new administrative decision within a reasonable period of time, the case is reactivated and is kept in the records as an unsolved case from some earlier year. Because of this, data about “old”

cases are not and cannot be absolutely precise. So, in the year of 2003, **3068 case files in total** were being processed.

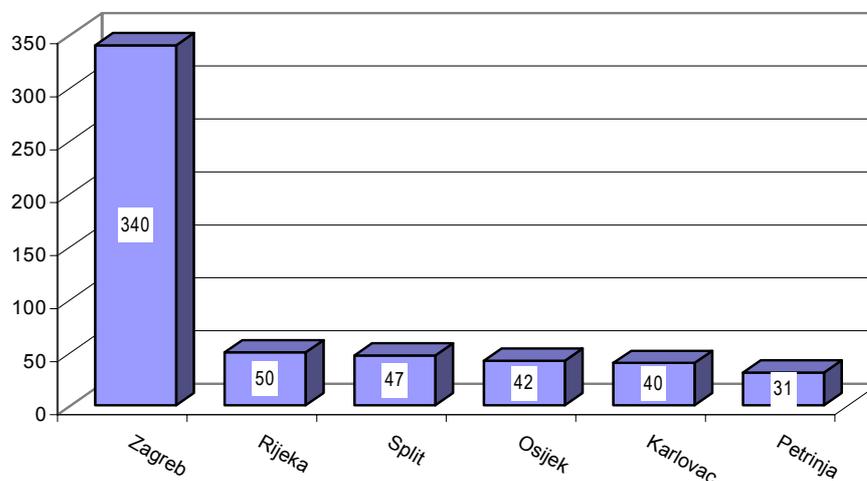
**Complaints were being filed** from throughout Croatia, that is, from 402 locations, and some were also filed from 80 locations abroad (most from Serbia and Montenegro and Bosnia and Herzegovina). Besides the ones from those countries, persons with complaints sought the Ombudsman also from Slovenia, fYR Macedonia, Hungary, Austria, Switzerland, Germany, the Netherlands as well as from the U.S.A., Canada and New Zealand. In total, 277 persons (**11.6%**) filed complaints **from abroad**.

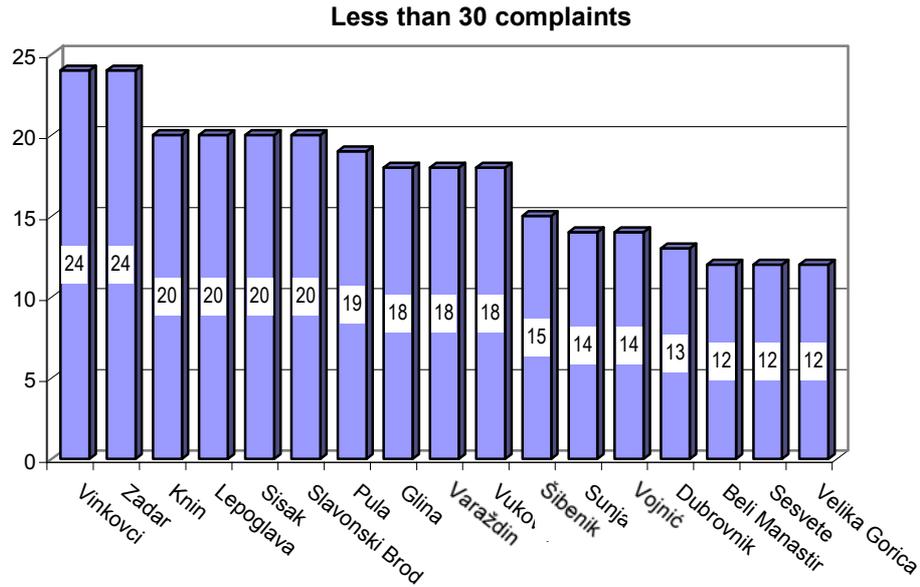
Complaints from abroad



Most complaints were filed from Zagreb (288), Knin (148), Korenica (67), Donji Lapac (64), Split (60), Osijek (60), Karlovac (58), Zadar (57), Rijeka (45), Gračac (41), Sisak (38), Petrinja (36), Vojnići (35), Benkovac (35), Vukovar (34), Beli Manastir (31), Tenja (28), Dubrovnik (26). **From these 18 locations** as many as **1151 complaints** were filed, which out of the total number of complaints accounts for **48.2%**.

More than 30 complaints





The distribution of received complaints by counties can be noted in the following table:

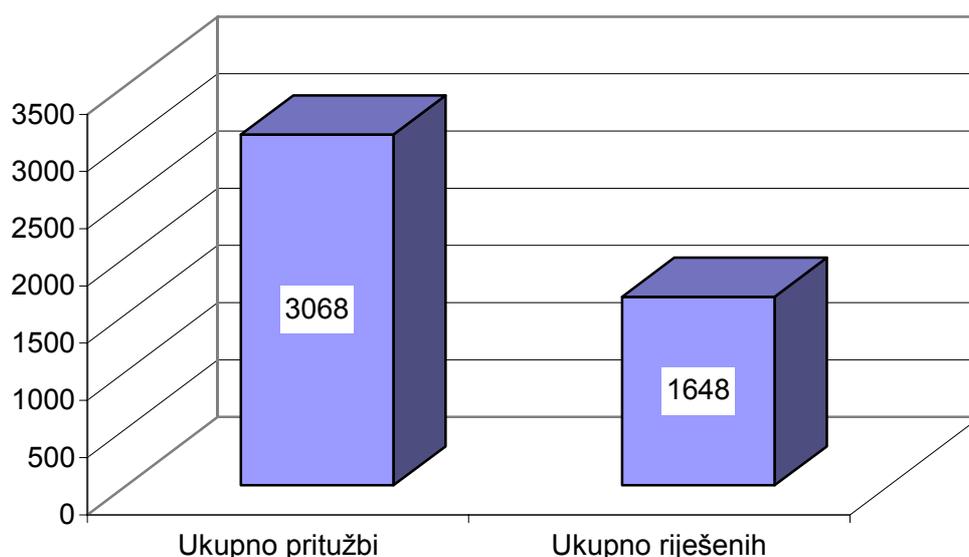
<b>CITY OF ZAGREB</b>	288
<b>I. ZAGREBAČKA COUNTY</b>	57
<b>II. KRAPINSKO- ZAGORSKA COUNTY</b>	16
<b>III. SISAČKO-MOSLAVAČKA COUNTY</b>	193
<b>IV. KARLOVAČKA COUNTY</b>	136
<b>V. VARAŽDINSKA COUNTY</b>	41
<b>VI. KOPRIVNIČKO-KRIŽEVAČKA COUNTY</b>	19
<b>VII. BJELOVARSKO-BILOGORSKA COUNTY</b>	11
<b>VIII. VIROVITIČKO-PODRAVSKA COUNTY</b>	13
<b>IX. PRIMORSKO-GORANSKA COUNTY</b>	73
<b>X. LIČKO-SENJSKA COUNTY</b>	186
<b>XI. POŽEŠKO-SLAVONSKA COUNTY</b>	65
<b>XII. BRODSKO-POSAVSKA COUNTY</b>	48
<b>XIII. ZADARSKA COUNTY</b>	159
<b>XIV. OSJEČKO-BARANJSKA COUNTY</b>	205
<b>XV. ŠIBENSKO-KNINSKA COUNTY</b>	238
<b>XVI. VUKOVARSKO-SRIJEMSKA COUNTY</b>	130
<b>XVII. SPLITSKO-DALMATINSKA COUNTY</b>	103
<b>XVIII. ISTARSKA COUNTY</b>	54
<b>XIX. DUBROVAČKO-NERETVANSKA COUNTY</b>	61
<b>XX. MEĐIMURSKA COUNTY</b>	16

Total complaints from the Republic of Croatia: **2112**

Out of 1952 cases that were within the mandate of the Ombudsman, an **inquiry procedure** was conducted in **1149** cases (58.9%), and in 803 cases the inquiry procedure was not necessary because the complaint was documented sufficiently enough in order to take appropriate measures even without additional questioning –or there was a possible endangerment of some rights due to the ignorance of the complainant, so the Ombudsman acted preventively, by giving advice or instructions on what to do in order to protect rights. Within the 1149 cases in which the inquiry procedure was initiated, the administrative body, i.e. the body vested with public powers **forwarded the requested** statement or necessary data in **859** cases (74.8%), which represents an insignificant decrease from the previous year when the Ombudsman received what he requested in 76.2% of the cases. Keeping in mind that the legal term for the submittal of a report has not expired yet for some cases, it can be pointed out that a high level of cooperation by administrative bodies has been maintained at the same level as in the previous two years. True enough, certain administrative bodies had to be pressed several times, but a **good cooperation** with the Ombudsman is clear.

Improved cooperation of administrative bodies and bodies vested with public powers with the Ombudsman has contributed to the efficiency of the Ombudsman. In 2003 the Ombudsman managed to **conclude as many as 1648** (84.3%) cases out of 1952 that are in his mandate, which represents a greater efficiency than that of the year 2002 when 82.9% of the cases received that year were concluded.

Complaints in 2003



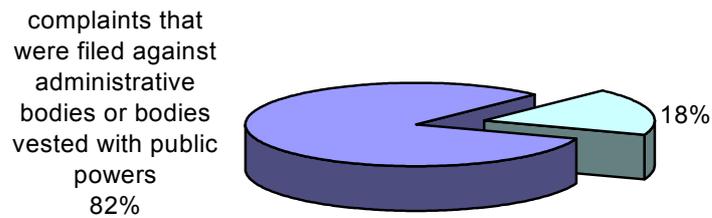
Within the 1648 concluded cases it was established that the complaint was **unfounded** in **375** cases (22.75%), and **premature** in **489** cases (29.67%). Therefore, in **784 cases (45.39%)** the Ombudsman established beyond doubt that some right of the complainant had been **violated or seriously endangered**, and most often it was by stalling the administrative proceedings longer than the legal deadline for adjudication. In relation to the previous period of time a significant increase in the number of complaints is noted, from 12.9% to 29.7%, which can on one hand indicate the citizens' trust in the Ombudsman, but also a distrust in the legal system, i.e. a fear that the administrative body will not conclude a case in time or legally. Also noted was the intent of certain complainants to obtain free legal advice or instructions on how to go about some case by means of a premature complaint.

Seeing as in 489 cases of premature complaints –and in certain cases ones outside of the scope of activity of the Ombudsman– it could mostly be expected that some particular right would be endangered due to client ignorance, the Ombudsman most often reacted by offering advice to the complainant on how to proceed in order to protect his/her rights in cases (**405** cases) of particular rights endangerment when violation has not yet occurred but it inevitably would.

It should be mentioned that by the initiation of the inquiry procedure itself, i.e. by questioning for reasons why the request of the complainant had not been concluded within the legal deadline for adjudication, in most cases (around 2/3) it was achieved that the complainant obtained the particular administrative decision that decided on his/her right, interest or duty, which prevented further endangerment of particular rights, so the Ombudsman did not have to take other measures that he is authorized to.

The Ombudsman took certain measures he is authorized to take **in 368** cases. In **163** cases he provided a **recommendation** to the administrative body, i.e. to the body vested with public powers, in **174** cases he issued a **warning**, and in 31 cases he recommended to an administrative body certain measures or a manner of case handling. In the year of 2003 the Ombudsman did not open any procedures of revocation of a ruling by **right of supervision**. Temporary restraint from this measure does not mean that there were no cases in which such a procedure could be opened, but because of the inefficiency of this measure in the previous three years –when the procedure was only formally conducted in order to decline the Ombudsman– this was abandoned.

Of the 2389 newly received complaints, **1952 (81.7%)** concerned endangerment or violation of rights by administrative bodies or bodies vested with public powers, so, within the sphere of the Ombudsman, which is significantly more than during previous years. It seems that the several years' efforts of the Ombudsman to familiarize the public with his authority and activities were productive.



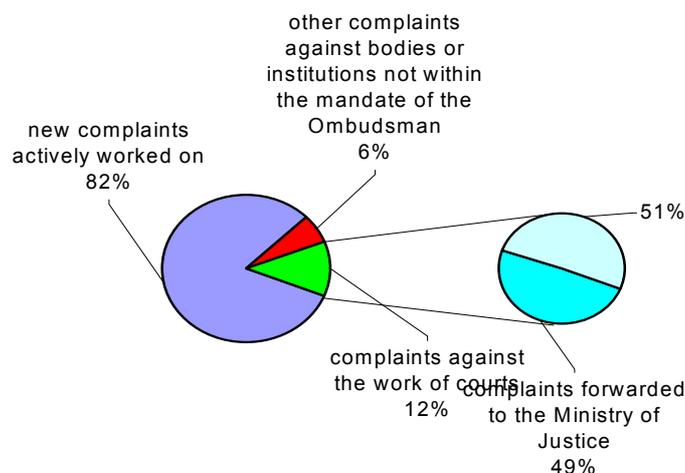
*Cases not within the mandate of the Ombudsman*

	<b>Total</b>	<b>%(2389=100.0%)</b>
not in mandate	437	18.3
court	286	65.5
labor relations	41	9.4
other	110	25.1

In the year of 2003 as well some citizens complained in writing about violations or endangerment of their rights arising out of labor relations, ones that are protected by court proceedings, and in a somewhat higher number than that of the previous years. Since the Ombudsman is not authorized to look into these violations or endangerment of rights, other than instructing the client to attempt protecting his rights by means of a lawsuit, other measures (no records were kept regarding the frequency of verbal complaints due to violations of rights arising from labor relations) were not taken. However, the Ombudsman deems it his duty to point out that there are occurrences of violations and endangerment of employees, and the system of protection (inspections, court proceedings) is not efficient. Thus the Ombudsman still believes that it would be effective to establish specialized courts for labor disputes, and to materialize the legal possibility of settlement by arbitration of labor disputes by establishing a constant arbitration for labor disputes.

As was the case in previous years, so were in 2003 most (286)

complaints filed regarding the slow or irregular work of courts, for the inspection of which the Ombudsman is not authorized.



Despite the Ombudsman's efforts to inform citizens about not having the authority to deal with complaints against the work of courts, the number of these complaints increases on a yearly basis. Thus in 2002 there were 235 complaints against the work of courts, in 2001 191 complaints, and in 2000 there were 170. In his Report for the year 2000 the Ombudsman pointed out a possible growth trend of the share of complaints against the work of courts within the total number of complaints that are not within his mandate, but until this day, despite significant efforts, no measures were taken that would really increase the efficiency of courts and improve the quality of their work. Data for 2003 confirm that each year absolutely and relatively the complaints against the work of courts increase, despite the efforts of the Ombudsman to explain to citizens his mandate. **The share of complaints against the work of courts within the total number of received complaints in 2003 accounts for as much as 11.97%, while the share of cases not within the mandate of the Ombudsman account for as much as 65.5%.**

#### *Complaints against the work of courts*

year	share not in mandate
1996	43.7
1997	43.9
1998	61.3
1999	67.7
2000	65.1
2001	65.1
2002	58.2
2003	65.5
average	58.8

When assessing the dissatisfaction of citizens with the work of courts one must bear in mind the fact that during the year of 2003 as many as 1928 persons directly approached the Ombudsman, of which a great number complained about the work of courts, and not only regarding slowness and

inefficiency, but also about the way judges conduct hearings. Just like in previous years, they complained about the way hearings were conducted because they were not allowed to put forward all their claims, and about the way minutes of the hearing were kept, i.e. about the situation that just about presents as a rule the fact that the judge dictates the minutes not allowing the party to intervene in case of an incorrect interpretation of what was said during the hearing.

The introduced amendments of the Law on hearings will without doubt achieve a greater processing discipline of parties, and with that also the more efficient work of courts, but the frequency of citizens' complaints about the manner of conducting hearings and the taking of minutes indicate that here also certain amendments should be made (e.g. similarly as in criminal proceedings parties should be allowed to have an audio transcript of the hearing; there should be a special minutes taking service so that the court reporter would not be simultaneously the personal secretary of the judge, but independent and answering only to the Court President; hearings should be taken down in shorthand; unification of the main hearing should be insisted on and evidence should be presented during one hearing that lasts continually, even for several days in a row, and alike).

Of the 286 complaints against the work of courts, in as many as **141** cases (49.3%) the Ombudsman assessed that there exists an unusual inefficiency of the court, i.e., such a right that is of special interest for the party because of which the case should be concluded as soon as possible, yet it is pending for a long time. That is why the Ombudsman forwarded these complaints to the Ministry of Justice so that it could take measures it is authorized to take (requesting a report from the President of the Court in question). The procedure of obtaining a statement regarding the unduly long adjudication from a President of the Court in question itself lasts relatively long, so the Ombudsman received only 26 reports, i.e. copies of statements by the end of the statistic period (31 December 2003). However, in most cases when there was an indirect intervention a faster processing of cases was achieved. In **107** cases (37.4% of the court cases) when there was an administrative dispute against a second-instance ruling or a ruling without the possibility of appeal, and a right of vital importance for the party was in question (e.g. the right to a pension, the issue of citizenship) or if an administrative body persistently refused to apply within the repeated procedure the legal interpretation of the Administrative Court of the Republic of Croatia which caused a repeated ruling with the same decision as the one that the Administrative Court suspended, the Ombudsman did not directly intervene, he indirectly

addressed the President of the Administrative Court and forwarded the complaint of the party along with a plea that it be treated as a rush note for the party. In these cases the Administrative Court placed the cases in priority processing. Regarding the complaints about the slowness and inefficiency of the courts it must be pointed out that a great number of complaints (about 87%) can be assessed as well-founded, because in these cases the Ombudsman acts very restrictively, intervening only in serious cases when the subsistence of the complainant is in question.

Other than taking action through the Ministry of Justice and indirect contacts with the Administrative Court, during 2003 the Ombudsman established the existence of individual violations of constitutional and legal rights and rights guaranteed by international instruments acceded to by the Republic of Croatia in **1952** new cases, as well as established oversights and other irregularities in the work of administrative bodies or bodies vested with public powers. The basic structure of newly received complaints is presented in the following table, and analytical data about the structure in particular administrative fields in separate chapters.

No.	field	number of complaints	% (1952=100)
<b>I.</b>	property rights	567	29.0
<b>II.</b>	pension-disability, health insurance and social welfare	573	29.4
<b>III.</b>	status-related rights	79	4.0
<b>IV.</b>	war-related issues	371	19.0
<b>V.</b>	urban development, environmental protection, construction	101	5.2
<b>VI.</b>	personal insecurity	13	0.7
<b>VII.</b>	other	433	22.2

It is evident in the table that in 2003 a share of less than 30% of the cases within the mandate of the Ombudsman regarding **property rights** was maintained.

Year	Complaints	Share (%)
<b>1998</b>	600	39.9
<b>1999</b>	444	35.5
<b>2000</b>	607	37.7
<b>2001</b>	497	33.9
<b>2002</b>	326	28.3
<b>2003</b>	567	29.1

Although a gradual yet slow processing of property rights violations and quicker processing of citizens' requests for the restitution of property that was nationalized during the period of communist rule is notable, what is concerning is the total number of these complaints that is unacceptably high, and thus the prediction from the previous Report that in 2003 we shall receive a higher number of such complaints came true. Since a large number of complaints regarding the protection of property rights still remain unconcluded, also in the ensuing year we can expect a certain number of new complaints. Complaints regarding violations or endangerment of property rights still dominate according to complaints being well-founded (around 80% of complaints were assessed as well-founded), and since this is a violation of a basic human right which has lasted for years on in (in some cases of unlawful takeover of apartments even for 12 years), energetic measures should be taken in order to finally return the property to its rightful owners.

In the year of 2003, complaints that dominated amount-wise were ones against the work of bodies vested with public powers and administrative bodies in the field of social security, i.e. the sphere of rights within **pension and disability insurance, health insurance and health protection, social welfare, and rights arising from labor relations between state and public officials**. 573 complaints in total were reviewed, which in the total amount of complaints that are within the mandate of the Ombudsman account for a share of 29.4% (last year: 31.7%). A table of data according to previously reported years is below.

<b>Year</b>	<b>Number of complaints</b>	<b>Share (%)</b>
<b>1998</b>	372	24.7
<b>1999</b>	291	23.3
<b>2000</b>	339	21.0
<b>2001</b>	443	30.3
<b>2002</b>	366	31.7
<b>2003</b>	573	29.4

During 2003, the Ombudsman received **79 complaints** regarding the inability to regulate **status rights**, which in relation to the previous year presents and absolute and relative decrease. Complaints regarding unsolved status account for 4.1% within the total number of complaints within the mandate of the Ombudsman. Data regarding these complaints during several years are presented in the continuation.

Year	Number of complaints	Share (%)
1998	160	10.6
1999	83	6.6
2000	329	20.4
2001	94	6.4
2002	81	7.0
2003	79	4.1

In comparison to earlier years, the absolute and the relative number of complaints by **Croatian defenders and veterans of the Homeland War**

Year	Number of complaints	Share (%)
1998	234	15.6
1999	144	15.6
2000	94	5.9
2001	139	9.5
2002	134	11.6
2003	371	19.0

has increased during 2003. In 2003 the Ombudsman received **371** complaints in this field, which account for a share of as much as **19.9%** of complaints for which the Ombudsman is authorized.

Year	Number of complaints	Share (%)
1998	54	3.6
1999	64	5.1
2000	45	2.8
2001	16	1.1
2002	84	7.3
2003	101	5.2

During 2003 there were **101 (5.2%)** complaints in regarding **urban development, construction and environmental protection**. The number of complaints about the work of administrative bodies has in this field absolutely

increased, yet relatively decreased –as can be noted in the table.

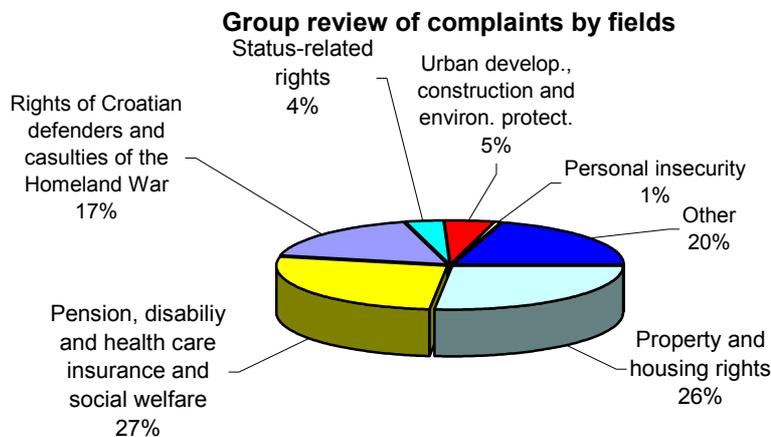
During 2003 only **13** persons complained about the work of the **police and about personal insecurity**, and complaints were mostly unfounded. In cases of suspicion that the complainant is a person with mental problems, the complaints were not reviewed. The authorized Welfare Center was contacted in those cases in order to establish whether or not the complainant had –besides the fictitious one– also some real problem, i.e. in order to process him for provision of some possible welfare help he is entitled to and has not requested due to his condition. Since these complaints are not very numerous, along with the fact that they decrease each year, they have been listed into the category of “other complaints” in 2003, (where they account for a share of 3%).

Year	Number of complaints	Share (%)
1998	137	9.1
1999	151	12.1
2000	185	11.5
2001	199	13.6
2002	145	12.6
2003	446	13.4

The set of “other complaints“ includes complaints from various fields (convicted persons, compensation for war damage, privatization, public municipal companies, family relations and children’s

rights, union activities, advocacy, land registry books, etc.) which are not numerous or both not numerous and of relatively low significance. Among these the most numerous (**33**) are complaints by convicted persons, who often complain about the irregularity of court rulings, and less frequently about endangerment of their rights within penal institutions.

## II. STRUCTURE OF COMPLAINTS BY FIELDS



This chapter includes statistic data and characteristic complaints against the work of administrative bodies and bodies vested with public powers according to the fields of their work, as well as measures taken by the Ombudsman that are within his mandate.

## 1. Complaints against the work of courts

Complaints against the work of courts were in essence not different from the ones submitted during previous years. Their number did not decrease, regardless of the efforts of the Ombudsman to inform the public about his scope of work, i.e. the inability to directly investigate and intervene in cases within the competence of courts or in the manner of their work. The number of these complaints is still significant (**286**) and accounts for a significant share in the total number of complaints that are not within the mandate of the Ombudsman (**65.5%**). From the standpoint of the constitutional right of citizens to submit complaints and to receive responses to them, the Ombudsman oftentimes –in order to send citizens a reply that they are entitled to– found himself in a situation of reviewing legal issues that are within the competence of judicial bodies. The fact is, when citizens address the Ombudsman for help or submit a complaint about the work of state administration, they expect a complete response. However, offering any kind of guidance, explanation or advice (legal aid) often is not possible without getting into a legal issue in question (meritum). In attempting to avoid these situations the Ombudsman instructed parties to seek professional help from an attorney and instructed them on how to obtain free legal aid. Some examples of complaints are presented in the continuation.

**(1.) Case description (P.P.–51/03):** Complainant A.S. addressed the Ombudsman by way of the Croatian Helsinki Committee (HHO) because of, as he claims, the stalling of adjudication arising from labor relations, which is pending at the Municipal Court in Zagreb, file number: Pr. 2124/96. He points out that this is a labor dispute that by its nature has a priority in adjudication, yet it is pending for seven years. He claims only one hearing had been held on the matter. He demands the taking of necessary actions for the conclusion of this dispute.

**Measures taken:** On 21 January 2003 the Ombudsman requested an investigation of the claims through the Ministry of Justice, Administration and Local Self Government of Croatia, as well as taking of measures for urgent procedure of the issue pursuant to Article 38 of the Law on Courts.

**Outcome of the case: Unknown**

**Note:** A violation of complainant's rights to an effective court protection has been established.

**(2) Case description (P.P.–181/03):** Complainant B. K. from S., represented by attorney at law R. D. from K. addressed the Ombudsman with a petition from a case of the Administrative Court of Croatia. She pointed out that as a claimant she filed a lawsuit to the Administrative Court of Croatia in order to contest the ruling of the Ministry of Croatian Defenders dated 17 October 2000, class: UP/I-562-02/00-01/6448, number: 519-04-3-00-2 which annulled the ruling class: UP/I-562-02/00-01/203, number: 519-21-00-24, and it was concluded that the claimant is to lose the HRVI (defender) status as of 29 February 2000. She also pointed out that during the

two years' elapsed time she sent a rush note to the Administrative Court of Croatia, however, the case is still pending. Therefore she kindly requests an intervention.

**Measures taken:** On 24 September 2003 the petition was forwarded to the President of the Administrative Court, in order to push along the adjudication of the case in Court.

**Outcome of the case:** Unknown

**Note:** A violation of complainant's rights to an effective court protection has been established.

**(3.) Case description (P.P.–662/03):** The complainant D. G. informed the Ombudsman through the Center for the Development of Democracy– CERD in S. about a petition directed to the President of the County Court in S. regarding a case of the Municipal Court in S., number I-P-1618/94, in order to protect his violated rights pursuant to Articles 6 and 13 of the Convention for the Protection of Human Rights and Basic Freedoms (right to a fair and expedient trial, right to the execution of verdicts) because the Municipal Court in S. in the relevant procedure did not participate nor was he given the chance to address the court. Domestic and foreign institutions were informed about this case, because this same court obstructed the execution of a court ordered seizure for 7 whole years and also the provision of possession protection for the G. family which they obtained in a court case regarding trespassing after which they were violently and illegally under the threat of arms thrown out of their apartment. It was only when those who illegally usurped the apartment became owners, i.e. when the Ministry of Defense sold them the apartment (in which after takeover they did not even live because they have a house in S., and the apartment was rented out, until it was sold two years ago – without a reaction by the Ministry or ODO in S.), that the seizure court for the first time initiated seizure (28 November 2000) only to conclude that the legal situation changed and place the seizure ad acta, although The Municipal Court in S. despite everything declined the claimant's proposal for a repeated procedure (even though tenant's right until today has not been disputed to the co-claimant, the spouse M.G.) so the claimant filed for an appeal in October 2002. Therefore D.G. kindly requested that the appeal be processed as soon as possible, because more than 5 years have passed since the submittal of the repeated procedure proposal, which violates his right to the efficiency of judicial protection and of ruled adjudication execution.

**Measures taken:** On 21 May 2003 the Ombudsman forwarded the petition to the Ministry of Justice, Administration and Local Self-Administration of Croatia regarding conduct pursuant to regulation in Article 38 of the Law on Courts.

**Outcome of the case:** Unknown.

**Note:** A violation of complainant's rights to a fair trial and to an effective court protection has been established.

**(4.) Case description (P.P.–1373/03):** The complainant T.Đ., represented by Law firm V. and Associates from R. addressed the Ombudsman with a complaint in which he claimed that in the year 2000 through his authorized attorney he filed a lawsuit to the Administrative Court of Croatia regarding the ruling of the Ministry of Croatian Defenders from the Homeland War, class: 562-02/02/00-01/921, number: 519-04-3-00-2 dated 22 May 2000. The dispute in question is being processed under business number Us-5758/00. More than three years have passed since the day the lawsuit was filed, and in this period of time the claimant attempted to hasten the adjudication by rush notes. This, however, had no result. Since the procedure was initiated in order to

establish the status of the claimant as a Croatian disabled war veteran, a status that was made effective by ruling US-133/1998 dated 23 September 1999, and since this issue is of existential importance to the claimant, it is considered that even with taking into account the overload of the court with numerous cases, the length of time this procedure has lasted cannot be justified, especially when put into a context of the number of rights that pertain to the adjudication of this basic status issue. He enclosed a copy of the lawsuit and of ruling US-133/1998, as well as the second-instance ruling which is being contested by the appeal. In lieu of the stated information, he proposes to the Ombudsman that he, pursuant to legal authority, warn the Administrative Court of Croatia about consequences of failing to reach a verdict in a reasonable period of time and to recommend –keeping in mind the nature of the dispute– expedient adjudication in this legal matter.

**Measures taken:** On 21 July 2003 the complaint of T. Đ. was forwarded to the Administrative Court of Croatia in order to expedite the adjudication of the case.

**Outcome of the case: Unknown.**

**Note:** A violation of complainant's rights to an effective court protection has been established. In addition, it has been established that the Ministry of Croatian Defenders from the Homeland War after the Administrative Court's annulment of the second-instance ruling reaches a new ruling in such a way that it basically repeats the annulled ruling, which leads to a new administrative dispute.

**(5.) Case description: (P.P.–1593/03.):** The Ombudsman was approached by Mrs. J.G. from S. complaining about the content of a court ruling on the basis of which her lawsuit regarding labor relations rights was only partially recognized.

**Measures taken:** Since this is a matter of court jurisdiction, the Ombudsman sent a memo to the complainant on 19 December 2003, which stated as follows: »Esteemed Ma'am, regarding your complaint to the Ombudsman in relation to a partially unfavorable outcome of a labor dispute before the Municipal Court in S., please be informed of the following: The Ombudsman has no jurisdiction over courts. The Ombudsman is authorized to examine particular cases or citizens' rights endangerment that have been enacted by state administrative bodies, bodies vested with public powers or employees thereof in activities that are within their authority. Therefore the Ombudsman cannot satisfy your demand, because he is not authorized to alter rulings of any court, nor to venture into assessments of validity and legality of court rulings. This is so because the judicial branch is independent in its decisions, and court rulings can only be reviewed by procedure after ruled regular or extraordinary adjudications. From your complaint it is not clear whether or not you filed an appeal against the declining section of the ruling to the court of authority on the matter. Also, during adjudication procedures courts reach decisions that are within the framework of the filed lawsuit of the complainant as a party and have no authority to add that which the party neglected to list in the lawsuit. Thus, for the negative outcome of the court procedure for which you blame the court and the Hospital as the defendant, the Ombudsman cannot provide you with the protection you seek. The fact is, the Ombudsman is not authorized to initiate procedures nor take actions in the procedure in the name of and on behalf of the party, because attorneys are authorized to do so. The Ombudsman can only control the activities of state administration bodies and employees thereof.

**Outcome of the case:** Unknown. It is not known whether or not the complainant used implemented her right to an appeal, and also unknown is the outcome of the possible appeal procedure.

**Note:** The complainant was informed about judicial matters being not within the mandate of the Ombudsman, this was especially explained in the section dealing with inability of reviewing court ruling contents (which is a frequent complaint by citizens regarding the work of courts) and she was provided with appropriate legal advice based on the documentation she enclosed with the complaint.

**(6.) Case description (P.P.-1428/03):** Mrs. V. T. from Z. Addressed the Ombudsman because of violations of basic human rights in a dispute between tenants and the owner of an apartment building she lives in.

**Measures taken:** Although the complaint of Mrs. V. T. falls under the jurisdiction of the judicial branch, it was assessed that it is necessary to address the Ministry of Justice, Administration and Local Self-Administration, in order to inform and warn them about the standard of a reasonable period of time within which the ruling should be reached so that protection could be realized at all as follows. We addressed the Ministry of Justice, Administration and Local Self-Administration with memo number P.P.-822/00 dated 24 January 2003 to inform them about the case of demolition of the apartment building in Z. as follows: "This case regards the initiation of demolition by the building owner V. Đ., yet before the initiation of work tenant and ownership issues had not been settled. Due to the fact that the case is being processed at the Municipal Court in Z., under numbers Ps-2620/97 and Ps-283/98, data was requested in order to expedite the Court. Reasons for this were based on the fact that the mentioned new owner and investor directly threatened the life of the tenants. Mrs. V. T. now approached us directly (initially we found out about the case from the Center for the Development of Democracy – CERD), in order to present the most recent factual information as follows: she was physically assaulted, the furniture and all her possessions she had in the apartment were destroyed, the apartment has been torn down. The complaint is enclosed in order to avoid unnecessary repetition of claims from it. Since this is a harsh violation of basic human rights, and Mrs. V. T. is without doubt a victim of violated basic rights; starting from the fact that Croatia –by signing the Convention for the Protection of Human Rights and Basic Freedoms as well as the accompanying Protocols– committed itself to securing an efficient application of all Convention regulations; to respecting of rights and a right to a fair and expedient trial by an independent court. I deem it necessary for the State to intervene only insofar as to achieve protection: personal, of the home, of rights guaranteed by Croatian laws and rights to equality; and thus I once more hereby inform the Ministry of Justice, Administration and Local Self-Administration about the case of endangerment of tenants of the building S. c. in Z., with a proposal for authorized action by also the Ministry, so that Mrs. T. could finally achieve protection (of the court)". Since there was no response regarding this particular case even after two months since the warning, the following rush note was sent: "... in the case of the dispute between the tenants and the owner of the apartment building in Z., S. c., the last written memo was forwarded on 16 September 2003 in order to once again point out the dysfunction of the State (legal), because the victim of basic right violations, despite the intervention of the police and the work of judicial bodies (proof: written memos, copies enclosed) is not successful in realizing protection when it is necessary. This includes not only review and discussion of the case, but primarily the ruling. Finally, the inability to realize protection when it is necessary seems to be a new violation of rights. Therefore, taking into account all that has so far been done for the case of apartment building S. c. tenants in Z., we propose that an instrument be found, one by which the protection of their basic human rights shall be achieved".

**Outcome of the case:** Unknown

**Note:** The right of the complainant to an effective court protection has been violated.

**(7.) Case description (P.P.-2060/03):** Mrs. B.V. from M. addressed the Ombudsman with a complaint claiming that despite everything done so far, not even after 15 years have passed since her divorce is she able to realize her legal rights that she is entitled to as a former wife regarding the division of the assets acquired during the marriage to her former husband, assets that are in a seizure procedure of real estate sale. The complainant has so far sent petitions to the Ministry of Justice, Administration and Local Self-Administration, which performed regularly the investigation procedure in the sense of Article 38 of the Law on Courts, and based on the received reports from the Judge in charge of the matter and the President of the Municipal Court in V. it ensues that the problem of inability to execute the seizure does not arise from the court, it is the person who the property is being seized from, the former husband, who is obstructing the seizure procedure by abusing the laws and process authority. From the report of the President of the Court and the accompanying documentation it ensues that S.H. as a person whose property is being seized is not obliged to provide guarantees for the payment in order to participate in the public auction, so he freely bids at the auction and offers the most favorable bid –that he ahead of time knows he has no necessary means to pay– and then when the property is sold and the payment deadline expires without him making the payment, the public auction is by court decision annulled and a new one is organized. In this way he has succeeded in achieving an unsuccessful outcome of 6 (six) public auctions despite the court order fines that range from 10,000 to 30,000 HRK for the obstruction of seizure execution. In this way he was able to «dispose of» all potentially interested parties who wanted to participate in the public auction. Therefore, from the above mentioned it is clear that he is consciously and purposely obstructing the execution of Laws and the efficient functioning of the rule-of-law institutions, by which he displays elementary disrespect towards the court ordered seizure that is in effect, and also towards the institutions of the rule-of-law. Since he is a person who is a public official, the Ombudsman has assessed that his conduct is even more offensive.

**Measures taken:** Since in this concrete case the problem does not lie with the courts, as is clear from the reports of the President of the Municipal Court in V. and the Judge in charge of the matter –both of which the complainant enclosed with the complaint– but the abuse of process authority within a seizure procedure based on the regulations of the Law on seizures which make this possible for the person whose property is being seized, the Ombudsman has –since the person in question is a public servant, a County Vice-Prefect of .... County– by a memo dated 18 December 2003 informed the Directorate for Local Self-Administration of the Ministry of Justice, Administration and Local Self-Administration, as well as the County Assembly in question and the County Prefect with a recommendation that this kind of conduct should be publicly condemned and the official should be given a vote of no confidence due to the displayed behavior that makes him unworthy of performing the entrusted function, i.e. he should suffer political consequences for his actions. The Ombudsman also requested a report without delay.

**Outcome of the case:** Following the recommendation and the request for a report that the Ombudsman forwarded to the Directorate for Local Self-Administration of the Ministry of Justice, Administration and Local Self-Administration, S.H., the person whose property is to be seized himself addressed the Ombudsman for help because of the arbitrariness of the court after the Directorate informed him of the contents of the

recommendation. Basically he complained about the content of court rulings (the ruling regarding the sale) claiming they are not valid, due to which he offered the highest amounts without paying, while remarking the following: »As is the ruling on sale, such is my action!« He claims that he values and respects the institution of the rule-of-law when it acts pursuant to valid legislation regulations. That is why after the ninth auction when the Ruling on sale was approximately pursuant to the Law on seizures he paid a part that was close to a half of the price right away, and the rest would be paid by the bank in which he initiated the procedure for obtaining a loan, and that the time frame of that part of the payment depends on the bank. He was promised that this would happen in the shortest amount of time possible.

**Note:** Since the Ombudsman did not request a report from the court deeming it unnecessary in the matter, it remains unknown when the ninth public auction was conducted and its outcome –whether or not it ended in a payment in part as claimed by S.H., and whether or not this outcome was influenced by the Ombudsman's intervention. However, this in no way justifies the previous conduct of S.H., because he could have contested the legality of the ruling during the court ordered seizure procedure by means of regular legal ways –by appealing the decision. S.H. furthermore disputed the truth of the complainant's statement and of the reports by the President of the Court and the judge in charge of the matter, and he described in detail the personality and character as well as financial standing of the complainant as his former spouse by stating that she neglected the children, deprived them of the means obtained for their sustenance, and finally abandoned them. He stated that because of this the children (three of them) proposed to the Center for Social Care a procedure for the dispossession of labor ability of their mother, the complainant in this case. He pointed out that it is significant how newspaper articles regarding this matter have been published at a time when his former party colleagues are taking actions in order to relieve him from his position, from which ensues that the complainant was for this purpose manipulated by someone. Following the statement of S.H., the Ombudsman expects also the official report from the Directorate for Local Self-Administration of the Ministry of Justice, Administration and Local Self-Administration, all the while not interfering in the process and outcome of court procedures between parties.

## **2. Rights arising out of pension and disability, health insurance and organization of health care, social welfare, and the field of labor relations of State and public officials**

In comparison to previous periods, in 2003, compared to complaints from other fields, complaints in the field of pension and disability, health insurance and organization of health care, social welfare, and the field of labor relations of State and public officials dominated both in quantity and in seriousness of the threatened or violated right of an individual. During the year of 2003, a **total of 573** complaints were received regarding the threats or violations of rights committed by administrative bodies or bodies vested with public powers in this field. In the total number of complaints that are within the mandate of the Ombudsman these complaints account for **29.35%**, which presents a large share. Of the total number (573) complaints in this field the most

(386) complaints were filed regarding the work of the **Croatian Institute for Pension Insurance (HZMO)**, its Central Service and regional services. The share of complaints against HZMO in this field amounts to 67.36%. During the year relatively few (**24**) complaints were received regarding the work of health services, violations of rights arising out of health insurance (HZZO) and the organization of health care, so these complaints account for a share of **4.18%** within the observed field. There are somewhat more complaints regarding difficulties in realization of rights in social welfare (86) and these complaints account for **15.01%** in this group. The second place by quantity in this group is held by complaints of State and public officials, 77 of them, and they account for as much as **13.43%** in this group. As a conclusion about trends in this field, presented in further text is data regarding the structure of complaints for the preceding five years.

**Note:** From 1998-2000 all complaints regarding labor rights were classified into this group, even those not submitted by state and public officials (and which the Ombudsman is not authorized to investigate). In 1998, it was not possible to set apart the complaints of state and public officials from the total number (88), which could be done in 1999 and 2000. As of 2001, this group includes exclusively complaints of state and public officials, and complaints of other employees are in the group of complaints that the Ombudsman has no authority to investigate.

Field	Number of cases by years									
	1999		2000		2001		2002		2003	
	No.	%	No.	%	No.	%	No.	%	No.	%
<b>pension</b>	188	71.5	216	70	228	51.5	187	51.1	386	67.4
<b>health</b>	46	17.5	49	16.3	36	8,1	22	6	24	4.2
<b>soc. welfare</b>	17	6.5	23	7.7	58	13.1	70	19.1	86	15
<b>labor</b>	12	4.5	12	4	121	27.3	87	23.8	77	13.4

From this five-year overview it is clear –with the exception of year 2000 when a large number of displaced persons and refugees following the reintegration of the Croatian Podunavlje initiated the procedure for acquisition or re-acquisition of pensions– that complaints by structure have an approximately similar share in this group of complaints, and also that they absolutely place high in the work activities of the Ombudsman. Most complainants have a **well-founded complaint** that the procedures concerning their rights are **impermissibly long-lasting** since pensions are

often the only source of their income, and because of the practice of the Central Service of HZMO not to re-evaluate rulings and change those that the Administrative Court of Croatia is justifiably expected to put out of force, complainants are forced –in the event when they have to initiate an administrative dispute– to wait for an inappropriately long time to receive a final and conclusive decision regarding their right. It should be pointed out that despite efforts to have administrative disputes against individual deeds of HZMO solved quickly, the decision of the Administrative Court is passed after over a year (in some cases two), so if one adds to that the failure to meet deadlines for passing the first-instance and second-instance rulings, and the time for repeated adjudication, in certain cases once again by both instances, the rights of retired persons, and not only the ones arising out of pension insurance, are seriously threatened and frequently violated.

In 2003 as well there were few complaints regarding the inability in or difficulties in realization of rights from health insurance and health protection; there were no complaints about problems in the organization of health services at all; improvement was noted in the field of social welfare and in the status of state officials.

## **2.1. Violations of pension insurance rights**

386 persons addressed the Ombudsman concerning the violation of pension insurance rights and of the procedure for the realization of rights from pension insurance. The main reason for complaints that complainants list is still the endless and never explained stalling of the administrative procedure despite the fact that these days all legal systems in addition to legally prescribed deadlines require from the body of authority to reach a decision within a reasonable period of time. This is understandable to the clients, and it would especially be understandable to the HZMO bodies of authority, because to this day we do not know how many unsolved cases burden the basic promptness (pursuant to legally prescribed deadlines) while reaching decisions concerning client requests. Every now and then when HZMO wishes to explain a long (non) processing of a specific legal matter, it mentions a large number of unsolved files as the only excuse.

The answers received by the Ombudsman should however be discussed. All memos from the Ombudsman to the Central Service of the HZMO were regularly replied to, among other things in a not so small number of cases also in such a way that it informed the Ombudsman how in most disputed complaints the file on a specific legal matter is being

processed at the appropriate HZMO regional service with a binding order and an instruction to the body of authority stating it is obliged to urgently reply to an inquiry to the Central Service of HZMO and to the Ombudsman. However, the result of this benevolent procedure of the Central Service does not have the expected effects concerning the Ombudsman, because following the delivery of the before mentioned memo and the order to the regional service, there is rarely an answer, much less an urgent answer, and there is no reply to the basic question asked by the Central Service of the HZMO and the Ombudsman: ones regarding the reasons for the slow work of officials in HZMO regional services even after a rush note and explicit instructions to conclude specific legal matters. It should be believed that the Ministry of authority and the HZMO will conduct an appropriate breakdown of the causes of this slow work, all with a goal of a most urgent conclusion of requests in cases for which they are authorized to reach decisions, both for officials of the Central Service and of regional services. The following cases are presented in order to illustrate the situation.

**(1.) Case description (P.P.-667/02):** On 08 May 2002 and on 18 November 2002 O.K. from S.B. addressed the Ombudsman with a case regarding the processing of a request for the continuation of pension payments. The complainant stated that he submitted the request for the continuation of pension payments to the authorized HZMO body on 10 September 1999, yet until the day of the complaint the authorized body, following the conclusion of the regional service dated 19 April 2000 and a timely appeal by the complainant, has not reached an appropriate administrative decision.

**Measures taken:** Concerning the mentioned complaint the Ombudsman requested a statement regarding the claims of the complaint and reasons for the stalling of the procedure and not reaching an appropriate decision in the specific legal matter by means of a memo on 9 May 2002 and on (again) 18 November 2002..

**Outcome of the case:** On 12 August 2003 the Central Service of HZMO forwarded to the Ombudsman without any accompanying memo or explanation of activities an administrative decision in file number: 176624, class: 140-02/02-01, number: 341-99-03/1-02-8177 from 1 July 2003. From this decision it ensues that the complaint of the complainant is accepted, the HZMO PS in S.B. conclusion number 4664 from 19 April 2000 is dismissed and the case is being returned to the regional service so they can reach a new decision. Other data about the continuation and outcome of the procedure is unavailable.

**Note:** Since the procedure was long lasting, a violation of the right to expedient processing of requests has been established.

**(2.) Case description (P.P.-225/03):** Đ.G. from K. addressed the Ombudsman with a case regarding the reaching of a final decision about the realization of rights to a pension. In a written complaint from 7 March 2003 the complainant stated that he submitted the request for a final decision on 15 March 2001 to the authorized regional service in Š.

**Measures taken:** Since more than two years had passed from the date of request submittal, and the authorized body did not even respond to the submitted request of the complainant, a memo was sent to the Central Service of HZMO on 10 March 2003 in which the Ombudsman asked for a statement regarding claims from the complaint and the conducted procedure on the specific legal matter. The authorized body of the HZMO responded on 11 December 2003 with a note that it had sent to the regional service in Š. on 28 November 2003, which includes a written order to finalize the procedure. On the day of the report the outcome of the case is unknown.

**Note:** Since we have not received a reply from an authorized body within the prescribed deadlines, and the decision of the authorized body is not known, a violation of the right to expedient processing of requests in a specific legal matter should be established.

**(3.) Case description (138/03):** M.G. from B.L. addressed the Ombudsman by memo on 11 February 2003 regarding the violation of the right to an expedient decision. In brief, the complainant stated that in this legal matter concerning the execution of a Contract on social insurance between Croatia and Bosnia and Herzegovina his request is not being processed since 9 April 2002, and that his file numbered 3115107398 was transferred from the Central Service of HZMO to the regional service in P. on 28 May 2002.

**Measures taken:** Within the procedure of investigation for the establishment of the soundness of the complaint, a statement regarding the complaint claims and reasons for the procrastination of the procedure was requested from the Central Service of HZMO by memo on 12 February 2003. On 27 February 2003 the regional service of HZMO from S.P. sent the Ombudsman a statement regarding the specific legal matter, which among other things states the following: ”.. Since the Contract on social insurance between Bosnia and Herzegovina and Croatia is only now beginning to be implemented, it still has not been agreed on how the processing of expert opinions should finally be conducted. For now it has been agreed that the foreign insurance company should send the decision and opinion of an authorized expert on the basis of which he/she was recognized the right to a pension. This we do have within the file, it was regularly submitted in addition to the initial request. It still has not been agreed upon how the ability to work is to be evaluated, how the specialized medical records are to be obtained and which specialized medical records are to be obtained“. Since the Contract on social insurance between Croatia and Bosnia and Herzegovina is in effect since 1 November 2001 and the claim by the first-instance body that “it is only now beginning to be implemented“ is unfounded, and a statement regarding the execution and interpretation about the Contract in question on this legal matter was not requested from it, a new report was requested from the HZMO Central Service by memo on 3 March 2003, a report concerning the work of authorized bodies on the specific legal matter. The Ombudsman was informed by a memo from the HZMO Central Service number: 167450 from 7 March 2003 that the regional service in P. had been instructed on how to proceed in this case in order to as soon as possible reach a decision based on Article 43 of the Contract on social insurance between Croatia and Bosnia and Herzegovina. The Sector for Execution of International Contracts on Social Insurance of the HZMO Central Service among other things informed the Ombudsman on 29 April 2003 that the authorized regional service completed the case and forwarded the copy of the decision and opinion with specialized medical records to the Department for medical findings pursuant to international contracts and to the Central Service in Zagreb, and that following the

performed evaluation the regional service shall reach a decision regarding the right to a disability pension based on Croatian insurance records pursuant to Croatian regulations and forward it to the insurance company in Bosnia-Herzegovina. The complainant once again addressed the Ombudsman with a complaint on 29 August 2003 stating that neither the Croatian Institute for Pension Insurance nor the foreign insurance company delivered the appropriate administrative decision. The Ombudsman requested by memo from the HZMO a statement regarding the reasons for procrastination of the procedure and such work of the HZMO authorized bodies for the third time.

**Outcome of the case:** The Central Service of the HZMO submitted a comprehensive report number: 167450 from 2 October 2003 regarding the specific legal matter which states at the end that according to finding and opinion no. D-1096/03 of an authorized expert it was established that the complainant does not have a general or professional inability to work, and the case was finalized by decision number 27297 dated 25 September 2003. The same has been forwarded to the address of the complainant. The intervention was successful, yet there is no data regarding the continuation of the procedure.

**Note:** The rights of the complainant were not endangered nor violated.

**(4.) Case description (P.P.-1543/03):** J. K. from D. addressed the Ombudsman by written complaint on 20 August 2003 regarding a case that is being processed in HZMO within a procedure for the implementation of an Administrative Court of Croatia ruling. The complainant briefly stated that on 26 March 2003 he received a ruling from the Administrative Court of Croatia number US-M-5669/1998-6 dated 4 December 2002, so six months prior to his complaint. His lawsuit was accepted and it was ordered to the HZMO Central Service in Zagreb to within 30 days reach a decision regarding the claim of the plaintiff about the request for the adjustment of the pension following the ruling of the Constitutional Court of Croatia number: -I-238/97 dated 12 May 1998. Until the day of the complaint HZMO has not acted in accordance to the directive from the ruling.

**Measures taken:** Since according to the complainant the authorized body has not reached an appropriate administrative decision within the amount of time prescribed by the ruling, on 20 August 2003 the Ombudsman sent a memo requesting a statement from HZMO regarding the claims from the complaint and reasons for the procrastination.

**Outcome of the case:** The requested statement from the Central Service of HZMO regarding this legal matter was submitted to the Ombudsman on 10 October 2003. It states that the authorized body, the HZMO Central Service, has on 19 September 2003 reached a decision class: 140/02-01/OB, number: 341-99-03/1-02/012932 as the execution of the Administrative Court of Croatia ruling dated 4 December 2002. The decision accepts the claim and orders the regional service in D. to within 30 days reach a decision regarding the party's request for adjustment of pension pursuant to the Constitutional Court of Croatia Ruling from 12 May 1998. We have no information about the possible continuation of this procedure.

**Note:** Intervention was successful, violations of regulations of the Law on general administrative procedures, Law on administrative disputes and violation of the right to expedient request processing were established.

**(5.) Case description (P.P.-1170/02):** On 13 September 2002 the Ombudsman received a complaint from M.B. from O. regarding a case that is under the jurisdiction

of HZMO. According to the claims in the complaint the HZMO has not by the time the complaint was written fulfilled the obligation from Decision: IN-911653 dated 1 June 1998, nor did it send any kind of notice to the complainant about intent, manner and time of the implementation of the decision which determined the payment of a pension to the recipient of a disabled war veteran pension, all pursuant to the implementation of the procedure of official duty pension adjustments according to the Law on rights of Croatian defenders from the Homeland War and their family members (Official Gazette number 108/96).

**Measures taken:** The Ombudsman sent a memo on 16 September 2002 requesting an urgent statement from the HZMO regarding the claims of the complaint and the submission of a reply concerning the procedure processed thus far. On 18 October 2002 the HZMO Central Service sent an informative memo dated 30 September 2002 to the regional service HZMO in Zagreb. The complainant was eventually informed about the state of things and the entire content of the memo as well. Nonetheless, the ending of the memo should be quoted: "... Based on the request of the complainant that was addressed to the Ombudsman, and keeping in mind the decision-rulings of administrative courts (???), as well as of regular courts on the matter of damage reimbursement, the conditions for the payment of the difference were met, and all the more since there are no basis in the existing and effective regulations for the retaining of the payment" !!! On 15 January 2003 the Ombudsman received a repeated complaint on the same legal matter, because, as was stated by the complainant, until the day of the repeated complaint and after the information from the Central Service that conditions for the payment were met ("all the more since there are no basis in the existing and effective regulations for the retaining of the payment") the authorized body took no action in order to pay the debt. It is obvious that the owed and promised payment has not been made, and memos on 15 January, 24 February, 3 April and 10 April of 2003 unsuccessfully requested an immediate reply about the reasons for no response and not submitting a reasonable statement to the inquiries of the Ombudsman and the competent Ministry on this specific legal matter. The HZMO Regional service in Zagreb sent a reply by memo on 18 April 2003 to the Ombudsman, file number: 94457, personal number: 03368212105 and stated: "In response to your memo from 10 April 2003 we hereby take the liberty of informing you that on 18 April 2003 the M.B. case has been sent to the Department for the calculation of pensions of this regional service in order to pay out the unpaid pension amounts for the periods of 1 January 1997 to 31 December 1997."

**Outcome of the case:** Whether or not the complainant received payment of the difference in pension we do not know.

**Note:** A violation of the complainant's right to expedient processing of administrative procedures was established; in fact the procedure was officially began by the HZMO back in 1998.

## **2.2. Violations of rights out of health insurance and health care organization**

24 persons complained about violations of rights in this field, which is a relatively low number. In essence, the complaints were in relation to: (a) hospital directors who were relieved of their duty, (b) difficulties in the arrangements of ensured persons' status and bearing of

hospital treatment expenses by uninsured persons, and (c) malpractice, or inhumane conduct of a physician. Only one complaint was received regarding arbitrary decisions on opening private pharmacies. Below is an example that illustrates the kinds of complaints in this field:

**(1.) Case description: (P.P.–525/03):** On 30 April 2003 the Ombudsman received an anonymous complaint by an employee of Clinical hospital O. regarding the appointment of D.H. as an acting Director, as well as his arbitrary and without legal basis relieving of duty of several clinic heads in that institution. The complaint also concerned the violation of interpersonal relations as a consequence of inappropriate behavior.

The Ombudsman noted that for the past several years employees of Clinical hospital O. have been addressing him quite frequently, and the protection of rights they requested was mainly concerning unlawfulness in decision making and decisions of the Management Board and the Clinical hospital. Due to such conduct bad interpersonal relations have obviously culminated at the hospital in question, and because of this it has been assessed that there is a danger that this situation could reflect itself on the quality and scope of health services.

**Measures taken:** Because of previous complaints, the Expert Commission of the Ministry of Health had already conducted a health inspection at the health institute in question on 15 November 2001, and sent a copy of the report to the Deputy Prime Minister of Croatia and to the Ombudsman. Furthermore, concerning the complaint of A.V., PhD on the work of the Governing Council regarding his being relieved of duty and the simultaneous appointment of D.H., PhD as the acting Director in case file number: P.P–23/02, the Ombudsman requested an investigation by the Ministry of Health. That is why the Ombudsman forwarded the anonymous complaint by an employee of Clinical hospital O. to the Ministry of Health on 14 May 2003 for reasons of authorized investigation, along with a recommendation for a repeated inspection procedure of the work of the Governing Council in the mentioned health institution and the clarification of the causes and reasons of the unusually high turnover of directors thereof. The Ombudsman recommended to the Ministry of Health that this inspection be conducted »as a priority in order to prevent possible illegal actions in procedures, harassment or violations of individual and collective rights of employees, and to inform the Ombudsman within 30 days about actions taken and established facts by means of a report.« On 18 June 2003 the Ombudsman received a memo from the Ministry of Health dated 06 June 2003 in which the Ministry regarding the recommendation of the Ombudsman to conduct an inspection stated the following: »Concerning the conducting of an inspection in order to prevent possible illegal actions in procedures, harassment or violations of individual and collective rights of employees, and regarding the before mentioned anonymous complaint by an employee of Clinical hospital O., we believe that the authorized body of state administration that has jurisdiction on work inspections is authorized to conduct the investigation.« However, since the problem indicated by the complaint of the hospital employee regards exactly the appointment of persons with special authority and responsibilities that are according to the Statute of the Clinical hospital O. under the authority of the Governing Council and the Director, in relation to which the work inspection has no authority – since it is pursuant to Art. 20 paragraph 1 and 2 of the Law on the State Inspectorate (Official Gazette 76/99) only authorized to conduct inspections of the application of laws and other regulations which regulate

relations between employers and employees (so, labor relations) and on the job safety, the Ombudsman concluded that in this specific case the Ministry of Health refuses to conduct the recommended inspection. That is why on 30 June 2003 he sent a new recommendation regarding the reply of the Ministry of Health from 06 June 2003 to the Minister of Health personally, stating the following: »Esteemed Sir, concerning your memo from 06 June 2003 in which you directed us to the labor inspection as a reply to our recommendation for the inspection of work of the Clinical hospital O. Governing Council, we claim that –based on the enclosed complaint and our earlier information– the basic problem that is being pointed out is exactly the appointment and relieving of duty of persons with special authorities and responsibilities, which is not under the jurisdiction of the labor inspection pursuant to regulations of the Law on State Inspectorate. Since according to the Statute of the hospital in question the appointment and relieving of duties of employees at positions with special authorities and responsibilities is conducted by the Director with the consent of the Governing Council –the work of which criticism on legality was addressed to– we reinstate our recommendation to conduct an inspection due to previously listed reasons that have been explained. During this inspection it is necessary to pay attention and take into account the complaints regarding the legality of appointment, professional qualifications and scientific titles of persons who are appointed to the mentioned positions with special responsibilities (Director or acting Director, Deputy Director, Clinic Heads, Department Heads and alike). The Ombudsman is to be informed on the actions taken and facts established within 30 days.« The Ombudsman sent a copy of this memo with enclosures to the Government of Croatia, attn. Deputy Minister Goran Granić MS.

**Outcome of the case:** The Ministry of Health and the Government of Croatia have not replied to the repeated recommendation of the Ombudsman to conduct an inspection of work of the Clinical hospital O. Governing Council, which imposes the conclusion that this body of state administration does not recognize the opinion of the Ombudsman, and that it persistently refuses the recommended inspection in order to establish the validity of the anonymous complaint. Therefore the Ombudsman in case file P. P.-23/02. regarding the not conducted recommended inspection by the Ministry of Health over the work of the mentioned Clinical hospital Governing Council (which was also in the noted case indicated as necessary) informed the President of the Croatian Government as well as the Committee for Labor, Social Policy and Health of the Croatian Parliament by means of a memo on 29 August 2003 as follows: »Esteemed Prime-Minister, concerning a complaint by A.V. PhD on the procedure for his being relieved from duty of the Clinical hospital O. by the Governing Council of the same institution, the Ombudsman has conducted an investigation procedure of particular violations of constitutional and legal rights of the complainant by investigating possible irregularities in the activities of the Governing Council within the procedure. Following this investigation procedure, the Ombudsman stated his opinion concerning the violation of constitutional and legal rights of the complainant and forwarded it in form of a warning on 26 June 2003 to the Ministry of Health, as well as informed the Government of Croatia about it by sending them a copy of the mentioned warning. In brief, within the mentioned warning the Ombudsman stated his opinion and explained it supported by legislature, that there was a violation of A.V. PhD. rights through the conduct of the Governing Council within the procedure of his being relieved from duty, because of which he indicated a need for inspection of the work of the Governing Council of that health institution. In any case, instead of accepting the recommendation to conduct an inspection, the Ministry of Health

responded as a reply to the warning by distorting the essence of the problem and obviously not accepting the recommendation for conducting the inspection. Therefore we reinstate the violations that had been committed within the procedure for relieving of duty as follows: (a) the Director was not informed right away about the offence he is specifically being charged with and about the basis for the accusation; (b) for the unharmonized final text of the Statute with the original the Director can not be responsible *ex lege*, because that is excluded by regulation of Art. 61 paragraph 2 of the Law of Health Care, pursuant to which the Director was excluded from reaching decisions prescribed in Art. 50 of the Law on Health Care (he has no powers regarding the compilation of Statutes and other decisions, because this is under the exclusive jurisdiction of the Governing Council along with the consent of the owner); (c) his right to a defense was violated (he was not given the opportunity to make a statement concerning the facts and evidence that he is being charged by and to make a statement regarding evidence that is pertinent to his case – because, if the complainant's attorney was refused on the demand to receive an 8 day period for a statement and deemed «not necessary», then the Governing Council had to offer the Director a possibility to make a statement; either shortly or right away, but definitely before reaching its decision. The Ombudsman wishes to point out this case personally, so that you can implement your authority and order the Ministry of Health to conduct the recommended inspection of the work of the Governing Council of this health institute, also due to the fact that it was indicated to the Ombudsman on more than one occasion that it performs its duties in an unsatisfactory manner, which resulted in a troubled state of interpersonal relations in this institute, on which the Ombudsman shall submit a special report to the Croatian Parliament if the recommended inspection is not conducted after this letter of information.«

**Note:** Not even after this letter of information to the Croatian Government and the Committee for Labor, Social Policy and Health of the Croatian Parliament about the actions of the Ministry of Health regarding the warning by the Ombudsman of right violations, none of the above mentioned addressed the Ombudsman in connection with this problem. A violation of the complainant's rights has been established.

### **2.3. Violations of rights out of social welfare**

86 complaints were received on violations of rights from the field of social welfare during the year of 2003. These complaints were somewhat more numerous than was the case in previous years, but they accounted for a lower share in this group of right violations that the citizens complained on (15,0%). As was in previous years, the cooperation with social welfare centers was exemplary. A large number of the complaints in this field that the Ombudsman reviewed, formally and legally, are not under the mandate of the Ombudsman. Citizens who find themselves in difficult social circumstances because they lose their jobs, they are unemployed, ill, unable to settle their housing needs or have a lack of means to cover living expenses address the Ombudsman for help. Complaints like that most often do not contain necessary data on the basis of which the Ombudsman could offer legal advice to the complainants, and legal and staff abilities of conducting investigations are

very limited. Therefore the Ombudsman in these cases of complaints recommended to the authorized Social Welfare Centers to process the cases and direct the complainants to the procedure for the realization of rights from the system of social welfare that they meet the legal requirements for. With a very good cooperation with Social Welfare Centers and as a result of that cooperation in a significant number of cases we helped the complainants to realize appropriate rights within the social welfare system, from financial help to accommodation in social welfare homes.

The second group of complaints in this field mostly relates to not reaching first-instance rulings or appeal rulings within the legally prescribed period of time and to actions of employees of Social Welfare Centers. According to investigation procedure results, delays mostly occur in complex and delicate cases that are preceded by numerous assessments.

Complaints regarding the actions of Social Welfare Center employees are most frequently those on procedures for decision making about which parent a child is to live with and the determination of visitation rights by the other parent. In this it is important to note that these complaints account for a fourth of the complaints due to violations of rights from social welfare. Following the passing of a new Family Law (Official Gazette number 116/03) in July 2003, the procedure for the issue of which parent is to get custody of a child, family care and the measures for the protection of children's rights and well being are under the jurisdiction of courts. These regulations should begin to be implemented, as is the state of things now, as of 22 January 2004. Since the Ombudsman does not have the power to review matters that are under the jurisdiction of courts, in 2004 the complaints in this field will not be under the mandate of the Ombudsman. A certain number of complaints by content indicate that the complainants are mentally ill persons. In such cases the Ombudsman sought a health-social case history of the complainant from the Social Welfare Center in order to ascertain whether or not the person in question is mentally ill and if so, are the person's rights adequately protected. The following examples illustrate the diversity of complaints in this field:

**(1.) Case description (P.P.–22/03):** Mr. I.K. addressed the Ombudsman with a complaint regarding the actions of the Social Welfare Center. From his complaint and the enclosed documentation it is clear that pursuant to Municipal Court Ruling dated 25 March 2001 his marriage with D.K. had been annulled. The same Ruling assigned their son M., born in 1992, to the custody of his father, while the daughter T., born in 1995 and son K., born in 1996, were assigned to the custody of the mother. The part

of the Ruling that determined mutual visitation rights of children and parents was dismissed by the County Court Ruling on 11 July 2002, and returned to the first-instance court for repeated adjudication. The Municipal Court reached a new decision by Ruling on 17 December 2002 regarding contact and visitation rights of children among themselves and of children and their mother and father, which Mr. K. appealed. This appeal, in our judgment, indicates objective difficulties regarding the execution of established visits. During the hearing, the Social Welfare Center organized temporarily by its decision from 15 April 2002 the manner of visitation rights and contacts between parents and children. Despite the decision, these contacts caused new disagreements and conflicts, which had further negative reflections upon the children. In June 2002 the father violated a certain manner of visitations with the children and refused to return the children to the mother after visitations. He pointed out that he kept the children because the Center had not responded to his information that the mother leaves the children alone, locked in the apartment, i.e. because a psychological assessment of their minor daughter K. had not been conducted after that. Mrs. D.K. requested the execution of the court order for the return of the children that were assigned to her custody. After the first hearing bore no success, she broke into the house of her former husband by jumping over the street fence and crashing through the glass front door with a chair, armed with tear gas and a gas pistol. In the house she hurt her mother-in-law and attempted to get to the children who were locked in the bathroom. In November 2002 D.K. did not respect the meeting of the father with the children in Zagreb, although she had arranged it by mediation of the Center. In the explanation of the quoted Ruling of the Municipal Court it is stated that the Social Welfare Center in its report dated 13 November 2002 established that these events additionally complicated an already fragile possibility of communication between the parties, while they had disturbing effects on the children, creating confusing feelings towards their parents.

**Measures taken:** The Ombudsman decided to conduct an investigation and requested a statement from the Social Welfare Center regarding the claims of the complaint by Mr. I.K. After receiving the requested report the Ombudsman did not establish a violation of the complainant's rights. He informed the complainant about that by means of the following memo: "...upon our request we obtained the report from the Social Welfare Center regarding your case. The Ombudsman did not establish a violation of your rights. The report lists a chronological order of actions of the Center from the mediation procedure, which preceded the divorce procedure, to the effective court order concerning visitation rights between children and parents and children. It also states that you expressed your dissatisfaction with this valid ruling and announced an appeal for a new decision regarding contacts. If you did submit a new request, the decision regarding contacts would be reached by the Social Welfare Center in O., the employees of which you submitted the last complaint against to the Ministry of Labor and Social Welfare on 23 April and sent a copy to our office. We believe that the only correct decision about the entrusting of children and about mutual contacts that would satisfy you, and which would primarily be reached for the well being and in the interest of your children, can be reached by reasonable agreement with your former spouse."

**Outcome of the case:** Unknown.

**Note:** Unfounded complaint.

**(2.) Case description (P.P.–1764/03):** Mrs. I.V. from Z. Addressed the Ombudsman. She claims that a procedure for the divorce of a marriage she had with Ž.V. and the

procedure for the division of the assets acquired during the marriage are pending at the Municipal Court in Z. She has four minor children with her husband: V., D., E. and G. It is clear from the Social Welfare Center decision dated 29 April 2002 that the complainant enclosed with the complaint that V. and D. were assigned to the custody of the father, and E. and G. to the mother. Mrs. V. complained on the actions of the Social Welfare Center claiming it does not protect her interests and the interests of the children sufficiently. She pointed out that the Center is not taking the necessary measures in order to prevent her former husband from daily harassment of the complainant and distractions of the attempts to create normal living conditions for their children.

**Measures taken:** The Ombudsman conducted the investigation procedure. He sent a memo to the Social Welfare Center in which he among other things stated the following: "The complainant enclosed with the complaint the results and opinion of a psychiatric-psychological-special education assessment of the V. family, conducted in September 2003 pursuant to the Municipal Court in Z. Ruling, with the goal of evaluating the ability of I. And Ž.V., concerning the decision on who the children are to live with. After the assessment it was concluded that the behavior of both parents indicates they have not taken adequate care of their children, they manipulated them depending on their needs. Furthermore, it states that the children are displaying signs of emotional abuse, that instructions and interventions of the Center had no results so far, and that it is in the interest of the children to separate them from their parents and admit them to a regular home for children. Based on Article 11 of the Law on the Ombudsman (Official Gazette number 60/92) submit your statement regarding the claims of Mrs. V. and information on actions taken with the goal of children's protection after the conducted assessment from September 2003 within 30 days at the latest." Within the legal deadline the Social Welfare Center informed the Ombudsman that pursuant to the results and opinion of the medical assessment, which proposes the separation of the children from their family and accommodation within a family type institution, on 17 October 2003 a request was sent to «SOS Children's Village» in Ladimirevci for the admission of the children to their institution. «SOS Children's Village» reached the decision to admit the V. children.

**Outcome of the case:** Concluded.

**Note:** Complaint unfounded.

**(3.) Case description (P.P.-1085/03):** Mrs. A.J. from J. addressed the Ombudsman for help. She claims that after being persuaded by her son she sold her tenant's right for 30,000 DEM. She gave the money to her son, and moved in with her son and daughter-in-law who were supposed to, according to their agreement, take care of her. After a short time the relations between them deteriorated. Mrs. J. initiated a court procedure for the annulment of the contract for the sale of her apartment. Since she lost the lawsuit, she is obliged to bear the court expenses. A court ordered seizure was established on her pension in the amount of 451.22 HRK. From this pension she now only has access to 1,058.69 HRK for living expenses. She claims that her son and daughter-in-law completely isolated her, no one may visit her, they threaten her, so she lives in constant fear. She is somewhat calm only when they are at work, that is until 2:30 p.m.

**Measures taken:** Although the described case is not within his mandate, the Ombudsman decided to take certain measures in accordance with his authority. He sent a recommendation to the authorized Social Welfare Center that it process the case of Mrs. J. and to find a possible accommodation for her in a retirement home.

The Center informed the Ombudsman that it performed a field investigation and established that the relations between the complainant and her son are disturbed beyond any chance for improvement and that they do not even communicate. The complainant accepted the offered accommodation in a Retirement home. Since her pension because of the seizure does not cover the expenses of accommodation, her son is to pay the difference based on the regulations of the Law on family regarding support.

**Outcome of the case:** Positive.

**Note:** A violation of rights was not established, yet the complainant was endangered due to old age and ignorance.

**(4.) Case description (P.P.-1009/03):** Mrs. J. M. from P. addressed the Ombudsman. In her complaint she stated that she is an unemployed single mother of two minor sons aged 15 and 10. The family gets by with the help of support in the amount of 1,280.00 HRK that they receive from the Social Welfare Center P. This amount is insufficient for all their needs, so she addressed the Ombudsman for help.

**Measures taken:** After reviewing the complaint, the Ombudsman addressed the municipal authorities of the City of P., that is, the Office for Labor and Social Welfare with a memo, which along with the case description stated the following: "Pursuant to Article 7 of the Law on the Ombudsman (Official Gazette number 60/92), the Ombudsman hereby recommends that you examine the case of Mrs. M. and establish whether she meets the conditions for the realization of rights to help in covering living expenses (rent, communal fees, electricity, gas, heating, water and alike), and that you in accordance with the established facts instruct her regarding the procedure for the realization of appropriate rights. You are to inform the Ombudsman about the measures taken concerning this recommendation within 30 days." The Office for Labor and Social Welfare informed the Ombudsman that the complainant meets all requirements for the realization of rights for help in covering living expenses. Following the provided legal instructions, she submitted a request that shall be positively concluded.

**Outcome of the case:** Positive.

**Note:** The rights of the complainant were endangered due to her ignorance.

## **2.4. Complaints regarding violations of rights out of labor relations of state and public officials**

In 2003 the number of complaints regarding violations of labor rights of state officials was lower (77) compared to years 2001 and 2002. In August 2001 the Government of Croatia adopted a Decree regarding the internal organization of ministries, state administrative organizations and Government Offices (Official Gazette number 70/01), which decreased the number of positions or the number of officials in particular positions. In March 2002 a Decree on Internal Organization of Offices of State Administration in Counties was adopted (Official Gazette number 21/02), by means of which a rationalization of state administration in counties was conducted. The consequence of these Decrees was a large number of state officials who lost their employment in the state

administration, which was the most frequent reason for addressing the Ombudsman.

During 2003 the complaints in this field were very diverse, which is clear from the described cases. They concerned violations of regulations of Collective Contracts for state officials and employees; violations committed within employment competition procedures, during job assignment, transfers, and establishment of the obligation to take the state expert examination. When reviewing the received complaints, the occurrence of an all the more present possible harassment of state officials and employees is notable. The complainants were, from a formal and legal standpoint, by means of legal decisions transferred within a short period of time several times from one work post to another. It is not insignificant that the work posts they were being transferred to were evaluated by lower coefficients of complexity, i.e. the complainants would receive less pay on those work posts.

The Ombudsman received a significant number of complaints regarding violations of rights out of labor relations, which are not within his mandate. When those complaints were clear and complete, the Ombudsman provided the complainants with legal advice and instructions for the further procedure in order to protect their rights.

**(1.) Case description (P.P.-769/03):** Mrs. Z. V. addressed the Ombudsman concerning the violation of rights out of labor relations. The complainant is an economic technician, has secondary school qualifications, and has 21 years of experience in the profession of which 8 years and 10 months in bodies of the P. Municipality. Municipal Council Decision dated 09 May 2003 placed her at the disposal of the Municipal Council of the P. Municipality as an unassigned official, which she feels violated her rights.

**Measures taken:** After reviewing the complaint and the enclosed documentation, the Ombudsman sent a warning on 02 July 2003 to the President of the P. Municipality Municipal Council that among other things stated as follows: "By Decision of the Municipal Council President class: UP/I-05/03-01/14, number: 2198/26-03-01-1 dated 09 May 2003 the complainant was placed at the disposal of the P. Municipality Municipal Council as an unassigned official of the Unified Administrative Department of the P. Municipality. The typical explanation that does not include the reasons for the decision on Mrs. V. states that the Municipal Council of the P. Municipality adopted a Regulation Book regarding the internal order of the Unified Administrative Department of the P. Municipality by which particular work posts were cancelled. Since there are no open job positions at the Unified Administrative Department, there is no possibility of assignment for the complainant within her professional qualifications, so she had been placed at disposal. The complainant stated that a new assignment of state officials and employees had been conducted at the Unified Administrative Department of the P. Municipality pursuant to the Regulation Book on Internal Order (Official Gazette of Zadar County number 4/03). The Regulation Book prescribes job positions for which the requirement is secondary

school qualifications with a major in economics. An official with secondary school of medicine qualifications was illegally assigned to one of these positions, that of an administrative secretary. Article 62 paragraph 1 of the Law on State Officials and Employees (Official Gazette number 27/01) prescribes that prior to assignment on job posts the officials must meet general requirements prescribed by this Law. Article 75, paragraph 4 of the same Law prescribes that the professional requirement for the assignment to the work post of an administrative secretary is secondary school qualification of an administrative profession or some other appropriate profession and the passing of the state expert exam. In lieu of the above listed, the Ombudsman pursuant to Art. 7, paragraph 1 of the Law on the Ombudsman (Official Gazette number 60/92) hereby warns of a violation of the Law on State Officials and Employees committed against the complainant. You are to inform the Ombudsman concerning the measures taken regarding this warning within 30 days, and also to submit a copy of the decision which decided on the complaint of the complainant, so that we may assess the need for further actions». The Municipal Council of the P. Municipality did not take measures following the warning of the Ombudsman. In its statement it claims that the decision regarding the complaint of the complainant was not reached since her complaint was not even reviewed. The Ombudsman informed the complainant about the contents of their statement and offered her the following legal advice: "From the statement of the Municipal Council of the P. Municipality it is clear that no measures were taken pursuant to the Ombudsman warning. Unfortunately, the Ombudsman does not have the power to sanction due to disregard of his warnings, he can only inform the Croatian Parliament on the matter based on Art. 7, paragraph 4 of the Law on the Ombudsman (Official Gazette number 60/92). Due to this it is our recommendation that you proceed pursuant to Art. 23, paragraph 3 of the Law on State Officials and Employees which states: "In case the complaint has not been decided on within the prescribed period of time as is stated in paragraph 1 of this Article (15 days), and the decision is not reached even after the expiration of the additional deadline of seven days during which a statement regarding the complaint is requested in writing, one can initiate an administrative dispute just like in the case that the complaint had been declined." This means that you should send a written memo to the President of the Municipal Council of the P. Municipality by which you would request that your complaint from 22 May 2003 be decided on within seven days. If the complaint has not been decided on within the amount of time that you set, initiate an administrative dispute against the Decision of the Municipal Council of the P. Municipality dated 09 May 2003 before the Administrative Court of Croatia the same as you would if your complaint had been declined."

**Outcome of the case:** Unknown. The complainant did not contact us again, so we do not possess information about whether or not the administrative dispute was initiated.

**Note:** The rights of the complainant were endangered.

**(2.) Case description (P.P.-2292/03):** Mr. Z. C. from Z. Complained to the Ombudsman. In his complaint he stated that he has University qualifications, that he is a police official of the Ministry of Internal Affairs and has over 23 years of effective work experience in the police. He addressed the Ombudsman because he believes that the Ministry of Internal Affairs violated his rights in such a way that it unjustly and illegally transferred him from one work post to another five times in the period of time from 14 September 2001 to 21 February 2003.

**Measures taken:** After reviewing the complaint and the enclosed documentation, the Ombudsman sent a recommendation to the Ministry of Internal Affairs which among

other things stated as follows: "Police officer Z. C. Was transferred five times in the period from September 2001 to February 2003 as follows: -by Decision dated 14 September 2001 he was transferred from the work post of a Chief of the Internal Security department to the work post of the Assistant Chief of the Internal Security Department; -by Decision dated 20 November 2001 he was transferred from the work post of the Assistant Chief of the Internal Security Department to the work post of Assistant Chief for the Organization and Structure of Activities; -by Decision dated 21 January 2002 he was transferred from the work post of Assistant Chief for the Organization and Structure of Activities to the work post of Chief of the VIII Police Station in the Zagreb Police Administration; -by Decision dated 30 October 2002 he was transferred from the work post of the Chief of the Police Station to the work post of a police official for supervision and planning at the Zagreb Police Administration, the Security Unit; -by Decision dated 21 February 2003 he was transferred from the work post of a police official for supervision and planning to the work post of a police official for the supervision of organized crime at the Zagreb Police Administration, the Organized Crime Department. We emphasize that the complainant initiated administrative disputes against the quoted decisions, and they are being processed. The administrative dispute against Decision dated 21 February 2003 is being processed under number Us-567/03. Since the above-mentioned information indicates a possible case of harassment, the Ombudsman pursuant to Art. 7. paragraph 1 of the Law on the Ombudsman (Official Gazette number 60/92) recommends that you investigate the complaint of Mr. C. and in accordance to the established facts take necessary measures. Submit the statement regarding the case and the report concerning measures taken to the Ombudsman within 30 days.»

**Outcome of the case:** Unsolved. The Ombudsman has not received information regarding the measures taken in lieu of his recommendation.

**Note:** frequent transfers violated the rights of the complainant, and it is possible that the transfers are a result of harassment.

**(3.) Case description (P.P.-216/03):** Mr. I. L. from V. addressed the Ombudsman. He stated that he was assigned to the position of an inspector of the II. type at the Ministry of Finance, Tax Administration, Regional Office V., Department for Supervision, Supervision Sector I. In his complaint he stated that he is 56 years old and has nearly 35 years of work experience –entirely at the Ministry of Finance. He addressed the Ombudsman among others in order to settle his work status and realize appropriate rights before going into retirement.

**Measures taken:** The Ombudsman decided to investigate the complaint of Mr. L. and with that goal he requested a statement from the Ministry of Finance by memo on 06 March 2003 which among other things stated the following: "From the complaint and the enclosed documentation it is clear that the complainant participated in five administrative disputes against the Decisions of your Ministry from 1995 to 08 April 2003, Decisions by which it had been decided on his assignment and other rights and duties within state services. By Administrative Court of Croatia Ruling number: Us-7589/2001-4 dated 5 December 2001 the claim of Mr. L. was accepted and the Decision of the Ministry of Finance regarding the adjustment of profession and assignment from 19 May 1995 was annulled. The complainant stated that the Ministry has not reached a new decision yet, one that would consider the court's legal interpretation and comments regarding the procedure. He also stated that the Ministry has not acted in accordance with the Ruling of the Administrative Court number: Us-4618/1998-10 dated 13 June 2002 by which his complaint was accepted and it was

ordered to the Ministry to within 30 days from the Ruling decide upon the request of the complainant regarding the increase of pay coefficient from 02 February 1998. The complainant initiated an administrative dispute on 08 April 2002 also against the Decision of the Ministry from 12 February 2002 by which his complaint against the decision on assignment was declined. The complainant also stated that until today his request for assignment to the open position of the inspector of I. type at the Tax Administration, Regional Office V. from 17 July 2002 has not been concluded. The Ministry also did not review the complaint by a union official regarding a decision from 27 April 2002 by which two working days of paid leave were approved for Mr. L. because of his participation in the VIII Union of State and Local Officials and Employees of Croatia Sports Meet. Pursuant to Art. 11, paragraph 3 of the Law on the Ombudsman (Official Gazette number 60/92) you are to submit a statement regarding the complaints of Mr. L. within 30 days at the latest, so that we may, pursuant to our authority, decide on the need for further action.» Even after rush notes on 16 June, 28 August and 10 October 2003 the Ministry of Finance did not submit the requested statement to the Ombudsman. The Ombudsman informed the complainant of this by the following memo: "In lieu of your complaint, the Ombudsman requested a statement from the Ministry of Finance on 06 March 2003. Since the Ministry did not within the prescribed period of time act in accordance to the request of the Ombudsman, he attempted to hurry along the statement of the Ministry by memos on 16 June, 28 August and 10 October 2003. He has informed the Government of Croatia on this. Despite all this, the Ministry of Finance has not until this day made a statement regarding the claims of your complaint. Unfortunately, the Ombudsman has no legal means at his disposal in order to sanction such conduct of state administration bodies. Pursuant to Art. 7, paragraph 4 of the Law on the Ombudsman (Official Gazette number 60/92) the Ombudsman can only inform the Croatian Parliament that the Ministry of Finance did not act in accordance to his request within the prescribed period of time."

**Outcome of the case:** Unsolved

**Note:** Violation of complainant's rights has been established.

**(4.) Case description (P.P.-184/03):** Mr. T. G. from Z. addressed the Ombudsman. From the complaint and the enclosed documentation it was clear that the Kindergartens of the City of Z. issued a job position competition for the selection of 86 trainee-kindergarten teachers in total, with two-year post-secondary school qualifications. They would in turn be offered temporary Employment Contracts for the period of 12 months in order to perform the regulated trainee work experience. The competition was published on 18 February 2003 in "Večernji list". Candidates were expected to fulfill the requirements from Art. 24 and 25 of the Law on Pedagogical Education and Training (Official Gazette number 10/97) and of point C1 of the Employment Stimulation Program (Official Gazette 21/02). The complainant graduated from the Academy for Teachers of the University of Z. on 04 July 2002 and thus obtained a University education and the profession of a Pre-school teacher. Upon finishing his studies, he immediately registered himself at the Employment Bureau. In December 2002 he was employed temporarily at the G. V. Kindergarten, as a substitute for an employee. His employment Contract was terminated after two months, so the complainant once again registered himself at the Employment Bureau. Concerning the above mentioned competition for trainees-kindergarten teachers, he was informed at the Bureau that he would not be placed on the list of candidates since it would not be his first employment, i.e. since he has work experience.

**Measures taken:** Following the review of the complaint the Ombudsman sent a proposal to the Employment Bureau which after the case description stated the following: "By consulting the competition in question we established that candidates without work experience are being sought. Point C1 of the Employment Stimulation Program that is being referred to regarding the competition requirements, it is prescribed that work experience up to 6 months in the profession and up to 12 months outside the profession is not considered as previous work experience. The complainant fulfills also the requirement concerning the time spent in the records of the Bureau (5 months), so he should have been placed in the list of candidates. Since the actions of the Bureau could cause the violation of the rights of the complainant from Art. 54, paragraph 2 of the Constitution of Croatia, the Ombudsman pursuant to Art. 7, paragraph 1 of the Law on the Ombudsman (Official Gazette number 60/92) proposes that you urgently investigate the claims of Mr. G. in order to prevent the violation of his rights. You are to inform the Ombudsman about the measures taken regarding this proposal right away, or within 30 days at the latest." The Croatian Employment Bureau, Regional Service in Z., submitted to the Ombudsman a reply to the proposal from 25 February 2003 which stated that the complainant registered himself at the Croatian Employment Bureau on the day of the publishing of the City of Z. Kindergartens competition, that is, on 18 February 2003. 30 days have passed since his application, which fulfills the formal conditions for the application of the C1 Program, i.e. for the co-financing of his employment according to the Government's Program. The Ombudsman informed the complainant on this by means of a memo in which he instructed him as follows: "Since the procedure for employment at the Kindergartens has not yet been finalized, we recommend that you submit a copy of the reply from the Croatian Employment Bureau dated 17 March 2003 (best in person) to the kindergarten where you applied for the position as proof of fulfilling the requirements regarding the time spent in the records of unemployed persons, and with that also the requirements for the application of the co-financing Program for your employment."

**Outcome of the case:** Positive. The Ombudsman prevented a violation of the complainant's right by a timely intervention.

**Note:** The complainant's right was endangered.

**(5.) Case description (P.P.-510/03):** The Union of State and Local Officials and Employees of Croatia addressed the Ombudsman. In their complaint they stated that the Ministry of Defense is not respecting the regulation in Art. 45, sub-paragraph 1 of the Collective Contract for state officials and employees (Official Gazette number 3/03), i.e. that they are not paying their officials and employees the financial help in the amount of one calculated basic wage in case of sick leave longer than 90 days.

**Measures taken:** The Ombudsman requested a statement from the Ministry of Defense by means of a memo which, after the description of the case, stated the following: "Along with the complaint regarding the violation of regulation of Art. 45, sub-paragraph 1 of the Collective Contract for State Officials and Employees, enclosed also is the memo from the Human Resources Department, Personnel Section, dated 29 April 2002 in which it is stated that the quoted regulation from the Collective Contract is not being followed because the means for that purpose have not been secured by the financial plan of the Ministry of Defense. It continues to state that all whose rights have been violated by this can file a lawsuit at the authorized court, yet the Ministry shall in such cases request a statement from the supervision services of the Croatian Institute for Health Insurance regarding the justification of long term

sick leave for each particular case. While withholding any comments about the quoted memo, we wish to turn your attention to the fact that state officials and employees who are being directed to courts in order to realize their rights from Art. 45, subparagraph 1 of the Collective Contract will have to be paid by the Ministry, along with the prescribed amount of the help, also court expenses that are not insignificant. Since your Department takes preventive legal measures (before initiations of disputes) with the goal of protecting the assets of Croatia that are at the disposal of the Ministry pursuant to Art. 32 of the Regulation on the Internal Organization of the Ministry of Defense (Official Gazette number 70/01), the Ombudsman pursuant to Art. 32, paragraph 1 of the Law on the Ombudsman (Official Gazette number 60/92) proposes that you investigate the case and take measures that are within your authority. You are to inform the Ombudsman regarding the measures taken on this proposal within 30 days at the latest so that he can decide on further actions." Following the statement of the Ministry of Defense the Ombudsman established the well foundedness of the complaint. The memo listed the circumstances due to which violations of rights occurred, and a will to resolve the court disputes initiated in order to realize violated rights be settled out of court was expressed. The Ombudsman informed the complainant of that by means of the following memo: "In lieu of the proposal by the Ombudsman, the Ministry of Defense of Croatia made a statement regarding your complaint. In it they claim that in 2002 the means for the payment of financial help in the amount of one calculated base wage for a sick leave longer than 90 days were not secured within the budget, and thus the Ministry of Defense was not able to pay out this kind of financial assistance. It is pointed out that the disputes initiated for the realization of this financial assistance shall be attempted to be settled out of court. Furthermore they stated that in 2003 the financial help in the amount of one calculated base wage for a sick leave longer than 90 days is being paid out regularly, since budget means had been secured for this purpose."

**Outcome of the case:** Positive.

**Note:** The right of the complainants was endangered.

### 3. Property and housing rights

567 persons complained to the Ombudsman regarding the violation or endangerment of property and housing rights in 2003. In the total number of complaints that are under the mandate of the Ombudsman, this group accounted for a share of **29.05%**, so these complaints were in second place by quantity, behind complaints regarding violations and endangerment of rights in the field of pension-disability and health insurance as well as social welfare.

Number of cases by years										
Field	1999		2000		2001		2002		2003	
	No.	%								
<b>Property</b>	203	45.7	424	69.8	329	66.2	151	46.3	294	51.9

rights										
<b>Housing rights</b>	188	42.3	131	21.6	130	26.2	120	36.8	190	33.5
<b>Expropriation, denationalization</b>	34	7.7	39	6.4	19	3.8	51	15.7	67	11.8
<b>Property-related insecurity</b>	19	4.3	13	2.1	19	3.8	4	1.2	16	2.8

### 3.1. Ownership rights and return of property

The consequences of the Law on Temporary Takeover and Management of Certain Assets that ceased to be valid on 05 August 1998 still remain present today, especially in areas of Croatia that are under special state concern. The right of the property owner that is to be returned to their possession, established by an administrative decision – decision regarding the revocation of rights for temporary utilization, for the majority of owners now means only the realization of a reimbursement (in the amount of 7 HRK/m<sup>2</sup>), for the time that he is not able to realize possession, i.e. to use his/her own house.

The basic reason for the violation and limitation of owners' rights still lies (in 2003) in the inability of state authorities (judicial and executive branch) to enforce evictions (after revocation of rights) of illegal users. An objective reason for this is the inability to provide different housing options as an alternative means of accommodation. However, the criteria for determining which temporary users have the right to an alternative accommodation are still not being applied consistently. The main difficulties are encountered when the owner is to be returned into possession of his/her property. The procedures are exhausting in cases of illegal moving in, when the illegal user does not wish to move out, and has no right to housing. There are still cases of inappropriate behavior by temporary users when they have to move out, however in a significantly lower number than during previous years. The reason for the "different" behavior of persons who must move out of other people's assets lies in the fact that the users are aware of the fact that they can not remain in someone else's property, and at the moment of moving out the mostly have their own housing needs settled and another apartment/house has been secured for them.

However, a different state of things has been recorded in the area of Gračac, where the property is being destroyed when persons are moving out in order to return the property to the rightful owner. The police in Gračac reacted urgently to each particular case and filed charges against the perpetrators. Be that as it may, the perpetrators are being punished by very low, almost symbolic fines in court rulings.

In regions of special concern for the state the housing problem is directed towards the securing of construction land for the assignment to settlers in order to build houses. Thus, a construction of 120 houses is planned at the Golubić settlement by Knin. For now 60 families already have the consent for construction of houses in the region of this settlement. APN has bought 250 houses in this region (of Knin), yet around 800 families still need to be housed. However, it is obvious that the majority of apartments (200-240) are being held by citizens whose houses have been reconstructed. This is illegal usage of apartments over which the city of Knin has no right of management. The beneficiaries are mostly family members, i.e. adult children of reconstruction holders who are becoming independent and are establishing families of their own. The housing problems of the city of Knin can only be solved by putting into order the state of things regarding usage of apartments. This would in turn solve the present condition of uncertainty of owners of the taken-over facilities. Since the management of apartments almost does not exist, the problem of devastation and decay of apartments is obvious, and these apartments could house many families that are under the care of the Republic of Croatia. The bad condition of apartments and apartment buildings is notable especially during the summers, when diseases occur due to bad installations.

Furthermore, the accommodation of immigrants from Drvar is inappropriate. These are young families, in total around 25 families with 80 members, accommodated at the Golubić settlement in wooden settlements with an area of 30 m<sup>2</sup>, which consist of one living and one sanitary space. In the same time, the settlement has around 40 minor children, who attend school in Knin. They are under the constant threat of eviction without previously being provided with other appropriate accommodation. The issue of their permanent solution is quite uncertain. All who are settled in this settlement do not wish to return to Drvar, because they attained peace of mind in Croatia, but the living conditions are impossible. They are willing to renounce their property that is in Drvar, and if basic existential conditions for life can not be secured for them in Croatia, they are prepared to immigrate into other countries.

A similar situation is present at Kistanje. Around 80 houses have not been returned to their rightful owners. A special issue is the one regarding illegally taken over street front shops – business premises that are being used without compensation. APN bought off most of the houses that owners abandoned during the Homeland War in this region as well. The immigrants from Janjevo and Kosovo do not wish to build houses themselves on parcels that were assigned to them for that purpose, and they are using the 120 newly built houses illegally.

A special issue within the field of "return of property to owners" is the unauthorized takeover (usurpation) of business premises. These are catering facilities along roadway D-1 in the region of Gračac. Most of the owners filed lawsuits for the return of the real estate property and for the reimbursement of lost profit but due to the slow work of the Municipal Court in Gračac none of the facilities have been returned to their rightful owners. Although the process of property return is developing on a daily basis, the property owner is still completely without protection.

**(1.) Case description (P.P.-1168/03):** Mr. S. A., the owner of a house in K., has in his possession the ruling by which M.P.'s right to temporary usage of his house is revoked. However, the owner to this day still has not realized his right to the return of the house to his possession. The issue of the return of the house to the possession of S. A. means the creation of conditions for the accommodation of a numerous family (wider family that is waiting on the return of the house numbers 22 members).

**Measures taken:** Each further delay of the procedure of return, i.e. the procedure of enforcement of the ruling regarding the revocation of temporary usage rights, is of special significance to this family. Because of this, it has been indicated to the Service for Displaced Persons and Refugees in K., quote: "...in order to secure alternative accommodation for the temporary user, as soon as possible."

**Outcome of the case:** Unknown. The report regarding the conclusion of the procedure and the case has not been submitted to the Ombudsman.

**Note:** A violation of the right to undisturbed usage of property by the A. K. family has been established.

**(2.) Case description (P.P.-1707/00):** The complainant, M. B., addressed the Ombudsman for the first time in 2000 with a complaint regarding the violation and limitations to the property rights of real estate – a family house with business premises and form buildings\auxiliary facilities in G. It concerns the real estate that was granted for temporary use to N.Š. by the Commission for Temporary Taking and Use of Possessions on 19 September 1995. However, although the owners have the Ruling of the Municipal Court in G. and the Decree on the revocation of the right of temporary use has been issued on 2 October 2001, they still have not taken possession of the real estate.

**Measures taken:** Considering that the property was owned by the family of two members, and/or it was not used solely (only) for housing, it was suggested to the Administration for Displaced Persons, Returnees and Refugees «... to examine this case closely and to determine the real reasons why the beneficiaries /users are not provided for, i.e. do they really have rights to state housing.»

**Outcome of the Case:** Unknown.

**Note:** It has been determined that property rights have been seriously violated (lasting nine years).

**(3.) Case description (P.P. –601/03):** Mr. L.J. B. can not get into his house at P.B., because it is still in possession of a beneficiary/user that had been granted a right to housing in the areas of special state concern. In addition, the user was given the keys to a state-owned house, provided by APN as an alternative accommodation. The particularity of the B. case is the fact that the beneficiary/user doesn't want to move out (one of the reasons is the fact that P.B. keeps domestic animals) before he adapts the house allotted to him. As by adapting he considers expanding and annexing (note: he was granted a supply of construction materials), the stated means that a decision upon the eviction deadline is left to his choice – to be more exact, a decision about a deadline when the property must be returned to the owner.

**Measures taken:** This specific case was brought before the Administration for Displaced Persons, returnees and Refugees, and it was recommended that: «For an accurate evaluation of conduct of P.B., who is a beneficiary/user of the house, it should be taken into account that he was allotted a habitable house that includes an accompanying plot (i.e. for keeping domestic animals). Since a decision about the recognition of rights to further postponement and return of the house to its owner (by the supply of construction materials) was reached without the knowledge of the exact condition of the allocated object of alternative accommodation and that the beneficiary/user was also put directly at a marked advantage in relation to the owner, who is in addition a person of an advanced age, when the right of dignity of housing is also a question of survival, it is therefore recommended that the procedure of take-over of possession of the property and its return to the owner should be conducted without any delay. The recommendation is based on the given objective feasibility of implementation. »

**Outcome of the Case:** The complainant has taken possession of his house.

**(4.) Case description (P.P.-100/01):** Mr. N. Š, owner of real estate in V., has been trying to take possession of his real estate since 1999, without any success. Namely, his house had been granted for temporary use to Z.K. Mrs. K. had subsequently also brought other members of her family into this house. The K family thus allegedly has a recognized right to alternative accommodation. However, three and a half years after the owner's request for the return of his real estate, which has to be returned to him, the K family still has not been evicted/relocated. The Š. family, which has two minor children, still have special needs since their minor child, born in 1993 was diagnosed with PTSD, and by doctor's recommendation (the child received a treatment for PTSD at a Children Diseases Hospital in Zagreb) needs a safe, permanent and adequate accommodation and permanent rest, yet the child does not have such conditions in the present accommodation at his relatives' in V. Stressful conditions which the child suffers in the present accommodation deteriorates his health and general condition. Mr. Š personally is not able to provide adequate alternative housing.

Although the local authorities are acquainted with the needs of the Š. family, Z.K. still haven't been provided with alternative accommodation, or been offered one. We have been informed that the stated beneficiary/user has not requested such accommodation.

**Measures taken:** A proposal was sent to the Administration for Displaced Persons, returnees and Refugees and it stated the following: «... Therefore, primarily in order

to fulfill the housing needs of the family of N.Š. and recognize his property rights and rights to take possession of his own house, it was pointed at the family K. case in order to examine the exact condition, and accordingly (if the obligation to procure housing to K. exists) recommends priority procurement of alternative accommodation, and hence the handover of possession of the house to the owner, without any delay. We have information that the APN has bought around twenty houses in the Karlovačka County, and probably not all of them have been rented out. Thus the recommendation for relocation of the beneficiaries/users is considered objectively possible. The nature of the case points to special urgency. »

**Outcome of the Case:** After receiving a report about this specific case, it was suggested to the complainant that «... proceeding of examining the reasons why you still have not realized the right to the return of property was conducted in relation to your complaint that you have filed in V. In the meantime, we received a report of The Administration for Displaced Persons, Returnees and Refugees of The Ministry of Public Works, Reconstruction and Construction, where it was determined that the beneficiary/user has a right to alternative accommodation – procurement of housing, but you, as the owner, are entitled to receive compensation until the take-over of possession of the property. The Administration for Displaced Persons, Returnees and Refugees has made a commitment to priority solving of your case. Since the Ombudsman does not have objective means to order eviction of the beneficiary/user as it is a matter of jurisdiction, nor does he have an accommodation at a disposal, and since the Administration for Displaced Persons, Returnees and Refugees has closed the file, we cannot find a legal base that we could use to act further to the protection of your property rights. We are therefore referring you to contact your Regional Office for Displaced Persons, Returnees and Refugees in K. so that you can for the time being realize your right to compensation. »

**Note:** The complainant's right to peaceful enjoyment of ownership has been seriously violated because of his child's condition.

**(5.) Case description (P.P.-899/03):** Đ. Ž. from K. has filed a complaint against the work of the Administration for Displaced Persons, Returnees and Refugees of the former Ministry of Public Works, Reconstruction and Construction which still has not enabled him to take-over the possession of his property in K., although the temporary beneficiary/user and his family are using two apartments instead of one, while the other might be returned to the complainant. The complainant is a person of an advanced age (86 years of age) and his present accommodation is not habitable.

**Measures taken:** A report about the reasons for not enabling the owner to take-over at least the empty apartment (which is his property) had been requested from the Administration for Displaced Persons, Returnees and Refugees, as he lives in very bad conditions. The Social Welfare Center has been asked to provide a social case history and a recommendation for housing in more adequate accommodation.

**Outcome of the Case:** The Administration for Displaced Persons, Returnees and Refugees still has not submitted a report. The Social Welfare Center G. – Branch Office K. has submitted a report to the Ombudsman that states that the complainant is a retired person who has a pension that exceeds 2.000 HRK per month and he is provided for by a legal provider, his daughter who lives in B. According to his relatives' statement he has never expressed a wish to be placed into a Home of the Social Welfare Center or a foster home. He will wait for the return of property in the present accommodation. The case was not closed.

**Note:** The complainant's right of peaceful enjoyment of ownership has been violated for years. The violation of the right is particularly serious because of the complainant's advanced age.

**(6.) Case description (P.P.-1722/00):** The ombudsman was informed about the official letter of the Croatian Helsinki Committee for human rights dated 09 April 2003 that was sent to the Administration for Displaced Persons, Returnees and Refugees of the Ministry of Public Works, Reconstruction and Construction. It points out to the problem of realization of rights to alternative accommodation of the Society of Kosovo Croats «L...» which was actualized by seizure orders based on valid court rulings – i.e. the eviction of numerous families at the owners' request from the houses in the Đ. and V. Municipalities where they have been temporary beneficiaries/users, based on previous decisions of the housing boards. Temporary beneficiaries/users do not question that the property should be returned to its owners, but what they are asking for is previous procurement of alternative accommodation.

**Measures taken:** Considering the problems that were pointed out in that letter and the request to take necessary measures in order to provide alternative accommodation for temporary beneficiaries/users so that the owners can take over possession of their property, the Ombudsman has requested a report from the Administration for Displaced Persons, Returnees and Refugees by official letter dated 15 May 2003 to ascertain if there were any actions taken by them concerning this or other individual requests for provision of alternative accommodation, which stage is the solving of these cases on, what the possibilities are of finding alternative accommodation in V. and Đ. and what measures have been taken.

**Outcome of the Case:** The Administration for Displaced Persons, Returnees and Refugees of the Ministry of Public Works, Reconstruction and Construction did not fulfill the Ombudsman's request and did not submit a report about the possibilities of provision of alternative accommodation for this group of Croatian refugees and displaced persons from the territory of the fRY. In the meantime, the Society of Kosovo Croats «L...» has addressed the Ombudsman directly by official letter dated 27 October 2003, pointing out the specific problem in the case of Đ.J. and his family, who are being evicted, and asking for an intervention so that the eviction procedure would be suspended. The Ombudsman replied to their official letter: «In answer to your request for the intervention of the Ombudsman in order to suspense the eviction in the above court matter, the Ombudsman is not able to meet your request. Namely, according to the Law on Courts, the court executes the judicial power independently and autonomously within the domain and jurisdiction as defined by law. According to the provisions of the Article 6 of the Law on Courts: «Every aspect of influencing the passing of court rulings is prohibited, especially: every use of public authority, the media and public appearance in order to influence the procedure and court rulings. A court ruling may be changed or dismissed only by the court with the jurisdiction over the case in court in the judicial proceeding under law. There are therefore no means for the intervention of the Ombudsman. However, in regard to the general problem of your members concerning the provision of alternative accommodation in the given situation, the Ombudsman will insist on a solution immediately after the formation of the Croatian Government and inform it about the Ministry of Public Works, Reconstruction and Construction failing to take action following the Ombudsman's request of a report on 15 May 2003. A report about that will also be submitted to the Croatian Parliament.»

**Note:** Apart from the submission of this report, it shall be requested of the Croatian Government and the Croatian Parliament to consider the problem and to reach a solution for the problem of housing provision to this group of Croatian refugees and displaced persons from the territory of the fRY, if possible by means of international political action with a material satisfaction request to Serbia and Montenegro. It has been determined that the right of a large number of people has been seriously violated.

**(7.) Case description: (P.P.–1493/03.):** M. I. from U. has address the Ombudsman with a complaint regarding the work of the Housing board D.K., as even three years after the annulment of the ruling on the temporary use of the house with an obligation of finding alternative accommodation for the temporary user M.V., he had not taken over of possession of the property in U. The complainant also claims that the temporary beneficiary/user owns a house in P, where she abides most of the time, but she does not want to leave his property. The complainant enclosed copies of the following: Housing Board Ruling class: 370-01/99-01/52, file number 2176/07-0005-03 of 4 February 2000, complainant's rush notes to the Administration for Displaced Persons, Returnees and Refugees and the District Attorney's Office in P. of 26 March 2003 together with a photocopy of a part of a registered real estate certificate (sheets A and B) in cadastral municipality P., co-owned with A. V. and M. V. from K., without the bill of lading (sheet C) and authentication of the legal venue.

**Measures taken:** The ombudsman has pointed out the complaint and explained it in the letter to the Administration for Displaced Persons, Returnees and Refugees of 14 August 2003, with the following warning: »As you have taken the documentation and jurisdiction over Housing Boards which have discontinued their operation, according to the provisions of Article 15 paragraphs 1 and 2 of the Amendments of the Law on Areas of Special State Concern (Official Gazette No. 88/02) and the deadlines for solving the issue of providing accommodation for the temporary user and enabling the owner to take possession of his real estate by the proper authorities have been missed, you are being reminded about that fact, and about the expected legal consequences of failure to act. You should thus examine the complaints without any delay and obtain information about the execution of seizure, based on the Ruling of the Municipal Court in H.K, II-P-209/00 of 8 July 2002, from the District Attorney's Office and inform the Ombudsman about the actions taken and facts established. »

**Outcome of the Case:** Unknown. The Administration for Displaced Persons, Returnees and Refugees of the Ministry has not replied to the Ombudsman's inquiry, and the complainant has not contacted the Ombudsman again.

**Note:** Missed deadlines before which the owner is supposed to take possession of his property occur because of delays of eviction of the temporary user (in this case the beneficiary/user owns a property in the territory of the Republic of Croatia, but continues to use the property which was granted for temporary use), and causes serious damage to the state, as it has an obligation to pay compensation to the owners for the deadlines for the return of property set by the courts that are missed. Serious violation of the right to peaceful enjoyment of ownership has been determined.

### **3.2. Housing Rights**

During 2003 we received **190** complaints (**35.51%** in this group) regarding violations of housing rights. Citizens addressed the Ombudsman in the field of housing relations mostly concerning legal

assistance in housing provision. Namely, housing relations under dispute are regulated by the court, and the jurisdiction of administrative bodies is mostly reduced to the above named and to housing provision, but only in cases which are not considered welfare cases in the usual sense.

During 2003 the Ombudsman was addressed primarily by citizens who lost their apartment – the right to an apartment by the court annulment of their tenancy rights of tenure or loss of tenure of an apartment becomes effective by the moving in of a third person, by a legal action (using, purchasing from the state in the meantime) or illegally. A certain amount of complaints was received from citizens who were tenants of state owned apartments in areas of special state concern based on previous regulation, which also granted them purchase rights to that apartment, but that right has not been realized and cannot be realized (because they did not get the status of protected tenant drawn from the settler rights).

Furthermore, some complaints were received from individuals who may be considered welfare cases, but could not rent a social apartment from local Self-Administration Units. The main cause for the failure of local authorities to solve welfare cases on its territory is legal in nature - court protection is not timely. Local Self-Administration Units own a certain number of apartments that are reserved for welfare cases (note: social needs are bigger than the number of available apartments). However, a considerable number of apartments are not at their disposal because of judicial proceedings being performed in order to evict citizens who are using the apartment without legal grounds. The above stated is the reason why even the worst welfare cases often cannot be solved – the unemployed with several minor children and families with special needs. However, as the illegal tenants who face eviction from the city-owned or municipality-owned apartments, are as a rule also welfare cases, who after eviction become a housing problem to the local authorities "again", local Self-Administration Units do not actually bring up the issue of speeding-up the forced evictions. It is thus noticeable that the forced evictions are being speeded-up only for the apartments that are owned by government institutions and entrusted to the central state authorities (ministries).

There is also the separate issue of housing provision for citizens in areas of special state concern, where we encountered a disturbing situation that was a result of bad or no management by the state- or state company-owned apartments. At the same time, besides the fact that the state owns a considerable number of apartments (primarily in Knin), the

public administration wears itself out working on the housing provision of war victims and settlers by looking for objective possibilities of alternative accommodation or rent, while the results achieved are minimal.

There were several complaints from Serbia and Montenegro and Bosnia and Herzegovina in 2003, as well. The complainants are previous holders of tenancy rights, mostly of the apartments which were so-called «military apartments of the Yugoslav People's Army», but which came into possession of the Republic of Croatia administered by the Ministry of Defense. The complainants generally did not state when and by which specific act they had lost their tenancy rights, or the circumstances that lead to their leaving Croatia. These were mostly persons who left Croatia as members of the Yugoslav People's Army in 1991, some of them in 1992, and who were living in bigger urban centers. Since the cases in question are of such nature that it can be justly assumed that their tenancy rights were annulled by court rulings, and that more than 5 years have passed since the legal validity, all of them have been provided with information regarding the possibilities of housing provision in Croatia, provided they are Croatian citizens and are returning to Croatia. As almost none of them contacted us again in order to ask for further information or give information about the annulment of tenancy rights, it may be assumed that the intention of most complaints was not receiving housing provision in case of return, it seems, and this is also stated in the earlier reports, that the complaints were filed in expectance of material (financial) satisfaction for the annulled tenancy rights. According to the Ombudsman's point of view, previous holders of tenancy rights that have left Croatia without a valid reason (e.g. In order to join the enemy forces or to avoid taking part in the defense of Croatia), meaning all those who left Croatia on their own accord, and moved away taking all of their mobile assets, shall not be entitled to any kind of material satisfaction, even if appropriate regulation were to be adopted. The reason for this is the fact that all laws that regulated housing relations during the time of former Yugoslavia ordered the consolidation of the loss of tenancy rights in case of the unjustified non-use of the apartment for more than 6 months, and they specifically forbid trade in tenancy rights. Because of the stated reason, most of the formal complaints were not reviewed separately, but if basis for review existed (e.g. if the complainant had stated that he left the apartment because of threats, that he was a Croatian citizen, that he didn't accustom himself to new surroundings), the complainant was given detailed instructions on the way he can acquire housing provision, with a remark to contact us again if he finds any difficulties and lack of understanding from the officials. Only a low

number of complainants contacted us again, which leads to the conclusion that a very small number actually intends to return to Croatia. The Ombudsman's position is that the authorities would really have to provide adequate housing for citizens who have lost tenancy rights and have returned to Croatia with intent to permanently stay, i.e. live here. They should be entitled to purchase the apartment in terms similar to those for the purchase of apartments with tenancy rights following a specific amount of time of actual residence in the apartment leased with protected rent.

Finally, citizens who have not bought an apartment according to the provisions of the Law on the sale of apartments with existing tenancy rights, and that right was recognized by the Law on the Compensation for Property Nationalized during the Yugoslav Communist Rule, continue to address the Ombudsman regarding the violation of their rights. The public administration endangers their legal security and realization of rights warranted by law by missing the reasonable deadline when the ruling of a government body must be given in this way. The diversity of complaints from this field is well illustrated by the following examples:

**(1.) Case description (P.P.-1758/03):** Tenants' Council of an apartment building H. in V., addressed the Ombudsmen as the representative of all tenants with a complaint involving the responsibility of the Ministry of Public Works, Reconstruction and Construction, as the investor and the Ministry of Croatian Defenders from the Homeland War, as the commissioner. It concerns a building that was built under the realization of the Program of housing provision for the families of defenders, i.e. sale of the apartments with favorable loan options. The hand-over of the apartments (by handing over the keys), took place on 22 March 2003 in Z., on the premises of the Ministry of Croatian Defenders from the Homeland War. Immediately after the owners (24 defenders and 2 widows of the defenders) had entered the apartments they purchased (based on the formal decision on allocation), complaints were made on the quality of construction and installed facilities. Complaints regarding the noted defects were made both to the investor and the commissioner within the time prescribed by the law, in order to ask the contractor to repair them, according to responsibilities of the contractor. Flimsy construction still has not been repaired, and the tenants – families of the Croatian defenders, have not even been informed if their complaint was at least recorded and if repairing of defects had been ordered.

**Measures taken:** The procedure of investigation of the violation of rights to a faultless apartment was conducted at the Ministry of Public Works, Reconstruction and Construction and Ministry of Croatian Defenders from the Homeland War, with the following suggestion "... establish the actual condition of the building and the apartments immediately, without further delay, and ask the contractor to immediately remedy all defects, especially those that directly affect safe enjoyment. In the same circumstances the issue of costs, acquiring the rights of ownership (procuring the contract and land registration), i.e. enabling of realization rights, must also be discussed in its entirety. Finally, I find it professionally, legally and morally unacceptable to force the war victims into buying apartments with defects, deprive

them of the right to objection and/or neglect, without any responsibility. Lack of responsibility manifests itself in the fact that the legal amount of time prescribed by the Law on Obligatory Relations is still in effect, during which solidity of construction and facilities of the contractors may be questioned.» The reply to the statement of the Ministry of Croatian Defenders from the Homeland War, which states that they are ready to help and mediate in order to repair defects in the apartments and the building, as well as with registration of ownership of the apartments, was as follows: "However, the Ombudsman can not accept the allegations from the statement, the section concerning objection to legitimacy of tenants to make objections. The tenants of this building, no matter if they are individual citizens or have organized themselves under the name of tenant's council, have the right to make an objection, send a complaint and receive a reply to it (Article 46 of the Constitution). At the same time, they cannot be identified as owners, or as "non-registered", to the third party as they still do not possess a Contract on purchase of the apartment. They do not have it because the Ministry of Croatian Defenders from the Homeland War did not deliver sales contracts (Note: acquiring property rights pursuant to Article 115 of the Law on Property and Other Actual Rights is questionable). Without legal proof that they are owners of the apartments, they can not conclude a Contract between owners and choose a building manager (Article 85 of the Law on Property and Other Actual Rights). On the other hand, building representatives, only because they dubbed themselves the Tenant's Council, are considered by the Ministry as a non-existent body (from the submitted statement, page 2, paragraph 2.). It is not therefore completely certain that during the handover of apartments the expected procedure for acquiring property rights on a real estate was carried out, i.e. that the tenants of the given building did not follow received instructions and procedure, all being arguments for lack of personal responsibility for "silence" and non-acting – handover of sales contracts and not taking part in remedy of defects (visible defects and faults of the object of sale)."

**Outcome of the Case:** After accepting the report of the Ministry of Public Works, Reconstruction and Construction, which guarantees remedy of all defects on the building and the apartments, the complainants were sent the reply: "Since fulfillment of obligations is expected from the Ministry of Croatian Defenders from the Homeland War (especially after the last memo dated 28 November 2003.), at the moment we have no basis for further intervention. Should you find it necessary, you may contact us again, as you have already done after receiving the statement of the Ministry of Croatian Defenders from the Homeland War. Otherwise, we consider our procedure completed".

**Note:** Rights of the complainant remained violated.

**(2.) Case description (P.P.61/03):** Mrs. V. Š. with her family has been in possession of a city-owned apartment in the attic of a building in Z. with the area of 12.58 m<sup>2</sup> since 13 April 1990. She filed a request for the allocation of this apartment in the City of Z. for the first time on 26 April 1991, and then again on 11 June 1998 as well as during the 1998 competition for allocation of the lease of city-owned apartments. In order to solve the issue of legal basis for using and keeping in possession this apartment, she repeated the same request on 23 November 2001. Now, eleven (11) years after request to regulate the relationship with the owner, the Š. family is facing eviction from this apartment, pursuant to charges of the City of Z. of 14 February 2002. After the charges and call of the Municipality Court in Z. for the main hearing regarding eviction, scheduled on 15 April 2003, Mrs. V. Š. approached the City

Office for the Administration of City-Owned Property in February this year, with a request concerning allocation of lease of the apartment, enclosing an explanation of reasons and providing evidence on why this apartment is necessary for her.

**Measures taken:** Since the Ombudsman can not grasp the legal interest of the City of Z., as the owner, in insisting on eviction of the S. Family from the attic residential area of the size of one room, it was suggested to the City Office for the Administration of City-Owned Property of the City of Z., as follows: "... to reconsider this case once more regarding the problematic 12.58 m<sup>2</sup> of the building-entity as an apartment, excuse for establishing a new relationship of using by an unknown third/interested party, i.e. in circumstances of any existing reason which would prevent settling the relationship with the existing tenant with at least a lease agreement. In consideration, certainly, one should hold as not insignificant information the silent acceptance of the use of apartment, in the period between 26 April and 14 December 2001, when she had received a notification, class: 370-01/01-01/2419, file number: 251-17-05/1-01-2, which claims that the City of Z. authority of contracting lease agreements of the apartments only with an individual who had acquired tenancy rights according to the previous provisions, i.e. remaining member of the family household. The Law on the lease of the apartments (provisions of Article 1 to Article 29) does not prevent the City of Z. to contract lease agreement for the apartment; on the contrary, an apartment can be rented out without competition. As the request of the above-named thus does not concern recognition of the legal standing of the protected tenant, but contracting the standard civil relations of lease of the apartment, pursuant to everything stated, please inform the Ombudsman about the reasons why this family is being placed into a situation of legal insecurity, when nothing excuses it: legal, objective or moral reasons."

**Outcome of the Case:** Intervention of the Ombudsman regarding protection of the legal interest of the complainant was successful, which put a stop to the violation of her rights.

**(3.) Case description (P.P.-593/99):** Mrs. S. M. approached the Ombudsman for the first time in May 1999 with a complaint regarding the ruling of the Municipality court in Z. on the annulment of tenancy rights for the apartment owned by the Croatian Ministry of Defense in Z., with an area of 44.16 m<sup>2</sup>. Annulment of tenancy rights was requested because of non-use of the apartment for more than 6 months.

**Measures taken:** Not engaging at that time in the investigation of the case of Mrs. M., because it involved the legal matter within judicial jurisdiction, Mrs. M. was, as a retired person with deteriorated health, informed about the possibility of housing provision without a priority list for acquiring a welfare apartment, at the expense of the city of Z., through the Welfare Center and the Administration for Health Care and Welfare. In the meantime, execution of the mentioned ruling for eviction of 31 October 1996 was attempted. The seizure was not executed (eviction) due to deteriorated health condition, because the complainant could be evicted only by removing her from the apartment in bed – S. M. had recently been operated on. The execution was postponed to 1 November 2003, by which date the assessment of her medical documentation should be performed. Starting from the fact that the complainant was: (1) because of her own health problems, especially because of the treatment of her now late spouse, away from Z. for (established by the ruling) a decisive term, (2) that the person involved is of an advanced age, and that (3) she had been living in this half-bedroom apartment since 1968, (4) that by the eviction she would have to be taken into a welfare program and would actually become a burden,

primarily to the state and/or units of Local Self Administration, the following was suggested to the Ministry of Defense, as the owner of the apartment and to the Administration for Displaced Persons, Returnees and Refugees, as proper authority for housing of tenancy rights holders: "...to once again reconsider the possibility of housing provision to S. M. in the state-owned apartment where she is already living. Since Mrs. M. is an ex-holder of tenancy rights, I am basing the suggestion for housing provision on the Ruling and Decision of the Croatian Government on housing provision for ex holders of tenancy rights (Official Gazette number 100/03), because the named fulfils formal conditions and criteria for entering the program. For that reason the eviction, along with the simultaneous right to acquiring lease of another apartment, is considered illogical, unnecessary and useless. The eviction of the ex tenancy rights holder would produce unnecessary costs to the State."

**Outcome of the Case:** Unknown. We have been informed by the OSCE, Regional office Z., about the postponement of the forced eviction because of the deteriorated health condition of Mrs. M.

**Note:** Rights of the complainant are seriously violated.

**(4.) Case description (P.P.-492/03):** Mrs. J. D. from B. M. addressed us with a complaint regarding housing provision. Namely, Mrs. D. is currently living in a retirement home, but according to an invalid ruling (from 1999). She lived in the apartment in O. since 1966 as a holder of tenancy rights together with her late spouse – the apartment was allocated to her by the communal company for water "V...". The tenancy right was not annulled, but the apartment was inhabited by a third party. As a displaced person, she acquired housing provision in B. M., in the retirement home where she is now facing eviction. However, she is not herself able to tackle the issue of housing in some other way.

**Measures taken:** Since Mrs. D. is a retired person, protection of her right to an apartment was executed at the Croatian Institute for Pension Insurance, Regional office O.,: «... for a correct evaluation of the case of the named and establishment of facts of violation of rights to an apartment, we need information about the exact conditions, regarding the legal base for settlement, living and eviction from the home, as well as the fact if she is a pension user and possibilities for acquiring housing provision at the named Service, regarding permanent housing." Protection of rights of Mrs. D. to an apartment was also executed at the Mayor's Office of the City of O.: "Therefore, beginning from the fact that Mrs. J. D. had acquired tenancy rights on the apartment in O., that she can not enter the apartment with the address A. S., because another person is living in that apartment (note: it is supposed as a temporary user), we are pointing out to this specific case in order to examine it further and allocate housing provision from the city of O. Inform us about everything established regarding this letter, as well as about possibilities of housing provision for this socially endangered person of an advanced age.»

**Outcome of the Case:** Unknown.

**Note:** Rights of the complainant were seriously violated.

**(5.) Case description (P.P.-1087/03):** Mrs. B. Š. from O. requested assistance with acquiring housing provision. Namely, she, as a retired person and a seriously disabled person, found herself without housing provision. The issue is as follows: Mrs. Š. had been living with her spouse in an apartment in O. as a holder of tenancy rights until 1973. Based on the Contract on exchange of apartments (triple exchange, of 22 October 1973), she moved into an apartment in Primary School "B. R.", – and prior to

his retirement on 24 November 1989, her spouse Đ. Š. worked as a caretaker there. One could not acquire tenancy rights over the apartment at the school building because the apartment served for official needs. The stated is also the reason why she is facing eviction (the apartment will be refurbished into a classroom), yet the school has no objective possibilities for providing another apartment to the named, and as a retired person she can not acquire housing provision, because she is not a person without apartment but (only) has no appropriate housing provision.

**Measures taken:** Since Mrs. B. Š. cannot find housing herself, and with retirement she was found without housing provision, the Ombudsman suggested to the City of O. to provide housing for her as follows: "...by allocation of a city-owned apartment. Since this person is in advanced age and is disabled, Mrs. Š. would also accept placement within a sound home. Mrs. Š. B. case does not tolerate postponement or procrastination in concluding." Since a report regarding what was decided and done concerning this suggestion has not been delivered, we have intervened again, by sending a rush note.

**Outcome of the Case:** Unknown.

**Note:** Right of the complainant was violated.

### **3.3. Rights in procedures of restitution of property nationalized during Yugoslav communist rule**

In the field of rights to compensation for dispossessed property, citizens approached the Ombudsman during 2003, as a rule, with complaints that object to the long duration of the procedure by the administrative body (first and second-instance) and regarding the "silence of administration", because the ruling on compensation has not been passed yet. Objections to the "silence of administration" and missing deadlines for passing rulings have been explained, in 2003 as well as in previous years, with reasons such as complexity of procedure and lack of staff who work on the compensation request procedure. In 2003, **67** complaints were received (**11.82%** of complaints in this group) regarding violation, i.e., more often, violation of rights in procedures of return of property.

Complainants who in previous reporting periods had only partial rulings, still have only that administrative decision, because the standards for determining the value of construction land had not been determined until December 2003. Namely, the amount of compensation could not be established because these standards did not exist (Note: they were not determined even five years after the deadline before which they had to be determined; the legal deadline was one year from the effective date of the Law, before 1 January 1998).

In 2003, a considerable number of citizens asked for legal assistance, in order to reassess their own understanding of the right to compensation – return of the dispossessed property, or because of

reassessing of the validity of administrative body decision. Some examples of the cases follow.

**(1.) Case description (P.P.-213/03):** Mr. D. Č. from V. filed a complaint regarding misadministration of state bodies for property rights (of first and second-instance) within the procedure for the return into possession and compensation for property dispossessed from his family by nationalization.

**Measures taken:** After the complaint was discussed and documentation delivered, the following memo was sent: "Based on the documentation, which you have made available for insight into exact situation and measures that have been taken for execution of the procedure, we hereby conclude that the procedure is ongoing, i.e. that the ruling on compensation did not become valid, which prevents execution to the party under obligation for the compensation – the Croatian Privatization Fund. Furthermore, if the changes of the General Plan of Urban Development (GUP) result in changes of the intended use of the plot which is also a subject of the compensation request, then a request for retrial may be submitted, because of the change of circumstances relevant for establishing form of return (compensation or return of property). You have correct information that regardless of the deadline having passed, standards for determining the value of construction land have not been set. Namely, to the Ombudsman's request (that you have already seen), no reply was received, nor have the standards been set. The Croatian Government and the Croatian Parliament have already been informed about this. Since your complaint does not contain information that would fulfill conditions for putting your complaint on a priority list, we thus, despite missing of the legal deadline for passing the ruling, for the time being find no reasons for intervention at the Ministry of Justice, Administration and Local Self Administration."

**Note:** Violation of the right of complainant was not established.

**(2.) Case description (P.P.-1552/03):** Mr. V. N. from Z. filed a complaint to the Ombudsman against misadministration of the Administration for the State Property of Croatia for non-compliance with a Ruling of 20 December 2002 regarding rights of an heir to the real estate property in V. It regards exercising pre-emption of the heir of the real estate property in V. The primary objection of Mr. N. concerns deviation from the ruling of the Administration for the State Property of Croatia of 20 December 2002, in payment dynamics of rates for business premises which he is in the process of buying from Croatia, and then on the lack of access to Agreement II and Agreement III, according to which pre-emption should be executed, under subsequently changed conditions.

**Measures taken:** Important allegations of the complaint of V. N. were presented to the Administration for the State Property of the Croatian Government, as well as the statement on special circumstances of this specific case: "... Mr. N. emphasized that, contrary to the ruling of the Commission, joint execution of Agreements II and III is being performed, at the same time not recognizing the co-owners' right to a difference in price (price of the business premises with the amount of the value of construction land which Croatia compensates to Mr. N., as the previous owner). Following the explanation of the complaint, we need a statement regarding the objections of Mr. N., as they were pointed out. Considering the established execution deadlines, the nature of the case points to urgency."

**Outcome of the Case:** Unknown.

**Note:** Right of the complainant was violated.

**(3.) Case description (P.P.-467/03):** Mrs. T. T. from Ž. approached the Ombudsman because of the stalling of proceedings on her request for the return of property, agricultural land confiscated from her father. Namely, the named claims that the request was submitted on time (16 January 1997), and that she has been called to complement twice, but the ruling on the return into possession of the land has still not been issued. The reason why, supposedly, the ruling on return of possession of the property had not been passed, is complexity of the procedure of identification of the plot because of land consolidation, done in the meantime.

**Measures taken:** Since Mrs. T. does not insist on the plot, but on agricultural land of the same size, it was suggested to the State Administrative Office in V... County Administrative-Law Service in Ž. to: "... finish the procedure in such a way that the requested return be performed, by allocation of another appropriate agricultural land in Ž., at present municipality-owned. Inform us about completion of the procedure on the request of T. T. from Ž. (photocopied ruling)."

**Outcome of the Case:** Unknown.

**Note:** Right of the complainant was violated.

**(4.) Case description (P.P.-2059/03):** The Ombudsman was addressed by Mrs. D. M. from Z., as a legal representative of her son M. B. with a complaint regarding lengthiness of the appeal procedure, which in 2001 as a legal representative she submitted against the ruling of the City Administrative-Legal Office, Administrative-Legal Department, First district section Z., class: UP/AND-942-01/98-02/17, file. No. 251-18-02/205-01-17 of 20 April 2001 in the case of return of confiscated property – real estate property in Z.

**Measures taken:** The Ombudsman's report of 18 November 2003 to the Administration for Civil Right, Ministry of Justice, Administration and Local Self Administration asked for assessment of the complaint and delivery of report within 30 days stating the reason for not passing the ruling on appeals pursuant to Article 247 of the Law on General Administrative Procedure.

**Outcome of the Case:** Unknown. The Ministry of Justice did not act as the Ombudsman requested.

**Note:** Violation of rights of the complainant by serious missing of the deadline for solving appeals (appeal was not resolved even more than two years since its submission) is obvious. However, it is unknown if the violation was the result of non-delivery of appeal to the body of the second-instance by the public administration authority of the second-instance or due to non-acting of the public administration authority of the second-instance.

**(5.) Case description (P.P.-529/03):** A.I. from O. filed a complaint against misadministration of the Service for Physical Planning, Environmental Protection, Construction and Property-Legal Affairs of the State Administrative Office in O... County – Regional branch V., which on 27 November 2002 passed a partial ruling on his request for the determination of compensation for property, and the final ruling still has not been passed.

**Measures taken:** A Report from the Service for Physical Planning, Environment Protection, Construction and Property-Legal Affairs of the State Administrative Office in O... County – Regional branch V on why the final ruling has not been passed regarding his request for determining compensation for the taken property was requested.

**Outcome of the Case:** The submitted report states that the final ruling was not reached because the Ministry of Finance did not determine standards for establishing the value of construction land, and according to that, the body of the first-instance could not pass a final ruling but only a partial one. Standards were supposed to be set within one year from the enforcement of the Law on Compensation for Property Taken during the Yugoslav Communist Rule, and this deadline has passed. The Ombudsman sent a notice to the Ministry of Finances in September 2003, asking why the standards have not been set, and for the time being, no reply was received.

**Note:** Right of the complainant to conclusion within a legal deadline was violated, because the Ministry of Finance did not pass regulations within the legal deadline (Book of regulations was issued at the end of 2003 and was published in the Official Gazette No. 204/03).

### **3.4. Proprietary insecurity**

In 2003, only **16** persons complained on the violation of proprietary security, so this group of complaints accounts for a share of **2.82%**. Most complainants regarding proprietary insecurity left Croatia during the Homeland War, which resulted in misappropriation of the mobile assets left behind – mostly tractors. Considering the time passed, the police could not establish who and when had misappropriated the tractors despite the actions they took. In cases when the tractors were given to temporary use by a ruling of the local authorities, and the users of other people's tractors were known, the owners managed to return their tractors, with more or less difficulties. Returnees who had had foreign-currency deposit savings in the banks whose headquarters were outside of Croatia (e.g. in "*Jugobanka*") did not get a reply from the Ministry of Finance on their inquiry regarding how to transfer old foreign currency savings to a bank with Croatian headquarters. In such cases the Ombudsman asked the Ministry of Finance to investigate complaints and warned that several citizens approached him with the same problem. In all investigated cases the Ministry of Finance defaulted to the Ombudsman's request. As the Ministry of Finance did not respond to the Ombudsman, it is not known whether the Ministry responded directly, i.e. provided appropriate instruction to the interested citizens. It is justly assumed that the stated ministry completely defaulted and thus violated the constitutional right of the complainant to get a reply to their inquiry from a state body. The following examples are given as an illustration.

**(1.) Case description (P.P.–380/03):** The Ombudsman was addressed by Mr. A. M. from Z., with a complaint regarding inquiry directly to the Ministry of Finance on 26 November 2002, as well as later complainant submissions to the Croatian Government regarding intervention, and which the Public Relations Office of the Croatian Government by their report of 11 February 2003 forwarded to the Ministry of Finance and to the Minister of Finance personally; he received no reply. Inquiry of the complainant related to asking for instruction or explanation of the Contract on

Payment of Due Installments and Interests on Foreign Currency Deposits of the Citizens transformed into public debt of the Republic of Croatia for Vukovarska Bank d. d. Vukovar in liquidation, which the Ministry of Finance contracted with Privredna Bank, because it became disputable – who is due to issue substitute savings-account books of Vukovarska Bank after it went bankrupt, as the complainant received written reply from Privredna Bank that it was not authorized to issue any document on savings for thrift depositors of Vukovarska Bank, and the Ministry of Finance is acquainted with this problem, so the complainant was instructed to approach the Minister of Finance personally for faster solution of his problem.

**Measures taken:** The Ombudsman asked in a report dated 8 May 2003 for immediate investigation of the complaint by the Ministry of Finance, pointing to the necessity of urgent action, because holders of right to payment of old foreign-currency savings can not realize their right anymore due to technical-administrative reasons, and he also requested a report on reasons of non-acting, as well as on what was decided and done.

**Outcome of the Case:** Unknown.

**Note:** The Ministry of Finance did not reply the Ombudsman at all. Violation of the complainant's right due to non-acting of the bodies of public administration and not showing the will to solve the stated problem is obvious.

#### **4. Rights of Croatian defenders and members of their families and casualties of war**

**371** complaints were received in 2003 relating to casualties of the Homeland War, i.e. Croatian defenders and members of their families, displaced persons and citizens whose homes were destroyed or damaged. Complaints in this group account for as much as **19.01%** of the total number of complaints that are within the mandate of the Ombudsman. More complaints were filed by citizens whose property was damaged in the war regarding difficulties in realization of rights to reconstruction, financial support for furnishing reconstructed structures or reconstruction performed below standards. There were **279** such complaints, which in this group accounts for **75.20%** of the cases. Croatian defenders and members of their families filed **58** complaints which account for **15.63%** in this group; displaced persons only **34** complaints which make a share of **9.16%** in this group. It must be pointed out that in 2003 there was no founded complaints of persons who exiled from Croatia, i.e. who live in neighboring countries as refugees, and have difficulties in realization of the right to return to Croatia, to their previous domicile. Continued lack of founded complaints in this category of people in several years' time points to the fact that Croatian authorities have fulfilled their task and enabled return to all Croatian citizens who wanted to return to Croatia. But, if lack of complaints of the refugees is compared to the relatively high number of complaints against difficulties in realization of rights to reconstruction, and many of them were filed by citizens who have spent a specified amount of time in exile away from Croatia, it is evident that in

the next term proper authorities must make significant effort and show the will that in a lawful, moral and every other acceptable way solve still numerous problems of the returnees – from return of their property to reconstruction of their homes which are destroyed or damaged. It must be pointed out that all refugees from Croatia who wanted to return to Croatia did return, and that really has no problems with returnees for a longer period (3-4 years), but still, due to limited financial means of the state, still has a lot of problems, that many of them are serious and last for several years, with reconstruction of the returnee's property. According to complaints that the Ombudsman received it is evident that the problem of refugees is mostly solved and that it is not realistic to expect the return of greater number of persons who at some point of time exiled from Croatia in the following term. It is therefore necessary to concentrate on solving housing and other existential problems of the returnees, no matter if it involves displaced persons who are still unable to return to previous domicile due to difficulties with reconstruction, or refugees who decided to return to their homeland, and their homes are either taken or destroyed, or considerably damaged. Because of the false impression that exists in the international and home public on existing difficulties in realization of rights of refugees to return to Croatia, Croatian Government would do a good thing if they would prepare coherent informative-analytical material on return into previous domicile of all persons who left them due to the war. Such material would enable better planning, i.e. deciding priority tasks in reconstruction, as well as more precise determination of financial assets and deadlines for finishing reconstruction. Statistical data on the complaints that Ombudsman received in the last 5 years support this evaluation.

Field	Number of Cases by Years									
	1999		2000		2001		2002		2003	
	No.	%	No.	%	No.	%	No.	%	No.	%
<b>Displaced persons</b>	37	25.7	26	27.6	21	15.1	17	12.7	34	9.2
<b>Defenders &amp; families</b>	54	37.5	26	27.6	56	40.3	48	35.8	58	15.6
<b>Reconstruction</b>	53	36.8	42	44.7	62	44.6	69	51.5	279	75.2

#### **4.1. Rights of Croatian defenders and members of their families**

In 2003 a relatively small number of complaints (**58**) of the defenders and members their families were received. Most of the complaints related to serious difficulties in acquiring status of Croatian defender, i.e. to difficulties in establishing length of participation in the Homeland War, to difficulties in determining the level of disability of the military disabled persons of the Homeland War and violation of right to housing provision. When the judgment on the work of the then Ministry of Croatian Defenders from the Homeland War would be based solely on number of received complaints, it would seem that the stated Ministry was up-to-date, efficient and passed lawful rulings. However, despite the claim of the representatives of the above-named Ministry, stated in discussion on the Report on Work of the Ombudsman for 2002, that Ministry had abandoned false practice of non-compliance to the court rulings of the Administrative Court of the Republic of Croatia, and disastrous practice of polemics with legal positions of the Administrative Court of the Republic of Croatia (and which are obligatory for the Ministry), such unacceptable practice was not abandoned. Because of the unprofessional and sometimes even stubborn wrong access in solving individual requests of Croatian defenders – for establishing status of a defenders, or the status of HRVI, the complainants had, in practically the same matter, went through all levels of administrative solving twice only to start administrative procedure again in the end. Such behavior brought a certain number of defenders in situation that they would have to start administrative procedure even for the third time, which in the end leads to several years' unsolving of the specific case and justified dissatisfaction of the Croatian defenders. It would be therefore very useful to take appropriate measures that all who work on solving these administrative matters have good understanding of legal positions Administrative court, and acquire skills necessary for doing job that they are in charge of. Institute of amending ruling in the administrative procedure should also be useful in case when the procedure is started for the second or even third time. Organizations that came from the Homeland war which provide legal assistance to the defenders should also formulate request charges to the Administrative Court in such way that in case of non-compliance to the legal position of the Administrative court of the Republic of Croatia and passing a new act which has same content as the previous one which the Administrative court of the Republic of Croatia declared null and void, requests that the Administrative Court competently solves the case (proceedings of full jurisdiction). It is important to point out here that in the procedure of establishing the status

of Croatian defenders, besides the national law provisions of the Geneva Convention on improving life conditions of war victims and the Hague regulations that the Republic of Croatia accedes to must also be applied; they are international provisions by their legal strength and above national law. These international regulations very clearly and without doubt determine who may be considered a member of the armed forces, what it means and who is a defender. Besides that, there are also very strong legal and moral reasons to solve the status rights of Croatian defenders. Namely, the persons concerned took part in the Homeland War until 1995 and nine years is long enough for the authorities to determine their status and rights that belong to them. The stated examples illustrate type of complaints of Croatian defenders and members of their families.

**(1.) Case description (P.P.-1437/03):** On 28 July 2003 E. M. from Z. approached the Ombudsman with a complaint claiming that he is dissatisfied with the work of the Ministry of Croatian Defenders from the Homeland War, he thinks that after the ruling of the Administrative Court of the Republic of Croatia, number: Us-1412/1998-5 of 7 September 2000, ruling of the body of the first instance of 24 September 1997 remained in effect, and that there was no space nor was it possible to amend the stated final and valid ruling or abolish and change established percentages which was nevertheless done on 22 March 2001 by subsequent ruling of the Ministry.

**Measures taken:** In accordance to the authority pending provisions of the Law on the Ombudsman on 18 August 2003 urgent statement on development of the procedure and the reasons for non-compliance to the ruling of the Administrative Court of the Republic of Croatia was requested.

**Outcome of the Case:** The requested report was delivered on 4 November 2003 from which it was evident that among other things: "The Ministry of Croatian Defenders from the Homeland War in the line of duty, and pending Article 267 of the Law on General Administrative Procedure, passed ruling class: UP/II-562-02/01-1301/58, file number: 519-04/2-03 of 29 October 2003 by which declares its earlier ruling class: UP/II-562-02/01-1301/58, file number: 519-04-3-01-2 of 22 March 2001 null and void and determines that pending the ruling of the Administrative court of the Republic of Croatia No.: 1412/1998-5 of 7 September 2000 ruling of the body of the first instance of 24 September 1997 remains in effect.

**Note:** Intervention was successful, violation of right was recovered.

**(2.) Case description (P.P.-640/03):** Ž. P. from Z. approached the Ombudsman asking for assistance claiming that he was dissatisfied with the work of the authorities of Ministry of Croatian defenders from Homeland war. He considers that after the ruling of the Administrative Court of the Republic of Croatia number: Us-12499/1997-4 of 3 March 1999 and Us-8548/1999-5 of 6 September 2001 ruling of the body of the first instance of the Ministry of Defense of the Republic of Croatia, Administration for Defense P., Office of Defense P., class: UP/AND-562-02/97-92/09, file number: 512-128/9-97-4 of 11 August 1997, by which he received status of the Croatian military disabled person of the Homeland War of the IX group with 30% disability, remained in effect, is permanent, and that there was no space nor was it possible to annul it. The ruling of the Ministry of Croatian Defenders from the Homeland War class: 562-05/99-01/4631, file number: 5519-05-4-99-2 by which,

despite court ruling the ruling of the Administration of Defense P., Office of Defense P, class: UP/AND-562-02/97-92/09, file number: 512-128/9-97 of 1 August 1999 was annulled, was enclosed.

**Measures taken:** The Ombudsman asked the proper authorities urgent statement on by now conducted procedure in this legal matter and reasons for non-compliance with the ruling of the court jurisdiction.

**Outcome of the Case:** In case of the named complainant the Ministry of Croatian Defenders from the Homeland War delivered statement to the report of 14 July 2003 states: "... concerning recognition of status of Croatian military disabled person of the Homeland War and non-compliance with ruling of the Administrative Court of the Republic of Croatia, we deliver a copy of the ruling of this Ministry passed in execution of ruling of the Administrative Court of the Republic of Croatia number: Us-8548/1999-5 of 6 September 2001 where we completely acted upon the stated ruling." Namely from the enclosed photocopy of the ruling of the Ministry of Croatian Defenders from the Homeland War, class: UP/II-562-02/01-1101/253, file number: 519-04/2-03-3 of 8 July 2003 it is clear that in passing decision under I. ruling of the Ministry of Croatian Defenders from the Homeland War, class: UP/II-562-02/01-1101/253, file number: 519-04-3-01-2 of 10 December 2001 is being declared completely null and void and furthermore under II. Pending ruling of the Administrative Court of the Republic of Croatia No.: Us-8548/1999-5 of 6 September 2001 ruling of the Administration of Defense P., Office of Defense P, class: UP/AND-562-02/97-92/09, file number: 512-128/9-97-4 of 11 August 1997 remains in effect.

**Note:** Serious violation of the rights of complainant was established pending irregular execution of ruling of the Administrative Court. Violation was repaired by subsequent act.

**(3.) Case description (P.P.-2027/03):** M. D. from P approached the Ombudsman. He is born in 1936 in S and was a prisoner of the enemy forces in the former Montenegro in the period between 16 October 1991 to 16 January 1992 pending ruling on determining custody of the High Court in *Titograd*, and was tried for joining of the then Croatian National Guard because of »provoking national, racial and religious hate«. It is stated in the complaint that Administration of Defense D., Office of Defense D of the Ministry of Defense of the Republic of Croatia on 4 August 1999 issued him confirmation that he served in the HV in periods between 2 May - 1 July 1994 and between 4 August 1995 - 22 February 1996 in order to regulate MIO. However, the stated confirmation did not include the period between 16 October 1991 - 16 January 1992 that he spent in captivity of the enemy forces, as period that does not count for welfare years of service. With the complaint he delivered conformation of the Croatian Society of the Detainees of he Serbian Concentration Camps from Z., file. No. 2-480/2003 of 25 July 2003 and by insight into records of the members of the Society confirms that the complainant was arrested by the enemy forces in Titograd in period between 16 October 1991 - 16 January 1992 as well as ruling of the High Court in Titograd on prolongation of custody to the complainant No. Kv-332/91 of 15 November 1991 and Kv-360/91 of 16 December 1991 as well as photocopies of the newspaper articles published in the press in Montenegro relating conduction of the criminal proceeding against the complainant and the others.

**Measures taken:** The Ombudsman asked by a report of 10 November 2003 the Ministry of Croatian Defenders from the Homeland War based on delivered documentation and their own records to investigate this case and inform the

Ombudsman on possibilities of recognition of the time spent in captivity to years of service of the insurance pending Article 36 of the Law on Rights of Croatian Defenders from Homeland War and Members of Their Families in order to regulate MIO M. D., as detainee in the enemy camp.

**Outcome of the Case:** Unknown. Ministry of Croatian Defenders from the Homeland War neither responded nor delivered requested notification to the Ombudsman within 30 days expected for acting of the organs and bodies of public administration pending Article 7 of the Law on the Ombudsman.

**Note:** Due to insufficient information, because the Ministry defaulted, it was not possible to establish whether the rights of the complainants have been violated. Still, it is unquestionable that the right of complainant was seriously violated by default of the appropriate administrative body.

**(4.) Complaint description (P.P.-961/03):** Lj. M. from K. seeks assistance with housing provision. Complainant was a tenancy rights holder on the apartment in K. which she left during the MILITARY ACTION „Storm“ and when she wanted to return it was impossible because Ž. U. started using the apartment although he owns a house in G. Complainant states that her late husband G. M. was a Croatian defender, had been missing since 1991, but was found later, identified and pronounced killed, and based on that he has right to housing provision. Complainant seeks return of her apartment since 1997 and purchase of the named, but everywhere she faces misunderstanding and stalling of the procedure. She states that she is living in very hard living conditions and must pay rent for lease housing provision.

**Measures taken:** We asked a report from the Administration for Displaced Persons, Returnees and Refugees of the ex Ministry of Public Works, Reconstruction and Construction on possibilities that the complainant solves her problem and accomplish repossession of the apartment as soon as possible. As her late husband is missing Croatian defender, a letter was also sent to the ex Ministry of Croatian Defenders from the Homeland War in order to investigate possibilities for hero housing provision. Letter was also sent to the Ministry of the Internal Affairs to provide housing for temporary user/beneficiary, who is member of the police, as the complainant could take possession of her apartment.

**Outcome of the Case:** Administration for Housing Affairs of the ex Ministry of Croatian Defenders from the Homeland War delivered report which stated that it was established that the complainant had no right to family disability pension, which is precondition to housing provision. Administration for Displaced Persons, Returnees and Refugees of the ex Ministry of Public Works, Reconstruction and Construction delivered a report which states that the complainant is applicant for housing provision in the area of special state concern. Department of investment and real property of the Ministry of the Internal Affairs replied to the Ombudsman that their employee Ž. M. did not illegally possessed the apartment on which the complainant was tenancy rights holder but on the basis of lease agreement which he contracted on 28 September 1995. Also, it was said that the lessee does not own any property in G. The complainant was instructed to wait for the housing provision because she is on the list of priority for housing provision in the areas of special state concern.

**Note:** Violation of rights of the complainant was established: a right to a home, rights based on killing of husband-Croatian defender and a right to information from the administrative bodies. Due to denial of relevant information she was unable to start appropriate procedure for realization of her rights.

## **4.2. Complaints against violations of the right to reconstruction**

Basic causes of the citizens complaints in the field of realization and/or violations of right to reconstruction of family houses destroyed in the war are badly performed reconstruction works and loss of rights due to missing deadline for submitting request for reconstruction. Complaints on the work of public administration authorities still relate to non-acceptance of the fact of the future living in the building that relates to the request for reconstruction. Domicile reported prior to 1991 is a problem. Namely, unrecognizing of rights to reconstruction is a result of the fact that the previous domicile was reported in job locality, often on the address of the leased apartment, not on the address that belong to owned houses that reconstruction is asking for; most commonly that house was in the birth place or parents' home. Furthermore, a great number of citizens cannot realize right to reconstruction of houses because of co-ownership on the object of reconstruction or because the house has no clear title or because of registered owners in the land-registry of the houses. For reaching solutions on determining rights to reconstruction, the public administration authorities, as evidence of active validation recognizes solely the registered land certificate, but not the Certificate of possession of the Administration of Cadastre and Geodetic Affairs (as official validation of the actual condition and the owners).

Regarding individual complaints of citizens, and there are as much as **279** accepted, it was established that in the Croatian areas of special state concern, where tenement houses and other buildings damaged by war and destroyed are situated, it was evident that there is still a certain number of owners of destroyed and damaged real properties who are not users of rights to reconstruction, or owners who cannot realize right to reconstruction and right to subsidy for remedy of defects and furnishing of houses with the most necessary household objects.

That involves mostly complaints by citizens of advanced age, who have not realized right to reconstruction of their houses out of different reasons, most commonly because of lack of education and failure to adapt to new circumstances of inhuman conditions they are living in, and the process of return of citizens into their previous domicile has not been actually finished. It was thought necessary to inform Administration for Reconstruction of the Ministry of Public Works, Reconstruction and Construction about the cases which the Ombudsman monitors in order to inform the Ombudsman for every individual case, after the case is investigated. Due to unnecessary repetition, request was submitted by one

letter, based on the identical content of the complaints. In majority of cases the procedures are still ongoing. However, intervention for protection of rights of citizens may be considered as intervention based on which the Ministry of Public Works, Reconstruction and Construction conducted the procedure and replied to the request of the Ombudsman.

In meeting with the citizens, it was established that the considerable number of the owners of damaged tenement buildings did not and/or cannot realize right to reconstruction because of the late requests. On 29 5 2003, it was suggested to the vice-president of the Croatian Government that, quot.: "In realization of the provisions of the Article 69b of the Law on reconstruction (Official Gazette number 24/96, 54/96, 87/96 and 57/00), Croatian Government has, on a session of 15 February 2001, with a special Decision, class: 361-08/01-01/01 file number: 5030115-01-1, determined that 31 December 2001, would be a deadline for submission of requests for reconstruction. However, in the Croatian areas of special state concern, where tenement houses and other buildings damaged by war and destroyed are situated, it is evident that there is a certain number of owners of this real properties who did not become users of rights to reconstruction, or owners who cannot realize right to reconstruction because of missing deadline when such request could be submitted to the state service competent for the reconstruction affairs. Cases of late requests for reconstruction, almost all citizens – owners of the damaged family houses that I have met in the areas of special state concern, are homogenous: people concerned are uneducated and ignorant citizens of advanced age who out of objective reasons did not know and could not know about the legal deadline when they can realize right to reconstruction of their houses. Finally, neither is the process of return of citizens into previous domicile finished and is common case. Objectivity of ignorance, besides old age, lack of education and failure to adapt to new circumstances of inhuman conditions they are living in, is also the fact that they are living in inaccessible, marginal hamlets of the municipalities they territorially belong to, without electricity, which is additional reason why they have no access to information. Certain number of this owners requested reconstruction of houses, but on incompetent places; learning about the loss of rights was thus unacceptable, unattainable and unjust. Therefore, I am suggesting to the Croatian Government to abolish deadline for submitting request for reconstruction, and thus annul the stated Decision. I find basis for such proposal in moral responsibility for exceptional acceptance of objective ignorance as excusable. Existence of the case deadline puts these citizens into unequal position in comparison to citizens who have returned earlier and citizens to whom the information

about that is available, in several ways (electronic media, daily press, availability of the body of the units of Local Self Administration or the authorities). Deadline for submitting requests for reconstruction prevents these citizens from realization of rights, guaranteed to all Croatian citizens by the Law on Reconstruction."

The Ombudsman did not receive any reply on the issue of deadline for submitting requests for reconstruction. Decision of the Croatian Government on closing date for submitting requests for reconstruction, as proposed by the Ombudsman, was not changed.

Since the Ombudsman thinks the issue of reconstruction priority in the execution of return of citizens in their earlier domicile, and bearing in mind the number of complaints he received, the Ombudsman finds it necessary to point out that by solving issues of return of citizens at the same time many other problems are being solved too, e.g. problems of temporary housing, revitalization of the area of special state concern, unburdening of the state budget etc. It would therefore be useful to examine in detail issues of reconstruction in the context of return of citizens into still deserted areas of Croatia. Detailed presentation of problems would probably also contribute to better understanding of national and international public of the problems that Croatia still has to solve. Every complaint on reconstruction done beyond standard or partially done reconstruction should also be carefully investigated, for the sake of efficient supervision on spending significant means of the state budget.

**(1.) Case description (P.P.-2113/03):** M. D. approached the Ombudsman on behalf of his sister A. S. with a complaint on the work of Office of public administration, s.-m. County, Service for Spatial Planning, Environment Protection, Construction and Property-Legal Affairs regarding violation of rights to reconstruction. Objection related to «silence of the administration» on appeal to the ruling which denied request for reconstruction and allocation of subsidy for equipping family house with the address N.....189 in S., with established sixth level of damage.

**Measures taken:** Delivery of information on this case was requested from the Ministry of Public Works, Reconstruction and Construction: «...Therefore, send the Ombudsman information about this case, and competently investigate if there are objective reasons for non-passing the ruling on the appeal. If you determine that there is no reason for non-passing the ruling, you may consider the submission with the rush-note and suggestion for execution of procedure.» The stated Ministry informed us that the case appeal was received, but considering the workload, no ruling was still passed on the appeal. Regarding statement it was thought necessary to warn on unacceptability of the received reply and the rush-note was sent again.

**Outcome of the Case:** Intervention was successful. Ministry of Public Works, Reconstruction and Construction passed a ruling of the second instance regarding the

appeal against the ruling of the Office competent for the affairs of reconstruction of County s.-m. The party has ground to start administrative litigation.

**Note:** Violations of right to solving within a reasonable term was established.

**(2.) Case description (P.P.-578/03):** A. H. from S. complains on work of the Regional office for displaced persons and refugees in V. to whom she submitted a request for allocation of construction materials for construction of family house in January 2002, and still has not get reply to submission.

**Measures taken:** We asked the report from Administration for Displaced Persons, Returnees and Refugees of the ex Ministry of Public Works, Reconstruction and Construction why complainant still has not get reply to submission. Administration for Displaced Persons, Returnees and Refugees delivered a statement that did not contain requested information, with the same text as in several previous cases with the same issue, so the Ombudsman warned the Administration on defects in the report and asked that do not send such reply in such cases in the future.

**Outcome of the Case:** Reply to warning still has not been received, nor the new report (warning was sent in November 2003.). Case was not completed.

**Note:** At the time being no violation of rights of the complainant was established, but serious violation of her rights with unprompt and careless work of the competent administrative body was established.

**(3.) Case description (P.P.-764/01):** Mr. M. Š. approached the Ombudsman for the first time in May 2001, with a complaint regarding reconstruction of his house in B. The basic objection relates to: performing work without knowledge of the owner, without notification on the level of damage of the tenement building, change of the existing carpentry with the poor one, installation of minimal electrical wiring and other construction and finalizing works. Mr. Š. repeatedly claims that he did not receive any notice which determines minimal technical conditions for moving in and using the building for living, which directly affects possibility of realization of protection, in regular legal way.

**Measures taken:** Regarding complaints, in February 2003 procedure of investigation was raised again at the Administration for Reconstruction in relation to: 1) was Mr. M. Š. as authorized person to the rights on reconstruction and owner of the reconstruction case issued administrative act which determines condition of building for use at all (at least minutes on performed technical inspection, certificate of occupancy, certificate on adaptability of the building or some other document) and 2) in order to check allegations of the complaint and establishing the exact condition as well as establishing kind and extent of the work performed and the facilities, as follows: "Based on complete documentation, consisting of documentation which was delivered by Mr. Š. together with the complaint and documentation of the ongoing procedure from the Administration for Reconstruction of the Ministry of Public Works, Reconstruction and Construction, it was established that: - the works were performed in 1997 in reconstruction of tenant buildings of lower level of damage, - ruling on right to reconstruction was not issued , -there is no minutes on the established level of damage from war, -works were performed without owner's knowledge, minutes on performed technical examination were made available to the owner for the first time after he received them with the Ombudsman's assistance. Since Mr. Š. repeatedly claims that the during reconstruction devastation of his family house was done, not remedy of the war damage, and that the condition of the house is such that his family cannot live there, and further communication with the

Administration for reconstruction has no sense, it was estimated that it is necessary to point to this specific case, before directing complainant to the procedure of compensation of damage to protect his property rights, in order to be solved, directly to Mr. Š. – by repairing, settlement or some other appropriate way." The Ombudsman received report of the Administration for reconstruction, class: 370-01/00-01/2219 file number: 516-04/04-03-13 of 23 July 2003. However, as it confirmed the established that the objections can be remedied only by repair, not with damages, the complainant was informed and it was pointed out that if he still holds the same position (damages), that the protection may be provided only on court. After receiving this letter from the Ombudsman, Mr. Š. approached again, visibly discontent with reconstruction of his house in B, and requests reply on the question if his base rights were violated and have, as he claims, visible mistakes been done. It was requested therefore from the Ministry of Public Works, Reconstruction and Construction, for the sake of final discussion about this case, quot.: "Reconstruction of the named house in B. was finished by 31 December 1997 (on request by 18 July 1997), under the program of organized reconstruction of houses of lower level of damage – specifically, I level. As that involved organized reconstruction in the "Area of reconstruction", we conclude, the works were obviously done in time when "its turn came". Namely, the stated is our explanation which arises as the basic reason why the named did not participate at works. We do not have a statement on reason why the explicit Note that the works must not be performed without participation of the owner (note because of household members who have a disabled person status), was not observed. However, we do not have the allegation which explains that the family house previously, before the damage, was adapted to the special needs of members, and that during reconstruction were done such works that changed previous condition (architect barrier). Following the stated consideration the conclusion was that in reconstruction there were no new and/or additional works, that would exceed present condition, but only change and repair (I level damage). The above stated is an explanation for our standing according to which the owner had been pointed to court protection. However, we nevertheless find this necessary to discuss: Objection on works was put on 15 October 1998, in Service in B., thus within warranty period, not after three years (appeal), as it says in the first report of the Administration for reconstruction of 12 April 2002. Further, from Minutes on performed technical check at reconstruction of the family house by «B...» d.o.o., of 31 December 1997, the following works were done: removal of carpentry, dismantlement, checking of roof truss, ceramic ware works, plumbing, sewage system, wiring. Exactly the load of work, considering objections of Mr. Š. towards later established defects, leads to a conclusion that the carpentry was (maybe) unnecessary changed (Note: with the carpentry of a lesser quality), or that the performed works that exceed damage of the I. level, and with questionable quality – the roof is leaking, damp in the bathroom, the wiring made the existing goof wiring useless etc. Therefore, we suggest that you establish possibility of remedy of defects once again. Inform us about the established and done."

**Outcome of the Case:** Complainant was replied with explanation that: "The last request, sent to the Ministry of Public Works, Reconstruction and Construction Administration for Reconstruction, as well as all earlier requests, primarily tend to remove irregularities, but in order to establish actual objective and right condition, because without fully establishing condition: for the necessary works, works done and their solidity and quality of facilities, it is not possible to give final conclusion, in a sense of predicting outcome of the litigation. One must also bear in mind that the Ombudsman has no assistance of the component professional from architecture, who

could perform examination and give objective (impartial) findings, regarding works and facilities, as well as damage. Property is guaranteed by the Constitution. However, for proper estimation of violation of property and/or performing works must be discussed and issue of execution of works with or without warrant and without the owner's presence, in the circumstances of reconstruction from the assets of State Budget. So, as long as we do not have all information, we can only instruct you on possibility of court protection. The Ombudsman cannot take responsibility for final decision about that."

**Note:** Procedure ongoing.

### **4.3 Complaints of refugees and displaced persons**

**For several** years the Ombudsman did not receive any founded complaint of a person who has left Croatia during the Homeland war and who lives abroad as a refugee. Occasionally, we were approached by persons who live in, but who were not born in Croatia and who moved to Croatia during the ex Socialistic Federative Republic of Yugoslavia. It mostly involved military persons who were in service in the then Yugoslav People's Army, who had republic citizenship of some of the ex states of the ex Socialistic Federative Republic of Yugoslavia, and who left Croatia at the beginning of the war. Those persons have never had Croatian citizenship and at the moment of leaving of Croatia they were citizens of some of the states established out of the ex Socialistic Federative Republic of Yugoslavia. In most cases after leaving Croatia they went to their birth state, and in majority of cases in country of their citizenship. Therefore, according to international and national rules, they were not refugees, although that status was recognized to them in the state of their origin and since those people weren't Croatian citizens, who are foreigners and who according valid rules do not fulfill conditions for acquiring Croatian citizenship. In 2003 the Ombudsman received only 4 complaints of persons who have left Croatia and wish to return. In 3 cases it was established that the complaint was unfounded, because it involved foreigners i.e. persons who have never had Croatian citizenship nor fulfill conditions for acquiring Croatian citizenship. In the fourth case, too, that is repeatedly pointed to, although it probably involves a foreigner, i.e. citizen of Bosnia and Herzegovina who today resides in Bosnia and Herzegovina.

Complaints of displaced persons, and in 2003 there was 30 of them, in almost all cases relate to the impossibility of housing provision. Almost all complainants are Croats who had been displaced or were forced to leave Bosnia and Herzegovina, and who with the time acquired Croatian citizenship. They are mostly based on temporary solutions and were placed as beneficiaries/users into houses of the original owners who

demand return of their property, and are facing recent eviction. In several cases there were tries to acquire rights that the complainant does not have, or receive actual reconstruction despite the fact that they received appropriate financial support in order to reconstruct their buildings on their own. Still, bearing in mind that there are still a lot of tenement buildings that have not been reconstructed, the problem of displaced persons and housing provision for them remains current. The following examples illustrate work of the Ombudsman on these complaints.

**(1.) Case description (P.P.-39/03):** Complainants A. and K. M. from Đ. complain on the work of the Administration for Reconstruction of the ex Ministry of Public Works, Reconstruction and Construction, to whom they had submitted an application for assistance regarding purchase of construction land in the City of Đ. and provision of construction materials for building a house and cost compensation for the building permit. Complainants submitted a request to the Regional Center for Displaced Persons and Refugees in O. application for allocation of a house, construction land or construction materials, provision of construction materials was promised to them provided they buy construction land, but they did not get the ruling.

**Measures taken:** The Ombudsman asked Administration for Reconstruction of the ex Ministry of Public Works, Reconstruction and Construction a report on possibility that the complainant purchases land in Đ., and receive provision of construction materials and that expenses for acquiring building permit be paid for. Administration for Displaced Persons, Returnees and Refugees of the ex Ministry of Public Works, Reconstruction and Construction delivered a statement to the Ombudsman where they claim that the complainants are candidates for housing provision in the area of special state concern. It was state that the order of propriety for housing provision was established pending Article 9 paragraphs 1 and 2 of the Law on the areas of special state concern – purged text (“Official Gazette” No. 26/03), and is described in details by the Regulations on the order of priority of housing provision in the areas of special state concern (“Official Gazette.” No. 116/02), and that the candidates are not beneficiaries/users of the property temporarily allocated to possession and enjoyment, according to the Law on temporary takeover and administration of certain property (“N.N.” No. 73/95, 7/96 AND 100/97), and therefore solving their housing provision is not priority. As the reply was not complete, the Ombudsman asked for addendum of the statement in a part that was not answered.

**Outcome of the Case:** New statement still has not been delivered to the Ombudsman. The case is not completed.

**Note:** Right of the complainant was violated by stalling.

**(2.) Case description (P.P.-549/03):** Complainant Lj. R. from K. stated in her complaint that she and her family (spouse and a son) have been exiled from S. M. (BiH) in 1992 with a threat of capital punishment i.e. forcedly evicted. Today they are living in K. as subtenants and the apartment is owned by F.P. who at the time being lives in Germany. Complainant is 71 and states that she is partially blind person, her husband is 72 and has been operated for three times, and the son who is 41 fall ill leaving the army of the ex state. They lost status of refugees in Croatia in 1996 by the change of the identity cards (by change of identity cards the complainant considers acquiring Croatian citizenship). In previous domicile in S. M. they cannot return as everything is devastated and ruined and destroyed. They have no living means, i.e.

possibilities and prerequisites for autonomous solving of the present existential problems. To the day of writing the complainant submitted two requests to the Ministry of Public Works, Reconstruction and Construction, one request to the Minister personally. They have not received the reply or decision on requests. They were looking for alternative housing provision or something appropriate by the Regional service for refugees and displaced persons in K. However, according to allegation of complaints they still have not received appropriate reply or decision of the proper body concerning considered request.

**Measures taken:** The Ombudsman had asked a statement on the allegations made in complaints from the competent Ministry of Public Works, Reconstruction and Construction, Administration for Displaced Persons, Returnees and Refugees. Until the day of writing this report the named have not sent any report on measures taken concerning this legal matter.

**Outcome of the case:** Unknown.

**Note:** Violation of basic freedom and human right was established. Namely, on the complainant's requests all bodies of public administration that the request for housing provision or solving of status of displaced person, returnee and refugee was submitted to, was due to reach the appropriate decision i.e. administrative act, as the complainant might use right to appeal guaranteed pursuant to the Act 18 of the Croatian Constitution and realization of rights pending Article 26 of the Constitution which established that all citizens of the Republic of Croatia and foreigners are equal before courts and other state and similar bodies that have public competence.

## **5. Rights in the fields of urban development, construction and environment protection**

Complaints of the citizens on misadministration of bodies competent in the field of urban development, construction and environment protection are rising not only in number but also in seriousness of threats to right of citizens and threats, occasionally even of devastating cultural and architectural heritage. In 2003 a total of **101** complaint in this field were received, and as many as **83** (82,18%) complaints were related to illegal construction which mostly violate rights of neighbor, and complaints regarding violations of not only rights of neighbor but also wider interests were also received. The complainants stated in their complaints that the proper inspection departments were not effective and that inspection rulings are not being executed.

In 2003 **18** (17,82%) complaints were received regarding endangerment of environment, and by that right to healthy living. Although there are not many complaints, in certain cases the complainants – organizations of citizens have pointed out to danger to environment by certain businesses and insufficient supervision on influence of specific plants on the environment. They have especially pointed out to the casual and inefficient analysis of soil, air, water, and

impossibility of execution of appropriate inspections that would prove violation of health of a larger number of people.

### **5.1. Urban development and construction**

Complaints by citizens who have approached the Ombudsman in 2003. regarding violation of rights, lead to conclusion that the condition in constructional, and urban development, has not changed significantly in comparison to previous reporting periods. Basic complaints are still the complaints on work of bodies of public administration and regarding violation of rights of the neighbors, with approval of new reconstruction of existing structures the same as with approval of new construction. In addition, the procedure for issuing a building permit lasts for an unreasonable amount of time. The officials who issue building permit don't use the institute of "received agreement", if the proper authorities or public enterprise didn't issue such agreement in agreed time (as a rule 30 days). Lack of spatial – planning documentation still results in legal insecurity of the citizens, no matter if they are investors or parties who need to protect their rights and interests in the procedure.

In this report period fact of neglect of the rights of neighbors in proceedings of buildings inspectors became especially evident, they are illegally taking them away attribute of a party and interested person who has right to protect their interests before body public administration (executive branch of government). Finally, ineffectiveness of inspections, which is especially evident in lack of implementation of the hardest measures in the line of duty, is in the interest of society. Forced execution of rulings of building inspectors on the removal of illegal construction are not being executed in time or are not executed at all, condition of tolerating illegally changed spatial condition is therefore evident, even the occurrence of usurpation. Finally, "silent or indirect legalization" of illegally built objects is done by the utility services, by plugging in to the utilities infrastructure (electricity, water, gas, determining street and house number).

Building inspectors objectively cannot supervise every site (inspectors are employees of the Ministry of Environment Protection and Spatial Planning, not of the county state office or city service; lack of staff), so the illegal construction in some areas is "flourishing". The local authorities (units of Local Self Administration) are displeased by such condition. The units of Local Self Administration because of protection of their area do not have measures to order measures of prohibition and/or termination of construction, or order removal, so it feels inefficient and

helpless. Local authorities are responsible for condition within its territorial competence. However, while responsibilities were shifted, the means were not (material, active validation - competence, staff), that she could use to execute its responsibility.

Further, that the institute of "appeal" does not postpone execution of the ruling of building inspector" is not being applied at all. Such practice directly changes will of the legislator expressed in the Law on construction. Forced execution of the order for removal of illegal buildings is exercised only after utterly exhausting regular legal way against the administrative act (complaint, administrative charges), and is determined by the annual Plan of execution and criteria of order. In such way, measure of removal of building loses sense of purpose why it was pronounced (Note: a great number of buildings were not removed within of 10 years since pronouncing of the order, after this deadline the case expires by limitation so it is not possible to perform forced execution, illegal change in space remains permanent). Reason for not being able to start removal before it is established by the Plan of Removal is ensuring means for execution of such procedure. However, for removal of illegal buildings, as a rule provisions are made in the State budget. (State budget for 2003 of 8,583,510.00 Kuna is expected), but the Ministry has not used sufficiently those means to use those means for the purpose they are supplied for. In previous term, as well as in previous years, those designated funds were used for other purposes. Such action should be investigated for damaging consequences and investigate the responsibility of the order-issuing authority.

**(1.) Case description (P.P.-679/03):** The Ombudsman was approached by B. V., owner of the historically protected complex "Lj. B." in Z. M., because of illegal construction of his neighbor. Mr. V's complaint relates to the new building of the investor Z. H. from D. inside "Ambiental and rural unit S." The same complaint has been, through the State Inspectorate, on 3 May 2002 and 9 May 2003, been delivered to the Ministry of Environmental Protection and Spatial Planning.

**Measures taken:** Evaluating the intervention of Ministry of Environment Protection and Spatial Planning necessary, it was suggested that: "the implementation of supervision over lawfulness of building permit, class: UP/AND-361-03/99-02/298, file number: 2117-05/3-00-2 o 2 February 2000, of the service competent for spatial planning and construction of the Office of public administration in County d. and supervision of building – regarding order of the Administration for protection of the cultural heritage of the Ministry of Culture, class: UP/AND-612-08/02-01/19, file number: 532-10-1/30-02-11 of 5. 7. 2002., issued for termination of works. Site of the construction is, pending ruling of the Office for protection of cultural monuments D., number: 12-15/1-68 of 4. 3. 1968., determined by preventive protected cultural property of a higher instance. Since the Ministry for Protection of Environment and Spatial Planning is introduced to the construction, by direct delivery of ruling on temporary termination on works of Art-Conservation department in D., class:

UP/AND-612-08/01-07/17, file number: 2117-25-01-03/6-01-02 of 13. 2. 2001., inform the Ombudsman on the established in procedure according to the right on supervision of the above stated building permit for construction of the tenement-business premises on cad. plot No. 934/1 and 936, all cad. mun. Z., and according to that also about the ruling passed according to the right on supervision. Furthermore, we need information on measure passed to the investor in procedure of supervision of building Inspection on construction (ruling, minutes on the investigation, all photocopied)." Problematic construction was done according to location permit, of 2. 7. 1998. Building permit is valid since 31 March 2000. Considering the fact of validity of building permit, which is illegal, further procedure was executed at State Attorney Office in D., Ministry of Culture, and Croatian Government was informed about the case: "Since the fact of prohibition of construction is evident (statement of the Ministry of Culture, class: 612-08/03-01-120, file number: 532-03-3/3-03-03 of 8. 7. 2003.), it is suggested that the competent procedure should be executed in order to establish conditions for application of provision of the Article 267. ZUP-a – pronouncing ruling null and void – location and building permit as illegally issued, which permit Z. H. construction of the new building on plot marked as cad. plot. No...., all cad. mun. Z. inside the protected cultural property."

**Outcome of the Case:** The complainant was informed: "...by delivering our letter, in which we intervened at the proper authorities regarding your complaint on construction inside historical protected complex "Lj..." in Z. M. You have been informed on procedure we are conducting. In the meantime, based on our suggestion for pronouncing building permit null and void, a statement Ministry of Environmental Protection and Spatial Planning was received... Since the building permit was annulled, which includes also annulment of all legal consequences it produced (Note: construction performed with a permit which is null and void is construction without building permit), in order to restore previous condition we are pointing to building inspection. Namely, by annulment of building permit our means for protection of your rights have been exhausted."

**Note:** According to ruling of 18 June 2002, on the investor's suggestion for a repeated procedure of obtaining a building permit. The last information delivered to the Ombudsman was a notification that the procedure of reconstruction of procedure regarding building permit was ongoing. Outcome of this case is unknown. Violation of rights of the complainant was established, but also violation of Croatian cultural heritage.

**(2.) Case description (P.P.-1998/03):** Mr. D. B. from U. approached the Ombudsman with a complaint against misadministration of bodies of public administration (of first and second instance) on his request for issuing building permit for reconstruction of the existing (old) house. Mr. D. B. intends to adapt and refurbish the old building, because he would solve the issue of housing provision for his family. However, he was lead into an absurd situation.

**Measures taken:** After consideration of the complaint and extensive documentation, which Mr. B. made available as evidence to his allegations, the following standing was pronounced: "We conclude that your reconstruction was completely done according to traditional (and legal) definition of reconstruction: construction works restore appropriate condition of the existing building, which includes annexing, adaptation, change of important (building and spatial planning) requests of the building. By existing building we understand also a part of the building, and according to the rules of the guild the stated understands existence of at least

foundation because, quota: "building is everything that came into existence by construction and is connected to the soil" (Law o construction), when change of state of the space (note: in comparison to the state before building was performed, u relation to the vacant lot) is evident. An important fact for establishing reconstruction of the existing building and its preservation, to the greatest extent (external look and architectural formation etc..) Based on allegations of the complaint and the letter, that you approached to the body of first and second instance, it may be concluded that you have been lead into situation of violation of basic rights to equal relation and rights to receiving lawful individual administrative act of the body of public administration, because you were denied right to building, and that denial and restriction has no legal basis in documentation of spatial planning, acquired real third party or some other objective reasons why the requested change of existing building should not be allowed. Based on delivered documentation it was found that the ruling on denial of request for issuing building permit was final. However, as the complaint mentions court protection of rights at the Administrative court and that administrative bodies did not act according to the ruling of this Court, it can only be assumed, but not claim, that the named ruling did not become valid and that the procedure was returned to repeated execution. In order to apply our procedure for protection of your rights we need information if you have pressed charges on Ministry's ruling and if the Administrative Court had passed the ruling, i.e. information if the procedure is ongoing or is it validly completed. Information on the present legal situation of the administrative matter of (your) building permit for reconstruction is important to us because of evaluation of existence of condition for our procedure and taking standing on necessary actions for protection of your rights. In addition, if the ruling on denial of request became valid, we instruct you about the possibility of submitting new request for building permit, based on documentation which you have already acquired and based on project, which was already done."

**Outcome of the Case:** Completed. Right of Mr. D. B. acquisition of lawful building permit is violated.

**(3.) Case description (P.P.-2002/03):** During the visit to County d... citizens of Ž. had approached the Ombudsman, as well as representatives of the unit of Local Self Administration regarding illegal construction in S. and Ž. Namely, as units of Local Self Administration due to protection of their area do not have means for giving measures prohibition and/or termination of construction, or order its removal, especially for works in tourist center S. in the complex "Ž...", in the phase of preparatory works and start of construction, and therefore report was submitted. However although it was not established that those constructions were illegal – the investor has no building permit, condition of area was not restored to previous condition, because procedure of the building Inspection was not completed by execution of the procedure.

**Measures taken:** Estimating that in this specific case for execution cannot wait according to annual plan (for the next or subsequent years), because the purpose for issuing the order of the building inspector is not fulfilled, intervention for restoration to the previous condition or demanding restoring lawful condition cannot be postponed. It was therefore suggested to the Minister of environment protection and spatial planning, quot.: " to consider problematic building in such way to discuss competently if it would be possible to restore the named to the condition that could remain at all (legalize by subsequent building permit), and accordingly ensure means for execution of removal (of a part or the whole), before order of priority. It is highly

important that the stated should be done as soon as possible because it was built in the area that has another purpose – tourist one. Intervention for establishing of the earlier condition or request for establishing lawful condition cannot be postponed." Since no reply on the Ombudsman's suggestion was received for a month, the same was repeated as rush-note: "Since in the meantime no notification about our suggestion has been received, and construction work continued, we request for information about the measures taken".

**Outcome of the Case:** Minister of Environment Protection and spatial planning replied on 27. 11. 2003 with a statement to the Ombudsman, establishing that, quot.: "By plan of execution and criteria of order equality of citizens before the law is realized".

**Note:** Purpose of the measure of removal passed to the illegal investor was not accomplished. The evidence is continuation of construction work as if the order of the inspector has never been said. Execution of the removal subsequently for the citizens who tolerate illegal building of a neighbor or a third party questions principle of "equality of citizens before law". Violations of right of several persons were established, but also violation of interests of Croatia for preservation of the ambient whole.

**(4.) Case description (P.P.-48/03):** Mr. F. M. approached the Ombudsman regarding legal and other assistance regarding protection of tenement building, of the tourist-apartment purpose in S., real property marked as cad. plot.... cad. mun. S., built with a valid building permit, class: UP/AND-361-03/01-01/580 file number: 2198-05-1/1-02-04. This particular case relates to a tenement building which is on one side turned directly to the sea from which it was, since it is lower than the sea level, enclosed with dry stone wall (property of complainant as the owner of plot). However, as the existing dry wall could not provide sufficient, appropriate and necessary protection from the waves and deposition of alluvium, Mr. M. had, in accordance with the Municipality Authorities of the Municipality S., class: 342-01/02-01/06 file number: 2198/03-1/3-02-1 of 28. 3. 2002. in front of cad. plot no.... cad. mun. S., spread over stone-earth material as a protection from the wave strikes. Namely, this area is well known for strong south wind which rises sea waves even few meters high (evidence: confirmation of the State Weather Bureau on probability of the occurrence of south wind and expected maximum speed according to the monitoring 1958-1987). However, by ruling of the Port Authority Z., of 24. 6. 2002., it was ordered to Mr. F. M. to remove the described material, as illegally spread on marital property. Forced removal was executed by "K..." d.d., on 17., 18. and 19. December 2002. , in such way that the material was taken some 50 m away and left, also on the marital property. Mr. M. has, true, covered the dyke of stone and earth by stone plates, and done arrangement of the coast, as it was agreed by the Municipality Authorities. The coast is not permanently and unnaturally changed not by such arrangement, and remained in general use, too. Primary function of a dyke was achieved by natural, indigenous material and did not spoil indigenous ambient. However, a condition to of the coast after forced removal is such that only now it may be considered that the condition of the area was devastated.

**Measures taken:** Starting from the raised question if the purpose of the ruling on removal was achieved at all, it had been requested from the Port Authority Zadar: "...starting from the main reason for interfering into property under special protection of the State (protection of real properties from natural, elementary occurrences), we suggest that every needed action should be taken in order to protect legally built

tenement building, without violating marital property by this protection. Suggestion includes repeated discussion on the stated location, which includes at least reaching temporary solution by accordance or permit (determining size of a dyke, material etc.), until producing special plan on that. Since the tenement building of our complainant is exposed to constant influence from the sea, the nature of the case points to urgency."

**Outcome of the Case:** Unknown.

**Note:** Violations of right of the complainant was established, but also violation of interests of Croatia by deforming the area.

## 5.2. Environment protection

Commitment to protection of nature and human environment Croatia pronounced as the highest value of the constitutional order, so the right to healthy living and ensuring conditions for healthy environment is everybody's obligation. Everyone has to pay special care to protection of health of people, nature and human environment. Therefore not only property and freedom enterprise are not absolute rights and has unconditional constitutional guarantee, but may, and must be, limited for protection of the nature's cause, health of people and human environment, provided that, at the same time, principle of the rule of rights understands balance between public interests and restrictions/prohibitions that owners, entrepreneurs and other persons demand, so the restrictions must be founded and necessary.

However, from the complaints of citizens, civil initiatives and non-governmental organizations, who have addressed the Ombudsman in 2003 because of violation of right to healthy environment and threats to people's health, it is established that the executive branch of government does not manage to maintain balance between public interests for protection of people's health and freedom of enterprise and property rights, because freedoms of entrepreneurship (still) have not been set necessary prohibitions, restrictions and obligations, so the issue of people's health and protection of human environment has been seriously threatened. Citizens have right to information, right to take part in discussions on environment protection and right to court protection. However, these rights are not being adhered and realized enough in Croatia. Lack of information, not taking part in discussion and lack of necessary transparency of high-risk businesses result in anxiety of citizens who live on the location where they are situated (Raški Channel, Labinština, City of Zagreb, Kaštela).

Thus, for example, Provision of the Croatian Government on Amendments of the Provision on marginal values of emission of

contaminating substances into the air from stationary sources (OFFICIAL GAZETTE No. 105/02, 108/03), changes 50% of the base text and permits, emission of a triple value of "poison" into environment, and 500% more organic substances, and that (only) with self-control of the stationary source (read: business subject), until 1. July 2004; after that with external supervision, but in the same values, until 2009. Further, it is estimated that the consents for import and processing of (dangerous) waste are issued improperly, which media of our environment (soil, air, water) can bear without consequence for sustainable development: on natural sources and biodiversity. The same relates to entrusting monitoring conditions in human environment.

In practice, request for taking measures for prevention of damage, as well as damage from harmful emissions, can be tolerated only when the damage is done, and in existence of possibility of damage. As such danger must be specific and relates to the "common margins of excessive damage", special attention must be given to determining marginal values of emission of contaminating substances into the air and issuing business permits (e.g. when the subject is allowed to use waste only as the alternative fuel, or as additional).

**(1.) Case description (P.P.-135/02):** GRIN – Civil Initiative for Humane Life, approached the Ombudsman in 2002 with a petition of 301 citizens, inhabitants of the AND. county, with an objection and to the resistance to incinerating various waste materials in Cement Factory K. The main reason of complaint is deterioration of condition of the environment and violation of constitutional right to healthy living and healthy environment. Members of the civil initiative GRIN approached the Ombudsman again in 2003 with a request for assistance in prevention of further deeds, i.e. regarding intervention at the competent Ministry. As evidence of the reasons of complaint, they directly witness noted cases of change of condition of environment (plants, animals, side effects). Citizens are not informed about the condition of environment, any kind of discussion for them is impossible, and the courts, as members of the organization claim, still have no skill for ecological disputes.

**Measures taken:** As in 2002 the procedure was executed (Note: with no success and results) at the Ministry of Environmental Protection and Spatial Planning, now the Croatian Government had been warned: "In January 2002, petition of 301 citizens, inhabitants of the I. county in municipality of R. was received. The main reason of the petition is, even then, evident deterioration of condition of environment, so the petition was encouraged because of resistance to the planned incineration of various waste in Cement Factory K. Petition was undertaken because of violation of constitutional right to healthy living and healthy environment and the procedure of investigation at Ministry of Environmental Protection, to establish if the procedure of supervision of the Inspection environment protection was executed at all, and accordingly if the findings on condition of the environment were produced and if some measures had been taken in order to remove the consequences of hazardous influence to environment due to the actions, described in petition (incineration of the

used tires, used oil and bone meal and inappropriate storage). However, after stalling of the Ministry of Environmental Protection and Spatial Planning in delivering the requested information (Note: report was delivered after third request of the Ombudsman, after nine months, and was received on 2. 1. 2003.), it became evident that this was not only a small local community problem with undeserved attention. Since GRIN – Civil initiative for human life – K. and nearby villages, warned also the Croatian Government by letter of 27 March 2003 on all important issues, and all circumstances that are directly related to work of TC K. and incident situations, it is considered unnecessary to repeat those requests, conclusions and suggestions of the citizens, but only point out serious doubt in existence of privileged relation and privileging a high-risk business TC from Minister of environment protection and spatial planning, affecting: rights of citizens, health of citizens, condition of environment and nature. The stated was based on information: in a report of ecological condition for the year 2002 a warning of the inspector for environment protection regarding existence of real and serious problems and that the further waste incineration in TC K. will have more negative effects upon living space and environment and that the condition is getting worse was omitted; the warning is based on deterioration of the air quality – evident of frequent occurrence of intensive smells (evidence: videotaped); used tires are most commonly used as alternative fuel (in accordance with the minister 5000 tons of used tires was imported two years); existing system of monitoring (monitoring of emission and emission) is not appropriate – maximal concentration of emitted gases, vapor, total metals etc. of solid particles occur 800 to 1000 m away from the source, and measurements are being done in immediate locations of the source – because of natural and technological peculiarity it is not appropriate that all measurement (note. not only in the area of municipality R. but also all other high-risk locations in Croatia) is being done by "A.", as lawful trustful person; optimisation of height of the chimney (lowering of chimney for approx. 20 m), has not been done, and order for the "return" of the necessary, effective height of the chimney has not been given, visible damage of forest vegetation (investigation done by the Inspection for environment and forestry protection); founded doubt in seriousness of situation and favoring TC K. is also affirmed by the transfer of the employee who performs supervision on TC K. from position of the inspector of environmental protection to other position, i.e. from technical manager of TC K. with good cooperation with the Minister. TC K. is holder of the sign of environment protection. However, the stated does not mean that the work of the factory, after awarding the sign, as a subject who deals with the waste cannot or must not verify, monitor or put more objections because of burdening of environment. Finally, due to irreparable consequences because of gradual physical, chemical and other influences, everyday 24-h unavoidable monitoring of inhabitants shows ecological consciousness of the citizens about necessity of strict control of external influences and human influence on environment, in order to keep natural attributes and ecological stability. Petition of the citizens from municipality R. asserts acquisition of high ecological consciousness of the developed European democracies to Croatia. Since se this specific case involves situation which, for every stated reason, exceeds one Ministry, in order to prevent and/or limit occurrence of further consequences for people and environment, we suggest that: multidisciplinary investigation of all relevant facts and emphasized special circumstances of the case K., in such a way that the investigation would be carried out by environment protection, agriculture, forestry, public health care etc. professionals of necessary professions. For all established irregularities taking measures, for which the Croatian

Government is competent, is expected." Since no notification has been received it was considered done in case TC K. too, because Croatian Government did not deliver any notification regarding warning, another action was taken: "Therefore, AND am warning about waste incineration, asking for thorough examination: why is measurement of Croatian air in all high-risk locations in Croatia done by "A..." d.o.o.; Provision of the Croatian Government on Amendments and of the Provision on marginal values of emission of contaminating substances into the air from the stationary sources (OFFICIAL GAZETTE No. 105/02 of 5. 9. 2002.) – by changing 50% of the basic text and permits, without professional expertise and discussion in Croatian Parliament, emission of a triple value of "poison" into environment, i.e. 500% more organic substances, and that (only) with self-control of the stationary source (read: business subject), until 1 July 2004; after that with external supervision, but with the same values, until 2009. Further, it is determined that the accordance for import and processing of (dangerous) waste are issued unduly which media of our environment (soil, air, water) can bear without consequence for sustainable development: on natural sources and biodiversity. The same relates to entrustment of monitoring conditions in human environment; thereat it is not important which Ministry was expert holder of the text; but approved quantity of export of the used tires and is international crime and the black market of waste involved, and the circumstances of import despite the ban and the fact that the company «E...» from L. is the exclusive collector of rubber waste, but in such way that it pays only for transport of tires to Cement Factory, with a fee of 76 kn/t (commission), a that it has no program of care, has no employee, has no organized loading of the tires, nor pays of transport to Cement Factory".

**Outcome of the Case:** Unknown.

**Note:** In the meantime, high level of mistrust and unrest among citizens, inhabitants of this area was established, towards which position of Ministry of Environmental Protection and Spatial Planning, but also responsible company (TC K.) also contributed. As citizens' requests should be certainly recorded and respected, the Ombudsman will insist that an independent commission establish right condition of the environment and that the results of measurements reached would be made public.

**(2.) Case description (P.P.-95/99):** Organization for environment protection from Z. "E..." approached the Ombudsman for the first time in January 1999. in order to inform about activities on the site of the ex cement factory in P., i.e. because of the work of the, registered for recycling (mechanical processing) of metal waste. Basic reason of complaints of the Organization "E..." in 1999 concerned illegal construction of the named company, performed inside railed area of the ex cement factory, so the procedure of investigation was done regarding circumstances of notices/complaints. It was established (then, in 1999. ) that for the illegal building the ruling on removal was passed, that the plants for separation of metal from non-metal materials were given obligatory measures of environment protection and obligatory measurement of condition of environment was established. After such conditions, it was determined that by giving competent measures our procedure regarding complaints on violation of constitution right to healthy environment, was completed. However, Organization for environment protection "E..." approached us again in 2003, now with a heavier complaint and heavier charge regarding the same company: for unmerited incineration of waste of the unknown content, which is as a rule done outside working hours of competent Inspections (by night and on weekends).

**Measures taken:** After considering documentation delivered with the complaint it was established that: 1) The Ministry of Environmental Protection and Spatial Planning issued this company authorization to import from BiH, from the company "G..." d.o.o., non-hazardous waste, and exportation of the same waste from Croatia to Slovenia as dangerous waste. By this specific import the Ministry of Environmental Protection and Spatial Planning had enabled, contrary to the Law on Waste and the Basel Convention as well as Provision on Duty tariffs of Croatia, import of dangerous waste to Croatia; 2) by evidences on a series of ecological incidents done by the company ... d.o.o. and daughter company ... d.o.o. – registered excessive flying particles, "greasy film" and intensive smell, and analyses of Swiss chard and both specimens point out directly to uncontrolled waste incineration on this location (measurements done by the Institute for Medical Research and Croatian Institute for Public Health Care). So, this complaint again leads to conclusion about privileged state of the high-risk business (provision of illegal authority) from Ministry which has to protect condition of environment, thus the issue of the constitutional rights of citizens, citizens' health, condition of environment and nature is raised again. Therefore the Ministry of Environmental Protection and Spatial Planning, is warned: "Based on petition of citizens of P. (5252 signatures of citizens), on evident endangering environment condition and health of citizens, and participation of Ministry of Environmental Protection and Spatial Planning that the Organization for environment protection "E..." has warned about in August 2002 in an open letter the Croatian President, President and all Vice-Presidents of Croatian Government. Therefore, I am pointing to the area of the ex cement factory in P., in relation to illegal construction, which still has not been legalized, nor removed, as well as to the issue of business of the company ... d.o.o. and waste incineration (including exclusive contracts on laboratory analysis and toxicological measurements), in order to give professional expertise by objective and independent experts. For all established irregularities taking measures is expected. Croatian Government must prevent and/or limit occurrence of further consequences on people and environment." Delivered reply of the Ministry contained a short statement, which evaluated the Ombudsman's request inadequately documented and argued. The intervention to the Minister of environment protection and spatial planning was therefore repeated: "...we received your statement regarding warning the Ombudsman on work of the company "...» d.o.o., o. location of the ex cement factory in P. Since the complaint of the civil organizations was based on 5252 signatures of citizens, findings on Service for health ecology of the Croatian Institute for Public Health Care, Institute for Medical Research, Building Inspection and Inspection for protection of nature and environment as well as Report of the City Authorities, appointed in 1997 to establishing conditions at this location, the Ombudsman considers that the request for taking measures was proven, quot. (from statement of 14 July 2003. class: 351-01/03-04/0173, file number: 531-05/1-01-01): "by evaluation of the civil organization". Therefore, for needs of further procedure the Ombudsman would like to know if you repeat your earlier statement, prepared before your appointment (delivered, photocopied)."

**Outcome of the Case:** After the Ministry, and after repeated intervention, thorough investigation was conducted and certain irregularities were established, and appropriate measures were taken, the complainant was informed: "...regarding your notification on actions in the area of the ex cement factory in P., i.e. regarding work of the company ... d.o.o. at this location, registered for recycling (mechanical treatment) of metal waste, as you have already been informed, procedure was done in such way

that the Croatian government received a warning. In the meantime, statement of the Minister of environment protection and spatial planning was received, and it leads to conclusion that the condition on this location was within allowed limits and under supervision of Inspection. We have therefore once again pointed out, this time directly to the Minister of environment protection, to all relevant evidences of competent institutions and requested notification if he still agrees with the statement of July this year (note prepared before appointment of the minister of Environmental Protection and Spatial Planning). We determine that the reply has been already delivered to you, class: 351-01/03-04/226 file number: 531-07/2-1-VK-03-2 of 10 September 2003., which does not significantly differ from the statement delivered to the Ombudsman (with additional explanation), and we consider it unnecessary to quote its content. If you still find it necessary, and if the condition of the environment does not change, inform us about that, as we, for the time being, consider it necessary to leave a reasonable term for competent acting, and the removal of all defects".

**Note:** Rights of the greater number of citizens have been violated. Possible violations of rights to healthy environment.

**(3.) Case description: (P.P.-229/03):** Mr. AND. K. from Z. complained to the Ombudsman, claiming that his health and right to peaceful and comfortable tenancy were violated by permanent and exceeding noise and engine vibration, air-conditioning and refrigerators, and that according his report, the Sanitary Inspection class: 540-02/02-01/1052, file number: 251-07-05/02-02-7 of 16. 4. 2002 informed him that has no element for further procedure.

**Measures taken:** The Ombudsman asked Sanitary Inspection of the city of Z. for delivery of minutes with findings of the expert Z-8700 within of 30 days and a report on reasons for non-acting, i.e. not passing the ruling according to provisions of the Law on General Administrative Procedure.

**Outcome of the Case:** On 8 May 2003 the Ombudsman received the report from Sanitary Inspection of 06 May 2003 with requested attachments. Therefore he informed the complainant after investigation procedure, report of 12. May 2003: »Dear Sir, regarding your complaint to the Ombudsman, regarding allegations on violation of peaceful tenancy by exceeding noise from the shop »B...« in Z. Sanitary Inspection of the City of Z. was asked to submit a report on reasons for non-application of further proceedings and reasons for not passing the ruling. To avoid unnecessary retelling, we are enclosing the report of 06. May 2003 together with the minutes of Directorate for measuring the quality of goods d. d. from Z. under No. Z-8700 on measurement and examination of noise on 10 April 2002 and No. Z-4244/00/2 on measurement of sound isolation on 13 March 2000, which show that the warehouse and shredders for mini meat processing in G., as a part of the Shop «B...» fulfils provisions of regulations concerning sound isolation and level of the sound impact i.e. noise in area where people work and live, and that it does not affect health and does not violate peaceful tenancy. According to the results of expertise of the Directorate for measuring the quality of goods d. d as professional institution, in whose authenticity and objectivity of findings as well as expertise and accuracy of reasoning the Ombudsman has no reason to doubt, the Ombudsman did not find that further non-acting of the organs of public administration would result in violation of right to peaceful tenancy. However, the Ombudsman observed that in their action Sanitary Inspection should have completed further proceedings with a conclusion, not the report and should have as well instruct you, as the complainant, about legal remedy, in case of possible complaint and continuation of procedure. As in this

specific case the Sanitary Inspection did not act accordingly, and you were not instructed about your right to complaint, and that notice by which you were informed that there is no element for further procedure you received in an orderly manner on 18 April 2002, you have missed the 15-days term to complain, why you were deprived of the right to legal information and right to complaint and continuation of this proceeding. Therefore the Ombudsman will, within the mandate, inform Sanitary Inspection and point out to this violation in order to achieve greater level of protection of lawfulness in proceedings of inspection supervision on pressing charges on a party. However, independently from the action of the Ombudsman, if you still are not content with recognition of your rights, you can press charges again, i.e., file charges to a proper court for protection against neighbors' emissions (excessive noise) which you suffer from neighboring real property. Considering the results of the enclosed findings and expertise, it should be mentioned, that the success of the possible procedures is utterly uncertain«. Further, in accordance with the established, based on investigation procedure, the Ombudsman sent the report of 12 May 2003 to the Sanitary inspection of the City of Z. with the following recommendation: »Regarding the Ombudsman's request of 15 April 2003 in this case, you received requested minutes and detailed report on the development of the proceedings within a short time. However, it has been noticed, that you did not fully answer on the Ombudsman's inquiry. Inquiry of the Ombudsman, namely related to the reasons for notifying the party on nonexistence of elements for further progress of the proceedings (dismissal of the case) in form of the official letter instead of in form of decision (ruling) according to provisions of the Law on General Administrative Proceeding. As after the party's report, the Sanitary Inspection conducted proceedings in the line of duty and informed the complainant on its development, it was necessary on the closing of it, considering results of the supervision, to reach a decision which closes the procedure in the form of ruling and deliver it to the complainant with the instruction on legal remedy (pending provision of the Article 131 paragraphs 4 and 5 regarding Article 222 of the Law on General Administrative Procedure). When it was not acted in described manner, the party was deprived of his right to appeal (because he did not get instruction about legal remedy either) and possible continuation of this procedure whose outcome cannot be prejudicated at all. Right to appeal is important not only because of pure realization of that right to the party, but also because of control of lawfulness of the inspection work and lawfulness of their specific acts. Therefore you are being warned on this circumstance, with the recommendation that in order to accomplish higher level of lawfulness, in implementation of procedure of inspection supervision in the future - closing of proceedings by termination perform in the form of conclusion, not in the form of the letter.« On contents of this recommendation the Ombudsman notified Ministry of Health Care by delivering the copy of the stated.

**Outcome of the Case:** Unknown.

**Note:** Violation of right to solving within a reasonable term was established, rights to effective legal remedy and right to health and peaceful enjoyment of ownership.

## 6. Violations and threats to status rights

As could be predicted from the movement of number of complaints regarding violation of status rights, i.e. impossibility of solving

citizenship status, permission of the extended stay to foreigners or permanent settlement, as well as other status rights, the number of this complaints has dropped, and in 2003 made only **4,0%** of complaints. In this field beside complaints to the relative prolongation of some proceedings of solving the status of complainants, on lawfulness and regularity of work of proper authorities (MUP-a and PU, as well as registrar and the Ministry of Justice) there are no serious complaints, on the contrary has the same evaluation that the registrars are doing their job up-to-date and legally and that registrars in addition to the welfare centers staff do their job in the most professional and conscientious manner among all state officials. Several years' movement of number of this complaint is visible from the following table:

Field	Number of complaints									
	1999		2000		2001		2002		2003	
	No.	%	No.	%	No.	%	No.	%	No.	%
status rights	83	6.6	329	20.4	94	6.4	81	7.0	79	4.0

The following examples illustrate the work of the Ombudsman on complaints in this field.

**(1.) Case description (P.P. - 1197/03):** Mrs. F. B. from Z. came to the Office of the Ombudsman asking for legal assistance in regulating her status in Croatia. Mrs. B. states that she is Indian citizen, employed for indefinite term in the Embassy of F. in Z. In June 1999 Z. entered marriage with D. B., Croatian citizen, and gave birth to a son F. B. in the same year. Ministry of the Internal Affairs, Police Department z..., had granted to the complainant extended stay in Croatia by ruling number: 23/1-PB-31037-UP/AND-3638/02 to 14. 5. 2002. Complainant is addressing the Ombudsman regarding assistance in regulating her status in Croatia. It is not clear from the Mrs. B.'s complaint whether she submitted or intends to submit request for permanent settlement. She states that her greatest problem was her husband who does not want to provide her with all necessary documents that she has to enclose with her request. The complainant is the only one who works and supports her spouse and his 13-year old daughter from previous marriage out of her salary. Their marital relations are evidently disturbed; complainant is in fear and is asking that the reply to her complaints should be delivered to the address of the Embassy of F. The husband does not the complainant to regulate her status in Croatia.

**Measures taken:** The Ombudsman after complainant's statement and insight into the delivered documentation decided to send to the Ministry of the Internal Affairs recommendation in which after case description he states: «The Ombudsman could not establish relevant circumstances on which basis he could provide a valid advice to the complainant. Considering the stated circumstances, the Ombudsman, pending Article 5 Paragraph 1 of the Law on the Ombudsman (OFFICIAL GAZETTE number

60/92) recommends that you instruct the complainant on possibilities and ways how she could be granted permanent settlement in Croatia. About measures taken regarding this recommendation inform the Ombudsman at the latest within 30 days. » Ministry of the Internal Affairs informed the Ombudsman that regarding his recommendation Mrs. F.B. was sent a report explaining how to submit a request for permit of permanent settlement in Croatia according to the Article 29 Paragraph 1 of the Law on movement and residence foreigners. At the same time she was told what documents she should enclose."

**Outcome of the Case:** Unknown. Complainant did not contact again.

**Note:** Rights of the complainant were violated because of lack of education and limited language command.

**(2.) Case description (P.P.-1127/02):** The Ombudsman has been delivered in 2002. a note by V. V. from U. complaining on the work of Ministry of the Internal Affairs which by the writing of complaint did not respond to complaint on unwanted change of his surname. Namely, the complainant stated that the competent body of MUP changed his surname by force because letter «ö» of the surname was in all documents unilaterally and unlawfully changed to the letter u letter «o», and in other case the letter «ü» was written as «u».

**Measures taken:** The Ombudsman in the report of 4 December 2002 asked for the statement of the competent Ministry on the allegations of the complainant. After repeated complaint due to illegal change of personal name in case of the complainant V. V. from U. and Ž. T from Z. The Ombudsman in a report of 19 February 2003 asked for the statement in this legal matter from the Ministry of Internal Affairs, Ministry of Justice, Administration and Local Self Administration and Committee for legislature of the Croatian Parliament. The complainants stated that their surnames were irregularly written due to illegal action of the proper authorities of public administration in procedures of application of the Law on personal name, Law on travel documents of Croatian Citizens and Law on Personal Identity Card. In reply to the parties and photocopies of notes delivered to us it is evident that the proper authorities of public administration have first explained by lack of technical possibilities (one reply was such that it states that there are none), and later quoted Article 8. Paragraph 1. of the Law on the Personal Identity Card and Article 26. paragraph 1. of the Law on travel documents of Croatian Citizens. It was established that the quoted Article of the Law on travel documents .... determines that the forms of the travel documents must be printed in Croatian language and Latin script, in addition to English and French languages, but should be filled in Croatian language and Latin script only. Further, the quoted Article of the Law on the Identity Card proscribes that the form of personal identity card must be printed in Croatian and English and Latin script, and filled in Croatian and Latin script only. In such factual condition and within his mandate, the Ombudsman derived an explained warning to the competent Ministry. Stating inter alia as personal name is sign of individualism of every human being, a person, and thus enjoys complete legal protection of a person. That protection of individuality Croatian Constitution puts it on the level of not able to be violated and lists in into the basic freedoms and rights of a human and citizen. Pursuant to provisions of Article 22. p. 1. of the Croatian Constitution one's freedom and individuality are inviolable and protected. Concerning personal name, the stated means that everyone has right to personal name (first name and surname), that it is registered into public registries (registries of birth, dr.) because of protection of its holder and legal security, and that everyone can, and is and is due to use, and

that no one can be forced to change or correct his/her personal name for ethnic, linguistic, political, cultural or any other reasons. In such condition it was clear that the proper authorities of public administration are not competent to change personal name of a party, because only the holder of personal name can request that (Article 6. of the Law on Personal Name). The proper authorities in the procedure of unruly change of personal name at issuing travel documents and personal identity cards pointed to Croatian language and Latin script, without following provisions of Croatian language and Croatian spelling. Namely: "... according to general rules of Croatian spelling foreign proper names are written in the same manner as in the source language. That rule can be uniformly exercised only in languages that use Latin script ..." (quot.: Croatian grammar, by: Babić, Finka, Moguš, published by Školska knjiga Zagreb, 1995.) As the authorities did not observe provisions of the Constitution and the Law, it was suggested that, bearing in mind person's protection and rights and complainant's interests, the proper authorities of the public administration should issue obligatory instructions that all bodies of public administration have to apply provisions of the Law on personal name, Law on travel documents of Croatian citizens and the Law on personal identity card correctly, following the spelling provisions of Croatian language. Urgent report on measures taken was requested.

**Outcome of the Case:** Ministry of the Internal Affairs reported number: 511-01-72-100618/02 of 6 August 2003 to the Ombudsman that the Ministry took appropriate measures and actions to enable correct printing of names and surnames which come from the foreign language personal identity cards and passports. Furthermore, what is most important, the complainants were informed in a letter on the measures that the competent Ministry took to ensure correct and lawful work of the authorities.

## 7. Other rights

In 2003 the Ombudsman received no less than **446 (13,37%)** complaints about violation or violation of various rights that were aligned to this group. As Ombudsman received a significantly larger number of complaints (2389 or 153,34%) in 2003 than in the last year, as a result there were also more complaints about violations of other rights. But, the share of these complaints, although somewhat larger than in 2002, does not differ significantly from their shares in previous years, which is clear from the following chart:

Field	Number of cases									
	1999		2000		2001		2002		2003	
	No.	%	No.	%	No.	%	No.	%	No.	%
other	151	12.1	185	11.5	199	13.6	145	12.6	446	13.4

The structure of these complaints changes throughout the years and that is one of the reasons for being unable to track the changes more systematically in the areas where individual rights are violated. Still, it must be mentioned that a part of this group are also the citizens' complaints on high utility rates charged by the municipal services. Most of the complaints are unfounded, because the citizens have a specified consumption of electricity, gas, water etc. However, what bothers citizens most are amounts of the so-called monthly fee that they have to pay although in certain amount of time they did not use some utility services at all. Complaints on payment of monthly, «fixed amounts», i.e. fees for certain service were lodged mostly by citizens who own apartments or houses where they occasionally reside (summer houses, weekend houses) and what bother them is e.g. that they have to pay utility rates for garbage removal throughout the year, as in most of Croatian cities, it is calculated according to the size of the building.

In this year slightly more complaints than in previous years was accepted from the inhabitants of the areas of special state concern against utility services for distribution of electricity. Temporary beneficiaries/users who did not pay for the consumed electricity in buildings they were enjoying temporarily also complained, because the enterprise for distribution of electricity denied plugging in the building they were allocated as alternative housing. As it was estimated that no one has right to use electricity for free, and in case when the complainant evidently were not in a condition of social need, those complaints were not investigated in details, and the complainants were told that this involved obligatory-legal relation and that in a case of litigation, the court was competent to find solution. In cases where the complaints were lodged the beneficiaries with limited needs, they were instructed to submit request for one-time financial help for paying the costs of living. The cases of returnees who homes were given for temporary use, and then returned in possession are somewhat different. Many of them faced the problem of found, often big, debt for unpaid electricity by temporary beneficiaries/users. At taking possession condition electricity meter often was not evidenced in the minutes, but even if it had been done, the distributor as a rule charged the owner for the debt. There were also cases of cutting of electricity and denial of plugging in until the owner pays the debt he did not made. As many of such cases involved old and poor persons, some help was offered. The results varied – in some cases the distributor admitted that the owner was not a debtor, but in some cases it did not happen. Although the legal condition is clear in such cases, because of court procedure of protection of the rights of the owner, i.e. collection of debt, which is long lasting, the returnees are in a really

difficult position. New condition should be developed in such a way that the debt should be paid from budget, and should be regressed from the ex temporary beneficiaries/users in cases when they, regarding their financial situation, would be able to pay it. Returnees have also faced the requests to move the meter outside the house (on the outer wall) as a condition for plugging in of electricity. As many returnees are persons of limited means, no matter on the real incompetence of the Ombudsman, actions were taken out of just cause.

A part of this group are also complaints of the former political prisoners, i.e. members of immediate family of the deceased political prisoner who complained on work of the Administrative Commission of the Croatian Government. The Ombudsman received **10** complaints of the ex political prisoners, that is, their children (inheritors) and he started investigation procedures in 4 cases, because the other complaints were lodged by the inheritors and political prisoners who are not granted right to payment by the valid law. However, encouraged by the statement of the Administrative Commission Croatian Government on the allegations of the complaints, the Ombudsman think pointing out to this group of violation of rights necessary. The report says: "State budget Croatia for the year 2003 (OFFICIAL GAZETTE No. 154/02), the amount of 45.450.514,00 Kuna was allocated for payment of compensation to the ex political prisoners. The stated amount does not cover all requests for payment of compensation, and therefore the Administrative Commission of the Croatian Government, on a session on 3. January 2003, reached a decision on standards for payment of compensation to the ex political prisoners in 2003. Administrative commission has paid the first and the second installment of the compensation to all living ex political prisoners, third and fourth installment of compensation to those who were born up to 1920 and payment of third and fourth installment to those who were born up to 1926 also started. ." In addition, that cash advance of the first installment of compensation has been paid only to the widows of ex political prisoners born up to 1930.

It is significant to note that the Croatian Parliament has passed the Law on Rights of the ex political prisoners in 1991, on a suggestion of the Croatian Government which guaranteed the allocated means of the State budget for execution of law. The Law was changed and amended several times. With the last amendment in 2001 right to compensation to the children of the ex political prisoners was abolished, which lowered the total amount for compensation.

In ten years of the effectiveness of Law on legal right to compensation, as established by a ruling of a proper authorities, only persons older than 83 were able to realize that right. This information shows that the complainants to the Ombudsman are numerous, mostly old, frail and resigned citizens Croatia.

Guided by the principle of justice and morality, which obligates the Ombudsman in his work by the Article 2 paragraph 3 of the Law on the Ombudsman, the Ombudsman urges the Croatian Parliament to urgently allocate means for payment of compensation to the ex political prisoners. Also, we repeat the last year's suggestion to amend the Law on the Rights of the ex Political Prisoners in order to enable the child of the deceased political prisoner the right to compensation that would go to the deceased political prisoner, even if he receives the family pension following his/her parent's death. That is because it involves a person that the deceased had supported and total general disability is non-existent.

1. In 2003 (33) complaints of prisoners who are serving their sentence in jail were received. To the complainants who complained on rulings which they perceived illegal or unjust the Ombudsman responded that he cannot investigate work of the courts and that in protection of their rights they should use regular and exceptional legal remedies. Complaints of the convicts and remand prisoners regarding treatment in institutions for restricting freedom were investigated. They mostly related to impossibility to realize some conveniences, but in most cases those conveniences have not been realized because they had no right to them, so the complaints were considered unfounded.

As in the previous years parents who don't live with their child after divorce also addressed the Ombudsman, basically complaining against behavior of the ex spouse, but by complaint on the decision of the Welfare Center. Investigating those complaints in majority of cases misadministration of welfare centers was not established. However, a great number of so-called inadequate divorces where the children are used in campaign against the ex partner is worrying. In this field there were complaints against difficulties in execution of seizures and administrative rulings, on deeds of the tax office which stalls passing of ruling in cases when the taxpayer is supposed to get tax return, on work of cadastre departments of the municipality courts and Bureau for cadastre and geodetic Affairs. Varsity of these complaints can be seen from the following examples.

**(1.) Case description (P.P.-59/03):** Mrs. V. F. from Z. addressed the Ombudsman. She complains against misadministration of the Ministry of education and sports which still had not solved the request for promotion of complainant, delivered to Ministry on 13. May 2000.

**Measures taken:** The Ombudsman decided to investigate the complaint and on 30. January 2003 sent the following submission Ministry of education and sports: " Mrs. V. F., teacher in the School of Classical Ballet u Z., addressed the Ombudsman. In her complaint she states that, after finishing grammar school and secondary music school she graduated from Musical Academy in Z. on Department of Theory and Education and Department of Conducting. She has been working in education for 26 years. In December 2000, principal of the School of Classical Ballet had sent a proposal for promotion of Mrs. F. to your Ministry, Administration for supervision, together with the enclosed documentation, pending Article 16 (OFFICIAL GAZETTE No. 89/95) of the Regulations on promotion of teachers in primary and secondary education. The proposal was received in Ministry on 13. December 2000. and filed under number 588. Complainant had shown interest for several times in the last two years, that passed from submitting of proposal, if the educational supervisor had started procedure for her promotion, but she did not receive any reply. She therefore addressed the Ombudsman. Pursuant to Article 7 paragraph 1 of the Law on the Ombudsman (OFFICIAL GAZETTE No. 60/92), we suggest that you investigate reasons for not reaching decision on suggestion of the principle of the School of Classical Ballet concerning promotion of Mrs. V. F. even after two years. About measures taken concerning this suggestion, please inform the Ombudsman in 30 days at latest." Ministry of Education and Sports, Institute for Advancement of Education, delivered to the Ombudsman submission of 20 March 2003. on which we informed complainant: "Ministry of education and sports, Institute for Advancement of Education sent a reply to the Ombudsman on his proposal of 30. January 2003 concerning your complaint. In the reply, which we are enclosing, conditions and procedures of promotion of teachers into the post of tutor and counselor of education are described, as well as the problems that the Ministry face in those matters. It says that the number of teachers who can be promoted each year limited by financial assets as well as the number of counselors and supervisors in the Ministry of education and sports. Concerning your promotion, it was stated that the counselor for art programs, who in 2001 received your case, is retired. The new counselor, as they say, intends to take the proposal for your promotion into procedure in this half-year. If the proposal for your promotion won't be solved by June of this year, contact us again for intervention." Complainant had contacted the Ombudsman again in July 2003 informing him that the proposal for her promotion still has not been solved. The Ombudsman addressed to the Ministry of education and sports a submission which also states: "After the Ombudsman's note, which orders that reasons why after two years the case proposal has not been solved should be examined, Ministry submitted a reply on 20 March 2003. The reply also states: "Counselor for art programs was retired in 2002. The new Counselor for art programs Mrs. R. A. intends to take the case into procedure in this half-year, when it will be established if all conditions for promotion of Mrs. V. F. into the post of tutor teacher have been met." In a submission of 10 July 2003 the complainant informed us that her proposal for promotion still has not been solved. Pending Article 7. p. 1. of the Law on the Ombudsman (OFFICIAL GAZETTE No. 60/92) the Ombudsman suggests that you examine reasons why even after 2 years and 7 months the proposal of the principal of the School for Classical Ballet for promotion of Mrs. V. F has not been solved. About the measures taken

regarding this proposal inform the Ombudsman immediately, at latest within 30 days." Ministry of education and sports delivered report of the Institute for Advancement of Education to the Ombudsman on 14. October 2003. according to which the complainant met the requirements for promotion to the level of tutor-teacher of theoretical music subjects.

**Outcome of the Case:** Positive.

**Note:** Right of complainant was violated by stalling.

**(2.) Case description (P.P.-1907/03):** Lawyer R. D. approached the Ombudsman on behalf of her under-age party S. K. from O. She states that her under-age party after more than 6 years has not succeeded, through the Ministry of Finances, to realize right to support from her father who lives in Germany.

**Measures taken:** After consideration of the complaint and delivered documentation, the Ombudsman sent the following warning to the Ministry of Finance: «Complainant states in her submission that by the ruling of the County court in K. of 22 January 1997 number: Gž-557/96 it was established that AND. B. from Germany is due to contribute towards support of his under-age daughter S. K. with a monthly installment of 800,00 Kuna, starting from 12 June 1995 onwards, as long as the legal conditions exist. According to Convention on realization of right to support from abroad, lawyer had on 1 September 1997 submitted on behalf of her client to your Administration request for mediation in realization of claim on support, as established by the quoted ruling. We point out that even after more than 6 years from submitting of request the under-age complainant did not realize her right to support. Pending Article 7 p. 1. of the Law on the Ombudsman (OFFICIAL GAZETTE No. 60/92) the Ombudsman is warning about the violation of the provision of the Article 62 of the Croatian Constitution which guarantees the children protection of the state. As body of public administration, which is in the first place under obligation by the quoted provision of the Constitution, even after more than 6 years you have not met the request of the minor S. K. for realization of her existential right, right to support. On measures taken concerning this warning inform Office of the Ombudsman urgently.» Ministry of Finance, Tax office delivered the Ombudsman submission which states the circumstances which led to lengthiness of procedure. It is stressed that the Ministry of Finances is only expedite body which has no influence on meritory solving of the matter. Concerning the Ombudsman's warning, the Ministry has sent rush-note to the competent body in Germany.

**Outcome of the Case:** Unsolved.

**Note:** Violation of the right of the complainant was established. It is uncertain when she is going to realize her right.

**(3.) Case description: (P.P.-1310/03):** Co-owners of the tenement building in St. Z. and F. No. 2, in V. approached the Ombudsman by the representative of the co-owners of the building, Mrs. K. B. H. and Mr. M. with the complaint where they openly show their dissatisfaction concerning procedure of the deputy mayor of the City of V., which according to complainant's allegations, ( which they confirm by the written allegations of Mrs. B. J., manager of the trade enterprise »B...« d.o.o. from V. by submission of 20. 6. 2003. to the Administrative department for the utility services of the City of V.) disregarding institutions who are competent for solving of the ongoing land-title disputes between co-owners, solved the problem by settling out of court in the interest of Mrs. B. J. The other part of the complaint of co-owner of the tenement building related also to the issue of lawfulness obtaining location permit for the

building where trade company of Mrs. B. J. is situated, which is a protected historical center of the city of V.

**Measures taken:** The Ombudsman decided to investigate allegations of the complaint, and sent a note to the mayor of the City of V. on 4. 11. 2003. which also contained submission of Mrs. B. J. of 20. 6. 2003. and available documentation that the complainant refer to, describing the problem of the complaint in detail: »Namely, according to the allegations of the complainants, because of placement of traffic sign »prohibited traffic in both ways except for the tenants« based on signed agreement on the meeting held on 1. 4. 2003. among building representatives and you as the Mayor, based on which the agreement o mutual financing and work on decoration and resurfacing of the busy entrance of the courtyard on conjunction of the Ul. Z. and F. behind the building No. 2, Mrs. B. J. has subsequently agreed with your deputy putting additional sign »and delivers for B... d.o.o.« although that is contrary to the content of the signed agreement, bypassing the Administrative Department for Utility Affairs of the City of V. as the organ which is competent for this litigation. As the stated procedure, under condition that the mentioned agreement of Mrs. B. J., as the only party in procedure with Mr. Z. H., as deputy may exists and that is executed, and justly causes exasperation of citizens because of enforcing which suits only one party, and makes damage to another, and that by avoiding institutionalized solving of problems under organs which are competent, and without contributing to financing of project resurfacing of the courtyard, you are asked as a mayor to investigate the whole case, ask for the statement of deputy and submit your report on the established facts and measures taken to the Ombudsman, within 30 days, referring to the number as above.« The Ombudsman has also sent Administration for Inspection Affairs of the Ministry of environment protection and spatial planning a report of 4. 11. 2003. asking for supervision on lawfulness of the issued location permit and taking measures available by law, as well as submitted report regarding objections of the complainant based on delivered documentation.

**Outcome of the Case:** Unknown. Mayor of the city of V did not send the requested report to the Ombudsman on lawfulness of acting of his deputy. Concerning requested supervision on the issued location permit, the Ombudsman received a report from the Department of Inspection supervision of individual acts within the mandate of the urban Inspection of the Administration for Inspection Affairs of the Ministry of environmental protection and spatial planning of 7. 1. 2004. and was informed, that the supervision of the urban Inspection was ongoing, and that if reasons for annulment were established, the same would be annulled in term proscribed by the Law pending Article 50 of the Law on Spatial Planning, that the Ombudsman would be subsequently informed about.

**Note:** In case that the location permit was unlawfully issued, it will be annulled and in the repeated procedure the complainants would be able to take part as the interested parties and by that protect their rights, and also object to the parking permit of the delivery vehicles of Mrs. B. J. in the courtyard of their tenement building. If the location permit is lawful and valid, it is clear that violation of rights of complainants was present, relating subsequent unilateral issuing of parking permit to Mrs. B. J. contrary to the previous agreement with the mayor.

**(4.) Case description (P.P.–969/03):** concerning violation of her rights established by the valid ruling of the Administrative Commission of the Croatian Government of 8 October 2001 which had recognized her right to damages, as a widow of the ex political prisoner, for the days which her late husband spent in jail.

**Measures taken:** Concerning complaint of Mrs. R. P. the Ombudsman sent this recommendation to the Administrative Commission of the Croatian Government: "Mrs. R. P. from Z approached the Ombudsman. From the complaints of Mrs. P. and attached documentation it is evident that her late husband S. P., ex political prisoner, was recognized by the ruling of the Administrative Commission of Croatian Government of 5. 12. 1997. years he spent in prison from 1. 3. 1947. to 31. 5. 1948 as years of service for the insurance in double length of the service. After his death, right to damages for the days he spent in jail, were recognized to his spouse by the ruling of the Administrative Commission class: 140-09/97-24/82, file number: 50304/4-01-01 of 8. 10. 2001. Payment of the first cash advance of the damages of total 6.142,50 Kuna was granted to Mrs. R. P. After that, there were no subsequent payments. According to the stated, and pending Article 11. of the Law on the Ombudsman (OFFICIAL GAZETTE No. 60/92) could you please inform this Office on reasons for failure to pay the complainant the remaining installments of the damages. The Ombudsman recommends Pending Article 7. paragraph 1. of the same law that the payments to the complainant should be made as soon as possible, regarding her age and material conditions. On measures taken regarding this recommendation please inform the Ombudsman at latest within 30 days." Administrative commission of Croatian Government informed the Ombudsman that there are no sufficient means for payment of compensations to the ex political prisoners, or their widows in the State budget of Croatia for 2003. The Ombudsman informed the complainant about that with the following submission: "Administrative commission of Croatian Government made a statement on the recommendation of the Ombudsman to pay the remaining installments of compensation to you as soon as possible, which you are entitled to as the widow of the ex political prisoner for days he spent in jail. In the quoted notification it said that the means allocated by the state budget for payments of compensations to the ex political prisoners, or the spouse after their death, were not sufficient to meet all requests for payment of the compensation. Therefore the Administrative commission of the Croatian Government, on a session held on 3. 1. 2003. reached a Decision on measures for payment of the compensation to the ex political prisoners in 2003. According to criteria from the quoted Decision the installment is being paid in installments of  $\frac{1}{4}$  (25%) of the total sum of compensation, according to the age. Until now the first advance of the compensation was paid only to those widows of the ex political prisoners that were born up to 1930. According to that, payment of the remaining installments of the compensation will depend on the allocated means in the state budget and financial capabilities of the state.

**Outcome of the Case:** Unsolved.

**Note:** Complainant's right was violated. It is uncertain when it will be recognized and considering her age, if it will be recognized at all.

**(5.) Case description (P.P.–2230/03):** Complainant M. B. from B. represented by the lawyer R. D. D. from K. approached the Ombudsman with a complaint against work of the Administrative Commission of the Croatian Government, regarding payment, as ex political prisoner based on ruling of the Administrative Commission of the Croatian Government of 19. 06. 2002. class: 140-09/00-02/76, file.No. 50304/4-00-01.

**Measures taken:** According to provisions of the Article 7. and 12. of the Law on the Ombudsman (OFFICIAL GAZETTE No. 60/92) report of 1. 12. 2003. investigation of the allegations of the complaint was requested, as well as reporting the

Ombudsman about the established and measures taken. It is suggested that the payment should be made as soon as possible considering his age (b. 1912 ). On 5. 1. 2004. the Ombudsman requested the statement again, quot.: «In relation to the letter of the Ombudsman of 1. 12. 2003. on the above stated number where report on the complainant's case was requested and the reasons why the whole compensation has not been paid to him, although he was born in 1912, that he is entitled to pending Article 5. of the Law on the rights of the ex political prisoners, with recommendation to perform that a.s.a.p., you have sent the report from which your reply to the inquiry was not evident. According the delivered report, all living political prisoners whose status was established by 21. 11. 2002. and who were born up to 1926 the third and fourth installments of the compensation were paid, but on the inquiry why you have not paid the installments to the complainant, who fits into the stated group, you have given no reply or explanation if any measures were taken according to the recommendation of the Ombudsman».

**Outcome of the Case:** On 21. 1. 2004. Croatian Government, Administrative commission informed the Ombudsman that the third and fourth installment of the compensation were paid to the complainant, pending ruling, class: 140-09/00-02/76, file.No. 50304/4 -03-01.

**Note:** Right of the complainant was violated by stalling.

### **III. VISITS TO SELECTED COUNTIES WITHIN THE PROJECT OF FAMILIARIZATION OF CROATIAN CITIZENS WITH THE OMBUDSMAN**

As part of the project: Work of the institution the Ombudsman/ Scheme of support to the institution which was made in cooperation with OESS Mission in Croatia with the support of Norwegian Government, conditions are met so the Ombudsman can made direct contact with citizens in local communities, i.e. make access to his office easier, especially to the endangered groups of citizens such as displaced persons and refugees, as well as the settlers, i.e. everyone who face difficulties in realization of their right at different state and local authorities.

The outreach of the Ombudsman, his deputies and staff from the office enabled access to the Ombudsman to the individuals and greater use of informal mechanisms which the institution of the Ombudsman allows.

Under this project the Ombudsman and his deputies and associates in 2003 visited ten counties: Sisačko-moslavačka, Vukovarsko-srijemska, Karlovačka, Šibensko-kninska, Ličko-senjska, Osječko-baranjska, Zadarska, Dubrovačko-neretvanska, Požeško-slavonska and Istarska.

#### **1) Sisačko-moslavačka County:**

On 24 to 28 March 2003 the Ombudsman and his deputies and associates visited Sisačko-moslavačka County, and during the visit he met the head of the county, Mr. Đuro Brodarac and head of Public administration services, who introduced him to the that they commonly face in the fields of education, functioning of provision of alternative housing, problems with house constructions on allocated plots because lack of funding for contractors, unemployment etc.

Besides meetings in the County, the Ombudsman met the representatives of the Welfare center and Administration for displaced persons. The Ombudsman met also Mr. Michel Dreneau, regional representative of the Regional center Sisak of the OESS Mission in Croatia. In the premises of OESS-a in Sisak he also talked with 22 complainants.

During this visit the deputies of the Ombudsman visited municipality Popovača where they talked to the head of municipality Mr. Zvonimir Lukšić, they visited Neuro-Psychiatric hospital "Dr. Ivan Barbot" – Department for forensic and prison in Lipovica where he talked to the acting principal Branko Babić, who introduced them to the functioning of the prison and enabled talks to the prisoners. After one-day visit and investigation of the received complaints in municipality Popovača and existing organizations, it was concluded that there is a visible trend of decrease of complaints regarding realization and protection of constitutional and legal rights of citizens, especially in the field of realization of "social rights" and protection at exercising law which restricts freedom of movement of the citizens, housing and diet of the prisoners. However, the proper authorities should be warned that the premises for personal hygiene of the inmates (bathrooms) in Neuro-Psychiatric Hospital is in bad shape, due to the unsolved and inappropriate financing. It is therefore necessary to engage all available sources responsible for financial assets to ensure final and full adaptation of the hospital, or rehabilitation of the decrepit and devastated part.

In Hrvatska Kostajnica representatives of the Office of the Ombudsman met mayor Mr. Davor Govorčinović, as well as representatives of various organizations, such as: SDF, Organization of the Settled Croats from Bosnia (UNOS), Organization "Return" from Banja Luka and Organization of returnees Donji Kukuruzari. They also talked with Mr. Bogdan Kantorski, Head of the Regional Office of OESS in Hrvatska Kostajnica on outreach problems.

In municipality Dvor they discussed outreach problems with the head of municipality Mr. Nikola Carić.

Visit to Sisačko-moslavačka county finished with a visit to Petrinja and visits to surrounding villages in companion with the OESS monitor Mr. Jevgenija Paščenko. During the visit it was established that there is

no electricity or running water in the village of Pastuš, wells are not checked, there is no road; and electricity is plugged in to the village which is only 300 meters away. In village of Pastuš live 20 inhabitants, village of Hrvatski Čuntić has electricity and running water, and Srpski Čuntić which is next to Hrvatski Čuntić has neither electricity nor running water. Village Križ Hrastovački has no running water, and there is waterworks underneath. Village of Dumače was also visited; it is settled with Croats from Kosovo and no electricity or running water, and the houses are built out of pressed cardboard. We talked with 34 complainants, so during the visit to Sisačko-moslavačka county total of 56 complaints of citizens were received. Furthermore, there was also a press conference attended by the representatives of local and national media. Purpose of this press conference was introducing citizens to the work and authority of the institution of the Ombudsman, because despite it is not a new institution (existing from the beginning of 1994) many citizens do not know who the Ombudsman is and what is within his mandate.

## **2) Vukovarsko-srijemska County:**

In the period of 7– 9 April 2003 the Ombudsman visited Vukovarsko-srijemska County. Visit started by meeting with Mr. Valeriu Florean, regional representative of the Regional Center of the OESS in Vukovar and his associates. In that meeting the Ombudsman pointed out that the purpose of visit of the representatives of the institution to this area is primarily, to talk with county and local authorities, as well as OESS representatives, and find out more about the problems the citizens on this area face, especially regarding return, infrastructure, trust, reconciliation, reconstruction, individual and minority rights etc. It was established that the process of reconciliation is still ongoing, that there is a lot to be done, that the process of reconstruction advances but is slow, while the economic situation is very bad. Most displaced persons are returning, their houses are reconstructed, but due to unemployment they are leaving this area again, and the worse thing is that a limited number of young people return, and they are the holders of development.

During visit to Vukovarsko-srijemska county The Ombudsman talked to the head of the county Mr. Nikola Šafer and his associates about problems in County which are within the mandate of the Ombudsman. Head of the county introduced the Ombudsman with outreach condition; a lot was done, but surely more and better could be done; reconstruction of houses is satisfactory, 250 million HRK from the state budget is invested, 1.500 houses were reconstructed, apartments are reconstructed too, urgent reconstruction of infrastructure on welfare buildings are ongoing. Considering trust among people, the condition is getting better,

it could be said that this area is relatively peaceful, since it involves undefined border area, and the border crossings towards Vojvodina and Bosnia and Herzegovina. When the corridors start functioning as well as the port Vukovar, small-border cooperation would create development possibilities, as well as staying of citizens in this area.

County representatives think that the state must stimulate development of this area, which would contribute to joining the European Union. Solidarity of Croatian economy is also necessary. Problem is also structure of the unemployed, because most of those seeking employment are half-educated, uneducated or too old, pyramid of unemployment in Croatia is just the opposite. The Ombudsman pointed out that he is generally contend with the condition of human rights in Croatia after all casualties of war of displaced persons, refugees and settlers. Concerning civil initiatives, they are starting to flourish.

Press conference that was organized after talks in the County attended a great number of media representatives, who showed great interest for visit of the representatives of the Ombudsman in Vukovarsko-srijemska county.

During visit to the mayor of the City of Vukovara Mr. Vladimir Štengl the field situation which changes and improves every day was described as satisfactory. There are no illegally possessed houses, a great number of houses is on sale, there is still a certain number of illegally possessed apartments that need reconstruction, but it is hard to evict people who have no valid papers for those apartments, and they are aware themselves that they will not be able to return into them. Assets of the Fund for Reconstruction and Development of Vukovar are annually paid through state budget, which proved very good.

After visit County the Ombudsman visited Regional office for Displaced Persons, Returnees and Refugees and talked to the Head Mr. Ante Drmić.

After the meeting the Ombudsman and his deputy talked to the citizens. 38 complaints were received.

On the second day of the visit a meeting with mayor of the City of Vinkovci Mr. Mladen Karlić, was organized, and he assessed the condition in the city very good. Budget of the city increases constantly, there are round 150 families in the city who are welfare cases, while the number of displaced persons and refugees is decreased, reconstruction is going on well, the city is reconstructed round 99%. Concerning management of public enterprises, there are no significant problems, it was pointed out that there are more than 1000 businesses which shows force of employment.

During the visit to Vukovarsko-srijemska county meeting representatives of organizations of settlers and returnees was also

expected. According to the schedule of the meetings with nongovernmental organizations representatives which was organized by the Regional center of the OESS, the Ombudsman was supposed to meet four nongovernmental organizations, however only two organizations came: Center for peace, legal counseling and psycho-social help and Center for peace, nonviolence and human rights Osijek – Regional center Vinkovci.

Representatives of the Center for peace, legal advice and psychosocial help Ms Ankica and Mr. Ljubomir Mikić informed the Ombudsman on their work. About the problems they face they first inform local and state authorities, and if there are no results, they approach International Organizations. They commonly deal with collective problems; work relations, reconstruction, return, issue of the status of Erdut Treaty and its application, convalidation, issues of pension insurance, etc. While working with the parties they analyze problems and present them to the specified institutions who are due to solve them and thus point to the problems which are peculiar to certain area.

The other nongovernmental organization which attended the meeting with the Ombudsman was Center for peace, non-violence and human rights Osijek – Regional center Vinkovci. Mr. Dragan Prpić informed us about the work of organization, which is financed completely by UNHCR, and the project would last until the end of 2003 with possible extension until the end of 2004. The issues they are involved in are: social, labor, health, pension problems, convalidation, tenancy rights, right to return and status issues. Free legal counsel is the primary activity of this organization, which is widespread throughout Croatia. Such activity of this organization resulted in summing of experiences of lawyer in the field of human rights in Croatia. According to his estimate Croatia has a large number of violations of human rights with slight tendency of improving, while the estimates relating Human Rights Convention are far from being applied, the courts pass different rulings, varying from one verdict to another, some judges still lack personal courage, while in his opinion the laws are articulated political will of the party which is on power. He also thinks that the laws are not bad, but the problem lies in their application.

During the visit to Vukovaru on 7 April and Vinkovci the Ombudsman met 55 complainants, whose complaints involved: return of property, property rights, right from pension-disability insurance, housing matters, status issues, realization of right to work, questioning right to reconstruction, jurisdiction etc.

On 9 April the Ombudsman visited municipality Nuštar and had talks with the head of municipality Pero Drinovac, who had shown his content because displaced persons have mostly returned; now the

infrastructure is being reconstructed. They have projects for reconstruction of roads in the municipality, and they hope that they will also find means. Nuštar has 5800 inhabitants. Children from Cerić, Marinci and Tordinci attend School u Nuštar, which has 800 pupils.

After visiting municipality, the Ombudsman has visited and Home for mentally ill and old persons and Home for old and the frail persons in Nuštar, which share the building until the reconstruction of Home for old and the frail persons in Vukovaru is done. He also talked to Mr. Nenad Lučanin, the principal of the Home for mentally ill and old persons. The Home has 100 inmates and the same number of pensioners, while the Home has capacity for 300 persons. Staff working conditions and inmate working conditions of the Home are above average in comparison to the Croatian standards of similar institutions. The premises are light, airy and well equipped, the only objection of the principal is impossibility of employing a psychiatrist regarding hundred mentally ill patients and the number of them is likely to rise. It is estimated that the Home would become more attractive for living of the sick and old people, if there were more available single or double rooms or even studios instead of four-bed rooms, which are most common, which is for the old people hard to accept. It is the main reason why the capacity of the Home is unused. It is estimated that the investment in adaptation of big rooms into single and double studios would be profitable.

On the third day of visit to Vukovarsko-srijemska County the Ombudsman visited Investigative Department of the County Court in Vukovar and talked to the president of the court Mr. Ante Zeljko and Mrs. Nevenka Zeko, head of the Investigative Department. The most critical problems of those numbered is the problem of lack of space. However they have been promised that the old dilapidated court building would be reconstructed, and that the County court would be placed there.

According to the schedule in the following days the Ombudsman talked to the mayor of the City of Županja Ms Ljubica Brdarić and mayor of Ilok Mr. Zvonimir Dragun and his closest associates.

Mayor of Županja spoke about the common problems that local authorities meet, including the most common - unemployment, impossibility of charging utility services and other local fees, while violations of minority rights have not been witnessed (Bosniaks, Serbs).

Representatives of Ilok stated the most common problems of the city authorities, such as: a) return of nationalized real property which still has not been realized because of work of the county property rights services – the job is done by a single employee who insists on identification of plots, which is very hard because of the three land consolations; b) it involves border area – way to the parcels of citizens goes to the spots where police or Serbian Army is still present; c) great

number of inhabitants, Croatian citizens, live in Serbia, and come to Ilok just to get their pension, child's allowance and other compensations; d) certain number of the public services employees work in Ilok and live in Serbia; e) according to the Erdut Treaty Serbian Army had to withdraw from Croatian territory in 1997. However they hold border regions today, e.g. Šarengradska ada etc.

After talking to the representatives of the City of Ilok, the Ombudsman talked to the representatives of the Slovakian minority, Mr. Zelko Lomianski and his deputy. In Ilok and its surroundings two Slovakian Institutes exist – in Ilok and Radoš. Problems they usually face are unemployment of the members of Slovakian minority, and they're under representation in public services. At employment, the employers ask for filling a questionnaire, which raises the issue of status during the Homeland war, as e.g. refugee, affiliation to the army and which army, returnees and other similar questions. Since the Slovakian mostly did not go to exile, it affects their employment. As another problem they stated teaching in Slovakian, as there are no appropriate textbooks in Slovakian. At the moment, Slovakian is taught by a teacher with half-time employment.

At the end of the visit to Vukovarsko-srijemska County the Ombudsman and his associates visited also County Administration for Reconstruction in Vukovaru, where he talked to the head of the Administration for Reconstruction, Mrs. Kata Tomljanović, Mrs. Ida Kuić, Head of the Department for Reconstruction and Head of the Public Administration Service for spatial planning, construction, housing and public utilities, environment protection and property-rights Mr. Slišković, as well as Regional service of HZMO in Vukovaru, where he met with head of the service Mr. Dragutin Guzovski, and visited Refugees' settlement "Blace" where he talked to the manager of the settlement Mr. Ivan Brizanac.

During the visit to Županji and Iloku the Ombudsman held interviews with clients, so 22 complaints were filed. During the time of visit to the Vukovarsko-srijemskoj County 77 complaints were received in total.

### **3) Šibensko-kninska County:**

In period between 19-23 May 2003 the Ombudsman and his associates have visited Šibensko-kninska County. In the premises of County šibensko-kninska he met the County officials, Mr. Miho Mioč, deputy head of the county with the associates and authorities of the City of Šibenik, mars Dijana Dulibić-Vlahov, secretary of the City of Šibenik and Mr. Vlatk Mršo from Croatian Institute for Pension Insurance, Regional service Šibenik. The Ombudsman paid special attention to

problems in solving social issues of the citizens, problem of illegal construction, environment protection etc. Since this is the County with significant problems of displaced persons, especially in the City of Knin, the second largest City of the County, the Ombudsman asked the county officials information about solving property rights of the returnees, solving housing provision of the settlers and solving reconstruction of houses and business premises destroyed in the war. County assembly has 41 councilors, and 4 of them are members of SDSS-a. Councilors are elected on regular elections as representatives of Serbian minority. Since there is a lesser number of Croatian citizens in four (4) municipalities (Kistanje, Biskupija, Civljani and Ervenik), participation of Croats in government was regulated in the Statute of the County. In municipalities with Serbian minority of less than 15%, right to representation with one (1) councilor in the city or municipality assembly has been recognized.

Near Golubić settlement building of family houses for settlers from BiH (most of them came from Drvar) was planned, like settlement built in Kistanje for settlers from Janjevo. Conditions for building of named settlements are met recently, by providing Spatial Plan of the County so now design of plans of a lesser rank can follow – cities and municipalities. However, as lack of spatial plans prevented construction of settlement of housing provision for citizens who have right to it, lack of spatial plans is not at the same time the cause of illegal building which gets hard to prevent and is increasing, especially in the coastal area of the County. Thus 90% of illegal weekend-buildings have to be legalized. Besides, in significant number of buildings there are changes in construction from that allowed by the building permit. Further, there is also a pressure to make some coastal areas into building areas, although there are no objective or other reasonable reasons for that.

Illegal construction leads to crushing burden of the utility infrastructure, which cannot take increased number of buildings and users, especially in the areas where number of users is increased only during summer season. Because of lack of paying of utility charges, it is not possible to allocate necessary funds for increasing of capacity and reconstruction of infrastructure (water, drainage). Since there is no flat rate for water usage because of protection of consumers, that water work was maintained from and new system built, condition is tough. On the liberated areas acceptance (convalidation) of years of service between 1991-1995 is important. Procedures of reconstruction of information and passing rulings on pension and/or pension years of service are ongoing. Since the archives of the para-fund of the so-called Krajina were mostly saved, reconstruction of information is generally possible.

In the office of public administration in County šibensko-kninska the Ombudsman talked with Mr. Zoran Petković, head of the Public

administration authorities in the County and Mars Julija Jerem, head of the Department for reconstruction. The greatest service of the Authorities is Service for urban development, construction, housing and public utilities, environment protection and property-rights. Considering of the areas of its mandate, this is the Service with greatest problems. Conflict between investors and entrepreneurs and executive branch of government is most evident in the field of spatial planning, i.e. construction. Department for reconstruction has been neglected in the previous term until foundation of the county Office for public administration; it was situated in a distant location, and area of interest of reconstruction was only area settled by Croatian citizens, which changed in recent times. For the time being, condition is such that there are more rulings on right to reconstruction than realized rights. Significant and visible progress refers to the City of Knin and municipality Biskupija. In order to make work more up-to-date, department increased efforts in solving requests, so for the time being there are only 2000 ongoing procedures for request for reconstruction. Priority in solving have requests of individuals housed in the apartments and houses that have to be returned to the owners and requests of individuals who are housed in collective centers in Serbia. However, as requests of citizens who are still living on a territory of the other country are incomplete, termination of procedures is hard, sometimes even impossible.

After talks and learning about condition in the County, the Ombudsman accepted complaints of citizens. 12 citizens approached the Ombudsman in Šibenik.

On the second day of visit to County šibensko-kninska, in the premises of OESS-a Mission to Croatia - Regional center Knin, the Ombudsman met Mr. Jonns Walsh, deputy of the regional representative, and Mr. Kevin Waite, legal counselor of the Regional Center Knin who shortly informed him on previous visit to County and City of Šibenik. Considering the fact what this area went through, rehabilitation of the consequences of the war is evident, as well as accomplished level of safety of people and property. However, destroyed and unreconstructed houses are still visible. Housing provision for returnees and displaced persons is still economic and financial burden to Croatia but, liveliness present in the City of Kninu and presence of young families, show optimism.

Participating in a contact radio show of the Croatian Radio Station Knin, the Ombudsman informed citizens about to his visit to the City of Kninu and other municipalities according to the schedule, and on possibilities for submitting direct complaints in the meeting. At the same time, requests was sent to all businessmen to invest in this area and opening new positions and increase of the total employment. On the same

day, in the premises of OESS-Regional Center Knin, 56 citizens approached the Ombudsman. Also, the Ombudsman talked with minority representative, Mr. Dragan Janković, as the representative of Serbs. Objections of Mr. Jankovića referred mostly to issue of employment: in the bodies of Local Self Administration, in the bodies of public administration and public enterprises not a single member of Serbian minority is employed, and on job advertisements no member of the minority got a job.

On the second day of visit to Knin, on 21 May 2003, in the premises of City Council of the City of Knin Ombudsman met Mr. Vinko Marić, the mayor, and the mayor's deputies, Mr. Mate Milanović and Mr. Milivoj Marić. The City of Knin has 15,190 inhabitants, and according to the last census 20,8% of them are of Serbian nationality. However, although today Knin has more inhabitants than in 2001, 50% of the citizens are unemployed. The issue of housing attempts to be solved by allocation of construction land for building houses to the settlers. The new accepted Implementation plan of the settlement Golubić intends construction of 120 houses. For the time being 60 families agree with building a house in the settlement Golubić. APN has bought 250 houses in Knin, but there are still round 800 families who need housing provision. Right to purchase of apartment according to the conditions set by the Law on sale of apartments with existing tenancy rights was realized by 100 holders of tenancy rights. Information that 200 to 240 apartments hold citizens whose houses were reconstructed is evident. It involves illegal use of apartments not administrated by the City of Knin. Beneficiaries/users are mostly family members, or adult children of the holders of reconstruction, who become independent and found their own families. Housing problems of the City of Knina can be solved only by regulation of condition in use of apartments. In such way problems of the owners of taken property would be solved, too. Administration of apartments barely exists, problem of devastation and deterioration of apartments is also present. Bad condition of apartments and tenement houses is especially evident in summer, when bad installations result in diseases.

There are 3400 families in Knin who are welfare cases, and 2000 of them are holders of welfare cards. As majority of companies in Knin are insolvent, and the process of privatization has not been regular, the unemployment is basic problem of citizens and the city. On the other hand, Grad Knin has no business premises to offer to the entrepreneurs for opening new posts. Building of the military police of MORH is now in the zone of various designations (according to the new spatial plan), and is the most valuable city business premises used by the body which could be housed on a less attractive location, too.

After meeting the city officials, the Ombudsman visited the refugees' settlement Golubić. It was observed that the housing of settlers from Drvar is inappropriate. That involves young families, total of round 25 families with round 80 members. There are round 40 children in the settlement who attend school in Knin. They are under constant threat of eviction, without having specific other appropriate housing. Issue of their permanent solution is utterly uncertain. Everyone settled in this settlement do not want to return to Drvar, because they have found peace of mind in Croatia, but the living conditions are impossible. They are willing to give up their property in Drvaru, and if it proves impossible to provide them basic living conditions in Croatia, they are ready to immigrate to the third countries. Further, it has been pointed out that international organizations which operate in Knin, have different criteria for care on citizens rights – ex refugees i.e. returnees get assistance, while the settlers are being neglected.

The Ombudsman visited the Settlement and saw living conditions – it involves wooden premises 30 m<sup>2</sup> large which consist of one room and one room with toilet facilities. The settlement was originally built as youth settlement, and was used in the meantime as camp of Krajina.

The Ombudsman also visited returnees, accommodated in the building of Primary School Strmica. There are mostly thirty-six (36) single people of advanced age and with deteriorated health, which makes them unable to live independently and take care of themselves. A certain number of returnees need organized housing provision because reconstruction of houses has not been done, i.e. for the time being they still do not have ruling on reconstruction because of incomplete request for reconstruction (mostly because the house has no clear title) or the request for reconstruction of homes destroyed in the war was submitted after specified deadline (untimely, late). Group of those who have not been returned into possession of join this group of returnees. Further, nine (9) returnees need housing provision under welfare system, i.e. appropriate welfare organization with constant medical help, i.e. other person's care and assistance.

35 citizens approached the Ombudsman in premises of the City Hall of Knin.

On 22 May 2003, in the premises of the OESS-Regional center in Kninu, the Ombudsman had talked with the representatives of the nongovernmental organizations which operate in Knin, as well as Kistanje, Gračac and Korenica. The Ombudsman asked representatives of the organizations to talk about the occurrences they have noticed, not the specific cases, because he learns about the specific cases in direct contact with citizens. The following was pointed as crucial:

- a) the issue of settling of pensions for persons who were killed during the action "Storm", because the families of the killed have not been recognized right to family pension, because the deceased was a member of the paramilitary units of Krajina,
- b) after "Storm" all pensioners received temporary rulings on pension, with explanation that the Service of HZMO has no access to all information for passing final rulings. However, after issuing final rulings, a considerable number of pensioners have to return certain amounts. Explanation for return of the surplus of pension was that the pension of temporary ruling was bigger than the final pension.
- c) then, register of births, marriages and deaths, as well as register of marriages have been mostly destroyed in this area. For the marriage issues there is disagreement between municipality court and registry office. Namely, court dismisses the charges concerning marriage, with the explanation that reconstruction of register of births, marriages and deaths needs to be done, and registry office is not reconstructing registers because of lack of funds
- d) The Ministry of Public Works, Reconstruction and Construction has recently started to accept settlement offers from the owners regarding temporary use of their houses by the users/beneficiaries. Pending article 6 of the Agreement, there is no deadline for annulment of the Agreement, but it could be annulled only in case that the Ministry fails to pay rent for three (3) months.

The Ombudsman was welcomed in Municipality of Kistanje by the Head of municipality on 22 May 2003 and introduced him to general information on Municipality Kistanje. According to the latest census Kistanje has 3040 inhabitants, 53% of Serbs, 47% of Croats, some Albanians, Italians and Muslims. There are only 17 domicile Croatian families in Kistanje, while all other citizens are the settlers. Reconstruction has not been finished and is still going on, as well as return of possession of property to the owners, round 80 houses still have not been returned to the owners. Return of property is the main problem in this area. A special issue is the issue of illegally possessed commercial premises – business premises which are used without paying rent. Also, Ministry of Public Works, Reconstruction and Construction warned local officials that possession of other people's houses couldn't be tolerated anymore. A great number of houses, which owners had left during the Homeland War were bought by the APN. Settlers from Janjevo, Kosovo, do not want to build houses on the allocated plots on their own. In Kistanje 120 new houses were built and there are living, as a rule, families of illegal beneficiaries/users. Municipality Kistanje has no income of its own. Consummation of water cannot be charged, especially because the greatest number of houses has no installed water meters. The

same goes for charging electricity. Primary School Kistanje is attended by round 260 pupils.

During inspection of the newly built areas of the city and inner center, many stone-built, abandoned and destroyed houses were noticed, with no any kind of construction work. During the visit to Kistanje, 13 citizens approached the Ombudsman.

On 23 May 2003 in Civljane, Mr. Ante Gutić, president of the Municipality Council, had introduced the Ombudsman to the situation in the municipality. Municipality Civljane exists since 1994, and since 1995 the on the head of municipality was Commissioner of the Croatian Government. In period since 1995 – 2001 nothing was invested in municipality Civljane. At the time being reconstruction of round 20 houses is going on, and reconstruction of 36 houses is within the scope of the Ministry of Public Works, Reconstruction and Construction. In period since 2000 to 2001 not a single house was reconstructed, and 270 requests for reconstruction are currently being solved. Up to 2001 the whole municipality had no electricity, except two settlements: Miljkovci and Totići. Electricity is still the most important and basic issue to be solved, because settlement Cetina still has no electricity. Hamlet Medići cannot be connected to water supply system, because round 500-600 m of network still must be built, so water supply to the citizens is still being done by cisterns. Present citizens are mostly displaced persons and returnees. In hamlet Cetina 370 houses need reconstruction. For the time being round 150 citizens, mostly single, have returned to this hamlet, because the family has no housing provision.

Head of Kijevo municipality, Mr. Marinko Čavka and vice mayor of Kijevo municipality, Mr. Zvonko Radić have given the Ombudsman general information regarding this unit of Local Self Administration, situation in municipality, basic problems they meet and development programs prepared for revival of the area and establishment of the social activities, necessary for functioning of Kijevo as a smaller town. It has been pointed out that the investment in municipality Kijevo is insufficient, which results in impossibility of keeping inhabitants. There is no business in Kijevo which employs more than 20 workers. Property without clear title is common, which is the result of war and settlement of greater number of people. In addition, the inhabitants have got used to not having to pay rent and municipal services during five years' exile. Reconstruction of the family houses was done mostly in 1996/97. Out of the total of 415 destroyed and demolished objects, total of 368 houses were reconstructed, and reconstruction of 5-6 houses is still going on. Owners who have not realized right to reconstruction, have not realized that right only if they didn't have a registered domicile in Kijevo prior to 1991.

In the premises of Municipality Kijevo, where municipality office is situated, 9 citizens approached the Ombudsman.

During the visit to the Šibensko-kninska County, the total of 146 citizens has approached the Ombudsman with the complaints concerning violation of the property rights, financial insecurity, violation of property rights and housing provision as well as violation of the rights to a pension.

Based on condition, was established in County šibensko-kninska, in the part of the County which is of special state concern, the Ombudsman had:

1. submitted a report to the Croatian Government on administration of the state-owned apartments in Knin and asked for the urgent operative and legal measures for making order in residence and housing provision for returnees and displaced persons,
2. suggested to the Croatian Power Utility - Plant Sinj urgent electrification of the Civljani municipality,
3. suggested extension and/or abolition of deadline for submission of request to reconstruction of war devastated buildings to the Ministry of Public Works, Reconstruction and Construction – old, uneducated inhabitants of marginal hamlets in municipality Civljani who, because they have no electricity, have not been informed about this deadline. Ignorance of these citizens, from objective and notorious reasons, must excuse them for missing the deadline for submitting request for reconstruction.

The addressed have not responded the Ombudsman about these suggestions.

#### **4) Karlovačka county:**

From 5 to 9 May 2003 the Ombudsman visited Karlovačka County with his associates. The visit begun with conversation with head of the county Mr. Vladom Jelkovic and his closest associates in the County about the problems in Karlovačka County within the mandate of the Ombudsman. County comprises 5 towns and 16 municipalities. According to census of 1991 there were 186,000 inhabitants, while according to census of 2002 there were 141,000 inhabitants. The county was partly occupied during the war, and Karlovac was on the first line. Economy perished, especially big enterprises, and infrastructure was destroyed. Of the total number of inhabitants with Serbian nationality which reached 25,800 people before the war, after the «Storm» only 1800 person were found, which means that 24,000 inhabitants had left the area. At the time being 14,200 persons of Serbian nationality returned.

However 5000 displaced Croats from Bosnia and Herzegovina settled this area, to the municipalities Vojnić, Krnjak and Plaški. The problems occur when two families wish to use the same property. Bosnian Croats don't want to return to BiH, and the owners are naturally asking for return of their property, which has been substantially returned.

After informing all present about his authorities, the Ombudsman has asked for the information about return of property, convalidation, problems in old age-disability insurance, status-problems, take-over of possession of property, emission of noxious substances and evaluation of cooperation with ministries and central authorities.

The county authority representatives stated that the problems have been identified, many things have been achieved and considerable progress is being made as time goes on. However, they will not be satisfied until the last exiled person has taken possession of his/her property. Although more than 1600 facilities were returned, there are still about 600 to be returned to their actual owners since they are still in the possession of the temporary beneficiaries. The exile residential settlement "Gaza" presents a great problem. 150 persons from Bosnia and Herzegovina are situated there. As the settlement is 10 years old and it is in very bad condition, it should not be used anymore. Most of the immigrants do not have any other place to go and some of them are afraid to go back to Bosnia and Herzegovina. The County is doing everything it can to solve these problems. The problem of about 700 exiled persons whose homes are being reconstructed will be solved this year. 205 facilities in Slunj have collapsed waiting for the beginning of reconstruction. The County representatives are hoping that the reconstruction will be finished by the end of the year and they emphasized that the cooperation with the authorized ministries is excellent.

As far as the economy is concerned, the structure was similar everywhere and bankruptcies had negative consequences. The cotton industry in Duga Resa collapsed, as well as the leather industry subsequently. Bankruptcy of the large companies is a great problem since many people lose their jobs. The infrastructure and the water resources management have not been reconstructed fast enough due to the lack of initial means. 15800 unemployed persons are registered at the Employment Office. Unemployment reached a record breaking high last year when there were 17200 unemployed persons; 5 to 6 thousand people receive social welfare to support their families, which makes up 5 % of the population.

Mine clearance is a huge problem in this area. 272 persons in the area are the victims of the remnant mines. Agriculture highly depends on the removal of mines.

A large number of the mass media representatives participated in a press conference and expressed particular interest in the visit of the Ombudsman and his associates to the County of Karlovac.

The Ombudsman met with Božidar Joha, the mayor of Karlovac and his associates. Among the rest, the two of them emphasized the fact that the property-rights issues block the local authorities, particularly municipal. Many state-owned facilities which are situated in the historical part of the city are in a very bad condition and they are collapsing since nobody manages them and the state refuses to transfer them to the local government. In the mayor's opinion, those buildings should be transferred to the city on the condition that they should be reconstructed and thereby preserved. There are 8 military facilities in Karlovac. One of the polytechnics is interested in the reconstruction of one of them on condition that the facility should become theirs. The Ombudsman demanded a written request for its conversion into a polytechnics building which should be directed to the Ministry of Defense in order to pursue their consent.

The City of Karlovac has a population of 58000 inhabitants. Croatian immigrants from Bosnia and Herzegovina are facing many problems, one of them being the exchange of apartments between Bosnia and Croatia. Abandoned schools that are in the city's ownership are to be renovated and given to the homeless Croatians from Bosnia. 5 million kunas has been appropriated for social welfare to the families in need.

During his stay in the County, the Ombudsman visited the Regional Office for refugees, returnees and displaced persons where he interviewed Marica Barbarić, the head of the Office. According to Mrs. Barbarić, there is huge pressure on the Office coming from various sides –the apartment owners, political parties and various institutions that deal with the protection of human rights. The lack of houses is a key problem. 1600 of them were returned to their owners and there are another 600 still to be returned. Some of the families bought the building sites and they are now demanding building materials. They are satisfied after all, since Karlovac was the first to begin with the restitution of property and it has become a growing trend.

After the interview, the Ombudsman and his deputy interviewed the clients and 40 complaints were received that day.

On the second day of the stay in the County of Karlovac, the Ombudsman visited the municipality of Krnjak and discussed the most relevant issues with Mirko Srđić, the deputy mayor. The crucial problems are: the restitution of property, accommodation care, reconstruction of houses, illegitimate employment procedures and immigrants. 256 certificates for settling the houses were given to immigrants from Australia and the Homeland War veterans. 180 houses were returned to

their owners and there are another 98 still to be returned. There is a great problem with damaged houses since the requests for their reconstruction are mostly denied. Only 12 out of 160 requests were approved. The Ombudsman stated that the issue of the devastated houses which are out of reach should be directed to the competent authorities, since the state has taken over the issue of abandoned property.

The Ombudsman also visited the municipality of Vojnić where he met Vladimira Furač, the Government commissioner of the municipality. Mrs Furač stated that most citizens of Vojnić emigrated. Some of them have returned but a large number of Croatsians from Bosnia now reside in that area and the problem of their accommodation has remained unsolved for seven years now. Most exiles refuse to return but they request the reconstruction of their houses in order to sell them. The key problem in the area is utilization of land; since the immigrants occupy houses without the right to use the land and there is no organized land purchase. Mrs Furač feels that solving their existential problems would reduce the tension.

49 % of the population in this area is of Serbian nationality, 15 % are Croatsians and the rest are Bosnians. Additional school classes are organized for the members of individual ethnic groups, but the attendance was poor. Children attend classes together, regardless of their nationality. Since the branch schools are closed, the state and the county subsidize their transport to school.

After the interview with the Government commissioner for the municipality of Vojnić, the Ombudsman and his associates interviewed:

- Slavica Lagundija, the representative of the Association of Immigrants
- Zvonko Jakar, the representative of the Association of Croatian refugees from north-western Bosnia and
- Milica Vučinić, the representative of Serbian Democratic Forum.

The representatives of the Association of Immigrants and the Association of Croatian refugees from north-western Bosnia were most interested in what way and when the problems of the immigrated Bosnian Croatsians will be solved, since they do not want to return to Bosnia and Herzegovina. They believe that the issue was not dealt with as it was promised. Aside from solving the problem of accommodation, they request the settling of pensions as well as the issue of cultivating land, which should be granted for use to those who are willing to work on it, considering the fact that this is the area of specific state care. They believe that this would be a good way to decrease social welfare payments since they would have an occupation. The proposition that

should be directed to the competent Ministry is to allow the Real Estate Agency to buy off the land of the owner from whom they purchased the house.

The representatives of the Serbian Democratic Forum informed the Ombudsman about the activities of their association, which is trying to help everyone who approaches them regardless of their nationality—immigrants, returnees, etc. Their key problem is the restitution of property. According to them, only 13 houses were returned last year in the municipality of Plaški. Another problem lies in the fact that the temporary users refuse to accept the alternative accommodation and keep rejecting the offered solutions. In their opinion eviction should be executed instead of allowing that.

The clients were interviewed in the municipality of Vojnić, too, and 31 complaints were received.

The Ombudsman and his associates also visited the Local Office of the OESS in Karlovac, where they interviewed Andrei Kandybko, the head of the Office.

At the meeting with the representatives of the non-governmental associations, the Ombudsman interviewed the representatives of the Croatian Helsinki Committee Karlovac, Human Rights Committee Karlovac, Women's group "Step" Karlovac, Stigma Center, SDF Vojnić, Association for creative development, CRTA Karlovac and "Croatian Heart" - the Association of Croatian Settlers.

The visit plan included a meeting with Miro Škrgatić, the head of the Administrative Office of Reconstruction and Development in the County of Karlovac. According to Mr. Škrgatić, the key problem is the restitution of property. The reconstruction runs smoothly and the model by which it is executed is not the same as in the rest of the world, since the houses are being reconstructed in full. Mr. Škrgatić emphasized that the cooperation between the County Office of Reconstruction and the Ministry is satisfactory. He believes it would be useful if the Law on Reconstruction included an article which would take into account the reconstruction of those houses which were not maintained during the period of occupation and therefore collapsed.

At the meeting with Davorin Rukavina, the president of the County Court, the conclusion was drawn that not a single complaint was directed to the Ombudsman concerning the activities of the County Court in Karlovac, whereas 2-3 complaints were filed on the account of the Municipal Court.

The Ombudsman, his associates and the representatives of the Local Office of the OESS Mission in Croatia visited "Gaza" - the exile settlement in Karlovac, where he had a meeting with the refugees from Bosnia and Herzegovina and the settlement manager.

The citizens of Karlovac were given the opportunity to address the Ombudsman and there were a total of 40 complaints.

In the course of the visit, the Ombudsman had an interview with Ivan Bogović, the mayor of Slunj, who stated that most problems refer to the restitution of property; although most of it was returned; the unused tenancy rights, reconstruction of the facilities categorized by the low damage degree and those are mostly older buildings that cannot be reconstructed with the assigned means. Unemployment is also a problem, since a large number of companies declared bankruptcy. The County is trying to encourage the entrepreneurs to activate the production, but they are not able to take mortgage loans since most of the production facilities were destroyed in the war and there are no available assets to serve as a guarantee. The County is also concentrated on the development of tourism and agriculture as well as the production of ecological food.

The Ombudsman interviewed ten complainants and their complaints referred to the reconstruction and restitution of property and the violation of the pension rights.

The meeting in Plaški included an interview with Radmila Medaković, the mayor of Plaški, who discussed the problems which the municipality is faced with. She complained about the unsatisfactory cooperation with the Office of Reconstruction and Purchase of houses.

On the last day in the County of Karlovac, the deputies of the Ombudsman visited Popović Brdo, Trebnja and Vukmanički Cerovac, where they interviewed citizens. 18 complaints were filed, of which 11 complainants had already addressed the Office of the Ombudsman for the restitution of property. The newly filed complaints referred to the violation of retirement rights, reconstruction of the houses, environmental protection and the restitution of property.

Their five-day stay in the County of Karlovac ended with a visit to the villages of Štakorovica, Široka Rijeka and Brusovača, which are without power grid. They came to the conclusion that much more help can be provided to the citizens by gaining direct insight into their problems. One should emphasize the major role of the non-governmental associations and the OEES who have an insight into all those problems and could therefore help the representatives of the Ombudsman's Office to look into the problems.

## **5) Ličko-senjska County**

From 2 to 6 of June 2003, the Ombudsman and his associates visited the County of Lika and Senj. The visit began at the office of the County prefect, Milan Jurković, who briefed them on the problems that the County is facing. Considering the fact that Gospić suffered severe damage during the Homeland War, great efforts are being made to rebuild

it as soon as possible. The reconstruction of the residential units should be finished during the year. Although the County of Lika and Senj is spatially the largest county in the Republic of Croatia, it has a population of only 53000 inhabitants and consequently specific living conditions. A large number of inhabitants fled during the war, but many of them have returned. The economy was completely destroyed, while there never were any trades and crafts or small businesses in this area. After the war it was recognized that the large companies could not be reconstructed and that small business is the most profitable branch of economy. The first results can already be seen and that certainly improves living standards. Plitvice Lakes and Velebit are exquisite nature parks situated in the County of Lika and Senj, which means that there are excellent conditions for the development of tourism. Velebit links the inner and seaside parts of the County. That advantage is used in constructing the motorway. According to them, the planning of the agricultural production will considerably influence the development of the livestock industry. Unemployment is one of the key problems in the County. Although it has decreased, it still amounts to 25%. The motorway construction and the development of small businesses contributed to the rise in employment - 800 persons have been employed and another 600 will be employed when the motorway is completed. The County prefect expressed discontent about the former military facilities such as Sv. Rok and Otočac since they are disintegrating instead of being given to the cities to make use of them.

The Ombudsman concluded that the proposition about the military facilities should be directed to the Ministry of Defence, like it was done in the County of Karlovac, in order to transfer them to the cities.

After the meeting there was a press conference with the representatives of the local news media, radio stations and correspondences.

After meeting the leadership of the County, the Ombudsman visited Milan Kolić, the mayor of Gospić. At the interview with the representatives of the City of Gospić, the conclusion was made that the situation is improving in this region. There are still great problems with reconstruction and people are unable to return to their homes. However, there are not any problems with apartments in Gospić, since they were not granted for use, as was the case in Korenica. The key issue is the devastated parts of the city, since the city does not have the means to rebuild them. Another problem is the registration and sale of the state-owned apartments.

The Ombudsman met with Nenad Vukelić, the head of the Government Administration and Milan Pervan, the head of the Office of Reconstruction and Development.

They stated that reconstruction is the main problem in the County. Deadlines are constantly pushed, individual cases have not been completed, relevant data is missing and it is difficult to trace the people who no longer live there. The land registers were destroyed, not only in the Homeland War, but also in the Second World War, and they were not renewed. The reconstruction of the land registers has not even started yet. Another important problem is establishing the degree of damage, since the residential units are far away from each another, some even 50 km. Some areas are mined, making it impossible to approach them during the winter due to the snow and ice. Since this is the area of specific state care, it cannot be treated the same as the other counties. Field work can be done only 7-8 months a year, considering the weather conditions. The work is extensive and the number of the staff members was reduced during the reorganization of the Government Administration. They emphasized that there is no communication at all between the leadership of the Government Administration on site and the Ministry of Justice. There is not any communication between the Government and the head of the Government Administration either.

The Ombudsman and his associates also had a meeting with Ankica Nikšić, the deputy head of the Office for the Refugees and Exiles. There are some requests for the establishment of the returnee status on the territory of Donji Lapac and Korenica, while most people have returned to the territory of Gospić. Although the process was stalled in the winter, it was started up again in the spring. As far as occupied houses are concerned, since the activities of the housing commissions were overtaken by the Office, the situation is as follows: 5 houses in Vrhovine are occupied and a request was filed for the restitution of property; there are 17 occupied houses in Udbina and 12 families may be taken care of through the Real Estate Agency by this summer. On the territory of Plitvice Lakes there were 171 requests for the restitution of the houses, which are currently being occupied by Bosnian Croats. Eight of the families filed a request for the building material. 42 families have been given building land and materials. As for the rest of the families, there are 16 single persons and it would be good if one building could be constructed for all of them. The municipalities of Donji Lapac and Udbina do not have land registers. Many houses are put up for sale. There are 37 occupied houses in Donji Lapac but there are not any that require reconstruction. A residential building with 12 apartments is in the reconstruction process and it will hopefully be placed at their disposal. Although plots of building land are offered, many people refuse to accept them.

The visit to Korenica started at the Local Office of the OESS Mission in Korenica. Iulian Fruntasu, the deputy chief of the Mission

discussed the activities of the Mission, which include the problems of integration, media, democratization and the cooperation with the non-governmental organizations of the OESS. The problem of the restitution of property on the territory of Korenica was specifically pointed out, since it is a long-lasting process. There are always some informal reasons to delay the execution in certain cases. Another problem is the attitude of the local authorities. Apart from the problems mentioned above, the OESS conducts monitoring related to war crimes.

The discussion at the meetings on the level of the County and the City of Gospić resulted in the conclusion that the territory of the County is extremely large in comparison with the population density. The process of return is slow and there is a general feeling that there is not enough encouragement on the local level to speed it up. It is therefore positive that the central authorities took the matter into their hands.

Mile Čančara, the mayor of the municipality of Plitvice Lakes whose headquarters are in Korenica, was pleased that the visit to his municipality was included in the Ombudsman's plan of visit. According to him, the restitution of property is the main problem. Out of 432 requests for the restitution, only 139 cases have been solved. The municipality has no influence in the matter, since it is all under the jurisdiction of the Regional Office for the Refugees and Exiles. There are no Croatian returnees in that area, only Serbian. Another problem are Bosnian Croatians and the persons from the other parts of former Yugoslavia who settled in that area in 1995. Each of these categories feels threatened. Everybody has certain rights except for the domicile population, no matter whether they are Croatians or Serbians. Plitvice Lakes cover 49 % of the municipal area, but no one from the local authorities takes part in the activities of the governing council of Plitvice Lakes and that is unacceptable. 750 persons are employed at Plitvice Lakes, but the hotels purchase groceries from other counties, as opposed to earlier when they used to supply from their own county. That region is unexploited for several reasons. All the apartments on the municipal territory that belonged to the communities of interests, the municipalities and other similar institutions are now state-owned. The beneficiary users of those apartments do not even pay for the reserves.

In the Ombudsman's opinion, the apartments in the state ownership should be inventoried due to their mismanagement.

Discussions were also held with the representatives of the non-governmental associations. Among those present were the representatives of the SDF Korenica, HOMO Association and the Association of the Bosnian Croatians. It was concluded that the problems that they most often come across are the restitution of property, validation and reconstruction. SDF Korenica requested from the Government to deliver

the list of the state apartments and their tenants, as well as the information about the methods of managing the state property. The municipal authorities were advised to claim those apartments from the Government, due to their mismanagement. The representatives of the Croatian immigrants from Bosnia stated that they are treated as some kind of obstacle, instead of somebody in need of help. People are being threatened to leave the houses and apartments. According to him, all humanitarian organizations that are active in that area are taking care of the Serbian returnees only, with the explanation that Croats did not live in that area in 1991. There are 260 Croatian families from Bosnia in that area who chose to stay there. Only 60-70 families have solved their housing issues. There is allegedly a housing care programme for the Bosnian Croats on the state level and for that reason the Ombudsman feels that the proposition should be directed to the Government and the Parliament in order to solve the problem of the immigrated Croats as soon as possible.

During his stay in Gospić and Korenica, the Ombudsman and his deputies interviewed 94 complainants. Their complaints mostly referred to the restitution of property, disability pension insurance rights, validation, denial of reconstruction rights, execution, court competence and labor relations.

In the municipality of Udbina they met Mr. Stanko Momčilović who emphasized the lack of water supplies as a key issue. The representatives of the Office of the Ombudsman also visited the Senior Citizen's Home in Udbina, which has been renovated and well equipped. Young citizens manage it.

They also visited the municipality of Donji Lapac, where they had a meeting with Milan Đukić, the mayor. The municipality of Donji Lapac is more developed than Udbina. Restitution of property is the main problem there, since the returnees' houses are still occupied by Croatian immigrants from Bosnia and Herzegovina. Most people are employed in the forestry, but a new cheese factory is about to be opened, which will create new jobs.

59 complainants were interviewed in the municipality of Donji Lapac. 2 of them had already addressed the Ombudsman. Their complaints were mostly related to the restitution of property, status-related rights of the citizens, status of the exiled persons, the rights of Croatian Defenders, social welfare, etc. 153 complaints were altogether filed on the territory of the County of Lika and Senj.

On the last day of the visit, the Ombudsman had a meeting with the representatives of the Association of the parents of Croatian Defenders killed in the Homeland War and the Association of the Widows of Croatian Defenders, who mostly complained about the lack of legal

assistance. Since most of them have only primary or secondary education, they need someone to inform them of their rights.

Another discussion was held with the representatives of the ecological associations of the County of Lika and Senj. Although 16 associations were invited, only three of them responded: "Eko - Senj", "Eko-Senj"-Jablanac branch and the Alpine Club "Zavižan".

The representatives of HVIDRA stated that the key problem they are faced with is the lack of legal assistance to the invalids. They were referred to the Office of the Ombudsman.

Finally, there was a visit to the prison in Gospić. The premises were inspected and there were not any visible deficiencies. The treatment of the prisoners is satisfactory.

## **6) Osječko-baranjska County:**

The Ombudsman and his associates visited the County of Osijek and Baranja in the period between 9-13 of June 2003. The visit began by interviewing Julia Gilbert, the head of the Local Office of the OESS Mission in the Republic of Croatia. Mars Gilbert informed the Ombudsman about the activities carried out by the OESS Mission in that area. The most common problems that the Mission deals with in Baranja are labor relations and pensions, while the key issues in Osijek are the realization of ownership rights, validation of the employment record, reconstruction, pension insurance rights, realization of the residence-related rights, employment rights, etc.

60 % of these cases are also dealt with by the non-governmental organizations which cooperate with the lawyers on site. The lawyers come across many different cases and the part of the population that is most taken care of is senior citizens and the low-income citizens. There is a demand for as many lawyers as possible to help them on site. Efforts are being made to train them professionally, so that they can be as efficient as possible. The largest portion of the work done by the lawyers at the OESS Office is related to the provision of help to the persons who conduct court and administrative proceedings which last impermissibly long. In most cases there are not any administrative decisions, either positive or negative. In such cases, the clients are referred to the Office of the Ombudsman. The OESS maintains contact with the local authorities and that way often speeds up the proceedings. Resistance to the normal situation is visible from the relationship towards the Serbian returnees. Most problems are caused by the internal instructions which are not made public. Validation and the Law on Ethnic Minorities are the issues which create most problems. As far as Baranja is concerned, there is a problem of distrust between the people who stayed there during the war and those who returned afterwards. The other relevant problems are validation and

silence of the administration. Labour disputes are too long - lasting and some of them even after three years have not been considered yet. Labor disputes mostly refer to "Belje". The main question is whether the newly founded "Belje" is the branch of the former "Belje" corporation or not. Discrimination is a problem when the competition for the job opportunities is concerned. When a Croatian and Serbian compete for the same position, Croatian is considered to have advantage. There are 6000 Romanies in that area and there is a great resistance towards the integration of their community.

The Ombudsman is already acquainted with the problems presented by the head of the Local Office of the OESS Mission in Osijek and her associates. Croatian Parliament will be informed about them.

The prefect of the County of Osijek and Baranja Željko Bosančić and his associates stated the problems which they are dealing with in that area: taking care of the returnees, integration processes, validation, employment, pensions and housing issue. The County suffered severe devastation during the Homeland War and it is one of the counties of specific state care. Efforts are being made to achieve equal development of the whole County. In 2002 there were 38000 unemployed persons and that number has gradually decreased to 34000. Most of the citizens who lost their jobs had been working for the "Belje" corporations. 5500 residential units have been reconstructed so far, but the members of the Serbian and Hungarian minorities are leaving Baranja since coexistence in this area is impossible.

After the meeting there was a press conference with the representatives of the local news media, correspondences and HRT. Discussions with Nada Arbanas were held at the Local Office for refugees and exiled persons. The process of the restitution of the occupied property began in 1993 and 9000 houses have been returned since. Help was provided to everybody, regardless of their nationality. However, there are many Bosnian Croatians in the area without refugee status. They refuse to return to Bosnia, claiming they would be unsafe there and would not have normal living conditions. The exile settlement they are living in provides very moderate living conditions and their issue should be solved as soon as possible. Some of the families solved their problems last year. The Local Office cooperates well with the non-governmental associations and Caritas. They are trying to help people in any way they can obtain the required documents and, most of all, to solve their housing issue. Since this is the area of specific state care, it is necessary to provide new money for its development. Educating young people is of particular importance.

At the meeting with Franjo Zdravčević, the head of the Government Administration and Jasna Mađura, the head of the County Reconstruction Office it was concluded that the funds have been provided

only for the legally prescribed activities and none for those which are not explicitly listed. What creates problems is the assignment of tasks by the Central Administration without providing financial means for them. One example of this is the estimation of the damage outside Osijek. This is one of the largest counties and there are 370 employees in the Government Administration. Its jurisdiction is large, there is a lot of work to do and the personnel is qualified. However, the means from the budget are insufficient, especially for the purchase of computer equipment. There were 23000 requests for the reconstruction of dwelling units and most of the work is done. The restitution of property is still in progress and so is the provision of financial support. Restitution of property confiscated during the communist rule has not been carried out yet, particularly of the land. The pressure on the restitution of the real estates is not as high as expected. The farmland registers are still being made up and agricultural support will be given according to them. The return of the people has mostly finished. About 10 % of the population has not returned. Many citizens of Serbian nationality did not return, not because they were unable to do that, but rather because they chose not to. Registers of births, marriages and deaths remained in the occupied area until the process of the peaceful re-integration, although the UNTAES was requested to protect and return them.

According to the schedule, the Ombudsman met Zlatko Kramarić, the mayor of Osijek. Osijek has a population of 100000. Apartments for the social welfare needs are in the process of construction and the list of the persons requesting housing care is made anew each year. According to the mayor, the city is not going to get any bigger and it will probably be outsized by Slavonski Brod. There are 250 requests for housing care so far. One of the issues is a growing population of the Romanies in the area.

The Ombudsman also met the representatives of non-governmental associations, among them: Matt Smith of the Peace Center, Biserka Milkošević of the Centre for peace, non-violence and human rights in Osijek, Gordana Stojanović of the Coalition for promotion and protection of human rights Osijek, Milorad Nenadović of the Association for peace and human rights "Baranja" Bilje, Julijana Božić of the Centre for peace, non-violence and human rights in Osijek, Erika Jasnić of the ZVO-the Project for the legal help Beli Manastir, Srđan Marov of the HHO-Cooperation Centre Osijek and Aleksa Đokić of the OESS.

The OESS supports the project for the development of civil society and provides both financial and organizational help to the associations. 170000 € (25000 € a year) were spent in four years together with the County. The OESS provides help in the process of reconciliation, return, media freedom, minority issues, (child-care centre for the Romany

children in Valpovo), decentralization and provision of legal assistance. They also organize professional training of the associations and Local Self-Administration. Help was also provided for the foundation of the NGO Forum.

The programme of the Centre for Peace and Non-Violence includes the provision of legal assistance and the protection of human rights. The Centre has its own mobility team.

Citizens' self-organization, provision of legal assistance and development of the civil society are the most important tasks of the non-governmental associations, which are most often faced with the issue of the restitution of apartments and the termination of labour relationship (many workers were given their employment record cards, but not the decision on the termination of employment). In their opinion, people in this area, as well as the whole Croatia need free legal assistance. Many people need it because they are not educated enough and do not have sufficient financial means. Validation is a key problem in Baranja. If such law is passed, the preclusive deadline has to be met. Although 100 complaints were filed to the Administrative Court, not a single ruling was made. Since this is an agricultural region, many people are only a couple of years from retirement. It is impossible to realize family pensions since some of their members were a part of paramilitary troops under compulsion. As far as restitution of property is concerned, they feel that the vicious circle must be broken. When it comes to medical insurance problems, they are not the consequences of war but rather of the denial of the acquired rights. Medical insurance practically does not exist any more and for that reason it is important to elaborate the social security rights. In such economic situation the realistic chances for the return of the young people are slim and something needs to be done to prevent them from leaving.

The representative of the Association for the Legal Assistance Project pointed out that apart from validation there are many cases connected with disability pensions. Many persons who reported after the war lost the right to pension compensation they were receiving before it began, as they could not be reached during the war. They were also denied the right to disability pensions. When it comes to disability pensions that some persons realized in the period of "Krajina", the complete documentation was inspected in Zagreb and their rights to disability pensions were denied. Those were prescribed the adequate medical treatment and sent back to work.

Despite of all, the international relations in this area have improved. Problems have decreased and people's attitudes towards the non-governmental associations have changed. More and more Croatian

Defenders seek help. Unfortunately, they feel that the problem of Croatian civilian victims has not been solved yet.

On the third day the Ombudsman visited the municipality of Darda and spoke to the mayor Marijan Molnar. The reconstruction is mostly finished while the problems related to the ownership are yet to be solved. There were about 3000 exiled persons and 90% of them returned. 8 families have still not solved their problem. Unemployment is a key problem in Darda, particularly after the collapse of the multi-plant firm Belje. The municipality of Darda had a population of 9000 before the Homeland War and there are now 2500 less inhabitants there. 6000 persons receive social welfare and those are mostly the Romanies, as there are two Romany settlements in this area.

After the meeting with the mayor, the Ombudsman visited Romany settlement and spoke to Branko Petrović, the president of the Romany Community. Apart from the status-related problems, the Romanies are also faced with unemployment and inadequate accommodation in the settlement that was devastated during the occupation, while the residents were in exile. The settlement was ruined due to the years-long lack of maintenance and its reconstruction has not begun yet.

For these reasons it is necessary to undertake everything that the financial means provide opportunity for in order to improve their status. Educating young people is of particular importance in order to make their social integration as painless as possible. Better insight should be gained into the possibility of reconstructing their settlement out of the reconstruction budget.

The Ombudsman also met with Ivica Buconjić, the mayor of Beli Manastir and Josip Kompanović, the president of the Association of the Returnees.

According to the mayor, Beli Manastir was unjustly excluded from all donations made by the international organizations. There were 56000 inhabitants in Baranja before the Homeland War, of which 13000 lived in Beli Manastir. Today Beli Manastir has a population of 11000 inhabitants, which is 20 % less. A large number of inhabitants are registered as residents of Beli Manastir but they live in Serbia. Although some of them have sold their houses, about 1500 persons are still registered there. A positive thing is that 90 % of the displaced persons returned. There were a lot of people from Lika and Banija in that area and some incidents occurred, which is understandable, but the refugees' rights cannot be overpowered by the returnees' rights. A large number of displaced Serbs went to Serbia or abroad and fewer returned to Baranja.

One of the key problems in this area the Romanies, who settled here during the occupation of Tenja and Sarvaš. They moved into the

apartments of the 5<sup>th</sup> or 6<sup>th</sup> degree of damage. That area is about to be rebuilt, but the Romanies refuse to move out, claiming their human rights are denied.

According to the election results estimate, 25 % of the citizens are of Serbian nationality. Before the war there were 38 % Serbians in that area and they constituted a relative majority. They are well organized and the relationship with the SDSS is satisfactory. They participate in the activities of the City Hall and the Council. They are trying hard to solve their problems alongside the others since it is important to maintain the balance. The process of return is mostly finished, but there is still a problem with the people who had tenancy rights but their apartments were sold and they only have temporary accommodation. Those who came to this area from Zagreb or Osijek during the war demand the solution of their housing problem in Beli Manastir.

The return ran parallel with the reconstruction, which will be finished next year. However, the unemployment rate is very high - about 55 %. Young people are leaving the area and even the high school attendance is low. Social conditions are poor and the state does not have the same attitude to all the areas of specific state concern.

The Ombudsman visited the Social Welfare Centre, where he met the manager - Vlado Grujić. There is a lot of work to do at the Centre, and the employees carry a crushing case load since 1200 persons are assigned to one trained employee. In their opinion, at least another five qualified persons should be employed. The beneficiaries of the Centre are mostly uninsured persons and the main purpose of the Centre is to help them as soon as possible. There are 4539 regular beneficiaries of the Centre.

The Ombudsman and his deputy interviewed 75 complainants in Osijek and Beli Manastir. The complaints mostly referred to the property rights, restitution of property, realization of pension and disability rights, status-related rights, denial of the reconstruction rights, tenure and lease of the state land, etc.

Darko Čuraj, the head of the Croatian Bureau of pension insurance informed the representatives of the Office of the Ombudsman about their activities. The institution has a large number of various beneficiaries. Most of them are pensioners and workers who demand the validation of their employment record, children's allowance, etc. There are 12000 pensioners on the territory of Osijek, which was occupied during the war and another 10000 on the territory of Vukovar. 7600 requests were filed for the validation of the employment record and about 5000 requests for the realization of pension earned in the Republic of Croatia. Some requests were filed by the holders of Croatian citizenship who request the retirement earned in Bosnia and Herzegovina or in Serbia and

Montenegro. Although the request started being dealt with soon after the multilateral agreement was put into force, Mr Čuraj thinks that the procedure should be simplified. Agricultural pensioners present another problem. Along with the demands for the realization of retirement, there were 3800 requests for children's allowance. Mr. Čuraj also mentioned the problem of the system and measures of charging financial claims, with the emphasis on the unrealistic interest rate as the key problem, since it is increasing tremendously even though the capital sum is small. The key problem of the Bureau is charging the claims out of the contributions.

Jelica Klobučar, the head of the Social Welfare Centre informed them about their activities. The Centre had many problems during the war. It has 140 public authorities, and only three professional teams who deal with family relations. The field welfare workers are for that reason included in the teams' activities. The protection of children and families is a key concern. Intervention in the divorce cases has decreased since the women have nowhere to go after being divorced, so they remain married and address the Centre for help. Through the Centre's intervention, 10 % of the cases give up divorcing after all. Marriage rate has decreased and thereby the birth rate, too. For the purpose of child protection, 6-7 parents are undergoing proceeding daily, which is in increase. Special attention is given to the issue of child adoption. About 15 adoption procedures are initiated each year. 11 children were adopted last year, but there is dissatisfaction with the existing laws and regulations. The head of the Centre pointed out that taking the children away from their parents is a painful process. It is often done in the police presence. Although they do not interfere in the very act, they are present for the security reasons. The cooperation between the Centre and the police is satisfactory.

According to the plan, the Ombudsman met Zvonko Borić, the mayor of Belišće. According to him, Belišće is the city where one can always reach the mayor since his working and office hours are not limited. There are not any major problems connected with ethnic minorities, restitution of property or housing shortage in the Belišće area. Unemployment is a crucial problem there. In his opinion, the funds from the budget are poorly distributed and the amount of 5 % that belongs to the Local Administration and Self-Administration is inadequate. He believes that there should be a better control over the expenditure. As far as "Belišće" corporation is concerned, the number of the employees was reduced from 5000 to 1700 and the business is flourishing. Due to the low financial status of the population, birth rate has decreased. They are trying to help the young people who are faced with drug problems as much as possible. Finally, it should be pointed out that the mayor of Belišće was awarded for starting the public initiative.

The representatives of the Office of the Ombudsman visited Valpovo, where they met with the mayor - Tomislav Ivić. Valpovo has a population of 8000 and another 4600 inhabitants live in seven nearby villages. 94 % of the population who lived in this area before 1991 was of Croatian nationality; 3 % of the population were Serbian and 3 % were other nationalities. Due to financial instability, the birth rate is in decrease. The key problems in Valpovo are inadequate funds from the budget and too narrow authority of the Local Administration and Self-Administration. Decentralization had not been carried out the way it should have been. New tasks and needs are emerging and the funds from the budget and the capital yield taxes are decreasing. The city took the loan for the construction of the sports facilities and has paid off most of the money, but the rest of the debt has tremendously increased due to high interest rates. Although the Ministry was asked for help, there was no reply. Local Administration has no influence on the police work when it comes to public peace and order maintenance. Although this was the most developed area before the Homeland War, there are 4000 unemployed persons and the social situation is difficult and complex.

The principal of the children's village in Ladimirevci informed the representatives of the Ombudsman about their activities. There are 16 families with 97 children and they reside in 16 houses. Each family has a "mother" and up to seven children. Some of them are siblings. "Mother" is a single, widowed or divorced person who does not have her own family and who has secondary education at least. She takes care of the family the same as any other mother. They are registered as a non-governmental association Children's Home. They are financed from the foreign countries' donations (60 %) and 40% of the funds come from the budget. Most donations come from Germany. The settlement takes care of the children from their infancy till the end of the primary education. The second stage starts with the secondary education. It is realized through the Young People's Community in Osijek, where the high school is situated and 16 children currently attend it. Semi-independent living is a part of the 3<sup>rd</sup> stage and the children are still in contact with their "mother". The 4<sup>th</sup> stage includes monitoring, and the children are provided with financial help, for instance when purchasing a flat, etc. Each child has his or her godfather abroad, whereas children abroad have godfathers in Croatia, too. They do not visit each others but they communicate through the letters.

Children from all parts of Croatia come to this settlement. They associate with the rest of the children from the village, visit each others and go to the same primary school in Ladimirevci. With the approval of the Social Welfare Centre the children can get in touch with their biological parents except in the cases of child abuse in which the contact

is forbidden. Speech pathologists, psychotherapists and other various trained persons work with the children who have difficulties.

On the last day of the visit to the County of Osijek and Baranja the Ombudsman met with Dražen Arnold, the mayor of the municipality of Čepin.

Considering the number of citizens, the municipality of Čepin could be a city, but the main problem is a lack of its own income. For that reason it is incapable of self-financing and the requirements of the city are large. Čepin is about 7 km away from Osijek. There are two primary schools in the centre and one regional. 1400 pupils attend them. 200 children used to attend child-care centre but the number reduced by half due to expensiveness and low income of the parents. National structure has not changed a lot since the war. 11 % of the population who lived there before the war were of Serbian nationality and today there are 5 % of them. There are almost no demands for the restitution of property since the ones who left Čepin exchanged their houses, mostly with Croatians from Vojvodina. 7500 hectares of land on the municipal territory is planned for lease. 4000 hectares of that land was confiscated and the municipality is waiting for the potential owners to get in touch. Therefore only 15 % of the land is on lease. Since there are many unemployed persons, many of them are interested in the lease of the land for the cultivating purposes. The municipality pays special attention to the sports activities and promotion of urbane manners. The library has 700 members and it is equipped with computers and daily and weekly newspapers. The membership fee is minimum.

The discussions were also held with Branko Vukoja, the head of the "Naselje Prijateljstva"- Settlement for displaced persons in Čepin. It was built ten years ago and it consists of prefabricated houses where the living conditions are poor due to the summer heat and winter cold. 1100 persons are settled there, 320 of them are the refugees and displaced persons from Bosnia and Herzegovina, and the rest of them are exiled persons from Osječko-baranjska County and Vukovarska County.

As a part of Osijek's medical centre, there is a clinic in the settlement, which is open every day. Legal help is organized on Thursdays and Fridays. They are provided with three meals a day. There is also a child-care centre in which 55 children are placed. Children attend lower grades of primary school in Čepin and higher grades in Ladislavci. High school children travel to Osijek. This is one of the poorest settlements for the displaced persons. Many people from near-by Antunovac whose houses are in the process of reconstruction are also situated in the settlement and they will soon be able to return to their homes. Due to the large number of the beneficiaries of the settlement its closing time is questionable.

The visit ended with the interview with Zoran Vinković- the mayor of Đakovo. Đakovo suffered considerable damages during the Homeland War, but it was not proclaimed the area of specific state care. Since there were not many persons of other nationalities in the area before the war, there were not many problems with the restitution of property. People left the area of their own free will and solved the property issues mostly by selling or exchanging the real estates. The city has its own welfare programme which is mostly being carried out, but the funds are insufficient to help people in the right way. Transition and unemployment are the key issues.

During the visit to Valpovo and Đakovo, the complainants were given the opportunity to address the Ombudsman. 16 complaints were received and they mostly referred to the reconstruction, status-related rights, land consolidation, health care and court authority.

## **7) Zadarska County**

The Ombudsman visited the County of Zadar between 29 September and 3 October 2003. The visit began by meeting the County prefect - Šime Prtenjača. The Ombudsman emphasized solving the property issues in general, and particularly those of the refugees: providing accommodation to the settlers and the reconstruction of the industrial and residential facilities, which were devastated in the war; solving the citizens' social welfare issues and all the problems connected with illegal building and the violation of Croatian marine territory; solving existing problems related to the environmental protection, and handling all other problems in the sphere of life and work of the citizens.

The County prefect pointed out that they are doing everything they can to prevent the usurpation of national property, i.e. the sea and maritime goods as well as woodland goods. However, the control instruments are not adequate. Illegal housing building has not let up since the 70s, when the construction of the residential buildings on the island Vir began. Construction without issuing special permit is a consequence of the lack of urban development plans. The existing plans which are used, e.g. in Pakoštane, are 40 to 50 years old. Due to the lack of physical plan, the construction works were carried out in the protected area of Lake Vransko. The whole construction is actually under the constructors' control and the competent inspection boards are no longer under the jurisdiction of the local and regional Self-Administration units. For that reason Local Self-Administration has no influence at all in preventing space violation. Illegal conduct at sea is related to the concession for the fish-breeding; twice as large area has been taken up than the assigned. Concretely, fish-breeding cages are set up in the inland waterway and are therefore blocking the passage for the ships. The citizens' ownership

rights over maritime goods are acknowledged as well. Furthermore in the case of concession for the beach allocated for the purpose of its renovation, the concessionaire has subleased it, which is contrary to the concession contract. Sub-lessee has set up the prefabricated facilities on the beach, which not only should not be there according to the concession contract but they also disrupt the environment and the very beach. Examples of illegal building and taking up the sea and the maritime goods are the result of the lack of coordination of the inspectorates, building and maritime inspectors, i.e. the inspectorate of Ministry of Environmental Protection and Design as well as the inspectorate of the port authority office of the Ministry of Maritime Affairs, Transport and Communication. On the other hand, the concession is given by the County which does not dispose of the instruments for the control and protection of the assigned goods. Since the local and regional Self-Administration does not have the objective means at its disposal, it cannot carry out the social welfare policy of the state. There are not enough means and trained personnel in the small municipalities to carry out the social welfare plan in full. The largest polluter in the County is "Lužina" company although they have not caused any ecological incidents so far. The situation with the source of the river Zrmanja is somewhat different. It is a source of Zadar's water supply but there is an old nuclear waste dump in this area, which needs to be sanitized at the expense of the regional Self-Administration.

Finally, the prefect stated that the County lacks the means and instruments to protect the coast and the sea. It is obvious that the government institutions (inspectorates) are powerless. Decentralization has been carried out only fictitiously: land managing is in the jurisdiction of the central authorities, while land protection is consigned to the local level of the Self-Administration unit. Municipalities and cities are mostly without the means for the equipment maintenance and renewal as well as the means for financing their activities. If the protection instruments were at its disposal, the county would be more efficient and faster than the states is at taking care of its territory and goods. Utilization and managing would be more efficient, too. The activities of certain state services which function within the Government Administration Office as the central authority services are not fully defined. This particularly refers to medical care, social welfare and education. Although the County of Zadar is the area of specific state care, it has not been properly taken care of.

On the premises of the OESS Mission in the Republic of Croatia with the regional office in Zadar, the Ombudsman had a meeting with Louise Claston, the deputy of the regional representative and her associates. He was informed about key issues in the large area covered by the Local Office of the OESS in Zadar: reconstruction, restitution of

property and apartments on the basis of the previously acquired tenancy rights. Administrative problems are noted in Gračac, Obrovac and Benkovac, mostly because the citizens are not given the proper and valid instructions about their rights and they are directed from one service and institution to another. Such treatment creates feelings of provocation and deepens the sense of distrust towards the government institutions. The same situation is observed at the Municipal Court in Benkovac.

There are great differences between the individual places in the County of Zadar. Benkovac, Gračac and Obrovac are faced with the problems of the restitution of property and apartments as well as the reconstruction of the houses. Furthermore, the transparency of the court work has only recently become prominent - after the replacement of the court presidents. The returnees feel unsafe due to the lack of support by government institutions, e.g. reconstructed houses are not connected to electricity supplies, communal waste is discarded right next to the houses and the revised decisions on the assignment of the property for temporary use are mostly not put into effect. One of the main problems in Zadar are evictions from the apartments which are placed at the disposal of the Ministry of Defence, whereas the court proceedings are still in progress, mostly due to the proposals for the retrial.

The Ombudsman had a meeting with the deputy mayor of Zadar – Ana Lovrin, on the premises of the City Government. According to her, they have not received any particular complaints by the citizens. The City of Zadar deals only with the citizens' issues which are under its jurisdiction as the Local Administration Unit. The key problems are currently related to the protection of the municipal property from the illegal users, since the city is unable to have free use of its property. Municipal inspectorates can carry out only the decisions made by the city government. However, there is a necessity for the municipal police forces which would maintain public peace and order, standstill traffic and other similar issues important for the life in the city. 40 welfare apartments have so far been given to the most endangered families. 120 apartments are occupied by the persons who do not have the legal title and the court proceedings against them are still in progress. Eviction procedures are delayed by regular legal expedients and there are even some unusual requests like the one for the exemption of the whole Municipal Court in Zadar. The judges feel uncertain and the demands for the delay of eviction are approved, regardless of their legal form. Certain number of illegal tenants are welfare recipients and if the eviction were carried out, they would become the municipal burden again. Ultimately, there is a problem with charging the lease of the business space and the eviction regulations for the lease-holders are not the same as those for the illegal tenants. The inability to terminate the cases and issues related to the

municipal property boils down to the fact that the local authorities are powerless.

On 30 September 2003, discussions were held with Ivo Gregov, the head of the Government Administration Office in the County of Zadar. Organization of the internal structure of the Office has just begun. The key problem is the lack of skilled personnel and technical equipment. Salary differences resulted in the employees drain, particularly of the most skilled ones. The Office currently employs 204 government employees. Property-rights service is particularly burdened, due to the backwardness in dealing with piled up citizens' requests. Additional problems for the service were caused by the motorway construction and the need to solve the property-rights relations on the land through which the marked route of the motorway runs. The County of Zadar is among the ones with the largest number of requests for the reconstruction, with about 5500 unresolved requests. The Government Administration Office operates on 6 locations and the costs of using various facilities (heating, electricity, water, telephone, etc.) create additional burden to their activities and funds. Since the physical plan was made for the island of Vir, extensive work is in progress on issuing required permits for the legalization of the already constructed buildings.

The process of return is slow, inspite of the fact than certain places and municipalities are completely reconstructed. Reconstructed facilities are more used for the weekends than as permanent residential buildings. Most of the owners live and work in Zadar or some other places. The problem of the registered residence in 1991 considerably complicates the reconstruction process. One such example is the people who were working and living as subtenants in Zadar before 1991 and were at the same time building a house in Škabrnja - their native village. Although they invested everything in those houses, they were registered in Zadar, where they were working, and now they cannot realize the right to reconstruction of their family houses in Škabrnja. It is almost impossible to do the field work due to the lack of means for covering the expenses of such work (providing transport, particularly by sea). The office is not in the information network with the other government and local institutions, which stalls the execution of certain proceedings, and the citizens are burdened by additional expenses during the acquisition of particular documentation as a proof that they satisfy the requirements for the realization of their rights.

The Ombudsman met with Sandra Kaurlo, the head of the Local Office for Refugees and Displaced Persons, who informed him about their activities and crucial problems. The main part of their work consists of solving and carrying out the process of the restitution of property to its owners. Regular inflow of new requests for the restitution of property is

almost negligible. 2000 requests were taken care of. 781 displaced persons and 606 returnees were registered in September 2003. The process of the restitution of property is in progress: there are 120 requests in Gračac, 95 in Benkovac and 80 in Obrovac. Four settlements in Benkovac are being built for the families who have chosen the allocation of the public apartment on lease within the accommodation care programme. About 50 family houses have been built in Novo Kruševo, but they are still vacant since the communal infrastructure has not been built yet. The worst difficulties occur when bringing the owner into the possession of his/her property. It is an exhausting process when the illegal tenant has no accommodation rights and therefore refuses to move out. However, there were not any cases of property destruction by the temporary users before they moved out. They are aware of the fact that they cannot stay on other people's property and by the time of eviction they usually have their housing problem solved - as an alternative accommodation. The office has so far registered only one request by the owner for the compensation for the damage caused while moving out.

At the meeting with Tomislav Orović, the head of the Social Welfare Centre in Zadar and his associates, the Ombudsman was informed on the social situation in the County of Zadar. The Centre provides monthly support for 1600 persons. There is a large number of unemployed persons, whereas their seasonal work and seasonal employment cause them difficulties with the realization of the unemployment compensation rights. Social welfare rights are cancelled during the seasonal employment (in the period of 2-3 months) and the process of acquiring those rights after the termination of work starts all over again. Thus, getting seasonal job seems like a punishment. Psychiatric hospital on the island of Ugljan, Institution for the mentally challenged adults and Home for the education of children and adolescents are also operating within the Social Welfare Centre Zadar. Practice has shown that once they are released from the Psychiatric hospital, patients are unable to live on their own and take care of themselves. Those are either persons without a family of their own, or the ones whose families refuse to accept them. For those reasons, a part of the hospital will be converted into the institution that provides permanent accommodation. Single help was given to 800 citizens in Zadar area and to another 150 persons who live on the territory of the local units of the Centre. Separate administrative ruling needs to be made for each welfare recipient, which additionally burdens the Centre.

On the same day, the Ombudsman visited the municipality of Škabrnja, where Mr. Nediljko Bubnjar informed him about the key problems and the situation on the municipal territory: Škabrnja has 20 % less population than the census taken in 1991 indicates, which is about

300 citizens less. About 90 % of the territory has been cleared of mines. Public institutions, i.e. local clinic and primary school are put into function. 300 pupils attend primary school, whereas the existence of the clinic is questionable due to the small number of registered patients. In the period of exile, the inhabitants realized their health care in other places, particularly in Zadar and they are still registered at clinics outside Škabrnja. The reconstruction is mostly finished but people find hard to accept the legal criterion by which they have the right to reconstruction of only 35 m<sup>2</sup>, since most of the damaged houses are much bigger (200 m<sup>2</sup> and bigger). Moreover, there is dissatisfaction about poorly performed construction works, particularly on the houses reconstructed in 1996/97. Many people are unsatisfied about losing the right to reconstruction because they had not have their residence registered in Škabrnja before 1991.

The Ombudsman interviewed 8 complainants on the premises of the Municipal Council.

On 1 October 2003, the mayor of the City of Benkovac - Branko Kutija and the head of the Unified Administrative Department of the City of Benkovac - Paulina Kulaš informed the Ombudsman on the issues he pointed out as being of particular interest: the stage of the reconstruction of the buildings devastated in the war, return of the refugees, social status of the citizens of Benkovac, solving the accommodation issues, economic situation and other relevant issues in the area.

There are about 1500 registered settlers in this area, out of which 39 families declared that they wanted to realize their accommodation right by taking a state-owned house on lease, 29 families will accept the lease of a damaged house, 42 families want to take an apartment on lease, 198 families would accept the assignment of the building site and material and 15 families demand only building material since they have solved the issue of building land themselves. 50 % demands for the restitution of property were taken care of. But there are still 1985 out of 2572 unsettled requests for the reconstruction of houses, of which 350 were filed on the termination of the deadline.

International organizations are reconstructing the returnees' houses without issuing reconstruction papers, which creates considerable difficulties for the termination of the administrative proceedings. International organizations mostly spend much more money for the reconstruction than the owner of the house is entitled to according to the reconstruction law, which creates the impression of discrimination. Furthermore, as the process of gathering the documentation necessary for the realization of the reconstruction rights has been simplified and as it is issued ex officio, there are many complaints about the fact that the owners who applied for the reconstruction later, and those are mostly the

citizens of Serbian nationality, realize their reconstruction rights much faster and easier. There is the same situation with gathering certificates from the land register - all one needs to do in order to prove the ownership is make a statement and find two witnesses to confirm it. There is a large number of tenants (215 families) on the territory of Benkovac who use the apartments without having legal title. 149 families legally use public apartments (based on the decision on allocation for use) but not one contract on apartment lease has been concluded. 30 proposals were issued for the eviction of the illegally settled families who are not entitled to accommodation care. 109 apartments were purchased subject to conditions of the law on sale of the apartments to which people have tenancy rights. Maintaining the buildings and the communal infrastructure facilities is the crucial problem, since there is no charge for the provided services and consumption.

Discussions with the representatives of the non-governmental associations were held on the premises of the Local Office of the OESS Mission in Benkovac.

Gordana Šeša and Mirela Bilokapić, who represented Dalmatian Solidarity Board, draw attention to the unequal legal relation of individual counties to the citizens concerning the realization of health insurance rights. According to the members of Dalmatian Solidarity Board, only a minor number of returnees in County of Zadar managed to realize health care, as opposed to the other counties. The same situation refers to the pension insurance rights. The clients' requests are being sent from one county office to another at the discretion and rough estimate of the employees whose work is not supervised by anyone. The clients are not provided with legal assistance and even if they get certain advice in the form of instruction, it is not complete and valid.

Pax Christi Association Benkovac and Tintilinić Association are international organizations with the headquarters in Germany who deal with social welfare programmes and the provision of help to the senior and helpless citizens. They have been present on the territory of Benkovac for four years and they have been registered as independent associations in the Republic of Croatia since 2002. Their activities are based on the data from the public-opinion poll conducted in 2001 about the citizens' wishes and needs. On that basis they organized psychosocial work with the citizens of Benkovac and playrooms for 120 children. The associations are working on three projects: (1) Children's magazine Benkolist - five young persons are working on the publication of four sheets in Croatian and German; (2) Internet-café - courses of computer usage for the children from 5-13 years of age; (3) The village representative - each village has an appointed representative who represents poor villagers and there are also minor humanitarian actions

within the programme (e.g. firewood and chickens, etc). The issues discussed at the citizens' meetings are related to the village matters and the problems of the Serbian returnees as well as the threats for the cooperation with Pax Christi. People of Croatian nationality address the Association for help in relation to their existential problems, most often for the reason of not having sufficient means of subsistence since their income (i.e. pensions) is low.

According to Serbian Democratic Forum - Benkovac, restitution of property, housing care and validation of employment record are the crucial problems in Benkovac area. What is most worrying is the categorization of the damage made on residential buildings, since the damage degree of certain houses was estimated lower than it actually is. The fact that most of the damage was not caused by the war should not be taken into account, since the houses collapsed due to the lack of maintenance and use, which are the consequences of war. The return to some places is rendered impossible due to the lack of communal infrastructure, particularly electricity. Power grid was supposed to be finished by the end of 2002, but it has not been set up yet. The intensity of return to this area is unexpectedly low. 1035 persons returned by 30 of May 2003, whereas only one person returned to Lišane. 40-50 owners are still waiting for the restitution of their property but this information is not reliable. What often occurs is an illegal take over of the agricultural land, outside the contract on real estate exchange.

The Association of Croatian immigrants in the area of Benkovac, Smilčić and Miran pointed out that the process of their integration into the activities of the Local Self-Administration has been a controversial issue from the moment they settled there. Furthermore, unemployment is a particularly large problem. As the settlers are not credit worthy, i.e. they lack the property to serve as a guarantee for the bank, they are unable to start up small businesses. Most of the settlers can draw their pensions only in Bosnia and Herzegovina, which creates additional burden and expenses, and they are hard to cover. Accommodation care is being settled through the pilot project - by building settlements, first out of which should be settled into by the end of the year. The construction of the settlement in Smilčići is also in progress (18 facilities) and the construction of another 20 houses in Mirani is about to start, too. The settlers feel legally and existentially insecure, since none of them hold the lease contract although they were assigned the apartments for use. The law on apartment lease on the liberated territory for the purpose of purchase has not been enforced either.

The Ombudsman interviewed 25 complainants altogether on the premises of the OESS Benkovac and the City Council.

On 2 October 2003 the president of Municipal Court in Polača - Viktor Prtenjača, informed the Ombudsman on the situation in the municipal area. Almost 80 % of the population of Polača are engaged in agriculture. As the agricultural land management is in the jurisdiction of the local administration unit, the agricultural production started immediately after the Homeland War. As Lake Vransko is near and there are many subterranean water-wells, land irrigation is made possible. Since water supply goes through the Krka-Zadar water conduit, Polača is faced with the lack of drinking water almost every day, due to inadequate organization of the usage of the waterworks and water wells. Reconstruction of 400 devastated buildings categorized in the VI and V damage degree was hurriedly carried out in 1995, due to its priority. Only 40 buildings are left for reconstruction. It has been found that more people returned to Polača than there used to be before. As the agricultural area was not mined, the production began immediately. 60 hectares of vineyards were cultivated. As a result of new administrative borders, about 100 hectares of the land, i.e. cadastral plots in the ownership of the inhabitants of Polača now belong to the municipality of Biograd na moru. So far, all efforts to set the municipal borders back to where they used to be earlier have failed. One of the problems in Polača is the fact that in the last two years none of the municipal programmes were approved by the Ministry of Public Works, Reconstruction and Construction. It is the duty of the municipality to provide firewood for 20 registered welfare cases, but it does not have the material means at its disposal to fulfil its duty.

On 2 October 2003, the Ombudsman met the representatives of the non-governmental associations at the Local Office of the OESS Mission in Zadar. Among those were: Dalmatian Solidarity Board, Associations for improvement of quality of life Zadar, Association for providing help to mentally challenged persons "Svjetlo" and "EKO Zadar" - association for the promotion of ecological production of food and environmental protection.

Associations mostly have their teams of experts necessary for the work of each individual association, but they lack business space. Their basic activity is providing free professional assistance to the citizens, as they are financed by various donations, often from abroad. People who address them are at first confused by the fact that the services are free, but initial distrust decreases each day due to their persistency and results they achieve.

On the same day, 15 complaints addressed the Ombudsman on the premises of the OESS Zadar.

On 3 October 2003, which was the last day of the stay in the County of Zadar, the Ombudsman visited the municipality of Gračac, where he met the mayor - Tadija Šišić. The municipality of Gračac

belongs to the areas of specific state care. It is the largest county municipality (1000 m<sup>2</sup>), but it is situated on the border of the County. All the services of the Government Administration Office in the County of Zadar are represented on the municipal territory. Reconstruction of the family houses is brought to an end, whereas the reconstruction of the infrastructure facilities, particularly water supply system, is still in progress. Lack of water supply is currently a crucial problem, as drinking water is expensive due to its transport (pumps functioning 24 hours a day). 159 demands for the restitution of property have not been dealt with yet, whereas the owners of 35 houses have not even filed a request. 160 owners entered into the possession of their real estate. 163 families in Gračac area are legally using someone else's property, on the basis of the assignment decision. Those are families with the right to alternative accommodation, i.e. the right to accommodation care which should be provided by the state. At the same time, 31 families have illegally occupied someone else's houses. Social structure has somewhat improved due to employment on the motorway construction. However, at the end of the construction season, the workers will register themselves at the Employment Office again. 456 persons are currently registered there and 266 of them are women who do not have any qualifications. Unemployment rate in Gračac area is below 15 %. According to the 1991 census, 96 % of the population was of Serbian nationality and the rest were Croatians. However, 2200 Croatians from Bosnia and Herzegovina settled in this area in 2001 and they now amount to 70 %. The return of Serbian inhabitants has been more prominent since 1998 and young people started returning, too. The relation of the beneficiaries, settlers and returnees towards the property, i.e. real estates, has positively changed in this area, since everyone who is currently living in it wishes to stay there. A change in the relations was influenced by the motorway construction and the reduced humanitarian aid from foreign humanitarian organizations.

Rada Andrić, the head of the Dalmatian Solidarity Board Office informed the Ombudsman on the crucial problems of the citizens of Gračac. She pointed out the problem of the restitution of the property to its owners and unauthorized usurpation of someone else's property, i.e. occupation of the business premises, or, to be more precise catering establishments by the D-1 road. With the help from the Dalmatian Solidarity Board, most of the owners filed ownership lawsuits for the restitution of the real estates and the compensation for the loss of profit, but due to the slowness of the court work not a single facility has been returned to its owner. Furthermore, when finally leaving the property, people purposely devastate it. The police in Gračac immediately responded in each individual case and filed criminal charges against the

offenders. However, the courts pronounce very low, almost symbolic sentences. Real estates sale is done through the Real Estate Agency. Reconstruction process is slow due to the rough terrain and the constructors are unable to approach the damaged buildings. Situation is particularly difficult in the borderline town Lički Tiškovac, since the first store is 23 km away and the citizens are forced to cross the Bosnian border in seven places in order to reach it. Instead of the border crossings, there are only the police checkpoints. Electrification of the municipality is slow and difficult due to the lack of means. Most places are considerably far from Gračac (about 40 km) and there is almost no medical help, particularly in the summer during the school vacation, since the bus line operates only during the school year for the transport of the pupils to the primary school and high school. Transport and travel expenses are one of the crucial problems for the citizens of Donji Srb, in connection to the monthly registration at the Employment Office in Gračac. The bus ticket to Gračac and back costs about 150 kunas, which is a considerable amount, especially in the cases where more than one member of the same family needs to register with the Office in person. As there is an available space in Donji Srb for the officer who registers the unemployed, Dalmatian Solidarity Board suggested organizing work in a way that the officer come to Donji Srb once a month. That way the citizens would not have to travel to Gračac. The other services have already organized their work that way. The returnees in most cases do not manage to realize medical insurance rights, partially due to the fact that the registration needs to be done within 30 days after they have returned. The damage on the residential buildings was categorized into the lower damage degree than the actual and the reconstruction that needs to be carried out in order to bring the houses into usable state is much more extensive. One of the problems connected with the realization of the reconstruction rights is the fact that there was an administrative change of the municipal border. Certain places (e.g. Srb) that used to belong to the municipality of Lapac now belong to Gračac, which means that the inhabitants did not have their residence registered in the municipality in which they should realize the reconstruction rights. The citizens who moved into three residential buildings as a part of the accommodation care programme possess neither the documents that would prove that they are granted an apartment for use nor the lease contract. They are therefore in the state of legal insecurity. Financial support for furnishing apartments or houses has still not been paid out to the owners of the reconstructed facilities.

The visit to the County ended by interviewing the citizens on the premises of the municipality of Gračac and the OESS Gračac.

Based on the situation determined on the territory of the County of Zadar, which is an area of specific state care, the Ombudsman:

1. requested the statement about reasons why the citizens who realized the right to accommodation care by being granted a public apartment on the territory of specific state care have still not concluded a lease contract;
2. suggested that the Employment Office should organize the field work.

During his visit to the County of Zadar, the Ombudsman received 77 complaints from the citizens. They referred to the violation of the ownership rights, restitution of property, housing rights, pension rights, rights of the refugees and exiled persons and violation of the rights in the sphere of construction and urbanism.

### **8) Dubrovačko-neretvanska County**

From 20-24 October 2003, the deputies of the Ombudsman visited the County of Dubrovnik and Neretva. The County prefect Ivan Šprlje emphasized in his introductory address that there are not as many problems as expected considering the surroundings and the fact that a large part of the County was occupied. There are 27 border crossings that are not completely set in order but mutual cooperation is satisfactory. Although economy was considerably ruined, great progress has been achieved in the reconstruction of infrastructure. However, as far as the sale of the government property is concerned, hotels in particular, Mr Šprlje emphasizes that the County wishes to participate in it. The structure of the Government Administration is such that it should be granted the right to dispose of those real estates and participate in their sale. Apart from that, he believes that their interest should be directed towards the sea, since only two small marines were built in that area. The so-called South Adriatic Project was initiated for that reason. A profitable public institution has been established for the territory of Prevlaka and the Government will provide means for the land purchase in Prevlaka, even though the landowners established their own association. Judging by the current situation, Mr Šprlje believes that everyone will eventually be satisfied. The cooperation with the mayors in the area is satisfactory, there have not been any conflicts and potential problems are dealt with at conferences, which are organized each two months. The prefect's office is open for the citizens each Wednesday when they can discuss their problems and try to solve them. Written requests by the citizens are answered within the period of eight days. There is also a web site and the citizens can address them by e-mail. Yet, the prefect emphasized the malfunctioning of the inspectorates, which are not sufficient for the

prevention of the so-called "wild construction". According to him, their working methods need to be changed. Substantial financial means were spent on spatial planning. As far as medical sphere is concerned, the personnel and the patients are very satisfied. There are not any major problems in the spheres of education and judiciary. The exiled persons returned to their homes and there are not any problems in this sphere either. The prefect believes that the problems they share with the neighbouring countries should be solved mutually. Some of the problems include taking care of the communal waste, drinking water and fire prevention.

The conclusion was drawn that the Ombudsman would suggest the amendment to the Local Administration and Self-Administration Law, by giving the Local Administration the position of a client in the process connected with the disposal of the real estates in the government ownership.

After the meeting with the prefect, there was a press conference at which the Ombudsman presented the facts about the course of discussions in the County and the press were given the opportunity to pose questions in order to familiarize the public with the methods of work of the Institution of the Ombudsman. The representatives of the mass media expressed great interest in the visit of the representatives of the Ombudsman to their County and another meeting was scheduled for the end of the visit.

The deputy mayor of Dubrovnik expressed satisfaction about the fact that the citizens' complaints are more and more related to the peaceful period, e.g. the problem of illegal construction, harmful emissions, illegal waste dumps, etc. The positive thing is that the Local Administration will from now on have say in issuing each building permit. The issue of the non-jurisdiction of the cities and the local administration, particularly in relation to the hotels sale, was discussed again. It was emphasized that the cities need to have their say in that issue and that there is a lack of necessary communications in that sphere. The prices of the real estates in Dubrovnik area are growing at a dizzy rate. A large number of foreigners find that area particularly attractive and are therefore buying the real estates. The city is planning to establish the polytechnics on the premises of the old hospital facilities in Dubrovnik. There are currently the Interuniversity Centre and the Faculty of Management there. It is considered that the polytechnics would attract a large number of students and that would contribute to the revival of the city in the winter months when the tourist season is over. It would also render possible for the young people from the most southern part of Croatia to study in the place they live and remain there after they have finished studying.

The head of the Government Administration - Ivo Golušić and his assistant for spatial planning, environmental protection, construction and property-legal issues - Ivo Žeravica believe that the visit of the representatives of the institutions of the Ombudsman is a specific and very positive aspect of administrative activities, which is entirely new in our practice.

The deputy of the Ombudsman pointed out in her introductory statement that the purpose of the visit is to make it easier for the citizens to approach the institution, since it is difficult for most of them to travel to Zagreb due to their limited material means. In the course of the discussions the emphasis was put on the illegal construction, protection of cultural monuments, protection from noise and the problem of construction waste dumps.

The head of the Government Administration stated that illegal construction is a major problem of the whole country. Inspectorates are not efficient enough and it is difficult to find trained personnel for the construction inspectorate service as well as the conservator of cultural goods. Adequate personnel for the protection of cultural monuments are particularly hard to find and that is mostly due to the salary rate. As far as protection from the noise is concerned, sub-legal deeds have still not been passed in that sphere. The whole system relies upon the issue of authority, which is difficult to implement. There are no major problems related to the reconstruction and efforts are being made to bring it to an end. Although 7957 requests for the reconstruction were filed, only 522 are still pending and of that number 44 buildings belong to the highest category of damage. At the end of the meeting, the head of the Government Administration stated the problem of computerization of their office. The section run by the deputy head of construction Ivo Žeravica is particularly inadequately equipped.

Katarina Botica, the head of the Local Office for the exiled persons, returnees and displaced persons stated that most of the exiles returned to their homes. 56 exiled persons from Vukovar, 21 from Dubrovnik and 6 from the other parts of Croatia have not solved their problems yet. Neither did 54 refugees from eastern Herzegovina and Bosnia who are currently placed in the private houses in Orebić.

Dobroslav Šarović, a lawyer working for the American Refugees Board which has developed specially oriented legal programme for providing help to the refugees in Trebinje (Bosnia and Herzegovina), informed the representatives of the Local Office for the exiled persons and refugees that according to some information, up to 400 persons might soon ask for help with solving their status and housing problems. Some of them have already addressed the Office of the Ombudsman. Most of them had left the Republic of Croatia before the aggression started, whereas the

rest of them left together with the hostile army when it was abandoning the occupied territory of the County of Dubrovnik and Neretva, or to be precise Župa dubrovačka, Mokošica, Slano and Dubrovačko primorje. Most of them are now demanding the restoration of their tenancy rights, which is a non-existing institute. However, all of their complaints will be received and taken into consideration if they are justified.

According to the visit schedule, discussions were held with Hasan Čustović, the president of the Bosniac Minority Council on the county level and Šemsudin Brković, the president of the Bosniac Minority Council on the level of the City of Dubrovnik.

The representatives of the Bosniac Minority Council stated that there are 600 members of the Bosniac minority and most of them are currently in Dubrovnik. In their further presentation they specifically estimated that unemployment is a burning issue there and as an objective category it particularly affects the minorities. They feel that as a minority they are not represented enough in the government administration bodies. Coexistence with the majority nation is on very good terms; there have never been any conflicts in this area. They are unsatisfied with the performance of media, claiming they have been neglected and have not been represented in the way they would like to be. Mr Čustović stated that they have constituted the minority council, drew up the articles of association, adopted financial plan and elaborated the work programme and now they need to be registered. They are hoping to solve the problem of space soon. The charitable society Merhamet has been active for 12 years within the activities of Bosniac minority in Dubrovnik. According to them, the most difficult problem is currently the construction of a new cemetery, since the existing one has become too small. (We found out subsequently from the other speakers that the location for its construction has been found on the territory of Dubec, but the physical plan has not been made yet). There are not any problems as far as education is concerned, 170-200 children attend school and religion classes are well organized, too. At the end of the discussions, they suggested that it would be useful to create posters that would condemn xenophobia, hatred and intolerance - the unacceptable conduct which resulted from the ignorance about different cultures and customs. The representatives of the Office of the Ombudsman agreed that they should support this proposal.

Within the meeting with the representatives of the non-governmental associations, discussions were held with Zdravko Bazdan, a member of HHO and the representative of the Cooperation Centre Dubrovnik, who emphasized the educational role of the centre. The purpose of their activities is promotion of freedom, non-discrimination, national equality and respect of human rights.

Another discussion was held with Kiti Korda Jurica, the president of the county coordination for human rights and Nikola Obuljen - city councillor and former Member of Parliament. The county Coordination for Human Rights has been active since 2002 and their activities are mostly focused on providing free legal assistance. According to them, the Office of the Ombudsman should either have office hours in certain Croatian cities or establish its local offices, which would include county coordination as their integral part.

At the end of the second day of the visit to the county of Dubrovnik and Neretva, the representatives of the Office of the Ombudsman had a meeting with a group of lawyers who provide free legal assistance to the individuals who need it but do not have sufficient means to engage a lawyer.

The representatives of the Office of the Ombudsman visited the municipality of Konavle, where they met the mayor - Luka Korda and his closest associates. Reconstruction in this area began very early. Water supply system in Konavli is in the process of construction and the tenders are invited for the construction of the water supply system in Prevlaka. They received 10 requests by the volunteers of the Homeland War for the assignment of the land for the construction of residential facilities, but they request the land in Cavtat, which is the municipal centre. The police union has also requested the land to build houses in Konavli. The municipality will meet their requests since it is interested in settling young families in that area. There are currently 9000 inhabitants in the municipality and the number would increase to 15000 if the volunteers of the Homeland War built their houses there. For that reason, the municipality is going to buy the land and grant it to everyone who is interested in building a house there. 900 devastated buildings in the municipality have been classified in V or VI category of damage. They had been set to fire and those are mostly the houses of the size of about 300 m<sup>2</sup>. Reconstruction criteria were inadequate for this area, since they did not take into account stone facades, which are typical of this area. The floor area per capita was not satisfactory either and there were complaints about the quality of reconstruction. Although there were altogether 1200 damaged facilities, 300 of them were granted the financial support only. The reconstruction is nearly over and there are only 4-5 facilities left to be reconstructed. All the citizens of Konavli returned to their homes. There are three child-care centres in the municipality and the construction of the senior citizens' home is under consideration. The representatives of the municipality of Konavle pointed out that it is not positive that the municipality has no influence over the real estates sale on its territory, particularly hotels sale, and they suggested amendments to the existing Local Administration Law.

During the field rounds the representatives of the Office of the Ombudsman visited the territory of Prevlaka on which there are 56 solid facilities, 4 of which will be ready for the next tourist season, which will have a positive impact on the development of the most southern part of the Republic of Croatia.

In the course of the visit to the municipality of Ston, discussions were held with Vedran Antunica, the president of the Municipal Council. The municipality of Ston was not only devastated in the Homeland War, but also in the earthquake in 1996. Reconstruction requires substantial material means, since most of the devastated facilities are worldwide cultural heritage monuments and they must not be pulled down but renovated according to the existing renovation standards. The Ministry of Culture supports reconstruction of the devastated buildings, but their crucial problem is a slow process of issuing construction permits and settling property-rights relations. The reconstruction process is slow due to the lack of financial means. 29 facilities in Ston should be reconstructed, but according to the existing law those facilities do not have the right to reconstruction since their owners have not registered their residence there. Those facilities are situated in the town centre and should be taken care of, as they have become a threat to the environment and an eyesore to the town visited by a large number of tourists. They object to the impossibility of the Local Administration to arrange their area independently or at least participate in the decision-making process. The municipality has 300 inhabitants and a double status: as an area of specific state care and as an insular municipality. Agriculture is a primary activity there and it is difficult to charge taxes since those are mostly senior citizens' households. Young people are constantly leaving the municipality. High school should be built for their education in order to prevent them from leaving. The salt works in Ston used to be a generator of development until the 90s, but it is now facing problems due to the market liberalization and cannot compete with the others because of its outdated technology.

In the municipality of Dubravačko primorje with the headquarters in Slano interview was conducted with the mayor Vice Škrabalo. He expressed dissatisfaction with the physical plan of the municipality, as they feel that a part of the border in Bistrina has been given away. He commented on the reconstruction of the "Admiral" hotel in the centre of Slano, which used to be the pillar of the tourist development of the area. It was privatized five years ago and it has not been reconstructed yet. All the other activities related to the development of tourism are therefore at a standstill and he suggested that the Ombudsman should demand the competent ministry to explain why they still have not requested the owner to reconstruct the ruins which have been in the centre for five years. As

the citizens complain about it, the inspection for the environmental protection should be sent to the premises. Mr Škrabalo objected to the change of the initial physical plan adopted by the municipality. The County of Dubrovnik and Neretva is the only one in Croatia that has not introduced its physical plan. He also stated that the County considers the municipality "overbuilt". The key issues of the municipality are: cemetery - lack of burial ground, construction of the senior citizens' home, continual emigration of the families to Dubrovnik (about 40 % of them moved), aged households, the issue of cadastral municipalities and legislative regulation of the land units.

At the end of the visit to the County of Dubrovnik and Neretva, the interview was conducted with Ivo Miletić, mayor of Župa dubrovačka with the headquarters in Srebreno. The municipality of Župa dubrovačka has a population of 6700 inhabitants; there are 16 settlements and 12 smaller villages. It became a municipality in 1997, when it seceded from the municipality of Dubrovnik. There are 1500 able-bodied inhabitants, but few of them have permanent jobs. As tourism is the exclusive branch they can work in, the reconstruction of the hotels in the area would mark exceptional progress. The hotel complex Kupari has still not been brought into function and its area amounts to 800,000 m<sup>2</sup>. Germans made a master plan for the renovation of Kupari and they at the same time offered the establishment of the mixed companies in which they would be the investors, but there is no explanation why the agreement was not reached. After the Homeland War and the occupation of the area, there were 660 devastated residential buildings, half of which belonged to the highest category of damage. Almost everything has been reconstructed and all the people have returned except for those who fled during the aggression or before the hostile army retreated. There is a problem with the houses that were built without the construction permit. The people who have not solved their accommodation care problem currently occupy them. There is also an issue of certain number of company holiday homes that had been used by the employees of various companies from Serbia. Most of the holiday homes were sold and Serbia is claiming them now. The holiday homes owned by the companies from Bosnia and Herzegovina remained unreconstructed. Perhaps they are not aware of the fact that those are in their ownership, since most of the companies who owned them went bankrupt in the meantime. One of the key problems of the municipality is environmental protection, i.e. illegal construction waste dumps and illegal construction, i.e. violation of space. At the mayor's suggestion, the representatives of the Office of the Ombudsman visited illegal waste dumps that are unnatural for the mild surroundings of Župa dubrovačka and should be sanitized as soon as possible.

During the visit to the County of Dubrovnik and Neretva, clients were interviewed in Dubrovnik, Ston, Slano for the municipality of Dubrovačko primorje, Cavtat for the municipality of Konavle and Srebreno for the municipality of Župa dubrovačka. 47 complaints that were received referred to the ownership rights, property-related security, denationalization, status-related rights, labour relations, social welfare issues, etc.

## **9) Požeško-slavonska County**

From 17-21 November 2003, the deputies of the Ombudsman visited the County of Požega and Slavonija. The County prefect Anto Bagarić informed them on the situation concerning the return of the refugees to the area. A large number of them returned but the reconstruction process is not as efficient as expected. Young people are unfortunately not returning, and even if they do, they sell their houses and leave again. Another problem is a large number of the refugees from Bosanska Posavina and Banja Luka. The third dimension of the return has not been achieved yet. Serbians who had left that area during the war and settled on the territory of East Slavonija returned now, whereas the Bosnian refugees have not returned to Bosnia. There are some unreconstructed houses in Pakrac that have become a threat to the environment. Decision for their removal has been issued, but the process came to a halt. As far as medical care and education are concerned, they are under the county jurisdiction, but the funds have not been decentralized yet. All the hospitals in the war-engulfed area were devastated and need to be reconstructed. There was total of 106677 devastated buildings, out of which 9696 in the County of Požega and Slavonija. The main problems are the return of Croatian citizens of Serbian nationality, mined areas, ruins clearance, pollution of the area, property-rights issues, reconstruction of the communal and social infrastructure and dysfunction of economy. Most means were spent on the reconstruction of Pakrac. International organizations provided help, too. Italians helped with the reconstruction of Lipik, as Italian minority lives in that area. The hospital in Lipik has only partially been reconstructed, whereas the spa, which is the third in size in the whole Europe, has still not been reconstructed. The County has its physical plan, whereas the cities and towns have not designed theirs. Since the County borders on the nature park, the Government prohibited the exploitation of the stone-pits, which endangered one branch of economy. Mr Bagarić finds it necessary to establish the borderlines of the nature park and design physical plan according to them.

After the meeting with the prefect, there was a press conference at which the information was provided about the course of the discussions in the County. They were free to ask questions in order to inform the public about the activities of the Institution of the Ombudsman. The representatives of the mass media showed great interest in the visit of the representatives of the Ombudsman to the County of Požega and Slavonija.

In the course of the visit, interview was conducted with Zdravko Ronko, the mayor of Požega. Great efforts are being made to improve the appearance of the city. The monument on the main square is being renovated by due standards since it is a worldwide cultural heritage monument. According to the mayor, the Local Self-Administration units are facing many problems. He supports the decentralization on the local level and introduction of the quality taxes. A wide range of social welfare cases, mostly the refugees from Bosnia, is the crucial problem since there are not enough financial means to help them. As Croatian citizens of Serbian nationality are returning to Croatia, Bosnian families who occupied their houses need to be moved out and provided with the adequate accommodation. Private accommodation was provided for some of them through the social welfare. The city provided free building sites and solved some of the problems through the programme of socially encouraged apartment building. Mr Ronko believes that social welfare should be exclusively under the jurisdiction of the city and that the

county, i.e. the city should have broader authority in managing the property in that area.

On the second day of the visit, discussions were held with Kornelija Parcen, the head of the Government Administration Office and her closest associates. The Government Administration Office was established 2 years ago, after the rationalization of Government Administration. Many problems are related to the professional personnel. Most of them have only secondary education and there is a lack of lawyers. Efforts have been intensified in the sphere of registering agricultural farms and the revision of the status of Croatian Defenders. As far as medical care is concerned, the means have substantially decreased in comparison to the earlier period. Each category of the citizens who lost their medical care should be dealt with on the county level. There are many cases in the sphere of reconstruction and more than 100 of them have not even been considered. That process has been accelerated and the deadline for making decisions is the end of the year. The cities of Pakrac and Lipik suffered severe devastation during the war. There were 8,500 requests for the reconstruction in that area. There are certain cases in which the damage estimate was done in 1996 and 1997 but the houses have not been reconstructed up to now, due to the amendments to the Law. 2500 people used to live in the area between Pakrac and Požega. That area is completely vacant today and it is under specific state care. Although there are some reconstructed houses there, nobody lives in them. The refugees from Bosnia are mostly located around Pakrac in the settlement called Jug II. US Aid provided great help in the reconstruction of Pakrac and encouraging the development of small business. As far as the restitution of the nationalized and confiscated property is concerned, some of it has been returned to the church and the private owners. It needs to be emphasized that people in this area are very patient when it comes to the restitution of property, which began in 1997.

Interview was conducted with Ružica Alaber, the head of the Social Welfare Centre, who pointed out that help should be provided to each welfare case within the social welfare system, as this is a welfare country. The City of Požega earmarks funds for covering accommodation expenses to those who are unable to support themselves. Požega is a unique example of such care. Cooperation between the Office of the Ombudsman and the Social Welfare Centre is satisfactory and only three complaints were filed at the Centre.

Erwin Plugl, the head of the Regional Office for Exiles in Požega informed the Ombudsman on the activities of the Office. Most of its work is related to the restitution of property, accommodation care and regulation of the accommodation care rights. There are 36 occupied facilities in the County of Požega and Slavonija which should be returned

to their owners. 16 beneficiaries were provided with building material, while the rest of them have no rights to any kind of help, as they either do not possess the papers for the facilities they use or they own some other property. The returnees from Serbia and Montenegro most often visit the Office. Although Topolik - the exile settlement in Lipik, which was built by the German Government about ten years ago, is still functioning, it should be pulled down due to its worn out condition.

On the premises of the Section of the juvenile prison within the penitentiary in Požega, interview was conducted with Željko Mrgan, the head of the Section. There are 16 juvenile delinquents who are serving time in this section. They are all working, except for the one who is receiving treatment in the Svetošimunska Hospital in Zagreb. They mostly do the kitchen work and service jobs (gluing calendars, arranging files, etc.). If their behaviour is satisfactory, they are free to use the out-of-prison facilities. All of them attend school and those who have not finished primary school study and take exams at primary school in Požega. The fact that they finished school while serving prison sentence will not be registered in their certificates. They are currently not equipped with personal computers and supplying them would be of great use. At the end of the visit they came to the conclusion that the key problem of the penitentiary is space, which is cramped and divided into three locations. The Section for the execution of penal sanctions at the Ministry of Justice will be requested to provide more adequate accommodation for those serving the sentence in juvenile prison.

On the third day the representatives of the Office of the Ombudsman visited the municipality of Čaglin, Home for the mentally challenged adults in Ljeskovica and Kutjevo.

Ivan Đurina, the mayor of the Čaglin municipality brought out the problems they are faced with. There are not any refugees in that area since people mostly exchanged the whole estates. The lack of water supply in the Home for the mentally challenged adults in Ljeskovica used to be a crucial problem in the municipality, but it has been solved. It cost 2 million kunas. 400 000 kuna is invested in the construction of the industrial zone to prevent young people from leaving the area. This is also an area of specific state care, not because of the war destruction but for the demographic reasons. One of the problems presents the fact that most people who are employed in the Čaglin municipality have not registered their residence in Čaglin, but in the places they come from and due to the tax refund the municipality is running out of means, which indicates inadequate conception of the financing system of the Local Administration.

During the visit to the Home for the mentally challenged adults in Ljeskovica, the representatives of the Ombudsman interviewed the

principal Katica Krijanović and the inmates. Although the capacity of the building is 350 persons, there are 450 inmates there, which means that it is overcrowded. The persons come from all parts of Croatia and 2/3 of the inmates are not from that area. The Home is under the jurisdiction of the Ministry of Work and Social Welfare, which supports it. The Home principal pointed out that the inmates are losing all their rights because they need to ask for the guardian's consent when they want to go home and their wishes are mostly denied (guardians are mostly the employees of the social welfare centres). She also pointed out the problem of negligence of the society for the mentally challenged patients. They do not have the right to vote, since their fitness for work was taken away. Many of them get used to this kind of life, but many do not. The Home has 89 employees but there is a lack of staff. A doctor comes from Čaglin every day and they are satisfied with mutual cooperation. Work therapy is organized for the inmates. They have a pig farm and a garden, which are mostly taken care by the inmates, but only on the voluntary basis. They breed pigs and cultivate vegetables strictly for their own needs in order to raise the living standards. The Ombudsman is going to warn the social welfare centres to ensure that the guardians be more sensitive to those who wish to visit their families and enable them to do it. As it is not a closed type of institution, they should be allowed to visit their relatives or their homes once or twice a year.

The representatives of the Ombudsman had a meeting with Anto Pavković, the mayor of the Kutjevo municipality. There are 17 settlements and 7850 inhabitants in the municipality. 89% of them are Croatians and the rest are minorities. There were 8-9 % people of Serbian nationality in the area before the war, but many of them emigrated. Multi-plant firm Kutjevo used to be the generator of development and its substitution has not been found yet. Nobody knows if the privatization will be carried out and in what way. There are about 1100 unemployed persons, but there has been a slight increase of employment. They are oriented towards the development of tourist attractions. For that purpose they are building wine roads and connecting the vineyards. Their aim is to establish the wine academy in order to develop the tradition of the production and consumption of the first-rate wines. They also wish to improve hunting tourism and develop religious tourism.

The representatives of the Ombudsman conducted an interview with the head of the Local Administration Section in Pakrac – Krunoslav Kelemen, in the absence of Damir Špančić, the mayor. Pakrac had a population of 8800 inhabitants before the war, whereas 4600 inhabitants live there now. The cooperation with the international organizations in the area is satisfactory, particularly with the US Aid who financed the electrification and the construction of the market. As far as the restitution

of property is concerned, there are not any problems there; the houses were returned to the citizens of Serbian nationality, whereas the new ones were built for the Bosnian refugees. Municipal apartments were allocated to the invalid war veterans. Devastated economy is the key problem in the municipality. Construction firms are the only ones that are partially employed, as they are operating within the reconstruction. Efforts are directed towards the development of small-scale industry. The cultivation of mushrooms will therefore be started on Papuk. The representatives of the Office of the Ombudsman had a meeting with Guy Bransby, the head of the Local Office of the OESS Mission in Croatia. The Local Office in Pakrac covers four counties, which is a great challenge for all the employees, particularly due to the fact that those areas were affected by war. They particularly emphasized well inter-border cooperation with Bosnia and Herzegovina and their police. Obtaining personal documents is the key problem. They are particularly supportive of the “Policeman in the Community” programme, although it is being carried out only in Požega so far. The problems they mostly deal with are the restitution of property, status-related issues, return of the refugees and monitoring war crime trials, since that is the area with the largest number of arrests; about 30, but many of them were not treated in court due to the lack of evidence. In relation to the issue of the citizens’ status, it needs to be said that a part of the registers of births, marriages and deaths was destroyed by fire in the course of war, whereas the rest were taken to Serbia. 500 of them have been returned. The issue of reconstruction was brought up at the end of the interview. The reconstruction of the houses is in progress, but the reconstruction of infrastructure has not begun yet. The issue of the dissolved institute of tenancy rights and the reconstruction are the key problems in Pakrac.

In the course of the visit to Pakrac, the representatives of the Office of the Ombudsman had a meeting with the representatives of the non-governmental associations: SDF Pakrac, Delfin and the Association of the blind – Pakrac and Lipik, who informed them about their activities.

On the last day of the visit to the County of Požega and Slavonija, an interview was conducted with Stjepan Horvat, the mayor of Lipik, who immediately pointed out that they are facing great problems. Devastation of Lipik is much greater per capita in comparison to the devastation of Vukovar. Lipik was liberated on 6 of November 1991 and people immediately started returning and reconstructing their houses. German Government built an exile settlement Topolik, situated in the very city. It was initially the residence of the exiled persons, mostly Croatians, whereas today it is used by the citizens of Serbian nationality and most of them do not want to return to their homes for various reasons. According to Mr Horvat, international relations have

considerably improved. There are about 500 immigrants from Bosnia in the area, who intend to stay there. Although the housing problem of the returnees has been solved, unemployment rate is high due to the ruined economy. Most parts of Lipik were reconstructed out of donations made by the Italian Government, which reconstructed 280 facilities. Caritas from Udine in Italy donated 43 heads of cattle, which were immediately given to the individuals. The reconstruction of the infrastructure is nearly finished. Gas, electric and collector capacities have been reconstructed, as well as the roads. They are unsatisfied about the fact that the reconstruction of the medical recreation centre has not started yet. Only a part of the hospital has been reconstructed. The reconstruction of the buildings that are cultural monuments requires substantial financial means and the state is expected to provide support.

Finally, the representatives of the Office of the Ombudsman visited Topolik, the settlement for the exiles, where they interviewed the beneficiaries. The settlement is in a poor condition and should be pulled down as soon as possible. However, the exiles and refugees who are settled there refuse to move out for various reasons, inspite of the fact that it has become dangerous to live in it. Most of their houses have been reconstructed, but they are unsatisfied about the fact that the houses are not connected to the electric power network or the waterworks, but they never actually had been. The fact is that those are mostly senior persons who do not want to return to the village they came from, although living conditions in the settlement are poor.

In each city and municipality visited by the representatives of the Office of the Ombudsman, the citizens were enabled to file complaints in person. There were a total of 17 complaints.

## **10) Istarska County**

From 8-12 December 2003, the Ombudsman visited the County of Istria. The plan of the visit was presented to the deputy prefect. The County of Istria was the tenth county visited by the Ombudsman and his associates, with the purpose to bring the institution closer to the citizens. Of all the visited counties, the County of Istria is the only one without the areas of special state care and that was the reason why the visit was scheduled for the end of 2003. This County was estimated as the one with least problems in the sphere of realization of human rights. Like in the rest of the counties, the Ombudsman focused on the social situation in the area, environmental conditions and protection, illegal construction and devastation of space, as well as other various issues that the citizens most often complain about at the Local Administration and Self-Administration units. The deputy prefect Marin Brkarić informed the Ombudsman on the situation in the County, which is facing problems in

all the spheres of life. 206000 inhabitants live in 29 municipalities and 10 cities on the territory of 2820 km<sup>2</sup>. The process of forming the municipalities is moving towards further fragmentation, i.e. creating new municipalities with a small number of inhabitants. The County of Istria is bilingual and it is a member of the group of the European regions. Strategic points of the County are: 1) reduction of unemployment, 2) economic development with the purpose of creating new jobs and the development of agriculture and agro-tourist households in the central part of Istria, 3) development of infrastructure. The largest number of the citizens' complaints is related to labour relations, evictions and environmental protection. The citizens are provided with free legal assistance. Due to the large number of citizens who seek legal assistance as laypersons, the County finds it necessary to request the amendments to the Law on Local and Regional Administration and Self-Administration, which would include appointing a public official for the provision of legal assistance to the citizens in each Local Administration unit. The citizens' initiatives for the environmental protection are more prominent in Istria than in any other part of Croatia. Housing fund is under supervision, but the County does not have the data on the requests of the holders of the tenancy rights to army apartments in which they lived earlier. Those data are at the disposal of the Ministry of Justice. There are many abandoned and mismanaged military facilities in the city centre which pose a threat for the by-passers, particularly the children. Those attractive, but military unusable facilities are the integral part of the architecture of the city and considerable funds should be earmarked for their maintenance. All of them would be brought into function if the City of Pula were granted the ownership or the right to manage them.

In the course of the visit, the Ombudsman had a meeting with Luciano Delbianco, the mayor of Pula, who informed him that the city is characterized by immigration. The pressure resulted from the immigration of people from Slavonija and Bosnia and Herzegovina, whereas certain number of them is immigrating without control, particularly the Romanians. Most of the city budget is spent on social welfare, particularly the subsidized meals and the food for the most affected welfare cases. Meals are organized at the existing restaurants. There are about 100 single mothers who do not have substantial means of existence and are therefore provided with support for the accommodation expenses (electricity, heating, utility charges, etc.). 400 public apartments are illegally occupied and there are 2000 requests for the welfare public apartments. Court proceedings are in progress for about 100 apartments. Pula is facing drug problems, particularly when it comes to young people and children. There is also a problem of selling the real estates to the

foreigners, particularly to Austrians, Italians and the Swiss, who acquire ownership without the Government's consent.

The Ombudsman had a meeting with Ercole Golja, the head of the Government Administration Office of the County of Istria and Radovan Juričić, economy assistant. As Mr Golja is retiring, Mr Juričić was appointed the head of the Government Administration Office on 1 January 2004. Among the crucial problems they pointed out the noise coming from catering facilities, illegal construction, usurpation and devastation of the agricultural land. The noise coming from the catering facilities within the residential block is mostly related to the arrival of the guests and their leaving, whereas there are not any problems with noise coming from the facilities. Most complaints originate from the areas which are the most popular meeting places, such as night clubs and cafes. Such example is the nightclub in Medulin. At the time of its construction it was far away from the residential block. In the meantime, however, the construction sites expanded and new buildings nearly reached the club. Certain number of illegally constructed buildings near Duga Uvala has been pulled down, but government inspectorates are powerless in this matter. Five construction inspectors cover the territory of Istria. Illegal construction is being carried out too fast and it is impossible to prevent it at the very beginning. Since the construction of the physical plans is more than 2,5 years behind, investors are in the state of insecurity, while the illegal construction is at the same time flourishing. It is mostly carried out by the persons who do not live in this area, i.e. foreigners and weekend house owners. Foreigners cannot be fined since they do not own any other property on the territory of the Republic of Croatia and they do not earn their salary there. Mr Jurčić particularly pointed out the problem of devastation of agricultural land by illegal construction, which is carried out on the state-owned land, too. Finally, the representatives of the Government Administration Office brought the Ombudsman's attention to the degradation of the government officials, which results in negative selection on all levels (regional and local). Aside from low salaries, the Office has a problem with space, as it is operating on nine locations in Pula. Nothing has been done for the education of the employees and falling behind in further training is obvious.

There have not been any complaints to the Ombudsman by the beneficiaries of the Social Welfare Centre in Pula. According to Vesna Radetić, the head of the Centre, the key reason for that is the fact that the beneficiaries realize their rights in a regular legal way, by filing appeals to the body of another level. The Social Welfare Centre operates in the area with 100000 inhabitants and 15 % of them are senior persons. Assignment of material help is in increase, as well as the number of persons who receive allowance for the home care of other persons,

whereas 550 persons receive permanent financial help. However, there are only four pensioners who are the recipients of material help within the welfare system. There is a department within the Centre for the children and adolescents who suffer from behaviour disorder. 500 persons are currently being treated, whereas the number of young people who experiment with drugs is in permanent increase, as well as the number of property offenders. As a close-type institution, the Centre for Education in Pula has 38 inmates.

On 9 December 2003, the Ombudsman visited the penitentiary in Valtura. The warden Vladimir Erceg informed the Ombudsman that the financial situation of the penitentiary is satisfactory, but the facilities are in poor condition, since nothing has been invested in their maintenance in years. The only thing done is the sanitization of the facilities where the prisoners are placed, but not of the facilities they work in. There are about 80 prisoners in the penitentiary. Although the rooms are designed as three-bed rooms, there are two persons in each room. Facilities are equipped with TV antennas, video, DVD, etc. There are also a library, restaurant and sports facilities there. Most prisoners are able-bodied, the average age is about 40, and the average stay in the penitentiary is 5 years. Although it is a minimum-security penitentiary, there are not only persons convicted of misdemeanour there (e.g. traffic offence), but also the persons convicted of felony. Those are the ones who had served 2/3 of the sentence and thereby realized the right to serve the rest of the sentence in this type of penitentiary (there are no judicial police, the guards are unarmed, the space is not fenced). The structure of prisoners has changed in comparison to earlier. 48 % of them are convicted of homicide. In accordance with the Law on government officials and employees, the personnel are ranked as qualified officers and the belonging salary coefficient makes 0,85 or 0,88, which is less than 3000,00 kn (net income). Although their work corresponds to the work done by the judicial police, their status is different, as well as the salary supplement. The salary supplement of the duty officer makes up 10 %, whereas the salary supplement of the judicial police makes 25 %. Duty hours which also include night shifts are performed by an official who does not have any instruments of coercion at his/her disposal.

On the same day, the Ombudsman had a meeting with the representatives of the non-governmental associations in Pula, on the premises of the County of Istria. Those were "Ekop-Istria", "Humanitarian Association of the good people of Istria", "Homo" Pula and "Suncokret" Pula. The representatives of the associations informed the Ombudsman about the sphere of work of each association in relation to the protection of human rights. There are 1000 associations on the territory of Istria, and more than 70 of them are in Pula. Their basic fields

of work are protection of the workers' rights, protection of the bank clients' rights, protection of the tenancy rights, protection of the status-related rights, violence in the family, loss of property, social welfare rights of the citizens and provision of legal assistance to the citizens. Due to the loss of job and regular monthly income, able-bodied citizens travel to Italy where they do the hardest and the lowest-ranked work, which does not require any qualification. After he heard out the complaints about the violation of labour rights, the Ombudsman explained to the participants of the meeting that he only has jurisdiction over the executive power, whereas the court work cannot be the object of his intervention.

On 10 December 2003, on the premises of the City of Pazin, the Ombudsman met Neven Rinanić, the mayor of Pazin and his associates - the heads of all municipal services. The City of Pazin is struck by the emigration of the young people to the rival areas of Poreč, Rovinj and Pula. In order to stop the depopulation of the city, new business areas are being opened for the small and medium business. Pazin has the first grammar school in Istria, opened in 1890 and it is a classics-programme high school today. Pazinska Jama presents a specific ecological problem for the waterworks of Pazin and Istria. It was partially sanitized in 2002, and the complete sanitization is expected during 2005, when the sewage treatment system is finished. Jama will then be open for the tourists again. There are 550 unemployed persons in Pazin, most of them are women and persons more than 40 years old. Since the citizens fulfil their basic existential needs by engaging in agriculture, there are not any major social problems. Country tourism is particularly developing and there are 20 countryside estates, which provide board and lodging services. 4 public apartments are each year granted to the citizens who are unable to solve their housing issue. There are 20 families in the social welfare treatment who receive occasional and one-time support to pay the electricity bills, heating or other utility charges. 30 low-income families receive monthly compensation of 200,00 kn as well as holiday presents (for Christmas, Easter).

The visit to the City of Pazin went on at the Social Welfare Centre in Pazin. The Centre operates on new premises of the building constructed in 1995. Bernard Mrak, the Centre principal, informed the Ombudsman that the Centre covers the area of Pazin, all the municipalities which enter the area of the City of Pazin as well as Buzet and Lanište, which is the area of 25000 inhabitants. There are 13 employees at the Social Welfare Centre in Pazin, but the area of Lanište lacks a lawyer, special-education teacher, social welfare worker and nursing attendant. In rural and peripheral areas of the Centre's jurisdiction are mostly senior citizens' households. There are 18 beneficiaries of nursing care in Buzet. About 300 persons in Pazin and 30

in Buzet are the recipients of permanent financial support. The centre also takes care of 211 mentally challenged adults. There are a councillor for marriage and up-bringing, Club of mentally challenged persons, and first instance commission for determining invalidity within the Centre facilities. 48 persons are wards of the state as specific cases and 80 persons are permanent wards of the state. The Centre yearly pronounces 33 measures of parental protection, 24 for child abuse and 30 cautions for child neglect. 7 families who do not have substantial income to support themselves are in the treatment of the Centre. Social Welfare Centre in Pazin is working on the prevention of behaviour disorder of children. About 60 children are in the treatment yearly, most of them for vagrancy and begging. 15 of them are in the treatment for drug abuse. Drug addicts are placed and treated in the communes.

During his stay in the County of Istria, the Ombudsman also visited the Home for mentally ill adults Motovun, situated in Brkač. Milena Hrvatin, the Home Principal, informed the Ombudsman that the beneficiaries, 18 of them, are placed in the renovated building of the Primary School Brkač. Those are the persons with specific needs the capacity of existing building is insufficient for all the persons from Istria who require this kind of accommodation. For those reasons the construction of the new building which will be integrated into the existing one is in progress and it will be finished by August, 2004. It will provide accommodation for 50 persons in the in-patient section and 42 ambulatory persons in single-bed rooms and two-bed rooms. The construction plan also includes the space for all the accompanying medical services. There are 14 employees in the Home. However, they are not qualified for the job since aside from the basic activity, which is care for mentally ill adult persons, the management of the real estates that belong to the institution needs to be done as well (it is the institution of the Ministry of Work and Social Welfare). General administrative services and personnel activities are done by the employee who has secondary education, although the nature and the scope of work requires at least two-year degree. All the employees' activities, particularly the principal's, are directed to the beauty and adequacy of the lives of the senior persons, with respect to their specific needs (various mental illnesses). An old primary school building will be renovated after the construction of new facilities, for the administrative needs of the Home. There is already a garden, orchard and olive-grove in which the patients spend their time and if they wish they can participate in the gardening.

The visit to the City of Pazin ended by interviewing the citizens in the facilities of the City Government.

On 11 December 2003, Giovanni Sponza, the mayor of the City of Rovinj, met with the Ombudsman in the presence of all the heads of

administrative sections -for construction works and physical planning, public services, finances and utilities. The mayor briefly informed the Ombudsman about the situation in the area under jurisdiction of the City of Rovinj. He left further presentation about each individual field of work and activity of the Local Administration unit to the heads of administration departments. Illegal construction, which particularly escalated in the last ten years, was pointed out as the first issue. It was determined within the Master plan that about 800 illegally constructed buildings would not be legalized. What we are dealing with here are the houses built on the hinterland and cultivating land and various illegal interventions carried out within the old protected city centre. The mayor and head of the Administrative Section for Construction agreed with the Ombudsman that illegal construction should be defined as a criminal offence. Borderlines of the construction areas of the City of Rovinj are strictly determined by physical plans and they will be respected by the municipal administration. The City of Rovinj will always provide funds for the elimination of illegal construction. That will be the only way to preserve the space and prevent further devastation. The City of Rovinj pursues social welfare policy that suits the needs of the citizens of Rovinj. Social conditions for the execution of the social welfare programmes are already defined. The City subsidizes pre-school education, meals at primary schools and transport expenses up to 50 %, particularly for the children with specific needs. Immigration of people to Rovinj is extremely large, whereas the natural population growth is negative (-7% to -8%). The number of unemployed persons has considerably decreased and it currently amounts to 530 persons. Since development of small and medium business is highly important, a large business area in Rovinj is in the process of construction with the support from the Ministry of Trades and Small and Medium Business. Agriculture has also been encouraged and the city participated in the planting of 50 ha of land. There are 600-700 requests a year by the immigrants for the housing care by granting a public apartment and about 500 requests by the persons who registered their residence in Rovinj. There are no critical cases but the city will have to establish the mechanism for the restriction of further immigration.

In the course of his visit to Rovinj the Ombudsman also met Fabrizio Radin, the head of the Administrative Section of the Italian national community and the other ethnic groups. According to Mr Radin, there are no such cases in Rovinj that could be classified as problematical. All the issues that the Section is dealing with are of technical and material nature. Administrative Section of the Italian National Community and the other ethnic groups in Rovinj is trying to keep up with material and logistic needs of the minorities and ethnic groups with the support from the Administrative Department of the

County of Istria. 9 associations (including Rijeka) and 7 ethnic minority Councils managed to constitute on the territory of Istria. The history of minorities in Istria has existed for 50 years already. Apart from Italians, there are also Albanian, Bosnian, Romany, Serbian, Macedonian, Hungarian and Slovene minorities. They all have their associations, which are mostly active in the spheres of culture and art. The County budget has provided 1,360 million kunas for the needs of the associations. Complaints are rarely filed to the Administrative Department and they in most cases refer to the enforcement of the Statute on bilingualism or the issues connected with catering establishments.

In the course of the visit, the Ombudsman met with Ivica Matošević, principal of the public institution "Natura Histrica", who informed him about the basic characteristics of the institution. According to the Law on Nature, the founder of the Institution is the County of Istria. As a public institution it has been taking care of all areas in Istria that are under protection as nature parks or protected territory. There are altogether 32 such areas. Each of them requires specific way of managing and specific measures for the prevention of their downsizing and the devastation of nature. The Institution is particularly active in three areas: Kamenjak, Palud and Linski kanal. They also carry out the programme of educating citizens, particularly school children. There is an intensive cooperation with non-governmental green peace associations. Since larger part of the coast and coastal area is protected, illegal construction is a considerably large problem. And the activities carried out in this part of Istria are more extensive. Inspectors carry out 24 hour surveillance, particularly in the summer. The Institution is financed with its own means - by selling tickets to the visitors of the protected areas (e.g. the cave in Linski kanal).

On the premises of the City Government in Rovinj, the Ombudsman met with the representatives of the non-governmental associations: Marina Zečević and Nevenka Mesić from "Rovinjsko sunce" - Home for abused children and adults and Biserka Momčilović from the Civic Initiative Centre Poreč. Mirko Mastilović, a lawyer from Rovinj also attended the meeting on behalf of "Rovinjsko sunce". Women's civic community Rovinj deals with humanitarian issues related to women: about 100 women truly want to help the City of Rovinj to solve certain issues and provide help to children and women. The community began as an association for providing help to children who are drug addicts. One of the most important activities is managing the Centre for abused children and adults. The Centre is located in the building that is not adequate for both mothers and their children and fathers with their children. Men who were mentally abused by their wives used to find shelter at the Centre but it currently provides care only for

children and women. More than 500 persons sought help at the Centre. The cooperation between the Centre and the police in Rovinj is on high level and deserves praise. The professional team of the Community and the Centre consists of speech pathologist, psychologist and special-education teacher who work with children with specific needs. They organized duty hours, too. 4 persons are permanently employed at the Centre. The Centre is in conflict with the City Government. The building where the Care Centre for abused children and women is situated was granted concession for the period of 99 years. It is situated in the old centre of the City of Rovinj. However, although it is a Social Welfare Centre with 32 wards, they have not managed to issue a permit to enter that part of the city by vehicle. As the Centre does not possess the vehicle for the transportation of patients and supplying groceries and other goods, they are using a member's personal vehicle. The employees need to supply all the goods within their working hours, i.e. by 3 p.m. The permit for the entrance into the city zone is issued only for a limited period of the time, i.e. several hours, with 60 minutes maximum stay. As opposed to the Centre, the hotel is permitted to enter the city zone 24 hours a day. The Centre for citizens' initiatives Poreč is Women's Party-of-Right Association and the coordinator of women's network of the Republic of Croatia. It cooperates very well with the other associations. It stands for women's rights and educates its members through various workshops. According to the past experience, the local administration is very supportive of it. The Centre organized a shelter for the molested women on the territory of Pula.

At the end of the visit to the city of Rovinj, the Ombudsman interviewed clients on the premises of the City Government.

On the last day of the visit to the County of Istria the Ombudsman and the county prefect Ivan Jakovčić held a press conference on the premises of the County of Istria at which the Ombudsman summed up his observations and information gathered during his four-day visit to Istria.

Labin was the last city visited by the Ombudsman, who informed Tulio Demetlik, the mayor of the City of Labin about his observations during his visit to Pula, Pazin and Rovinj. The mayor was also informed about the jurisdiction of the Ombudsman in relation to the activities of the local self-administration units. The mayor informed the Ombudsman about the basic facts about the city: it has a population of 25000 inhabitants, including four municipalities, while Labin on its own has a population of 12500. It has always been a powerful industrial centre (pit coal mines). Since many families immigrated from Bosnia, Labin has the largest number of Muslims in Istria. Religious services of the Muslim community are carried out on the premises provided by the City of Labin. Labin is also an "artistic republic", as a result of the folk-art heritage.

Many factories are also a part of the heritage: cement, boats, toys, knitwear, ceramic tiles, pipes, lime, and there is also a stone-pit. Since 1998, the city's business space has been leased to the tradesmen and small entrepreneurs. Many of the business premises were sold on concession terms of loan. Entrepreneurs are being encouraged by loans and co-financing the interests. Unemployment is a key problem in Labin - 370 persons are registered at the Employment Office, whereas 420 persons lost the right to compensation.

**Fali teksta**

#### **IV. INTERNATIONAL COOPERATION OF THE OMBUDSMAN IN 2003**

Apart from the activities done within the jurisdiction of the Institution of the Ombudsman, international cooperation between the Ombudsman and the institutions in Europe and the rest of the world, as well as with the Governing Board for the human rights of the Council of Europe and the Commission for human rights UN is highly important. It is necessary to emphasize the fact that our institution is a member of the European Institute of the Ombudsman with its headquarters in Innsbruck, Austria, as well as the full member of the International Institute of the Ombudsman with headquarters in Edmonton, Canada. As a member of these two international institutions, the representatives of the Office of the Ombudsman are able to participate in all relevant conferences and gatherings organized by those two institutions. Those conferences are particularly important for the advancement of efficacy, gaining new experiences and developing new ideas that can efficaciously be applied for the benefit of all citizens of Croatia.

International relations and the cooperation of the Ombudsman and his deputies were as satisfactory as in previous years. The Office of the Ombudsman was included in many activities through the international cooperation and the representatives participated in many international conferences, seminars and gatherings mostly on the level of the European countries' institutions of the Ombudsmen.

From the large number of invitations to participate in various gatherings of the institution of the Ombudsman, we will single-out the most important ones. Right at the beginning of 2003, on 24 and 25 of January, Frank Orton - the Ombudsman for human rights in Bosnia and Herzegovina, organized in Sarajevo an international meeting of the ombudsmen from the region. The ombudsmen of Albania, Macedonia, Croatia and Slovenia were invited to the meeting where the following subjects were discussed:

- problems that the Ombudsman deals with and mutual support
- struggle against the old-fashioned bureaucracy and inadequate administration
- principle of restraint in relation to the issues which are exclusively in the domain of conduct of politicians.

At the same time there was another meeting of the officials who are in charge of international relations and cooperation, at which the participants presented their institutions, shared experiences and ideas with the purpose of advancement of mutual and international relations, as well as public relations.

Supported by the Foundation “Friedrich Ebert Stiftung” and the Swedish Embassy in Zagreb, the OESS Mission in the Republic of Croatia and IMO (Institute for international relations) organized a conference on 2 July 2003 in Zagreb on the following subject: “Integration of the minorities in South-East Europe and the Baltic republics”. The deputy Ombudsman participated in the activities at the conference.

Within the project of “Eunomia” which was established by the Office of the Greek Ombudsman, and whose aim is promotion of the Institution of the Ombudsman in South-East Europe, workshop was organized in Athens on 22 and 23 May 2003 on the following subject: “Role of the Ombudsman in South-East Europe – fortifying the rule of law as a step towards European integrations. The representative of our Institution participated in the activities.

Within the “Eunomia” project founded by the Greek Ombudsman and in cooperation with Bulgarian National Assembly, the Centre for democratic studies in Sophia and Bulgarian Ministry of Justice, Regional Conference of the South-East European Ombudsmen was held in Sophia on 28 and 29 November 2003. Crucial subjects discussed at the Conference were:

- the rule of law and human rights
- fulfilling administrative requirements based on the propositions of the Ombudsman
- environmental protection and social welfare
- Ombudsman and the mass media
- national/regional/local Ombudsman
- children’s rights
- ethnic relations: minorities and migration

The Ombudsman participated in the discussion and activities at the Conference.

International symposium on the status of the Romanies in East European and Central European countries was held on 11 September 2003 in the municipality of Črenšovci in Slovenia. The deputy Ombudsman participated in the activities at the symposium. The deputy Ombudsman participated at the symposium and informed them about the status of the Romanies in the Republic of Croatia, based on the Ombudsman's observations.

On 16 and 17 of October 2003, there was a Conference in Berlin within the European Centre for minority issues, which was supported by the Royal Danish Ministry of Foreign Affairs, German Ministry of Internal Affairs and the president of Land Schlesnig-Holstein. The theme of the Conference was the possibility of appointing the Ombudsman for minority issues. The deputy Ombudsman participated in the Conference.

The eight round table of the European ombudsmen was held in Oslo from 3 to 5 November 2003. It was organized by Arno Fliffet, the Ombudsman of Norway and Alvaro Gil-Robles the commissioner for human rights of the Council of Europe.

At the first plenary session ombudsmen were informed about the institutional issues of the Council of Europe in relation to human rights and European standards. At the second plenary session the European standards were reviewed in four items on the agenda chosen for the Round Table discussion:

- legal status of the prisoners
- rights of minority members
- public access to official documents
- jurisdiction of ombudsman in relation to the courts

The Ombudsman participated in the workshop dealing with the issues of the legal status of the prisoners and the one dealing with the public right of access to official documents and information.

The Ombudsman Ante Klarić participated in the International Conference on economical, social and cultural rights, which took place in Cavtat from 2 - 4 September 2003. The Conference was organized by the Republic of Croatia and International Lawyers Association, supported by Finland. The following subjects were discussed:

- promotion of understanding of economic, social and cultural rights on the part of countries and civil society
- promotion of support for the acquisition of the Draft of the facultative protocol within the International treaty on economic, social and cultural rights

- encouragement of the exchange of experience, knowledge and strategies for further protection and promotion of economic, social and cultural rights on the international and regional levels.

Due to the obligations at the Office, the representatives were unable to participate at all the gatherings they were invited to, but they did their best to participate at those which could be most useful for the improvement of the efficacy of the Office.

International cooperation was also carried out through the mutual visits of the Ombudsmen. The Ombudsman and his associates were invited to visit the Office of the Albanian Ombudsman Ermir Dobijani in Tirana. In the course of the visit, the delegation was received by the president of the Republic of Albania, president of the Constitutional Court and the Supreme Court of Albania and the minister of Justice.

During 2003, the Ombudsman of the Republic of Austria Peter Kostelka, the Ombudsman for human rights in Bosnia and Herzegovina Frank Orton and the Ombudsman of the Republic of Albania Ermir Dobijani paid return visit to the Office of the Ombudsman. All of them were received by the president of the Republic, president of the Constitutional Court, vice president of the Croatian Parliament and the president of the Parliamentary Board for Human Rights and the Rights of National Minorities.

Peter Kostelka, the Ombudsman of the Republic of Austria, gave lecture at the Centre for Human Rights on the subject: " The Ombudsman – Between legal control and appropriateness ".

Like every year, the Office of the Ombudsman was visited by the representatives of many international institutions.

At the very beginning of 2003, the Office was visited by the Swedish delegation lead by Agneta Jonhansson, an expert for the international law. The purpose of the visit was assessment of the situation in the judiciary in several countries of the western Balkans, which was requested by SIDA ( Swedish International Agency for Development and Cooperation ) in order to provide further assistance and cooperation in the development of the institutions.

Heleen Habraken, the representative of the Amnesty International and investigator for Bosnia and Herzegovina, Croatia and Slovenia,

visited the Office on 17 February 2003. She was most interested in the issue of violation of human rights according to the Ombudsman's report.

Hans G. Knitel, the Austrian ambassador in Croatia visited the Office on 5 March 2003. The purpose of the visit was the establishment of more active relationship between the Ombudsmen of the Republic of Austria and the Republic of Croatia.

The project of the European Union, called the "Asylum Reform", has been carried out in Croatia since 1 March 2003, within the CARDS project. Mr Detlev Böttger visited the Office in relation to the enactment of the Law on Asylum in the Croatian Parliament. The purpose of the visit was the discussion on the draft bill which should be in accordance with the same law of the member countries of the European Union.

Michael Petersen, senior regional legal counsellor for human rights within the United Nations, who is in charge of middle and eastern Europe, visited our Office and discussed the protection of the rights of the refugees, right to return, rights to asylum, new activities of the UNHCR and the seminar which will take place at the European Council on the subject of European Convention on Human Rights, cooperation and the draft of the new Law on Asylum, seminar on the construction of asylum system for the operatives of the Ministry of Internal Affairs, change of mandate in relation to the stateless persons, etc.

Within the project which refers to the protection of personal data for the future joining of the Republic of Croatia to the Europol and the system of Shengen subsequently, the senator Alex Turk visited the Office of the Ombudsman with the purpose of sharing experience and propositions for the regulation of the protection of personal data of the citizens.

In the organization of the OESS Mission in the Republic of Croatia, the Office was also visited by John Hacker, senior expert in human rights and the institutions of the Ombudsman. The purpose of the visit was the elaboration of the report on the institution of the Ombudsman in the Republic of Croatia, which would be the basis for the discussion on the methods of improving the efficacy of the institution. The report is an integral part of the Report on the activities of the Ombudsman in 2003.

As a part of their visit, the delegation of the Monitoring Board of the Parliamentary Assembly of the Council of Europe, lead by the Board president Josette Durrieu, also had a meeting with the Ombudsman, in which they mostly discussed the activities of the Office.

Michael J. Haroz, a member of the organization called the "International Senior Lawyers Project", who is engaged in the study on the provision of legal assistance, visited our Office on 16 May 2003.

Ilpo Manninen, the French ambassador in the Republic of Croatia visited the Office of the Ombudsman on 26 June 2003. The purpose of his visit was to get acquainted with the activities of the Institution, its authority, cooperation with the Finnish Ombudsman and the other European and world institutions. The Finnish ambassador expressed satisfaction about the fact that the Republic of Croatia passed the Law on Ombudsman in 1992, before many other transition countries and that the decision was independently made, which means that the institution was not enforced on Croatia.

Among the rest of the international activities of the Ombudsman, he also participated in the preparation and elaboration of the answers to the questionnaires requested by the international institutions and organizations that deal with promotion and protection of human rights as well as producing supplements about the activities of our Institution for the Newsletter of the European and International Institute of the Ombudsman.

## **V. MATERIAL AND FINANCIAL OPERATIONS**

In order to achieve easier orientation and reference, material and financial operations of the Office of the Ombudsman are graphically presented. In regard to legitimate remark uttered in the Croatian Parliament during the discussion on the Report on the activities of the Ombudsman in 2002, there is a separate presentation of public revenue and expenditure:

### **INCOME**

The Office revenues in 2003:

- 310.798,00 kn for the execution of the project "Activities of the Institution of the Ombudsman/Scheme of Support to the Institution of the Ombudsman", donated by the OESS Mission in Croatia and the Kingdom of Norway
- in relation to the above – interests on ordinary deposits - 225,00 kn, and
- 3.696.064,00 kn income from the Budget of the Republic of Croatia for financing regular services, which is 6 % less than planned

In comparison to the previous year, the funds earmarked for the Office from the Government Budget are 14 % higher.

Account	Description	Planned for 2003	Realized in 2003	%
1	2	3	4	5 (4/3)
632	Aid from international organizations	310.798	310.798	100
641	Revenues from financial assets	225	225	100
664	Revenues from the budget for the regular financial activities of budget beneficiaries	3.921.497	3.696.064	94
	<b>TOTAL:</b>	<b>4.232.520</b>	<b>4.004.087</b>	<b>94</b>

#### EXPENSES

Account	Description	Planned form the budget for 2003	Realized in 2003	%
1	2	3	4	5 (4/3)
311	Salaries	2.318.356	2.274.979	98
312	Other expenses for the employees	35.544	41.544	117
313	Taxes and contributions on salaries	404.348	391.015	97
321	Compensations for the expenses to the employees	128.341	290.420	226
322	Expenses for material and energy	138.000	158.416	115
323	Expenses for the services	326.959	260.226	80
329	Other unmentioned business expenses	163.852	79.288	48
343	Other financial expenses	1.100	3.417	311
412	Intangible property		42.959	-
422	Facilities and equipment	105.000	113.556	108
423	Means of transports	300.000	293.287	98
	<b>TOTAL:</b>	<b>3.921.497</b>	<b>3.949.107</b>	<b>101</b>

As far as expenses are concerned, larger discrepancies appeared in the following items:

- 312 Other expenses for the employed persons since there has been a change in the amount of disbursement for the Christmas bonus according to the collective agreement

- 321 Compensation for the expenses to the employed persons have increased since large part of donation was used for the expenses of the business trips on the occasion of the visits to the counties for the purpose of execution of the Project
- 322 Expenses for material and energy are higher since the stationery was purchased out of donation funds
- 323 Expenditures for services are smaller since the invoice for the painting of the walls was made out at a later date, so that expense was not given in evidence in 2003
- 329 The other unmentioned expenditures are lower because the item included expenses related to the international visits to the Office, but some of them were postponed. Another reason is the fact that the invoice for the membership fee for the International Institute of the Ombudsman was this year delivered only for 6 months instead of the whole year
- 343 The rest expenditures are higher due to the higher bank charges for spending larger amounts of ready money from the donation funds
- 412 Intangible assets: donation funds were used for creating the web site
- 422 Installation and equipment: the expenses include the purchase of laptops from the donation funds

### **SECTION THREE**

#### **CONCLUDING REMARKS**

1) Much more complaints were filed in 2003 in comparison to the previous years (44% increase in relation to the several-years average). Higher number of complaints resulted from the visit to ten counties which made it easier for the citizens of those counties to approach the Ombudsman. Field work rendered possible the solution of certain number of problems on the spot, by giving either advice or instruction, i.e. explanation.

2) In spite of the Ombudsman's efforts, many complaints which were received through the mass media and immediate contact with the citizens were not in the Ombudsman's jurisdiction. Most of those complaints (65,5%) referred to the inefficacious work of courts, particularly municipal.

3) Great efforts were made in the last 2 years to return the property to the legal owners, who had emigrated from the Republic of Croatia in the course of war and their property was granted for temporary use to a

third person. The efforts resulted in gradual decrease in the number of complaints filed by the owners for the reason of inability to take possession of their property. Yet, a considerable number of citizens complain about the violation of the ownership rights and tenancy rights. In comparison with 2002, the number of complaints related to this issue has increased absolutely and relatively (173,93%) but due to the increase in the number of all complaints, this group takes up the second position. There was a relatively small number of complaints about the violation of the rights in the proceedings for the restitution of the property expatriated in the period of Yugoslav communist rule, mostly due to the long lasting proceedings. Since regulation of the criteria for the evaluation of the building land (compensation rules for the expropriated building land and business space, »NN« number 204/03) was introduced at the end of 2003, further decrease in the number of such complaints is expected (even to the insignificant level). During 2003, there were 190 complaints about the violation or jeopardizing the tenancy rights, i.e. the impossibility for the low-income citizens to take the so-called «welfare apartment» on lease. Due to a relatively large number of those complaints ( with the share of 33,5% within this group), measures for the construction of apartments for the persons who are unable to solve their housing issue should be undertaken on both state and local level. There is also a large number of complaints by the persons who used to have tenancy right, but they lost it due to the valid court rulings. Such complaints were filed as a formality, i.e. only for the registration of the request for the recovery of their tenancy rights, which is evident from the formulation and bare-boned quality of the data. Based on the form of those complaints and the lack of relevant documentation or at least the information on the reasons why they abandoned their apartments and lost their tenancy rights, the conclusion can be drawn that most of the complainants would like to grant the right to financial compensation for the loss of tenancy rights. Considering the fact that each case is different, even when there are certain common characteristics, firm position on this issue should finally be taken on the state level, since it is primarily a political issue, not a legal one. It is therefore crucial to provide adequate accommodation within the legally set term for the former holders of tenancy rights who are Croatian citizens and who returned to the country with the intention to stay.

4) Most of the complaints referred to the difficulties with the realization of pension and disability insurance rights, health insurance and social welfare (29,4%). It needs to be pointed out that the relative share of these complaints has somewhat decreased ( from 31,7% to 29,4% ) in comparison to the previous period (2002), which indicates that certain

measures are being undertaken to speed up the process of solving administrative issues in this sphere. A large number of complaints about the activities of the pension and disability insurance bodies resulted from the enforcement of the international agreement with Bosnia and Herzegovina and Serbia and Montenegro, i.e. due to the large number of requests by the persons who retired in the Republic of Croatia but are currently living in the above mentioned countries. They request the calculation of the proportional part of pension in the cases when the insured party realized part of the length of service for retirement in the Republic of Croatia.

5) The complaints filed by the victims of war are in the third position (19 %) according to the absolute and relative share in the total number of complaints. The largest numbers of complaints (75,2 %) were filed about the difficulties in realization of the reconstruction rights. Most of the complainants are the returnees to the places where they used to live. Those are mostly senior persons with moderate material means. Their low social and economic position often results from the fact that they are insufficiently informed, which in some cases resulted in the loss of certain rights. More flexible approach is necessary in dealing with the issue of construction and all the other problems which the returnees are facing after the several-years exile. Yet, it is important to mention the fact that the largest number of unfounded complaints was within this group. It is not surprising since it is psychologically difficult to accept the impossibility of complete restitution of property and even those who realized all the rights that belong to them in terms of reconstruction often feel cheated of their rights.

6) As it was expected, the increasing trend of complaints in relation to the impossibility or difficulties with acquiring status-related rights (citizenship, permanent residence of foreigners, issuing certain certificates out of registers of births, marriages and deaths, entering into the marriage with a foreigner) went on in 2003 as well (97,53 % in comparison with 2002) and the share of these complaints among those within the Ombudsman's responsibility is only 4,05 %. It is important to note the fact that there have not been any complaints for 5 years in a row (except for the sporadic and in most cases unfounded ones) by the persons who emigrated from the Republic of Croatia during the war and for that reason could not define their status. This points to the fact that almost all persons who wished to settle their citizenship status, managed to issue personal identification documents (I.D., passport) can return to the Republic of Croatia any time they want to.

7) Since the neighbour-related rights, construction-related rights and freedom of entrepreneurship often collide, a relatively large number of complaints referring to urbanism, construction and environmental protection is not surprising. Of the total number of complaints that are in the Ombudsman's jurisdiction, there is a 5,17 % of those related to the above mentioned matters. Although their share is not large, the rights of a large number of complainants are seriously jeopardized, and often violated due to inefficiency of the inspectorates. After the interested party have finally issued a ban on suspension of construction or the warrant for the elimination of illegally built facilities, it is almost impossible to enforce the execution. The competent Ministry explains that the reason for the several-years inefficacy in execution of legally valid decisions is the lack of means, which is not always the case. Besides, elimination of the illegally constructed buildings needs to be done at the distrainee's expense and only advance-money should be provided for it. Based on the valid distress-warrant, the illegal constructor should cover those expenses. The cases of illegal construction in the protected historical and cultural areas, on the marine territory and other persons' property are most disturbing. The representatives of the local authorities specifically pointed out those problems during the visits of the Ombudsman and his associates to the counties. At the meeting with the Ombudsman, the mayors particularly pointed out that the adequate amendments to the Law should ensure that the Local Self-Administration and Administration unit be the client in the proceedings related to the elimination of the illegally built facilities, since the citizens rightfully expect an active approach from the local authorities, due to the fact that it is a matter of appearance and zoning order in the place of their residence. The Ombudsman shares their views about the necessity of the local influence on the elimination of illegally built facilities, as that would increase the efficiency of the authorized administrative bodies and assure the power of the local authorities.

Although there were only 18 complaints in 2003 about the violation of the right to healthy environment, the issuing of consent for the importation and processing of hazardous waste products beyond measure is very disturbing. What is most worrying is the contents of the Decree of Croatian Government on the amendments to the Decree on the marginal value of the emission of the contaminants from the stationary sources into the air ("NN" no. 105/02, 108/03) which allows excessive emission of toxic substances into the environment. In spite of the repeated warnings of the Ombudsman, civic organizations and the mass media about the impermissibility of such decree, amendments have not been passed yet. Considering the high level of the allowed environmental

pollution by certain harmful substances (300 % and 500 % higher than the standard) it is hard to eliminate the possibility that the enactor of the regulation was influenced by the economic agent whose activities are polluting the environment. According to the Ombudsman, the potential illegal influence for the purpose of assuring normative conditions for the "legal" excessive pollution of the environment by certain economic agents should be investigated by the bodies authorized for the prosecution of criminal offenders.

As in previous years the citizens filed complaints about jeopardizing health and peaceful use of apartments by the noise from the catering establishments, as well as the other artisan facilities situated in the immediate vicinity of the tenants. As the problem of harmful emissions of noise, smell and vibration of the machines has become everyday life to many citizens, who tolerate excessive traffic noise, certain measures should finally be taken in order to regulate the normative soundproof coefficient of the business premises from the neighbouring apartments as well as prohibit the conversion of space without checking if it meets soundproof criteria. Entertainment facilities, such as night-clubs, should not be near residential facilities and reasonable working hours should be fixed for such facilities in order to reduce the discomfort of the tenants to the reasonable level. The Ombudsman was informed about the powerlessness of the local authority bodies (particularly in the County of Dubrovnik and Neretva) to prevent the emergence of illegal waste dumps, which jeopardize people and animals' health (e.g. construction waste dumps) and present an eyesore and are often hazardous for the environment that should be protected.

8) The Ombudsman has already called attention to the necessity of reconsidering the Law on former political prisoners (in terms of righteousness) in his previous reports, particularly in the last year's. Some of those prisoners were not paid out the legally designated compensation due to their death. The children who are the beneficiaries of the family pension due to their disability to work, should be granted the right to inherit the compensation that was not paid out to their parents. Although the principle of righteousness and ethics force us to act that way, regardless of the potential number of the descendants of the former political prisoners, the Ombudsman stated that granting them the right to compensation would have an insignificant impact on the budget expenditures.

9) The Ombudsman stated that a considerable number of the returnees whose property had been granted for temporary use to a third person is facing the problem of the devastation of their homes, as well as

the debt to the public utility companies for which the former beneficiaries are responsible. Although the houses had been granted for temporary use without their owners' consent, the beneficiaries were obliged to maintain them (which they did not do). Therefore, the Government is legally and morally bound to pay off the debt. For the reasons of social sensitivity, the debt of those former beneficiaries who are on permanent or temporary social welfare should be written off.

10) At meetings with the Croatian refugees from Bosnia and Herzegovina and Serbia and Montenegro, the Ombudsman found out that much more help could be provided to them. The facilities which had been granted for use to a third person should be returned to their owners as soon as possible. Many of them are in fear of tomorrow because they are unable to help themselves. Therefore the Ombudsman concluded that they should immediately provide help for the families and individuals who need it most. As in previous years, the Ombudsman pointed out that exact housing criteria should be established and according to them deal with the housing problem of those who are unable to solve it themselves. The problem of unemployment should be dealt with, too. As many of the refugees were farmers, the Government could purchase farmlands and lease them to those people on favourable conditions, which would provide permanent care for them.

## II.

Apart from the proposals stated in previous items, the Ombudsman proposes that the Croatian Parliament:

- 1) re-examine and discuss the Report on the activities of the Ombudsman in 2003 and take note of it
- 2) draw the following conclusions:
  - a) adequate office space will be provided for the Ombudsman by the end of 2005;
  - b) extra 150 000 kn will be set aside from the budget planned for 2005 for the field work, i.e. for the visits to the counties and meetings with the citizens who live in the places outside the headquarters of the Ombudsman;
  - c) amendments will be passed to the Law on the Ombudsman by the end of 2006, with either holding office hours in the places outside the headquarters of the Ombudsman or

establishing 4 regional offices with the headquarters in Vukovar, Knin, Slavonski Brod and Gospić and employ 4 officials (1 assistant of the Ombudsman – head of the Office, 2 senior consultants, 1 civil servant).