



Croatian People's Ombudsman

Activity report for 2009

Report on occurrence of discrimination

Zagreb, March 2010



Impressum

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Introduction

Introduction





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Ombudsman

Jurica Malčić

Born in August 1942 in Zagreb, graduated on the Faculty of Law, University of Zagreb.

From 1972 – 1991, he served different administrative and later on leading positions both in the administrative and executive bodies of the City of Zagreb.

Pursuant to the creation of the independent Republic of Croatia in 1990 he worked as the Advisor at the Office of the President of the Republic. He performed the duty of the Deputy Minister of Justice and Administration and the Secretary of the Croatian government.

From 1993 – 1994 was the member of the Government of the Republic of Croatia and Minister of Administration.

In 1994 was elected judge of the Constitutional Court of the Republic of Croatia and served this duty until 2002. During that period he performed twice the duty of the Vice President of the Constitutional Court (1998 and 2000).

He was elected Ombudsman for a term of eight years by the Croatian Parliament on 30 November 2004.

He published several works in the field of human rights, administration and local self government. Author and collaborator of research and legal projects in different fields.

Deputy Ombudsman



Dejan Palić, dipl. iur.

- discrimination,
- reconstruction,
- displaced persons and refugees,
- restitution of property (returnees),
- settling housing issues,
- areas of special state concern,
- civil rights (citizenship, aliens and asylum seekers),
- construction and physical planning,
- access to information.



Željko Thür, dipl. iur.

- judiciary,
- police,
- persons deprived of liberty,
- denationalization,
- land-registry,
- expropriation,
- housing issues,
- sell of apartments with tenancy rights,
- rent of premises
- agricultural land.



Branko Tinodi, dipl. iur.

- pension insurance,
- war veteran's rights,
- health care,
- schooling and high education,
- social welfare,
- local self-government,
- public servants,
- environmental protection,
- NGOs,
- craft,
- taxes and finances.



Ombudsman's foreword

Since the introduction of the institute of the People's Ombudsman in the Constitution of the Republic of Croatia, adoption of the special law in 1992, and the beginning of the work of the Office in 1994 up until present day, the institution significantly broadened its scope of activities. Besides the classic function of the Ombudsman (solving of individual complaints referring to the way administrative bodies and bodies vested with public powers act towards citizens), the institute of the People's Ombudsman acted as the accredited national human rights institution for protection and promotion of human rights (NHRI) as well as the central equality body. Therefore, this publication is compiled by two summary reports: the Annual Report 2009 and the Report on the Occurrence of Discrimination.

When the Annual Report is concerned, 1655 new written complaints were received in 2009, which corresponds to the several-year average. The complaints against the work of administrative bodies and bodies vested with public powers have increased in comparison with the previous year for approximately 100 cases, while the number of complaints against judicial bodies has not increased significantly (makes around 20 per cent of all complaints).

Last year marked for the first time a certain improvement of the overall situation in relation to the previous years. From the presented statistical data it is evident that a number of unfounded complaints decreased. That speaks in favour of certain improvement in total efficiency and better communication between administrative bodies and citizens, partly due to the persistent insistence of the Ombudsman on the said bodies' legal obligation to notify the parties, in case they fail to bring the administrative act within legal term, about the reasons for the delay. In spite of the fact that the new Administrative Procedure Act does not contain an explicit provision related to the mentioned issue it should be expected that the administrative bodies continue and even improve such a practice.

As expected, the trend of absolute and relative decrease in a number of complaints referring to the administrative procedures in the cases resulting as the consequence of the war and the former state dissolution, has continued. Only 4 complaints referring to the rights of refugees and displaced persons were received and 7 complaints regarding return of the temporarily taken over property. The number of complaints, regarding the right to reconstruction (84) and the settling of housing care issues decreased as well as the number of complaints dealing with pension and disabled persons' rights and status rights. It is estimated that the total number of such complaints makes less than 25 percent of all new complaints while in 2007 their share was more than 50 percent.

However it is important to emphasise that the recorded data refer exclusively to the newly received complaints in 2009, while the number of such complaints we acted upon is larger because, unfortunately as it is seen in the report, not an insignificant number of procedures in the area of reconstruction, return of the property, housing settlements, pension insurance (according to the international agreements) last for years.

Excessive duration of court procedures: Despite some positive progress in the area, the excessive duration of the administrative procedures and failure to respect legal terms still represent a major problem for the citizens, as well as property and legal issues (such as denationalisation), and partly the area concerning reconstruction. A large number of second instance procedures is not solved within legal term and many procedures last unreasonably and unacceptably long due to non-efficiency of the procedures, i.e., „silence of administration“, repeated cancellation of procedures and repetition of procedures even in cases where the courts are obliged by the law, as a rule, to adopt decision on the merits.

The Ministries and other administrative bodies state that the reasons for inefficiency and failure to respect legal terms lay in complex procedures, deficiencies in provisions and problems in terms of human and material resources. Despite the fact that the mentioned reasons may serve as an excuse for some administrative bodies or services, they cannot serve as an excuse for the entire state which has as its obligation and responsibility to ensure the conditions for solving administrative affairs within appropriate, that is, within a reasonable term.

Since the Ombudsman does not have the power to take direct action towards the courts, we forwarded all the complaints dealing with the excessive duration of the court procedures or other complaints referring to the court and judicial administration, to the Ministry of Justice. The available information on the actions undertaken by the ministries in that respect is shown in the first part of the report. The complaints regarding excessive duration of the procedures before the Administrative Court were sent as rush notes to the president of the court in cases where the former administrative procedure lasted unreasonably long.

Data on number of complaints received by the Ombudsman and the Ministry of Justice as well as the data on an increasing number of requests referring to the violation of a right to fair trial within a reasonable term received by the relevant courts (especially a number of the founded complaints) show that inordinate length of procedures, especially in civil disputes still represents the greatest problem for the citizens and is a major cause of violations of their rights.

However, the analysis of the complaints sent to the Ombudsman shows that the share of the complaints related to the excessive duration of the procedure decreases while a number of complaints regarding complainants' dissatisfaction with the outcome of the procedure increases. Such a trend should be interpreted by the fact that more citizens take advantage of the legal possibility to fulfil their right to fair trial within a reasonable time through which they can also obtain a decision on the legal term for finalisation of the court procedure and financial compensation for violation of the right to a trial within a reasonable term.

Measures and activities being taken by the Supreme Court of the Republic of Croatia aiming to improve the efficiency and priority in solving old cases most certainly contributed to the positive trend in that respect.

Therefore, the assessment stating that the best way to prevent excessive duration of the court procedures lays in terms of strengthening the organisation and human and material resources of the court administration, especially at the Supreme Court of the Republic of Croatia. Amount of financial compensations received by the citizens from the state budget of the Republic of Croatia due to violation of their right to trial within a reasonable time justify any investment for that purpose. According to the experiences of great number of countries measures such as strengthening of judicial administration and services, monitoring, evaluation and control have proven more efficient than increasing the number of judges.

In that respect, the Ombudsman expresses satisfaction by legislative and other measures taken for the purpose of strengthening the position of the Supreme Court as the highest authority in the judicial administration as well as enhancing its role in ensuring a unique implementation of the law in the Republic of Croatia.

Changes related to strengthening of the role of the president of the Supreme Court in the appointment of the presidents of courts advocated by the Ombudsman in the last year report, followed by new revision authorities of the Supreme Court, alongside a welcome change in court practice by the Constitutional Court, as well as the announced changes in appointment of the members and new working methods of the State Judiciary Council, contribute to improvement of the overall efficiency as well as to independence of judicial power.

Social and legal security: It is well-known that the citizens do not turn to the Ombudsman only with complaints referring to unlawful or incorrect work of the administrative and judicial bodies or due to inordinate length of the court procedures, but also because they wish to point to the violations and jeopardizing social, economic and labour rights by referring to the constitutional principle of the social state and the right to work, health protection, social care and dignified life.

The most numerous and endangered are unemployed persons as well as the employed persons who do not receive their salaries. In addition to the people who became unemployed and impoverished in the processes of transitions and privatisations the "Croatian way" there is a raising number of people who lost their jobs and lack basic financial resources due to economic crisis and recession. Many employed persons with the lowest salaries are endangered as well and the ones who are forced to moonlight or work for the employers who violate law and fail to grant them labour rights; endangered are those whom competent state bodies fail to provide sufficient protection (and courts where trials for protection of the labour rights last excessively long) as well as pensioners whose low pensions lag behind an increase in the cost of living, especially of utility services.

Regarding equality before the law and legal security of the poor and weak, we may say that, despite improved normative framework and initial results obtained by its implementation, the situation is far from satisfactory. Slowness, excessive duration of the court procedures and inefficiency of control mechanisms in administrative and court procedures enable "arbitrariness" and provide grounds for bias and corruption of all kinds. The cause for such a situation lays partly in insufficiently depoliticised administration where many executive functions were given according to the criteria of political suitability and personal loyalty instead of the criteria of professionalism, knowledge and ethics. Judiciary still lacks efficient mechanism to remove the judges failing to meet necessary requirements such as professionalism, competence, independence and impartiality from the system.

Besides de politicization and strengthening of quality, professionalism and ethics in judiciary, a system of free legal aid as well as legal help provided by the lawyers, alongside better supervision of the public powers given to the Croatian Lawyer's Chamber by the law, should be improved.

Working conditions and development: The state budget for 2009 provided HRK 7 202 894 for the work of the Office of the People's Ombudsman.

Necessary financial amount foreseen by the Anti-Discrimination Act of HRK 1 200 000, out of which HRK 500 000 for 3 new employees and HRK 700 000 for other expenses of the central equality body in implementation of the Act, were not ensured, despite the fact that the implementation of the Law began on January 1, 2009.

Therefore a number of employees in 2009, including the People's Ombudsman and three deputies remain 31, as in the previous year, although the institution was entrusted with significant new duties and activities.

The obligations, foreseen in the Anti-Discrimination Act, were carried out with difficulty within the available funds and through the re-assignment of the employees to the new tasks. In that way it was rather difficult to carry out regular activities prescribed by the People's Ombudsman Act. Additional funds for recruiting new employees were not ensured by the 2010 state budget as well, although HRK 500 000 were foreseen for 3 new employees in the IV quarter of 2010 by the Croatian Government's Programme for implementation of the *acquis communautaire* (NPPEU).

The Ombudsman's Office was granted the additional space in Petrićeva Street 5, at the end of 2009 as a temporary solution. This premise lack sufficient capacities to accommodate all staff, thus the Office shall continue to use the existing space in Opatička Street 4.

Regarding further development of the institution, we believe that the conditions for, finally, drafting the new People's Ombudsman Act are met. The content of the existing, but in many ways obsolete law, should be adapted to already made changes in legal position and competence in domestic legal system as well as in the new role and status of the People's Ombudsman in harmonised international system of human rights protection. We bear in mind the following:

- After discussion referring to the Annual report for 2007, the Croatian Parliament brought the decision in September 2008 according to which the Government of the Republic of Croatia was obliged to prepare amendments to the People's Ombudsman Act, in accordance with the recommendations from the report,
- The Anti-Discrimination Act 2008, broadened the scope of jurisdiction of the institution in comparison with the People's Ombudsman Act,
- That same year the Ombudsman was accredited as the national human rights institution for protection and promotion of human rights with status A by the International Co-ordinating Committee of National Institutions, according to the criteria of Paris principles. Certain recommendations were made in relation to broadening of Ombudsman's jurisdiction and authorities as well as strengthening the capacity of the institution.
- At the end of 2008, after the study visit, the group of experts from the UNDP Bratislava Regional Centre produced the Capacity assessment of the institution of the Ombudsman. The assessment contains recommendations including the ones related to the changes of legislative framework.
- In 2009, based on the conducted assessment, a Project of strengthening capacities of the People's Ombudsman's Office was initiated with the UNDP office in the Republic of Croatia.

Part of the project referring to the rationalization of the human rights protection system was concluded at the beginning of 2010 and it also contains certain recommendations.

Based on the aforementioned, we proposed that the Croatian Parliament bring the conclusion on drafting the new People's Ombudsman Act and that Parliamentary Committee on Human and National Minorities discuss and make opinion to the recommendations, based on the abovementioned, and in that way participate in preparations for drafting new law.

Zagreb, 31 March 2010.

Jurica Malčić



Statistical data for 2009

RESEARCH





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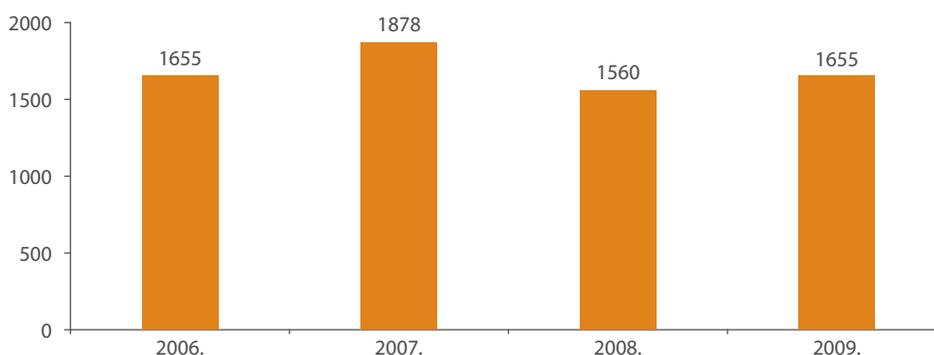
Statistical data for 2009

Citizens address the Ombudsman through written complaints, personally, by electronic mail and telephone. Statistical review provides data regarding cases opened and processed by the Ombudsman.

In addition numerous citizens (426) addressed the Office personally, between 25 and 35 persons contacted the Office via telephone and by electronic mail on a daily basis, however these data are not included in the statistical review presented in continuation of the text.

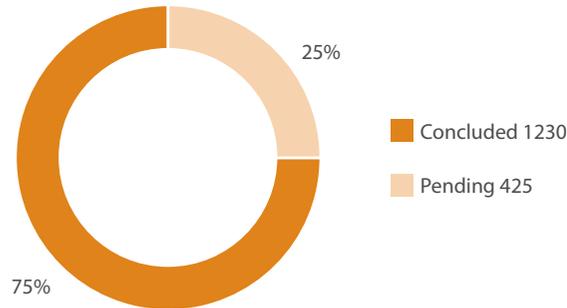
In 2009 the Ombudsman worked on 2114 cases out of which 1655 were newly received complaints.

Picture 1 Number of (written) complaints in the period between 2006 and 2009:



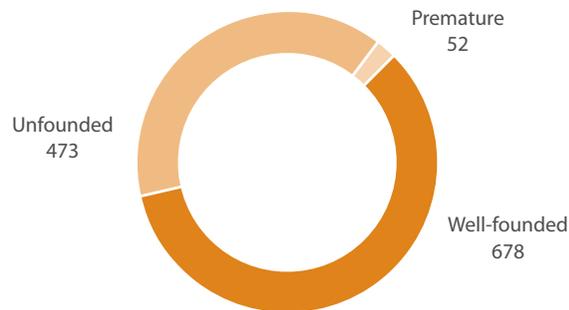
In 2009, the Ombudsman office worked on 2114 cases in total. Out of that number 1633 cases were concluded (403 from previous years and 1230 newly received cases in 2009)..

Picture 2 In 2009, the Office received 1655 complaints. The ratio of concluded and pending cases (newly received cases in 2009):



Obstacle to the more efficient work concerning complaints is primarily excessive length of the procedures, and in some part the fact that the competent bodies fail to provide the Ombudsman with the requested information within the legal term of 30 days.

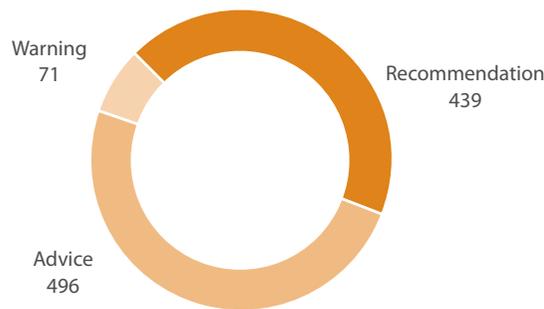
Picture 3 Ratio of well-founded, unfounded and premature complaints:



Comment: In the last year report, a number of well-founded complaints was three times larger than the number of unfounded complaints which was not the case in 2009. This indicator information speaks in favour of the thesis that the work of administration has improved and that the number of complaints regarding excessive length of procedures has decreased. It also indicates that it was easier for citizens to obtain requested information regarding the state of their case, the matter which had been described as the cause of the largest number of well-founded complaints. A decrease in a number of well-founded complaints could be partly attributed to the ignorance of citizens. Specifically, in some cases we noted that it was too late to use available legal remedies but the complainants did not know that and could not afford professional lawyer's assistance.

Based on the ombudsmen data in some western countries on justifiability of complaints, it has been observed that there is only a small share of well-founded complaints while complainants are mostly dissatisfied with the outcome of the court procedure and not with the excessive length of the procedure. In Croatia, in spite of the decreased number of cases, excessive length of the procedure is still the key cause of a large number of well-founded complaints. Furthermore, a large number of 1203 concluded cases within the jurisdiction of the Office were complaints submitted by the citizens who were not able to obtain the requested information or who did not receive an administrative act within the due legal term. After the Ombudsman addressed the competent authorities, a large number of the complaints was finalised as requested by the citizens concerned. In a certain number of cases it was necessary to undertake measures towards the competent authority (recommendations or warnings), that is, to advise the citizens regarding the way of resolving the disputable matter, as shown in picture 4.

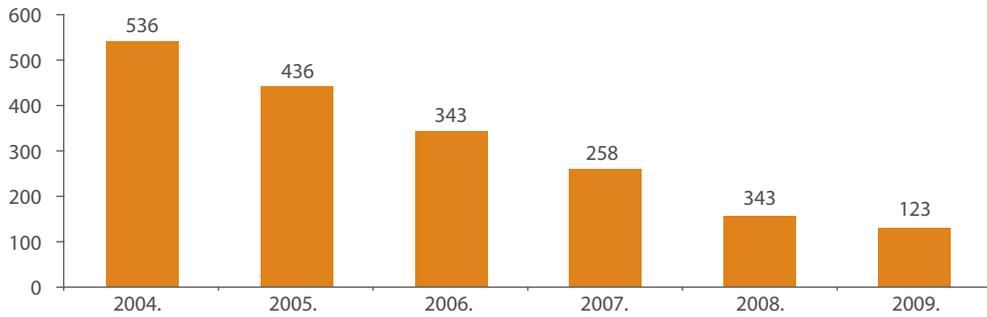
Picture 4 Undertaken measures (recommendation and warnings) and advice to the citizens:



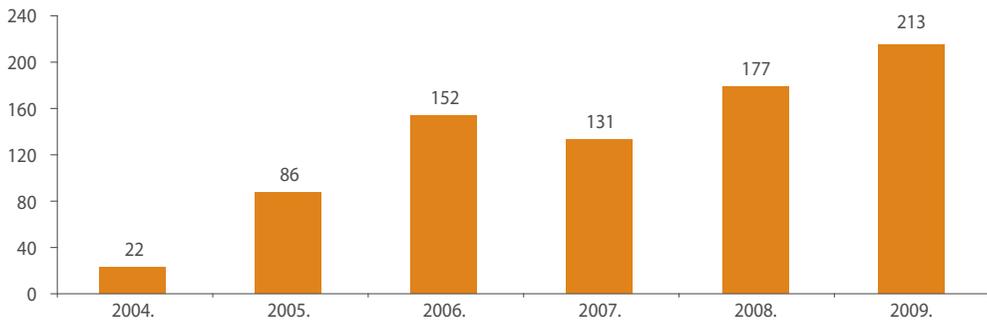
Picture 5 Complaints by the cities, where only those with over 20 complaints are included (showing the share of locations with prison facilities):



Picture 6 Number of complaints regarding pension insurance (2005-2009):

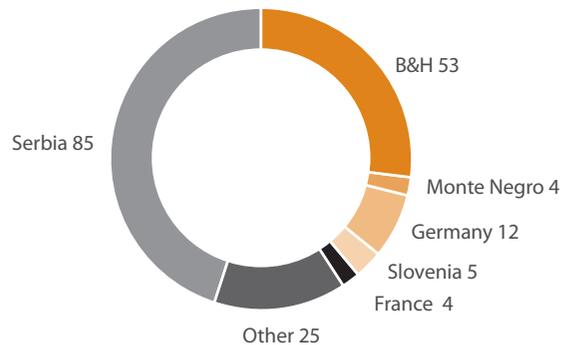


Picture 7 Number of complaints by persons deprived of liberty (2004 - 2009):



Increase in number of complaints from persons deprived of liberty refers to the fact that they are visited on a regular basis at prisons and that they had gained better information on rights and mechanisms related to protection of their rights.

Picture 8 Complaints from abroad:



Picture 9 Comparable illustration of complaints according to the legal areas (2006-2009):

Area:	2005	2006	2007	2008
Judiciary	266	276	299	334
Pension insurance	343	258	153	123
Right to reconstruction	207	208	116	84
Persons deprived of liberty	152	131	177	213
Construction / physical planning	73	129	81	79
Housing care issues	63	117	56	28
Status-related rights	50	88	56	55
Ownership rights	19	88	114	45
Temporarily taken over property	45	40	15	7
Labour and civil servants relations	40	73	100	151
Social welfare	40	70	46	59
Conduct of the police officers	28	52	45	41
Healthcare	23	49	51	49
Family rights – guardianship	/	/	23	49
War veteran rights (status, pension, housing)	20	44	37	39
Housing relations	44	41	33	28
Denationalisation	29	39	32	24
Utility services	/	/	/	13
Access to information	/	/	/	10
Refugees, displaced persons and returnees	43	7	4	4
Non-jurisdiction/incomplete complaints	65	61	48	65
Other	150	147	74	155
TOTAL	1655	1878	1560	1655



Analysis of work according to various administrative areas

Reconstruction – Housing Care - Restitution of temporarily taken over property

Complaints in the areas of reconstruction, housing care and restitution of temporarily taken over property refer to the work of the Ministry of Regional Development, Forestry and Water Management (hereinafter the Ministry of Regional Development), especially: the Directorate for the Areas of Special State Concern (hereinafter the ASSC Directorate), Directorate for Reconstruction and Directorate for Regional and Local Infrastructure. Out of total 122 new cases in 2009 concerning the work of the Ministry of Regional Development, 84 refer to the reconstruction of the family houses and infrastructure, 7 to the restitution of temporarily taken over property, 4 to the status-related rights of the exiles and 1 to the housing issues.

The Republic of Croatia is investing considerable means into the reconstruction of the housing fund, houses and infrastructure destroyed in the war, and at the same time is accomplishing proposed targets such as: reviving war stricken areas and return of all the displaced people to their homes. However, the process is furthermore made difficult due to two reasons: insufficient financial means and unemployment problem. Specifically, reconstruction of houses and infrastructure (roads and water supply) call for large investments. Additionally, a percentage of unemployed persons is higher in the war stricken areas and economy in the area is underdeveloped in comparison with other areas of the Republic of Croatia.

These areas are inhabited by elderly people living on low income with at average low level of education. Besides the lack of electricity infrastructure, water supply and roads, life is additionally made more difficult by other unresolved matters such as de-mining, access to health services, kindergartens and cultural events.

In comparison to previous years, a number of complaints from this area decreased. Human rights are severely violated in some of the remaining cases due to the excessive length of the procedures. It has been noted that procedures in some of these cases last over 10 years.

A) Directorate for the Areas of Special State Concern

Complaints from within the jurisdiction of the Directorate received in 2009 referred mostly to the unduly long procedures concerning the cases regarding housing care issues, failure to issue the administrative act upon the request, and failure to return temporarily taken over property.

Housing care

Two most common complaints regarding requests for settling housing care issues concern the work of the Ministry: excessive duration of the procedures (some of the procedures last over 10 years) and failure to provide information to citizens about the reasons for protracted procedures. Citizens frequently attempt to obtain information regarding the status of their cases from the relevant institutions in vain. Finally they turn for help to the Ombudsman.

Citizens more frequently complain about untransparent procedures concerning settling of their housing care requests with comments that they themselves know of the existence of empty apartments while the competent bodies deny that. Frequent complaints about the poor quality of the granted apartments and obvious favouritism shown by some biased officials towards certain people in granting them better quality apartments continue as well.

The reasons for such conduct citizens often attribute to corruption and nepotism and more frequently to intolerance towards members of other ethnic minorities as well as unprofessional work of officials.

Restitution of the temporarily taken over property

In the course of 2009 seven new complaints were received from the owners who were not able to return to their taken over houses because of the fact that their property had been temporarily taken over and given to temporary users who still use them. Some cases from previous years have not been finalised as yet mostly due to inefficiency of the competent Directorate for the Areas of Special State Concern.

Some owners had problems with the temporary users who undertook some reconstruction work on the said property and later on filed lawsuits against the rightful owners demanding the return of the invested means. The courts ruled in favour of temporary users, obliging the rightful owners to pay considerable amounts of compensation even in the cases where the competent commission confirmed that the said property was no longer suitable for living.

The Government of the Republic of Croatia brought the Conclusion in 2006 based on which the state would, through settlements, compensate these amounts to the temporary users instead of owners, however only a small number of cases was concluded in that way.

B) Directorate for Reconstruction

20

The Reconstruction Directorate issues decisions on appeals against first instance decisions on reconstruction of houses. At the end of 2009 there were still 7200 pending cases. The citizens' complaints primarily refer to inordinate length of proceedings which often last over 7 years, and in some cases they last over 11 years.

After the intervention of the Ombudsman, some appeals have been solved within reasonable time, but most of the cases were left unfinalised.

Some complaints refer to the categorisation of the damage on family houses, quality of reconstruction work (strengthening walls, size of windows, quality and arrangement of water and electricity installations, quality of sanitary tiles and similar). However the complainants were informed that such issues could only be solved before the court after conducting expert evaluation.

Pension and disability insurance

A number of complaints in 2009 in this legal area dropped in comparison with previous years while the complaints regarding the work of the competent bodies of the Croatian Pension Insurance Institute (HZMO) refer primarily to inordinate length of proceedings.

The Ombudsman Office established cooperation and regular contacts with HZMO related to the implementation of appropriate provisions regulating fulfilment, changes and termination of pension insurance rights and protection of the complainants guaranteed by the Constitution and Law.

HZMO Central Service in Zagreb and Agency for the Supervision of HZMO delivered statistical data and working reports to the Ombudsman in 2009 as well.

Based on the assessment of numerous complaints related to the implementation of the social insurance contract with the former Yugoslav states, we find necessary to establish better communication and cooperation with the insurance holders in order to shorten the length of the proceedings and provide better protection of the pensioners' rights.

Physical Planning and Construction

In 2009, the Ombudsman received 11 complaints referring to the area of physical planning and 68 to the area of construction, out of which 24 complaints referred to the issuing of the building permits for construction, and 44 were related to conduct and work of building inspection.

Physical planning

A public debate on the proposal of an urban zoning plan is a democratic means of protection of citizens' rights. The conducted public debate, besides providing prerequisite for accomplishment of legal physical planning, presupposes that citizens had been introduced to the planned construction activities in the areas of their local community.

As a rule, the Ombudsman is addressed by the citizens who did not participate in a public debate on the proposal of the zoning plan and who often disregarded the invitation to gain information about the spatial planning documents for the location permit according to which the concrete construction would be undertaken and in that way did not use democratic means to protect their rights, or failed to use the right sufficiently and in timely manner.

As is the case in previous years, in 2009 the Ombudsman was requested by the citizens, within area concerning protection of ownership rights, to inquire whether local self administration units indeed restricted complainants' ownership rights (manner of disposition of ownership) by spatial or urban planning. However, in cases where citizens demanded protection from the Ombudsman it was established that the local self administration units had indeed conducted assessment of public and private interests. As a rule, a balance between local unit's interests and general interest of all owners was accomplished. However, the problem lays in further delays in realisation of the urban planning, especially in cases important for improving living conditions.

Decision on conditions of building and building permit

As previous years, the citizens as a rule demanded help from the Ombudsman because they failed to receive an administrative act within the due legal term and only in a smaller number of cases citizens complained against numerous repeated procedures at the first instance body or because of the annulment of the administrative act by a right of supervision. Since the citizens are not allowed to initiate construction without a permit, they suffer damages. Procedures initiated upon the request for the issuing of the building permits are excessively long. As a rule, not a single procedural action is executed within the legal 30 days deadline for issuing the building permit.

The Ombudsman's opinion on subsequent annulment and repeal of a building permit by a right of supervision without any responsibility for such decision, specifically regarding state frequent interference in final and valid administrative acts, was confirmed by the decision of the Constitutional Court of the Republic of Croatia number U-III B-1373/09, from July 7, 2009. Valid building permit falls under the right of ownership pursuant to article 48, item 1 of the Constitution and article 1 of Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms. The state is not allowed to interfere partially in the recognised rights of citizens by annulment of the administrative acts (construction permissions and building permits) once they become valid unless such an annulment is in the best interest of the Republic of Croatia and upon payment of compensation equal to its market value, according to article 50, item 1 of the Constitution, to the private individuals suffering damages upon annulment of the administrative act.

The Ministry of Environmental Protection, Physical Planning and Construction ought to adopt legal practice which would define and determine criteria for establishing when and in which cases (misuse of the regulation) should the issued building permits be considered as a violation of the interests of the Republic of Croatia (article 52 of the Constitution), in order for the valid building permit owned by the investor to be annulled by a right of supervision (with payment of compensation equal to its market value).

Building inspection

Concerning illegal constructions, as a rule the Ombudsman is addressed by the citizens who are not satisfied with the way in which the building inspection works with respect to non-enforcement of forceful demolitions. In three cases monitored by the Ombudsman, the procedure was not finalised, in spite of the fact that inspection supervision of the illegal construction was carried out for the first time in 1998/1999.

Upon studying complaints requesting protection of the Ombudsman concerning illegal construction issues in 2009, the Ombudsman's concluded that only in a small number of cases the inspection supervision failed to provide protection of citizen's rights on time or within legal deadline. The citizens' rights in these cases were finally protected after the Ombudsman informed the Directorate for Inspection to monitor the particular construction cases. The complaints were related to the cases where first inspection supervision of the particular constructions should have been conducted and inspection measures issued (first inspection).

Unsolved inspection cases are mostly those where the building inspection consciously avoids conducting further procedural acts for finalisation of the procedure because it cannot find a suitable solution for both the investor and the state. These are cases in which the inspection decision had already been issued but reasonable reasons for enforcement of a demolition decision could not be found and at same time

legal basis for suspension of the procedure did not exist. These are mostly the cases where the legalisation of the constructed building is not possible due to, for instance, unresolved property and other issues or deviation from the valid urban plan. The construction of the building is completed, the building is used and it does not differ to a great extent from the surrounding environment.

The citizens cannot be held liable or suffer any kind of harmful consequences for the construction which was conducted in accordance with the act which was in force at the time of the beginning of the said construction but was later on annulled. In each individual case it should be assessed whether building permit (subsequently cancelled permit) caused large-scale violation that would surpass „legitimate expectations“ of the citizen whose construction permit had already been formally granted by the state (just balance between interests of the party involved and public interest). Inspection decision must be enforced only in cases of the large-scale violation which harms public interest of the Republic of Croatia (Decision by the Constitutional Court, number: U-III-3124/2008 brought on April 8, 2009).

The Ministry of Environmental Protection, Physical Planning and Construction is obliged to adopt and define its opinion towards construction cases in which measures related to enforcement of demolitions cannot be conducted. Until inspection case is not concluded by the administrative act, the threat of demolition measure stated in the effective decision, keeps investors in the situation of legal insecurity. On the other side, the parties involved expect and demand that the state authorities take action in accordance with the acts issued by the building inspector.

Housing relations

In the area of housing relations, all procedures initiated until the enforcement of the Act on Apartment Lease (that is until November 5, 1996) based on the transitional provision of article 52 of the Act on Apartment Lease, are still conducted according to the Law on Housing Relations, which was considered a valid regulation when these procedures were initiated but which has not been in force for 13 years.

In 2009 citizens filed 28 complaints because they failed to achieve protection of rights guaranteed by the said Law. In the course of 2009, 16 complaints from the previous years were also examined. A considerable number of received complaints do not fall within the jurisdiction of the Ombudsman and relate to possibility of renting social apartments based on public tender (social housing), possibility of purchasing social apartments, unfavourable conditions for purchase of social apartments (market value and one-time payment) or management of residential buildings and various relations which arise as the consequence of living in the residential building.

In spite of the fact that the Constitutional Court repealed the provision of paragraph 2, article 40 of the Act on Apartment Lease, the issue related to the rights of the protected tenants in private apartments and the rights of the rightful owners to such apartments still remains unsolved. In cases in which the court decisions related to annulment of the lease contract and eviction were brought, the preconditions for eviction of tenants from private apartments were still not regulated and inequality of citizens before the Act on Apartment Lease was not prevented.

Inequality of citizens before the law represents a special problem for the tenants in private apartments who due to low economic status are not able to finance professional legal aid before the Supreme and Constitutional Court of the Republic of Croatia. Both, the Constitutional Court and the Supreme Court

estimated that the enforcement of court decisions on cases related to annulments of contracts and evictions of tenants should be postponed. However, the rightful owners who intend to move into these apartments themselves or who attempt to move their descendants, parents or persons obliged to support into these apartments, manage to conclude the procedures before lower instance courts (since tenants lack sufficient financial means for further procedure). Thereupon, evicted tenants are put in a difficult socio-economic position with unresolved housing issue.

War Veterans – a right to housing care

The complaints concerning the Croatian Homeland War Veterans and the members of their families referred mostly to their failure to accomplish housing care rights. They failed to fulfil conditions for achievement of the said right, were refused the advantage in settling housing issues and were denied the right to purchase apartments. Basic objection concerning the work of the competent central body was seen in inordinate length of the procedures. Lack of financial means; undertaking necessary procedures in order to solve the administrative preliminary question, or exercise the right to efficient legal remedy (complaint, filing a lawsuit or other legal remedy) should not be the reasons or sufficient justification for disrespecting the legal deadlines and several year postponements.

Civil status

Complaints concerning civil status rights referred mostly to the issuing of extracts and certificates from the state registers.

For the second year, individual complaints point to the problem faced by citizens whose name or surname consists of words joined by hyphen.

Law on Personal Names prescribes that name and surname used by a person in legal issues may each consist of at the most two words.

Central State Administrative Office (now Ministry of Public Administration), issued instructions to the register offices related to the implementation of the Law stating: "...hyphen as a punctuation mark cannot be an integral part of the name or surname. In case the name or the surname is registered in state register office with a hyphen, the registrar is instructed to issue documents (extracts, birth certificates, marriage certificates, etc.) without a hyphen, because a hyphen cannot be considered as an integral part of the personal name."

Such certificates, besides changing identity and violating legal rights in using personal name, cause a number of practical problems for the citizens in daily life. In the course of applying for tenders, identification cards differ from previously issued school certificates and diplomas. As a customer during bank identification process, personal name in identification card differ from the personal name written on the bank account. During renewal of the personal documents after expiry, personal name in the old document differ from the personal name in the extract issued by the state register. It is often the case that a same person has personal documents (identification card, passport, driving licence) with various personal names. Upon recommendation of the Ombudsman, the Legislation Office of the Government of the Republic of Croatia submitted a statement regarding application of the Law on Personal Names.

It stated that article 2 of the Law on State Registry Books prescribes that facts registered at the state registers and the facts that they prove consider truthful until is proven otherwise by the law. In accordance with the mentioned provision of the Law on State Registry Books, personal name should be used in the same form as registered at the state registers. According to the feedback information, the register offices act in accordance with the statement of the Government Legislation Office.

In 2007 the Ombudsman sent an initiative to the Croatian Parliament concerning the amendments of the Law on Personal Names. The then Central State Administrative Office supported his initiative and made commitment to draft working text amendments of the law, however nothing has been done in that respect as yet.

Civil service and employment relations

Complaints in the field of civil service and employment relations in 2009 referred to rights violations in the procedure of admission to the civil service, unlawful suspension of contests, disciplinary and similar procedures, disposal and termination of service, reassignment, appraisal, termination of civil service by law, the status and the rights of employees in state bodies, the status and other rights of local employees, especially of the heads of administrative bodies of local units.

Also, the complaints referred to violations of civil servants' rights in the institutions of culture and in schools, as well as in the municipal and other public services in view of the implementation of the procedure of establishing employment without a public contest thus failing to respect provisions prescribing equal access to public services for all citizens. In that way unemployed Croatian Homeland War veterans were not able to exercise their right of priority in employment in recruitment procedures in the institutions and other public services, which is stipulated by a special law.

Frequent changes of the legislation governing the civil service and employment also contributed to the violations of the civil servants' rights, as well as numerous ambiguities arising from their application, the excessive duration of administrative and administrative-court proceedings, especially as a result of repeated adoption of unlawful acts after annulment of decisions before the Civil Service Commission or judicial review before the Administrative Court of the Republic of Croatia.

Local and regional self-government

Ombudsman was addressed by the Association of the Cities of the Republic of Croatia, for protection of the constitutional right to local and regional self-government and fundamental provisions of the European Charter of Local Self-Governments. Specifically their complaint referred to the fact that, during the course of drafting the law on obligations and rights of the said units, the city units were not granted any rights, that is, possibilities to express opinions in interest of the said units, especially related to decentralising work for the local population benefit as well as ensuring appropriate funds necessary for performing these new activities.

Hence, according to the allegations stated in their complaint, national legislation, contrary to the provision of the European Charter, does not specify in detail or ensure necessary procedure for gathering opinions from the local and regional self-government by which they could participate in provisions-drafting procedure, and thus influence decisions on the issues that directly concern them.

Some complaints referred to the violation of rights from the area of municipality utilities services, especially regarding provisions related to the rights and obligations of citizens which are unfounded in law.

These complaints referred to the costs of drinkable water supply and planning, utility fees, cemetery building fees and others, thus putting certain groups of citizens in an unequal position.

The control over cost allocation of drinkable water is not consistently formed and controlled in cases where the services are delivered by a single supplier, that is, the prices are not market based and formed by two or several suppliers for the same service. In terms of garbage disposal prices, the units of local self-government still fail to ensure criteria for the cost allocation based on the quantity of services provided, which is stipulated by the Consumer Protection Act.

Finances

In the field of finances, the largest number of complaints in 2009 referred to taxes, contributions, custom fees and duties.

The complaints were mostly submitted by craftsmen who did not officially cancel their craft trades after ceasing to perform their work and who did not cancel their pension and health insurance or who failed to settle related claims, thus continuing to receive slips for pension and health insurance, and even writs of executions. In cases of cancellation of a certain craft trade, the competent economic bodies deliver decisions on termination of all activities to the Tax Administration Office, the Croatian Health Insurance Fund and the Croatian Pension Insurance Fund (in total nine addresses). After observing procedures related to individual complaints, it can be concluded that no one or almost no one acted according to the decisions, in spite of the fact that mentioned institutions have control and supervision services.

Social welfare

As in the previous reports the complaints mostly refer to the need of further harmonisation of legislation with the comments and conclusions of the European Committee for Social Rights related to the First report on the implementation of the European Social Charter submitted by the Government of Croatia. It refers to low amount of permanent assistance awarded to a single person and a need for automatic indexing as the solution for providing the base for social contributions. Aliens with temporary residence should be granted a better access to social welfare rights.

Homeless people face a series of problems related to accomplishing of their social rights, especially those who do not have a residence permit in the area in which they reside. Thus they are left to the care of the local community in which they reside temporarily. The quality of care depends on decisions or social programs of the local self-government units which differ essentially depending on fiscal possibilities of the said units.

The reform of the social welfare system is slow and does not show expected results. In accordance with Joint Memorandum on Social Inclusion (JIM) of the Republic of Croatia (signed on March 5, 2007 between the Government of the Republic of Croatia and the European Commission), and the Project on

Development of the Social Welfare System, the organisation and quality of social services should have been improved while the scope of housing related support should have been decreased (prevent institutionalization that is implement deinstitutionalization). Also development of management information system, especially among social welfare centres should have been ensured. Creating necessary preconditions for improving activities within the scope of welfare services (conduct quality business processes, informatization, establish uniform data base, register of users, continued and quality education of professional workers) would provide a better access to social rights and more satisfied social care beneficiaries.

Family-legal rights and guardianship

Change in the legislation related to the persons deprived of legal capacity, especially of the Family Law, should be based on the international standards of human rights guaranteeing fundamental right to self-determination, principles related to respect of human rights, protection of dignity and prohibition of discrimination. The institute of deprivation of legal capacity and the institute of guardianship should be systematically changed in a way that it allows for greater rights and protection mechanisms of persons under guardianship (it especially refers to article 12 of the UN Convention on the Rights of Persons with Disabilities). Specifically positive comparative experiences of the European Countries should be applied, less restrictive instruments for providing help to persons with disabilities should be introduced as well as support provided while making decisions, without depriving them of their legal capacity and jeopardizing their independence and human dignity.

Due to lack of interest of their relatives, acquaintances and other persons, the centres for social welfare more often nominate a social worker at the centre for their guardians (so called immediate guardianship). It is a well known fact that social welfare centres do neither have enough staff, nor financial means for performing this very important public duty in a satisfactory manner. Such a situation opens up the possibility of omissions in the performance of their duties and in some cases even causes actual damage to the protected person. The social welfare centres should be alleviated of performing certain public duties (they perform over 150 public and other duties). It is our opinion that appointment and later revocation of the appointment of the guardian, as well as giving previous clearances regarding activities that surpass the regular activities when dealing with property and important rights of wards should fall under jurisdiction of the court ensuring expeditious proceedings.

The Ombudsman receives the complaints from the divorced parent with whom the child does not live (as a rule these are fathers) regarding their visitation rights (meetings and spending time with their child) in accordance with the temporary or valid court decision. The family mediation is currently not available in the Croatian social services, except as a legal provision according to which the parent of a minor child has to go through the mediation process. According to the amendments of the Family Law and the Law on Social Care the family centres would be given a new authority: conducting a family mediation free of charge.

People in the third age

In 2009, the parties turned directly to the Ombudsman with complaints related to a lack of uninstitutional services dedicated to the elderly people in their local community, specifically a lack of accommodation at the homes for the elderly and incapacitated persons and the lack of palliative care services. Mostly the elderly themselves turned to the Ombudsman for help, or in a small number of cases, their closest relatives.

A continued increase of absolute and relative number of elderly persons point to the necessity of the change in pension, health care and social welfare systems, which must meet the principles of independence, social inclusion and respect for the dignity of the elderly persons and with respect to the economic possibilities of the society. It is necessary to strengthen un-institutional forms of social care for the elderly and create preconditions for achieving their easier active inclusion into the social life (various forms of volunteering jobs, education and similar). We also emphasise a need to ensure stationary health care institutions for the smaller number (2-3%) of the most endangered and integrate these institutions into social and health care system.

Uninstitutional care has been provided, in various forms, to the elderly through pilot programs of various bodies and organisations. The Ombudsman believes, despite the accomplishments achieved in that area and respect for various efforts which had been invested in that field, that uninstitutional care is not equally available to all Croatian citizens on the territory of the entire country (especially in rural areas and on the islands).

Complaints related to the protection of the elderly persons partially referred to the lack of palliative care programs due to the fact that such a care is offered mostly in illnesses, especially common among older persons. The palliative care is mostly provided on volunteer basis and only in a small number of cases is such a care provided through health care centres.

The Ombudsman believes that the palliative care programs should be established urgently in accordance with the provisions of the Health Care Act and the program brought by the Government (Program of the Government of the Republic of Croatia for the mandate 2008-2011) and not exclusively based on volunteers, without any disrespect for the role of the volunteers in this field. Also it is necessary to include hospice care because the experience has shown that the palliative care cannot solely be based on uninstitutional forms of care. The manner in which the society treats its elderly and incapacitated persons is in a way a test of its true dedication to human rights. Therefore the Ombudsman will pay special attention to this problem in the year 2010.

Health Care

The Ombudsman received 33 complaints in the field of health care. Most of the complaints were submitted against the quality, content and type of health services rendered. Some of the complaints referred to the violation of the rights under the Act on the Protection of Patient's Rights specifically the violation of the right to access medical records.

A smaller number of complaints referred to the possibility of forming joint professional associations within the health sector for the purpose of strengthening their rights and interests, as well as improving their status (Croatian Association of Pharmacy Technicians, Croatian Laboratory Association). Solution to the mentioned activities was prescribed by the Medical Profession Act brought by the Croatian parliament on July 10, 2009.

Acting upon the complaint of the Croatian Laboratory Association, the Ombudsman proposed that the Ministry of Health and Social Welfare examine their requests for forming professional associations and enable them to participate in drafting of the health care protection law. The Ministry of Health and Social Welfare invited the Croatian Laboratory Association to the meeting organised for the purpose of drafting the Act on Medical Professions, by including the members of the Association into the working group in charge of executing preliminary activities for establishing the Health Workers Chamber.

Persons with mental disabilities (admission to a psychiatric institution)

In 2009, the Ombudsman, in addition to acting accordingly upon complaints referring to forced or involuntary hospitalisation (complainants were persons with mental disabilities), visited the following institutions where freedom of movement is restricted: Lopača psychiatric hospital and Dr. Ivan Barbot neuropsychiatric hospital in Popovača. During his visit to the neuropsychiatric hospital the Ombudsman paid special attention to the use of physical force and restraining measures as well as to the examination of premises of the Forensic Psychiatry Institute. Since the maximum security psychiatric facilities do not exist in the Republic of Croatia, the Ombudsman believes that maximum security wards should be established for the purpose of providing appropriate medical treatment in the psychiatric institutions dedicated for accommodating and treatment of mentally disabled. Since there does not exist a single sub-legal provision regarding conditions in terms of space, staff, medical and technical equipment necessary for the performance of health care activities within the psychiatric institutions dedicated to treatment and accommodation of mentally disabled persons, the Ombudsman furthermore recommends introduction of the sub-legal provision according to which those conditions should be prescribed. In 2009, the Ombudsman also visited the Centre for Mentally Ill Persons in Trogir. Concluding remarks by the UN Committee for Human Rights related to the periodical report by the Republic of Croatia on Implementation of the International Covenant on Civil and Political Rights, point 12, expresses concern regarding the use of the enclosed restraint (cages/net) beds as means for restraining mentally ill patients, including children in the institutions for mentally ill. We emphasise that the Ombudsman, during his visit and examinations of the psychiatric institutions has not seen any net/cage beds nor has any knowledge on the use of such beds in the health and welfare systems. However, taking into consideration the expressed concern by the Committee, the Ombudsman will pay special attention to the existence of such beds during his visit to mental institutions. Additionally, special attention will be paid to the use of physical force and restraining means in protection of rights of mentally disabled persons.

In 2009, the Ombudsman continued his cooperation as part of the joint project, in the field of human rights protection of persons with mental disabilities, with the State Commission for the Protection of Persons with Mental Disabilities. As part of the project, visits to the psychiatric hospitals in Popovača, Ugljan and Rab were conducted in 2009.

During his visits to the psychiatric institutions, the Ombudsman observed a lack of other appropriate services/centres for protection of mental health at the local level, which would, through their activities, be able to reduce institutionalisation of the mentally ill persons and make easier for them to remain with their own families. The Ombudsman requested information from the Ministry of Health and Social Welfare on the activities undertaken in that respect however the requested data has not been provided as yet.

School education and science

The Office of the Ombudsman received 18 complaints in the fields of preschool, primary and secondary education and higher education and science in 2009. Although the number of complaints was not large, the Office observed two problems faced by a considerably larger number of citizens than those who turned to the Ombudsman for help. These problems refer to school tuitions and rate of student's participation in the cost of their studies as well as the recognition of foreign diplomas.

The universities and their adjoining institutions are autonomous in bringing decisions related to the amount of participation of the students in the costs of their studies but in accordance with the Constitution, international agreements and the Act on Scientific Activity and Higher Education.

The deans of certain universities bring decisions on student's participation contrary to the general acts of the universities and in that way put unrightfully some of the students in unfavourable position. Some of the complaints referred to the amount of participation of the part time students, as well as to the amount of the post graduate student's tuition. Complainants believe that the share of their participation fees is unproportionally high in comparison with the real cost of the study. The students complained also about disregard shown for social criteria in determining their share in costs of study.

The Ombudsman sent a recommendation to the Ministry of Science, Education and Sports to undertake certain measures within its jurisdiction regarding the arrangements of the cost of study and participation of students in accordance with the Constitution, international covenants and the Science and Higher Education Act.

Problem regarding the recognition of the foreign diplomas was also observed by the Ombudsman. From July 1, 2004 the Law on Recognition of Foreign Diplomas is in force based on the principles of the Convention on the recognition of qualifications concerning Higher Education in the European Region from 1997 (Lisbon Convention). The Law acknowledges two types of recognition: professional and academic. The observed problems referred to the professional recognition of higher education qualifications for the purpose of obtaining employment in the Republic of Croatia.

During negotiations on Chapter 3 regarding the Right of Establishment and Freedom of Association it was established that Croatia does not have a legal solution regarding the recognition of professional qualifications for the purpose of joining free market for the regulated professions in accordance with the Directive 2005/36/ of the European Union. Therefore the Croatian Parliament brought the Law on regulated professions and the recognition of professional qualifications on October 2, 2009. It is to be expected that the problems would be solved upon adoption of implementing sub-legal acts.

Use of agricultural land owned by the Republic of Croatia

The complaints received in 2009 were dealt with according to the provisions of the Agricultural Land Act (National Gazette, no 66/01 from 09/05) although the new Agricultural Land Act had already been in force (National Gazette, no 152/08) because the complaints referred to the tender procedures conducted according to the previously valid Act. In total 10 complaints were processed and only a smaller number

dealt with violations of the legal rights of the complainants. Rather difficult communication with the Ministry of Agriculture, Fisheries and Rural Development was observed in the cases related to obtaining reports on tender procedures mentioned in the complaints. Regarding the use of the mentioned land, it is necessary to intensify the implementation of the prescribed administrative supervision over conducted tenders and over selection of the most favourable tender for rent and sale.

Property confiscated during the Yugoslav communist rule

During 2009, the Office received 21 complaints related to that area, and 31 were underway in total. Most of the complaints referred to the excessive duration of procedures.

The procedure regulated by the Act on the Compensation for the Property Confiscated during the Yugoslav Communist Rule is rather complex and requires extensive legal documentation and legal processing of that documentation from a person submitting a request. That presupposes a detailed and repeated checking of facts and knowledge of provisions based on which the property was confiscated from their rightful owners (confiscation, nationalisation and expropriation) as well as of the regulations brought by the Republic of Croatia after its independence.

The complaints clearly show that the complainants are mostly elderly people for whom it is difficult to collect all the required documentation, that the competent offices are burdened by other things, and some first instance procedures last over 10 years.

The State Administration Offices of various counties are the first instance bodies in charge of implementation of these procedures. The Ministry of Justice brings final decisions regarding the aforementioned complaints and the procedures last for years. Incorrect interpretation and dilemma of the first instance judicial bodies was observed in the application of the article 9 of the Law on Compensation and the article 77 of the said Law, that is, in cases where a heir who was first in the line of inheritance submitted a request for compensation within legal deadline, while the heir in the second line of inheritance did not submit the request at all, it was established that the mentioned share of the compensation belonged to the state.

The Administrative Court of the Republic of Croatia finally solved this dilemma by bringing a decision (Us-2878/1999 from December 7, 2000) expressing the opinion on solving such cases; in case a heir who was first in the line of inheritance of the former owner of the confiscated property does not submit a request for the return of the ownership of the said property, the property is returned to the heir in the first line of inheritance who submitted such a request. The Court brought such a decision because the Law on Compensation had not been enforced with an aim to transfer ownership of the confiscated property to the Republic of Croatia, but solely in order to correct or at least alleviate to some extent the injustice brought upon the owners whose property had been confiscated.

Access to information

Citizens are addressing the Ombudsman Office increasingly due to the failure to implement the Access to Information Act and are asking the Ombudsman to help them in mediation with the competent bodies which do not respond to their requests. It was noted that citizens increasingly demand from the authorities to respect their rights based on the Access to Information Act in order to gain information about the state of their cases or speed-up their administrative or court procedures under other existing laws. The most serious problem faced by the citizens in fulfilling their rights is that the authorities and public bodies turn a deaf ear to the information request of the citizens and in that respect violate their legal and constitutional rights.

In some cases it was noted that the administrative act was not adopted within the legal term, in other cases the administrative act was not brought at all, although the request to access information was not respected.

Access to Information Act does not prescribe any special procedural provisions but points to the application of the provisions of the Law on General Administrative Procedures and the Law on Administrative Disputes. Thus judicial supervision of the legality of certain administrative acts brought by the administrative and public authority bodies is ensured.

Better training of public servants would help avoid unnecessary disputes which additionally burden the Administrative Court of the Republic of Croatia.

Complaints against the work of judiciary

Although the Ombudsman has been informing the public for years that he is not authorised to examine complaints referring to the work of courts and judicial bodies, a number of complaints related to the said issues increased in last year.

Most of the complainants were dissatisfied with the outcomes of their cases while the number complaints referring to the excessive duration of the procedure decreased in comparison with the previous years.

Equally as in previous years, if the received complaints needed to be investigated, the Ombudsman forwarded them to the Ministry of Justice as the highest authority for conducting the work of the judicial administration. The Ministry in turn informed the Ombudsman about the steps it had undertaken for the examination of the said complaints.

According to the data of the Department for judicial organisational, staff and inspection tasks of the Ministry of Justice, a number of citizen's complaints and inquiries referring to the work of judicial bodies increased last year and the Department for Judicial Inspection, besides its regular supervisory activities, conducted several supervisions of the citizens' complaints and inquiries at the municipal courts.

Based on the number of complaints provided by the courts it is clearly seen that violations of a right to fair trial within a reasonable time are more common in civil law trials due to excessive duration of civil disputes, and that large amounts of money were spent consequently.

By examining the citizens' complaints from that field it was noted that, due to the slowness of courts in bringing decisions, the citizens were often granted compensation from the state due to violation of a right to fair trial within a reasonable time although some of their complaints are not always legally founded.



After the warning by the Ombudsman last year about legal regulation for protection of a right of citizens to a trial within a reasonable time the Croatian Parliament brought the Act on Changes and Amendments of Judiciary Act (Law on Courts) (NN 153/09 from December 21, 2009), by which it adopted attitudes and recommendations intended for changing the provision of the article 28 of the Judiciary Act (NN 150/05, 16/07 and 113/08) as well as the amendment of article 106, items 3 and 4 of the aforementioned Law.

The adopted changes and amendments of the Judiciary Act enabled more efficient supervision of the administrative work of courts, as well as fulfilment of citizen' rights related to more efficient and competent work of judicial bodies by using the instrument „a request for protection of the right to a fair trial within a reasonable time“.

Persons deprived of liberty

In 2009 the Ombudsman received 213 complaints from persons deprived of liberty which represents an increase in relation to 2008. The complaints mostly related to violations of the right to accommodation in line with human dignity and health standards, rights to health care, work, use of possible advantages by the prisoners, transfers etc. Regular visits to the prison and other correctional institutions reflected in an increase in the number of complaints and raised awareness among prisoners regarding the scope of Ombudsman's jurisdiction. In the course of 2009, the Ombudsman examined seven prisons and six other penal institutions (penitentiaries, correctional institutions and the Prison Hospital). Prison examinations confirmed that over crowdedness is the underlying problem within prison system and a generator of most restrictions and violations of rights of persons deprived of liberty while the accommodation conditions fail to meet hygienic and health requirements. It has not been possible to ensure stay in the fresh air in duration of at least two hours per day for all persons deprived of liberty, especially not detainees, which furthermore makes difficult or impossible for the prisoners to serve their prison sentence due to the fact that serving prison time is limited to laying in bed for 22 hours. Due to over crowdedness some other prisoners' rights such as the right to health protection have been restricted.

Numerous detainees continue to complain against the length of criminal proceedings. Furthermore, it was concluded that treatment departments had not been adequately equipped by necessary experts, especially when working with prisoners who in addition to serving their prison sentence require psychiatric treatment. Many prisons and penitentiaries do not have a full-time staff psychiatrist. Treatment of prisoners in maximum security wards has also been noted as a problem.

Many penal institutions lack the activities aimed at developing skills the prisoners need upon their release which would ease their integration into society.

Concerning the area related to the protection of rights of persons deprived of liberty 2009 was marked by significant amendments to the Law on Execution of Sentences, amendments and partial implementation of the new Criminal Procedure Act, amendments to the old and implementation of the new rule book on serving detention and investigatory prison, the Probation Law. In addition, the decision of the Constitutional Law orders the government of the Republic of Croatia to adapt Zagreb prison capacities to the standards of the Council of Europe and practice of the European Court for Human Rights within a five year period. According to this decision the treatment of prisoners and detainees inside prisons would not be humiliating and some legal shortcomings related to execution of detentions (U-III/4182/2008) would be removed.

Conduct of Police Officers

In 2009, the Ombudsman initiated 41 investigative procedures based upon citizens complaints and media reports related to the excessive use of police force.

The Ombudsman has insisted since his Annual Report 2005 and further on, that normative framework for examination of citizens' complaints should be regulated due to the fact that only by prescribed procedural provisions the material rights of citizens could be guaranteed. Legal disorder or lack of procedures on handling citizens' complaints, submitted according to article 6 of the Law on Police, causes doubts that the procedure is arbitrary, non-transparent, excessively dependent on discretionary assessment, and thus not objective. Regarding the aforementioned, the Ombudsman considers that it is necessary to strengthen the Internal Control Department at the Ministry of the Interior. Autonomous Internal Control Department provides prerequisite for raising professional standards and better protection of citizens. In 2009, the Ombudsman, within his jurisdiction, inspected police custody areas in 16 police stations throughout Croatia. The purpose of the inspection was to establish whether the conditions on the said premises met the requirements of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). During the inspection the Ombudsman bore in mind the attitude delivered in the 2nd General Report by the CPT, stating that since custody by the police is in principle of relatively short duration consequently physical conditions cannot be expected to be as good in police establishments as in other places where persons may be held for lengthy periods, although certain elementary material requirements should be met. Inspections confirmed that some of the police custody areas have been completely reconstructed since the last Ombudsman's visit while others remain in a very poor state. Numerous police custody areas do not have windows, fresh air, toilets and drinking water.

Citizenship – residence of aliens

Complaints in this field referred to excessive length of procedures for obtaining Croatian citizenship, failure of the Ministry of the Interior to act in accordance with the decisions of the Administrative Court of the Republic of Croatia, and insufficiently explained decisions of denial of citizenship status (especially in cases where assessment were made that complainants failed to respect legal order of the Republic of Croatia).

Additionally, problem of certain complainants was that the Ministry of the Interior did not accept the fact that the said complainants, due to objective circumstances could not express their ethnic belonging in the public documents issued by the other states, but stated only their nationality in the process of obtaining citizenship by privileged naturalisation.

There were also recorded cases where persons were denied Croatian citizenship after several years based on the fact that the certificate of citizenship was issued by mistake of the authorised person.

Situation faced by the citizens who suddenly found themselves without the Croatian citizenship after years of being a Croatian national, specifically after finding out that they were nationals of the states they had not even been born in, or that they became nationals of the states which they had never even been to or resided at, cause legal insecurity.

The Ombudsman received several complaints referring to the alien residence from the persons who had filed requests at the Ministry of the Interior for temporary residence but were denied temporary stay for security reasons. According to the opinion of the Ministry of the Interior, the institute of temporary stay is prescribed by the Aliens Act regardless of the purpose of the stay, and it presupposes clear and unambiguous, cumulatively determined preconditions for issuing positive decisions. One of these preconditions is that an alien will not pose threat to public order, national security or public health by his actions. In that context it should be emphasised that article 4 of the Aliens Act prescribes that a security check on an alien for the purpose of determining reasons of national security shall be carried out by the Security Intelligence Agency (SOA). The acts in which SOA brings assessments that a certain person does not fulfil requirements for granting temporary stay do not clearly explain reasons for such assessment but merely state that a person does not fulfil the conditions set by the law.

While this problem is not questionable in cases where an alien comes for the first time to the Republic of Croatia, it is questionable when it concerns an alien who wishes to return to Croatia and who has obtained his housing or reconstruction rights, but is unable to regulate his temporary stay in the country.

Some of them have lived for decades in Croatia and left the country due to war circumstance without previously obtaining Croatian citizenship. And while on one hand the Republic of Croatia supports the return of these persons, one ministry attempts to solve their housing requests, on the other hand some other ministry denies their right to temporary residence.

In these cases the constitutionally guaranteed right to appeal is threatened due to the fact that the Ministry of the Interior failed to provide exact reasons based on which the Security and Intelligence Agency's expressed a certain assessment on somebody's threat to national security. These procedures are still underway.

Roma – status rights

The Ombudsman, as implementation partner of the United Nations High Commissioner for Refugees (UNHCR), has conducted the IPA project since October 2009: Social integration: Support of marginalised communities. The project has regional character and it is conducted in Croatia for the first time. The project is aimed at providing help in the process of regulating legal status of Roma by supporting Roma national program as well as all the efforts within the action plan Decade of Roma Inclusion. The project activities are focused on several areas; protection of the Roma community members from possible racial discrimination, especially of the Roma members dislocated during the war; providing access to free legal aid to Roma members, especially in cases related to personal documents and fulfilment of basic civil rights for Roma; raising awareness among Roma themselves of the need to regulate their status and obtain identification documents and removal of administrative obstacles on their way to accomplish that; conducting regional cooperation with an aim to regulate Roma legal status. The mobile team of the Ombudsman's office regularly visits locations populated by Roma and provides a direct help in solving the issues addressing the status of Roma. Taking into consideration Roma difficult social situation, requirements prescribed by the Ordinance on the manner of calculating and the height of the means of subsistence for aliens in the Republic of Croatia and condition from article 52, item 3 of the Aliens Act which prescribes that an alien shall be granted temporary stay if he has health insurance, that is, if he



encloses proof that he has paid the related obligations, are considered to be an obstacle. It was observed that mentioned provisions cause temporary separations of families in order to fulfil formal requirement of crossing over state borders and renewing/extending their temporary residence status. It has also been observed that Roma women, aliens, married to the Croatian citizens and mothers of the Croatian citizens are granted temporary residence permits with a purpose of reunification of separated families for the less time than the maximum. This highly affects the quality of family life and its functioning. Also, it was recorded in some cases that competent bodies are acting contrary to the article 66 of the General Administrative Procedure Act according to which they are obliged to receive the application being submitted by Roma or make a note of an oral statement. Specifically in some areas, Roma members face further difficulties in submitting applications because they had been assured in advance that their applications are unnecessary and that they would be denied their rights because they had failed to meet the needed requirements. In some cases it was observed that the competent authorities acted contrary to the article 14 of the General Administrative Procedure Act prescribing assistance to unschooled parties. The article prescribes that the lack of schooling or knowledge of the party and other persons involved in the procedure shall not be the disadvantage of the parties and their rights pertaining to them according to the law specifically in cases where a certain number of Roma members had already fulfilled the requirements for submission of applications for permanent stay due to their timely and regular submission of applications for extension of temporary residence permits, however by lacking the legal knowledge they failed to submit a request for permanent stay or the competent body failed to inform them about a possibility for submitting such a request.

International cooperation

Activities related to the status of NHRI

In June 2008, the institution of the Ombudsman was accredited as the national human rights institution (NHRI) for protection and promotion of human rights with status A by the International Co-ordinating Committee of National Institutions thus enabling the Ombudsman office to intensify its cooperation with relevant international institutions and participation at the highest UN forums for human rights.

At the annual assembly of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, (ICC NHRI), held in the period between July 23 until March 27, 2009 in Geneva, the Ombudsman, Jurica Malčić, was elected member of the ICC Bureau of the aforementioned association, established under the auspices of the UN Office of the High Commissioner for Human Rights.

Accredited national institutions are obliged to submit independent reports to the UN treaty bodies of certain human right conventions thus for the first time the Ombudsman participated in the discussion at the Committee for Elimination of Racial Discrimination held at the end of February 2009 in Geneva on implementation of the aforementioned Convention. The proposals by the Ombudsman were included into the concluding remarks of the Committee.

In addition to individual reporting on the human rights implementation of the conventions, the most important role of the national institutions in the international plan refers to their active participation in the process of the so called Universal Period Review of implementation of the fundamental human rights documents adopted by the UN member state. This is a new mechanism of the UN Human Rights Council for assessment of human rights situation in all 192 UN member states. Croatia will be under the review in November, 2010 and the Ombudsman as NHRI with status A was invited to submit an independent report (apart from the state report) until April 19, 2010 on implementation of all human rights conventions signed by Croatia.

The Deputy Ombudsman participated in the work of the Coordinating Body of the European Group of NHRI on June 29, 2009 in Vienna. Cooperation with the Fundamental Rights Agency was on their daily agenda, as well as agreement on priority topics dealt by the European Group of National Institutions, working methods and arrangement of meetings.

European Group of NHRI' Chair Dr. Maurice Manning, a president of the Irish Human Rights Commission, visited the Office on September 24, 2009 and on that occasion shared experiences and opinions with the Croatian Ombudsman, Jurica Malčić.

Participation at the international seminars

Within the joint project of the European Union and the Council of Europe entitled „Peer to Peer Project“, which aims to establish an active network of independent, extrajudicial institutions for human rights protection, the Office employees participated in work of several specialized workshops.

The office employees who work on the discrimination cases participated at the seminar “Access to Rights” in Dublin, on April 28 and 29, 2009, organised by the European Network of Equality Bodies for combating discrimination (EQUINET).

The Deputy Ombudsman attended the 7th Seminar of the National Ombudsman of the EU Member States and Candidate Countries, held under the auspices of the European Ombudsman, Nikiforos Diamandouros, on April 5-7, 2009 on Cyprus.

As in previous years, the Ombudsman was visited by numerous delegations of relevant international institutions and representatives of diplomatic missions in Croatia interested in human rights developments in the country.



Report on occurrence of discrimination

Discrimination





Report on occurrence of discrimination

Upon the entry into force of the Anti-Discrimination Act on January 1, 2009, the Ombudsman became a central equality body for suppression of discrimination. This new competence is defined in the provision of article 12, ph. 2, of the Act prescribing the following:

- he/she shall receive reports of all natural and legal persons,
- provide necessary information to natural and legal persons that have filed a complaint on account of discrimination with regard to their rights and obligations and possibilities of court and other protection,
- if the court proceedings have not yet been initiated, examine individual reports and take actions falling within his/her competence required for elimination of discrimination and protection of right of discriminated persons,
- warn the public about the occurrence of discrimination,
- with the parties' consent, conduct mediation with a possibility of reaching an out-of-court settlement;
- file criminal charges related to discrimination cases to the competent state attorney's office;
- collect and analyse statistical data on discrimination case,
- inform the Croatian Parliament on the occurrence of discrimination in his/her Annual Report and when required, submit extraordinary reports;
- conduct surveys concerning discrimination, give opinions and recommendations, and suggest appropriate legal and strategic solutions to the Government of the Republic of Croatia.

In addition to the aforementioned, in accordance with the provisions 21 and 24 of the Act, the Ombudsman may intervene on behalf of the plaintiff and join the legal proceedings initiated against discrimination as well as he/she may file a class action lawsuit for protection of collective interest of a certain group.

Activities conducted by the Ombudsman in the past period may be divided into two basic groups:

- reactive actions concerning individual citizens' complaints
- proactive actions directed to raising public awareness on prohibition of discrimination, promotion of the Ombudsman as a Central Equality Body responsible for the suppression of discrimination and raising standards of protection against discrimination.

In 2009, the Ombudsman Office opened 172 new files related to suppression of discrimination. The cases have been opened at the request of the damaged parties, at the initiative of the other legal or natural person or at the initiative of the Ombudsman himself. Regarding the mentioned discrimination cases, 169 (98%) were opened upon the initiative of citizens who complained against discrimination as victims of discrimination or persons who witnessed discrimination. The Ombudsman initiated smaller number of cases as response to the media writings – in total 3 cases (2%).

Received complaints referred to the manner of performance on behalf of all state bodies, local and regional self-government bodies, legal persons with public authorities as well as to all legal and natural persons which fall under the Anti-Discrimination Act's jurisdiction.

Table 1. Bodies denounced in discrimination complaints addressed to the Ombudsman

Denounced Bodies	Number of complaints
Natural persons	5
NGOs	4
Legal persons	40
Legal persons with public authorities	19
Legal persons with public authorities and legal persons	1
Legal and natural persons	2
Judicial bodies	12
Judicial bodies and legal persons	1
State administrative bodies	71
State administrative bodies and legal persons	1
State administrative bodies and judicial bodies	6
Local and regional self-government units' bodies	10
TOTAL	172

Out of total number of opened cases in 2009, 130 cases were solved (concluded). In 32 cases the Ombudsman acted according to his authorities under the Anti-Discrimination Act based on suspicion on discrimination. In four cases the doubt of discrimination was established and the Ombudsman sent the adequate suggestions and warnings to the bodies concerned. However, total number of discrimination cases will be known after the termination of remaining 42 cases which are still underway.

Regarding 130 concluded cases in 16 cases parties were advised on their rights and court protection, in one case the Ombudsman recommended to the ministry in charge to change the implementing regulation, in 11 cases it was responded to parties' general inquiry, and in 4 cases, where discrimination was established, the Ombudsman issued recommendation or warnings.

In 8 cases a violation of other rights (but not a doubt of discrimination) were established and the procedure was continued according to the Ombudsman's Act (not on the Anti-Discrimination Act).

Remaining 90 complaints were solved in the following manner:

- a) evidently no discrimination founded or party withdrew complaint;
- b) forwarded to special Ombudspersons, according to the Anti-discrimination Act;
- c) cases where court proceedings had already started or concluded by enforceable decision or, due to the ban of retroactive implementation of the Anti-Discrimination Act – Ombudsman could not act; and
- d) according to the Ombudsman's free judgement.

Regarding the presented statistical data, the number of cases should be interpreted rather as a perception of citizens, who complained to us, than as discrimination occurrences survey according to Anti-Discrimination Act's stipulations. Complaints, in which doubt of discrimination was not established, could be partly interpreted as citizens' distrust towards state administration and court performance as well as unsatisfactory application of material provisions.

Table 2. Manner of solving concluded cases

Manner of solving concluded cases	Total number
Doubt of discrimination was not determined	36
The party received the reply to his/her initial inquiry	11
Recommendation or warning was sent	4
Acting according to the Ombudsman's Act	8
Court decision reached	5
Free assessment of Article 12	5
The party was informed on rights, obligations and possibilities of court and other protection	16
The party dismissed the request	8
Court proceedings underway, matter falls out of the Ombudsman's mandate	11
Initiative for changes of the Act or sub-legal act was undertaken	1
Sent to special ombudspersons	19
Prohibition against retroactive application of the law	6
TOTAL	130

The grounds of discrimination in cases investigated by the Ombudsman's office in 2009 were:

Table 3. Grounds of Discrimination stated in complaints

Grounds of Discrimination	Number	Percentage
Race/ ethnic affiliation/ colour of skin/ national origin	54	31,39%
Gender	17	9,88%
Language	0	0,00%
Religion	4	2,33
Political or other belief	3	1,74%
Property	3	1,74%
Trade union membership	6	3,50%
Education	7	4,06%
Social status/social origin	11	6,39%
Marital or family status	3	1,74%
Age	5	2,91%
Health condition	4	2,33%
Disability	10	5,81%
Genetic origin	0	0,00%
Native identity or expression	0	0,00%
Sexual orientation	1	0,58%
There are no grounds for discrimination and discrimination cannot be determined based on the content of the complaint	44	25,58
TOTAL:	172	100%

As seen in the aforementioned data, a large number of discrimination cases received by the Ombudsman were based on ethnic affiliation, gender, social status and origin, and disability. It is indicative that almost 25,73 % of complaints do not provide any ground for discrimination and discrimination cannot be determined based on the content of the received complaint.

Acting according to the aforementioned cases, it was observed that citizens are not sufficiently informed about the meaning of the term discrimination. Specifically, in a certain number of cases citizens attempt to recycle old, mostly concluded cases by invoking the provisions of the Anti-Discrimination Act. The mentioned trend was especially observed in a first few months of the implementation of the Act. The

largest number of the so-called recycled old cases involves complaints where the complainant is not satisfied with the outcome of the court or administrative proceedings and is attempting to change in its most part already valid court decisions through implementation of the provisions of the new Act. The Ombudsman informed the party in question of his/her rights and obligations in such cases.

A certain number of complaints, as is seen from the statistical data, refer to the events which happened before implementation of the Anti-Discrimination Act, and could not have been dealt with according to the other acts also containing anti-discrimination provisions. In such cases the complainants were as a rule informed about legal principle of prohibition of retroactive application of the law. In cases where consequences of such, earlier created discrimination still exist today, investigatory procedure has been conducted in order to determine whether there exists reasonable suspicion of discrimination.

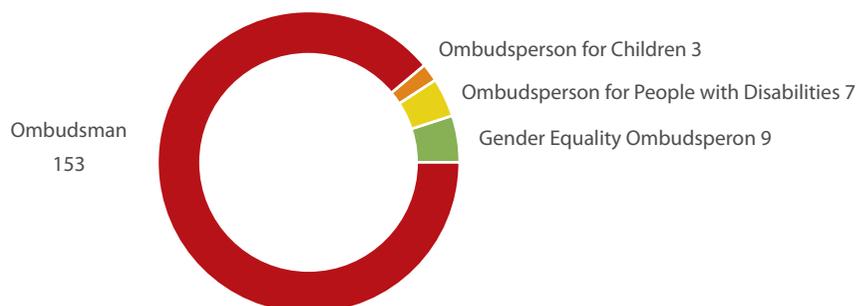
In a certain number of cases it was determined that there did not exist doubt of discrimination, however violation of some other fundamental human rights was established and such cases were furthermore processed as regular cases falling within the Ombudsman's jurisdiction.

Certain number of complaints referred to the already initiated court procedures regarding protection of some other fundamental human rights or solving of a dispute. All such cases were investigated with special care in order to determine whether possible involvement or mediation of the Ombudsman in these procedures was needed. Since the aforementioned court procedures have not been initiated according to the provision of the article 17 of the Anti-Discrimination Act, during first year of the implementation of the said Act, the Ombudsman's authority was not "used" in a single case. It should be emphasised that most „court cases“ deal with the complainants who were dissatisfied with the court proceedings related to their particular cases, specifically the complainants who were dissatisfied with the court decisions, and with the fact that the Ombudsman did not have the authority to take any action in their particular cases.

According to the data of the Ministry of Justice, in 2009 only two legal civil court procedures have been initiated in accordance with Article 17 of the Anti-Discrimination Act, while data on procedures according to Article 16 are still not available.

When the complaints referred to the areas falling under jurisdiction of other special ombudspersons, the complaints were forwarded to them and solved under their competent authority.

- Complaints concerning discrimination on grounds of disability were sent to the competent Ombudswoman for dealing with persons with disabilities;
- Complaints based on grounds of gender, native identity and native expression, sexual orientation and marital and family status were sent to the competent Ombudswoman for gender equality;
- Complaints concerning all forms of discrimination against children are sent to the competent Ombudswoman for children.

Picture 1. Number of cases forwarded to special ombudspersons

The statistics covering the scope of discrimination according to the received complaints is the following:

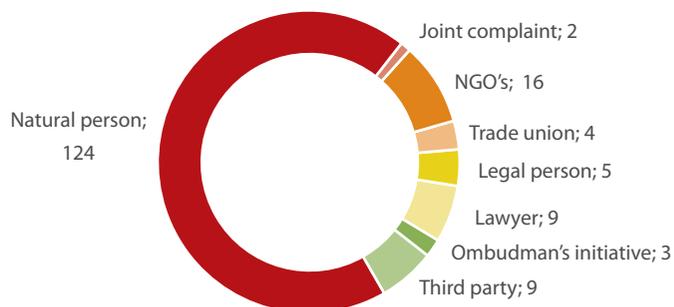
Table 4. Scope of Discrimination

Scope of Discrimination	Number of cases	Postotak
Labour and labour conditions, professional training, retraining	56	32,55%
Education, science and sport	10	5,81%
Social security/social welfare/pension and health insurance/ unemployment insurance	15	8,72%
Health protection	2	1,16%
Justice and administration	51	29,65%
Housing	3	1,74%
Public informing and the media	3	1,74%
Access to goods and services	18	10,46%
Trade union membership and activity in /civil society organizations/political parties or any other organizations	4	2,33%
Participation in cultural and creative work	4	2,33%
Discrimination in general	6	3,50%
TOTAL:	172	100%

This scope, defined by the Act in a very broad and all-inclusive manner, represents a very unique area consisting of different interacting fields such as: social security, social welfare, pension and health insurance and insurance in case of unemployment.

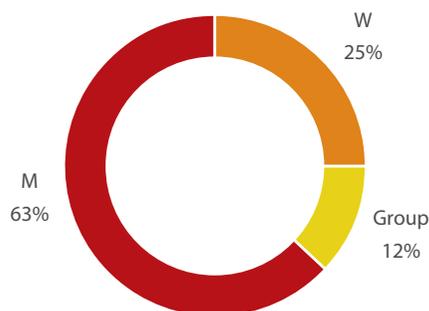
Complainants against discrimination are mostly physical persons. They address the Ombudsman personally, in writing or by e-mail. In order to enable citizens to understand better their rights according to the anti-discrimination legislation and avoid incomplete complaints, a special application form for complaints against discrimination was created and published on the Office's webpage. By completing the said form, the complainant is instructed to collect all relevant data necessary for working on the case. Unfortunately, most complaints were delivered in the so-called free form without prior use of the mentioned form. Result: a large number of incomprehensible and incomplete complaints. Alongside physical persons, civil society organisations were the most active in filing complaints against discrimination. In cases where a lawyer turned to the Ombudsman for help, the proceedings had already been underway, although the said proceedings had not been initiated in accordance with the provisions of the Anti-Discrimination Act. A certain number of anonymous complaints arrived also, and when possible, inquiries were also conducted in such cases as well.

Picture 2. Complainants against discrimination



Anti-Discrimination Act obligates the Ombudsman to monitor statistics related to the gender of potential discrimination victims. Regarding the complaints received by the Ombudsman's office, 108 (63%) of them were sent on behalf of men, in 44 cases (25%) complainants were women, while 20 (12%) received complaints referred to the protection against discrimination of certain groups.

Picture 3. Victims of gender discrimination



In addition to acting upon complaints of discrimination, the Ombudsman conducted other activities as well directed towards raising public awareness about discrimination problem, education of targeted groups and international activities. Through implementation of the mentioned activities, the Office established cooperation with numerous partners within the state administration and civil society organisations.

In order to mark the beginning of implementation of the Anti-Discrimination Act, a one day conference "The Ombudsman as the Central Equality Body" was held on January 26, 2009, with the support of UNDP's Resident Office in Croatia.

Furthermore, the Ombudsman was granted a project „Support to the implementation of the Anti-Discrimination Act" in partnership with the Office for Human Rights of the Republic of Croatia and non-governmental organisation the Centre for Peace Studies within the European Commission Program in the field of employment, social inclusion and protection, working conditions, gender equality and combating discrimination for the period 2007-2013 called PROGRESS. The project enabled the Office to carry out a series of activities necessary for conducting competent and efficient work of the central anti-discrimination body which otherwise would not have been carried out since financial means for the implementation of the Act had not been ensured by the state.

The following activities were conducted within the mentioned Project:

- Educational seminars for the Ombudsman's and special ombudsmen counsellors, judges, state attorney, teaching staff of the Police academy and civil servants, lawyers, representatives of civil society organisations, media and business sector;
- Round table for the members of the county coordination for human rights;
- All-inclusive public campaign with an aim to raise awareness about unacceptability of discriminatory behaviour and informing the public on existence of the Anti-Discrimination Act and central body for prevention of discrimination;
- Conducting investigations concerning opinions and levels of consciousness about discrimination and occurrences of discrimination in two cycles. First cycle was conducted before and second cycle after termination of the campaign;

- Data base for monitoring and analysis of the complaints against discrimination received by the Ombudsman was established;
- A guide to the Anti-Discrimination Act was printed;

As a final activity within the Project, a two day international conference on the Anti-Discrimination Act was held. Domestic and foreign experts on anti-discrimination theory and practice attended the Conference as well as around 100 participants interested in the topic, mostly representatives of the state bodies and civil society organisations.

The Ombudsman established cooperation with the civil society organisations and participated in their activities related to the mentioned area of work such as: implementing projects, attending round tables, delivering lectures when invited and participating in other civil sector initiatives.

As it was stated in the Ombudsman's Annual report 2009, a division on poor and rich is unavoidable in the chosen social model. However, it is inadmissible before the state and other public bodies which duty is to provide effective legal equality in administrative and court proceedings. Such a division make poor become second class citizens and it is detrimental for social moral and cohesion. Therefore, for an effective equality and legal security of vulnerable and poor the state must improve the system of free legal aid.

Discrimination on the grounds of race, ethnic affiliation or colour and national origin

When we talk about the area most affected by the aforementioned discrimination charges, the largest number of complaints refers to the labour and employment area and in a lesser degree to the area of judiciary and administration and access to goods and services. Territorially, a significant number of complaints is made by persons of Serb ethnicity living in the war affected areas.

According to the official data and the data of the non-governmental organisations, in spite of the provisions regulating positive discrimination of minorities, ethnic minority representation in the judiciary

Billboards used during the Discrimination suppression campaign



and administration is still below the proportion of ethnic minorities in the population as a whole. In that respect, one has to bear in mind that there does not exist a data base on ethnic affiliation of all civil servants. Therefore, we consider it necessary to stress the opinion of the European Commission against Racism and Intolerance according to which the seriousness and significance of the issue was underlined and pointed at the need to collect statistic data on ethnic minority members without which it would be difficult to efficiently implement article 22 of the Constitutional Law on the Rights of National Minorities.

Numerous complaints refer to the employment procedures, doubt related to the discrimination based on national affiliation was expressed but it was confirmed that the said cases referred mostly to the previous years and that complainants failed to use legal means within the legal term.

The persons who left the territory of the Republic of Croatia constitute an especially sensitive group which in the process of return encounters numerous obstacles referring to return of their property and social reintegration in general.

War events caused migration of a large number of Serbs whose proportion in the population of the Republic of Croatia fell from the pre-war 12 percent to the current 5 percent.

The problems which they face refer to the return of their temporary taken over property, reconstruction of houses, housing settlement and status rights (citizenship and residence status). Most complaints refer to excessive duration of procedures. In addition, there exist problem of prejudice due to their ethnicity in the areas to which they wish to return.

Billboards used during the Discrimination suppression campaign



The Republic of Croatia clearly expressed a political will to enable the return of all people to their homes, which is solving the housing issues of all persons returning to Croatia.

According to the official data on ethnic affiliation of the complainants requesting reconstruction of houses and settling their housing issues, 70 percent of persons are of Serb ethnicity, while non-governmental organisations express doubt that the percentage is even larger.

In relation to the problem regarding return of the property, there are still more than twenty cases referring to the owners who are not able to fulfil their rights in that particular area.

There is still a serious problem related to the excessive duration of procedures, both in court as well as in administrative cases. Only in the area related to the reconstruction of houses there are still more than 7,000 pending requests.

Position of Roma

The shadow report on the implementation of the Framework Convention for the Protection of National Minorities in the Republic of Croatia for the period 2004 to 2009, compiled by representatives of the Roma associations gathered at the Centre for Implementation of European Union Integration, stated among other things, that official data on number of Roma in Croatia differ significantly from the real situation.

The reports states the following: „The 2001 Census of the Republic of Croatia fails to provide a true number of population, especially concerning data on ethnic minorities. The official number of 9,463 Roma members differs significantly from the real number of estimated 35,000 to 400,000 Roma members (source: Central Bureau of Statistics; for example according to the report of the Ministry of Labour and Social Welfare there is 21,381 Roma member receiving social help.“ At numerous meetings, as well as in literature, a data on significantly larger number of Roma in comparison with the official statistical data has been recorded. The fact represents a serious warning that the Roma ethnic minority is not considered equal and that its members mostly express themselves as members of the dominant Croat ethnic group. It is a clear indication that there is a need to undertake measures for nurturing and appreciating Roma culture, language and alphabet, and eliminate prejudice against Roma as well as provide support to the Roma members for their inclusion in all areas of social life, education and employment as well as a need of informing public about true values of the Roma community, which constitutes the largest ethnic minority group in the European Union: estimated over 12 million.

Difficult access to the labour market is a special problem faced by the Roma minority members. In addition, the Roma ethnic minority councils emphasise difficulties which Roma face in the areas of education as well as violence against Roma children in both school and social welfare system.

In 2009, the Ombudsman for Children received numerous complaints referring to violation of Roma children rights due to various reasons: revoking of the parental rights, that is the right of a parent to live with and educate his/her own child, placing children in foster care due to neglect, failure to provide adequate accommodation and treatment for children with behavioural disorders, minors' pregnancy cases, domestic violence, violence in school committed by adults, violence among children within the same-age group in cases where the perpetrators were Roma children, lack of adequate care for right upbringing and schooling of Roma children, failure of the Roma members to fulfil the right to health and health protection, participation in the cultural activities inappropriate for children.

After talking to the representatives of the Roma community, we can conclude from the media reports and individual complaints which the Office receives, that interaction between Roma and the dominant community is mostly weak and takes place only in the area of education, while the relationship between two communities is marked mostly by mutual mistrust and prejudice. The received complaints created the impression that the Roma children do not feel entirely accepted within the educational institutions. In spite of the fact that some kindergartens and schools (especially in the region of Međimurje and Zagreb) conduct programs for learning Croatian as well as preparation programs, many Roma children are not included into any of the pre-school educational programs (pre-school and kindergarten) which prevent them from participating and listening to the courses equally as other children.

Discrimination based on the economic status - access to justice

The Law on Free Legal Aid became effective on February 1, 2009 and in the course of the last 11 months of its implementation some of its deficiencies became obvious.

Although the fact that the Law includes civil society organisations, trade unions and legal clinics as providers of free legal aid is praiseworthy, one of the basic problems related to its use lays in a rather complicated procedure of its approval. Specifically, legal aid is often necessary for the mere start of the

Billboards used during the Discrimination suppression campaign



procedure for seeking free legal aid which resulted, as stated by representatives of free legal aid providers, in a relatively small number of approved requests. In the statements by civil society organisations it is evident that the problems exist in the areas specifically covered by them. Specifically, due to the complex procedure the aforementioned free legal aid providers were not able to spend granted financial resources for providing free legal aid. Responding to these complaints, the Ministry of Justice simplified the procedure and enabled the citizens to fulfil the forms for submitting the requests.

An objection may be expressed related to the provision of the Law which does not recognize the right to free legal aid for the applicants if they, specifically the adult members of the household, own a property which is considered adequate living accommodation under Article 3 of the said Law: a flat or house of up to 35 m² usable space for one person, increased by 10m² for each subsequent person, plus or minus 10m².

In various contacts with non-governmental organisations it was observed that a significant number of persons, based on the aforementioned provision of the article, is excluded from free legal aid, without a proper reason. Namely, there exist cases of persons in very poor economic condition who live in bigger flats and houses and face the situation where they are unable to fulfil their most basic need by selling a part of their property. There have been no records on implementation of the provision of the Law according to which the Court may, at the request of the party who does not fulfil the conditions prescribed by the said Law, approve free legal aid due to the reasons of fairness.

In accordance with the data of the Ministry of Justice, only 5,152 requests have been received since the beginning of the implementation of the said Law on April 21, 2010. Out of that number 3,536 requests were approved (approximately 68%). According to the data of the nongovernmental organisations and the Croatian Attorney's Chamber, in years prior to the adoption of the Law, tens of thousands of citizens sought some sort of free legal aid.

Besides already mentioned problems in implementation of the Law, we believe that the public is still insufficiently informed about the rights prescribed by the said Law. If we, on one hand take into consideration the fact that there are a large number of pending court cases (several hundred thousand), and unknown number of administrative cases, and on the other the information on average incomes and number of social cases, it is difficult to believe that the free legal aid was necessary only in five thousand cases.

Therefore it is our opinion that the population of the low socio-economic status is exposed to discrimination based on their economic status.

Concluding observations

After only one year of implementation it is still too early to judge the effects of the Anti-Discrimination Act as well as for making grounded judgments on the scale of discrimination occurrences according to the legally prescribed areas.

According to the aforementioned data, complaints addressed to the Ombudsman and special Ombudspersons and the manner of solving cases show that the majority of denunciations are not legally well founded. In smaller number of cases in which the Ombudsman established grounds for discrimination or doubt for discrimination, drawing the final judgements and conclusions will be possible only after termination of the procedures initiated upon the complaints or after termination of court procedures.

Encountered shortcomings in establishing the records and statistical registration of discrimination cases, along with negligible number of court proceedings initiated pursuant to Art. 17 of the Anti-Discrimination Act make it also difficult to draw the final judgement of the impact of this law so far.

According to the experience so far, first results of court proceedings and court practice in discrimination cases are not expected soon.

Therefore, statements and judgements of this summary report are only partly based on data on complaints received in the course of 2009. In other part they are based on experiences gained acting upon the Ombudsman's Act jurisdiction by which the Ombudsman (even before the adoption of the Anti-Discrimination Act) has been already working on discrimination cases and reporting to Croatian Parliament on his findings with this respect.

This report includes other sources of knowledge like reports, researches, statistics, analysis and other documents belonging to state bodies, civil society and relevant international institutions for human rights.

Based on all sources, in this summary report we indicated social groups the most exposed to discrimination or to social exclusion: members of Serb and Roma minorities, returnees and displaced persons and the poor.

Judgements on discrimination towards gender, sexual minorities and persons with disabilities are left to the reports of Gender Equality Ombudswoman and Ombudswoman for Persons with Disabilities.

Parliamentary Ombudsman shall continue to pay the most attention to protection of mentioned vulnerable groups, including suggestions to the government and parliament for the improvement of legislation, policies and measures for prevention and suppression of discrimination.



Press clipping

