REPUBLIC OF LATVIA

OMBUDSMAN

Annual Report on the year 2012 by Ombudsman of the Republic of Latvia

Riga, 2013

Dear reader,

When looking back to the work done in 2012, I can responsibly say that in view of the existing capacity the Ombudsman's Office is working at full strength. If 2011 was more regarded as a year of changes associated not only with the management change, but mainly with determination of specific objectives and priorities for several subsequent years, then 2012 was characterised by a certain set of activities to facilitate the achievement of it. It also meant the review of resources, namely by focusing of resources for more priorities and by making changes also in the structure of the Office.

In order to compensate the fact that limited resources are allocated from the state budget, we have actively worked on the fund-raising projects and on the strengthening of international cooperation. Satisfaction is provided by the fact that the name and activities of the Ombudsman's Office's are recognized beyond the borders of Latvia, however, what matters much more is the fact that more and more people in Latvia trust us, which is confirmed not only by significantly increasing numbers of submissions.

In assessment of the human rights situation in Latvia, I believe that the main resources should being given to the part of the community that have limited abilities to defend their rights and interests, such as children, the people with disabilities, the people in social care institutions, prisoners and the poor people.

I give a negative estimate to the fact that the governmental and municipal authorities often provide feedback to the identified shortcomings in human rights or good administration in two ways. Either gaps are initially denied, although later their existence is recognised, or make-believe that working group are going to be created, the concept, guidelines or even strategies are going to be developed. Even though verbally it sounds right and maybe even important, but the public rarely perceives elimination of particular deficiencies, more is heard only of the development of documents. Deinstitutionalization problem presents one of such issues, to which for a long period of time even several strategies have been developed, but there are hardly any real life activities. So far there has been lack of a political and administrative will no longer to place individuals into institutions, but to provide to them alternative, family-type support services (both for children and adults).

I believe that the passivity of top state officials to prevent infringements of human rights and good administration contribute to estrangement of the society and the state authority and disbelief of the people in their country and its development.

In assessing the situation in Latvia, I perceive significant problems in compliance with the principle of good administration, both in the governmental and the municipal authorities. The problems of good administration like an infection have affected entirely all areas starting from rights of children, civil and political rights, and finally to social, economic rights and anti-discrimination. The established deficiencies of good administration are described in overviews of the annual report of all the divisions of rights, not only in subchapter "Infringements of the principle of good administration". These facts indicate the magnitude of the problem and the need not only for me and my colleagues in the Ombudsman's Office's to be active in the identification of the problems and the provision of possible solutions, but also for representatives of the highest national authorities to determine it as urgent and comprehensive issue to be addressed.

For Latvia to be democratic, law-governed and developed country, we will continue to work with strengthening of human rights and good administration since these factors are significant for development of the State and for public well-being.

Very truly yours,

Juris Jansons, the Ombudsman

Division of the Rights of Children

Harmonious development of personality requires living and bringing up of a child in the atmosphere of love, goodness and happiness, in family environment, among close, loving people. It is the task of adults to help the child to get prepared for independent life, to become a wholesome member of society, and to provide living conditions appropriate to physical as well as mental development of the child.

Priorities of the Rights of Children chapter:
I The right of the child to free education
II Key issues of the internal procedural rules of educational institution
III Implementation of the rights of children in psychoneurological hospitals
IV The right of the child to municipal social assistance
V The right of the child to grow up in family
VI The right of the child and freedom of expression

I The Right to Acquire Education Free of Charge

From the priorities defined in the rights of children area for 2012, increased attention has been paid to the subject that apply to all, not only socially less protected children - access to education free of charge.

According to the Ombudsman Law, the Ombudsman's function is to encourage the protection of human rights of private person, and to discover deficiencies in the legislation and the application thereof regarding the issues related to the observance of human rights, as well as to promote the rectification of such deficiencies.[1]

In June 2011 Ombudsman has launched to work with investigation of the content of the right ensured by the State in Article 112 of the Constitutional to acquire education without charge:
1) An advisory council was set up on access to education, by involvement of the representatives from parents, teachers, learners and non-governmental organisations;
2) On 6 October 2011 more detailed information was requested from the Ministry of Education and Science;
3) In 23 February 2012 Ombudsman called for the parents until 9 March to report on cases where the school has asked the parents to purchase educational aids, by sending information to an e-mail address bezmaksas.izglitiba@tiesibsargs.lv.
Referring to the call made by Ombudsman, 136 letters have been received.
4) In February 2012 the foreign institutions with competencies similar to those of the Ombudsman's Office were asked to provide information on the situation in the field of access to education;
5) On 14 March 2012 information was requested from all 119 local governments in Latvia with regard to budgeting of education institutions;
6) Upon aggregation of the information obtained and analysis of a regulatory framework, it was found that the right to acquire education without charge is not ensured in full and actual situation does not ensure equal rights and access to education, as provided for by the laws and regulations.

[1] Ombudsman Law, Section 11, Clause 1 and 4.

If the Ombudsman, in the performance of his functions, finds that the law provides for the provision of educational aids through governmental and municipal resources, but practice demonstrates that the parents are buying the said, and not by their choice, but are forced to do so, the Ombudsman shall be under obligation to promote alteration of the illegitimate practice.

On 23 May 2012 the Ombudsman has reported to the Saeima Education, Culture and Science Committee on the provision of the right to acquire primary and general secondary education free of charge via educational institutions established by municipalities.[2]

On 24 May 2012 the report was submitted to the Minister of Education and Science, and the situation was discussed vis-à-vis. The Minister promised to draw up amendments to the Cabinet Regulation No.97,[3] which currently provides for partial public funding only to purchase textbooks. The report was sent also to the Prime Minister, at the same time applying to the Saeima Human Rights and Social Affairs Committee to address the issues relating to the provision of rights to acquire education specified in the report.

On 22 June 2012, the report was sent to all the schools in Latvia, at the same time calling for a change in the unlawful practices and notifying that, if finding the cases in which the educational establishment has made the parents to purchase educational aids for provision of compulsory education, the Ombudsman is going to use the right provided for in Section 13, Clause 9 of the Ombudsman Law in the public interest to defend rights and interests of the private person in an administrative court.

On 8 August 2012 the press release was distributed that Ombudsman's Office will help any parent having received a list issued by the school specifying educational aids to be purchased by the parent, to prepare a submission to dispute actual action of the school. While if the school will refuse to change its practice, the Ombudsman is ready to apply to court on behalf of the public interest.

Function of the Ombudsman is to promote the protection of human rights of private persons and to promote public awareness of the human rights protection mechanisms, therewith the Ombudsman in the course of performance of this function, has notified the public, how to legally solve this issue, if parents are not satisfied with the existing procedures and they want to use the rights protection mechanism created by the state.

On 10 August 2012 one submission from a private person was received with enclosed lists of educational aids as annex, on 13 August a verification procedure was initiated, on behalf of the applicant submission was prepared and submitted to the school. On 17 August the applicant brought a reply from the school that requirement for the parents to purchase educational aids specified in the list has been withdrawn, notification of the decision is placed on the school's website and the school undertakes to ensure a possibility for all the learners to obtain the primary and secondary education free of charge, using educational aids available in the school. The verification procedure was completed with a reconciliation. In 2012, seven verification procedures were initiated in all with regard to nine schools in different regions of Latvia.

Within the framework of verification procedure the Ombudsman, on the basis of materials being at his disposal, applied to the State Service of Education Quality, which area of responsibility is monitoring compliance with the laws and regulations in the field of education.

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[2] "Report of the Ombudsman of the Republic of Latvia on the provision of the right to acquire primary and general secondary education free of charges in the educational institutions founded by local governments", available on http://www.tiesibsargs.lv

[3] Cabinet Regulation No.97 "Procedures by which the State Organises and Finances the Publication and Acquisition of Teaching Materials", dated 6 March 2001.

State Service of Education Quality has came to a conclusion that parents of the learners in some of the subjects are forced to purchase textbooks and exercise-books by using their personal financial resources. The said is in breach of the principle of free education prescribed by Article 112 of the Satversme (Constitution) of the Republic of Latvia, Section 55, Clause 1 and 3 of the Education Law, Section 11, Paragraph two of the Protection of the Rights of the Child Law.

Not including the initiated verification procedures, another 79 parents applied to the Ombudsman's Office and received advice on how to proceed. Most of them received assistance in writing a submission to the educational establishment on change of the authority's intention for the actual action of the authorities. After application to the school with the submission, the parents have received responses that a list of educational aids issued by the school is not mandatory, but informative or permissive, and has been issued for the reason that the parents could "select and determine whether they would like to purchase any of the educational aids".[4]

On 16 August 2012 the Council of Garkalne municipality publicly disseminated information that the local government will provide educational aids, at the same time appealing to parents of learners in educational establishments of Garkalne municipality "not to purchase exercise-books (workbooks), because all the necessary according to requirements submitted by the school administrations will be paid by the Council of Garkalne municipality".[5]

On 21 August 2012 the Ombudsman has sent a letter to all the local governments in Latvia to become cognizant with the Ombudsman's report of 23 May 2012 and an example of best practice from Garkalne municipality.

On 28 August 2012 the Ombudsman during the meeting of principals of Riga schools has notified the principals with regard to the legal framework and responsibility of the schools.

In 31 August 2012 the Ombudsman has applied to the Prosecutor General with the request in accordance with Section 16, Paragraph two, Clause 1 of the Office of the Prosecutor Law to assess the need to start the investigation of infringements of the laws and regulations in the field of education (actual action of educational establishments founded by local governments, making the parents to purchase educational aids required for implementation of the national standard of education). Prosecutor's Office has concluded that repeated investigation in the matter on which investigation has already been made by the Ombudsman, having found the infringements, is not nationally appropriate.[6]

On 5 September 2012 the Ombudsman took part in the meeting of the Association of Large Cities of Latvia, notifying on the governmental and municipal competence in the issue of ensuring educational aids.

On 20 December 2012 letters were sent to all 119 local governments in Latvia, seeking information about the funding available in 2013 budget for the purchase of educational aids. Information was requested from local authorities in respect of the following matters:

- What percentage of municipal 2013 budget is allocated to the field of education?
- What amount per learner is allocated for the purchase of educational aids?

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[4] Letter No.81-nd of Riga English Grammar School, dated 21.08.2012.

[5] Available on: http://www.diena.lv/latvija/zinas/garkalnes-novada-dome-skoleniem-nodrosinas-macibu-lidzeklus-13963057.

[6] Letter No.5-13-7-12/1464 of the Department for Protection of Rights of Persons and the State of the Office of the Prosecutor General, dated 14.09.2012.

- Whether the allocated amount also includes educational materials: substances, stock and articles used to acquire the mandatory content laid down by the standard of the subject, through performance of practical tasks; including exercise-books, et al. books, notebooks, skeleton maps, writing-materials, drawing and visual art supplies, rulers, folders, textiles, wood, et al.?
- How large amount for purchase of educational aids per learner was granted in 2012?
- Whether the allocated amount will fully ensure the rights of the child to acquire education without charge, or the parents will have to purchase the necessary for implementation of educational programs?

At the beginning of May 2013 information will be summarized, resulting in overview of the dynamics of access to free education in Latvia, which will make possible drawing of conclusions on the elimination of deficiencies in laws and regulations and their application.

The Ministry of Education and Science at the end of 2012 has prepared draft amendments to the Education Law and improved draft of consolidated version for the Cabinet Regulation No.97 "Procedures by which the State organises and finances the publication and acquisition of teaching materials" of 6 March 2001. Draft amendments to laws and regulations suggests updated explanation of the term "educational aids", covering the entire body of resources required for implementation of the national educational standard, as well as clear allocation of responsibilities (government, municipality, parents) concerning the funding of educational aids.

Latvian Association of Local and Regional Governments in response to the Ombudsman's letter of 20 December,[7] has proposed to undertake the transition to free education provision gradually in course of three years. At the same time the letter expresses a view that "the allocation of responsibilities proposed by the Ministry of Education and Science is incorrect and inappropriate to the real municipal financial possibilities".

II Key Issues of the Internal Procedural Rules of Educational Institution

In accordance with Section 11, Clause 4 of the Ombudsman Law one of the Ombudsman's functions shall be to discover deficiencies in the legislation and the application thereof regarding the issues related to the observance of human rights, as well as to promote the rectification of such deficiencies.

In examination of individual submissions, the Ombudsman has found cases when internal procedural rules of educational institutions (hereinafter referred also as to the Rules) do not comply with the requirements of the law (external regulatory enactments) and hence restrict the rights of the learners. In 2012, increased attention has been paid to this issue both via providing recommendations to educational institutions relating to amendments of the internal regulatory enactments, and via arrangement of educational seminars for employees of the educational institutions. The Ombudsman also applied to the Riga City Council's Education, Culture and Sports Department to pay more thorough attention to compliance of the Rules with laws and regulations of superior legal force. Having regard to the recommendation by Ombudsman, the Department undertook by the end of 2011/2012 school-year to examine all the internal rules of order of Riga city educational institutions by assessment of their compliance with requirements of laws and regulations, and to provide methodological assistance in their development.[8]

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[7] Letter No.1220123212/A185 of the Latvian Association of Local and Regional Governments, dated 06.02.2013.

[8] Letter No.2-1-20/DIKS-11-5851-nd of the Education, Culture and Sports Department of the Riga City Council, dated 28.12.2011.

In accordance with the regulatory framework[9] a general educational institution is entitled for independent development of the internal regulatory enactments of the institution. This means that internal procedural rules are approved by the institution's principal without coordination with the founder or any other institution. However, the institution lacks complete carte blanche in the development of content of the Rules, since a number of matters to be governed by internal rules of order are imperatively determined by exterior regulatory enactments.

General requirements for internal procedural rules of educational institution are determined by Paragraph two of Section 68 of the Protection of the Rights of the Child Law: „The maintenance of order in these institutions shall be ensured by internal procedural rules that comply with the requirements of law and do not infringe upon the dignity of children". Though several matters subject to control are determined by laws and regulations governing the field of education.

Actions of the school related to provision of internal order may be subject of appeal to the administrative court without disputing at the superior authority since the school as an educational institution is independent in development and implementation of internal regulatory enactments, as well as of the designation of the personnel and compliance with the laws and regulations.

1. Matters to be Included in the Internal Procedural Rules

In accordance with the external regulatory enactments the Rules shall determine:

- rules of behaviour of the learners in educational establishment, its territory and events organized by the educational establishment;
- placement of evacuation plan and information on calling emergency services in the educational establishment;
- prohibition for acquisition, use, storage and sale of alcohol, cigarettes, narcotic drugs, toxic and psychotropic substances, gas canisters, gas pistols, firearms and blade weapons in the educational establishment and within its territory;
- the learner's action if the learner in acts of any person perceives a threat to security of him or her or any other persons;
- actions of the principal and the teachers, if a physical or emotional violence against the learner has been established;
- order of presence in the educational establishment binding to parents of the learners and to other people[10] (order of presence may be determined in the Rules or in a separate document);
- regulations for the learners about dress code;[11]
- procedure by which the educatees during the educational process use:
    - the premises,
    - laboratories,
    - equipment, devices,
    - cultural, sports and medical objects and inventory,
    - schoolbooks, other literature necessary for the educational process, teaching resources and electronic teaching resources of an educational institution,
- procedure by which the educatees receive library and information services;[12]

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9 General Education Law, Section 10, Paragraph three, Clause 2.

10 Clause 6.1-6.5, 3.10 of the Cabinet Regulation No.1338 "Procedures by which the Safety of Educatees in Educational Institutions and the Events Organised by such Institutions shall be Ensured", dated 24.11.2009.

11 Education Law, Section 54, Clause 8.

12 Education Law, Section 55, Clause 3.

- action plan for what to do if the educational institution finds that the learners have used, kept or distributed alcoholic beverages, narcotic drugs, psychotropic or other addictive substances, as well as for implementation and control over enforcement of the said plan (may be a separate document or a section within the school's internal procedural rules); [13]

- the procedure under which arrival or absence of learners to the educational establishment is recorded on a daily basis;

- the procedure under which the parents notify of the state of health of the child or other circumstances due to which the learner fails to attend the educational establishment;

- the person responsible for parental notification when the learner without justified reason fails to attend the educational establishment[14] (may be a separate document or a section within the school's internal procedural rules);

- other issues that the educational institution considers to be essential; [15]

- responsibility for non-compliance with the internal procedural rules.[16]

2. Matters Suggested for Inclusion in the Internal Procedural Rules

In accordance with the regulatory framework the by-law of a general educational institution shall include the rights and duties of students as well as the rights and duties of teachers and other employees.[17] Taking into account that the Rules are available to the learners on a daily basis, and both to the learners and the parents are cognizant with the same, it is recommended that the rights and obligations are included in the Rules, with reference to the Rules in by-law of a general educational institution.

Educatees have the right to implement other rights specified in regulatory enactments.[18] One part of other questions that laws and regulations directly do not define as subject to inclusion into the Rules, from the Ombudsman's viewpoint could be the matters governed by the laws and regulations governing the field of education prescribing for the learners' rights. Inclusion into the Rules would facilitate awareness of the learners and their parents (legal representatives) about their rights in particular situation.

Suggested questions for inclusion into the Rules:

Rights of the learner:

- to keep day-to-day items in the institution in order to the weight of filling of learner's bag is not exceeded, which corresponds to the maximum norms for the weight of items to be carried;
- not to attend school up to the age of 12, if the air temperature is below minus 20 °C; from the age of 13, if the air temperature is lower than minus 25 °C;
- to be provided with food according to wholesome food principles;
- at least once a day to receive hot meal. A minimum 30 minutes break shall be provided for such purpose.[19]

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13 Clause 9.7 of the Cabinet Regulation No.277 "Procedures by which Prophylactic Health Care and Access to Emergency Medical Assistance of Educatees in Educational Institutions shall be Ensured" of 23.03.2010, recommendations to development of action plan (procedure) enclosed with the Regulation.

14 Clause 4 of the Cabinet Regulation No.89 "Procedures by which the Educational Institution shall Inform Parents of Educatees, Local Government or State Institutions, if an Educatee Fails to Attend Educational Institution without a Justifying Reason", dated 01.02.2011.

15 Clause 6.7 of the Cabinet Regulation No.1338 "Procedures by which the Safety of Educatees in Educational Institutions and the Events Organised by such Institutions shall be Ensured", dated 24.11.2009.

16 Ibidem, Clause 6.6.

17 General Education Law, Section 9, Paragraph one, Clause 6 and 7.

18 Education Law, Section 55, Clause 9.

19 Clause 6, 7, 51, 59 of the Cabinet Regulation No.610 "Hygiene Requirements for the general Primary Education, General Secondary Education and Professional Education Institutions" of 27.12.2002.

- catering of learners in forms 1–4 shall be organized in accordance with the complex lunch menu;
- catering of learners in forms 5–12 shall be organized in accordance with the complex lunch menu or optional menu;
- if the learner has diagnosis confirmed by a doctor (such as coeliac disease, diabetes, food allergy), due to which correctional diet is required, appropriate food shall be ensured for the student; [20]
- where necessary, to receive medicinal food;
- to receive first aid in the case of small domestic injuries;
- if the learner becomes ill in the educational establishment, to be relieved from classes or lessons for less than one day of studies to visit the family doctor. Relief shall be issued by the medical person or teacher, by notification to the parents thereof;
- if the learner has transient health disorders, to be relieved from attendance of the sport classes to one school day. Relief shall be provided by the medical person, by notification thereof to the parents;
- once during the school year to be sent to the taking of anthropometric measurements, vision and hearing checks, control over stance disorders, and arterial blood pressure, evaluation of the width of pupil, and response to light, venous inspection, as well as testing coordination disorders;
- not less than once a year to be sent to the examination of scabies and pediculosis, as well as to prevention measures of these diseases;
- to receive medical care in accordance with the instructions given by attending physician in the event of diagnosed chronic illness;
- be vaccinated in accordance with the procedure laid down in the regulatory enactments with regard to vaccination by notifying the planned vaccination to the parents;[21]
- when due to the health condition the learner for more than one month is unable to attend the educational establishment, to acquire education at home. Recommendation of pedagogical medical commission is required, which is based on the opinion of the medical commission or family doctor. Training load in forms 1 to 4 may not exceed three lessons a day and six lessons a week, but in forms 5 to 12 - four lessons a day and eight lessons a week.[22]

In addition to the above, internal procedural rules can also include all those questions which, according to the point of view of administration of the establishment, teachers or learners, need special provisions.

3. The Process of Development of the Internal procedural rules

3.1 Compliance with the law.

In drawing up internal procedural rules, it is essential to ensure their compliance with external regulatory enactments. Section 15, Paragraph six of the Administrative Procedure Law determines: „If a conflict between the norms of law of differing legal force is determined, the norm of law of higher legal force shall be applied”. Therefore in cases where

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[20] Annex 2, Clause 4, 5, 18 of the Cabinet Regulation No.172 "Regulations Regarding Nutritional Norms for Educatees of Educational Institutions, Clients of Social Care and Social Rehabilitation Institutions and Patients of Medical Treatment Institutions" of 13.03.2012.

[21] Clause 3, 7, 9.4, 9.8, 9.9, 9.10, 9.11 of the Cabinet Regulation No.277 "Procedures by which Prophylactic Health Care and Access to Emergency Medical Assistance of Educatees in Educational Institutions shall be Ensured", dated 23.03.2010.

[22] Clause 4, 6, 7 of the Cabinet Regulation No.253 "Procedures for Educating a Student Suffering from a Long-Term Illness outside the Educational Institution", dated 04.04.2006.

Rules are contrary to the norm of law of higher legal force, external regulatory enactments rather the Rules shall be applied.

Example:

Section 4, Clause 18 of the General Education Law prescribes: "The Cabinet shall determine the mandatory requirements for enrolment of students and moving them up into the next grade in general educational institutions (with the exception of boarding schools and special educational institutions)". There are no exceptions provided with regard to private educational institutions, consequently private educational institutions shall be entitled to discharge the learners under procedure prescribed by the Cabinet. Procedure under which the learners are discharged from general educational institutions (with exception of boarding-schools and special educational institutions) is prescribed by the Cabinet Regulation No.149 "Regulations Regarding the Procedures for Enrolment of Students in and Discharge from General Educational Institutions and the Mandatory Requirements for Moving Them up into the Next Grade" of 28 February 2012. The cases when an educational institution shall be entitled to discharge an educatee from the basic education programme are exhaustively stipulated in Paragraph 41 of the Regulation, and a discharge for breach of the internal procedural rules is not listed among them. In the verification procedure Ombudsman has found that the rules for enrolment and discharge of a private educational institution provide for discharge of the learner from educational institution as a sanction for breaches of the internal procedural rules. A learner has been discharged from Form 2 for breaches of the internal procedural rules of the school, pertaining to indecent behaviour and activities harmful to other people (physical and emotional violence against classmates, disturbance of the learning process et al.), therewith infringing the right of the child to education.

Example:

Clause 16 of the Rules prescribe: "Smoking shall be prohibited in the school's premises, adult students may smoke in the school yard at the specified location, by ensuring there order and safety. "

According to Clause 6.3 of the Cabinet Regulation No.1338 "Procedures by which Safety of Educatees in the Educational Institutions and in the Events Organised by such Institutions shall be Ensured" of 24 November 2009, the internal procedural rules shall define prohibition for acquisition, use, storage and sale of alcohol, cigarettes, narcotic drugs, toxic and psychotropic substances, gas canisters, gas pistols, firearms and blade weapons in the educational establishment and within its territory.

Clause 16 of the Regulation is manifestly contrary to Clause 6.3 of the Cabinet Regulation No.1338 "Procedures by which Safety of Educatees in the Educational Institutions and in the Events Organised by such Institutions shall be Ensured" of 24 November 2009.

3.2 Participation of the learners

In accordance with Paragraphs one and two of Section 13 of the rights of the Protection of the Rights of the Child Law, a child has the right to freely express his or her opinions, and for this purpose, to receive and impart any kind of information, the right to be heard. In any other fields, which affect the interests of the child, appropriate attention, corresponding to the age and maturity of the child, shall be paid to the opinion of the child. Having regard to the fact that the internal procedural rules significantly affect the interests of the child, it is suggested to draw up the same together with the learners, taking into consideration their views with regard to the adjustable issues and liability for violations.

3.3 Language

The language used in the laws and regulations is different from the literary language used in everyday life, therewith the child may fail to understand it. Rights and obligations to

the child must be explained in a language understandable for his age and level of development, the text should be easy to perceive both in terms of language and location, - it is advised to divide the matters to be regulated into sections, such as Chapter Attendance has to be divided into subchapters: Absence; Late arriving to school; Earlier leave from school; Planned absences; Absences due to illness; the Chapter Rules of Behaviour has to be divided into subchapters: Mobile phones; Musical/electronic devices; Dress code; School area; Playground rules, et al.

3.4 Different framework in relation to adult and minor learners (parents as representatives of a child)

In examination of the verification procedures, it was found that in certain cases the internal procedural rules provide for the regulation only in respect of minors, by imposing an obligation to the educatee in the event of absence to submit a source document written by the parents (guardians), the purpose for use of the learner's journal is indicated there – communication with parents, prescribing the educatee's obligation to make the parents cognizant to the records in journal at least once a week, prescribing the obligation for presentation of extracts from the school results to the parents (guardians), prescribing material responsibility of the educatee and his parents for the damage incurred by the educational institution, prescribing that in the case of suspicion of the use of illegal substances the educational institution shall notify the parents.

In accordance with Paragraph one and two of Section 177 of the Civil Law, until reaching legal age, children are subject to parental authority, and care is a parental right and duty of care for the child and his or her property and represent the child in his or her personal and property relations. After reaching legal age the educatee is no longer under the parents' charge and the parents are no longer his or her legitimate representatives. Given that the primary and secondary education program is acquired also by adult persons, the internal procedural rules should lay down different framework for adult and minor educatees with regard to parents as the learner's representatives. In other matters of relationship between the educatee and the educational institution there is no relevance to the circumstance that the student is adult (lawful age is relevant only in relationship between the educatee and the parents). In relations with the educational institution the person is an educatee within the meaning of the Administrative Procedure Law being "a person specially subordinate to the institution", and therewith internal procedural rules of the educational institution shall be binding on any educatee, irrespective of age.

3.5 Lawfulness of prohibitions

Internal procedural rules shall include restrictions to the rights of child. Article 116 of Satversme (Constitution of the Republic of Latvia) prescribes that the rights of persons may be subject to restrictions in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the State, and public safety, welfare and morals. Although the Constitution fails to mention one of the criteria for test for lawfulness of restriction to the human rights – necessary in a democratic society, this criterion is mandatory in parallel to those already mentioned, which must be considered, whether a restriction to human rights is justified. Thus, in considering whether in particular case the restriction is justified, it should be considered, whether all three criteria have been met at the same time: 1) restriction is provided for by law; 2) it is targeted at attainment of a legitimate objective and 3) it is necessary in a democratic society. In order to assess whether the restriction is necessary in a democratic society and can be used as a means of achieving the legitimate

objective, one must examine whether the restriction is socially necessary and proportionate.[23] While the principle of proportionality is reflected in Section 13 of the Administrative Procedure Law - the benefits which society derives from the restrictions imposed on an addressee must be greater than the restrictions on the rights or legal interests of the addressee. Significant restrictions on the rights or legal interests of a private person are only justified by a significant benefit to society.

3.6 Availability

Internal procedural rules must be easily available to the educatees and their parents (legal representatives), as well as to any stakeholder. Publication of the said on website of the school and placement in a visible place in the school's premises shall be desirable. Publication on website of the school provides an opportunity to become cognizant with the internal procedural rules before enrolment to the corresponding educational institution.

4. Liability for Non-Compliance with the Internal Procedural Rules

Attitude of the teachers must be equal to all the children. It is essential to respond to each infringement, without creating in the child a sense of impunity, which can lead to more serious violations. Prior to enforcement of liability the child should receive an explanation of non-compliance of his or her behaviour with the internal rules of procedure. Infringement should be examined in the light of the principle of proportionality, equal treatment and the best interests of the child. Depending on the nature of and relapse of the infringement for breach of the Rules may be applied:

1. Verbal reprimand, individual negotiations;
2. Written note in the journal (written report to the parents);
3. Explanation and negotiations with the form teacher;
4. Explanation, support staff (social pedagogue, psychologist) is involved in settlement of the issue;
5. Explanation and negotiations together with the parents;
6. Warning in the principal's injunction;
7. Reprimand in the principal's injunction;
8. Examination of the infringement in the school board meeting and proposal to involve municipal police in examination of the infringement by the administrative commission.

Administrative commission shall be entitled to make the child and his parents subjects to administrative liability, or to apply the "Law On Compulsory Measures of a Correctional Nature" and to determine such behavioural restrictions for the infringement as - to impose an obligation to participate in the social correction and social assistance programs, to impose an obligation to appear for consultation before the psychologist, doctor or other professional.

In the case if an infringement is associated with damaging material values of the institution, drawing up of a statement or a report on this event is required to deal with the issue under civil procedure.

III Implementation of the Rights of Children at Psychoneurological Hospitals

Implementation of the rights of children at psychoneurological hospitals (hereinafter referred to as the Hospitals) was among the priorities of the Ombudsman in 2012. Pursuant to the authority stipulated in Section 13, Paragraph 3 of the Ombudsman Law to visit closed-type facilities at any time without special authorization, to move freely on the territory of the

[23] Judgment of the Constitutional Court of 24 March 2000 in Case No.04-07(99) conclusive part Clause 4.

visited facility, and to visit all premises and meet vis-à-vis the individuals accommodated in closed-type facilities, representatives of the Ombudsman's Office repeatedly visited in 2012 all psycho-neurological hospitals eligible to accommodate children: "VSIA "Bērnu psihoneiroloģiskā slimnīca 'Ainaži'", VSIA "Daugavpils psihoneiroloģiskā slimnīca", VSIA "Ģintermuiža", VSIA "Bērnu klīniskā universitātes slimnīca" in Gaiļezers, VSIA "Piejūras slimnīca", and VSIA "Rīgas psihiatrijas un narkoloģijas centrs"[24].

In accordance with provisions of paragraph one of Section 72 of the Protection of the Rights of the Child Law, managers of health care institutions as children are found, shall be liable for the protection of the health and life of the child, that the child be safe, that he or she is provided with qualified services and that his or her other rights are observed.

During visits to hospitals, staff of the Ombudsman's Office have evaluated the activities undertaken to improve the situation of the rights of children, inter alia, has verified implementation of the Ombudsman's recommendations sent to the Hospitals in 2011.

The key issues on which notice is taken in the Hospitals:

1. Treatment of Children Separately from Adults

Accommodation of the children in wards of the Hospitals together with adult individuals impose restrictions on the right of the children to be placed under particular protection by the State.

Such practice should not be supported even if such solution facilitates protection of the rights of other children. Hospitals should take appropriate steps to ensure protection of rights of all the children accommodated in the Hospital.

It was identified during the visits to hospitals in 2012 that the practice of referral of adolescents to adult wards continued in separate cases.

2. Internal Procedural Rules for Patients

It was identified during the visits to Hospitals in 2012 that a number of Hospitals have established new or improved the internal regulations for patients. Unfortunately, internal regulations have not treated children as a separate group with specific needs, taking into consideration the age and development level of children, regulations are not easily perceptible. Accordingly, there are doubts, whether sufficient and clear information is provided to the children or their lawful representatives about the order established in the Hospital and legal remedies in the event of potential infringement of rights (for example, rules of behaviour, procedure for visiting patients, procedure for examination of complaints et al.).

Certain Hospitals have imposed an overall prohibition for the children to meet their friends, although an information was received that this prohibition is applied in practice when there is suspected threat.

Availability of the Rules is a topical issue – the Rules are not placed in location easily accessible to the children and their lawful representatives. For example, State Limited Liability Company "Riga Centre of psychiatry and Narcology" (*VSIA "Rīgas psihiatrijas un narkoloģijas centrs"*) required some time to find the Rules and to present the same to employees of the Ombudsman's Office.

In discussions with regard to application of the Rules, it was found, that personnel of several Hospitals still do not understand the need for the Rules.

3. Restriction of Physical Mobility (Fixation of Children)

[24] All the hospitals have been visited also in 2011.

During inspections it was found that there is a different practice as regards restrictions to physical mobility – there are Hospitals where restriction of physical mobility (fixation) is applied to children, whereof a statement is drawn and placed in medical card of in-patient, and there are Hospitals, where fixation is not applied but alternative means for calming down a child are used.

In 2011 Hospitals were asked to draw up a separate document to govern the procedure for restriction of child mobility, by describing therein also the methods that should be applied prior to taking a decision on restriction of mobility of the patient. It was indicated to the Hospitals that it is their duty to notify parents (legal representatives) of the child whenever mobility restrictions for the child are applied and proof of notification (for example, minutes of the conversation) has to be registered in the dossier.

During the visits to Hospitals in 2012 information was received that they still apply the regulatory rules for restriction of physical mobility generally developed and approved in the country where children are not treated as a separate group, against whom special treatment is required. One of the visited Hospitals has drafted appropriate regulations for restriction of child mobility.

4. Toilets

According to the international standards of human rights and the principles established by the UN for protection of individuals with mental illness and improvement of mental health, human treatment of all individuals with mental illness or those treated as such has to be ensured as well as respect of the inherent dignity of human being, with particular attention being paid to the protection of children[25].

To the Hospitals a recommendation was provided to ensure the child's privacy during going to toilet. If door to toilet may not be closed because of the child's health condition in his or her own interests, the Hospitals are encouraged to seek other solutions, such as a light switching on outside the toilet door, a corresponding sign hanged on the door-handle, etc.

It was identified during the visits to hospitals conducted in 2012 that infringements of the child's rights are not eliminated in respect of ensuring privacy. Practice of the State Limited Liability Company "Seaside Hospital" (*VSIA "Piejūras slimnīca"*) has to be appreciated by ensuring lockable toilet door, at the same time by providing a possibility for personnel of the Hospital to open the door from outside.

5. The Right to Maintain Contacts, Communication Possibilities, and Social Integration

Communication of the children placed in Hospitals with their relatives basically takes place in a form of telecommunications and meetings.

Recommendation was made to the hospitals to promote communication by children by means of the latest technologies (email, "Skype" software, etc.).

The fact that some Hospitals have provided possibility to children to communicate with their parents (legal representatives) and relatives via possibilities provided by the Internet deserves appreciation.

As regards conditions of visits to the children, information was received that establishment of appropriate meeting rooms in several Hospitals is impossible right now due to limited financial resources.

6. Support to Families (Availability of Social Worker and Psychologist)

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[25] The principles for protection of persons with mental illness and the improvement of mental health care. Adopted by General Assembly with Resolution 46/119, dated 17 December 1991. *http://www.un.org/documents/ga/res/46/a46r119.htm*

Notable work to ensure the rights of children is conducted by social workers and psychologists. Involvement of specialists is required to resolve daily situations.

The hospitals provide consulting by psychologists to the children within the scope of their resources.

Implementation of support program for parents (legal representatives) launched in November by the State Limited Liability Company "Daugavpils Psycho-Neurological Hospital" (*VSIA "Daugavpils psihoneiroloģiskā slimnīca"*) deserves appreciation, whereas advice of a psychologist is available not only to children but also to their parents. The Hospital have ensured availability of a specialist, by displaying information about consulting hours in the place that it is clearly visible to the visitors.

7. Availability of Outdoor Activities

According to the information obtained during the visits to Hospitals, children are provided with regular possibility to enjoy fresh air. When listening to the children accommodated in Hospitals, as well as when finding nonconformity of the daily regimen with the actual situation, doubts have arisen about the accuracy of the information provided by certain Hospitals.

Eventual attempts to escape or lack of personnel may not constitute a reason for not ensuring exercises. Hospitals should take the appropriate measures, by reviewing the work load of the personnel, adapting the territory of Hospital or considering other possibilities.

8. Smoking Prohibition

Section 48 of the Law on Protection of the Rights of Children prescribes that a child must not smoke and shall be protected from the influence of smoking, the persons being at fault for involvement of the child in smoking shall be subjects to liability prescribed by the law. Making tobacco products available to the child shall also be considered to be involvement of the child in smoking.

In 2012 by visiting the Hospitals, the respective issue was discussed repeatedly.

9. Leisure Time Opportunities

It has been established during the visits to hospitals that to ensure the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and in the arts, the Hospitals have equipped separate playrooms. Children also have the possibility to read books and watch TV.

In separate Hospitals no attention is paid to the contents of the games and TV broadcasts available to children. Practice of the State Limited Liability Company "Infantile Psycho-Neurological Hospital 'Ainaži'" (*VSIA „Bērnu psihoneiroloģiskā slimnīca „Ainaži"*") is appreciated by ensuring content of the broadcasts appropriate to the children's age and perceptive peculiarities.

10. The Right of Children to Education

If, according to the opinion of attending physician, an individual subject to education is expected to stay in hospital two weeks or longer, education shall be organized at the hospital[26]. According to the legal regulations, education is organized in accordance with the (type of) general education curriculum adapted to the individual needs of each learner.

[26] Clause 14 of the Cabinet Regulation No.253 "Procedures for Educating a Student Suffering from a Long-Term Illness outside the Educational Institution", dated 4 April 2006.

According to the information obtained during the visits to hospitals, the average length of a child's stay in hospital is 28 days. In all the Hospitals, with exception of State Limited Liability Company "Riga Centre of psychiatry and Narcology" (*VSIA "Rīgas psihiatrijas un narkoloģijas centrs"*), education is organized.

11. Involvement of Orphan's Courts and other Institutions in Handling of the Issues

When performing their duties, the hospital staff may become aware of eventual infringements of the rights of children outside the hospital. According to Section 73 of the Law on Protection of the Rights of Children, the involved individual has the duty to notify the police, Orphan's Court or other authority responsible for protection of the rights of children on the same day of any violence towards a child, or any infringement of or other threat to the rights of child.

The present practice of Hospitals to involve in handling of the potential infringements of the right of children and to cooperate with competent authorities of the child's place of residence, deserves appreciation, however, the actions might be more active. For example,

if the child is accommodated to the Hospital due to escaping from the child care institution, the Hospital should notify the Orphan's Court of the child's place of residence of possible breach of the rights of the child in the care institution.

The Ministry of Health on April 2012 has sent a letter to all the psychoneurologic hospitals where children are stationed, by requesting them to consult the Ombudsman's Annual Report for the year 2011 and according to their competency to plan measures to improve this situation, as a matter of priority drawing attention to the measures that do not require additional resources.

In 2013 employees of the Ombudsman's Office will carry out inspections of compliance with the rights of the child in all the Hospitals, to become familiar with the measures taken for improvement of the situation.

IV The Right of the Child to Municipal Social Assistance

By accession to the United Nations Convention on the Rights of the Child (hereinafter referred to as the Convention), Latvia has undertaken to provide to the parents and to the guardians proper assistance in performance of their obligations related to upbringing of the child to promote implementation of the rights prescribed by the Convention. As regards provision of social assistance to the children, taking into account of the principle defined by Article 27 of the Convention is of material importance, whereunder the parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development. The State recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

Therewith to the limits of their possibilities the State has committed to take the necessary measures to provide assistance to parents and other people bringing up children, in exercising of their rights referred to in the Convention and, if necessary, to provide material assistance and support programmes, in particular as regards the provision of food, clothing and housing. Similar framework of national obligations, if necessary, to provide support to a family is also included in the Protection of the Rights of the Child Law. Clause 1 of Paragraph two of Section 66 of the said Law lays down the obligation for the local government to provide assistance and support to families in which there are children, guaranteeing shelter, warmth and clothing, and nutrition appropriate to his or her age and state of health, for each child residing in the local government territory.

During the accounting period the most common situation, when the people were denied municipal social assistance, was associated with the amendment of the legal framework, which determines the order in which a family or a person living separately shall be recognised to be needy. People applied to Ombudsman to get advice about their rights, because they were worried about the acts of social service. No changes have been made to material situation of the persons, and previously it was correspondent to the status of needy personal (family), therewith the persons were eligible to receive social benefits from the local government (benefit to ensure the guaranteed level of income, housing benefit, et al.), but after amendments to the Cabinet Regulation No.299 "Regulations by which a Family or a Person Living Separately shall be Recognised to be Needy" of 30 March 2010 (hereinafter referred to as the Regulation No.299) the status of a needy person (family) was no longer extended, and provision of social assistance to people (families) have been refused.

In accordance with Law On Social Services and Social Assistance, provision of social assistance by local government is based on the evaluation of the material resources of persons (families) – income and property. Social assistance by local government is provided to needy and low-income persons (families) who lack the means to satisfy basic needs.

While criteria of income and material status of a needy family or a person living separately and procedures for granting of such status shall be determined by the Cabinet of Ministers.

The framework determined by the Cabinet of who shall be entitled to obtain the status of needy person (family) has changed for several times. To encourage timely receipt of the status of a needy person (family) and solution of the poverty situation for the people with the lowest income or without income, the legislator has gradually tried to extend the range of persons eligible to receive social support. Wording of the Regulation No.299, which was in force until 31 May 2012, provided that the needy person may possess a car or a motorcycle, which is owned by a single family, as well as one bicycle, moped or scooter for each family member and other movable and immovable property, which for the purpose of this regulation is not considered as personal property and is not taken into account in assessing the person's compliance with the status of needy person.

Local governments in Latvia have repeatedly drawn attention of the Ministry of Welfare that the regulations defined by the Cabinet for the movable and immovable properties of the needy persons lack flexibility. Therefore the Ministry of Welfare has developed amendments to the Regulation No.299, and since 1 June 2012 a new procedure was established in respect of the property, which the needy person may own. Regulation No.299 defines some specific categories of property that are not considered as property, leaving the rest for disposal of the local governments.

Clause 19.4 of the Regulation No.299 prescribes that the movable and immovable property defined by the local government binding regulations is not considered to be the property for the purpose of this Regulation. In practice, local government took the view that they can in their binding regulations avoid to impose regulation and to apply only Regulation No.299, however, from the particular clause a conclusion has to be drawn that the local governments are under obligation to establish the framework. Thus, each municipality had to establish regulations appropriate for their own circumstances of movable and immovable property, which is not taken into account in the evaluation of the personal material condition.

Although amendments to the Regulation No.299 were enacted on 1 June 2012, a number of local governments were in no hurry to define the framework of movable and immovable property. By making monitoring visits to municipalities and receiving information on the trend of the number of needy persons (families) to decrease, to employees of the Ombudsman's Office as the reason for it was indicated amendment of the Regulation No.299.

Given situation suggests that reduction in the number of needy people in the country, indicated by 2012 statistical data, is not associated with the improvement in the economic situation of persons, but rather had been reached due to application of stricter conditions for getting the status of a needy person in a number of municipalities. In 2012 municipal framework of movable and immovable property, which may be owned by the needy, was not established in Valmiera, Madona, Riga and many other municipalities. One part of the local governments considered that the absence of framework of the local government can not be a problem, since social service, when deciding on granting of social assistance, has to assess each case individually. However, in practice, it was found that the municipal social services, when deciding on granting of status of a needy person (family), rarely use individual approach and are strictly guided by the specific legal provisions.

Regulation No.299 no longer provide for that the needy person may own a car. Consequently, if the local authority in their binding regulations has not defined a car as property, which is not considered to be personal property, social service shall decide on the refusal to grant the status. Every local authority, when defining the list of belongings, should evaluate their own situation. For example, in municipalities where public transport services are well organized and public access to social infrastructure is not made difficult, a car owned by the person can be considered as an objective obstacle to get the status of a needy person. While there may be another approach towards the residents of rural areas where the car is considered to be practically the only means by which movement and access to infrastructure can be ensured. Ombudsman is holding a view that a car should not be an obstacle to getting the status of needy family and social assistance for the large families and the families where there is a child with disabilities, irrespective of the place of residence of the applicants for social assistance, public transport accessibility and other conditions, since in such cases, the need for a car is objectively justified by the concerns of the parents for the children (for example, transport of several children to educational institutions, to doctors and to other locations that can be made easier by use of the personal vehicle). While defining a car as property, which is not taken into account when assessing compliance of the family with the status of needy family, the local authority may specify, whether it may be entirely new or still must have some depreciation period. However, if such property for the large families and the families where there is a child with disabilities has not been defined at all, restriction of the said human rights to get social assistance may be disproportionate.

When deciding on granting of social assistance, the social service, as far as possible, should assess the actual circumstances of each situation. For example, it would not be proportionate to restrict the rights of a person to get social assistance, by indicating to a property owned by such person, although it according to the legal framework is considered as ownership, but with which the person is denied the possibility to deal with. In the verification procedure No. 2012-291-17E it was found that social service, deciding on refusal to grant the status of needy family and social benefits to a family, did not take into account the fact that the vehicle owned by the person has been removed from service more than 5 years ago and in the vehicle register in 2009 a bailiff's prohibition is registered for all activities with the car, including a prohibition for alienation of the vehicle. The said verification procedure concluded that the vehicle owned by a person does not affect the material situation of the family, since the family can get no benefit from this property – they can neither use, nor sell or mortgage or lease it. Therewith refusal of the social service unduly restricted entitlement of the family to social security.

Providing advice to people, a number of cases were found where social service by its own actions has permitted infringement of the child's rights, by denying the child to receive social assistance, if a parent fails to comply with his or her obligation to participation, but the income and material condition of the family corresponds to the status of needy family. Such

acts of local government are contrary to the child's non-discrimination principle explanation of which is provided in Article 2 of the Convention. From this article a conclusion may be drawn that a child may not be penalised for actions of his or her parents or guardians. Therefore, if the family meets the criteria of recognition as a needy family, but the parent avoids to perform the participation obligation, the social service, subject to the rights and interests of the child, shall be under obligation to pay social assistance to the child.

V The Right of the Child to Grow up in a Family

In 2012 Ombudsman's Office has received most of all submissions with regard to the right of the child to grow up in family and possible infringements of the right of parents to inviolability of family life having originated when for a long time and without success they were dealing with the issue of renewal of the child care right.

In dealing with the submissions, the Ombudsman has found that, in several cases, the same problems are encountered in decisions and actions made by Orphan's Courts and social services:

1. Social Work with a Family

Deprivation of right of care and removal of a child from the family are concerning very important human rights - the right to a family. In addition, removal of a child from the family affects this right in the most drastic way. Thus also severity of injury, if the decision had been unlawful, in such cases is considered to be very significant. That is why deprivation of the right of care and dissolution of a child from the family may take place only in accordance with the procedure laid down in the laws and regulations, without any derogations.

The United Nations Convention on the Rights of the Child (hereinafter referred to as the Convention) has established a principle that it is in the child's interests, whenever its possible, the right to be cared for by his or her parents (Article 7 and 9).

In accordance with Paragraph one of Section 203 of the Civil Law (hereinafter referred to as the CL), parent can be deprived of the right of care (the wording of the Civil Law before 01.01.2013) due to five reasons, namely:

1) there are factual impediments which deprive one of the parents of the possibility of exercising care over the child;

2) the child is found in circumstances dangerous for health or life due to the parent's fault (due to deliberate action or negligence of the parents);

3) the parent abuses his or her rights or does not ensure care and supervision over the child;

4) the parent has given consent for adoption of the child, except when, as a spouse he or she has given a consent that the child is adopted by the other spouse;

5) violence of the parent against the child is found or there are reasonable suspicions of violence of the parent against the child.

In practice it was found that in the decision to deprive of the right of care the Orphan's Courts not necessarily indicate a specific clause of Paragraph one of Section 203 of the CL, on the basis of which the rights of care are removed. Often these reasons you can tell from the content of the decision, however, in accordance with Clause 7 of Paragraph two of Section 67 of the Administrative Procedure Law a decision shall contain a reference to the particular section, paragraph, clause etc. of the regulatory enactment.

However, the most essential deficiency, to which increased attention should be paid according to the Ombudsman's opinion, - this is social work with a family. Upon assessment of the submissions, a conclusion can be drawn that after removal of the children from the

family and placement in the extra-familial care facility, no effective social work is carried out with the parents in order to the children as soon as possible could go back to their family. This means that a clear and unambiguous action plan is not developed to help the family to create a secure environment for bringing up children and understanding of the needs of children. This plan should require inclusion of specific, clear and explicit conditions to be fulfilled by the family to decide with regard to renewal of the right of care to the parents, for example, to indicate the need to purchase specific items (beds, stove et al.), the parents need to visit courses of the children's emotional education, to register the child at general practitioner etc., in order the child's parents clearly understand, what is included in condition of the Orphan's Court for renewal of the right of care – to prevent the circumstances that have been the grounds for removal of the right of care.

It is essential to emphasize that responsibility of the State is not to separate children from their families, but to try to eliminate the shortages that threaten the safety of children in the family, therewith it is necessary to improve parental awareness of the needs of the child and emotional education, while the resources available to the public authorities (local government, social service, Orphan's Court) enable the family to provide the necessary support to the development of such skills and abilities, as well as to provide assistance to improvement of the place of residence of the family.

2. Access Right with the Child during Provision of Extra-Familial Care

The next question, which we have to face, when assessing submissions, is safeguarding of the access rights for children with parents and close family members.

Upon assessment of submissions by a number of people, a conclusion has to be drawn that the most common reasons why parents are not in a position to realize access to their children - is the distance, reluctance of the foster family or the guardian to provide for the child's access to biological parents, inefficient social work with biological family.

In cases when the child, after removal from the family, is placed in the extra-familial care institution, which is a long way from the parental home, actual obstacles are created for a normal exercising of the access right. The families often indicate that cannot financially afford to go to visit the child as often as they would like and how it would be necessary.

In a number of cases foster-parents or guardians have initiated the limitation of right to contact, guided by their different interests are trying to dissociate the child from his or her biological family.

Civil Law is the regulatory enactment of the Republic of Latvia determining the right of the child and the parents to maintain personal relationship and direct contacts. Paragraph two of Section 181 of the said Law specifically underlines that this right should be ensured also when the child is separated from one or both parents. While the right of a child placed in extra-familial care to meet his or her parents is prescribed by

Section 33, Paragraph one, Clause 1 of the Protection of the Rights of the Child Law. Section 44 of this Law prescribes that while a child is in extra-familial care, the local government shall provide educational, social and other assistance to the parents of the child, in order to create conditions for renewal of care of the child within the family. While a foster family, guardian and a child care institution shall inform the parents regarding the development of the child and shall encourage the renewal of family ties.

In accordance with the received submissions, Ombudsman concludes that in many cases this work with the family is not really carried out, as well as Access to the parents is even prevented and deliberately restricted rather than encouraged.

Paragraph one of Section 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe (hereinafter referred to as the ECHR) ensures for everyone the right to respect for his family life. Majority of the cases, examined by the European Court of Human Rights (hereinafter referred to as the ECtHR) with regard to the right to inviolability of family life, were related directly with the rights of parents and children, inter alia, in relation to determination of the right of parents to meet a child or children, or events when children against the parents' will are delivered for the state maintenance.

Right to inviolability of family life protected by Article 8 of the ECHR, imposes on public authorities a negative obligation to avoid unjustified interference with right of the person for family life.

In the events when public authorities against the parents' will separate a child from his or her parents or impose to the parents restrictions for the access right, undeniably, there is interference of the public authorities with the right to family life. However, such interference may be legitimate, if it meets the requirements laid down in the ECHR Article 8, Paragraph two: it has taken place in accordance with the law, implementing one or more of the purposes prescribed by the ECHR Article 8, Paragraph two, for example, protection of the rights of a child, health, morality, and may be regarded as necessary in a democratic society. When deciding whether interference is needed, it is necessary to assess whether, in the light of all the circumstances of the case, the reasons provided by the public authorities to interfere in the right to family life are essential and sufficient. Decisive role in each case should play a consideration, how to ensure the interests of the child as good as possible. [27]

It should be noted, that in accordance with the ECtHR case-law in deciding the question for putting children to maintenance of the state public authorities have a certain discretion permissible, however, any further limitations are subject to much stronger control by the ECtHR, for example, limitations to rights of the parents to meet the child. It is explained by the fact, that, first of all, putting the child to maintenance of the state should be supposed to be a provisional instrument, which is discontinued, as soon as circumstances allow it and, second, when carrying out temporal custody, the state should take the necessary measures in order to achieve the final aim – reunion of the biological parents and the child. As regards limitations to the access rights of parents and a child, the ECtHR has specified that a reunion possibility will gradually diminish and in an end result it will not take place at all, if the biological parents will be denied the meeting rights or meeting with a child will be allowed so rarely that among them the ties of kindredship undoubtedly will not originate. Prohibition or limitation of access rights between parents and children not only does not promote a family reunion, but rather makes obstacles to it.[28] From ECtHR case-law a conclusion may be drawn, that limitation of access right between parents and a child should be grounded with the purpose such as protection of the interests of a child, however, it may not be contrary to the main aim - further family reunion. At the same time an equilibrium should be observed between contiguity limitation and aims, due to which the limitation is necessary.

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[27] Feldhūne G., Kučs A., Skujeniece V. Cilvēktiesību rokasgrāmata tiesnešiem. Latvijas Universitātes Juridiskās fakultātes Cilvēktiesību institūts, 2004. – pp.57-59.

[28] ECtHR judgment of 27 April 2000 in Case *K. and T. v. Finland.*

Implementation Handbook for the Convention on the Rights of the Child specifies that when children are subjects to the state care, a situation is possible when contact of children with their parents is not ensured. This can be done for the sake of care provider's convenience, especially in the events when the child's parents are ill-disposed, obstructive or unconcerned in the child's development. Arguments are put forward that the child ought to "become familiar", or that the child is worried when meeting with the parents. However, the evidence suggests that a possibility is less likely that children will be reunited with the parents, if the contact with them is not kept during the first few months, while being in the state care.[29]

Ombudsman has established that in some cases, prohibition for the child to meet his or her parents is used as a means of punishment for inappropriate behaviour in the extra-familial care facility. This practice does not comply with the legislative framework and is incompatible with the principle of ensuring the child's interests.

In the light of the above, the Ombudsman has provided recommendations in his opinions to particular Orphan's Courts on the need to cease violations of the rights of the child immediately and to ensure the child's access to biological family.

3. Removal of Care and Custody Rights from the Persons with Disabilities

In 2012 Ombudsman has reviewed also the matters where the Orphan's Court has deprived parents of the care right since the parent due to his or her state of health is not in a position to provide the necessary care for the child.

Thus, for example, the Ombudsman's Office has received an application from a child's father deprived of the right to care as well as his access right with the child has been restricted, by scheduling a meeting once per month in the presence of a third party.

Upon assessment of materials of the matter and requesting information from the competent authorities, the Ombudsman has found that the father has been deprived of his parental rights due to his state of health, but the access right has been limited, since the foster family does not want the child to meet his father twice a month, because after these meetings the boy becomes nervous and expresses his wish to live with his father.

The child's father is dealing with the problem of restoration of the right to care for years, but there is no success in it until now.

The Ombudsman has applied to the responsible Orphan's Court to ensure unlimited access for the child with his father, as well as to address the question of whether it is not possible to appoint one or other of the child's close relatives to be a guardian of the child, thus ensuring the right of the child to grow up in the family.

In a similar case, the Ombudsman received a letter from the Orphan's Court, which asked to give an opinion on the Administrative District Court judgment where the Orphan's Court is obliged to issue an administrative act on the prohibition of the mother with mental health problems to meet her daughter since her birth being under guardianship.

In accordance with Clause 2 of Section 1 of the Law "On Judicial Power" justice in the Republic of Latvia is administered only by judiciary. Taking into account the statutory principle of independence of the judiciary and the principle of preclusion to intervene in the work of the judiciary, the Ombudsman can not judge actions and adjudications made by the court in order to establish their legality or illegality. In the light of the circumstances of the particular matter, the Ombudsman has presented his position on the legal aspects of the situation.

In accordance with actual conditions of the situation, the child's guardian over an extended period of time, i.e., from the moment when the child was placed under guardianship,

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[29] Hodgkin R., Newell P. Implementation Handbook for the Convention on the Rights of the Child: UNICEF, 2002.- p.134.

had not properly ensured the child's right to know her mother and to maintain regular personal relationship and direct contacts with her. Directly as a result of unlawful actions of the guardian, the child did not know her mother, therefore, meeting with her mother could cause psychological trauma for the child.

In the particular case, the mother was not capable to implement her duties of care over her daughter because of illness. In the mother's actions there was no deliberate and malicious avoidance of the performance of her duties of care. State of health of the parent that precludes the parent to take care of the child, is a condition beyond control of the parent and has to be valued as the actual obstacle for performance of the duties of care, which in accordance with Section 203, Paragraph three of the Civil Law cannot form the grounds for removal of the child care right. Such a regulatory framework is to protect the rights to inviolability of family life of the child and the parent who is incapable to exercise the duties of care for the child due to reasons beyond his or her control, and justification for this can be found in the principle fixed by the UN Convention on the Rights of the Child (hereinafter referred to as the Convention) that it is in the interests of the child to be placed under custody of his or her parents, whenever it is possible (Article 7 and 9), and the UN Convention on the Rights of Persons with Disabilities prescribing that a child shall not be separated from his or her parents on the basis of a disability of either the child or one or both of the parents (Article 23). A possibility can not be excluded that, in the face of the said actual obstacle, re-unification of the child and the parent in the future may also not take place, however, in order to protect the right of the child and the parent to inviolability of family life, it is in the interests of the child and of the parent that the family ties have to be preserved.

Preservation of the family ties is closely linked to the rights of the children to know their parents. In accordance with Article 7, Clause 1 and Article 8 of the Convention, the child from the time of birth, as far as possible, shall have the right to know his or her parents and to preserve his or her identity. In the Implementation Handbook for the Convention on the Rights of the Child, it is noted that Article 7 does not refer to the best interest of the child. Wording "as far as possible" shall mean that a child has a right to know his or her parents, whenever possible, even in such a case, where that is deemed in conflict with the child's best interests.[30]

In accordance with Clause 1 of Paragraph one of Section 33 of the Protection of the Rights of the Child Law and Paragraph three of Section 39 of the Law On Orphan's Courts a child during extra-familial care, has rights of visitation with parents, except in cases, in which visitation is harmful to the health and development of the child. Administrative District Court, in the light of the conditions of the child's mother's mental health characteristics and their potential effects on the child's emotional stability and risks during the visit, has concluded that there is a sufficiently high risk of threat to safety of the child, which allows to impose restrictions to the right of the child meeting the parent. Ombudsman is holding the view that the Court, when adjudicating this matter, has failed to take into account and to assess in conjunction with other conditions the reasons for emergence of such a situation that are basically related to illegal acts of the guardian, without ensuring to the child the right to know her mother and to maintain regular direct contacts with her. Also when assessing the personality and the state of health of the child's mother, the Court has failed to take into account the current information provided by the specialists and third parties, but has given preference to the facts assessed when deciding about the need for continued imposition of compulsory measures of a medical nature to the person.

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[30] Hodgkin R., Newell P. Implementation Handbook for the Convention on the Rights of the Child: UNICEF, 2002.- p.117.

Article 3 of the Convention has anchored one of the basic principles of the rights of the child - the principle of priority of the rights and legal interests of the child: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." It means that not only the court and other institutions should take their decisions on the basis of what is in the best interest of the child, but also the child's parents and persons caring for the child, should take into consideration that the decisions and actions made by them protect and ensure the interests of the child in the best possible way.

Upon assessment of circumstances of the situation, a conclusion has to be drawn that restrictions for the mother and her daughter to maintain personal relationship and direct contacts, since the guardian so far have avoided to ensure the rights of the child to know her parent and to maintain direct contacts with her, are not desirable. No changes have been observed in the state of health of the woman that might harm her or the surrounding community and no inadequate actions have been observed in her behaviour. Therewith the mother's behaviour during the meeting with the child does not pose a risk to the safety of the child. Prohibition for the mother to meet her child will cause only further obstacles to the rights of the child to know her mother and to preserve with her family ties, which is not in the child's best interests and does not comply also with the principles of the Convention, ECHR and the UN Convention on the Rights of Persons with Disabilities. In order to the meeting with her mother cause to the child no emotional shock, it is important to ensure that the child is aware of the existence of genetrix, a meeting with her mother is taking place on a regular basis under emotionally favourable conditions for the child and, if necessary, by involvement of knowledgeable third parties in the said events and by ensuring the psychologist consultations for the mother, as well as for the child and for the guardian.

VI Right of the Child and Freedom of Speech

Article 100 of the Constitution of the Republic of Latvia and several international legal documents binding for Latvia guarantee the human right to freedom of speech and expression, which includes the freedom of views, the right to freely receive and distribute information and ideas without interference from public bodies and irrespective of national borders. The right to freedom of expression and speech is the basis for every individual's freedom to express their views without fear of restriction, prosecution or persecution. However, freedom of expression may become into conflict with several human rights, for example, affect the presumption of innocence, personal privacy or to be on the border of hate induction.

In 2012 the Ombudsman's Office has dealt with the verification procedure with regard to "Shepherding a Child's Heart", a book by Tedd Tripp, published by the "*Atradums-personības resursi*" publishing-house, where methods of upbringing children were described that include application of physical punishment and emotional violence against a child. T.Tripp's book "Shepherding a Child's Heart", referring to Holy Scripture contained information about the reasons for lashing and the benefits for flagellation, as well as a detailed guide to the events in which to flagellate, how to flagellate and why to flagellate. In the context of verification procedure assessment was made, whether it is allowed to publish and to disseminate the books of such content in Latvia.

Article 110 of the Constitution of the Republic of Latvia has fixed an obligation for the State to protect the rights of the child. Both the Convention and the Protection of the Rights of the Child Law prescribes that the child has to be protected against all forms of violence. A child shall not be treated cruelly, tortured or physically punished, and his or her dignity and

honour shall not be violated. Physical punishment to the child creates both physical and emotional distress for the child and is a violation of the rights of the child.

In assessment of individual chapters of the T.Tripp's book "Shepherding a Child's Heart", it was concluded that the book actually promulgates violence against a child as the method of child's upbringing and instigates illegal activities. Given that author of the book "Shepherding a Child's Heart" has based the need for flagellation of a child for educational purposes on the Holy Scripture, during examination of a verification procedure Ombudsman has asked the Council of Sacred Affairs to comment on the matter.

By providing information in the verification procedure, the Council of Sacred Affairs has pointed out that dogmatics of traditional religious confessions represented in the Council (i.e., United Methodist Church of Latvia, Union of Latvia's Baptist Parishes, the Evangelical Lutheran Church of Latvia, Roman Catholic Church, Latvian Orthodox Church, Latvian Pomorian Old-Orthodox Church, Union of the Adventists of the Seventh Day of Latvia's Parishes and Religious Parish of the Riga's Hebrews) do not popularize the need for flagellation of a child during the child's upbringing process. Consequently a conclusion has to be drawn that the methods of disciplining the child by using physical and emotional violence against the child described in T.Tripp's book "Shepherding a Child's Heart" are not supported among the traditional religious confessions.

The Council of Sacred Affairs further noted that no religious organization represented in the Council of Sacred Affairs has published T.Tripp's book "Shepherding a Child's Heart" and references to the Bible and the Holy Scriptures is interpretation by the author T.Tripp.

Although the freedom of speech is of fundamental importance to the existence of democratic society and implementation of fundamental rights of an individual, this right is not absolute. Limitations to the implementation of freedom of speech is allowed both by the Constitution and international documents binding for the Republic of Latvia. For a restriction of right to be justified, at the same time it must meet three criteria:

1. The limitation is prescribed by law;

2. It is justified by a legitimate aim.

3. This is necessary in a democratic society and complies with the principle of proportionality.

When making analysis of legal framework, it was found that in the Republic of Latvia special framework fails to define certain cases for prohibition of publication of information relating to books. Books are subject to general restrictions on freedom of expression, which are clearly defined in the Criminal Law, for example, as regards invitation to terrorism, genocide, aggressive war or causing national, ethnic or racial hatred or discord but general restrictions on the freedom of expression in their turn do not include a call for violence.

Even though specific laws fail to prescribe a prohibition to issue and to disseminate information promulgating violence against children and instigating unlawful activities in respect of the books, the Ombudsman has concluded that such restriction to the freedom of expression from the point of view of the law may be based on Article 110 of the Constitution, on the Convention, on the Protection of the Rights of the Child Law, as well as on the principle of priority of the rights of the child. In accordance with the said documents the Latvian state has committed to protect the rights of the child, including protection of children against all forms of violence, recognizing physical punishment of a child to be illegal and unacceptable.

Given that the book describing educational methods directed towards violence against a child, can adversely affect perception of the parents of the children and other persons responsible for the child with regard to upbringing of children, and lead to infringement of the rights of the child, it was concluded that prohibition for publishing and dissemination of literature with such content has a legitimate purpose, i.e. to protect the rights of the child and

public welfare, and it corresponds to one of the legitimate purposes referred to in Article 116 of the Constitution.

However, upon assessment of compliance of the restriction with the principle of proportionality, the Ombudsman has not arrived to opinion that such a restriction to the freedom of expression is necessary in a democratic society and is proportionate. From the European Court of Human Rights case-law a conclusion has to be drawn that freedom of expression in a democratic society is very wide and its restriction is possible only in exceptional cases. In addition, freedom of expression applies not only to information or ideas, which are perceived in a positive or neutral way, but also to those that are accusing, shocking or disturbing. From the Ombudsman's point of view, prohibition for production and distribution of the book describing violent methods of upbringing children, would significantly restrict the right to freedom of expression, including the right to express one's views and the right to receive information freely. It was concluded that public availability of the literature of such content has also a positive aspect, since it shows that there are different views in a community - there are still people who support the view that violence against children in the family is an appropriate method for the child's upbringing rather than violation of the rights of the child. This in turn activates the need to educate the society on the rights of the child protection issues, particularly in respect of corporal punishments.

When making analysis of normative documents, it was found that several laws and regulations provide for the most comprehensive prohibition of the types of violence, including physical (inter alia, corporal punishments) and emotional violence. However, the guilty person shall be subject to criminal, administrative and civil liability only when a violent action against the child is established, not in the event of invitation to violence against children. For example, Section 174 of Chapter XVII of the Criminal Law "Criminal Offences against the Family and Minors" provides for a specific criminal offence – "Cruelty Towards and Violence Against a Minor". According to this Section a person who commits cruel or violent treatment of a minor, if physical or mental suffering has been inflicted upon the minor and if such has been inflicted by persons upon whom the victim is financially or otherwise dependent shall be subject to criminal liability. Persons who can be subjects to criminal liability in accordance with this Section may also be the child's parents or guardians. This Section prescribes liability for such cruel or violent treatment of minors, which has resulted in a victim suffered slight bodily injuries. However, if physical violence has resulted in serious or moderate bodily injuries, liability is provided for in Section 125 and 126 of Chapter XIII of the Criminal Law "Criminal Offences Against Health of a Person".

For violence against children a person may be subject also to administrative punishment. Section $172.^{2}$ of the Latvian Administrative Violations Code provides for liability for the physical and emotional child abuse, - for such offence a warning shall be issued or a fine in an amount up to LVL 50 shall be imposed. In the case of the same violations, if recommitted within a year after the imposition of an administrative sanction or if they are performed by a State or local government institution official or employee, a fine in an amount from LVL 25 up to LVL 150 shall be imposed. In addition to the above types of liability, laws and regulations also provide for deprivation of the violent person of the child care and custody right, if violence is committed by a parent.

From national and international documents also obligation is derived for the State to take the necessary measures towards elimination and prevention of all forms of violence against children. The State should provide assistance to parents and other people who are taking care for children, to carry out their duties and to promote the implementation of educational measures, providing alternative methods of upbringing children to those people that considers flagellation to be the only effective method.

Respect for and protection of the rights of the child is also obligation of each member of the public. Although when making investigation of the issue it was concluded that there is no legal basis for prohibition to publish and to disseminate T.Tripp's book "Shepherding a Child's Heart" from the human rights point of view, however, in order to prevent formation of incorrect understanding among readers of the book on parenting methods and to protect the children from possible violence, in the light of the general principles of law and the principle of priority of rights and interests of the child, as well as from the morality point of view, the book publishers, traders, other natural and legal persons, including libraries, when publishing and disseminating the said book and other literature of similar content, shall be obliged to provide additional information (for example, by inserting explanation in the book) that the book promulgates violence against children and instigates activities being subject to liability prescribed by laws of the Republic of Latvia. The Ombudsman's opinion was sent for information and for further action to publishing house of T.Tripp's book "Shepherding a Child's Heart", to Latvian Publishers' Association and to Latvian Bookseller's Association, as well as to Library Association of Latvia.

VII Topicalities of the Division of the Rights of Children

1. Statistics and General Overview

The Republic of Latvia has not established a separate position of Children's Ombudsman and institution to ensure operation thereof. Ombudsman of the Republic of Latvia at the same time functions as ombudsman of the rights of the child. Division of the Rights of the Child has been established in the Ombudsman's Office, and lawyers who are working in the Division of the Rights of the Child, are working only with issues of the rights of the child.

In 2012 Ombudsman's Office has received 665 submissions with regard to issues of the rights of the child, including possible infringements of the rights of the child. 139 from them are written submissions and 526 verbal and electronic submissions, which are not signed with a secure electronic signature.

In total for clarification of circumstances 63 verification procedures have been initiated. 59 of them were initiated through examination of individual submissions, and four initiated on the Ombudsman's initiative.

The largest number of submissions (94) has been received with regard to the rights of the child to grow up in the family (for example, with regard to implementation of the access right, the right not to be separated from parents without good reason, renewal of the right to care et al.). In 86 cases persons have applied to the Ombudsman's Office with regard to the right of the child to acquire basic education free of charge and to find out how to handle the particular legal situation, in which the school requires to purchase educational aids. 73 submissions have been received with regard to recovery of support for a child (for example, recovery of child support, if the marriage is not dissolved, the right to apply to the court to adopt a temporary decision, the amount of child support and amendment thereof, litigation costs, enforcement of judgement, et al.).

When comparing the statistics on submissions with the previous year, the right of the child to grow up in the family and recovery of maintenance are still current topics. The number of submissions in maintenance issues has increased more than two times (from 31 in 2011 to 73 in 2012). In connection with inclusion of the issue in the Ombudsman's strategy for 2011-2013 and prioritisation in 2012, the number of submissions of the right of the child to acquire basic education free of charge has substantially increased. There has been a slight increase in the number of submissions on violations of the rights of the orphans and the

children having left without parental charge (8 submissions in 2010, 29 – in 2011, 45 - in 2012). In connection with the economic situation in the country, the number of submissions also increased on the right of families with children to social assistance from local government (from 23 in 2011 to 38 in 2012). While the number of submissions where the person is requesting provision of information continues to decline (96 submissions in 2010, 42 in 2012 and 19 during the accounting period).

In May 2012 the Ombudsman, by implementation of the right prescribed by Section 15, Paragraph two of the Ombudsman Law, provided a report to the Saeima Education, Culture and Science Committee in respect of ensuring the right to acquire the basic and general secondary education free of charge in educational institutions established by local governments (more comprehensive information in the chapter "Right of the Child to Acquire Education Free of Charge").

In 2012 monitoring visits were carried out to all 6 psychoneurological hospitals entitled to accommodate children (for more information about the monitoring visits see Chapter "Execution of the Rights of Children in Psychoneurological Hospitals").

In 2012 Ombudsman has launched monitoring visits in the municipalities of Latvia. Employees of the Division of the Rights of Children have participated in all the monitoring visits to local governments, during which attention was paid to the matters of ensuring the rights of the child and recommendations were provided to remedy this situation. Special attention during monitoring of local authorities was paid to prevention work with children[31], social work with families at risk and support measures for guardians and foster families.

Upon examination of verification procedures, Ombudsman contributed to elimination of the legislation gaps, for example, to several educational institutions recommendations were provided for development of the internal procedural rules; to local authorities – for elimination of deficiencies in the binding regulations. For example, the Council of Bauska Municipality on 29 March 2012 has amended binding regulations No.27 "On Procedure in which Travel Costs for Educatees of General Basic Education and General Secondary Education Institutions are Borne by Local Government of the Bauska Municipality" of 28 October 2010, by preventing infringement of the rights of educatees living outside the urban area.

In 2012 Ombudsman has provided opinion in a number of issues important to the public, for example, with regard to absolute nature of the right of teachers to the acts of protest and strikes and their use in the course of examination; with regard to the United Nations Committee on the Rights of the Child for elimination of baby boxes; restrictions for the right to take a teacher's job in connection with the person's criminal record; with regard to the right to receive the minimum maintenance by children whose paternity is not determined, et al.

In 2012 the children's rights experts from the Ombudsman's Office participated in development of several laws and amendments thereof, for example, continued to work within structure of the Working Group supervised by the Ministry of Interior Information Centre on the development of the normative framework to create an Information Support System for Minors to improve interinstitutional cooperation in the field of the protection of child rights, submitted proposals for amendments of the Protection of the Rights of the Child Law to ensure the rights of the child to receive care in a family-oriented environment.

In 2012 Ombudsman actively promoted public awareness of the rights of the child and of the mechanisms for protection of these rights. Seminars for social teachers, form masters,

[31] In accordance with Protection of the Rights of the Child Law, Section 58, Paragraph two, Local governments shall establish a prevention file and formulate a social behaviour correction and social assistance programme for each child who has committed illegal acts or other acts which may lead to illegal actions.

social science educators, school principals and managers of day-care centres; lectures for first year students of the University of Latvia Law Faculty law Bachelor's study program on the rights of the child within course "Basic International Human Rights" have been organized. Specialist of the rights of the child has participated in lectures arranged by the Ombudsman's Office for the State Police officers "Compliance with Human Rights in the Work of the State Police", promoting understanding of the police officers of the rights of the child issues.

By using an interactive game, 13 educational classes were arranged for children. During the classes children and young people were made cognizant of information about the Ombudsman and the Ombudsman's Office, their areas of activity, through the developing exercises have arranged new and improved the existing knowledge of the rights of the child issues.

Until 31 December 2010 for communication with children the Ombudsman's Office has used image of cat Indriķis XIII from the animation movie "Fantodroms". Copyright for the use of the said image has expired, therefore, the Ombudsman's Office in collaboration with the artist Agnese Bule has created a new image. The new image is used in all the materials intended for children.

To encourage the participation of children and young people, understanding of the rights of the child and identification of the Ombudsman's Office among children, in October 2012 the Ombudsman's Office has invited the learners from all the schools to participate in the contest and to submit their ideas for the name of the Cat - image of the Division of the Rights of the Child of the Ombudsman's Office and defender of the rights of children. On 20 November 2012, anniversary of the UN Convention, from 330 ideas contributed by learners' a name was selected for the Cat as defender of the rights of children - Modris the Prompt (Ašais Modris)[32]. Author is Mārtiņš Kalniņš from Grobiņa Primary School.

Specialists of the rights of the child from the Ombudsman's Office have participated in several information events, for example, in conference "Solutions for Safe Schools" arranged by the "Latvian Parents' Forum" member organizations "Education and Support for Parents in Latvia" and "Parents for Education" and the State Inspectorate For Protection Of Children's Rights , where spoke on the theme "Legal Framework of Child Safety in Educational Institutions".

On the International Day for Protection of Children, specialist of the rights of the child from the Ombudsman's Office has participated in the 10th conference "Orphan's Courts and Children in Extra-Familial Care" arranged by the Association of Employees of Orphan's Courts of Latvia, and spoke on the theme "Rights of the Children to Alternative Care in a Family-Oriented Environment".

During the second half of 2012, Division of the Rights of the Child of the Ombudsman's Office has cooperated with the Centre of Legal Practice and Assistance of the Law Faculty of the University of Latvia, providing an opportunity to the student for in-depth study of the rights of the child issues.

Specialists for the rights of the child from the Ombudsman's Office have participated in several interinstitutional meetings and discussions. For example, discussion "Provision of Educational Aids in the Schools of Latvia" jointly arranged by the "Education and Culture" (*„Izglītība un Kultūra"*) newspaper and the Trade Union of Education and Science Employees of Latvia.

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[32] More information http://www.tiesibsargs.lv/sakumlapa/bernu-tiesibu-aizstavis-kakis-tiek-pie-skolenu-izdomata-varda-asais-modris

In 2012 Ombudsman has actively cooperated with non-governmental organisations acting in the field of protection of the rights of the child, both by joint arrangement of information events and cooperation for identification and resolution of various problems.

Within the framework of international cooperation on 29-30 March 2012, the Ombudsman and specialists of the rights of the child from the Ombudsman's Office have participated in the seminar of children's ombudsmen from the Baltic States in Tallinn, Estonia, speaking with presentations on the Ombudsman's mandate and the system for protection of the rights of the child created in the country and by presenting the current events in the work. On 9-12 October 2012 Ombudsman and one of the specialists of the rights of the child from the Ombudsman's Office have participated in the European Network of Ombudspersons for Children (ENOC) annual 16th Conference and General Assembly in Nicosia, Republic of Cyprus. The Conference was entitled "Juvenile Delinquency – Child Friendly Justice, Structures and Processes for Prevention and Intervention".[33] On 4-5 December 2012 Ombudsman and one of the specialists for the rights of the child from the Ombudsman's Office have participated in the I International Congress on Children's Rights dedicated to the year of Janusz Korczak, arranged by Marek Michalak, the Children's Ombudsman of the Republic of Poland, and a scientific conference "The right of the child to respect – challenges of the 21st century" held within its framework. Members of the Congress have signed a Warsaw Declaration[34] applying to the States to fully implement the Convention and to ratify all the optional protocols to the Convention on the Rights of the Child; to establish an independent ombudsman's authority for the rights of the child in each country, as well as to adopt laws and to create the conditions for full implementation of the rights of the child.

Specialists for the rights of the child from the Ombudsman's Office have met representatives of the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) and Secretariat of the Council of Europe Convention on Action against Trafficking in Human Beings, as well as the World Childhood Foundation representative from Sweden, and discussed the topicalities in the field of the rights of the child.

2. Right of the Child to Housing in Relation with Putting into possession

Section 10 of the Protection of the Rights of the Child Law guarantees that every child shall have the right to housing. While in accordance with Article 96 of the Constitution of the Republic of Latvia and international human rights documents Latvia has undertaken to ensure the human right to inviolability of home. Infringement of the right to inviolability of housing may be present both when someone has unlawfully entered the person's apartment, irrespective of whether it has or has not caused any consequences, and when, unlawful actions of any other person have resulted in an individual lost the possibility to make use of their own home. The right to inviolability of home includes a national obligation to protect a person from arbitrary eviction and obligation to create mechanisms for protection of rights available to the person that could be used by it the event of arbitrary eviction.

During the accounting period a few submissions have been received, indicating infringement of the right of the child to housing and to inviolability of housing, which was made when putting the new proprietor into possession of the immovable property and arbitrarily evicting the tenants living in this property or creating to the tenants such conditions that make living in the rented immovable property impossible. For example, during

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[33] Program of the Conference available on http://crin.org/docs/FileManager/enoc/ENOC_Annual_Conf_Programme_Cyprus2012_fin..pdf.

[34] Available on http://deklaracjawarszawska.pl/en

verification procedure No. 2012-157-5C, although after putting of the new proprietor into possession of the immovable property for the tenant's family a possibility was provided to remain in the apartment, simultaneously with entering into possession eight persons authorized by an owner, including security staff, had settled in the apartment against the tenant's will. The mentioned persons voluntarily replaced the door lock of the apartment, cut out electricity and gas, to the tenant and her children limited a possibility for free movement around the apartment and to communicate with another persons, used and damaged the tenants' possessions, threatened and psychologically manipulated the tenant to sign an agreement for termination of the contract and vacation of an apartment. Due to actions of the authorized persons, by creating inhuman conditions in the apartment, children of the tenant have incurred emotional suffering, in a result of which state of health has deteriorated to one minor child - child with special necessities.

Section 8 of the Law "On Residential Tenancy" prescribes that if a residential house or apartment is transferred into the ownership of another legal or natural person, the rental contracts entered into by the previous owner shall be binding to the new owner. Consequently, it appears that putting of the new proprietor into possession of the immovable property causes no obligation for the tenant to vacate living accommodation and according to the law "On Residential Tenancy" is not considered as legal basis for the tenant's forced eviction from the living accommodation. Therefore, even in the case when the new owner is casting doubt on legality of the rental contract concluded by the previous owner, a person may be evicted solely through court procedure. Owner of the living accommodation have to bring an action to court for eviction of the person. Only when the court has considered the issue of the rights of individual to use the living accommodation and the relevant judgment of the court of justice has entered into force, forced eviction of a person is acceptable, which only a sworn bailiff shall be entitled to perform.

For prevention of the infringement of the tenant's rights, including in the event of infringement of the rights to inviolability of home, both civil and criminal means can be used. The tenant shall be entitled to address through the civil law procedure the dispute arising from the rental legal relationship, by bringing action to the court under civil procedure. In the event of infringement to inviolability of home, it is possible to make the guilty person subject to criminal liability in accordance with Section 143 of the Criminal Law (Transgression of Inviolability of the Apartment of a Person), while Section 279 of the Criminal Law prescribes a liability for arbitrariness. Although the State has created appropriate mechanisms for protection of rights, in practice application of these mechanisms does not ensure prevention of infringement of the person's rights in a reasonably short period of time.

Ombudsman has established that in some cases, the State Police fails to respond to eventual violation of the inviolability of apartment and arbitrariness committed by owner of the apartment, by indicating that it is a dispute of civil nature, which has to be dealt with under civil procedure, and the question of commitment of possible criminal offence subject to Sections 143 and 279 of the Criminal Law is not analysed at all. While, if criminal proceedings, nevertheless, have been initiated in situations when in the apartment with lodgement of other persons for the tenant inhuman conditions and obstacles to use the rented apartment without hindrance are created, the State Police officers are taking no actions to cease illegal activities of the apartment owner and to prevent infringement of the tenant's rights. Therewith pretty often use of the said law enforcement mechanism – application to the police acted inefficiently.

Though resolution of civil law dispute in the court may take several years. In practice there are also cases when the previous owners and tenants abuse their rights through entering into fictitious transactions for to delay the putting the new owner into possession and vacation of the occupied premises as long as possible, thereby allowing infringement of the rights of

the new owner. These issues the Ombudsman has communicated to the Ministry of Justice by asking for the need to assess development of the legal framework in order to ensure execution both the rights of the tenants and of the owners. Being aware of the problems associated with understanding of the concept "putting into possession of the immovable property", this question was included by the Ombudsman as one of the topics in 2012 Conference of the Ombudsman of the Republic of Latvia.

3. Right of the Child to Information (Publishing Children's Literature)

One of the examined verification procedures was associated with provision of the rights of the child to availability of appropriate literature.

The Ombudsman has received an open letter with regard to suspension of public funding and insufficient support for the reading incentive program "Jury of Children and Young People". The said programme has been implemented in Latvia already for 11 years, through getting public funding and substantial financial support from local governments, to ensure a possibility for every child to get books for reading in libraries close to their residence and to promote the children's literacy. Open letter has indicated that the governmental and municipal funding allocated for the program has declined sharply since 2008 and in several libraries it is not possible to implement the children's reading program without the donors' support. While in the State Culture Capital Foundation 1st competition of projects in 2012 no funds at all were granted for implementation of the project "Jury of Children and Young People".

Article 17 of the Convention on the Rights of the Child applies to the States to ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health, inter alia, to encourage the production and dissemination of children's books. Foundation and development of children libraries is one of the ways to promote implementation of the rights of the child to the availability of appropriate literature.

Upon assessment of the procedure for funding of public libraries, information received during verification procedure from the Ministry of Culture, Latvian Association of Local and Regional Governments and the State Culture Capital Foundation, it was concluded that the existing procedure for funding of municipal libraries does not provide for the State budget earmarked subsidy to be granted as co-financing to the libraries for the purposes of children acquiring literacy and dissemination of the children's literature. The exception are the libraries of municipal school funded from local governments and from the State, by receiving the State budget earmarked subsidies to ensure the school libraries with the necessary educational literature.[35]

The Ombudsman has established that so far the state aid provided to the program through the State Culture Capital Foundation cannot be considered a stable funding model. Receipt of the State aid in this way requires from implementers of the program a regular participation in the tender competitions, constantly emphasizing the importance of the project for promotion of wholesome development and provision of education, as well as quality of life of the children, which per se is an apparent fact.

While in respect of municipal funding to ensure library operations, the fact should be taken into account that local governments in Latvia are very different both in terms of the numbers of population and financial resources. Therewith the possibility of local authorities to provide adequate financial support for development of the libraries, taking into account

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[35] Cabinet Regulation No.97 "Procedures by which the State Organises and Finances the Publication and Acquisition of Teaching Materials", dated 6 March 2001.

other tasks, depends on the municipal budget. For example, the budget of local government of Vecpiebalga municipality within the territory of which 507 children are registered as on 01.01.2012, for 2012 amounts to LVL 3973155, but the budget of local government of Pavilosta municipality, which administrative territory of which 508 children are living, for 2012 is only LVL 1695481[36]. In view of the above, a conclusion has to be drawn that children living in various municipalities are not provided with the same rights and opportunities with regard to provision of broad availability of the children's literature in the libraries established by local governments.

When making survey on this issue, the Ombudsman has established that already now in accordance with the results of the Programme for International Student Assessment carried out by the European Organisation for Economic Co-operation and Development (OECD), average achievements of literacy of learners in Latvia are lower than on average for the European Union countries, lagging behind achievements of learners from Estonia and the Scandinavian countries. In Latvia 17.6% from fifteen years old learners have low achievements in reading, in Estonia the proportion of such learners is 13.3%.[37] While literacy of the children directly affects implementation of the rights of the child to development, education and culture.

The Ombudsman has concluded that in order to more effectively ensure the rights of the child to access to children's literature and to promote the children's reading literacy, the country should have implemented appropriate programme and provided for the state aid in a long term. Consequently the question has to be evaluated of the need for a review of the library funding arrangements by providing allocation of permanent co-financing from the State budget for implementation of the said programme in municipal public libraries. In the light of the fact that issue of provision of the State financial aid for implementation of the program concerns the cultural sector, Ombudsman has applied to the Ministry of Culture in cooperation with the Latvian Association of Local and Regional Governments to get involved in solution of this issue in accordance with their competence.

4. Guarantees of the Rights of the Child in Criminal Proceedings

(1) Ombudsman's Office has examined a verification procedure, initiated due to submission by Chairperson of the Orphan's Court, where it was specified that decisions of the State police officers have resulted in infringement of the rights of the child to property. The submission has specified, that a sworn notary has issued Inheritance Certificate for rights on an inheritance pursuant to law, confirming the right of inheritance for the estate left by a person to the heirs by intestacy of the first class with an inventory right - the minor sons. The father of the deceased person has pursued a court claim against legal representative of the minor heirs, where he has asked to acknowledge his property rights to the movable property located in the residence of the minor children and which both minor children have inherited in accordance with the issued Inheritance Certificate. In his claim the plaintiff has specified that a movable property owned by him is located in the children's place of residence. The claim of the plaintiff was allowed by judgment of the Limbažu district court, to which representative of the children has submitted an appellate complaint in the Vidzeme Regional Court. With judgment of the Collegium of Civil Cases of the Vidzeme Regional Court, dated 2 June 2011, the claim of the plaintiff against legal representative of the children was rejected with regard

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[36] Information provided to the Ombudsman in March 2012 on the issue of access to education.

[37] Study of the Eurydice Information network on *education systems* and policies in Europe "Teaching Reading in Europe: Contexts, Policies and Practices", issued by the Education, Audiovisual and Culture Executive Agency (EACEA P9 Eurydice). Translated into Latvian by the State Education Development Agency, 2011. – p.18. Document available on: http://eacea.ec.europa.eu/education/eurydice/documents/thematic_reports/130LV.pdf

to acknowledgement of his property rights to the movable property located in the residence of the children. The plaintiff appealed this judgment under a cassation procedure. A cassation complaint has not yet been adjudicated, therefore during examination of verification procedure there was still a civil law dispute present as regards property right to the said movable property. During the period, while the dispute was not yet been resolved in the court, the plaintiff without invitation appeared in the immovable property belonging to the minor children and without permission removed movable possessions belonging to the children and located in the immovable estate, and being subject to the civil law dispute. Legal representative of the children reported the incident to the State Police (hereinafter referred to as the Police) and requested to institute criminal proceedings and to ensure protection of the rights of the children. The Police, upon examination of materials of the case, has made a decision to terminate criminal proceedings, since acts of the plaintiff do not contain constituent elements of the criminal offence.

Article 92 of the Constitution of the Republic of Latvia states that everyone has the right to defend his or her rights and lawful interests in a fair court. Paragraph one of Section 1 of the Civil Procedure Law prescribes that every natural person has a right to protection of their infringed or disputed civil rights, or interests protected by law, in court. The plaintiff has brought a court action to protect his infringed property rights. The Court has not yet resolved the dispute over property rights. In the light of the above, from the Ombudsman's point of view, the conclusion made by the staff of Police and Prosecutor's Office that the plaintiff has dealt with the property belonging to him and consequently no crime has occurred does not correspond to the actual conditions.

In addition to infringement of the rights of the children to property, in this case the rights of the children to inviolability of home were offended as well. Article 96 of the Constitution of the Republic of Latvia provides that everyone has the right to inviolability of his or her private life, home and correspondence. A concept of home refers not only to home in its ordinary sense, but also to dwellings of another kind regardless of their legal status, where the person in living (property, renting et al.). Borders of the home contain also its adjacent territory (for example, garden and garage).[38] The said rights have been fixed also in several international legislative acts binding for Latvia, for example, the United Nations (hereinafter referred to as the UN) Universal Declaration of Human Rights, UN International Covenant on Civil and Political Rights, as well as Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe. Section 6, Clause 5 of the Protection of the Rights of the Child Law prescribes that an act or failure to act, as a result of which the rights of a child are not observed (..), or other acts which limit the personal or property rights and freedoms of the child, shall be considered amoral, and Article 16 of the UN Convention on the Rights of the Child prescribes that no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation. Taking into account the aforementioned, as well as the condition that the dispute with regard to property rights is still subject to adjudication by the Department of Civil Cases of the Senate of Supreme Court of the Republic of Latvia, the Ombudsman has repeatedly applied to the Prosecutor General's Office of the Republic of Latvia with an opinion, where has drawn his attention to the fact that from the Ombudsman's point of view, the plaintiff, without waiting for the court judgment and arriving without invitation to the immovable property belonging to the children, arbitrarily taking the children's belongings and object of the dispute in his possession, flatly ignored the order envisaged by the laws and regulations, in which property rights can be

[38] Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības. Autoru kolektīvs prof. R.Baloža zinātniskā vadībā. - Rīga: Latvijas Vēstnesis, 2011. – p.263.

acknowledged for a person, therewith such conduct has to be judged as unlawful, and the guilty person shall be subject to liability prescribed by the law.

(2) The Ombudsman's Office receives submissions from the people, where there are requests to evaluate the court judgment or lawfulness of actions and decisions taken by the Police officers. Thus, for example, the Ombudsman's Office has received a submission where it was indicated that a minor with the court decision has been found guilty of a committed criminal offence and placed in the "Naukšēni" social correction educational establishment for children. Submitter has indicated that the Court did not take into account a range of evidence, as a result, an innocent child has been convicted.

Judiciary power is independent in the Republic of Latvia. Article 83 of the Constitution prescribes that "judges shall be independent and subject only to the law". Independence of judiciary power is one of the basic principles of a democratic state, and this principle allows to the court to execute its functions - to administer justice – without being subject to no external influence and relying only on a law. Paragraph one of Section of the Law "On Judicial Power" prescribes that no interference with the work of judiciary shall be allowed: "State institutions, public and political organisations and other legal and natural persons have the duty to respect and observe the independence of a court and the immunity of judges." Therewith also the Ombudsman can not interfere with competence of the court, as well as can not set aside or modify the rulings made by the court. Similarly neither the Ombudsman, nor any other institution has checking of lawfulness of the court's rulings as one its functions. Within the Ombudsman's competence is falling only assessment of possible procedural violations in the work of judiciary. Assessment of the court rulings having become in legal force can be performed by the Ombudsman only in those cases when a complainant has identified substantial violations of human rights during the court proceedings. Similarly a condition should be present, that a complainant has indicated these violations to the court in their appellate and/or cassation complaint, but the court, in adjudication of the case, has failed to react to these indications. Notwithstanding the fact that a violation is established, the Ombudsman can not set aside the decisions made by the courts, as well as is not competent to estimate them on their merits. In such cases the Ombudsman shall be entitled to notify the Chair of the Court of violations and to specify, that such act from the part of the Court shall not be allowed. In the event when substantial violation of human rights is established, Ombudsman can ask to initiate disciplinary proceedings against the respective judge. Since the aforementioned submission did not contain references to any substantial violations of human rights in the Court's actions, there were no grounds to address a question of actions of the Court and the Regional Court in adjudication of the matter.

It is essential that the right to fair trial, in addition to the guarantees, as the right to hearing of the case by independent, impartial court, ensuring equal opportunities for the parties, shall include also the right to a reasoned ruling. From the right to a reasoned judgment also obligation of the courts is derived to provide sufficiently accurate indications to their arguments on which they shall base their decision. In the same way the court should appropriately evaluate explanations, arguments and evidence submitted by the parties, regardless of the fact if these will be required to justify the decision to be made.[39]

It follows from the above that the court should properly assess the evidence adduced and provide a reasoned rulings. The court can avoid to make a detailed analysis of any evidence, however, in such event it should duly justify why the respective evidence is not of significant importance for adjudication of the case. Obligation of the court under proper procedure to assess the evidence is the guarantee of a procedural nature.

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[39] Feldhūne G., Kučs A., Skujeniece V. Cilvēktiesību rokasgrāmata tiesnešiem. Rīga: Latvijas Universitātes Juridiskās fakultātes Cilvēktiesību institūta bibliotēka, 2004, p.45.

By referring to the judgments of particular court case in question, Ombudsman has concluded that the Court had evaluated the evidence and had evaluated them in connection with testimonies of the witnesses and other essential conditions, which were the basis for making the decision on compulsory measure of educational nature. On the light of the above, verification procedure was not initiated.

(3) In the same way also with regard to disputing the decisions made by the Police officers, there is a certain national mechanism established for protection of the rights of individuals. Performance of criminal proceedings is falling within competence of law enforcement institutions, acting in strict compliance with the Criminal Procedure Law, which Section 26, Paragraph one prescribes that the authorisation to perform criminal proceedings on behalf of the State shall be held only by officials of the institutions specified in this Law who have been granted such authorisation in connection with an office to be held by these persons, an order of the head of institution or a decision of a person directing the criminal proceedings. By virtue of the laws in force, to the Ombudsman the aforementioned functions are not delegated, therewith the Ombudsman is not competent to estimate validity for termination of a criminal proceedings or acts of the official performing investigation. However, the Ombudsman is entitled to estimate, how accessible and effective is the national mechanism for protection of the rights being present, which has been created, to ensure respect for rights of persons within the framework of criminal proceedings. When finding that such mechanism is not provided, the Ombudsman must interfere in the course of proceedings and to perform the necessary activities in order to ensure respect for human rights. Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe has fixed the right to a person to apply to national authorities and respectively obligation for the State to create such a system for protection of human rights to ensure for each person a possibility for efficient use of this system. The term "effective remedy" shall mean that at the national level there should exist sufficiently stable guarantees that would provide for a real possibility to dispute eventually unlawful act of public power and the right in the case of necessity to apply to the court instances of.

Section 336, Paragraph one of the Criminal Procedure Law provides that a complaint regarding the actions or adjudication of an official performing criminal proceedings may be submitted by a person involved in the proceedings, as well as a person whose rights or lawful interests have been infringed upon by the concrete actions or adjudication. Section 337, Paragraph two, Clause 2 and 3 of the Criminal Procedure Law prescribes that a complaint shall be transferred for deciding to the supervising public prosecutor regarding the actions or decision of an investigator or the direct supervisor of the investigator, while to a higher-ranking public prosecutor regarding actions or decision of a public prosecutor. If a person has appealed the actions or decision of a person referred above, and does not agree with the decision taken by the examiner of a complaint – higher-ranking public prosecutor, such person may appeal against such decision to the next higher-ranking public prosecutor, whose decision shall not be subject to appeal in a pre-trial criminal proceedings. Therewith a conclusion has to be drawn that the State has created a sufficient mechanism for protection of rights.

5. Right of the Child to Identity after Adoption

The Ombudsman’s Office has received a submission with regard to the amendments passed in the 1st reading by Saeima (Parliament) on 1 July 2011 (draft law No.386/Lp10) to Section 172, Paragraph two of the Civil Procedure Law, where the right of the adopter to change the name of the child to be adopted was regulated. The submission has specified that if Saeima will accept the said draft law, the rights of the child will be significantly infringed.

When assessing materials of the case, Ombudsman has provided his view and proposals for the draft law.

Section 7, Paragraph one of the United Nations (hereinafter referred to as the UN) Convention on the Rights of the Child (hereinafter referred to as the Convention) prescribes that the child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents; as well as Section 8, Paragraph one of this Convention indicates that States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without allowing unlawful interference.

Implementation Handbook of the Convention on the Rights of the Child states that the right to a name from the moment of birth is a matter that should be addressed by adult care providers or the State; infants can not have any role in the choice of their own name. But there is a necessary condition in order the children be able to apply to the relevant authorities to change their name. Names of the children can also be changed after re-marriage of the parents and adoption. [40]

Adoption is a legal act, resulting in more wholesome relationship between the parents and the children in legal terms, since laying down the same rights and obligations in personal and property family relations as a natural kinship. Therefore the aim and objective of the adoption is to provide for the child a family, a sense of identity and to become a lawful member of the family.

Giving a name to the child is a private event, which takes place at the choice of parents and pretty often in accordance with the family traditions. In some cases, when denying to change the child's name, the child may be deprived of this sense of identity with a particular family. As an example we may refer to the event, when within one family all children have got person's names explicitly belonging to one specific ethnicity. For example, there are two children in the family - Līga and Jānis, and the third (adopted) child Valerijs, whose name undeniably untimely will cause to the child a lot of questions about his real origin, as well as the fact of adoption of the child may also indirectly be disclosed to third parties.

In addition, such amendments to the law, denying the adopters to select a name for the adopted child, may lead to the event when potential adopters as one of the criteria for the choice of a child for adoption, will choose the child's name, which suggests that children can be selected according to their nationality or religious affiliation.

Separately should be taken into account the cases when children are adopted in their conscious age, having already accustomed to their name and identifying themselves with the specific name. In this case establishing the child's views and desires of the name change would be of substantial importance.

The name is one of the core elements of the human privacy, one of the grounds for an individual to feel himself or herself as a personality. Parents have the power to select for a new-born personality an appropriate name. Usually the parents use the power entrusted to them with a great sense of responsibility, when selecting from all the possible names, in their view, the most appropriate one.[41]

In the light of the above, the Ombudsman to the Saeima Legal Commission has expressed his view that by denying the adopters to select the name of adoptee, particularly for

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[40] Hodgkin R., Newell P. Implementation Handbook for the Convention on the Rights of the Child: UNICEF, 2002.- pp.652, p.113.

[41] Judgment of the Department of Administrative Cases of the Senate of Supreme Court of 17 November 2010 in Case No. SKA–890/2010

children at an early age, the rights of the adopters as parents to select their child's name, as well as the child's right to fully become part of the family, are significantly limited.

Views of the Ombudsman were taken into account and adopters retained the right to change the child's name after the adoption.

6. Right of the Child to Safety in Relation with Criminal Record of Teachers

In September 2012 Ombudsman of the Republic of Latvia has received a decision of the Constitutional Court of the Republic of Latvia, where Ombudsman has been identified as external person in the Case No.2012-11-01 "On Compliance of Section 50, Clause 1 of the Education Law with Article 106 of the Constitution of the Republic of Latvia" (hereinafter referred to as the Case No.2012-11-01). Decision requested to express the views in writing on issues that may be important in the Case, including whether the authorisation to teach a school for the person sentenced for criminal offence prescribed by Paragraph two of Section 219 of the Criminal Law would not be detrimental to the interests of educatees', as well as to submit to the Constitutional Court any documents being at the Ombudsman's disposal on these issues.

Clause 1 of Section 50 of the Education Law prescribes that a person who has been punished for an intentional crime and has not been rehabilitated may not work as teacher. The legislator has limited the right to hold the teacher's job for persons who have been punished for an intentional crime and has not been rehabilitated. From this it can be concluded that the restriction of fundamental rights is laid down by law.

Section 380 of the Criminal Procedure Law prescribes - "A person shall not be exonerated, if criminal proceedings have been terminated with a decision that is provided for in Section 377, Paragraph one, Clauses 3, 4, and 5, Section 379, Paragraphs one and two, Section 410, Paragraph one, Section 415, Section 421, Section 605, Paragraph one, or Section 615, Paragraph three of this Law, or in the case of a judgment of conviction." From this it can be concluded that if a person is convicted of an intentional crime with the guilty verdict, this person can not be exonerated and therewith the right of a person to free choice of employment and to work as a teacher is restricted.

Problems put forward by the norm contested in the Constitutional Court have already been studied in the Ombudsman's Office within the framework of the verification procedure on restrictions of the legal equality and right to work, depriving the persons who are punished for committed intentional crime of an opportunity to be employed as teaching staff, sworn advocates and sworn notaries. The Ombudsman already in 2010 identified weaknesses in the regulatory framework, hence proportionality of the restriction prescribed by Section 50, Clause 1 of the Education Law was assessed in the context and to the Ministry of Justice a view has been expressed that there is a need to review Section 50, Clause 1 of the Education Law, by introducing a differentiated restriction to the rights.

With the Law "Amendments to the Education Law", dated 5 July 2012, the said Section 50, Clause 1 was expressed in a new wording, under which the teacher's job may not taken by "a person who has been sentenced for committing an intentional crime (irrespective of extinguishment or setting aside of criminal record), with exception of the event when after extinguishment or setting aside of criminal record an institution appointed by the Cabinet of Ministers, having made an assessment, whether it is not detrimental to interests of the students, has permitted employment in a position of teacher for the person having been sentenced for intentional criminal violation or less serious crime. The Cabinet of Ministers shall define a procedure in which assessment is made, whether permission for such a person to take the teacher's job will not be detrimental to interests of the students".

Amendments to the Education Law have entered into force on 1 October 2012.

On 12 February 2013 the Constitutional Court has made a decision to terminate proceedings in Case No.2012-11-01, on the basis of the fact that the contested norm, i.e. Section 50, Clause 1 of the Education Law, has been amended.

Although the contested norm has been modified, however, there is still no established mechanism for protection of rights of the person, namely, the Cabinet has failed to elaborate the Regulations delegated with Section 50, Clause 1 of the Education Law, and therewith there is still neither the body established, which will evaluate, nor the procedure under which it will be evaluated, whether the person prosecuted for committing intentional criminal offence may work as teacher and whether it will not be detrimental to the interests of learners. This situation for a person may create infringement of fundamental rights laid down in the Constitution.

7. Right to the Means of Support of the Child Placed under Extra-Familial Care, when Staying with His of Her Parents

During the accounting period a question was activated of the legal framework in the field of social assistance with regard to the opportunities to get social assistance at a time when the child receives the long-term social care and social rehabilitation institution service, if the child on the basis of the decision by Orphan's Court for a certain time stays with the family. The question was activated by specific case, when the person who was acknowledged to be needy, had denied payment for the children both of the means of support from the childcare institution and the benefit to ensure the guaranteed minimum level of income in proportion to the period, which the children spent with the parent in accordance with the decision by Orphan's Court.

Refusal of the municipal social service to grant for the children social assistance benefits was based on subclause 2.3 of the Cabinet Regulation No.299 "Regulations by which a Family or a Person Living Separately shall be Recognised to be Needy" of 30 March 2010, prescribing that a person ("family") can not be recognised as needy and consequently to receive municipal social assistance benefits if they receive services provided by the long-term social care and social rehabilitation institution. Laws and regulations relating to the requirements being set to receive social assistance - benefit to ensure the guaranteed minimum level of income, do not provide for exceptions if the person, accommodated to the long-term social care and social rehabilitation institution, does not receive the institution services on a permanent basis. Therefore, it was concluded that such regulation could in practice lead to a situation in which social assistance is refused to the people, to whom it is required due to objective considerations.

When providing position on the said matter, the Ministry of Welfare has communicated, in accordance with the Cabinet Regulation No. 275 "Procedure of Payment for Social Care and Social Rehabilitation Services and Procedure under which the Service Costs are Covered from Municipal Budget" of 27 May 2003, the government and/or the local authority exercises payments of the money provided for food to the institution in the case of temporary absence of adult persons and children from the institution.

While as regards parents, it should be noted that the provisions of the Civil Law (Section 179, Paragraph one and Section 177, Paragraph four) stipulate that the parents, commensurate to their abilities and financial conditions, have a duty to provide their children with maintenance, i.e., ensure them food, clothing, housing, and health care, nursing of the child, and his or her education and upbringing (ensuring mental and physical development, as far as possible taking into consideration his or her personality, skills and interests and preparing the child to public-profitable activities). This obligation is the responsibility of the father and mother until the time when the children are able to maintain themselves. It also means that during extra-familial care, when the child stays with parents, the obligation to take

care of the child is placed with the parents, irrespective of whether or not the institution pays to the parents child maintenance or support benefit.

In accordance with information provided by the Ministry of Welfare, in practice by analogy with the provisions on covering the maintenance costs for adult persons staying outside the care institutions and the children's residence at other people or host-families, in many cases care institutions nevertheless are paying to the parents the child's maintenance, thereby providing additional support for these families.

On the other hand, if the child care authority does not pay to the parents child maintenance, when the child is temporarily staying with the family, the local government, in any case, should provide support for such a family, if appropriate, for example, by granting extraordinary social assistance benefit for the child's support. The Orphan's Court, when preparing the decision of the child's stay with parents who lack the resources to provide basic needs, before the decision is taken must cooperate with the municipal social services and the child care institution, and they have to agree, by which institution and what assistance will be provided to the family in order to take account of the best interests of the child and to ensure the needs of the child, as well as to facilitate the child's return to the biological family.

The Ministry of Welfare notified that in the preparation of the next draft amendments to the Cabinet Regulation No.299 "Regulations by which a Family or a Person Living Separately shall be Recognised to be Needy", a possibility will be considered to provide, where necessary, in the structure of needy family to include also person who for more than one calendar month is staying outside of the institution, which will make it possible to grant social assistance benefits for the person during this period.

8. Ensuring the Rights of the Child during Host-Programs

In 2012 the Ombudsman's attention was paid to ensuring the rights of the child when involving children in host-programs. For a long time in Latvia there is an established practice when foreign organizations offer a possibility for the children under extra-familial care to spend their summer and winter holidays with host-families, mainly in the United States of America and in the French Republic. These host-programs are aimed at cultural exchange, recreation, language learning and spending time in families. In practice through host-programs the children under extra-familial care often are getting the new family, if there are no obstacles to their adoption.

Section 45.4 of the Protection of the Rights of the Child Law prescribes the procedure in which a child under extra-familial care may be temporarily placed into care of another person in a foreign state. In accordance with the said Section, such temporary placement of a child into care of another person in a foreign state is possible, if the Orphan's court, which has taken the decision on extra-familial care of the child, agrees thereto and if this Orphan's court has recognised that such placement conforms to the interests of the child and the relevant person will be able to provide appropriate care for the child. These are two criteria that in any case have to be assessed by the Orphan's court. Each case should be assessed individually.

Ombudsman has received information that Orphan's courts, when deciding on the involvement of particular child in host-program, often have a formal approach to the children's interests and avoid to properly ascertain the potential impact of the travel on psyche and development of a child. In practice pretty often there are cases when very young children (2- 6 years of age) are involved in a host-program. Separation from direct carer of the child and adapting to a new environment for such children often leads to a negative experience and emotional stress. The said situation, in turn, may have negative consequences on the child's psychoemotional and physical development as a whole. While as regards older children the Ombudsman has received information that not for all of them who would like to be involved

in the programs, there exists such a possibility, since the foreign organisations are setting age limits and a condition that the child must be perfectly sound.

In relation to this practice and in order to assess the need to develop the legal framework for setting the age limits for involvement of the children in foreign host-programs, the Ministry of Welfare was asked to provide their viewpoint. In the same way the Ombudsman has discussed the matter in question with representatives of the State Inspectorate for Protection of Children's Rights, since the State Inspectorate for Protection of Children's Rights is responsible for the monitoring and the methodical management of Orphan's Courts.

Both institutions considered that basically in host-program the children should be involved who are at least seven years old. Exceptions may be situations where elder brothers or sisters are also involved in the host-program, at least one of whom is more than seven years old and if all the children are placed with the same host family. From information supplied by the Ministry of Welfare a conclusion has to be drawn that no support would be provided to the need under the law to establish an age limit for the child in order to the child being under extra-familial care could be placed to other person's care in a foreign country, and in this respect the freedom of action should be left to the Orphan's Courts as far as possible. However, the Orphan's Court should make individual assessment of each case, by taking into account the possible risk factors and the interests of the child.

In the light of the above problems identified with regard to wholesome provision of the rights and interests of the child during residence with the family abroad, on 14 November 2012, the State Inspectorate for Protection of Children's Rights has developed guidelines for the Orphan's Courts to use in cases when the question has to addressed of the child's placement in care of other person abroad. The said guidelines are available on the State Inspectorate for Protection of Children's Rights website.

Division of Civil and Political Rights

Priorities of the Division of Civil and Political Rights:
I Ensuring the rights of individuals with mental disorders
II Efficiency of the protection of private life
III Protection of the rights of prisoners in closed-type institutions
IV Respect for the rights of persons during pre-trial investigation
V Legal status and protection of the detained foreigners and asylum seekers
VI Guarantees for protection of the rights of persons in contacts with the Police

I Ensuring the Rights of Individuals with Mental Disorders

In 2012 the problem situation has been repeatedly activated, which has developed in connection with governance of legal capacity not corresponding to human rights, of which the Ombudsman has already reported in 2008. Unfortunately, due to delayed acts of the authorities the new regulation did not become effective yet until 1 January 2012 as determined by the Constitutional Court. From February provisional regulation was in place instead. Provisional regulation resolved only the most topical problems in connection with the cases submitted to the court, but did not resolve such questions, that are associated, for example, with increase to the volume of rights of the persons already lacking legal capacity to act, still giving raise to violations of the rights of persons, what was also specified to the Saeima. The new legal regulation for restrictions of legal capacity was at last adopted in late 2012, by stipulating the date for it becoming effective – 1 January 2013. The previous legal framework envisaged, that for the person, lacking the largest part of or all mental capabilities, a legal capacity to act can be fully restricted. It meant that the person himself or herself can not take decisions in the matters important in his or her life, for example, where to live and with whom to live together, whether to establish a family, whether to bring up children et al. In accordance with the new legal framework, the court will not be able to restrict personal non-property rights of a person and the rights to represent himself or herself before authorities and in courts. In turn various decisions will exist in respect of property matters.

Even though the amendments do not fully comply with the UN Convention on the Rights of Persons with Disabilities (hereinafter referred to as the Convention) since the law does not contain a fully-fledged alternative for restriction of legal capacity, as, for example, a mechanism of supported ability to decide (support persons), but they will definitely improve the protection of human rights of the persons with mental disorders. As a result, the State is expressing the belief that every individual has human rights and he or she may not be discriminated due to the state of health.

Already in the last year several problems were also found in the regulatory framework that prevents persons with mental disorders accommodated in the State Social Care Centres (hereinafter referred to as the SSCC), to exercise their rights. For example, the persons in point of fact are being denied the right to leave SSCC, creating *de facto* restrictions to freedom. In 2011 the Ministry of Welfare was invited to promote specific amendments to the Social Services and Social Assistance Law. Since MW has failed to act, already in this year a request to make the said amendments was sent to the Saeima, in particular, in June 2012 the Ombudsman has sent a request to modify Paragraph three of Section 28 of the Social Services

and Social Assistance Law, suggesting a specific wording. On 6 December 2012 amendments to the Law were adopted by Saeima in the 3rd reading. Of course, this does not mean that the remaining provisions are very good, however, at least a short step is taken to diminish very serious violations of human rights, which have already been incorporated into the normative framework. This example also demonstrates how constructive and successful cooperation can be developed between the legislator and the Ombudsman.

Continuing on the problems addressed in the context of the SSCC persons with mental disorders, the Office also in 2012 continued inspections in the SSCC branches. At the end of this year, three branches of the State Social Care Centres were visited, together with external internationally recognized expert from Iceland, a psychiatrist who has also worked for many years in structures of the Council of Europe's Committee for the Prevention of Torture. As a result of the inspection visits carried out, infringements counted in the SSCC were summarized in order to prepare an interim report to the Saeima.

The question relating to application of compulsory measures of a medical nature was also updated. Within the framework of specific verification procedure it was established that personal freedom (placement into psychiatric hospital) has been restricted pursuant to decision of the court, but the review of the said decision has not taken place in accordance with Paragraph four of Section 607 of the Criminal Procedure Law.

Procedure No. 2012-347-3F. Opinion has found an infringement in respect of the obligation of the court once a year to review the decision on compulsory measures of a medical nature applied to the person. For the person a compulsory measure of a medical nature has been applied - treatment in a hospital in 2004. The court decision was reviewed only in 2008, 2010 and 2012.

Violations have also been identified in respect of actions of the court, not sending to the person decision on the application of compulsory measures of a medical nature; the obligation for the court once a year to review the question of the application of compulsory measures of a medical nature.

I would like to specify that the Ombudsman’s Office has found several such cases and therefore the Chair of the Supreme Court was invited to send an Ombudsman’s letter to all the courts of the Republic of Latvia or to include this question for discussion in the Judicial Council, in order the courts further in their work observe human rights of the persons with mental disorders.

In response to various established problems relating to the processes for application of compulsory measures of a medical nature (hereinafter referred to as the CMMN) the Ministry of Justice this August has set up a working group to assess the need for amendments to the Criminal Procedure Law in connection with the human rights violations found, which includes also representative from the Ombudsman’s Office, who has presented its proposals on a number of necessary amendments to the Criminal Procedure Law (hereinafter referred to as the KPL) in respect of application of compulsory measures of a medical nature. For example, it was indicated that the second sentence of the Paragraph one of KPL Section 606 must be deleted, which states that a person, against whom the proceedings for the determination of compulsory measures of a medical nature are performed, may appeal a decision by him or herself only then, if he or she has participated in a court session. The Ombudsman’s representative has pointed out that this person should not be prevented to appeal the decision of the court.

In 2012, a number of opinions were also given on the rights of persons lacking capacity to act, for example, the right to associate, to select their own trustee, the right to get identity document, et al.

1) Administrative Court of the Republic of Latvia has invited the Ombudsman as an institution in the administrative matter No.A420336312 to deliver an opinion in connection with the rights of persons lacking capacity to act to join the association. The Ombudsman in his opinion has pointed out that the persons lacking capacity to act are entitled to join associations. Opinion was drawing attention also that one of the objectives of the association may also be to protect the interests of their members, consequently, by promoting protection of the rights of these persons. Thus denying the person himself or herself the right to join the association, restrictions are imposed not only on the right of the person to associate, but implementation of other rights are also precluded that particular association likely helps to promote and/or to protect.

Also the European Court of Human Rights in a number of cases has established violations to human rights when the State has automatically denied for the person various human rights, on the basis of overall restrictions to legal capacity.[42]

Latvia has acceded to the UN "Convention on the Rights of Persons with Disabilities" (hereinafter referred to as the UN Convention), which Article 5 prescribes prohibition of discrimination, while Paragraph 3 of Article 3 of the UN Convention explains that "Discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field". Article 29 of the UN Convention prescribes that States Parties shall promote actively for the persons with disabilities participation in non-governmental organizations and associations concerned with the public and political life of the country. Likewise Article 12 of the UN Convention determines that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

2) On the basis of submission by the person a verification procedure was initiated with regard to the rights of the persons lacking capacity to act to obtain personal identity documents, since the Office of Citizenship and Migration Affairs refused to issue a passport to the persons lacking capacity to act themselves. The Ombudsman in his opinion has concluded that a regulatory framework fails to establish the procedure for passport issuing and storage arrangements for the persons over whom guardianship has been established, as this is the case with the minors. Consequently, the restriction concerning adult persons is not laid down by law, but the Office of Citizenship and Migration Affairs is using analogy when to adult persons with deprived legal capacity they are applying the legal framework applicable to minors. By limiting the rights of the person, one can rely on the framework that has not been adopted in relation to a particular group of people. Also the Department of Administrative Cases of the Senate in a number of judgments has concluded[43] that when restricting human rights, an administrative act can not be founded on the rule by analogy.

As regards the direction provided by OCMA with regard to general restriction to the rights of the persons lacking capacity to act to receive and to store property, in the opinion it is noted that although the persons lacking capacity to act, in accordance with the current legal

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[42] See, e.g., *Zehentner v. Austria*, Application No. 20082/02, 16 July 2009, *X v. Croatia*, Application No. 11223/04, 17 July 2008, et al.

[43] See, e.g., Judgment of 16 March 2009 in Case No.A42459905

framework, have a lot of restrictions, however, one cannot say that the persons lacking capacity to act on the whole could not receive and store any property. In addition, the passport or identity card is not considered to be property for its normal purpose due to the fact that this is a personal identity document. Passport by its nature is an object, which is withdrawn from private law circulation. Therefore the passport is a document and it cannot to be regarded as property in terms of article of private law circulation, since it is a public property.[44] In addition, there can be different situations in which it is essential that the person would have a personal identity document and, where appropriate, the person could prove their identity, otherwise adverse effects can emerge (for example, the Police is entitled to detain the person for identification).

Article 18 of the UN Convention sets forth that States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification.

3) In Procedure 2012-47-4C submitter applied to the Ombudsman's Office since getting to know from the Orphan's Court that her daughter (with whom she lived) has submitted an application to the Court of justice for deprivation of a legal capacity. It was established during the verification that the Court has violated the procedural rules, without providing notification to the person on receipt of such an application, initiation of the civil proceedings, and designation of the Court sitting. After the Ombudsman's intervention, the Chair of the Court requested an explanation from the Judge and negotiated the matter in general meeting of judges so that, in the future, such violations are not allowed. During further proceedings opportunities had been provided to the person to participate and the Court decided on termination of the court proceedings.

4) Unfortunately, in a few cases also very fundamental violations of human rights have been identified during the process of the deprivation of legal capacity to act (it should be noted at once here that these processes in both cases had already taken place several years ago) that also resulted in the persons being deprived of legal capacity to act. In one of the procedures the Ombudsman addressed the Chairman of the Supreme Court of the Republic of Latvia, asking to submit a protest regarding a court adjudication that has come into effect, with which the person has been deprived of legal capacity, since during the process serious violations of human rights were permitted, for example, the person was not made aware of the court proceedings, the Court adjudications were not sent to the person, viewpoint of the person was not required, et al. Unfortunately the Supreme Court could not see that these very serious violations of the right to a fair trial would entail the need to submit a protest.

For a long time already one of the problems in the mental health area is a disarrayed legislation. Although certain things have been improved in recent years, for example, by amendments to the Medical Treatment Law relating to the compulsory placement of person into psychoneurological hospital. However, many things are still in disarray, thus leading to possible violations of human rights. For example, in psychoneurological hospitals where compulsory treatment is taking place, a number of coercive measures are applied and the right

[44] Personal Identification Documents Law, Section 2, Paragraph two specifies: "Personal Identification Document is the property of the Republic of Latvia".

of individuals to privacy is also restricted. However, the regulatory framework practically does not exist - restrictions are imposed by the institution's internal procedural rules.

In order to the human rights restriction to be permissible, first, it should be defined by the law adopted under appropriate procedure. If human rights restrictions are laid down by internal procedural rules, restrictions are not imposed by law. As a result, it can be concluded that the restrictions do not comply with the Satversme.

Already in 2011, when identifying the problem in respect of restrictions imposed by internal procedural rules of the Compulsory Treatment Ward of the Riga Psychiatry and Narcology Centre, it was indicated to the institution that in order to further avoid such a situation, adoption of regulatory framework would be urgently required, to provide for possible human rights restrictions in the Compulsory Treatment Ward. It should be noted that Jānis Buģins, Chairman of the Board of Directors of the Riga Psychiatry and Narcology Centre, for a long time already is also the main specialist of the Ministry of Health in psychiatric issues – advisor of the Ministry of Health in the field of Psychiatry.

However, one can establish that the said situation in the field of legislative framework has not improved.

In view of the abovementioned, the Ombudsman has applied to the Ministry of Health and asked to provide information with regard to plans of the Ministry of Health in respect of development of legislative framework to further prevent human rights restrictions in psychoneurological hospitals without an adequate normative framework.

In 2012 opinion has been delivered in relation to observance of the rights of the persons in the Department of Psychiatric Expert Examinations. In procedure 2012 – 123-2A submitter complained about the conditions in the Department of Expert Examinations at Laktas Street. The opinion has found that people can not have free access to toilet facilities since the wards are locked, and no toilets are arranged in the very wards. In order to the persons subject to expert examination could get to the toilet, they first have to call someone from the medical staff, who should accordingly report to the Police officer in order the door might be opened and the person could be taken to toilet. Thereby it was found that RPNC has not fully taken into account the Ombudsman’s recommendations provided in 2007 with regard to observance of the rights of the persons subject to expert examination.

In the same way opinion has expressed the view that as regards persons accommodated directly in the Department of Expert Examinations, laws and regulations would need a separate provisions on data processing in such institutions, specifically defining the cases in which and the extent to which it is possible to perform television surveillance, precisely determining the persons who has access to this information, how long such records have to be kept, and in which cases they have to be handed over to third parties. Thus, it was established that television surveillance of the persons placed in the Department of Expert Examinations, per se is not considered to be a violation of human rights, but the existing legal framework is not considered to be consistent with human rights.

Research

At the end of 2012, the research was conducted "Human rights of the patients when accommodated in psychoneurological hospital”.

This research was aimed to study the human right standards binding for Latvia, when implementing hospitalisation and treatment of the persons without their consent in psychoneurological institutions (including also in respect of the persons, for whom compulsory measures of medical nature as well as forensic psychiatric expert examinations

have been determined), to evaluate compliance of the Latvian regulations with these standards and to analyze legal frameworks of other countries, when searching for examples of good practice.

The research has resulted in a conclusion that the international documents (legally binding, as well as, in particular, the recommendations and principles) are providing a comparatively elaborated framework in respect of treatment of the persons with mental disorders without their consent. Several recommendations and principles in detail have defined criteria under which a person could be exposed to treatment, without his or her consent, as well as the circumstances and conditions when the physical means of limitation can be applied. Over the last few years also the European Court of Human Rights case-law has developed more extensively in this field, by setting standards that the countries should follow in order not to infringe Article 3 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Comparatively recent entry into force of the UN Convention on the Rights of Persons with Disabilities has been of particular importance for the development of international law in respect of the persons with disorders of mental nature. Its ratification at national level has constituted the basis of reforms in several countries (being in progress also today), by application of the regulatory compliance with the provisions of the Convention.

Upon evaluation of different national practices, it can be concluded that the laws and regulations are far more evolved and more detailed when compared to Latvia, however, it should be emphasized that also the laws of the countries concerned, as well as their implementation in practice, despite more sustained democratic traditions, is not perfect. For example, in England national court has found that the Code of Conduct of the Mental Health Act is not legally binding, which consequently leads to the equivalent problems in Latvia, as regards the lack of regulations at the law level in the field concerning application of the measures of physical mobility to persons. While the Finnish regulations in a comparatively recent judgment have been criticised by the European Court of Human Rights, by identifying also lack of safeguards in the cases where coercive treatment has been determined for a patient. In the Netherlands, despite regulatory clarity, in practice there are problems with the large-scale patients' isolation in the institutions. In accordance with the statistical data, one of the four patients of psychoneurological hospitals in the Netherlands has experienced coercive isolation the average duration of which is 16 days.

Being aware of the fact that institutional care is always subject to certain risks of human rights violations, it is possible that one of the best solutions is to avoid stationing of the person as much as possible, by introduction of alternative mechanisms. Regulatory frameworks of several countries provide for coercive treatment in society,[45] by leaving institution only as a last resort, when care outside the institution is not possible. Although, unfortunately, it will not be possible to apply such alternative in all the cases, it could be a positive solution in situations when the person's medical treatment may be ensured under less restrictive conditions.

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[45] Mental Health Law Online, Mental Health Act 1983, Article 17 and 20, available on: http://www.mentalhealthlaw.co.uk/Mental_Health_Act_1983#Part_I:_Application_of_Act (last accessed on 17.12.2012); Mental Health Act (Finland), 14.12.1990, available on: http://www.finlex.fi/en/laki/kaannokset/haku/?search%5Btype%5D=pika&search%5Bpika%5D=mental+health&submit=Search, Article 4, Paragraph two (last accessed on 19.12.2012).

The research has also resulted in provision of the following recommendations for improvement of the situation in Latvia:

- significant shortcomings are found in the regulatory framework in Latvia with regard to possible human rights restrictions of the persons who are placed in psychoneurological institutions without their consent. To prevent it, amendments should be drawn to the Medical Treatment Law, by providing a specific justification, as well as the mechanism, in which precisely identified human rights may be restricted;

- development of amendments to the normative regulations should identify both the persons to whom the restrictions would apply (by providing regulations also with regard to those persons to whom forensic psychiatric expert examinations and medical coercive measures are determined) as well as, covering all the institutions where such restrictions could be applied (including long-term social care centres);

- the regulatory framework should separate the person's stationing against his or her will from ensuring compulsory treatment, providing for certain decisions for each constraint, as prescribed by international human rights documents, as well as judgment of the European Court of Human Rights in the case *X.v.Finland*;

- in Latvia at the level of laws and regulations the framework for application of the person's physical restriction measures should be provided;

- events when physical restriction measures are applied in the institutions should be subject to external monitoring, for example, provided that the authority must report any such event to the Health Inspectorate;

- the person must be have a possibility to appeal the restrictions imposed on him or her, providing for efficient legal protection remedies, in particular with regard to such major decisions, as the provision of compulsory therapy and communication restrictions with the persons outside institutions;

- more attention should be paid to the Committee for the Prevention of Torture of the Council of Europe (hereinafter referred to as the CPT) reports on Latvia, as well as the results of monitoring by the Ombudsman's Office, which quite often reflect the same problems that are not addressed in the long term, for example, with regard to the treatment of children separately from adult persons;

- having regard to the CPT findings it results that cruel actions most often are the fault of the staff, not the medical personnel,[46] effective control should be ensured over staff at all levels, as well as training of staff in human rights standards;

- to avoid disproportionate stationing of persons in the institutions, similar to practices of other countries, it should included into the regulatory framework that the treatment of person in the institution shall be provided only if other methods are not adequate and effective. At the same time, provision should be made for the possibility to provide the treatment without consent of a person outside of the institution, by introducing effective patient's control mechanisms.

II Efficiency of Protection of Private Life

Content of the privacy consists of personal identity, physical or mental integrity, including honour and dignity, one's own living space, sexual activity and social relations, relations with other persons, including information about this relationship. It also includes the right to keep their private life secret from other individuals. The State is under obligation not

[46] CPT Excerpt from the Eight General Report: http://www.humanrights.org.lv/upload_file/CPT_standarti_LV.pdf, see p.41.

only to avoid unjustified interference in the private life of individuals, but also to protect them from infringements of fellow-citizens and the media.

The Ombudsman's Office receives submissions on various breaches of privacy: unallowed disclosure of information, control over personal communications (post, e-mail, conversations), person's video-surveillance, the name representation in Latvian, the use of photos, etc.

Topics such as representation of personal names in connection with the prohibition to register persons with specific given names and last names at the Population Register and carrying out video-surveillance (partly) in public places should certainly be highlighted. Topicality of both these matters in recent years has not decreased, on the contrary - increased, as shown by litigations launched by individuals in the administrative courts.

To carry out an in-depth study of the said topics, in 2012 two studies were initiated and completed: "*Personal names spelling and human rights*" and "*Video-surveillance as restriction of the person's right to privacy and its permissible limits*", that are going to be available for a wider range of interested parties on the Office website.[47]

In the same way verification procedure No.148-5D/2010 should be noted among the verification procedures completed by the Ombudsman's Office in 2012, having been initiated to assess the possible infringement of privacy. In that case the matter referred for assessment was - whether there has been a breach of human rights ensured for the victim through publishing of materials of the criminal case adjudicated in a closed court sitting, revealing the identity and the privacy aspects of the victim of crime, in the book "Maniac" by A.Grūtups.

When evaluating the potential infringement of private life and privacy through publication in a book of the personal-related sensitive information from materials of the criminal case, the following aspects were explained: * what is meant by personal privacy and the way in which the protection of personal privacy and private life is settled, * whether in the particular case the law permitted infringement of the victim's privacy, whether it had a legitimate purpose and whether the privacy restriction was necessary and proportionate in a specific situation.

Opinion of that verification procedure has indicated that:

"personal data shall mean any information relating to an identified or identifiable natural person ("data subject"); an identifiable person is one who can be identified, directly or indirectly, by reference to an identification number or [personal identity number] or one or more physical, physiological, mental, economic, cultural factors or factors specific to social identity of this person. Processing of data shall mean any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, registration [recording], organization, storage, application [adaptation] or alteration, correction [retrieval], consultation [examination], use, disclosure by transmission [divulging through transmission], dissemination [through distribution] or otherwise making available, alignment or combination, blocking access, erasure or destruction. The data subject's consent shall mean any freely given specific and informed [based on knowledge of the conditions] indication[s] of his or her wishes by which the data subject signifies his agreement to personal data relating to him being processed.[48]

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47 http://www.tiesibsargs.lv/lv/petijumi

48 Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data, Article 2.

Not all the personal data as to their substance may endanger private life or appropriate person. Recital 33 of the Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data refers to data which are capable by their nature of infringing fundamental freedoms or privacy and should not be processed unless the data subject gives his explicit consent, which means that not all the data are equal. Such sensitive data are data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, as well as data concerning health or sex life.[49]

With regard to the processing of personal data the following principles[50] have to be mentioned - personal data must be (a) processed fairly and lawfully, (b) collected for specified, explicit and legitimate purposes, (c) further processing thereof should be compatible with those purposes. In the same way for processing of personal data it is required that they may be processed only if: (a) processing thereof is necessary for the performance of a task carried out in the public interest or (b) processing is necessary for compliance with a legal obligation to which the controller is subject, or [.] (c) the data subject has unambiguously given his or her consent (.).

EU law reiterates the principle that personal data must be processed lawfully and for definite purposes and, in some cases, with the consent of the data subject. If to the data obtained in a closed court hearing, the restricted access information status is given and are processed in accordance with the granted permission for particular scientific or literary purpose, therewith the obligation of the data processor not to divulge data is not cancelled, particularly if they are reviewed in a closed court hearing on sexual offence being committed and can affect inviolability of private life (privacy) of a still living person.

Although in the framework of the verification procedure it was found that arrangements for organizing the documentation and paperwork in the courts of districts/cities and the regional courts are different from the order arranged in the Supreme Court of the Republic of Latvia, with regard to the third persons right to consult the materials and adjudications of civil, criminal and administrative matters there is effective procedure prescribed by the Law "On Judicial Power", Criminal Procedure Law (hereinafter referred to as the KPL) and the Freedom of Information Law with regard to access to materials of the criminal cases as the restricted access information.

Upon assessment of granting of authorisation for A.Grūtups to get acquainted with materials of the criminal case No. 41202882/K-57/83 in the Supreme Court of the Republic of Latvia, a conclusion has to be drawn that the access to the data processing was issued unlawfully. Verification procedure has failed to present any evidence that the access to materials of the criminal case, which are the restricted access information had been formally requested, request evaluated under appropriate procedure and processing materials of the criminal case has taken place with permission.[51]

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[49] CEU judgment of 8 November 2007 in Case T-194/04 The Bavarian Lager Co. Ltd v Commission of the European Communities, Paragraph 8.

[50] Principles for personal data processing may be derived from a range of EU regulatory enactments, i.a., from Regulation (EC) No 45/2001 of the European Parliament and of the Council, adopted on 18 December 2000, on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

[51] Protection of personal data is of fundamental importance in the rights of a person to enjoy inviolability of his or her private and family life, safeguarded by Article 8 of the ECHR. National law should provide a certain level of protection in order to prevent use of the personal data in the way that would be contrary to safeguards of the ECHR Article 8. National law in the same way must provide appropriate safeguards that the collected personal data will be efficiently protected against unauthorized or malicious use. Above conclusions are particularly important in respect of the protection of data of specific category and sensitive nature.

In the same way it can not be said that the processing of personal data from criminal case No. 41202882/K-57/83 was carried out with a scientific purpose, since compatibility of the book "Maniac" to scientific paper is doubtful.

In assessment within the framework of the verification procedure of the proportionality of personal data processing and disclosure related to private life [of the victim], it should be noted - **first**, no permission of certain individuals [..] was given to the author to publicize data related with the privacy in book "Maniac";[52] in respect of these persons the author has not attempted to transform the data of victims for the purpose of protect them from identification possibility.

Author of the book, when describing the criminal proceedings, has failed to change the victim's name [..], has precisely referred to her job and has provided sufficient numbers of other indications to the victim, therewith has allowed for a great opportunity to identify the victim.

Second, a conclusion has to be drawn that in this verification procedure the right to privacy ensured by Article 96 of the Satversme are juxtaposed against freedoms of expression, scientific, artistic creative activity ensured for the person by Articles 100 and 113 of the Satversme.

In the event of writing "Maniac" in the instance of publicizing emotional experience related to sexual violence, anonymity of the depicted person and higher protection of privacy had to be ensured when compared with freedom or artistic expression and speech,[53] since publicizing of facts entailing private life, personal data of the person may be justifiable only in cases when the right of public to information availability is of higher importance than the right to inviolability of private life ensured for the person.

In the said verification procedure violation of the right to inviolability of private life ensured for the victim was established and identified that author of the book "Maniac" when describing a historic person and detailed circumstances for committing crimes, inter alia, when mentioning the persons having fallen victims to sexual offences, for the purpose to achieve higher effect of plausibility and presence[54], disproportionally publicized information of sensitive nature with regard to real, identifiable[55] and living victims.[56]

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[52] Taking into account that memories of an individual in respect of his or her private life is building up of his or her moral capital, no one shall be entitled, even in good faith, to publish the same without clear and unambiguous permission of the person, which life is related; taking into account that although various considerations are applicable to public life of the person, since otherwise history could not be written, real events and incidents in private life of the person, especially of intimate nature, cannot be published without permission of such person.

[53] Similar cases then the court must assess a provision of balance between the freedom of speech and inviolability of private life, frequently occurs in case-law of the European countries and of the U.S. Identical conclusions may be found also in the FRG Federal Constitutional Court (First Division) judgment of 5 June 1973 in Case BVerfGE 35, 202 FCC, as well as in Case Briscoe v. Reader's Digest Association Inc., 483 P. 2d 34 (Cal. 1971) adjudicated by the Supreme Court of California in 1971, et al.

[54] Interview by A.Grūtups to Dina Gailīte, Editor-in-Chief of the "Jurista vārds" journal. // „Jurista vārds" No.28 (623), dated 13.07.2010.

[55] Recital 26 of the Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data prescribes: "to determine whether a person is identifiable, account should be taken of all the means likely reasonably to be used either by the controller or by any other person to identify the said person". Indication to exact given name, surname, job position in the work of the author, when describing a specific historical time period, does not reduce the possibility to identify the person if surname is changed, since associative information overlap for the reader knowing minimum data of the person required for its recognition, allows high degree of identification of a person.

[56] The right to act in respect of the privacy disappears only with the death of the particular person – the only proprietor of this right.

III Protection of the Rights of Prisoners in Closed-Type Institutions

Imprisoned person is vulnerable, it is exposed to absolute subjection to authorities and therewith under the State protection. The consideration that the State has punished the person by deprivation of liberty for the committed criminal offence, does not constitute a basis to assume that this person - the offender, with the loss of freedom lose other rights arising from internationally accepted standards of human rights. This person like any person retains the right to a humane behaviour inoffensive to human dignity, free from moral and physical violence. In the way of treatment of prisoners the said principles must be met.

The Constitutional Court has recognized that the State in adoption of a regulatory framework that applies to prisoners, as far as possible should be guided by recommendations developed by the United Nations and the Council of Europe in this field.[57]

Thus the European Prison Rules (Recommendation Rec(2006)2 of the Committee of Ministers of the Council of Europe to member states on the European Prison Rules) have emphasized that the enforcement of custodial sentences and the treatment of prisoners necessitate taking account of the requirements of safety, security and discipline while also ensuring prison conditions which do not infringe human dignity and which offer meaningful occupational activities and treatment programmes to inmates, thus preparing them for their reintegration into society.

When the person is deprived from his or her liberty, then his or her existence, protection of the rights becomes fully dependant on the prison staff, administration and governmental officials. Thus the Ombudsman has always kept focus on the rights of prisoners and mechanism for protection thereof and its efficiency.

In protection of the rights of prisoners the Ombudsman exercises his functions and tasks when considering applications, visiting prisons (within one year 10 visits to prisons have been made), as well as participating in various working groups entailed with execution of criminal penalties and arrest as a security measure (the Working Group arranged by the Ministry of Justice on Execution of Criminal Penalties, Working Group on development of the legislative framework with regard to appealing/disputing the decisions taken during execution of arrest and execution of criminal penalties).

Like in previous years, also in 2012 significant numbers of submissions from prisoners have been received with regard to various issues related to execution of punishment and arrest as a security measure. Submissions were received mainly on the following issues:

- inadequate living conditions;
- health care issues relating to the quality of medical treatment and lack of timely access to physicians;
- frustration of the decisions taken by an administrative commission;
- request for transfer to another prison. There are two reasons for it:

1) would like to be closer to the place of residence of their relatives,

2) feel to be endangered from other inmates, especially if prior to imprisonment cooperated with the Police officers.

- violations of the principle of good administration - prison staff members do not explain the rights, do not listen, do not issue the necessary laws and regulations, take unjustified decisions;
- procedure for process and granting of short- and long-term meetings;

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[57] Judgment of the Constitutional Court of 14 June 2007 in Case No.2006-31-01, p.14.2.

- correspondence censorship (do not send or check the contents of the letters);
- a request to send court adjudications (ECtHR, administrative courts);
- video-surveillance in the cells of lifers and excessively rigid regime;
- price differences of the prison store "Mego" and the lack of discounts as opposed to the equivalent stores operating outside prison;
- disproportionately high electricity rates for the use of individual household appliances;
- problems of the internal hierarchy of the prison.

Non-compliance of social conditions with human rights requirements (in 2011 received 164 written submissions, in 2012 - 68 submissions)

Still submissions are received with regard to overcrowded living cells, insufficient ventilation, lighting, lack of hot water in cells, inadequate enclosure of sanitary unit. In order to use resources in a rational manner, employees of the Ombudsman's Office do not carry out an immediate review of individual complaints. The received information about each prison is collected and taken into account when making the monitoring visit. It should be noted that during the last year there has been an increase in the number of submissions where prisoners are asking to send former opinions by the Ombudsman's provided with regard the conditions in prisons. Most submissions of this nature are received from the Daugavgrīvas prison. Prisoners are making active use of the Ombudsman's opinions to safeguard their rights. For example, through recourse to administrative courts against actual actions of prisons, failing to provide the circumstances of treatment meeting human rights. At the same time there is a tendency present, that also the administrative courts are increasingly applying to the Ombudsman with a request to provide information about the findings during the visit.

In connection with implementation of the recommendations provided by Ombudsman, in the context of the living conditions found during the monitoring visits we can refer to an example of the Daugavgrīvas prison.

In 2011 after visit to the Daugavpils Unit of the Daugavgrīvas Prison, Ombudsman has issued an opinion that the recommendations issued in 2010 and relating to the conditions for quarantine and living cells have not been taken into account. Also in punishment isolation cells, it was found that enclosure of the sanitary unit does not provide the protection of personal privacy. In 2012 when revisiting the Daugavpils Unit of the Daugavgrīvas Prison, in relation to punishment isolation cells it was concluded that the recommendation has been observed with respect to the punishment isolation cells. While in quarantine cells enclosures of sanitary units with doors were installed, artificial lighting was improved. Prison employees pointed out that in the quarantine cells as minimum as possible numbers of prisoners are accommodated. A conclusion has been drawn that the provided recommendation has been taken into account.

1. Health Care Issues Related to the Quality of Medical Treatment and Access to Medical Assistance

In respect of health care in 2012, in most cases, submissions have been received where complaints are expressed about the medical care received in prisons – about actions of medical staff (for example, not referring to the State Medical Commission for the Assessment of Health Condition and Working Ability to determine disability or for performance of repeated disability expert examination and not referring to different procedures), about carelessness of medical staff resulting in deterioration of the state of health. The Ombudsman, after receipt of the submissions of such nature, shall forward the same for examination on their merits to the Health Inspectorate.

For several years a topical problem in the prisons is availability of dental assistance and dental treatment. Clause 2.2 of the Cabinet Regulation No.199 "Regulation on the Health Care of the Remand Prisoners and Convicts in Remand Prisons and Institutions of the Deprivation of Liberty" of 20 March 2007 prescribes: "Prisoners shall get the emergency denticare free of charge". To find out what is included in the emergency care, position of the Prison Administration has been received. The received reply has specified that in the course of development of the draft regulation, consultations have been carried out with the Dental Centre. According to viewpoint of the Dental Centre, emergency dental assistance includes acute cases, injuries of face, jaw and bleeding. Upon initiative of the Prison Administration in prisons the medical assistance in cases of dental pain was also included as emergency medical assistance, providing to the patient to be given assuagements, filling of a tooth with provisional plug or tooth extraction - without provision of dental treatment. At present the prisoners, like people in community, can treat their teeth or make dentures only at their own expense. The Prison Administration has expressed their view that it would not be proportionate, if prisoners in prisons could receive such medical treatment services completely free of charge, or covering only partially, for what other people is required to pay a significant sum of money. From Ombudsman's view the prison administration, in collaboration with a prisoner on a case-by-case basis, if the prisoner do not have financial resources, but need more extensive denticare, should find a solution in order to the prisoner is not exposed to long-term tooth pain. Otherwise, there can be found a breach of the prohibition of torture prescribed by Article 95 of the Constitution of the Republic of Latvia and Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe. Analogous approach must be applied also for free making of dentures subject to individual evaluation and provided that the prisoner participates in solution of the issue, if there are evidence of medical nature that refusal to make free denture results in difficult food intake for the prisoner.

In 2012 also the question of the availability of dentist to the prisoners has become topical. Particularly many such submissions were received from Daugavgrīvas, also from Valmieras prison. For example, prisoners have indicated that a dentist is not available in the Daugavgrīvas prison. To assess the above information, employees of the Ombudsman's Office in January 2012 visited the Daugavgrīvas prison. During the visit, it was established that for about half a year there is no dentist in the Daugavpils Unit of the Daugavgrīvas Prison, but in the Grīvas Unit a dentist is employed on a part-time basis. Therefore prisoners should two to three weeks wait for the dental assistance. In the case of dental pain the prison doctors dispense assuagements or anti-inflammatories to the prisoners. At the same time during the visit documents were received attesting that Director of the Daugavgrīvas Prison in writing has applied to managers of dentistry institutions of the city of Daugavpils with regard to possibilities to provide paid services for inmates in prison, however, there has been no interest. The problems in provision of dental care are outstanding also in other prisons. For example, Valmieras prison for several years is looking for a doctor - stomatologist. Advertisements for a vacant doctor-dentist staff position were placed on the Employment State Agency website, on the Prison Administration website, however, no applicants have applied. Ombudsman has indicated to the responsible authorities that other solutions must be sought to ensure for the prisoners access to doctor - stomatologist, otherwise, there can be found a violation of the prohibition of inhuman behaviour or even torture.

A number of prisoners have applied to the Ombudsman's Office with a request to provide information about treatment of type C virus hepatitis in prisons. In this context, the

Ombudsman asked the Prison Administration to explain whether prisoners are entitled to receive the State-paid examinations of type C virus hepatitis and medication reimbursement. Response indicated that the inmates having hepatitises, including the chronic type C virus hepatitis in prisons receive medical treatment in accordance with the Regulations of Health Care for Remand Prisoners and Convicts. They are getting symptomatic treatment. At the same time it was indicated that the type of medical treatment of antiretroviral chronic hepatitis belongs to the tertiary health care, which is not included in the health care of prisoners. The said type of medical treatment in Latvia may be prescribed only by hepatologist from the Riga Austrumu Hospital Infectology Centre. In the case if antiretroviral treatment is prescribed to people in Latvia with medication reimbursement, the patient needs to make co-payment for medicines approximately as LVL 2609.00 (two thousand six hundred nine) plus patient contributions for a large number of examinations. The Prison Administration considers that they can not afford that prisoners could fully receive free treatment for which other people are required to pay a significant amount of money. Therefore a situation could develop that people who need treatment, might want to get to the prison, to get free specific treatment of type C virus hepatitis. Ombudsman partly agree to this view, holding the view that medical treatment and pre-treatment examination of type C virus hepatitis should be ensured similarly to the HIV/AIDS treatment and examination – within the framework of government programme - to all the people free of charge.

Already in 28 June 2010 the Ombudsman has given his opinion No.20 "On the availability of medical assistance in prisons". One of the issues activated therein was regarding the relationship of the organisation of medical care for prisoners with the overall public health care. Ombudsman concluded that the range of health care services paid for the prisoners from the State budget is by far less than for the persons in community whose income level prevents their access to health care services at their own financial expenses. Thus the existing health care system for prisoners does not comply with the guidelines outlined in the European Prison Rules. The opinion was sent to the competent authorities. In this context, the Ministry of Justice, in cooperation with the Ministry of Health, developed amendments to the laws and regulations and on 27 September 2006 the Cabinet Regulation No.744 "Amendments to the Cabinet Regulation No.1046 'Procedure for Health Care Organization and Funding' of 19 December 2006" (hereinafter referred to as the Regulation No.1046), setting a new division of competences between the Ministry of Justice and Ministry of Health with regard to funding of health care for prisoners. Subclause 17.2 of the Regulation No.1046 provides that the Ministry of Justice shall bear the costs for: (1) health care services of medical staff working in prison; (2) the patients' contributions and patients' co-payments for prisoners receiving health care outside prison. These amendments have approximated the rights of the prison doctors to the rights of the doctors working in community, by providing for the prison doctors the right to prescribe referrals for examinations to prisoners that will enable them to receive state subsidised outpatient and inpatient health care services in the medical treatment facilities outside prisons at the expense of the State budget, including also medication reimbursement, in the same way as with the rest of population in community. Amendments were enacted on 1 January 2012. In order to get information about the current situation in the field of availability of medical assistance in prisons, the Ombudsman has applied to the Prison Administration. The Prison Administration has notified that the prisoners are able to receive medical treatment and medical examinations in the treatment institutions in the community. During the first two months of 2012 prisons have organised and provided outpatient – in 219 cases, inpatient - in 54 cases examinations and medical treatment of prisoners in the treatment institutions outside the prison. Also the medication reimbursement to the prisoners have been prescribed.

2. Good Administration Issues in Prisons

A large number of submissions have been received with regard to probable illegal actions of the prison staff against prisoners. For example, unfounded reports on the regime violations, on violations committed during search, on the rude and disrespectful treatment of the prison staff, prison staff members do not explain to the prisoners their rights, do not listen, fail to provide with the laws and regulations of interest, make non-substantiated decisions, on failure to send the correspondence to the addressee et al.

Section 10 of the State Administration Structure Law stipulates that the State administration in its activities shall observe the principles of good administration. Such principles shall include openness with respect to private individuals and the public, the protection of data, the fair implementation of procedures within a reasonable time period and other regulations, the aim of which is to ensure that State administration observes the rights and lawful interests of private individuals. In prison the good administration principle means that inmates have free access to the prison staff both in written and verbal form. While the prison administration has to respond to the complaints of prisoners in a good time, communicate with them actively, make aware of their rights and responsibilities, maximum efforts should be put to respond to the questions of interest to prisoners on their merits.

In several submissions the inmates have asked to explain the right to long-term visit with other people who are not relatives, according to provisions of the Sentence Execution Code of Latvia. It derives from Paragraph two, Section 45 of the Sentence Execution Code of Latvia that the administration of deprivation of liberty institution, to decide the question of granting visit for the convicted person with other people (who are not relatives, but with whom prior to imprisonment they have had cohabitation, or have common children) it is necessary to obtain information from local authorities where the person has lived prior to imprisonment.

For example, a complaint has been received from a convict that the municipality where the person has had his place of residence prior to imprisonment, for a long time (more than six months) has failed to provide to the prison administration information necessary to justify decision on the visit, which is favourable/unfavourable for the convicted person. Ombudsman pointed out to the municipality that, in accordance with Section 57 of the State Administration Structure Law, such a cooperation between the institutions is not considered to be due administration. In addition, it has been indicated that in accordance with Paragraph three of Section 10 of the State Administration Structure Law, the State administration shall act in the public interest and the public interest shall include also proportionate observance of the rights and lawful interests of private individuals. During examination of particular submission the prison administration was drawing attention to the fact that such situations when the local government for a long time fails to respond (or responds after multiple requests) to the prisoner himself or to the prison facility, have been met fairly often in practice. In this connection an appeal has been sent to the Prison Administration for the development of uniform procedures (recommendations or guidelines) on how Section 45, Paragraph two of the Sentence Execution Code of Latvia should be applicable in order to facilitate the implementation of uniform practice in all the prisons by safeguarding the person's right to privacy and family life. Ombudsman has made also a recommendation in respect of compliance with good administration, requesting information from other institutions. Ombudsman will follow the implementation of recommendations.

In the course of the year several submissions have been received with complaints about the fact that the prison staff are using Russian language during negotiations with the prisoners, whose native language is Latvian. Prisoners at the same time have indicated that

some employees really do not have knowledge of the official language. Submissions of this nature are mostly received from the Daugavgrīvas prison. On this issue Ombudsman has repeatedly indicated to the Daugavgrīvas prison administration. Since submissions of this kind are still received by the Ombudsman's Office, this matter will be activated.

Inmates have indicated that short-term visits are taking place behind the glass wall. Neither the Sentence Execution Code of Latvia, nor the Cabinet Regulation of 30 May 2006 prescribes such a delimitation. Constitutional Court of the Republic of Latvia in its judgment of 23 April 2009 in the Case No. 2008-42-01 "On compliance of the words of Section 13, Clause 6 of the Law on the Order of Keeping in Custody "one hour long" and "in the presence of prison administration representative" with Article 96 of the Constitution of the Republic of Latvia" with regard to remand prisoners has drawn a conclusion that laws have prescribed that the court or the investigating judge may limit the scope of persons which the prisoner may meet, and to lay down what security precautions, including delimitation with the glass wall, can be applied during the visit. It is considered to be less restrictive measure than the automatic physical delimitation of all the remand prisoners and visitors. In the light of the above, the fact that in the prisons in the short-time visit room the remand prisoner and the visitors are separated by a glass wall, is considered to be a disproportionate restriction of the right to a private life. However, although such disproportionate restriction exists, it does not follow from the contested provision. The contested provision determines only that the visit may take place in the presence of a representative of the prison administration, but that does not mean that the prisoner must be separated from the visitor with a glass wall. The provision can be implemented also in the way that the representative of remand prison administration quite simply is present in a meeting room, but the space is not divided by a glass wall.[58] Ombudsman believes that this must also mutatis mutandis apply to the convicted persons. Conditions existing in the visiting rooms (glass walls) should be tailored in accordance with conclusions and findings of the Constitutional Court. For a prison administration there is no legal basis for separation of prisoners from visitors with a glass wall during the short-time visit, however, the glass wall is still used during short-time visits to the prisoners. Presence of glass delimitation is an established practice that is difficult to change. This issue is discussed in the Working Group for Execution of Criminal Punishment and the Prison Administration was requested to change this practice.

In prisons the question of objects authorised in parcels and storage has been activated. Namely, prison authorities quite often are applying grammatical interpretation of the list of items allowed for the convicted persons to be stored and to be received in parcels, specified by annexes to the Cabinet Regulation No.423 "Internal Procedural Rules in the Institutions for Deprivation of Liberty" of 30 May 2006, avoiding to view them systemically with the purpose and substance of the regulatory framework.

For example, the Ombudsman's Office has received a submission, which indicated that the person A. wanted to deliver a judgment of administrative district court as a parcel to the person serving his sentence in the Daugavgrīvas prison. However, the Daugavgrīvas prison administration has removed it on the grounds that the consignment contained items (copies of documents) that are not included in Annex 11 to the Cabinet Regulation No.423 "Internal Procedural Rules in the Institutions for Deprivation of Liberty" of 30 May 2006. Ombudsman has applied to the Prison Administration, indicating that the prohibition to receive copies of the court judgement or case-law of any other courts in a parcel does not satisfy the requirements of human rights, *as well as* objectives and spirit of the law and rules issued on

[58] Judgment of the Constitutional Court of 23 April 2009 in Case No.2008-42-01, p.17.3.1.

the basis thereof. At the same time, it was indicated that the prohibition to receive a judgment, which could be applied to him and can help to safeguard his rights and interests, moreover, is publicly available on the Internet, is not only contrary to the human rights requirements, but is also deemed to be a violation of the principle of good administration. The said letter has been sent for information also to the Ministry of Justice.

During the second half of the year there was a sharp increase of the prisoners' submissions with regard to the Cabinet Regulation No.282 of 28 April 2012, enacted on 28 April 2012. The said Cabinet Regulation has amended Cabinet Regulation No.327 "Regulations on Pricelist for the Paid Services Provided by the Prison Administration" of 25 April 2006, by prescribing higher payments for the use of electricity in prisons, and other paid services provided by the Prison Administration. Prisoners is of the opinion that payment for the use of electricity is abnormally high and does not conform to the actual electricity consumption. Ombudsman in this respect, on his own initiative has launched a verification procedure on compliance with the principle of good administration of the Cabinet Regulation No.327 of 2 April 2006. Verification procedure is under the examination stage.

In 2012, it was found that the Latvian Council of Sworn Advocates, considering the complaints of a prisoner about the lawyer's work, when sending a reply, addresses it to the prison administration instead of the prisoner himself. Ombudsman in his recommendation to the Latvian Council of Sworn Advocates has specified that such acts does not comply with the principle of good administration and has asked for further observance of the rights of prisoners.

In 2012 several complaints have been received where prisoners indicated that the prison authorities fail to ensure timely delivery or acceptance of the correspondence, resulting in reduced time for the persons, for example, to prepare documents for the court, or documents are received late by the court authorities. It was found that such action may affect the person's right to a fair trial. In some cases, appraisal has to be given to the fact that the courts, upon assessment of specific cases, have renewed the procedural terms, and therefore the right of the person for access to court has been secured.

Breach of the principle of good administration has been also found in actions of prison staff and the Police officers by carrying out multiple searches of the person prior to escorting. Namely, the prisoner indicated that before he and his possessions were moved to another prison, the prisoner has been searched twice. Initially the person was searched by the prison staff, immediately after that by the State Police staff. Ombudsman has concluded that when the staff of two institutions with a short interval is operating with a single purpose (public order and security of a person), it is not considered to be effective and appropriate use of time and resources. In addition, during these activities the rights of the person have been disproportionately restricted. Therewith a conclusion has to be drawn that such acts of the authorities are contrary to the principles of good administration. Findings of the opinion were communicated to the Ministry of Justice.

3. Security Issues

The question of the safety of prisoners has become topical in the Ombudsman's Office. Namely, a number of submissions have been received from the prisoners, where they pointed to the fact that in the course of criminal proceedings or after the court verdict of guilty has become effective they have cooperated or are cooperating with various law enforcement authorities. As a result, when placed in prisons, they are exposed to risks from other prisoners,

and pretty often they fail to see proper support for their security from the prison staff. Employees of the Ombudsman's Office, when visiting prisons, have concluded that there are outstanding problems of violence in prisons and in particular for certain categories of prisoners, which also includes the prisoners who have cooperated with the investigating authorities. Specific prisoners have pointed out that, in this context, they have been exposed to physical influence by other prisoners, but no prison staff has recorded bodily injuries. Ombudsman in these cases have applied to the Prison Administration with a request for verification to be performed. The fact of threat is not confirmed, however, cooperation of the prisoner with law enforcement authorities has been confirmed. Aims of the officials are to detect and to prevent criminal offences in community, consequently a public interest, and also a prisoner with participation in these activities entails a danger for the rest of the time he will spend in prison. Thus cooperation between the law enforcement institutions is essential to prevent possible risks of threat. It should be noted that also the European Court of Human Rights in the case J.L. against Latvia has noted to the lack of adequate cooperation between responsible public authorities to protect the prisoners having cooperated with the investigating bodies in detection of other criminal offences, from subsequent physical revenge in prison.

The Ombudsman's Office has received several submissions from prisoners about the cases of violence from the prison staff. These submissions have been forwarded to the Prison Administration with a request to check and to notify the Ombudsman. In its replies the Prison Administration has communicated that there have been discussions made with particular prisoners and either they have ceased to have claims against actions of the staff, or they have withdrawn their submissions. It is known that prohibition to be subject to inhuman or degrading treatment included in Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe imposes to the State a positive obligation to thoroughly investigate and to carry out checks in any event of violence, and to provide a sufficiently plausible explanation for the origin of the bodily injuries incurred by the prisoners. Otherwise, there is a reason to believe that a breach of the human rights of prisoners has occurred. Given that the Ombudsman has become suspicious of ineffective checks, the said was notified to the Ministry of Justice. In response, the Ministry of Justice has indicated that they will call for the Prison Administration not to terminate the proceedings of submissions and to respond, irrespective of whether they are or are not withdrawn.

From the submissions received and also from the verification visits to the prisons, a conclusion has to be drawn, that the internal hierarchy of prisoners is still topical, creating moral and physical violence. Already in the previous years, the Ombudsman has brought these problems to notice of the prisons, the Prison Administration and the Ministry of Justice. However, signals are still received from prisoners of the events of mutual violence.

4. Problems of Lifers

The Ombudsman's Office during the last six months have received a number of submissions from lifers, who are serving their sentence in the Daugavgrīvas prison. Submissions have indicated to an excessively severe regime for execution of punishment, video-surveillance in cells. In order to assess the information received, employees of the Ombudsman's Office have visited the Daugavpils Unit of the Daugavgrīvas prison. The visit was aimed at video-surveillance of lifers as one of the means of supervision, individual risk assessment and conditions for serving sentence in the lifers' block. During the visit, violations of human rights have been found.

Conclusions and recommendations:

1. According to normative regulations in Latvia, the lifers are isolated from other prisoners, but it is important to allow them to communicate at a sufficient level. There is a need to improve the role of the prison staff in the process of execution of punishment for the lifers. The Prison Administration and the Daugavgrīvas prison authorities were asked to take appropriate measures to balance the security measures with resocialization, as well as mutual communication between the prisoners.

2. Supervision of the lifers in Daugavgrīvas prison is realised via video-surveillance. Video-surveillance has been installed in all the living cells (both at the lower, and at the medium regime level), and all the lifers are exposed to it round the clock. Video-surveillance is also installed in the corridors and exercising areas. Video-surveillance of the prisoners' is associated with privacy of the person. Even though the Sentence Execution Code of Latvia requires increased supervision of lifers, however, it does not provide for video-surveillance of the prisoners as one of the types of supervision. Also the Committee for the Prevention of Torture of the Council of Europe (hereinafter referred to as the CPT) in several its reports has emphasized that a prisoner may not be kept under stricter regime for longer than this is necessary, due to the risk caused by his behaviour, by indicating that in many countries the lifers are not considered more dangerous than other prisoners. At the same time explaining that many of these prisoners have long-term interests of stable and peaceful environment without conflicts. The above presents evidence that the strengthened supervision provisions (compared with other inmates), including video-surveillance, from the point of view of human rights can only be permitted by making individual risk assessment.

From the human rights point of view the practice cannot be acceptable that video-surveillance as means of supervision is used in relation to all the lifers, building on the punishment applied to them as the sole criterion. Thereby the Ombudsman has asked the Daugavgrīvas prison authorities to carry out individual risk assessment for each convicted person, which should include an assessment of the prisoner’s behaviour, including the description and the analysis of the committed violations of the regime for serving the sentence, or where the desire to work, to study has been expressed, how the rest of the time is spent. The Prison Administration was recommended to ensure that also in Jelgavas prison for the lifers and those to whom the court of first instance has imposed the life sentence, an individual risk assessment should be made. At the same time recommendations were proposed to the Ministry of Justice to include in the Sentence Execution Code of Latvia (hereinafter referred to as the SIK) regulatory framework with regard to the possibility of using video-surveillance as additional measure of supervision by exact stipulations of criteria, in which cases video-surveillance of the prisoners in living accommodations is permissible.

Within the Standing Working Group for Execution of Criminal Punishments of the Ministry of Justice, which also involves representatives from the Ombudsman’s Office, discussions have been launched with regard to incorporation of video-surveillance in prisons into the normative regulations, by precisely providing the cases in which and the criteria by which in living cells it is permitted as an additional measure of supervision. By 20 December 2012 amendments to the Sentence Execution Code of Latvia, normative regulations are included for individual risk assessment of the lifers when applying special measures - handcuffs. At the same time, it is expected that such an assessment is carried out not less frequently than every six months. However, the issue still remains unresolved with regard to separation of the lifers from other inmates. Ombudsman still considers that the issue of separation of the lifers should be reviewed, which is also indicated in the above opinion. Namely, the responsible authorities were asked to change the penal policy with regard to persons who have been sentenced to life. From the point of view of human rights this category of prisoners must not be isolated from others, only on the basis that the court has

applied the custodial sentence-life imprisonment. Each slightest risk must be evaluated individually. Moreover, the Committee for the Prevention of Torture of the Council of Europe already in 2007 has urged Latvia to revise this separation policy. While after the 2009 visit to Latvia has repeatedly highlighted that the separation of lifers from other prison inmates is not justified, solely on the grounds of their sentence.

5. Resocialization

At the beginning of 2012 amendments have entered into force to the Sentence Execution Code of Latvia, providing for individual assessment of risk and needs, on the basis of which resocialization plan for a convicted person must be developed, which once a year should be reassessed. These amendments have opened a new page in the penal policy, directed towards progressive, effective execution of punishments with a view to promote law-abiding life of the prisoners after returning to community. In visits to prison, special attention has been paid to activities for implementation of resocialization processes of the persons sentenced with a deprivation of liberty. During visits to prisons (for example, Daugavgrīvas prison, Brasas prison), by becoming cognizant of assessments already performed, after negotiations with staff the most directly involved in the development of resocialization plan, employees of the Ombudsman's Office have concluded that, practically, the new framework does not function or functions formally in practice. Also the prison staff members have acknowledged that it is possible that the individual risk and needs assessment in future will bring positive change in the execution of sentence, but at present, taking into account the current financial situation and the number of employees in prisons (for example, in Brasas prison there are 80-90 prisoners per one senior inspector) this work is performed superficially. It is important to understand that only by including the concepts "resocialization", "individual risk assessment", "resocialization plan" in the regulatory framework, the objective of these amendment in the Sentence Execution Code of Latvia will not be achieved. Activities prescribed by law must be filled with content, by creating awareness of the nature of resocialization in prisons and making the implementation of the tasks laid down in the law possible (financial resources for additional staff positions, salaries of the employees). Also in 2013 the Ombudsman's Offices will pay special attention to the process of implementation and ensuring of the prisoners' resocialization.

6. Progressive System of Deprivation of Liberty Sentence and Efficiency of Appeals to Decisions Taken within its Framework. Work of Administrative Commissions

During the first half of the year a large number of complaints has been received related to amendments to the Sentence Execution Code of Latvia on the transition from the three levels of serving sentence to two in a semi-closed prison. Previously in the highest level of semi-closed prison there was no period defined, for how long time a prisoner must spend there, in order to qualify for the open prison. Right now the law provides that one quarter of sentence must be served. Prisoners believe that thus their rights are being infringed. Ombudsman is of the opinion that these amendments are not making the situation of convicted persons worse, since the principle of progressive execution of punishment does not provide for the automatic mitigation of the regime for serving sentence. The administrative commission shall have the right to examine all the criteria laid down in the law and the resocialization level achieved by the convicted person, but is not under obligation to mitigate the regime for serving sentence. Moreover, the convicted persons, irrespective of the regime for serving sentence unchangeably retain their right to request conditional release prior to the term of sentence. It should be noted that these amendments, by reducing the levels, were aimed at making execution of the deprivation of liberty sentence more flexible and simpler. Previously the differences between the regimes for serving sentence were represented by the

extent of the rights of convicted persons - incidence, duration of visits, the number of phone conversations et al. Such a fragmented multi-level system restricted the possibilities of convicted persons to engage in resocialization programs, namely, they were unable to complete a training course undertaken or one of resocialization programs due to the change of regime.

In 2011 the Ombudsman has provided his opinion, where it has been concluded that a mechanism is ineffective for appeals to decisions on disciplinary penalties applied against convicted persons and decisions made by administrative commissions. Findings of the opinion were discussed in the Working Group arranged by the Ministry of Justice on improvement of the normative regulations for disputing/appealing decisions made during the period of execution of arrest and criminal punishment, where also representative of the Ombudsman's Office have participated. The Working Group has elaborated three possible models to improve the effectiveness of appeals against the disciplinary actions and decision of the administrative commissions.

1. Decisions of the Director of the Prison Administration with regard to disciplinary penalties imposed to the convicted persons appealed before the Administrative Court have to be adjudicated over a short period of time, thereby accelerating adjudication of complaints of the convicted persons about the applied disciplinary punishments;

2. Decision about imposition of the disciplinary penalty is not an administrative act, but internal decision of the institution, by providing that the disciplinary penalty imposed on the convicted person shall be subject to dispute before the Director of the Prison Administration, whose decision is final and not subject to appeal to the court;

3. The disciplinary penalties imposed on the convicted person are internal decisions of the institution, however, if the decision of the Commission that is unfavourable to the convicted person and based on the imposed disciplinary punishment is appealed to the Court, then the Court when examining the decision of the Commission, shall also consider lawfulness of the disciplinary punishment. That is, if the Commission takes a decision on the aggravating of the regime for serving the sentence or refuses to mitigate the existing regime for serving the sentence on the basis of the applied disciplinary punishment, the convicted person shall be entitled to appeal against the decision to the District (City) Court under procedure prescribed by the Criminal Procedure Law. Therewith the court at the same time has to assess justification and lawfulness of the applied disciplinary punishment and the decision by the Commission made on the basis thereof.

Ombudsman has supported the 3rd option, at the same time pointing to several weaknesses. The Working Group was invited to continue the discussion on development of this option, upon careful evaluation thereof. The Working Group has accepted it and discussions are still going on for evaluation of the amendments required for implementation of the 3rd option. Work on the putting appeals mechanism into order will continue also in the next year.

The aforementioned opinion has activated also a question that in the cases when a convicted person has appealed to the court against a decision of the administrative commission and the court has set it aside, the administrative commission, when examining the specific matter anew, quite often fails to take into account indications of the court of justice and is repeatedly making identical decisions. In a law-governed state such a situation is not acceptable, and the obligation to comply with the decision of the court is derived both from the Constitution of the Republic of Latvia and from the Law "On Judiciary Power". However, the Ombudsman's Office still receives submissions from the prisoners with complaints about the fact that the administrative commissions are not taking into account the deficiencies

identified by the court in the decisions being made. Therewith examination of this matter will continue also in 2013.

During the last few months the question has become topical of the fact that administrative commissions when deciding on the proposal of motion to the court of progress of the convicted person towards conditional release prior to the term of sentence are setting as a compulsory criterion a requirement to the convicted person to produce the employer's certification of the fact that after release from prison, he will be provided with a job. Criteria that should be taken into account by the administrative commission, when deciding about change of the regime for serving sentence of the convicted person and his progress towards conditional release prior to the term of sentence, are governed by the Cabinet Regulation No.282 "Regulations on the Operational Procedure of Administrative Commission and Criteria for Decision-Making" of 31 March 2009. The Regulation does not provide for the existence of paid employment outside prison as a compulsory criterion that must be evaluated by the administrative commission when deciding about proposal of motion to the Court with regard to conditional early release of the convict. Ombudsman is of the opinion that this situation is not acceptable, moreover, the person while being in prison, cannot find a job. Ombudsman will draw to the attention of Prison Administration that such practice is unacceptable.

It should be noted that in the course of this year several verification procedures have been completed that were initiated in 2011 with regard to the prisoners' topics. For example, the verification procedure, which was initiated on 24 August 2004 with regard to restrictions prescribed by the Cabinet Regulation No.740 "Regulations Regarding Stipends" for prisoners to get stipends. Ombudsman concluded that there is no legitimate objective visible in the prohibition imposed by Regulation No.740 to get a stipend for educatees that are prison inmates or acquire extramural professional education programs (vocational training). Thereby the above Regulations allow for unjustified different treatment of persons who are in the same comparable conditions. Therewith there is a breach of the rights guaranteed by Article 91 of the Constitution of the Republic of Latvia. In response to the Ombudsman's Opinion, the Ministry of Education and Science has recognised the need to prepare amendments to the said normative enactment, in order to also the trainees acquiring vocational training in prisons should be able to get a stipend.

IV Respect for the Rights of Persons during Pre-Trial Investigation

In 2012 the Ombudsman's Office has received 67 written submissions with regard to the actions and decisions of a person directing the proceedings during the pre-trial stage of investigation in the criminal proceedings. The nature of complaints varies and affects both actions of a person directing the proceedings during performance of various investigative activities (for example, on a search to be carried out), and decisions made by a person directing the proceedings (for example, for the imposition of an attachment on property). In some cases, submitters are not satisfied with, in their opinion, wrong qualification of an offence determined by a person directing the proceedings.

Example:

Submitter S.L. was detained by the State Police officers and criminal proceedings were initiated. S.L. was released the next day and learned that the car belonging to him has been seized and inspected. From S.L.'s point of view the seizure was aimed at getting his

admission in committing a criminal offence. S.L. has indicated also that during the period of three months no procedural activities were carried out with him. With complaints about actions of the person directing the proceedings S.L. was approached to the supervising Aizkraukle district Prosecutor's Office and the Prosecutor's Office of Zemgales Court Region, however, he has got no substantiated reply of the reasons which would prevent the return of his car. Upon assessment of information being at disposal of the Ombudsman's Office, there was no reason to doubt that the State Police officers have seized and inspected the car owned by S.L. within the framework of the launched criminal proceedings. Even though restriction of S.L.'s rights to property and privacy has taken place, the said right is not absolute and under the procedure prescribed by law can be reasonably limited to attain a legitimate purpose. Investigation and disclosure of criminal offence is considered to be a legitimate purpose.

The Ombudsman's Office has received also certain submissions from victims in criminal proceedings, which are of the opinion that the criminal proceedings are lasting too long, are not taking place actively enough or else have been delayed. In cases when the submitters have not exercised their rights prescribed by Criminal Procedure to make complaints of this nature to the supervising prosecutor, these rights are explained to them, and they are invited to use them. In some cases, submitters are applying to Ombudsman, for example, when supervising authorities have already established the fact of delayed criminal proceedings and officials have already been punished for the allowed violations. In such cases, Ombudsman is not undertaking repeated evaluation of the allowed human rights violations.

Example:

Submitter O.A. has applied to the Ombudsman's Office, by complaining about actions of a person directing the criminal proceedings failing to provide responses to submissions in a timely manner and to provide information about the progress of criminal proceedings. At the same time, a complaint was expressed of the protracted course of criminal proceedings and that the responsible officer has got disproportionately soft disciplinary punishment. In the course of making cognizant with the documents attached to the submission, no violations were found in relation to responses given to the submitter. However, from replies of the supervising prosecutor it was evident that in particular sections of criminal proceedings delays have been found, but the responsible officer has become a subject to disciplinary liability. Ombudsman did not evaluate the circumstances specified in the submission once again, but concluded that there has been violation of the rights of O.A. as a victim for timely completion of the criminal proceedings, which has already been established by the supervising prosecutor. At the same time, the Ombudsman has explained to the submitter that a natural person shall not have the right to require that the public official is punished in any particular way. To O.A. her right was explained to apply to the court for compensation for damage incurred, if any.

In certain submissions the submitters have complained also with regard to decisions of the supervising prosecutor or higher-level prosecutors that have been made without reason, or are not sufficiently justified. When receiving submissions with complaints about decisions or actions made by a person directing the proceedings or by a prosecutor, the Ombudsman shall refrain from assessment of the same to their merits, namely the qualification of criminal offence or presence of constituent elements, lawfulness of performance of investigative operations, as well as admissibility of evidence. In these matters the Ombudsman might examine the matter concerning availability and efficiency of the mechanism for protection of rights established in the Criminal Procedure Law.

However, although the Ombudsman Law defines for the Ombudsman a comprehensive right to supervise observance of human rights, including also in criminal proceedings, an objective obstacle to examination of such cases is too narrow interpretation of certain provisions of the Criminal Procedure Law and quite often also irregular practice and deprecatory attitude of the law enforcement authorities towards such right for the Ombudsman, which often has made the Ombudsman's powers to carry out the monitoring of respect for human rights in criminal proceedings to be only declaratory. Section 375, Paragraph one of the Criminal Procedure Law prescribes that the officials who perform the criminal proceedings, as well as the persons to whom the referred to officials present the relevant materials in accordance with the procedures provided for in this Law, shall be permitted to familiarise themselves with materials of the criminal case. Law enforcement authorities have repeatedly indicated that the Ombudsman is not among these persons.

Example:

The Ombudsman's Office has initiated a verification procedure due to the submitter's A. submission. The submitter has stated that already for 70 days he has not received answers to his submissions about the actions of the person directing a process within the criminal proceedings, as well as the Investigative Judge's decision. Verification procedure was initiated in order to assess the effectiveness of the mechanism for protection of rights available in the country. Within the framework of verification procedure information was requested from the supervising prosecutor asking to send copies of individual documents, with which A previously has been made cognizant, however, they were not at his disposal. On the basis of Section 375, Paragraph one of the Criminal Procedure Law, this Ombudsman's request was rejected. Also the Chief Prosecutor of the supervising Riga City Ziemeļu District Prosecutor's Office, as well as the Chief Prosecutor of the Riga Region of Court considered that Ombudsman is not among the officials, which are entitled to access to the materials of pre-trial criminal proceedings, while provisions of Section 13 of the Ombudsman Law providing for the Ombudsman the right to become cognizant of all the documents required in the verification procedure, are not binding to the law enforcement authorities. Given that without reviewing the requested documents it was not possible to provide an objective assessment of circumstances relevant for the verification procedure, the verification procedure has been terminated.

In connection with the said, the Ombudsman has applied both to Saeima and the Ministry of Justice with the proposals for amendments to the Criminal Procedure Law to provide for the Ombudsman the right to acquaint with certain types of materials from criminal case also during the pre-trial investigation.

V Legal Status and Protection of the Detained Foreigners and Asylum Seekers

When compared to the previous reporting period, in 2012 the number of complaints to the Ombudsman's Office about the person's legal status has been diminished. The fact that there is no increase for this indicator in statistical summaries of the Office from year to year, may be explained by several factors. In relation to certain groups of people, for example, asylum seekers and refugees, the Ombudsman has limited options to provide assistance due to the extent of his mandate, therefore, asylum seekers with complaints for refusal of protection and refugees and the persons to whom alternative status has been granted with requests to help in solution of social problems are basically applying to non-governmental organisations

providing to the said persons the required assistance, including legal assistance within the framework of projects of the European Refugee Fund.

Despite the fact that few written complaints are submitted by the refugees and the asylum seekers to the Ombudsman's Office, in the past two few years during verbal consultations a problem has been found in the area of social protection for the persons being granted the alternative status. Therefore in 2012 the Ombudsman's Office has carried out a study on access of the persons being granted the alternative status, to social assistance and social services. The main findings and conclusions of the research clearly identify problems for the persons being granted the alternative status with integration in the country and the range of issues precluding to accelerate this integration.

First, at the national level no mechanism is operating, to facilitate faster learning of state language in the said group of people. This finding likewise can be equally applied to the persons having received an alternative status and the refugees, as well as to the immigrants initially staying in the country with temporary residence permits and over time are becoming eligible to qualify for getting a permanent residence permit.

Second, the state language learning problem sequentially makes difficult access of the said persons to the market and vocational training, leading this group to social isolation. This is an unacceptable situation that the persons having received protection in the country after expiration of the term for receipt of the state benefit (9 months) are automatically channelled to queues of the social assistance claimants in municipalities that do not receive additional funding to work with this group from the government or other sources.

In the same way the research points to issues such as difficulties for the persons being granted alternative status to settle the issue of the place of residence, access to information and obtaining health care, that are of no less importance and their resolution should have required immediate action by the responsible authorities.

The range of issues that are constantly invariable in the proportion of complaints submitted to the Office, is related to refusals to issue residence permits to foreigners or their cancellation, if the members of family of the foreigner are living in the country and in the case of refusal of residence the right to inviolability of family life guaranteed for the person could potentially be restricted.

Thus in 2012 the Ombudsman's Office has received several verbal and one written complaint with regard to cancellation of the repatriant status and residence permit for the persons whose family - parents, brothers, sisters and other immediate family – is living in the Republic of Latvia and for them a constant sustainable relationship has developed with that country, despite the fact that they are born outside Latvia and have arrived to Latvia only in the mid-1990s as a result of the repatriation process.

In practice the Ombudsman's Office has hardly ever assessed the cases when a residence permit is cancelled for repatriants because of their criminal record. One of the cases of complaint, when the residence permit was cancelled for the repatriant having sentenced for deprivation of liberty, a verification procedure has been initiated. However, in view of the fact that the Office of Citizenship and Migration Affairs has renewed a residence permit for the person, there was no basis for continuation of the verification procedure.

In other cases, there have been verbal complaints received about deprivation from the residence permit and the repatriant status, which was based on criminal conviction, however, the submitters did not ask for the Ombudsman's Office to become involved in resolving the problem, since they on their own have disputed under the appellate procedure the deprivation of repatriant status at the court.

Deprivation of residence permit due to the reasons of national and public order and safety and attempts to balance this limit with the right to inviolability of family life guaranteed for the person[59] is presenting a problem not only in Latvia. Also in other countries of the European Union addressing this dilemma has led to a sharp political discussions,[60] and it is likely that evaluation of different aspects of this problem in the near future might more frequently become to the Ombudsman's sight.

In addition to the above it could be noted that the Ombudsman's Office annually receives a small number of complaints from foreigners, who for health reasons are unable to get through the Latvian language test and to receive a permanent residence permit (or to get citizenship of the Republic of Latvia). These complaints basically are also expressed to the Ombudsman's Office viva voce without any request for initiation of the verification procedure. In these cases, the persons have got recommendations to engage the unused law enforcement mechanisms - appeal against the decisions before the authority or the court.

No complaints about unreasonable deprivation of citizenship or prohibition to get a citizenship were received by the Ombudsman's Office in 2012, however, the cases have still been identified during verbal consultations, when the process of deprivation of citizenship is initiated against the persons, since another state automatically in the early 1990s, has granted citizenship to these people.

1. On the Observance of Forced Removal

On 16 December 2008 Directive 2008/115/EC of the European Parliament and of the Council has adopted on common standards and procedures in Member States for returning illegally staying third-country nationals, where (Article 8 (6)) it was prescribed that Member States shall provide for an effective forced-return monitoring system.

By virtue of Amendments to the Immigration Law of 1 July 2011, more specifically, Section 50.7, the Ombudsman of the Republic of Latvia was entrusted with observance of the forced removal process.

In order to create an effective system of observance, the Ombudsman's Office within the framework of the European Return Fund 2011 project, in 2012 has completed development of the methodology for questioning of foreigners, and when continuing development of the observance mechanism, in 2013-2015 intends to develop a similar methodology in respect of the other tasks contained in the observation process - the survey of detention places of the persons subject to removal and observance during the actual removal.[61]

During the period from 1 January 2012 to 31 December 2012 the Ombudsman's Office has received for execution 58 decisions on the forced removal of foreigners, of which in 9

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[59] Rights of the person to family life shall cover also the aspects such as entering into marriage, inviolability of family life, right to form a family et al.

[60] "Theresa May 'picking a fight with judges' on immigration"// http://www.bbc.co.uk/news/uk-21489899, as well as "Theresa May says judges are 'ignoring' deportation" //lawhttp://www.bbc.co.uk/news/uk-21489890

[61] Section 50.7, Paragraph two of the Immigration Law prescribes that the observation of the forced removal process shall include:

1) visiting of the detained foreigners subject to forced removal at their place of accommodation in order to evaluate the conditions of accommodation and maintenance, also the provision of medical assistance and the satisfaction of other needs;

2) a questioning of the foreigner in order to determine his or her awareness of the progress of the forced removal process, his or her rights and the possibility for implementation thereof;

3) observation of return of the personal property of the detained person seized at the time of detention, transportation from the accommodation centre of detained persons to the departure point, handing-over and registration of luggage, as well as participation in the actual implementation of the forced removal process in order to evaluate the observance of the human rights of the foreigner to be removed.

cases the observation could not be put into practice since the Ombudsman's Offices was not notified on the expulsion of foreigners in due time or due to lack of time it was not possible to find an interpreter who could ensure communication with the foreigner subject to removal.

During observation process the problems were identified, to which the foreigners subject to removal have pointed out:

1) information about the removal is provided late, and the persons have not received information about the rights guaranteed to them for defence and appeal against the decision in an understandable and a timely manner;

2) there is a problem to communicate with one's family and acquaintances to notify on extradition and return to their home country, because there are limits imposed on the use of personal cell phones or the persons themselves have no phones or money to communicate with relatives at home.

3) at the place of detention of the foreigners subject to forced removal at Rudolfa Street, Riga premises are not designated for long-term detention. A few foreigners subject to removal have pointed to deficiencies in the isolator equipment, thus, for example, it was indicated that the shower required for personal hygiene is not ensured. Complaints were also received about the quality and quantity of food.

Given that for majority of the foreigners forced removal is performed through the "Riga" International Airport, and the temporary accommodation premises used by the State Border Guard in Riga are not entirely suitable for long-term accommodation of foreigners subject to forced removal, consideration should be given to the need to arrange appropriate detention facilities in Riga, or in the vicinity, where the persons subject to forced removal, might be detained for longer than 3-4 days.

Also in 2012, in conjunction with data obtained through the observation process, the Ombudsman's Office has initiated two verification procedures on possible violations of human rights in the forced removal process where the decision about forced removal was adopted with regard to persons who:

- due to mental illness did not fully control their actions, and removal was intended to the country, in which the reigning regime carried out brutal repressions against their own nationals (authorities committed serious human rights abuses, including mass arrests, killings without a court sentence, arbitrary detentions, violent disappearances, torture of prisoners, including children, and ill-treatment of them);
- asked them not to be expelled to their country of origin, where they were threatened to physical violence and exposure to torture or other inhuman acts.

In respect of both cases investigation is going on in the Ombudsman's Office, and provision of opinions in them is provided for 2013.

VI Guarantees for Protection of the Rights of Persons in Contacts with the Police

In 2012 employees of the Ombudsman's Office in cooperation with the State Police College have arranged for the training "*Compliance with Human Rights in the Work of State Police*". Within the framework of the said project employees of the Ombudsman's Office have visited several (11) State Police institutions in various regions of the country (Riga, Liepaja, Daugavpils, Jelgava, Gulbene, Kuldiga, Rezekne, Cesis). During these visits employees of the Ombudsman's Office have conducted classes for the Order and Criminal Police staff (in total, approximately 200) on compliance with fundamental rights in their daily activities. During the classes the Police officers were made cognizant of the tasks and scope of the Ombudsman's Office, as well as the following topics were reviewed:

(1) Compliance with anti-discrimination in the work of Police;

(2) Fixing of the racial, ethnic features, when instituting criminal proceedings;

(3) Investigation of criminal offences prescribed by Section 78 of the Criminal Law (triggering national, ethnic or racial hatred)

(4) Application of the principle of good administration in the State Police work;

(5) Aspects of prohibition of inhuman treatment in contacts with the Police. Specific character of detention of the persons with mental disorders;

(6) Securing of the right of person to inviolability of private life (in the work of Police). Compliance with the presumption of innocence principle in communication of the Police with mass media;

(7) The respect for the rights of minors in the work of Police;

(8) Respect for the rights of the child in contacts with the Police (specialist training, subjects, delivery of a child to the police station, etc.);

(9) The right of parents to participate in any actions undertaken with their child;

(10) Initiation of criminal proceedings pursuant to Section 174 of the Criminal Law (Cruelty Towards and Violence Against a Minor).

After completion of the said training classes, the State Police College has shown interest in further cooperation with specialists from the Ombudsman's Office.

In 2012 employees of the Ombudsman's Office have visited a temporary place of detention (hereinafter referred to as the TPD) of the State Police (hereinafter referred to as the SP) Jurmala Station, as well as repeatedly visited TPDs of Riga, Jelgava and Dobele Stations. The purpose of the said visits was to assess compliance of conditions in the TPD with the human rights requirements, to observe compliance with the Constitutional Court judgment in the Case No.2010-44-01, as well as to provide their views on the improvements to be made. Activities of SP for improvement of living conditions in TPD, as well as the fact that administrations of individual TPD (in Riga) and regions comply with the recommendations provided by the Ombudsman's Office has to be appreciated.

In 2012 the Ombudsman's Office has received complaints about Jelgava, Aizkraukle, Ogre, Dobele, Jekabpils and Talsi TPDs. In their submissions the persons request for the Ombudsman's opinion or evaluation to be sent or provided with regard to living conditions in SP TPDs. The said information is often used to submit a claim to the administrative court with regard to actual actions of SP, failing to ensure living conditions in TPD compliant with the human rights requirements. The observed increase in the number of applications in this matter could be linked to judgments of administrative courts positive for the persons (for example, judgment of the Administrative Regional Court on Kuldiga TPD[62] and Ventspils TPD[63]. Judgments of the Administrative District Court on Jelgava TPD[64], Aizkraukle TPD [65] un Jekabpils TPD[66]).

Ombudsman's Office has evaluated also compliance of the normative enactments governing the work of Police with the human rights requirements.

In 2012 shortcomings were identified in the normative enactments governing the work of TPDs (in the maintenance provisions the quantity of vitamins does not comply with the Ministry of Health standards). Ombudsman has applied to the Ministry of Interior to make the

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62 Judgment of AAT of 11 May 2012 in Case No.A42974609 AA43 –0496–12/11

63 Judgment of AAT of 2 July 2010 in Case No.A42510707 AA43-0885-10/19

64 Judgment of ART of 16 November 2012 in Case No.A42 06266 11

65 Judgment of ART of 8 January 2013 in Case No.A42042012

66 Judgment of ART of 22 January 2013 in Case No.A420475612

necessary amendments to the Cabinet regulation. However, the Ministry of Internal Affairs rejected the said proposal, indicating that person's temporary accommodation in TPD is not likely to cause any damage to health.

Section 257, Paragraph one of the Latvian Administrative Violations Code (hereinafter referred to as the Code) prescribes that an instrument for the committing of a violation shall be removed if such administrative violation has been committed, which is provided for in Section 149.[4], Paragraph seven; Section 149.[5], Paragraph four or Section 149.[15] of the Code (except for the violation provided for in Paragraph six) up to the implementation of the fine applied. Therefore, the said provision imposes on the SP an obligation to remove and to store up to payment of the fine also vehicles of the offenders. According to Annex 4, Clause 1.1 of the Cabinet Regulation "Regulations for Handling the Property and Documents Seized in the Administrative Violation Case" of 7 December 2010, storage of the vehicle seized in the administrative violation matter costs 8 LVL per 24 hours. While the fine for driving a vehicle repeatedly within a year, if there is no driving licence or there is a prohibition on the utilisation of the driving licence (Section 149.[4], Paragraph seven of the Code) is LVL 400, failure to comply with a person's repeated request to stop the vehicle (for fleeing), who is authorised to inspect the vehicle driver's documents (Section 149.[5], Paragraph four of the Code) is LVL 800 - 1000, driving of a vehicle under the influence of alcohol or narcotic or other intoxicating substances (Section 149.[15] of the Code) is LVL 150-1000. Therefore the costs for storage of the vehicle within the period of four months will be equal or exceed the maximum fine prescribed by the sanction. Accordingly, the Ombudsman has found that the imposed limit unreasonably restricts the rights of the person to the property. In view of the above, the Ombudsman has referred to the Saeima (Parliament), asking to amend Paragraph one of Section 257 of the Code. Even though the Ombudsman's proposal was referred to additional discussion to the Ministry of Justice, however, on 12 December 2012 the Constitutional Court of the Republic of Latvia, after receipt of petition from a private person has decided to initiate the case of compliance of Paragraph one of Section 257 of the Code with Article 105 of the Constitution.

On 26 May 2011 the Ombudsman applied to the Saeima of the Republic of Latvia, asking to draw up amendments to Section 43[6]. of the Road Traffic Law (hereinafter referred to as the RTL) (Photo Radars), but on 20 December 2011 submitted proposals for amendments to the RTL Section 43[6]. However, the Saeima Economic, Agrarian, Environmental and Regional Policy Committee in its meeting of 11 January 2012 decided not to support (not to move forward), these proposals for consideration in the Saeima. In view of the above, on 29 May 2012 the Ombudsman has submitted a constitutional complaint to the Constitutional Court, where asked:

1) to find that the decision-making procedure prescribed by the RTL Section 43[6], Paragraph three and five does not comply with Article 1 and 92 of the Satversme;

2) to declare that the RTL Section 43[6], Paragraph two does not comply with Article 91 of the Satversme;

3) to declare that the RTL Section 43[6], Paragraph seven and eight does not comply with Article 92 of the Satversme.

On 29 June 2012 the Constitutional Court decided to institute the proceedings No.2012-15-01 with regard to compliance of the RTL Section 43[6], Paragraph three, five seven and eight with Article 92 of the Constitution of the Republic of Latvia.

The Ombudsman's Office still receives submissions from the persons with regard to cruel or inhuman actions of the Police officers as well decisions and actions taken or carried out within the framework of criminal proceedings or administrative proceedings. Although

there are not many complaints received by the Ombudsman's Office about the actions of the State Police officers, however, in several verification procedures Ombudsman has established that:

1. The complaints of persons about inhuman treatment were not investigated effectively by the SP:

For example: A person was escorted from the Riga Central Prison to the Riga Regional Court. While meeting with employees of the Ombudsman's Office, the person indicated that during the said escorting the State Police officers unduly applied their physical strength and special measures against him. In the Riga Central Prison Medical Unit bodily injuries were found for the person. SP Internal Security Office (hereinafter referred to as the ISO) has performed a departmental examination in total for one year and seven months, which substantially exceeds the time limit laid down by the Law "On Police". In view of the above, a conclusion has to be drawn that departmental examination is not carried out within a reasonable period of time and is not considered to be an effective in the context of Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

2. Violation of the prohibition of inhuman treatment:

For example: in connection with the injuries incurred during the detention, individual was placed in a hospital, where several State Police officers have guarded him. At the same time against the person special measures were applied - handcuffs and legcuffs. Upon evaluation of materials of the verification procedure, it was found that the use of handcuffs and legcuffs against a person whose mobility has been made significantly difficult, as well as his strapping to the bed, despite continuous guarding by several police officers, is considered to be a disproportionate set of security measures. Taking into account the period of time (one month), when the said security measures (means) were applied, it was found the minimum level of suffering is exceeded and actions of the officers has to be assessed as an infringement of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

3. Breach of the principle of good administration:

For example: on 1 March 2006, the Court sentenced the person to punishment - administrative arrest. However, its execution was commenced only on 16 September 2011. During this period the person within initiated criminal proceedings has participated in 30 procedural acts in the SP, in the Prosecutor's Office and in the Court. As well as to him a security measure – arrest – was applied. SP officers for 377 times have requested information about this person (including, on the day when he was arrested). Upon assessment of materials of the verification procedure, it was found that actions of the State Police, when executing the court decision in an administrative violation case more than five years later, do not comply with the principle of good administration.

On 10 January 2013 at the meeting of the State Secretaries a draft concept "On solutions for transformation of the State Police Internal Security Office to an institution under supervision of the Minister for the Interior". The Cabinet of Ministers has supported transformation of the State Police Internal Security Office to an institution under supervision of the Minister for the Interior, by giving to it the status of operational subject. Ombudsman on several occasions has found inefficiency of the verifications carried out by the SP ISO. Also the European Court of Human Rights in the case Jasinskis against Latvia has indicated that the official investigation could not be considered as an appropriate in cases where there is an alleged eventual ill-treatment within the meaning of Article 3 of the Convention. Therewith the wish of the Ministry of Interior to create a body independent from the State

Police, to carry out checks of lawfulness of actions of its employees from the point of view of institutional independence has to be appreciated.

VII Topicalities of the Division of Civil and Political Rights

1. Right to Fair Trial

The Ombudsman's Office every year receives submissions concerning the right of the person to a fair trial. When making analysis of the content of submissions, a conclusion has to be drawn that these applies to different aspects of a fair trial – access to the court, right of the person to high-quality and effective defence. Like in 2011, the largest number of submissions on this topic (67 submissions in writing) concerns fair hearing of the case, when people are not satisfied with adjudication of the court. The key problem, however, emerging from the received applications is related to the right of person to hearing in fair court within reasonable period of time, by additional activation of the question concerning deadlines for development of full court judgment. In relation to the latest issues, the Ombudsman has issued also opinions on identified breaches in a number of inspection proceedings.

1.1 Access to the Court

In 2012 there were 32 written submissions received that access to the court is denied, since the court does not relieve the persons from state duty payment, thereby denying to the person the right to a fair trial. It should be noted that in a number of cases also the imprisoned persons have addressed the submissions of such content. However, no violations have been found, because the substance of the issue was perceived in the fact that the persons themselves have not provided sufficient information to the court about their financial situation. The fact should be appreciated that the courts in their decisions extensively explain and indicate to the persons how the person would have act and what documents should be submitted in order to the court it should be possible to make a objective decision (for example, information has to be updated on granting of the status of low-income or needy person, etc.). While in relation to the prisoners in administrative matters there is an evident trend that the court itself requires information from prison on the prisoner's income. In some cases, the prisoners have pointed to the problem, that the prison administration personnel fail to send procedural documents to the court in a timely manner, resulting in limitations of the right of the person for access to the court. However, in the examined cases, although the problems have been perceived in the organization of work of prisons, violations of the rights of prisoners for access to the court were not found. The courts had recognised the conditions for delay to be valid and had resumed procedural time limits for submission of the procedural documents.

1.2 Reasonable Deadlines

A long-term problem, indicated by the Ombudsman during recent years, is examination of matters within reasonable terms. Mainly applications are being received with regard to examination of criminal proceedings in the long term, but this trend is evident also in the process of examination of civil and administrative matters.

For example, in one of the verification procedures it was found that in the first instance a civil matter is adjudicated now for more than 12 years already! Legal proceedings in the matter in the first instance within a period of 12 years is not yet over, and overall potential period for adjudicating in the matter may be extended for another indefinite period of time, if the matter will be directed to adjudicating under the appellate and the cassation procedure.

During the verification procedure Ombudsman has found violation of the right to fair trial, more specifically, to the timely adjudicating the case. Furthermore, it was found that due to conduct of the court, adjudicating is lingering to the extent that due to the death of parties in the matter replacement of parties in the matter has begun, which even more has extended consideration of the matter.

There is one still topical question of time limits for adjudicating the matter in an appellate instance. In some cases, the Ombudsman has established that for the people who have been convicted by a judgment of the court of first instance and continue to be in detention, since they have appealed against the judgment of the court of first instance, the appellate proceedings are lasting for years, sometimes the period spent under arrest is approaching the sentence for deprivation of liberty awarded by the court of first instance.

Ombudsman has brought to notice of the courts the fact that the European Court of Human Rights has noted in its practice that the main thing to be assessed, with a view to decide, whether the right to a hearing within a reasonable time is complied with, is - are there disproportionately long periods of time in the matter, when there are no actions taking place in the matter at all. In a number of events it was found that there are disproportionately long wait periods from one court sitting to the next one, when no other actions are carried out in the matter.

For example, the District Court has postponed the adjudication in the matter due to examination of other matter and the next court sitting was stipulated in a year. After a year the parties failed to appear in the court sitting, since the court had not sent the summons on the time and place of the sitting to the parties in the matter. Despite the fact that the matter was not dealt with due to the fault of the court, the next court sitting was repeatedly stipulated in a year. The same trend is evident also in a number of other matters when the next court sittings, regardless of the reasons for postponement of the court sitting, are stipulated after the disproportionately long time.

It should be noted, however, that Ombudsman has also has found positive examples as well, where the court finds solutions to correct mistakes.

For example, a complaint was received from a convicted person, where the person pointed to the fact that the court sitting, where the question of person's early release had to be decided, did not take place because the Court had failed to appoint the escort, thus denying to him the right to attend the court sitting. However, there was no violation perceived in the specific case, since the Court immediately and without delay has stipulated the next court sitting in a week, as well as ensured attendance of the prisoner in the court sitting and the matter was adjudicated on its merits.

Although most criticism in this event relates to the executive power, which does not provide the courts with a sufficient number of judges and assistants in order to carry out examination of the matters in a timely manner, however, there are deficiencies demonstrated in the work of the courts.

1.2.1 Disproportionate Extension for Preparation of the Full Text of the Court Judgment

In several verification procedures the Ombudsman has identified problems with the KPL Section 530 providing rights to judges after preparation of an abridged judgment to extend the time for preparation of full judgment. A conclusion has been drawn that the

provision is not elaborated in sufficient details and gives judges too much and uncontrolled freedom to its application.

The first sentence of Article 92 of the Constitution of the Republic of Latvia prescribes that everyone has the right to defend his or her rights and lawful interests in a fair court. The right to a fair trial, includes also examination of the matter within a reasonable period of time. The KPL Section 14, Paragraph one provides that each person has the right to the completion of criminal proceedings within a reasonable term, that is, without unjustified delay. The completion of criminal proceedings within a reasonable term is connected with the scope of a case, legal complexity, amount of procedural activities, attitude of persons involved in the proceedings towards fulfilment of duties and other objective conditions.

Paragraph one of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the ECHR) guarantees for the person rights to a fair trial, including the rights of persons to timely proceedings in the matter, i.e., progress of the matter in a reasonable time. These rules are aimed at "*protection of all the parties to proceedings [..] from excessive procedural delays*",[67] to prevent excessively long legal uncertainty, as well as to maintain confidence in the efficiency and reliability of the judicial system.[68] In criminal proceedings the term for examination of the matter, in accordance with the European Court of Human Rights (hereinafter referred to as the ECtHR) case-law is calculated from the stage of investigation rather from the date when the case comes before the court. ECtHR has defined that the time calculation in criminal proceedings shall begin when the "*competent authorities have notified to certain person to be a suspect in committing of crime*",[69] or "*condition of the person has been substantially affected*",[70] namely, the rights of individual within criminal proceedings have been significantly restricted.

KPL Section 530 prescribed (Paragraph three of the Section in such wording was in force until 1 July 2012) that:

„*(1) A court may prepare a judgment in an abridged form, consisting of an introductory part and an operative part.*

(2) If a court has prepared an abridged judgment, the court shall prepare the full judgment within 14 days, announcing the date of the availability thereof.

(3) If due to plausible reasons a full court adjudication is not drawn up in a specified time, a judge shall notify a public prosecutor, accused, victim, defence counsel and representative when a full court adjudication will be available.''

For example, one of the verification procedures has found that abridged judgment of the court in a criminal matter was pronounced on 18 March 2011, by announcing that the date for preparation of full judgment is 1 April 2011. While on 1 April 2011 the Court announced to the parties stated that the date of receipt of the full judgment is stipulated on 2 June, but on 2 June 2011 the date for receipt of the full judgment has been set for 14 July 2011.

Upon assessment of the legal and factual circumstances of the particular case, the Ombudsman has pointed out that, by restricting the freedom of the individual, on the basis of the court judgement, he has the right not only to receive a reasoned judgment, but also to receive it in time, in order to make use of the procedural protection measures specified by the

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67 See Judgment of the European Court of Human Rights in Case *Stögműller v. Austria,* (1969).

68 Judgment of the European Court of Human Rights of 28 July 1999 in Case *Bottazzi v. Italy*, application No. 34884/97.

69 See Judgment of the European Court of Human Rights in Case *De Veer v. Belgium* (1980).

70 See Judgment of the European Court of Human Rights in Case *Ekle v. FRG (1982)*.

KPL, for example, to submit appellate or cassation complaints. Extended hesitation to prepare and to issue to the accused person the reasoned adjudication of the court:

1) may affect the total term for adjudicating the matter and hence also adjudicating the matter within a reasonable period of time;

2) leave the accused person in a state of legal uncertainty, which is not acceptable from the point of view of the right to a fair trial;

3) may interfere with the right to liberty. Any arrest must be substantiated and effective control over the arrest must be in place. The reasoned part for alteration of the security measure can be established only from the full judgment, therefore, long-term imprisonment of the person on the basis of an abridged judgment may deny the accused person access to disputing the altered security measure.

Upon evaluation of the legal and factual circumstances of particular verification procedure, Ombudsman has perceived infringement of the right of the person to a fair trial.

Similar violations were found also in other verification procedures.

For example, during the verification procedure it was found that the District Court on 10 November 2011 has adopted the guilty verdict when adjudicating the criminal matter. The judge has notified that the full text of the judgment will be available on 25 November 2011, but the full judgment of the court for the person was available only on 18 July 2012. The judge failed to notify the parties in the proceedings of the reasons why the full text of the judgment has not been prepared within the required time limit and failed to notify availability of the full judgment at a later date. The accused person was under arrest for entire this time period, which in accordance with repeated conclusions in the ECtHR case-law is an additional condition for the court to show due diligence and to take all the necessary measures in the matter in order not to allow for undue delay. The lack of availability of the full judgment text for more than six months has denied for the accused person an opportunity to lodge an appellate complaint against the judgment, thus creating a significant infringement of the right to a fair trial. It should be added that this was not the first case in practice of the particular judge. However, the Ombudsman has welcomed the fact that the Judicial Disciplinary Committee also duly responded to this case. Such cases not only creates the basis for the claim of the person for compensation against the State, but also undermines the judiciary authority as a whole.

With the aim of preventing deficiencies in provisions of the KPL Section 530, the Ombudsman has appealed to the Ministry of Justice with a request to initiate amendments to the said provision, and this initiative has resulted in amendments to the KPL Section 530, Paragraph three that have improved the wording of the Section. From 1 July 2012 KPL the KPL Section 530, Paragraph three provides that:

"If due to the volume, or legal complexity of the matter, or other objective reasons full court judgment is not drawn up in a specified time, a judge shall notify a public prosecutor, accused, victim, defence counsel and representative when a full court adjudication will be available. Drawing up the full court adjudication may be postponed only once."

During the discussion on the amendments to the KPL Section 530, Paragraph three there was not sufficiently many evidences at disposal of the Ombudsman's Office on consistency throughout the judiciary system with unjustified and long periods for drawing up the full judgment, therefore a proposal to set a maximum term for drawing up of the full judgment was not supported. On the other hand, if the complaints of such content from parties of the proceedings will be submitted to the Ombudsman's Office also in the future, a possibility will be assessed to repeatedly apply to the Ministry of Justice with the proposal to specify the

extension for drawing up the full judgment laid down by the KPL Section 530, Paragraph three.

2. Positions provided to the Constitutional Court with regard to Fair Trial

Ombudsman in 2012 has provided several positions to the Constitutional Court in relation to compliance of separate legal provisions with Article 92 of the Constitution:

1. The Constitutional Court in Case No. 2011-21-01 has assessed compliance of Section 8, Paragraph two of the Law on Reparation of Damages Caused by State Administrative Institutions with fundamental rights set out in Article 92 of the Constitution of the Republic of Latvia, namely, the right of individual to appropriate reimbursement. Ombudsman has provided his view in this case, where indicated that the current framework in the contested provision is not just disproportionate per se, but whereas the right to commensurate compensation is inseparably linked to the provision of other human rights, also limits effective exercise of the rights of the other. Thereby pointing to the fact that the contested provision does not comply with Article 92 of the Satversme.

2. The Constitutional Court in Case No. 2012-06-01 has assessed compliance of the Civil Procedure Law Section 128, Paragraph two, Clause 3, 5 and 7 to Article 90 and 92 of the Constitution of the Republic of Latvia. Ombudsman, by giving his views on all the issues which at the Ombudsman's discretion may play a role in the case, indicated to the Constitutional Court that only the fact that from the submitter's viewpoint a different civil procedure would be more rational, does not mean that the existing process is contrary to human rights.

3. The Constitutional Court in Case No. 2012–10-01 has assessed, whether words of Section 17 of the Law on Reparation of Damages Caused by State Administrative Institutions "*however, no later than within five years from the entry into force of the illegal administrative act of the institution or the day when illegal actual action has been performed*" complies with Article 92 of the Constitution of the Republic of Latvia. Expressing his views, Ombudsman pointed out that taking into account the time limits for adjudicating the matters in administrative courts as a less restrictive means for rights and legal interests of the person to attain the legitimate goal should be regarded extension of the time limits laid down in Section 17 of the Reimbursement Law. While the most effective means have to be considered the national obligation to arrange the work of judicial system with a view to reducing the terms for adjudicating administrative matters.

4. The Constitutional Court in Case No.2012-07-01 has evaluated compliance of Section 179, Paragraph one of the Credit Institutions Law to Article 105 of the Constitution of the Republic of Latvia, and compliance Section 179, Paragraph two of the Credit Institutions Law to the first sentence of Article 92 of the Constitution of the Republic of Latvia. Ombudsman expressed the opinion that the contested provision corresponds to Article 105 and the first sentence of Article 92 of the Satversme.

Division of Social, Economical and Cultural Rights

Priorities of the area of social, economical and cultural rights:
I Compliance with the human right principles in the process of stabilization of social insurance system
II Ensuring commensurable rights of owners in compulsory lease relations
III Assessment of the vehicle designed to control the quality of health care
VI Assessment of activities of municipalities providing assistance in apartment matters
V Assessment of compliance with the Constitution of Transitional Provisions of the Law on Social Protection of Participants in Elimination of the Consequences of the Accident at Chernobyl Nuclear Power Plant and Those Injured as a Result of Accident at Chernobyl Nuclear Power Plant
VI Compliance with the principle of good administration in the state administration
VII Facilitation of public awareness of its rights and the principle of good administration

I Compliance with the Human Right Principles in the Process of Stabilization of Social Insurance System

This priority is pursued by means of follow-up with the decisions made in the process of legislation and issuing the relevant opinions and conclusions by the Ombudsman.

1. On the Revised European Social Charter

In February 2012, the view was provided to the Saeima and to the Ministry of Welfare of the need to ratify Article 4 (The right to a fair remuneration), Article 12 (The right to social security), Article 15 (The right of persons with disabilities and retarded persons to independence, social integration and participation in the life of the community), Article 17 (The right of children and young persons to social, legal and economic protection), Article 23 (The right of elderly persons to social protection), Article 30 (The right to protection against poverty and social exclusion) and Article 31 (The right to housing) of the Revised European Social Charter (hereinafter referred to as the Charter).

Proposal was based on the international instruments binding for the Republic of Latvia that already basically provides Latvia's commitment to apply the articles subject to ratification, namely UN Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, UN Convention on the Rights of Persons with Disabilities, UN Convention on the Rights of the Child, as well as at a national level Article 106, 107, 109 and 112 of the Constitution of the Republic of Latvia.

In response to the Ombudsman's proposal the government[71] has pointed to the fact that provisions of the Charter, as well as interpretation standards of the European Committee of Social Rights are much more specific and higher than of the international instruments specified by the Ombudsman and provisions of the Constitution of the Republic of Latvia, although the said documents refer to the same or similar area. For example, a number of

[71] Letter of the Cabinet of Ministers of the Republic of Latvia, dated 16.03.2012, to the Ministry of Foreign Affairs, No.18/TA-342.

international treaties are binding to Latvia where issues of wages are included.[72] For example, the UN Universal Declaration of Human Rights states that "everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity". Also the Article 107 of the Constitution prescribes that every employed person has the right to receive, for work done, commensurate remuneration which shall not be less than the minimum established by the State. And minimum wage regulations in the country are defined in the Labour Law and the Cabinet Regulations.[73] However, the amount of the minimum wage in the country is still under the provisions of Clause 1 of Article 4 "The right to a fair remuneration" of the Revised Charter "to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living", which according to calculations by experts is 66% of national income per capita or 68% of the national average wage. In accordance with the latest available statistical data, the average monthly wage in September 2011 was 446 Latvian lati, and the minimum monthly wage (200 Latvian lati) amounts to 45% of the national average wage. In order to the minimum monthly wage achieve 68% of the national average wage, in 2011 it had to be 303 Latvian lati, while, to the minimum monthly wage achieve 66% from the national income, in 2011 it had to be 360 Latvian lati. Therewith Latvia can not ratify the said Clause of the Charter Article.

The government has pointed out that similarly, also the United Nations Convention on the Rights of Persons with Disabilities referred to by the Ombudsman, and in the provisions of Article 15, Clause 3 of the Charter prescribes - by ratification of the said Convention its Member State undertakes to, by making maximum use of its available resources and international cooperation, if necessary, to take measures with the aim of gradually to achieve full implementation of the rights set out in the Convention (Article 4, Clause 2 of the Convention). While by ratification of provisions of Clause 3 of Article 15 of the Charter, Latvia should immediately ensure "reasonable adjustment", which shall mean appropriate alterations and corrections in order to persons with disabilities enjoy their human rights and fundamental freedoms a par with the others and it does not create disproportionate or unjustified difficulties for performers of adjustments. Latvia has set out the measures for attainment of the standards prescribed by the Convention in the schedule for implementation of the United Nations Convention on the Rights of Persons with Disabilities for 2010–2012, while the measures to be implemented in the coming years will be determined by the guidelines for implementation of the United Nations Convention on the Rights of Persons with Disabilities for 2013–2019. Therewith assessment of compliance of the Latvian laws and practice with the Clause 3 of Article 15 of the Revised Charter is required at the final stage for implementation of the guidelines.

The question has been repeatedly activated in the meeting of Saeima Foreign Affairs Commission on 22 January this year when the proposals have been examined for 2nd reading of the draft law "On the Revised European Social Charter". With active participation of the Ombudsman both the Commission and later also Saeima agreed to ratify Clause 3 of Article 15 of the Charter (Right of persons with disabilities and retarded persons to independence, integration and participation in the life of the community; to promote their full integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure) as well as Clause 2 of Article 17 of the

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[72] UN International Covenant, UN Universal Declaration of Human Rights, Minimum Wage Fixing Convention No. 131 of the International Labour Organisation, European Social Charter

[73] The Cabinet Regulation No.413 „Procedure by which the Minimum Monthly Wage shall be Determined and Revised", dated 22 July 2003; the Cabinet Regulation No.791 "Regulation on the Minimum Monthly Salary and Minimum Hourly Wage Rate", dated 23 September 2008

Charter, including a commitment to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools. The rest of the articles of the Charter indicated by the Ombudsman still have not been fully ratified or separate clauses thereof have not been ratified.

2. On Raising the Retirement Age

In April 2012 the position was provided to the Saeima Social and Labour Affairs Commission in relation to the raising of the retirement age. A draft law was planning to raise the retirement age by defining, that the age required for the award of the old-age pension from 1 January 2014 shall be 62 years and three months, from 1 January 2015 - 62 years and six months, and starting from 2016, at 1 January of each year, shall increase for six months, by 2020 reaching 65 years. The draft law included also other measures to ensure balanced position of the state social insurance special budget.

As it has already been stated that the Ombudsman conceptually do not object to the increase of the retirement age given that one of the decisive criteria in formation of the social budget is sustainability of the pension system, ensuring that also future generations will have the right to social security.

Ombudsman pointed out that the real situation in Latvia is different from legal norms included in the international treaties[74] Latvia has joined. There is an evident trend that social rights and freedoms are being increasingly reduced, more and more explicit public segregation is perceptible. Under the conditions of economic crisis, there is a growing trend to adopt strict "economic management" measures of a purely financial nature, by defining a strict budgetary discipline, but at the same time disregarding the social dimension.

Ombudsman pointed to the fact that with the Cabinet Ordinance No.674 of 17 November 2010 the government supported the 3rd version of solutions included in summary of the Concept of Long-Term Stability of the Social Security System (hereinafter referred to as the Concept). It lays down restructurization of the costs of social insurance system, offering two options for raising the retirement age:

(a) from 2016 to the 2021 by gradually raising the retirement age for six months and by reaching 65 years in 2021;

(b) from 2016 to 2026 by gradually raising the retirement age for three months and reaching 65 years in 2026.

The Concept has emphasized that a faster increase in the retirement age and ending early retirement options is not allowed for several reasons. The Concept has indicated that a rapid increase in the retirement age under conditions of an economic crisis will lead to a sharp increase in the number of disability pensioners. It would also stimulate increase in the numbers of the beneficiaries of unemployment allowances and sickness benefits as well as the average duration of disease. Therewith the load and expenses of social assistance system will also increase. In the Government's Concept these were some of the considerations presented in November 2010, why more rapid commencement of the raising of retirement age in 2016 shall not be allowed. From the Ombudsman's view the situation in this area has not improved. The largest number of the unemployed persons is directly in the pre-retirement age group,

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[74] Treaty on European Union, consolidated version, Article 2, available on: http://eur-lex.europa.eu; International Covenant on Economic, Social and Cultural Rights, Article 9, available on: http://www2.ohchr.org/english/ law/cescr.htm

ages from 45 to 54 years (28% from the total number of the unemployed persons).[75] Moreover, significant improvements are not perceived in the reduction of unemployment, the promotion of employment, inclusion of the aged inhabitants in the labour market. Thus the Ombudsman has pointed that increase of the retirement age may not be launched already in 2014, the transition must be much more careful and easy, by determination of a reasonable transitional period.

In addition, the Ombudsman specified that self-financing is the underlying principle for operations of the social security system, i.e. in order to receipts of the state social insurance special budget cover expenses. At the same time, calculation of pension is associated with the long-term capital savings. The Ministry of Welfare has pointed out that positive balance of the social security budget (from 2002 to 2008) was the basis for the adoption of decisions on the additional financing of expenditures within the framework of the existing contribution rates (33.09%) - supplements to the old-age (from 2006) and disability pensions (from 2009), parental allowance (from 2008) and additional four days of sick-leave (from 2009), thus breaking the balance of special budget and threatening its sustainability.[76]

According to the Draft Law annotation[77] supplement to the old-age and disability pensions represents a service not covered with social security contributions, which has to be financed from the general State budget, not the State social insurance special budget.

Thus, in the context of the proposed Draft Law from the Ombudsman's point of view no answer is provided to the question, why deficit in the special budget of state pensions, which has been created also in the part as a result of incorrect actions of the Parliament and the government, is planned to be prevented by measures that even further undermine confidence of the public to the pension system, its sustainability and stability. Such an action from the Ombudsman's point of view is incompatible with the principle of socially responsible State, is contrary to Article 1 of the Constitution and does not provide for protection of the rights laid down in Article 109 of the Constitution.

On 4 June 2012 Saeima has passed a law, which stipulates that the age for granting of old-age pension is gradually increased in steps of three months, starting from 2014, by reaching 65 years of age in 2025. While funding of the supplements to old-age and disability pension from the general state budget specified by the Ombudsman, is started from 2014.

3. On Recalculation of Disability Pension in the Event of Change of the Disability Group

A view has been provided to the Constitutional Court in Case No.2012-09-01. The proceedings have been initiated with regard to compliance of Subclause 1 of Clause 16 of Transitional Provisions of the Law "On State Pensions", to the extent it relates to conversion formula of disability pension in the event of change of the disability group if beneficiary of the invalidity pension before the change of a group has been an employee and has made social contributions, with Article 91 and 109 of the Constitution of the Republic of Latvia.

Ombudsman has pointed out that having regard of the current fundamental principles for granting and recalculation of state pensions prescribed by the Law "On State Pensions",

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[75] Unemployment situation in the country in January 2012, available on: http://www.nva.gov.lv/.

[76] See, Initial impact assessment report (annotation) of the draft Cabinet Direction "Amendments to the Concept of Long-Term Stability of the Social Insurance System", p.6.

[77] See, Initial impact assessment report (annotation) of the draft law "Amendments to the Law "On State Pensions'", p.5.

the persons with Group 3 disability who has been awarded disability pension before the first day of January 1997, but after 1 January 1997 continue to work and to make social payments, and get Group 2 disability, and the socially reinsured employees getting disability of Group 2 after 1 January 1997, are not placed in equal and *comparable legal conditions* based on certain criteria. Therefore compliance of the contested provision with Article 91 of the Constitution shall not be assessed.

In evaluation of compliance of the contested rules with Article 109 of the Constitution, the Ombudsman has pointed out that from the social insurance model existing in Latvia a principle is derived that the social insurance payments are proportionate to the contributions being made. Namely, the amount of pensions based on social contributions, including the amount of the invalidity pensions, depends on the person's income from which social contributions have been calculated and made. However, for the persons to whom invalidity pension has been granted before 1 January 1997 and also after that date they continue to work and make social security contributions, the amount of the invalidity pension is not dependent on the amount of the contributions made. Therefore to these persons in the case of recalculation of invalidity pension the contested provision does not ensure a link between social security payments made after 1 January 1997, and the amount of the disability pension. Therewith the right to social security guaranteed by Article 109 of the Constitution is restricted. From the Ombudsman's point of view such a restriction does not comply with the Constitution. The legislator's objective when adopting the contested provision was to ensure stability and sustainability of the social insurance system based on social contributions, and hence to protect the public welfare. However, the contested provision fails to attain this objective.

The Constitutional Court has declared that the contested provision does not comply with Article 91 of the Constitution without assessing its conformity with Article 109 of the Constitution.

4. On the Supplement to the Old-Age Pension

A position has been provided to the Constitutional Court in Case No. 2012-12-01. The proceedings have been initiated with regard to compliance of the words "until 31 December 2011" of the Clause 41 of Transitional Provisions of the Law "On State Pensions" with Article 91 and 109 of the Constitution of the Republic of Latvia.

From the Ombudsman's point of view, supplement to pension has already initially been envisaged as a temporary right, which is not contained in the "hard core" of the right to social security laid down by Article 109 of the Constitution. In the field of social rights the hard core of positive obligations of the State covers only provision of such social assistance, which is guaranteed even if the person has not made social insurance contributions. Rights of the persons to social security at a minimum level are ensured pursuant to Clause 34 of Transitional Provisions of the Law "On State Pensions", which provides for a minimum amount of the pension being conditioned on the insurance standing accumulated by the person and the amount of the State social security benefit.

Supplement to the pension shall be recognized as an additional social security which the legislator as a result of political determination, using the discretion granted to it, has provided in order to improve the material situation of the pensioners, who have a large insurance standing and small pensions. In particular case the right to social security at least at the minimum level is not affected.

With regard to compliance of the contested provision with the principle of equality prescribed by Article 91 of the Constitution, I am bringing to your notice that the Ombudsman's Office has examined a verification procedure No.2012-93-26C with regard to procedures of awarding supplements to the pension, which on 5 July 2012 has been completed with the Ombudsman's opinion. The opinion has concluded that failure to award supplements to the pension from 1 January 2012 complies with the principle of equality prescribed by Article 91 of the Constitution. From the Ombudsman's point of view those recipients of old-age and invalidity pension to whom the pension has been calculated before 31 December 2011, and those recipients of old-age and invalidity pension to whom the pension has been calculated after 31 December 2011, are placed under equal and comparable conditions, since both groups of individuals are recipients of old-age or invalidity pensions, to whom a certain part of the insurance period has been accumulated before 31 December 1995 and this standing is taken into account when awarding (recalculating) the pension. However, the contested provision has a legitimate aim, and the principle of proportionality has been taken into account, and, therefore, a conclusion has to be drawn that the differing treatment has objective and reasonable grounds.

The Constitutional Court acknowledged that the contested provisions complies with Article 91 and 109 of the Constitution.

5. On the Link of the Amount of Disability Pension with Social Contributions in Review of the Amount thereof

Within the framework of the verification procedure, the Ombudsman has established that Paragraph five of Section 24 and Paragraph five of Section 30 of the Law "On State Pensions" is limiting opportunities for recipients of disability pensions to increase the amount of the pension in proportion to the paid social security contributions. Thus the rights of the persons with disabilities to social security are limited.

6. On the Cessation of Payment of State Social Benefit when being Fully Dependent from the State

A position has been provided to the Constitutional Court in Case No.2011-20-01. The proceedings have been instituted with regard to compliance of Clause 1 of Paragraph one of Section 20 of the Law on State Social Allowances with Article 91 and 109 of the Constitution of the Republic of Latvia. The contested provision prescribes that payment of the regularly paid state social benefits paid shall be suspended for the time period when the recipient of the benefit or the child, for whom the benefit is paid, is fully dependent from the State.

Ombudsman pointed to the fact that in the proceedings, first, the question of interpretation and application of the contested rule shall be assessed, namely, it should be clarified whether the concept of "full dependence from the State" included therein, is applied to the imprisoned persons with disabilities. Account should be taken of the objective of State social security benefit, namely, to provide material assistance to cover the costs related to disabilities in the cases when the person cannot obtain compensation from the state social security system. First, one must identify, whether the basic needs are met when being located in the prison, since their satisfaction is the primary task of the right to social security. It is essential to assess their legal and actual situation. Primarily for the persons with disabilities satisfaction of their essential requirements must be ensured, associated with consequences of the disability, otherwise, full maintenance of the State is not ensured.

The contested provision is aimed at prevention of the overlapping of social security services. It should be recognised that, in the cases when basic needs of the person are not ensured in the prison, as a result of the application of the provision its objective is not achieved, since full State maintenance is not ensured for the person. Thus from the Ombudsman's point of view, the question on the rights of persons with disabilities to the State social security benefit in prisons should be addressed through application of the contested provision, by the State Social Insurance Agency on a case-by-case basis, considering both the legal and the actual circumstances and, where necessary, by issue of an administrative act favourable to the addressee (that is, the decision on the granting of social benefit).

Constitutional Court joined the Ombudsman's point of view, considering that the matter has to be solved in the process of applying the contested provision, by declaring the provision to be compliant with the Constitution.

7. On the Risk of Poverty in Latvia

In November 2012 the Ombudsman, subject to provisions of Section 15 of the Ombudsman Law, has brought the increasingly growing risk of poverty in Latvia to notice of several international institutions (the Council of Europe's Human Rights Commissioner, the President of the European Council, the Vice-President of the European Commission, the Commissioner for Justice, Fundamental Rights and Citizenship of the European Commission, the European Economic and Social Committee, the Fundamental Rights Agency and the International Ombudsman Institute).

Ombudsman pointed out that, despite the information provided by the Latvian government on a rapid economic recovery, an improvement of the economic indicators, that Latvia for the third quarter in a row has the fastest growing economy in the European Union, the social reality and the statistical data suggest that still more than one half of the population in Latvia feels an economic stress, in Vidzeme and Latgale region even 76.4 % to 77.7% households.[78] Data suggest that the economic stress in households is not becoming weaker, quite on the contrary, continues to grow. 40% of Latvia's population, including 43% of the children and 33% of the pensioners are exposed to the risk of poverty and social exclusion.[79]

In particular, it was emphasised that a large part of the persons exposed to the risk of poverty are pensioners, people with disabilities and children that in the context of human rights are considered to be particularly protected groups of persons who require a special state aid. In his report the Ombudsman has drawn attention also to the insufficient amount of a minimum wage, the numbers of unemployed, including the long-term unemployed persons in the country.

In its response to the report, the European Economic and Social Committee has pointed to the latest opinions,[80] indicating to the provisions included in the Treaty of Lisbon that significantly changes the EU social dimension. When defining and implementing its policies and activities, the EU shall take into account the requirements associated with ensuring an

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[78] Central Statistical Bureau of the Republic of Latvia, available on: http://www.csb.gov.lv./dati/statistikas-datubazes-28270.html.

[79] Eurostat, available on: http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_peps03&lang=en; Central Statistical Bureau of the Republic of Latvia, available on: www.csb.gov.lv.

[80] Opinions of the European Economic and Social Committee: Opinion "Strengthening EU cohesion and EU social policy coordination", available on: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri= OJ:C:2012:024:0029:0034:LV:PDF;

adequate level of social protection and combating social exclusion (..) The purport and the most important goal of efforts by the Member States is "continuous improvement of the living and working conditions of their people". Decision-making authorities should be without prejudice to the application of horizontal social clause either in the terms of scope or the choice of methods (..) on the contrary, it should be applied in the widest sense and in all the EU policy areas (..). The horizontal social clause should be reflected in the legal instruments ensuring attainment of the objectives of the new treaties both in the European Union and the Member States."

In response to the Ombudsman's report also Prime Minister of the Republic of Latvia provided his information to the said institutions[81], notifying on the impact of economic crisis on the population welfare during the period from 2008 to 2010, as well as, indicating that the reduction of poverty and social exclusion, as well as the promotion of social security and welfare is one of the priorities of the Latvian government.

In response to the information provided by Prime Minister, Secretary General of the International Ombudsman Institute (IOI) P.Kostelka has appreciated activities of Latvia's Ombudsman for protection of social rights.

II Ensuring Commensurable Rights of Owners in Compulsory Lease Relations

During the reference period the Ombudsman continued to receive submissions from people in connection with the joint property relations. Still the largest numbers of submissions were received from owners of apartments (in total more than 350 people had signed the submissions), holding the view that the State acted unfairly against the owners of apartments in course of the land reform, allowing the former land owners and their heirs to regain the historical land or giving to their ownership the land, on which the houses belonging to other persons are located.

Crux included in the submissions was the excessively high level of the land rent charge, which in the long term could threaten also with the possibility of humans losing their dwelling, easy – government-guaranteed profit for the land owners (with higher profitability as the interest rates for deposits fixed by credit institutions), the obligation to pay the immovable property tax in addition to the rent charge and the value added tax applicable in addition to the rent charge, which even further increases the costs pertaining to the owners of apartments.

Ombudsman is holding the view that the rights to property are restricted both for the land owners and the apartment owners, the restriction is laid down by law and it has a legitimate objective, but a fair balance has not been reached in the joint property relationship.

In summer of 2012 the Government came up with several proposals. They determined that one will not be able to build residential buildings, including apartment houses on a land belonging to another person (and thus in the future the forced land rent relations will be excluded between owners of apartment of the residential building, or joint owners of the apartment house, and owner of the land) that the leaseholder in addition to the rent charge is not obliged to reimburse the immovable property tax on land, and the lessor with the

[81] Letter of Prime Minister of the Republic of Latvia No.20/SAN-2178 of 08.03.2013.

Immovable property State Cadastre information system should register the part of the land unit, which will be used for the purpose of establishing the compulsory rent charge for the land. Only in the case when the land owner will not be entitled to use the remaining part of the land unit for other purposes (e.g., to create a parking lot, to build new structures, etc.), the owners of apartments and the owners of other residential buildings and structures will have to rent also the remaining land unit. In the case if the owner of the land will not create the land unit and will fix the land compulsory rent charge, the fixed land compulsory rent charge can be contested in court.

Ombudsman has supported the said amendments, however, given that therewith the situation is only slightly improved, but not resolved completely, has made a research[82] of other countries experience in similar situations and case-law of the European Court of Human Rights. This question was discussed also during the 6th annual Ombudsman conference. As possible solutions to terminate the shared ownership relations were referred to:

(1) enabling owners of buildings/apartments to buy out the land under the building;

(2) pursuant to the law to lay down the procedure and time limits in which owners of residential buildings/apartments decide to purchase the land under the building.

At the same time, Ombudsman has specified that the State support will certainly also be required, for example, in the form of guaranteed loans, tax relief and the like. In the middle of this summer the government intends to come forward with its proposals to terminate the shared property. The Ombudsman continues to monitor the progress achieved in this matter.

III Assessment of the Vehicle Designed to Control the Quality of Health Care

During the accounting period Ombudsman continued to work on this priority of the field of social and economic rights, by making analysis of the submissions received and identifying deficiencies. The content of the submissions presents evidence that the said control mechanism is still ineffective. In 2013 there are plans to study also experience of other countries, the obtained examples of good practice, through publication of the opinion, perhaps, in a form of a separate report, at the end of 2013.

Verification procedure initiated due to submission by a private person with regard to lawfulness of action by the Health Inspectorate of the Republic of Latvia, it was found that initially the person has disputed the opinion of the Health Inspectorate with regard to the quality of the provided medical care to the Director of the Health Inspectorate, later appealed to the Administrative Court. Administrative Regional Court by judgment in the matter has declared decision of the Health Inspectorate to be illegal and has imposed an obligation to the Inspectorate to provide a new opinion with regard to the quality of the health care provided to the person.

Therewith it is important for the Ombudsman, when making assessment of the opinion, to make a distinction between issues of medical nature and issues of legal nature. The assessment of the quality of health care provided by the Health Inspectorate is basically focusing on medical issues, which review shall be carried out by certified doctors - experts. Ombudsman cannot and does not have any reasons to doubt the competence and the findings

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[82] Research and analysis of the shared property, sworn advocate R. Anspaks, available on: www.tiesibasrgs.lv

of these experts. Accordingly, the Ombudsman can not assess, whether the medical manipulations have been justified, or diagnosis has been correct et al. At the same time, although opinion basically concerns issues of medical nature, experts are under obligation to comply with the principles of administrative process in the expert examination and preparation of the opinions.

Consequently, in evaluation of the actual action of the Health Inspectorate, the Ombudsman can check, whether it has been carried out, subject to the procedural and formal preconditions, and whether it corresponds to the substantive law. Since laws prescribe no special procedural preconditions to provide an opinion, assessment should be made, whether the Inspectorate has to complied with the general principles of procedural law.

Ombudsman has found that the repeated opinion was provided by the same doctors – experts as the initial opinion, which by judgment of the Administrative Regional Court has declared to be illegal. This situation, when the doctors, who have provided an opinion, which already once has been declared to be illegal, are undertaking repeated expert examination, can lead to serious doubts of the person about the expert's knowledge and competence as well as impartiality of the expert examination as a whole. Therefore the Ombudsman thinks that the Health Inspectorate has violated the principle of procedural equity defined by Section 14.[1] of the Administrative Procedure Law.

VI Assessment of Activities of Municipalities Providing Assistance in Apartment Matters

During the accounting period in most applications entailing housing rights the individuals applying to the Ombudsman have asked to settle civil legal matters. A large part of the applications contains complaints about the items of public utilities or management fee payments, from the applicants' point of view, without reason included in the invoices issued by the managers, failure to provide services in apartment houses due to overall indebtedness of the residents of the house, the house thermal insulation costs and the like. Ombudsman has explained that there are no grounds for him to directly interfere with examination of such disputes, since the relations between residents of the houses and the house administrator (manager) are of a private law nature regardless of the owner of the housing fund. The situation has been explained and advice has been given to the applicants, how the applicant has to act in the particular situation in compliance with the law in force. However, if the house is owned by the local government, the Ombudsman shall carry out verification from the point of view, to establish whether the local government has complied with the principle of good administration in relation to the residents.

In a large part of submissions the residents have indicated to disproportionately long period of time to wait for the assistance from local government in apartment matters, which is predominantly typical for the capital city. One part of the complaints concerns the quality of the proposed housing and the order in social houses.

For the major part the claims expressed by the persons with regard to activities of local governments have not been confirmed, however, violations have also been found to which the attention of relevant authorities has been drawn. For example, a verification procedure has established that binding regulations of the local government have included a clause that, in addition to provisions of Paragraph one of Section 10 of the Law On Assistance In Solving

Apartment Matters, the persons may be deleted from the assistance register if they have unreasonably refused or have failed to provided a response to at least three offers for rent of living accommodations.

Within the framework of verification procedure, the Ombudsman in April 2012 has drawn attention of the local government to provisions of Paragraph three of Section 18 of the Law On Assistance In Solving Apartment Matters: "If a person has had an opportunity to see at least three different residential tenancy offers fit for living and to choose, but he or she has refused these offers without reason or has not responded to the local government regarding the received offers, this person shall be re-registered in an assistance register of the relevant type with the last sequence number." Ombudsman has emphasized that the cases specified by Section 10 of the Law, when a person may be deleted from the assistance register, are well established and in all other cases Section 18 of the Law shall be applied on re-registration of the person in a register with the last sequence number, thereby finding incompliance of appropriate clause of the binding regulations to the law provisions and applying to the local government to amend it, by communicating thereof to the ombudsman. In response to the Ombudsman's opinion the local government has indicated that it does not agree with the Ombudsman's view, considering that the right of the person is not restricted, since after exclusion from the register they may apply anew to the local government with a request to receive assistance in the apartment matter. In the said matter a view on lawfulness of the binding regulations presented also the Ministry of the Environmental Protection and Regional Development by joining findings of the Ombudsman's opinion and applying to the local government to cancel the unlawful provision in the binding regulations.

In July 2012 the Ombudsman repeatedly applied to the local government when finding that the local government keeps to the unlawful practice. Ombudsman in this case, additionally referred to judgment in the matter No. A42538807 SKA-79/2011 of the Department of Administrative Cases of the Senate of Supreme Court of the Republic of Latvia of 10 March 2011 (against the same local government), where the Senate had come to the knowledge that the provision included in Section 10 of the said Law in accordance with its prescriptions has to be narrowly construed, namely thereby, that it governs only the cases where the person fails to use their rights in good faith. Failure to respond to offers per se presents no evidence that the person is acting in bad faith and he or she actually does not need assistance or he or she does not wish to receive it, and that the person's unjustified refusal from the offered living accommodations or failure to respond to offers, if the person had an opportunity to become acquainted with them, according to Paragraph three of Section 18 of the Law On Assistance In Solving Apartment Matters, shall constitute the basis for re-registration of the person in the assistance register with the last sequence number. In this case, the Ombudsman asked local government to explain, under guidance of what reasons it does not take into account the findings of judgment of the Senate of Supreme Court, it is aware of. In response to the repeated request by the Ombudsman, the local government has pointed out that amendments are being prepared to the binding regulations. The said provision of the Regulation was deleted in September 2012. Even though thereby a fair equilibrium has been achieved, the said from the Ombudsman's point of view presents evidence also of the lack of understanding on the principle of good administration in the work of local government.

In another verification procedure the Ombudsman was approached by a two-people family, a pensionary and an unemployed person, having obtained the status of needy family, living in an one room flat with a living space of 7.6 m2. Applicant has pointed out that it is abnormal for two adults to live in such a small area, calling such a life to be "subsistence".

Applicant has applied to the local authorities with a request to register her family to receive municipal assistance to rent a living accommodation in a social residential building, by offering to donate her apartment to the local government. Local government has refused assistance on the basis that the binding regulations do not provide for this type of assistance.

It has been established that in Latvia there are no existing laws and regulations to determine a minimum space of living accommodation per person. To compare: in the adult social care institutions minimum area of a living room - dormitory - is defined as 6 square metres, the dormitory area - 4 square metres per person.[83] Minimum area of living space for accommodation of foreigners – asylum seekers detained by the State Border Guards – amounts to 4 square meters per person.[84] Standard living accommodation in prisons in the dormitory-type premises per one convicted person may be not less than 2.5 square metres for men and 3 square metres for women.[85] In the light of the above, even without making technical expert examination, a conclusion may be drawn that it is not possible to recognise a living accommodation with area of 7.6 square metres (on average 3.8 square metres per person) to be appropriate for long-term accommodation and placement of household articles of two adult persons.

Ombudsman has indicated that the legislator's goal has been to determine social assistance directly to low-income and socially vulnerable persons who are left without suitable accommodation and due to their material condition themselves are not able to overcome the hardships in life. Although the law has precisely listed the cases in which a low-income and socially vulnerable person has the right to rent a social apartment, the legislator has left at discretion of the local authority to determine preferential conditions for recognition of a person (family) eligible to rent social apartment, taking into account that exactly the local authority, after examining individual cases, is capable to identify the range of persons who have faced the difficulties of life and who need social assistance.

Ombudsman has concluded that in particular case the local authority has made a formal decision, by interpretation of the law and the binding regulations only according to the grammatical method for the interpretation of law provision, contrary to the provisions of Section 8 of the Administrative Procedure Law, without use of other methods, without taking account the sense and purpose of the legal provision in order to achieve the most equitable and useful results. Ombudsman has called for the administrative act unfavourable to the person to be set aside by finding the opportunity to register the person for getting the municipal assistance for rent of living accommodation in the social residential building.

In the second half of the year within the framework of monitoring of local authorities a strengthened attention was paid to the way how the local authorities fulfil their statutory duties to provide assistance to the people in the housing matters. Ombudsman is pleased to note that one part of the local authorities have sufficient municipal housing fund and the queue for apartments either is not formed at all, or the time for waiting in the queue is very short (not longer than several months). There are local authorities where examples of good practice are found, for example, in the case when residents in the municipality are evicted from their only dwelling due to debt obligations, one of the municipalities has found a

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[83] The Cabinet Regulation No.431 “Hygiene Requirements for Social Care Institutions,” of 12.12.2000, Annex 1.

[84] Clause 3 of the Cabinet Regulation No..276 "Requirements for Equipping and Arrangement of the State Border Guard Accommodation Premises for Detained Asylum Seekers,” of 23.03.2010.

[85] The Sentence Execution Code of Latvia, Section 77.

possibility to buy at auction the particular property, providing for the large family an opportunity to continue to live in their former residence, further paying rent to the local government.

V Assessment of Compliance with the Constitution of Transitional Provisions of the Law on Social Protection of Participants in Elimination of the Consequences of the Accident at Chernobyl Nuclear Power Plant and Those Injured as a Result of Accident at Chernobyl Nuclear Power Plant.

Within the framework of this priority a normative regulation was assessed in the field of social protection of persons suffered as a result of accident at Chernobyl Nuclear Power Plant (hereinafter referred to as the Chernobyl NPP) and having reached their age of retirement.

Constitutional Court instituted proceedings No 2011-12-01 on 13 June 2011 upon the motion of the Ombudsman concerning the compliance of Article 1 of the Transitional Provisions of the Law on Social Protection of Participants in Elimination of the Consequences of the Accident at Chernobyl Nuclear Power Plant and Those Injured as a Result of Accident at Chernobyl Nuclear Power Plant with Section 91 of the Constitution of the Republic of Latvia.

On 1 March 20012, the Constitutional Court decided on termination of the above-named proceedings. Constitutional Court pointed out in their decision that the Chernobyl Law did not regulate the procedure for reviewing old-age pension in case of persons to whom old-age pension is granted upon reaching certain age instead of disability pension, and that it did not impose restrictions on this group of persons; eventual restrictions of the fundamental right of persons to whom old-age pension is granted instead of disability pension could arise from the Law on State Pensions. It means that the legislator is competent to decide on amending the procedure for calculation of old-age pension in case of persons who receive old-age pension instead of disability pension.

Constitutional Court has clearly and plainly pointed out in their decision that, whenever the Ombudsman's proposals regarding the need to amend regulatory acts are received by the legislator, such amendments have to be considered in their merits, or a motivated opinion has to be issued regarding the failure to do so.[86]

Notwithstanding the unsuccessful start in the Constitutional Court for social protection of those who have participated in elimination of the consequences of the accident and those injured as a result of accident at Chernobyl NPP, investigation of the matter is continued.

VI Compliance with the Principle of Good Administration in the State Administration

Opinion was provided that by making amendments of 22.12.2009 to Clause 117 of the Cabinet Regulation Nr.933 "Procedure for Applications of Provisions of the Law ‘On Value Added Tax’" of 22 February 2009 (entered into force on 01.01.2010) in respect of application of value added tax (hereinafter referred to as the VAT) to payment of the land sale without defining a transitional period, the government has not complied with the principle of legitimate expectations.

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[86] Decision of the Constitutional Court of 1 March 2012 on termination of the proceedings in Case No. 2011-12-01available also on http://www.satv.tiesa.gov.lv/upload/2011-12-01_Lem%20par%20tiesved%20izb.pdf

The Ministry of Justice has based their views on avoiding to define a transitional period on the fact that the previous regulations were inconsistent with the Council Directive 2006/112/EC on the common system of VAT.

In the matter of the transitional period Recital 9 of the Directive 2006/112/EC of the Council of the European Union (28 November 2006) determines otherwise: "*It is vital to provide for a transitional period to allow national laws in specified fields to be gradually adapted*".

Article 1 of the Constitution defines that Latvia is an independent democratic republic. From the concept of a democratic republic covered by this article results an obligation for the State in its activities to comply with fundamental principles of a law-governed state, including the principle of confidence in legality of actions. Paragraph three of Section 10 of the State Administration Structure Law stipulates that the State administration shall act in the public interest. Public interest shall include also proportionate observance of the rights and lawful interests of private individuals.

In agreement with the view that the normative framework has had to be amended in order to consistently comply with the principle of indivisibility of the land and building of the Civil Law of Latvia, as well as to the tax legislation in the field of VAT to meet the Directive 2006/112/EC of the Council of the European Union, its was found that the view of the Ministry of Justice about non-application of the transitional period is contrary to Article 1 of the Constitution and to case-law of the Constitutional Court, as well as to the Recital 9 of the Directive 2006/112/EC of the Council of the European Union.

From the Ombudsman's point of view, there is no justification for non-application of the transitional period to the modified legal framework by attributing the new framework also for the sale of land, which is purchased before the entry into force of the new regulation. The other way round - a transitional period should be consistently appropriate for findings of the Constitutional Court on compliance with the principle of confidence in legality of actions, as well as the above-quoted Recital 9 of the Directive 2006/112/EC of the Council of the European Union. In addition, further providing for a transitional period adequate for the principle of confidence in legality of actions with regard to these particular and any other changes in the regulatory framework of taxation, the environment for business and investments in Latvia will become predictable, stable and attractive, which will definitely contribute to economic growth of the country.

VII Facilitation of Public Awareness of its Rights and the Principle of Good Administration

During the reference period monitoring of local governments was commenced, within the framework of which, while being in each particular municipality, specialists of the Ombudsman's Office are assessing compliance with interests of a private person in certain areas: children rights, social rights, civil and political rights and the field of legal equality, in all the cases over-arching objective, however, is to establish whether local governments are applying individual approach when addressing specific questions, by assessment of all the circumstances of particular personal case with the aim to achieve the best possible result for interests of the person. Conclusions are surprising - in equivalent situation one local authority refers to binding regulations issued by the same local authority, restricting it to provide

assistance to residents, while other local authority finds a possibility to consider the question out of turn by the responsible commission or even at the council meeting, by providing sufficiently motivated reasons why the local authority aid is required and is able to take a decision in compliance with interests of the person. Within the framework of the said visits the Ombudsman aimed not so much to search for imperfections but provide more information about examples of good practices in other municipalities.

Within the framework of monitoring of local authorities also the availability of local authorities residents has been assessed as well as consultations provided for people in the fundamental rights and good administration issues.

VIII Topicalities of the Division of Social, Economic and Cultural Rights

In parallel to the priorities set in the area of social, economic and cultural rights, the work has also been carried out with other topical issues of public importance.

1. Provision of the Rights of Individuals Accommodated at Social Care Centres

During the accounting period verifications were continued in the State Social Care Centres (SSCCs), by making assessment of the household and social conditions of the persons accommodated in the centres, and also from the point of view of fundamental rights – whether there is no violation of Article 3 of the European Convention of Human Rights and Fundamental Freedoms with regard to prohibition of cruel and degrading treatment. Assessment is also made, whether the right of the person to live in community is complied with, namely, whether the person is not placed in SSCC against his or her will, whether the right to liberty is not violated, also the quality of health care, social care and social rehabilitation is assessed.

At the end of the year Ombudsman has involved an internationally recognized expert and under his guidance the Office staff members have carried out inspections in some SSCCs, identifying violations and at the same time also getting practical experience and knowledge, which is intended to be intensively used in further work. A complex report[87] to the Saeima and the Ministry of Welfare on systemic deficiencies in the SSCCs was given at the beginning of this year, including conclusions of the findings in course of several years, as well as the recommendations for elimination of the deficiencies.

(1) The Ombudsman has indicated that the main deficiency is the lack of society-based, or alternative social care services (group apartments, half-way homes), whose need in different policy planning documents has been included by the sectoral ministry already since 1997, when as one of the most important directions to ensure the development of social care services, introduction of the principle of financing "the Money follows the Client" and assignment of social assistance services to local governments have been established. However, SSCCs still are financed only from the State budget, the above principles of financing are not implemented and the alternative social care services are rather underdeveloped. Currently in the Republic of Latvia provision of social services does not meet the needs of persons with mental disorders, the society-based alternative services are available for a small number of people. As a result, in many cases, people with mental

[87] Report of the Ombudsman of the Republic of Latvia on State Social Care Centres for adult persons with mental disorders, available on: http://www.tiesibsargs.lv/files/zinojums_par_SSCC_-_kopsavilkums_gala.pdf

disorders are forced to opt for the care in long-term social care and social rehabilitation institutions. Many SSCC customers would be able to live in a society where they should have support at the place of residence provided. However, the most visited SSCCs have been expanded, and deinstitutionalization efforts have been limited, or have not been at all.

(2) In relation to the conditions in which the residents of SSCCs are accommodated, the Ombudsman has provided the following recommendations:

2.1 Appropriate measures must be taken to ensure that people with intellectual disabilities and with mental health problems are not accommodated in the common living rooms.

2.2 In accordance with provisions of the Cabinet Regulation No.291 "Requirements for Social Service Providers" of 3 June 2003, to provide to the clients the necessary conditions in order they are able to enjoy a meaningful quality of life, as well as the ability in accordance with his or her functional condition to acquire the required domestic and self-care skills, to ensure their activities, taking into account their skills and abilities.

2.3 To ensure compliance with the requirements prescribed by the Cabinet Regulation No.431 "Hygiene requirements for social care institutions" of 12 December 2000 with regard to the living-space per one client. To find a possibility to provide larger living-space for the clients accommodated in SSCCs, as well as to accommodate as small as possible number of clients in each room.

2.4 To ensure the appropriate number of staff in SSCCs in order to the clients would have the ability to get the services and care necessary and appropriate for their requirements.

2.5 To ensure a possibility for the SSCC clients to use normal cutlery for their meals, including knives and forks. The Ministry of Welfare has to track the quality and diversity of the food offered to the SSCC clients.

2.6 To amend Paragraph two of Section 31 of the Law On Social Services and Social Assistance, which provides for the possibility regarding the isolation of the person for a period not exceeding 24 hours, by abandonment of such isolation facilities in SSCCs at all, or, by determination of the reasonable maximum period of time, with providing for the possibility of holding the person in isolation room for up to 3 hours.

2.7 To ensure compliance of the isolation facilities arranged in SSCCs with all the required hygiene standards, including providing to the clients access to toilets at any time.

2.8 In order to avoid any eventual cases of the conflict of interest, to terminate the generally accepted practice when SSCC employees are appointed as guardians for the clients having limited legal capacity.

(3) In connection with restriction to the right to freedom, the Ombudsman has recommended:

3.1 To review the status of the persons that have entered the SSCC when lacking capacity to act and instead of whom the consent to receive the service has been provided by the guardian.

3.2 SSCC contracts with customers to draw up in a simpler language, avoiding complicated legal terminology or as an annex to the agreement to enclose its translation into the plain language.

3.3 To change the practice, when the clients have limited and even denied freedom to temporarily leave the SSCC territory. In cases, when there are objective reasons to deny to the clients such a freedom, it would be necessary to revise the legal status of the SSCC clients.

(4) By inviting a qualified psychiatrist L. Jorena within the framework of the inspection visits, the Ombudsman also evaluated access to health care by the SSCC clients and its quality. It was established that a large part of the clients are receiving considerable dosage of the

medicinal products, often a concomitant use of medication is present, moreover, in most cases the methods of alternative care are replaced with medication. Clients at the same time are receiving multiple medications and in high doses. For many clients who receive such combinations of medicinal products, these are not appropriate for guidelines of treatment of disorders determined to them. Ombudsman is drawing a conclusion that in the majority of cases, the medicines are administered to control behaviour of the SSCC clients. This practice has demonstrated the use of chemical containment. It was found that the need for the means of chemical containment could be largely reduced if SSCC might offer to the clients exercises and care appropriate for their needs. This means that at present the SSCC clients, in many cases, receive such a big doses of medicinal products and are in isolation only because there is a lack of purposeful exercises and a valuable rehabilitation process. The report has indicated that for the number of clients, who tend not to swallow and to hide the medicine, medicine is "decoyed" in a dissolved way. This practice is indicative of a number of clients receiving medical treatment against their will, which in its turn is illegal. Only with the decision of the court medical treatment may be carried out without the person's consent and also only in a psychoneurological hospital.

Ombudsman recommended to ensure that, as far as possible, informed consent has to be received from the clients for the treatment process offered to them when they are getting services in SSCC. To ensure that for the clients to whom medical treatment is applied on a regular basis, individual treatment plans to be drawn up, as well as also to review the status of SSCCs, because in fact, there is a large number of clients with mental health disorders and that in practice already now SSCCs are engaged in provision of health care services. In addition, introduction of a separate case-record for each client should also be ensured.

(5) In accordance with the Law On Social Services and Social Assistance, long-term social care and social rehabilitation institutions shall provide a person, who cannot take care of himself or herself due to old age or state of health, with housing, full care and rehabilitation. The Law On Social Services and Social Assistance gives the following definition for social rehabilitation: social rehabilitation service is a set of measures aimed at the renewal or improvement of the social functioning abilities in order to ensure the recovery of social status and integration into society.

It has been found that the understanding frequently appears to the SSCC staff that the goal of social rehabilitation provided in the institutions is only a social care not aimed at the clients of SSCCs returning to society rather than preparing the clients for independent life.

The Ministry of Welfare has acknowledged that some of the found deficiencies may be eliminated in a few months, however, significant improvements need a longer period of time and financial investments, as well as systemic cooperation between the Ministries of Welfare and of Health and the government support in general shall be required.

At the same time, it should be noted that the team of Ombudsman's Office this year will continue to visit SSCCs to establish whether the recommendations made are taken into account, although the intensity of a large extent also depends on the resources available to the Office.

2. Restricted Distribution of Legionellosis

During the previous period the Ombudsman had pointed to the lack of effective protection of public health in the cases of spreading legionellosis and imperfections of the

regulatory framework in this area. Ombudsman has mentioned the possible solutions - to strengthen the control mechanism for assurance of the hot water quality, for example, more extensive powers to the State Agency "Latvijas Infektologijas centrs" with respect to performance of the disinfection operations; preventive measures carried out by the Health Inspectorate for hot water tests; more comprehensive information to the public.

During the accounting period the Ombudsman has repeatedly drew attention of the government and the legislator to the critical situation in population falling ill with legionellosis and asked to seriously consider the possible solutions.

Ombudsman has found that the Health Inspectorate in collaboration with the Centre for Disease Prevention and Control has undertaken activities for improvement of the situation: namely, an information seminar has been arranged on the spread of legionellosis and options of its prevention for the house managers, on the Health Inspectorate website information materials are found on the prevention of legionellosis, for example, on the prevention measures for managers and water users of the residential and public buildings,

In accordance with the statistical data provided by the Centre for Disease Prevention and Control, no significant changes have occurred to the sickness rate in the accounting period, compared with the previous one.[88] However, changes are detected in the indications of the 1st quarter of 2012/2013, respectively, this year the sickness rate has decreased from 19 to 5 cases.[89]

3. On the Draft Concept of the Model of Financing of the Health Care System

In view of the inconsistent public reaction and forecasts of sustainability of the new model of financing of the health care system, the Ombudsman has included the question of public benefits from the expected change of financing model of the health care in the agenda of the Ombudsman's annual conference.

Ombudsman is holding a view that constructive and versatile discussion ensures public participation in decision-making, which is one of the edges of the principle of good administration. The most important thing was to find out what are the benefits the people are going to get from the new financing model: whether it will reduce the queues by increasing the quotas, or improve the quality of the service, what people will not receive the service in the future. The industry professionals, academics, representatives from NGOs and representatives from the Ministry of Health were invited to participate in the debate.

Discussion has outlined the view of professionals on the former attitude from the government, namely the health care funding in recent years has only declined, if sufficient funding for the health care is not provided for years, access to health care will not improve, despite the fact that good practice of the other countries is adopted, the desire to bring about improvement of the situation must be real rather than declarative one. In order to the system to function it must be adequately financed, or, with introduction of personalized contributions the health care funding will increase with a time, and the state paid health services will become more accessible, and funding to the health care will be more predictable and more stable.

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[88] Epidemiology Bulletin No.9 (1279) of the Centre for Prevention and Control of Diseases, available on: http://www.spkc.gov.lv/infekcijas-slimibu-statistika/.

[89] Idem.

Right now there are improvements in the Concept, however, there are still many unanswered questions in it, namely:

(1) There are no references found in the draft concept to prevention, treatment and control of occupational diseases and other diseases. That could result in dangerous consequences - among the patients in Latvia a number of chronic patients may progress rapidly, which treatment process would mean double costs for the State. While, looking from the point of view of the rights of patients, the national planned preventive measures are to be considered as guaranty for a healthy society.

(2) The concept has specified social justice and solidarity as legitimate objective for the change of the health care budget financing system. The stability of income in the health budget is specified as a public benefit, the allocation of resources and the motivation of people to make payments is more clearly highlighted. While aspects of the right of public to health are not specified.

(3) No assessment is made, what are going to be improvements, for example, in the availability and quality of medical services after implementation of the Concept. Even if the Ministry of Health has this evaluation at its disposal, it is not reflected in the draft concept.

(4) Considering into account that administration of the system, in accordance with the Concept, will require significant additional resources (3-6% instead of the former 0.8%), the public must see significant benefits from such a reform.

(5) In order to comply with the principle of good administration, it is important to hear and also to take into account the views of the representatives of the sector of non-governmental organisations. Ombudsman is holding the view that if respectable representatives of the industry (for example, Latvian Association of Family Physicians, Rural Family Doctors Association of Latvia) flatly opposes the introduction of the Concept, by drawing attention to a range of significant risks to be brought by such reform, the government needs convincing arguments why the objections are not taken into account. Repeated discussions are likely to be held on public benefits brought by the introduction of the concept.

4. Housing Issue – Putting into Possession of the Immovable Property

During the accounting period there has been an increase in the number of applications in relation to possible arbitrary eviction/ or its attempts, upon putting of the acquirer of immovable property into possession of immovable property, by targeting not only the debtor, but also third parties residing in the house. A number of such applications continues to grow all the time. From the content of the applications not only infringements of the right to housing have been found, but also infringements for inviolability of housing and privacy of the person. Ombudsman has found that the State Police do not engage in such disputes, considering these to be of a private law nature, as well as court bailiffs as representatives of the State authority tolerate and frequently even participate in such illegal activities. Arbitrariness of the new owners that often are subsidiaries of credit institutions and their involved security companies has also been established. By finding that the existing law enforcement mechanism is likely not efficient enough, the Ombudsman has included the discussion on the protection of fundamental rights of the person in the agenda of the Ombudsman's annual conference.

Laws and regulations currently in force in the Republic of Latvia prevent arbitrary eviction of a person. Law "On Residential Tenancy" prescribes that the issue of forced eviction of the person is dealt with through courts. Also in the case when owner of the living accommodation believes that the person has no legal basis to use his or her occupied residential space, he or she may be evicted only through courts. Only when the court has

considered the issue of the rights of the person to use the residential space and the relevant judgment of the court has entered into force, forced eviction of the person shall be acceptable. In the event of arbitrary eviction it is possible to deal with the question of the right to use residential space under civil procedure, as well as with the question of becoming subject to criminal liability according to Section 143 (Transgression of Inviolability of the Apartment) of the Criminal Law, Section 279 (Arbitrariness) of the Criminal Law and/or Section 175 (Theft) of the Criminal Law. Dealing with the issue in the court under civil procedure does not preclude the application of criminal liability. Both law enforcement mechanisms may be used at the same time.

The argument that there is a civil dispute over the right of use appropriate residential space between the owner of the residential space and the person using the residential space, may not be applied to justify a decision on refusal to initiate criminal proceedings, since the law forbids person's arbitrary eviction from residential space, by providing this to be subject to criminal liability. Arbitrary eviction from the residential space is a criminal offence being subject to criminal liability regardless of the use of civil procedure measures for protection of rights.

Legal literature mentions the concept of "putting the acquirer of immovable property into possession" in Section 995 of the Civil Law from which follows that the alienation of the immovable property has taken place contrary to the intent of the previous owner, i.e. through public auction conducted by a sworn bailiff according to the Civil Procedure Law. Along with putting into possession, the acquirer, although not yet corroborated their right of ownership in the Land Register, may deal with the immovable property with the owner's rights and consequently may be a renter, but the rights of the former owner are avoided, that is, he can not appear as a renter.[90]

Section 2, Paragraph two and Section 5, Paragraph one of the Law "On Residential Tenancy" (hereinafter also referred as the Law) prescribes that a rental contract enter into by the renter and a tenant in writing shall be the only grounds for a tenant or sub-tenant to use a residential space. Inter alia, I am taking notice of the following, namely, although the law requires written form for a transaction, and no written deed has been drawn up and the legal relations of rental are maintained on the basis of verbal agreement, it should be taken into consideration that a transaction which both sides have performed shall have the same consequences as if it were in written form, and, in accordance with Clause 1 of Paragraph one of Section 1488 of the Civil Law, compensation may not be reclaimed for whatever has already been given or done pursuant to such transaction. For the application of Section 1488 of the Civil Law, it should be established not only that the rent has been paid and accepted, but also that the residential space had been transferred to the tenant for living (for use or holding) under procedure prescribed by the law. If it is found, it can be assumed that the rental agreement exists and the verbal agreement from the point of view of consequences shall be considered equal to written form of a contract. [91] Also the Department of Civil Cases of the Senate of Supreme Court of the Republic of Latvia in the reasoned part of the judgment in case SKC-311 of 25 April 2007 specifies:" (..) the fact that rental contract has not been concluded in accordance with the law requirements in writing and there are rental legal relationship present, shall not be an obstacle to admit that there has been an agreement on the

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[90] Lapsa J. Dzīvojamās telpas īres attiecības īpašnieka maiņas gadījumā.-Jurista Vārds, 02.01.2007. No.1 (454)

[91] Krauze R. Par dzīvojamo telpu īri. Likums ar komentāriem. Ceturtais papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2008., p.27.

(..) legal relations of rental (..) since the transaction fulfilled by both parties, should have the same effect as if it has been written." [92] It results from the above, if a person has occupied a residential space, has made payments for the rental of residential space and the renter has accepted the tenancy payment, legal relations of rental have been established with concludent actions.

Section 8 of the Law "On Residential Tenancy" prescribes that if a residential house or apartment is transferred into ownership of another legal or natural person, the rental contracts for residential space entered into by the previous owner shall be binding to the new owner. Consequently, the rental contract for residential space shall remain in force with all the contractual provisions. Also legal literature has indicated that in the event of putting into possession the rental contract signed between the previous owner and the tenant shall be binding for the acquirer, and this rental contract may be terminated only in the events prescribed by law.[93] Therefore a conclusion has to be drawn that when putting the new owner into possession, the tenants living in the house may not be endangered and evicted. Putting into possession does not mean that tenants lose the legal basis to stay in this house and to use it. Also the Collegium of Civil Cases of Riga Regional Court in descriptive part of the decision of 20 September 2010 in the case No.C17110410 specifies that vacation of living accommodations due to putting the plaintiff into possession has to be performed under procedure prescribed by Chapter $74.^2$ of the Civil Procedure Law. From provisions of the said Chapter, the Court concludes that the obligation to vacate the immovable property shall not be associated with forced eviction from the residential space of the persons that have their place of residence in this property, including, also eviction of the persons, which have not been parties to the proceedings. The Court has concluded that sworn bailiff has no right to judge the concluded rental contract on its merits, but delivering the immovable property – putting into possession of the immovable property, should be made guided by the provisions of Chapter $74.^2$ of the Civil Procedure Law. In accordance with Paragraph one and two of Section $620.^5$ of the Civil Procedure Law, in the execution of the judgment on putting into possession of the immovable property, sworn bailiff shall issue a proposal to voluntarily vacate immovable property and to transfer it to the acquirer in accordance with the procedures set out in Section 555 of this Law to a person from whose possession immovable property is to be removed, i.e., to the debtor.[94]

In connection to the issue, whether a sworn bailiff's proposal for a voluntary vacation of immovable property and transfer of it to the acquirer shall also apply to tenants, case-law has provided the answer: "[Tenant] is not the debtor, and in terms of the Civil Law is the holder rather the possessor of the apartment [..], therewith the sworn bailiff has had no legal basis to apply a proposal to [the tenant]." [95]

Paragraph two of Section 620^6 of the Civil Procedure Law prescribes exhaustive range of the persons to be evicted from the property. If there are persons in the immovable property

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[92] Judgment of the Department of Civil Cases of the Senate of the Supreme Court of the Republic of Latvia of 25 April 2007 in Case No.SKC-311

[93] Lapsa J. Dzīvojamās telpas īres attiecības īpašnieka maiņas gadījumā.-Jurista Vārds, 02.01.2007. No.1 (454)

[94] Decision of the Collegium of Civil Cases of the Riga Regional Court of 20 September 2010 in Case No.C17110410.

[95] Decision of the Collegium of Civil Cases of the Riga Regional Court of 20 September 2010 in Case No. C17110410 (CA-4076/21).

not listed in the CPL Section 620[6], Paragraph two, or belongings of such persons, they shall not be evicted without valid court judgment on the eviction.

Ombudsman is taking notice of Section 881 of the Civil Law prescribing: "Control of property can be assumed without coming in direct physical contact with it". Moreover, Section 882 of the Civil Law provides that: "Assumption of control of immovable property takes place not only in an instance where the acquirer enters thereon, but also where this is just indicated by the transferor, if together therewith there are no natural impediments to entry into such immovable property". Given that the House has been encumbered with obligations of the rental contract, it must be seen as a natural barrier to entering into the immovable property.

Ombudsman is holding a view that, if the residential space is used by the tenant on a legitimate basis, putting of the new owner into possession shall come to an end at the door of the house rented by the tenant, if the tenant refuses to admit the new owner, as well as the sworn bailiff and other persons in his or her rented house. Otherwise there is a breach of inviolability of the tenant's dwelling. The concept of the inviolability of dwelling shall mean the tenant's right to undisturbed stay in the house. The right to inviolability of dwelling is fixed by the Constitution of the Republic of Latvia, Article 12 of the UN Universal Declaration of Human Rights, Article 17 of the UN International Covenant on Civil and Political Rights, Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. For breach of the inviolability of dwelling, the guilty person shall be subject criminal liability pursuant to Section 143 of the Criminal Law (Transgression of Inviolability of the Apartment). Putting into possession of immovable property in compliance with laws and regulations should be terminated with agreement between the new owner and the tenant (holder of the apartment) with regard to conditions of the rental contract of the residential space. Actually it is derived also from Section 48 of the Law On Bailiffs: "In fulfilling official duties a sworn bailiff shall in accordance with the official activity to be performed explain to the parties their rights and obligations for the implementation of their procedural rights in good faith." Such notification to the Parties should not be considered as an evaluation of lawfulness of the rental contract, which is the question of competence of the court.

It should be noted that admittance to the apartment could be regarded as lawful where it was carried out in accordance with the will of the person living in it, as well as, if it has taken place contrary to the will of the person living in it, however, in accordance with the requirements of laws and regulations. Lawful admittance into the apartment is going to be present also in the cases when it should be performed immediately, to prevent any damage endangering the interests of natural or legal person, and where that damage could not be prevented by other means, for example, in order to prevent or to localize fire and inundation of the house, or to discontinue criminal offence. Such activities, although formally containing constituent elements of a crime, are not subject to criminal liability, because have been committed in a situation of urgency.[96] While admittance into the apartment is unlawful, if it has taken place contrary to the will of the person living in it and has no legal basis. The person (tenant) shall be entitled to decide - to let in or to keep out somebody from his of her apartment.

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[96] Krastiņš U., Liholaja V., Niedre A. Krimināllikuma zinātniski praktiskais komentārs. 2. Sevišķā daļa. Rīga: "AFS", 2007, p.286.

In addition to that, staying of the security staff in the apartment against the tenant's will violates also the right to inviolability of private life protected by Article 96 of the Constitution of the Republic of Latvia and international laws – Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 12 of the UN Universal Declaration of Human Rights, Article 17 of the UN International Covenant on Civil and Political Rights. Namely, the right to private life shall mean that an individual has the right to his or her own private space, the right to live in their own way, in accordance with their substance and wishes to develop and improve their personality, suffering as minimum as possible from interference of the State or any other persons.[97] Therefore the State has the responsibility not only to avoid unjustified interference of the individuals' private life itself, but also to protect them from infringements of fellow-citizens and the mass media.

Thus the Ombudsman is holding a view that both representatives of the State Police and sworn bailiffs should actively respond, prevent infringement of fundamental rights of the person, estopping involuntariness of the new owner and the security companies.

Although the responsible state administration authorities are recognising shortcomings of the legal framework, no success in common understanding has been reached at present, therefore, the Ombudsman continues to study the issue.

5. Relations with Operator, Utility Providers

Ombudsman has found that the apartment tenants are relatively more secure in legal relations. In the absence of basic service, the tenant has the right to submit a complaint to the local authority. Administrative commission of the local government, on the basis of provisions of Section 210 the Latvian Administrative Violations Code (hereinafter referred to as the Code) shall be entitled to initiate an administrative violation procedure and to apply the administrative penalty prescribed by Section 150.[3] of the Code (Failure to Provide Basic Services to Tenants).

In addition, Section 21 of the Law On Administration of Residential Houses (hereinafter referred to as the Administration Law) prescribes for the local government the right or the duty to appoint an assigned administrator, in cases where the residential house owner does not perform the mandatory administrative activities (where in accordance with Section 6 of the Administration Law is also included the provision of heating, cold water and sewerage, as well as removal of household waste) and it has resulted/may result in threats to human life, health, safety, property or the environment, and/or the residential house administration is performed in such a way that causes/may cause threats.

Administration Law regardless of the possession of a residential house provides the right to turn to the local government for any person whose rights have been infringed in relation to this Law or other regulatory enactments related to the fulfilment of administration of residential houses in such a way that endangers or might endanger their life, health, safety, property or the environment.

However, the Ombudsman with regard to the assigned administrator concept as an effective legal remedy, has established a number of disadvantages:

(1) According to information provided by the Riga City Council Housing and Environment Department (letter No. DMV-13-418-nd of 11 February 2013)

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97 Judgment of the Constitutional Court of 26 January 2005 in Case No. 2004-17-01

procedure for the appointment of an assigned administrator is lasting from 4 to 12 months.

(2) Most of the residential buildings, which sought to appoint an assigned administrator, have many uninhabited apartments, which mainly is also the reason for the accumulation of debts for the services and these have been switched off for the house, causing a threat or a potential threat. While to the local government it is not appropriate and proportionate to invest huge funds in the renovation of communications, in the absence of users, from whom these funds have to be recovered, since in accordance with Paragraph four of Section 25 of the Administration Law, the assigned administrator does not have the right to lodge new tenants or leaseholders (as well as the families of tenants) in residential and non-residential premises of a residential house being administered, to enter into rent and lease agreements regarding the use of premises;

(3) Quite often the residential house is mortgaged and the insolvency process has been initiated for its owner, and it is not expected that the local government will be able to recover from the owner the costs related with appointment of the assigned administrator.

Ombudsman is holding a view that strengthening of the effectiveness of the assigned administrator's institute is required, by reducing the time periods within which the assigned administrator is appointed, by providing to the assigned administrator the right to lodge new tenants or leaseholders (as well as the families of tenants) in residential and non-residential premises of a residential house being administered, to enter into rent and lease agreements regarding the use of premises.

In situations where public utilities are not ensured by the house manager (administrator) appointed by the local government, when the owners have not taken over the house administration in accordance with Section 51 of the Law "On Privatisation of State and Local Government Residential Houses", the residents shall be entitled to make a complaint to the local government, having regard to Paragraph seven of Section 50 of the said Law imposing a duty to local government to administer and to manage the residential house until transfer of the administration rights of the house. The said has been indicated by the Ombudsman in his Opinion No.6-6/1 of 4 February 2013 in the verification procedure No.2012-131-18D on the failure to provide water supply services.

However, this also does not preclude problem situations, if debts for public utilities have developed for one or several apartment owners, having resulted in switching off public utilities for the property.

Ombudsman is holding a view that currently in the most vulnerable position are those people, to whom public utilities are not provided by the house administrator (manager) appointed by the apartment owners themselves. Basically two situations have to be distinguished: (1) if the administrator has acted maliciously and (2) if a debt of public utility payments has accumulated for the house.

For example, an administrator has acted maliciously and misappropriated payments made by the apartment owners for public utilities, without transferring them further to the service provider, as a result, public utility is turned off for the property. Administrator has become insolvent, but the owners of apartments in order to receive a public utility:

1) should undertake management of the property themselves or commission the management to be carried out by a new manager;

2) should settle accounts for the service once again;

3) do not have an opportunity to declare the creditor's claim against the insolvent administrator due to the fact that the service provider is deemed to be the creditor, which in turn, does not declare the creditor's claim, since expects payment from owners of the house.

If malicious action of the house administrator is established, the owners of apartments, of course, have an opportunity to protect their rights through means of criminal proceedings, but it does not solve the problematic situation that the owners of apartments will have to pay again for the public utility.

Moreover, the owners of apartments do not have a possibility to appeal to any state administration authority with a claim for protection of their interests for failure to receive management service or for management service provided in a poor quality, but to bring a claim against the administrator to the court under civil procedure.

Ombudsman is holding a view that a number of issues are resulting from provisions of Section 11 of the Administration Law that the provisions of the Civil Law regarding an authorisation contract shall be applied to administrative legal relations, insofar as they are not regulated by this Law. If legal relations between the owner and the administrator of apartment/house would be governed by relations of the service contract, for poor quality of provision of a service, apartment owners could be able to apply to the Consumer Rights Protection Centre for protection of their interests, and in the event of administrator's insolvency they would not undertake the obligation of repeated payment for the received services.

In addition, enforcement of civil liability of the administrators would be required, by implementation of the compulsory insurance of civil liability in respect of their professional activities.

In connection with the problematic situation in the events where services are cut out because the house has a debt of public utility payments (due to numerically few apartment owners), Ombudsman perceives contradictions in the existing laws and regulations.

Section 6 of the Management Law prescribes mandatory administrative activities for the residential house, such as the provision of heating. In accordance with the Management Law the house administrator may not terminate heating of an individual apartment also in the cases where payment for it is not carried out. However, according to Clause 26.4 of the Cabinet Regulation No.876 "Regulations for Supply and Use of the Thermal Energy" of 21 October 2008: "If the user within the specified time limits fails to settle accounts in accordance with the terms of the contract, the supplier shall be entitled, subject to three days notice in advance, may interrupt in whole or in part the heat supply" - mandatory administrative activities for the residential house - the provision of heating or the supply of thermal energy may be interrupted at any season of the year to the whole house. The said inconsistency in the laws and regulations is also reflected in the Administrative Regional Court judgment of 7 February 2012 in case No.A43003611, where an indication is expressed that even if the apartment owners themselves will act in capacity of the house managers, in order to avoid switching-off heating for the entire house, they will have to pay to the heat manufacturer instead of nonpayers.

However, through arrangement of laws and regulations, so that the same would not be mutually contradictory, and by allowing the house administrator to turn off the heating only to

nonpayers (or enabling the service provider itself to undertake it, if a possibility is found of signing a direct contracts for provision of services), the real situation will change a little only in those houses, where it is technically enforceable. While prohibiting the manufacturer of thermal energy during the winter period to switch off heating in apartment houses, there will be increase in their production costs and hence also the energy tariffs, bringing about even a higher number of nonpayers.

A proposal to provide an opportunity for each apartment owner to conclude a direct contract for supply of thermal energy is the best and most civilized solution of this situation. However, its implementation depends not only from technical possibilities, but also from financing. If for every apartment in the house a separate meter for consumption of thermal energy is arranged, there are no problems in payments for heating of the common use premises in the same way as for electricity consumption in these premises and to conclude separate heat supply agreements with the apartment owners. This would make the supplier to take care for reducing the heat losses in the heating mains.

6. Right to Property

In assessment of possible infringements of the right to property fixed by Article 105 of the Constitution, the Ombudsman has indicated that "a property" in the context of Article 105 of the Constitution shall mean not only movable and immovable property, but also economic interests, which are legally and definitely expected.

1) A position has been delivered to the Constitutional Court in Case No.2011-19-01. The proceedings have been initiated with regard to compliance of Clause 4 of Paragraph two of Section 6 of the Law On the Rights of Landowners to Compensation for Restrictions on Economic Activities in Specially Protected Nature Territories and Microreserves with the first sentence of Section 91 and Article 105 of the Constitution. In the framework of the proceedings a person is requesting reimbursement for the fact that in his property a microreserve has been created for a particularly protected species - black stork. Person's claim has been rejected by the court due to the fact that at the time of imposing restrictions provided for the immovable property the person through legal transaction has become owner of the immovable property, where microreserve has been created, only has failed to manage register the property right to the land in the Land Register.

Ombudsman considers such a regulatory framework to be unfair and disproportionate, indicating that the State is obliged to compensate for the damage to property caused by any administrative act, if it actually prevents the person to use his or her property. A reason on public confidence of corroboration and inability of the State as third party to find the owner is considered to be unfair and disproportionate and contrary to the principle of a law-governed state. It is essential that the transaction does not lose validity if it is not registered in the Land Register. Ombudsman is holding a view that legitimate objective of the contested rule can be achieved with the means less affecting fundamental rights of the person. It is essential to ensure justice in the society. The State can justify the refusal to reimburse for the restrictions of economic activities neither by grammatical interpretation of the contested provision, nor by the principle of public confidence.

Constitutional Court has declared that the contested provision is incompatible with Article 91 and 105 of the Constitution.

2) Position has been delivered to the Constitutional Court in Case No.2012-07-01. The proceedings have been initiated with regard to compliance of Paragraph one of Section 179 of the Credit Institution Law with Article 105 of the Constitution of the Republic of Latvia and compliance of Paragraph two of Section 179 of the Credit Institution Law with the first sentence of Article 92 of the Constitution of the Republic of Latvia, on the right of the meeting of creditors to take independent decision for application of restoration, if the Financial and Capital Market Commission (Commission) objects against it.

Ombudsman has indicated that restrictions are imposed on the right to property during the credit institution insolvency process due to the fact that further insolvency process of the credit institution in its terms is under control of the Commission. This limitation has a legitimate objective, since the activities of the Commission focuses on the maintenance of public financial security and prosperity. Having regard to the objectives for creation of the Commission and its tasks, the condition relating to the compulsory control of the Commission over insolvency process of a credit institution is aimed at the protection of the interests of all the creditors, thus it has to be assessed as proportionate one.

The Credit Institution Law does not provide for the direct possibility to dispute the actions of Commission when it does not accept the restoration decision, however, the legislator has provided for the court and obligation to decide on the commencement of bankruptcy procedure. Namely, when failing to approve the restoration decision, the Commission is actually passing to the court decision with regard to the issue about solution of insolvency of the credit institution. Consequently, there is no reason to believe that the right to a hearing before the Court would be precluded in principle.

Constitutional Court has declared that the contested provision is compatible with Article 105 of the Constitution, while terminated the case in the part of compliance with Article 92 of the Constitution since the said provision has not affected the rights of applicants.

7. Right to Fair Remuneration

A position has been provided to the Constitutional Court in Case No. 2012-04-03. The proceedings have been initiated with regard to compliance of Clause 6 and 7 of the Cabinet Regulation No.311 "Regulations on the Number of Members of the Board of Directors, Remuneration to the member of the Council and the Board of Directors, Representative of the Holder of Capital Shares of the Local Government and the Responsible Official of the Governmental and Municipal Capital Companies" of 30 March 2010 (hereinafter referred to as the Regulation) with Paragraph two of Section 96 of the Law "On Capital Shares and Capital Companies of the Government and Municipalities" and Article 107 of the Constitution of the Republic of Latvia, as to whether members of the Boards of Directors of the governmental and municipal capital companies if they are holding any more offices in the capital company on the basis of the contract of employment, shall be entitled to receive a remuneration for performance of the other job duties, which is not a position of the member of the Board of Directors.

Ombudsman is holding a view that, in the light of the Board of Director being executive body of a capital company managing and being in charge of all the matters in the capital company, from this context results that the persons who officiate as the members of the Board of Directors, shall be entitled to manage and shall be responsible for all the matters relating to business activities of a joint-stock company. Thus, any duties performed by the member of the

Board of Directors in a capital company in point of fact shall fall within the scope of responsibilities of the member of the Board of Directors. In accordance with the Regulations each member of the Board of Directors shall receive one monthly salary, which includes consideration for performance of obligations of the chair of the Board of Directors or the member of the Board of Directors, as well as for performance of other professional responsibilities. The same job at the same time can not be made several times, so there is no reason to receive several monthly salaries. Therefore the right to a fair wage is not infringed.

The Constitutional Court has terminated the proceedings in the case, by coming to the point of view that the complainants are not performing responsibilities that are not within the competence of the Board of Directors or exceed the scope of responsibilities of the members of the Board of Directors, therefore their fundamental rights have not been infringed.

8. Violations of the Principle of Good Administration

8.1 Polite and decent attitude towards the customers

Applicants have quite often pointed to unfriendly and even rude behaviour of individual officials and employees of governmental and local authorities. In some cases, after involvement of the Ombudsman the employees have got a reprimand and local government has apologized to the private person, however, in many cases, the submitter's point of view has been unilaterally and sometimes partially presented. In the verification procedures the Ombudsman has invited to respond more actively when getting information about possible imperfect and unfriendly attitude towards people.

8.2 Reply on the merits

In connection with the complaints of the people about failure to reply in several verification procedures the Ombudsman has found that instead of a written response, an oral explanation has been delivered or the response is not provided at all, to which the Ombudsman has specified that such action is not allowed in public administration, as well as has addressed the responsible state administration authorities to apologise to a private person for a failure to reply. Most of the applications have been received with regard to actions of municipal capital companies, failing to provide responses to the people, to which the Ombudsman has pointed out that, when carrying out their functions in a public sector, any institution and also a company is obliged to respond to the people’s submissions, not just formally, but in fact and in substance, providing clear and precise response to the question of the person within the limits of their competence. This obligation successively results from the guarantees given to the person in Section 104 of the Constitution.

8.3 Different practice in the institution

Ombudsman has found that different practices are present in various regional divisions of a state administration institution (State Land Service), when for provision of the same service one division charges as for a paid service, while another division does not charge for it. After the initiated verification the authority has provided information that such practice of regional divisions will be eliminated. In addition, the Ombudsman has acknowledged: although fees for the issue of information is restriction of the right to reply in the context of Article 104 of the Constitution, it does not infringe the rights of the person to get information when it is correctly determined and applied. Ombudsman has specified as well: if the acts of authorities have not corresponded to requirements of laws and regulations, the private person is not entitled, referring to the same, to request to repeat such error also in further operations of the authorities. The principle of equality shall not give to a person the right to demand equal treatment with regard to the repeated making of error.

8.4 The standard for reception of clients

In connection with the failure to comply with the Standard for Reception of visitors, the Ombudsman has brought to notice of the authority (the Court Administration) infringement of the principle of good administration, when during a period of four years the authority was unable to introduce the employee identification cards determined by the standard. After commencement of the Ombudsman's verification procedure the employee identification cards were introduced.

8.5 Right to exhaustive, comprehensive and impartial information, explanation

In connection with the rights of individuals to get an exhaustive, comprehensive and impartial information from the State administration authorities, the Ombudsman in a verification procedure has found that an individual has applied to the State Revenue Service (SRS) prior to sale of immovable property. The SRS employees have provided an explanation that personal income tax on income from sale of a land used for agricultural purposes is not payable when this land is sold to the person engaged in farming. After sale of the land, information has been received from the SRS that if the land purchaser is engaged in agricultural production, but his income therefrom accounts for less than 50% of all income, then tax should be paid in the amount of 15% from the received income. Applicant indicates that if the SRS division staff would have clarified immediately this nuance of the law, he would have ascertained before the sale of the land, whether the buyer's income from agricultural production in 2010 will make more than 50%. If such information is not received or is negative, the person would have sold the land to another person.

In addition to that, the SRS has calculated late charges of tax payment. Ombudsman is holding a view that actions by the SRS, through calculation of late charge for the applicant with regard to the period before the SRS itself has learned that the tax should be paid at all (related with time limits for submission of accounts) do not comply with the principle of good administration, although formally comply with requirements of the Law "On Taxes and Fees" since of the obligation for payment of tax initially could not know neither the seller of land, nor the SRS, since the accounting period was not expired yet and the account thereon was not submitted to the institution.

Thus due to inaccurate advice by the SRS the private person was obliged to pay not only the capital gains tax, but also the late charge for the period during which neither the applicant, nor the SRS knew and could know about the tax payment obligation. Therefore, by failure to comply with fundamental principles for operation of the state administration, the SRS have caused to the applicant both real material damages and moral injury.

8.6 Support from local governments in cleaning of the territories for vulnerable groups of people

With regard to the cleaning of adjacent territories a number of submissions from single pensioners has been received, where they indicated that they have repeatedly been subject to administrative liability while being seriously ill or placed in hospital, as a result, they have not even had an opportunity to provide clarification for the local government administrative commission about the actual conditions of the matter. Within the framework of the verification procedure, the Ombudsman has applied to the local authorities to identify those house owners who due to old age or disease are unable to ensure wholesome cleaning of the buildings in their possession and adjacent territory on their own, to take care for facilitation to these owners the cleaning of area of the city adjacent to their property, as well as to explain

comprehensively the procedure in which they can get assistance from local government in such situations. Therefore Ombudsman has indicated that the local authorities:

1) in specific cases have not selected the correct method (punishment) to ensure execution of the function prescribed by Clause 2 of Section 15 of the Law "On Local Governments" to look after the public services and facilities, and the sanitary cleanliness of their administrative territory;

2) the objective of the administrative sanction - to educate the violator – is not reached;

3) formal compliance with the requirements of laws and regulations, without taking into account the actual circumstances (applicant's disease in the time of establishment of administrative violation and making of the Decision, the absence of his explanations, failure to clarify his material situation) has restricted the rights and interests of the private person;

4) without providing comprehensive information to the people about the opportunity to receive assistance for aged, disabled and lone people to clean up the territories adjacent to their properties, the right to know their rights is not ensured for the population of particular local government.

8.7 The right of the producers of medicine to claim provisions of the laws and regulations (confidence in legality of actions)

Within the framework of verification procedure the Ombudsman has found a number of deficiencies in the Cabinet Regulation No.899 "Procedures for the Reimbursement of Expenditures for the Acquisition of Medicinal Products and Medicinal Devices Intended for Out-patient Medical Treatment" (Statute) of 31 October 2006:

1) The first sentence of Paragraph 1 of Article 2 of the Council Directive 89/105/EEC prescribes that Member States shall ensure that a decision on the price which may be charged for the medicinal product concerned is adopted and communicated to the applicant within 90 days of the receipt of an application submitted. While the first sentence of Paragraph 1 of Article 6 of the Directive prescribes that Member States shall ensure that a decision on an application submitted, in accordance with the requirements laid down in the Member State concerned, by the holder of a marketing authorization to include a medicinal product in the list of medicinal products covered by the health insurance systems is adopted and communicated to the applicant within 90 days of its receipt.

   Ombudsman has found that, by submitting an application within time limits set forth by the Regulation, a period of time is developed, which is longer than 90 days. It is essential to pay attention to the last sentence of Paragraph one of Article 2 of the Directive prescribing that - in the absence of such a decision within the abovementioned period, the applicant shall be entitled to market the product at the price proposed. Therewith from the principle specified by the Directive derives that, after the time limit provided for making and communication of the decision to the applicant - 90 days – the applicant has to be entitled to market the medicine for the relevant price or else has to receive a justified refusal. The notified decision has no economic efficiency, if its entry into force for a certain period of time is "frozen". Therefore, subject to the procedure set out in the Regulation, after the expiry of the period laid down in the Pharmacy Law and in the Directive for a certain period of time the right to market the product at the price proposed is denied. Ombudsman has asked for a review of the procedures laid down in the Regulation to revise the reimbursement base price, in order to match the period laid down in the Pharmacy Law and in the Directive.

2) At present the framework of the system for reimbursement of the costs for acquisition of medicines in respect of the producers of medicines does not conform to the

intentions of the "Concept on financial resources to ensure access to medicines for the treatment of outpatients in Latvia over the next five to ten years, the role and responsibilities of the State in this process" accepted by the Cabinet on 14 December 2004, and the "Concept on development of the reimbursement system for costs of acquisition of medicines and medical devices" accepted by the Cabinet on 12 February 2009, since the reimbursement system for costs of acquisition of medicines after the said amendments to the Regulation is funded also with the help of co-payments of the producers of medicines. In addition, in 2012, by maintaining the funding in the previous level, no funding is provided for the continuation of development of the reimbursement system for medicines.

Therefore the Ombudsman has applied to the Ministry of Health as the responsible ministry to make a choice in the implementation of the said concepts - either to update the concepts in order to match the activities to be implemented and realistic time limits for completion of the activities, or to comply with provisions thereof.

3) Responsibility of the State, taking into consideration its economic and financial possibilities, is to create a system in which it is actually possible for a person to get from the state budget paid medicaments for outpatient treatment. Ombudsman is drawing attention to the need to balance the interests of patients and entrepreneurs. Namely - whether, by taking care of the protection of the rights of patients an adequate assessment is carried out for lawfulness, proportionality and appropriate regulation in the statutory enactments of the obligation imposed on the manufacturer, restricting its ownership. Since the Regulation has been amended, without taking into account of the objections of manufacturers and also the promise is not fulfilled to increase the budget for the medication reimbursement, the manufacturers have warned that they are going to refuse to cover the medication reimbursement budget deficit of 2012, because they do not see a long-term sense for such a measure. If it happens, in accordance with provisions of the Regulation, the National Health Service would remove the respective medicines from the medication reimbursement list. As a result, the patients in the same way would be provided with the necessary medication reimbursement. Consequently, in relation to the current practice, by extending the period of application of the temporary solution without reaching a new consensus with the producers of medicines, a conclusion has to be drawn that such action is not correct and, in so doing, may not achieve the desired objective.
4) As regards 2011, the producers of medicines have agreed to co-payment by justification for it as a socially responsible action in a crisis situation. However, right now when Prime Minister indicates that the crisis is over in the country, justification is missing for the co-payment to be retained. In addition, the practice of the Ministry of Health has to be taken into account - not to increase budgetary request to cover expenditures on medication reimbursement in 2012, knowing that there will be the budget deficit, and already anticipating that the deficit will be covered by the producers of medicines. As well as in the request for 2012 budget amendments the Ministry of Health has asked only for one part of the missing amount of money, indicating that the remainder will be covered by the producers of medicines (although the Ministry had been aware of the notification by the producers of medicines of the refusal to cover budget deficit). Having examined the said, a conclusion has to be drawn that the short-term measure included in the Regulation, through its extension, is already used as a permanent solution to cover the budget deficit, not as an exceptional measure of a crisis situation, agreed with the producers of medicines. In the absence of crisis situation, it is not

permissible to keep the current regulation under the shelter of temporary solution; a permanent "standard" solution should be found for a problem.

8.8 Legality of Actions of Insolvency Administrators

Within the framework of the verification procedure the Ombudsman has found:

(1) Financial interests and incompetence in the business management issues of the administrators is contributing to the sale of property belonging to the debtor as soon as possible, without ensuring its preservation and management in order to restore the debtor's solvency and economic activity. Property of a capital company is handed over for use of relatives or friends by charging from the Capital Company payment for storage costs, other contracts unfavourable for the Capital Company are concluded. The said does not comply with the purpose of the Insolvency Law - to promote compliance with commitments of the debtor getting into financial difficulties and, if possible, the restoration of solvency, by application of the principles and legal solutions laid down in the law.

(2) The insolvency process is unduly delayed, since due to the administrator's weak knowledge or financial interest, litigation is initiated against the debtor's employees to recover from them the amounts due to creditors, amount of which is related to the volume of payment for the administrator's services. The amount of the claims can in theory be maximally high since the administrator is exempt from the obligation to pay a state fee. In turn, in order to submit an appellate complaint, employees of the company are not exempt from the state fee, which significantly affect the use of the right to appeal against the court judgments.

(3) The fact that the claims submitted by administrators may be unjustified and are for significant amounts, creates a serious risk of corruption in litigation proceedings.

(4) By entrusting to one administrator administration of several, up to 10 insolvency proceedings at the same time, it inevitably leads to negligent attitude towards the administrator's functions and impossibility to attain the objective mentioned by the Insolvency Law - the restoration of solvency.

(5) The possibility to launch the insolvency proceedings, when inadequate proportion is present with a small amount of the debt to the company balance sheet assets, which in most cases, leads to unjustified winding up of a company and illegal opportunities for the insolvency administrators to acquire wealth.

(6) Lack of control by the State Agency "Insolvency Administration" over the insolvency process, as well as biased attitude in the case of complaints, always supporting the position of administrators, irrespective of the circumstances of the case and received information about administrator's illegal and even criminal behaviour.

The Ministry of Justice in response to the Ombudsman's opinion has communicated that the deficiencies identified by the Ombudsman have been partly eliminated by the new Insolvency Law (effective from 01.11.2010), as well as the Ministry of Justice will take into account the deficiencies identified by the Ombudsman's opinion, in evaluation of opportunities for improvement of the insolvency process.

8.9 On Refusal to Enter into a Natural Gas Supply Contract

Ombudsman's Office has received submissions from a number of people on refusal to enter into a natural gas supply contract until the new leaseholder, tenant, or owner of premises has not paid debts of the former natural gas recipient for the supplied gas.

The Ministry of Economy, the Public Utilities Commission and the service provider AS "Latvijas Gāze" in general have the same opinion, namely, the right laid down in Paragraph one of Section 24 of the Law "On Regulators of Public Utilities" to request public services is

not absolute, and this provision entitles AS "Latvijas Gāze" to refuse natural gas supply in the case when the request is not justified, as well as the AS "Latvijas Gāze" has no legal obligation to conclude a contract on supply of natural gas with another person before the debt obligations have been settled for the natural gas consumed in the gasified facility. The Commission is writing that upon conclusion of a natural gas supply contracts with the new leaseholders before the debts of former leaseholders have been settled, "for the lessors of immovable property settlement incentives should be reduced to settle accounts for the service received (by other person), but the leaseholders of immovable property, being aware of support from governmental authorities, will have no incentives before conclusion of a contract to require from the lessor to settle accounts for the public services received in a property." Such a restriction (this means an obligation to enter into supply contracts with new leaseholders) may affect the development of public service provider and the possibility for users to receive services for economically reasonable prices. Otherwise, the costs incurred by supply of one user and not covered by the respective user, would be transferred to all the other users, by including the same in the natural gas supply tariffs rather than for the new owner or holder of the gasified facility, who (subject to payment of the debts of previous owner) has the possibility to prevent such a situation.

Ombudsman is holding a view that the existing legislation provides no grounds to interpret it in such a way that it is possible to impose for new leaseholders, tenants or acquirers of the immovable property, the obligation to pay for unpaid debts of the former gas consumers, as well as it provides no grounds to refuse to enter into the natural gas supply contracts due to the reason that the former user has not paid for the service. The said laws have no reference to an obligation of different attitude towards energy consumers, by prescribing to one consumer an obligation to cover debts of the other consumer. It does not result from laws and regulations that the requirement to enter into a natural gas supply contract in the gasified facility becomes unjustified in cases where AS "Latvijas Gāze" has not collected payments for the consumed gas from the previous gas user.

In no event described in the submissions, AS "Latvijas Gāze" has provided a reasoned refusal for signing of a supply contract, since all the refusals are based on requests of payments not collected by AS "Latvijas Gāze" for gas consumed by another persons, rather than due to the fact that financial possibilities of the company and technical capacities of the facility or the infrastructure do not permit to do so. Thus AS "Latvijas Gāze" is restricting the rights of owners of the immovable property to use their property (to rent, to hire, to live, to cook, to engage in business activities, et al.), in breach of the right of the persons to own property guaranteed by Article 105 of the Constitution. By demanding the debts of previous users from the new users of gas equipment, there is a breach also of the principle of equality between persons.

Conduct of AS "Latvijas Gāze", when refusing gas supply to the new owners or leaseholders of households, not only is inconsistent with the laws and regulations governing the activities of AS "Latvijas Gāze", it is also contrary to the interests of joint-stock company itself. Continuing operation of the contract with the person, which has nothing to do any more with the gasified facility, and without entering into a gas supply contract with the new users of the facility, who would like to pay for the consumed gas, the joint-stock company is causing interruption to its activities. Therefore, not supplying gas and not collecting due payment, AS "Latvijas Gāze" is suffering losses. Requirement from the lessor, the new leaseholder, the tenant or the new owner of immovable property to pay the debts accumulated by another person for the consumed gas, and delayed switching-off of the gas installation

when it has already another user, does not comply with the basic principles of regulation of public utilities and the Civil Law.

On the basis of findings of this verification procedure, Ombudsman has issued recommendations to the Ministry of Economics and Public Utilities Commission to discontinue the previous practice of AS "Latvijas Gāze" not corresponding to laws and regulations and to ensure the activities of the company, taking into consideration the basic principles of regulation of public utilities prescribed by the Energy Law and Law "On Regulators of Public Utilities".

Division of Legal Equality

Priorities of the Division of Legal Equality:
I Minimizing discrimination in the area of employment
II Minimizing the hate crimes
III Ensuring equal access to goods and services regardless of gender, racial or ethnical origin, or disability
VI Promoting implementation of UN Convention "Convention on the Rights of Persons with Disabilities"
V Minimizing discrimination against representatives of the Roma people

I Minimizing of Discrimination in the Field of Employment

To minimize discrimination in the field of employment in 2012 Ombudsman has inquired into views of the persons on the observance of rights when returning to work from parental leave. Information on violations of Paragraph four of Section 156 of the Labour Law has increased from 0 - 2 violations during prior periods to 14 violations in 2012. Paragraph four of Section 156 of the Labour Law prescribes for the employer an obligation to retain the previous job of an employee who makes use of parental leave, or, if this is not possible, to ensure the employee similar or equivalent work with not less favourable conditions and employment provisions. Mostly women have suffered from such discriminatory treatment (no man has applied with a reflection of particular case). Ombudsman has received calls, electronic and written submissions, where persons have pointed to specific situations, in what way was the employer's discriminatory attitude expressed due to the person's family status, period of parental leave. Only in certain cases the young moms were ready to defend their rights and apply to the Ombudsman's Office or to the court. The reason for this is unwillingness to get a reputation of a "squeaker", and the fear of finding a job in the future. Applicants have indicated that the economic situation has forced to become reconciled with worse working conditions than before going to the parental leave, by agreeing to the employer's proposed reduction in the office and the remuneration.

A position has been provided on interpretation of the Paragraph four of Section 156 of the Labour Law. Duty for the employer prescribed by Paragraph four of Section 156 of the Labour Law shall mean a statutory employer's obligation. In the case if an institution, a company is being reorganized, by taking over the rights and liabilities, obligations to those workers should be transferable who are on parental leave, and, consequently, at the end of parental leave the same or an equivalent position should be offered to them.

Within the framework of the verification Procedure, the Ombudsman has established that SIA "Rēzeknes slimnīca" has failed to comply with the duty for the employer prescribed by Paragraph four of Section 156 of the Labour Law and allowed an unjustified, discriminating treatment of a young mom because of gender, maternity, in violation of Section 29 of the Labour Law. The fact that employment in the position of Administrator of the Emergency Medical Assistance and the Patients Receiving-Room during the absence of another employee, being equivalent to the job of Registrar of the Centre of Diagnostics has been offered to the mom, indicates that the employer has had an actual opportunity to continue the legal relationship of employment with the applicant, however, the employer has failed to do that, by offering to the young mom a significantly impaired legal status with

fixed-term contract of employment. To the young mom jobs have been offered that are not equivalent to the job of Registrar of the Centre of Diagnostics to the Diagnostic Centre – as a kitchen maid in the Catering Block of Housekeeping Department, positions of laundress in the Laundry Building of Housekeeping Department for unlimited duration.

Settlement has been reached in a case concerning violation of prohibition of discrimination, when returning from parental leave. During parental leave the employer has invited the employee for negotiations, where offered a lower job position that is not equivalent to the job carried out by the person before taking parental leave. Applicant has not agreed to the said offer. Notwithstanding the employer's obligation prescribed by Paragraph four of Section 156 of the Labour Law to retain the same or an equivalent job, with the man, who has been hired for the period of parental leave, a contract for unlimited duration was concluded. Employer has offered to agree on termination of the employment relationship, by paying a compensation of 2 monthly salaries. Applicant has rejected this offer. Then the employer has pointed out in negotiations that before taking parental leave the decisions made by the applicant has resulted in damages in amount of EUR 500,000 incurred by the company. Applicant has drawn attention to the fact that decisions were taken collectively, and at that time, when the damages have originated, the company management have brought no claims against her. Ombudsman has initiated a verification procedure and turned to the employer with a request to provide an explanation of the said situation. After receipt of the said request the employer offered an agreement - to pay compensation in the amount of monthly salaries for 9 months and withdraw the submitted claim. Applicant has agreed to it, since realized that she cannot continue her job taking into account such employer's attitude. Having regard to settlement between the persons, the Ombudsman has terminated the verification procedure.

Information campaign on the prohibition of discrimination when starting the legal relationships of employment has been performed. On 9-22 July 2012 the Ombudsman's Office and the Society of Disabled Persons and their Friends "Apeirons" with support from Friedrich Ebert Foundation have jointly arranged a public awareness campaign "There could be a job". Information contributors to the campaign are the State Limited Liability Company "Latvia Radio", State Limited Liability Company "Latvia Television", AS "Passenger Train (*Pasažieru vilciens*)" and the State Employment Agency. Public awareness campaign is aimed at prevention of discrimination at the places of work, by making job seekers aware of information specified in CVs and letters of motivation. Often job seekers in their CVs or motivation letters indicate information not related to performance of the job duties, thereby exposing themselves to the risk of discrimination (for example, adding ambiguously perceived photos, indicating to a strange e-mail, disclosing information on the private life etc.). The campaign's message is designed to show what was meant by the author of CV or motivation letter, on the one hand, and the way it was perceived by the potential employer, on the other hand. The campaign's message is delivered through brief witty video and audio clips, by placement of the same in Latvian Radio, Latvian Television, on websites of the Ombudsman's Office and the Society of Disabled Persons and their Friends "Apeirons" and social network profiles and elsewhere. At the same time information is distributed with environmental advertising at public transport stops in Riga, Valmiera, Daugavpils, Liepaja and Rezekne, and posters in the State Employment Agency and its regional branches, as well as in railway stations in Latvia. In addition to the activities already discussed, the Ombudsman and the "Apeirons" representatives undertake the interpretative and educational work by explaining through the mass media, to what attention has to be paid in CV and motivation letter when looking for a job. The time for running the campaign is 9-22 July 2012, when the job search question becomes topical for high school and university graduates.

II. Minimizing of Hate Crimes

A training program has been developed for the Police officers on practical human rights issues, including constituent elements of hate crimes. In 2012 the Ombudsman has worked at improvement of the education for professionals on the human rights content, including violations of the prohibition of discrimination and constituent elements of hate crimes.

Violation of the prohibition of discrimination has been found in connection with the use of expressions containing the racial hatred in the Channel 2 author broadcasts, by allowing abusive expressions in television online: "*Lingita should depart to Africa and pick bananas*". The expression directly indicates that Lingita is not desirable in Latvia due to her origin, that the singer has to depart to another continent, which violates provisions of Clause 3 of Section 26 of the Electronic Mass Media Law: "*In the mass media programs and broadcasts no encouragement for inciting hatred or call to discriminate any person or a group of persons due to gender, racial or ethnic origin, nationality, religious affiliation or belief, disability, age or other circumstances*". Ombudsman has pointed out that according to interpretation by the European Court of Human Rights (hereinafter referred to as the ECtHR) discrimination shall mean in general cases where a person or group is treated, without proper justification, less favourably than another, even though the more favourable treatment is not called for by the European Convention on Human Rights[98] and recommended that more rigorous monitoring has to made to reduce the violation of prohibition of discrimination.

III. Ensuring Equal Access to Goods and Services Regardless of Gender, Racial or Ethnical Origin, or Disability

For the purpose of ensuring equal treatment in the private sector, recommendations have been provided in the area of traffic in order to enable improvements in the quality of provisions of the flight services when passengers are serviced quickly, kindly, pursuant to the prohibition of discrimination laid down by the laws and regulations. Verification procedure on exclusion of a passenger of Lebanese nationality from the flight and re-registration by application of the reverse burden of proof, the Ombudsman has concluded that AS „Air Baltic Corporation" and AS „Air Baltic Corporation" cooperation partner have not provided sufficient evidence to the Ombudsman that, in this case, there had been no violation of the prohibition of discrimination and exclusion of the Lebanese passenger from the flight, and his re-registration has no relation with his ethnicity. The service provider has failed to prove that there is an equal treatment of all the passengers excitedly pointing to the slow service, and all of them are excluded from the flight. The fact that the Security Service of the State Joint-Stock Company "Riga International Airport" did not notice in excitement of the Lebanese passenger any signs that could endanger the flight safety, and did not prevent the applicant going on board, points to the fact that, in this case, there has been no objective threat present to the flight safety, which would give rise to withdraw from the contract of passenger's carriage under procedure prescribed by Section 88 of the Law "On Aviation".

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98 Abdulaziz, Cabales and Balkandali v. the United Kingdom judgment of 28 May 1985, Series A no. 94, p. 39, para. 82.

Financial consultations have been provided to the Financial and Capital Market Commission (FCMC) for the interpretation of the legislative framework for equal treatment of representatives of both sexes as regards determination of the amounts of insurance premiums and insurance indemnities.

A view has been provided with regard to the age discrimination in access to goods and services, by making a decision to refuse to grant a sms-credit for people being 18 to 19 years old. Ombudsman has indicated that discriminatory treatment against this group of people is contrary to Article 91 of the Constitution of the Republic of Latvia.

Opinion of the verification procedure has specified that having regard to special protection of the people with disabilities and the need for positive actions, customer service should be carried out in a way to avoid subjective infringement of a person due to disability, long-term physical, mental, intellectual and sensory disorders. SIA "Marta LTD" after the Ombudsman's request has failed to submit any evidence (testimonies, records, documents) that service has been provided to A.Ž. (a customer in the specified case) with appropriate treatment so as he could make wholesome examination of the product and buy it. From explanation provided by SIA "Marta LTD" in the letter of 7 December 2012, the Ombudsman has not detected the company's understanding of the problems of persons with disabilities and has not gained confidence that the business company and its staff have taken or are willing to take measures on their behalf to promote availability of the goods and services to the people who have difficulty in access to goods and services due to long-term physical, mental, intellectual or sensory disorders, including hereditary skin diseases. Therefore, by application of a reverse burden of proof, the company has not demonstrated that with A.Ž. the specified case was not present and in similar cases no breach of the discrimination prohibition will be allowed.

IV. Promoting Implementation of the UN Convention on the Rights of Persons with Disabilities

Inquiries have been made in course of the monitoring on the environmental accessibility in medical institutions, banks, NGOs, where officially upon receipt of the replies work will be continued with associations of the persons with disabilities, to find out whether provisions of the Convention have been introduced into life. The received information has been forwarded to non-governmental organisations of the persons with disabilities for the purpose of asking the persons with disabilities to highlight certain specific cases, when violation of the discrimination prohibition has occurred in the access to the said institutions and individual services were not provided as indicated in the reply to the Ombudsman in those cases where the environment is not available.

Within the monitoring of municipal buildings commenced in 2012, access to municipal buildings, premises of social services, police stations, electoral districts has been inspected, information has been provided to local authorities and the best solutions have been discussed.

Specific recommendations have been provided in the field of provision of technical aids:

1. Long-term strategy is required in the field of provision of technical aids, through acquisition of modern technical aids being usable in the long-term and satisfying the needs

of persons, as well as ensuring for the people an opportunity for repairs of aids and replacement of outworn spare parts.

2. Queues should be immediately eliminated. The system has to be designed in such a way that the persons receive the technical aid if necessary, in the long term or in the short-term, on the basis of individual need.
3. The amount of the allocated funding and efficiency of the use of existing financial resources should be reviewed, by modification of the procedures for granting technical aids, where appropriate. It is not acceptable that the technical aids, which are acquired by using the state budget resources, are of poor quality and do not meet the needs of persons.
4. The system for provision of technical aids must be developed, by taking into account individual needs of each person, linking rehabilitation measures to the selection and immediate acquisition of suitable technical supplementary aid, by providing appropriate funding, and providing state aid (payment by instalments, credit with the government guarantee, et al.) to the person's co-payment for expensive technical aids for long-term use.
5. When developing this system, provision should be made for the possibility of individuals to receive expensive technical aids required for short term to be used during the required time period, via development of the lease system.
6. For doctors, who deal with the rehabilitation and prescription of technical aids, provisions should be made for certain qualification requirements, where necessary, training must be provided to them.
7. Attention must be paid to the promotion of personal responsibility, for the people who are awarded with technical supplementary aid or the state funding for purchase thereof, to prevent the cases where, for example, people sell the technical supplementary aid awarded by using the state resources.

Recommendations have been provided to prevent age discrimination in the field of social rehabilitation.

Social rehabilitation services have to be provided to a person, upon assessment of his or her individual requirements and assessment of the need for social service, not age. A person at any stage of life (as prescribed by the Labour Law) may express his or her readiness to enter into the employment legal relationships, and the person at any state of age should enjoy protection of fundamental rights guaranteed by the State. Artificial minimization of queues, by restriction of the range of recipients of the service, on the basis of the actual situation, as indicated by the Ministry, the increasing number of people with disabilities in the country, as well as general ageing of the population, cannot be recognized to be legitimate and proportionate. According to the Ombudsman’s recommendation amendments have been made to the Social Services and Social Assistance Law, by providing for social rehabilitation of the people with functional disorders regardless of the age for ability to work (adopted by Saeima on 6 December).

Infringements have been found in provision of the rights of persons with disabilities in the employment legal relationships. The recommendations have been provided to the employer for adaptation of the workplaces for persons with disabilities and provision of working conditions being fair, harmless to health, appropriate for the needs of people with disabilities. Ombudsman has indicated that allotment of an adequate parking place for a person with disability is included in responsibilities of the employer, via reasonable adjustment of the environment to the person with disability as laid down in Paragraph three of Section 7 of the Labour Law.

V. Minimizing Discrimination against Representatives of Roma people

Cooperation has been going on with the Roma non-governmental organizations for reducing discrimination of the Roma people. Memorandum of Cooperation signed on 30 August 2011 with the Roma non-governmental organizations was appreciated also by other national (Lithuanian, Polish) Ombudsmen.

Effectiveness of the use of resources allocated from the EU financial instruments and from the state budget for the rights protection, integration of the Roma community has been examined. It was found that during the time period from 2007 to 2012 LVL 1,081,905 have been used to carry out the projects of governmental and non-governmental organisations for the Roma integration. Systematic shortcomings have been found. In the relevant areas - reduction of discrimination, promotion of education and employment, access to health care and housing provisions - the necessary measures to prevent the Roma exclusion were not taken. International law, which provides for the prohibition of discrimination and the necessary action, have not been followed, despite the fact that both the state budget resources and the European Union financial instruments have been allocated to that. The main problem found: the lack of link between use of financial resources and the objectives set out in the European Union guidelines and national policy planning documents and the actual needs of the Roma community.

Recommendations have been provided:

1. In accordance with the EU Framework for National Roma Integration Strategies, by 2020 a separate long-term policy planning document and a specific action plan to improve the situation of the Roma has to be developed;
2. An efficient control mechanism for allocation of funding and compliance of the objectives set out in the project with international and national guidelines has to be developed;
3. A single competent authority has to be appointed to evaluate and to approve each project;
4. Information on the planned projects has to be provided to the Ombudsman for a monitoring to be carried out.
5. Representatives of the Roma community should be involved in all the projects intended for the Roma community, both in the project development process and implementation of the projects.

Roma Advisory Council has been established. Objective - to identify the views of the Roma community and to assess the measures taken by governmental, municipal, non-governmental organisation to prevent discrimination and to reduce exclusion of the Roma people.

VI. Violations of the Principle of Legal Equality

Violation of the principle of legal equality laid down by Article 91 of the Constitution of the Republic of Latvia has been found in the Law of 15 December 2011 "Amendments to the Law On Remuneration of Officials and Employees of State and Self-government Authorities" according to which social guarantees have been significantly reduced for one group of people - the State Probation Service staff, thereby breaching the principle of legal equality.

Violation of the principle of legal equality laid down by Article 91 of the Constitution of the Republic of Latvia has been found, through application of different treatment to certain persons included in the disability group, including by providing preferences in public transportation only for the persons with visual and hearing disabilities of Group III. In accordance with the principle of legal equality preferences in municipal public transport should be equally provided for all the persons with disabilities of Group III, irrespective of the type of disability. Ombudsman has completed examination of the verification procedure No.2012-81-26K by suggesting to the local authorities when providing preferences, to take into consideration the principle of legal equality prescribed by Article 91 of the Constitution of the Republic of Latvia and, as appropriate, within the framework of the social group to provide equal treatment both for working and non-working pensioners and persons with disabilities of Group III with all types of disabilities.

Violation of the principle of legal equality laid down by Article 91 of the Constitution of the Republic of Latvia has been found when legitimate objective is not seen in mutually different determination of the annual paid vacation benefit for the State Police, the State Border Guard and the State Fire and Rescue Service. The reference indicated by the Ministry of the Interior to the right included in Paragraph four of Section 3 of the Remuneration Law to the remuneration system to be developed by manager of the institution, does not mean that the manager of the institution shall have the right to develop the remuneration system, without taking into account the general principles and the above mentioned objective of the legislator for determination of remuneration for officials with special service ranks in the service of the Ministry of the Interior system institutions and the Prisons Administration.

In performance of the functions prescribed by the Law "On Police" for the municipal police officers, municipal police officers are exposed to the same risks as the State Police officers. In view of the above, a separate regulations have to be elaborated to establish social guarantees for the municipal police officers, also the right to a long-service pension, by providing social guarantees adequate to the risks of municipal police officers.

Ombudsman has asked the Ministry of Welfare to equalize the amount of benefit for the person with disability, to whom nursing is required, to the level of benefit for nursing of a child with disability.

Ombudsman has found that setting the term for settlement of obligations on the basis of the debtor's obligations at the time when insolvency of the debtor is declared, is a proportionate restriction of the rights of person, and has not to be considered to be a breach of the principle of legal equality, due to the persons within the framework of the insolvency proceedings, as a set of measures, are situated in different circumstances.

Ombudsman has acknowledged imperfection of the existing regulatory framework in current wording of the Cabinet Regulation No.32 of 22 January "*Regulations Regarding Restriction of Prostitution*". In accordance with the UN Convention, regulations has to be declared illegal as regards health cards to be issued for the group of people on an individual basis, where occupation of a person is specified. In accordance with Paragraph eight of Section 12 of the Ombudsman Law, one of the tasks of Ombudsman shall be "*to provide the Saeima, the Cabinet, local governments or other institutions with recommendations in respect of the issuance of or amendments to the legislation*", please, notify the Ombudsman of the elaboration of amendments to the respective Cabinet Regulation No.32 of 22 January "Regulations Regarding Restriction of Prostitution".

Ombudsman has found a violation of the principle of legal equality and the principle of good administration in relation to the vehicle operation tax rate applicable for motorcycles, motor tricycles and quadracycles. In accordance with Clause 8 of Section 12 of the Ombudsman Law, the Ombudsman considers modification of the tax rate prescribed by Paragraph one and two of Section 4 of the Law, to be necessary by determining it commensurate to motorcars, as well as to take account of the seasonal nature of operation of the said vehicles.

Information by the Ombudsman's Office

1. Financial Resources and Operating Results of the Institution

The Ombudsman's Office is funded from the State budget. In 2010 the Ombudsman's Office has experienced a drastic reduction in the budget (in 2010 compared to 2008 the budget was reduced by 57%), by endangering timely and qualitative performance of examination of verification procedures and preparation of appropriate legal opinions, to say nothing of implementation of the public information and education about the human rights and good administration issues. In 2012 state budget funding of the Ombudsman's Office has remained at the level of 2010, in addition, the Office was forced to grant on lease a part of the premises, in order to partly cover the institution's maintenance expenses, and to raise funding from the foreign cooperation partners for performance of the Ombudsman's statutory functions and tasks.

Government funding and its use in 2012.

(in Latvian lati)

Series No.	Financial indications	During the previous year (actual performance)	In the year of account	
			approved by law	actual performance
1.	Financial resources to cover expenses (total)	585,393	713,158	700,537
1.1.	grants	554,074	673,005	669,190
1.2.	paid services and other own revenue	19,547	40,153	37,352
1.3.	foreign financial aid			
1.4.	donations and contributions	11,772		-6,005*
2.	Expenses (total)	577,566	714,981	708,364
2.1.	maintenance expenses (total)	575,426	685,361	678,744
2.1.1.	current expenses	574,723	683,590	676,987
2.1.2.	expenses on interest			
2.1.3.	subsidies, grants and social benefits			
2.1.4.	current payments to the European Community budget and international cooperation	703	1771	1757
2.1.5.	transfers of maintenance expenses			
2.2.	expenses for capital investments	2140	29,620	29,620

* - remaining amount of the 2012 resources of donations and contributions has been included in other own revenues.

In 2012 the Ombudsman's Office has received an additional state budget funding in the amount of 100,000 thous. Latvian lati, for the purpose to ensure a more efficient performance of its functions and tasks, thus achieving 52 % of the budget level in 2008. Revenue from the leased premises in 2012 have amounted to 19.3 thous. Latvian lati, but funding from foreign cooperation partners for implementation of projects and activities – 18.1 thous. Latvian lati, to perform research and to analyse the situation in the field of human rights. Thus, in cooperation with the Friedrich Ebert Foundation and financial aid from the Foundation, the Ombudsman's Office continued the research project launched in 2011 on the monitoring of intolerance expressed in comments on the Internet portals "Aggressiveness index", a public awareness campaign "There could be a job" against discrimination in the workplace has been conducted, and further work with the project "Media and Children" has been continued, in drawing up the guidelines for the media "How to speak in media with and about the children". The Ombudsman's Office has participated in the project of the Nordic-Baltic Mobility and Network Programme for Public Administration of the Nordic Council of Ministers "Observance of Human Rights in Closed-Type Institutions in Norway and Finland".

At the end of 2011 the Ombudsman's Office has entered into agreement with the Ministry of Interior for implementation of the Project "Development of Supervision Mechanism of the Persons Subject to Forced Expulsion" performed within the framework of General Program "Solidarity and Management of Migration Flows" of the European Return Fund, in total amount of 14,056 Latvian lati. Activities intended in the project were implemented in 2012.

In the course of the year reallocation of principal budget appropriation of the Ombudsman's Office within the program between economic classification codes has been performed, by reducing funding for remuneration bye 5.8 % or 28,620 Latvian lati and by increasing funding for development of equity capital in order to replace 35 replacement of out-of-date computers (part of which has been in operation since 2002).

Statistics of the Ombudsman's Office from 2007 to 2012

Year	Written submissions	Initiated verification procedures	Completed verification procedures	Refusal to initiate verification procedure	Verbal consultation	Total submissions and consultation
2012	2633	326	235	514	6202	8835
2011	2246	328	355	629	1707	3953
2010	1359	294	185	649	2242	3601
2009	1986	609	402	772	1617	3603
2008	2502	741	412	1009	2434	4936
2007	2269	47	240	633	2831	5120

At present the maximum number of staff units established for the Ombudsman's Office is 42, including – 10 staff units are related to the institution supporting functions, which are indispensable to ensure key functions – record keeping function, secretariat function, economic provisions for institutional activities, administration and management of the property, financial management, accounting. A question of involvement of additional human resources has become particularly urgent, since the existing are lacking capacity to ensure performance of all the functions and tasks assigned to the Ombudsman's Office. This is demonstrated in the table below with regard to the trends of execution of resultative indicators

for operation of the Ombudsman's Office during the time period from 2007 to the end of 2012.

Execution of the Results of Activities and Resultative indicators thereof in 2012

Activity result	Resultative indicator	Plan of the resultative indicator of the accounting period	Execution of the resultative indicator of the accounting period	Notes
Informed society and violations prevented in a timely manner	Verifications organized in governmental and municipal institutions (closed and semi-closed type of institutions, Orphan's Courts, educational establishments et al.)	40	44	
	Educational seminars, discussions and other events arranged	35	50	Deviation from plan has originated due to activities of the Ombudsman's Office by emphasizing an unsettled long-term problem for a wider range of stakeholders or by providing information to the public with regard to deficiencies found during verifications (e.g. matters entailing education).
	Lectures delivered in events arranged by other institutions on the matters within the Ombudsman's terms of reference	12	16	Representatives from the Ombudsman's Office have been invited to give lectures on the human right issues or to provide an explanation.
	Mass media publications	2000	4316	Activities of the Ombudsman's Office with performance of the task prescribed by Clause 5 of Section 11 of the Ombudsman Law – promotion of public awareness – have been significantly activated.
Compliance with the principle of good administration	Opinions provided to the Constitutional Court	15	16	
	Opinions provided to the public authorities with regard to draft laws	46	25	Resultative indicator contains only opinions prepared in writing, while the Ombudsman's Office is providing their verbal views in the meetings of Saeima commissions, meetings of work groups and electronically.

	Participation in working groups and commissions	150	91	Due to considerable increase of the amount of work and insufficient human resources in the Ombudsman's Office, a decision has been made to participate only in those work groups and meetings of the commissions, where already prepared draft regulatory enactment is reviewed or an invitation to submit a view has been received.

Activity result	Resultative indicator	Plan of the resultative indicator of the accounting period	Execution of the resultative indicator of the accounting period	Notes
Effectiveness and authority of the Ombudsman has been increased	Submissions received (examined)	2607	2633	
	Prepared responses to submissions	1720	1667	Resultative indicator is closely related to another indicator – verification procedures initiated on the basis of submission. Responses to submissions are provided when it is possible to respond without initiating a verification procedure.
	Prepared refusals to submissions	600	514	
	Verification procedures initiated on the basis of submission	287	326	
	E-mail replies prepared to the questions within competency of the Ombudsman's Office	500	556	
	Verbal consultations provided	4000	6202	Due to activities of the Ombudsman's Office, by providing information to the public on topical human rights issues, there has been a considerable increase of the number of persons requiring consultations.
	Consultations in presence	1400	1422	

	Consultations by phone	2600	4491	Due to activities of the Ombudsman's Office, by providing information to the public on topical human rights issues, there has been a considerable increase of the number of persons requiring consultations.
	Verification procedures instituted on the Ombudsman's initiative	25	25	

Activities undertaken by the Ombudsman's Office have been fruitful, since more and more persons are asking the Office for help: 2633 written submissions have been received in 2012, which is by 387 submissions more than in 2011, 235 verification procedures have been completed. In cases when there was no need to initiate a verification procedure to resolve the issue of the person, the Ombudsman's Office has prepared an extensive response to submission of the person. 1667 such responses have been prepared in 2012. Statistics summarized in the Ombudsman's Office demonstrates that there has been a sharp increase in the number of consultations provided – during the year of account 6202 consultations have been provided, 866 from them have been provided by legal advisers in complex cases to be dealt with in a legal way, while 4780 – by the customers' adviser on issues to be solved easier.

Public awareness and knowledge of their rights was also encouraged by publicity activities and cooperation with the media. During the accounting year 4316 publications have been published in the media on issues falling within the Ombudsman's competence.

While, in order to facilitate the access to Ombudsman's Office in the regions and to inquire into compliance with human rights and the principle of good administration in local governments, in 2012 monitoring of local governments have been launched, under which the residents of respective municipality can receive consultations from legal advisors of the Ombudsman's Office on the human rights and the principle of good administration issues. During the year of account monitoring visits have been made to the following 6 local governments (Bauska, Valmiera, Liepaja, Madona, Ludza and Tukums) and in 2013 these will be continued.

Structure of the Ombudsman's Office

Operations of the Ombudsman's Office was previously organised in six areas of law - [1] civil and political rights, [2] social and economic rights, [3] criminal law, [4] the rights of the child, [5] anti-discrimination and [6] good administration, - while support functions were provided by the Administrative section.

While in 2012 reorganisation of the Ombudsman's Office has been carried out, by establishing four divisions of rights and two divisions of support functions. As a result of the reorganisation on 2 April 2012 the divisions of rights were created as follows: [1] Division of the Rights of the Child, [2] Division of the Civil and Political Rights (by merging the former areas of civil and political rights and the criminal law), [3] Division of Social, Economic and Cultural Rights (by merging the former areas of social and economic rights and good administration and [4] Division of Legal Equality (the former anti-discrimination area). While Administrative Division has been established for the performance of support functions and

having under its subordination the Registry, and Division of Communication and International Cooperation.

In order to ensure the continuity of work of the Ombudsman's Office and on the basis of Section 16 of the Ombudsman Law, there is a position of the Deputy Ombudsman, which is performed only during the absence of the Ombudsman.

2. Personnel

There are 41 job positions in the Ombudsman's Office (42 including the Ombudsman). In the year of account all the positions were filled.

From all the staff members 28 have been employed in legal analysis and consultations, 7 - in the provision of administration, document management, personnel and financial management functions, 4 – in supplies and management, and 2 – in the communication and international cooperation matters.

Personnel structure of the Ombudsman's Office according to their education is as follows: 1 Doctor, 26 Masters of Sciences, 8 Bachelors, 3 employees with the secondary professional education and 3 employees are taking studies in the university to get the Bachelor's degree.

Distribution of personnel of the Ombudsman's Office by age groups (on average): 10 employees are 20-30 years old, 20 employees are 30-40 years old, 5 employees are 40-50 years old, 3 employees are 50-60 years old and 3 employees are more than 60 years old. Average age of the team of the Office is 37 years.

3. Public Information and Educating Measures

Ombudsman Law prescribes that one of the functions of the Ombudsman is to promote the public awareness and understanding of human rights, of the mechanisms for the protection of such rights and the activities of the Ombudsman.

Notwithstanding the insufficient budget, the Ombudsman has determined educating and information for the public as an essential task of the Ombudsman's Office, therefore, in 2012, strengthened attention has been paid to these activities.

The public has been informed verbally in presence and in writing via letters or e-mails, as well as via mass media. 6202 consultations have been provided to the population in 2012, 866 from them have been provided by legal advisers in complex cases to be dealt with in a legal way, while 4780 – by the customers' adviser on issues to be solved easier, and 556 consultations via e-mail. In many cases, the persons have contacted Ombudsman to inquire into their rights and the possible opportunities for protection of the rights. Also in these cases Ombudsman has explained to the people, where and to what competent officials to go to in order to evaluate the particular matter on its merits and to verify the legality of the contested decision.

To address specialists in the areas of human rights and the law discipline, successful cooperation has been developed with the weekly professional journal "Word of a Lawyer (*Jurista Vārds*)". This cooperation has provided opportunities to deliver the Ombudsman's views and opinions on topical issues of human rights and good administration in Latvia for a wide range of lawyers and experts in the field of law.

The practice started during the previous years to publish the Ombudsman's views and opinions not only on the Ombudsman's website, but also though mass media to deliver this information to the general public, has been actively continued in 2012. In this case, the significant role has been played exactly by the explanatory work.

Website of the Ombudsman's Office presents a major channel of communication with society as a whole, media representatives and international partners as well,. In 2012 a new website has been developed by ensuring transparent and easily searchable information. During the website construction process consultations have been carried out with the Society of Disabled Persons and their Friends "Apeirons" on technical solutions and requirements for the website to be available also for the people with disabilities.

Public Awareness Campaign "There could be a job"

Incorporation of excessive information in CV and motivation letter quite often is the reason why the job seeker is not invited to a job interview at all. A common mistake is to incorporate the information, which, in accordance with the Labour Law, is considered to be a discriminatory condition, for example, information on age, gender, family status or state of health.

On 9-22 July 2012 the Ombudsman's Office and the Society of Disabled Persons and their Friends "Apeirons" with support from Friedrich Ebert foundation have jointly arranged a public awareness campaign "There could be a job". Information contributors to the campaign are the State Limited Liability Company "Latvia Radio", State Limited Liability Company "Latvia Television", AS "Passenger Train (Pasažieru vilciens)" and the State Employment Agency.

Public awareness campaign has been aimed at prevention of discrimination at the places of work, by making job seekers aware of information specified in CVs and letters of motivation. Often job seekers in their CVs or motivation letters indicate information not related to performance of the job duties, thereby exposing themselves to the risk of discrimination (for example, adding to the ambiguously perceived photos, indicating to a strange e-mail, disclosing information on the private life etc.).

The campaign's message was designed in the way to show what was meant by the author of CV or motivation letter, on the one hand, and the way it was perceived by the potential employer, on the other hand. The campaign's message is delivered through brief witty video and audio clips, by placement of the same in Latvian Radio, Latvian Television, on websites of the Ombudsman's Office and of the Society of Disabled Persons and their Friends "Apeirons" and social network profiles and elsewhere. At the same time information is distributed with environmental advertising at public transport stops in Riga, Valmiera, Daugavpils, Liepaja and Rezekne, and posters in the State Employment Agency and its regional branches, as well as in railway stations in Latvia. In addition to the activities already discussed, the Ombudsman and the "Apeirons" representatives undertake the interpretative and educational work by explaining through the mass media, to what attention has to be paid in CV and motivation letter when looking for a job.

Ombudsman Juris Jansons, and Ivars Balodis, Chairman of the Board of Directors of the Society of Disabled Persons and their Friends "Apeirons", and Alfred Phaller, Manager of the Friedrich Ebert Foundation in the Baltic countries, have taken part in the opening of campaign. Revita Logina, Customer Manager of SIA "TNS Latvia" will present results of the research "Discrimination Spread in the Employment Environment in Latvia", Ilze Boitmane, the member of the Board of Directors SIA "I-Work Latvia" will advice to what attention has

to be paid, when writing CV and motivation letter, while Saulcerīte Briede, the Career Councillor of the State Employment Agency Jūrmala branch ESF project "Complex Support Measures" will share experience, what kind of mistakes people make when search for the job.

Public awareness campaign "There could be a job" has been a continuation of the Project "Discrimination at Work Place" launched in 2011 and supported by Friedrich Ebert Foundation in the Baltic States.

Within the framework of the campaign 4 video clips and 4 posters have been created, where the most common mistakes in CVs have been reflected with regard to incorporation of information of the discriminatory content. The developed information materials have been placed on website of the Ombudsman's Office and are also available after the end of the campaign.

"Aggressiveness Index"

The Ombudsman's Office continues the cooperation and research project launched in 2011 for monitoring "Aggressiveness Index" of intolerance expressed in the comments on the Internet portals in order to assess communication of the audience and its response to current events. This index presents the response from audience to various social and political events, the most commonly used "aggressive" words, commentation culture and other interesting connections.

Creation of the "Aggressiveness Index" is aimed at explaining the communication in the content created by the audience in the commentary environment on the "TVNET", "Delfi" and "Apollo" portals in order to understand emotional aggression of the comment writers on the Internet.

Within the project framework connection has been established between the content of the news and comments with aggressive words. Namely, most of the news consists of citations from one source (68%), the main subject of the news - politics (54%), focus of the news – on human being (38%), or event (27%), while the main sources - officials (41%), politicians (19%) and other media (18%)

Experts have also specified that the content of the news very often contains no facts, inimical words are referred to personalities (politicians and officials) and their views. Verbal attacks are person-oriented, they rarely concern the subject, since being directed against individual, while the variety of views and impartiality is limited, the news is missing context. It has been observed that biased, self-righteous views in publications are copied by the commentators.

Experts have found also the most commonly used nouns in the comments, and these are word forms "State" and "of Latvia". Even though both concepts are extremely important for the commentators, as concluded by the researchers the word form "of Latvia" is used in a pronouncedly negative, criticizing, condemning context, but the word form "State" - in a much more positive (less negative / condemning context, more – in a positive or neutral context).

This project represents a successful team work of cooperation between the scientists, the Ombudsman's Office, and the Friedrich Ebert Foundation. The project is planned as a long-term research process, where data from previous periods are regularly maintained and explanatory expert analysis is provided. Teaching staff of the Riga Stradins University

Communication Faculty - Sergejs Kruks, Anda Rožukalne, Klāvs Sedlenieks, Ruta Siliņa and Ilva Skulte, as well as Normunds Grūzītis, leading researcher of the Mathematics and Information Science Institution of the University of Latvia, are involved in the Project. "Aggressiveness Index" will be continued also in 2013. The results of the research are available at the Ombudsman's Office.

Guidelines for media professionals "How to Talk to and About the Children in the Media?"

Guidelines "How to Talk to and About the Children in the Media?" were developed within the framework of cooperation between the Ombudsman and the Association of Latvian Journalists, and Anda Rožukalne and Ilze Olšteina have elaborated the same. Development of the Guidelines has been financed by the Friedrich Ebert Foundation.

When creating guidelines, information has been used from the codes of ethics for journalists in different countries, data from survey of journalists in Latvia, analysis of examples of media in Latvia, several laws and Bachelor's Thesis of the journalist Laura Vonda "Compliance of the Practice in Formation of Criminal News with Latvian Laws and Ethical Norms in Assessment of Journalists and Experts".

Special care and attention should be paid to the cases, if the mass media are publishing information about children, the children are used as sources of information, media is using images of children or information provided by the immediate family of the child.

Media sensations and ethical dilemmas in the context of human rights and the rights of children as a specially protected group were also among the topics in 2012 Ombudsman's Conference. The Conference not only presented guidelines, it was attended also by journalists, researchers, experts in law, communications and ethics and representatives from the State Police and the Children's Clinical University Hospital. The developed guidelines and Conference materials are available on the Ombudsman's Office website.

Lectures for the State Police officers

The Ombudsman's Office in 2012, in cooperation with the State Police College has arranged a professional development course for the State Police officers, especially for investigators, on respect for human rights in the work of State Police. Training was organised in all the regional branches of the State Police College. Within the course framework the following topics have been reviewed:

- Tasks and competences of the Ombudsman's Office;
- Respect for the prohibition of discrimination in the work of Police;
- Observance of the principle of good administration in the work of State Police. Characteristics of the most topical complaints in the Ombudsman's Office relating to the Police competence;
- Aspects of the prohibition of inhuman treatment in contacts with the Police. Features in detention of the persons with mental disorders;
- Safeguards for the rights of the person to inviolability of private life (in the work of Police). Compliance with the presumption of innocence principle in the Police communications with the mass media;
- Respect for the rights of minors in the work of Police.

Training has included insight into the normative regulations and judicial practice, as well as the practical tasks. Training has been concluded with a test of knowledge.

Inquiries into the Public Views

The Ombudsman's Office has repeatedly addressed the public for additional information for in-depth research of certain questions. In 2012 this has been the way to involve the community in the inquiries of matters on provision of free education and research of discrimination of the young moms in employment legal relationships.

On 23 February 2012 Ombudsman has called for the public to report on cases in which the school has asked the parents to purchase the materials for provision of the school learning process. The Ombudsman has asked to send to an e-mail address bezmaksas.izglitiba@tiesibsargs.lv information about the school, class, subject, teaching material to be purchased and the way how the school has expressed to the parents the need to buy requisites for the school. There have been 136 letters at all received referring to the Ombudsman's call to notify about the articles that the parents of learners and also the teachers are buying for the school from their own funds. Letters have been written by the parents of learners and by the teachers, and by the associations of parents, and by the municipal educational authorities. Members of the public have not only notified about the purchased materials, but also suggested proposals to address the issue.

Proposals were mostly related to the need for clarification of "education free of charge", the things that must be provided by the school, and the things that the parents have to buy themselves. Proposals were also regarding the reduction of diversity of text-books (in order to reduce the eventual quantity of books to be selected on the same subject). One of the calls from the parents is for elimination of the practice when text-books are combined with work-books paid-up by the parents being twice as expensive as the books issued by the school. A proposition was also suggested to agree on clear principles, as the municipal funding is divided between the schools in order to local authorities could not manipulate the schools. In the section of proposals, the need has been expressed to specify the functions for a council of an educational institution in Section 13 of the General Education Law, by increasing their capacity to resolve conflicts on a local level. Proposals have been suggested by teachers as well. One teacher indicates that one should start with review of the education standards, revision of curricula.

The contributed information has been summarized in the material "What is the cost of free education?" and published also on the Ombudsman's Office website. Information has enabled to more fully explore the actual situation of a provision of education free of charge, and it has been used also by the Ombudsman's Advisory Council on access to education.

The second issue, where the Ombudsman has asked for public participation, is linked to a situation study about the prohibition on discrimination against the young parents in the employment legal relationships.

Ombudsman has applied to the public with a request to notify the cases when the people having returned from parental leave, have faced the prohibition of discrimination in the employment legal relationships. A survey was conducted on the moms' portal *Māmiņu klubs* http://www.maminuklubs.lv, Latvian family portal *Cālis* http://www.calis.lv, *Mammām un tētiem* http://www.mammamuntetiem.lv, as well as questionnaire was placed on the Ombudsman's website. In total questionnaires were received from 364 people.

Lectures in Educational Institutions

Continuing the practice started during the previous year, also in 2012 the Ombudsman has been actively involved in the information activities on the rights of the child and the mechanisms for protection of these rights. Workshops have been arranged for social educators, form teachers, social science educators, school principals and day-centre managers.

As indicated by the former experience, lectures by legal advisors of the Division of the Rights of the Child of the Ombudsman's Office on the legislative framework in relation to safety of children in the educational institutions are entailing more and more interest in the schools. The Ombudsman's Office will continue the educational and the explanatory work also in the future. If the school wants representatives of the Ombudsman's Office to deliver such a lecture or consultation, you are welcome to send a written request to the Ombudsman's Office e-mail address tiesibsargs@tiesibsargs.lv.

Cooperation with NGOs

Ombudsman J. Jansons, when taking up his duties, as one of the priorities has set a promotion of cooperation with non-governmental organisations, since these are representatives of interests of the public groups, on a daily basis aggregating the information present in the appropriate field, solving problems and proposing suggestions on how to improve the regulatory framework, thus eliminating the shortcomings being found.

Society of Disabled Persons and their Friends "Apeirons"

For a long time already cooperation has developed between the Ombudsman's Office and the Society of Disabled Persons and their Friends "Apeirons". Together with this non-governmental organisation public awareness activities have been carried out, to draw public attention to issues of the people with disabilities, especially environmental accessibility and access to services.

During the reference period activities have been going on launched in 2011 in the campaign "Alternative Solutions in Action". Drugstores were among the first objects selected for monitoring of the environmental availability. In 2012 the range of research has been expanded and included also medical institutions, banks and state institutions. The campaign aims to make both the public and the managers of institutions aware of the environmental availability and to encourage the public involvement in prevention of various absurdities.

The Society of Disabled Persons and their Friends "Apeirons" is a good partner also in arrangement of various other public awareness activities. Apeirons was one of the first partners also in the public awareness campaign "There could be a job".

Cooperation with the Roma Societies on Preventing Discrimination

Memorandum of Cooperation on Preventing Roma Discrimination was signed in 2011 by the International Romani Union, and by the Ombudsman. Within the framework of the established cooperation the Ombudsman for several times has met Roma communities in different municipalities of Latvia. One of the most common problems faced by the Roma, is unawareness of their rights and discriminatory treatment on the labour market.

On 30 August 2012, the first anniversary of the Memorandum of Cooperation, the Ombudsman has notified to the public evaluation of the use of funding from the European Union financial instruments and the State budget resources granted for the period from 2007 to 2012 for solution of the problems of Roma community. Evaluation letter has been sent also to the Human Rights Commission of the Saeima of the Republic of Latvia, to the Public Unity Commission of Saeima of the Republic of Latvia, to the Cabinet of Ministers and to Normunds Rudevičs, the High Commissioner of the International Romani Union.

Alliance for Alternative Child Care

In 2011 a few organisations for protection and support of the rights of the child have founded the Alliance for Alternative Child Care. Ombudsman is among the ideological supporters for founding the Alliance.

Founders of the Alliance for Alternative Child Care include the Society "Azote", Society "Latvijas SOS - bērnu ciematu asociācija", establishment "Fonds Grašu bērnu ciemats", "Audžuģimeņu centrs" and Association of Professional Foster Families "Terēze" as structural units of the foundation "Sociālo pakalpojumu aģentūra"; Society "Zvannieku mājas", Latvian Society of Foster Families; Society "Asociācija „Dzīvesprieks""; and society "Fonds Žubīte".

The Alliance for Alternative Child Care is an active cooperation partner for the Ombudsman’s Office in activating the deinstitutionalization question and information to the public about the need to provide alternative care in the family-oriented environment for children who have stayed without parental care, rather to place them into institutions.

Advisory Councils of the Ombudsman

The Ombudsman encouraged representatives of NGOs in 2011 to participate in two advisory councils established by the Office: the Ombudsman's Advisory Council for Education Accessibility, and the Ombudsman's Advisory Council for Legal Regulation of Partner Relations.

The Ombudsman's Advisory Council for Education Accessibility

The Ombudsman has established the Advisory Council for Education Accessibility in 2011. The Council is an advisory institution assigned with the duty to identify the opinion of experts and to draft proposals on the issues related to education accessibility guaranteed by the State in Section 112 of Constitution of the Republic of Latvia. The Advisory Council for Education Accessibility is also entrusted with assessing the provision of equality, teaching aids and mandatory nature of basic education.

Education accessibility is viewed in the context of free basic and secondary education guaranteed by the State, i.e., what is understood by the term of free education, and how the costs born by the State or municipality and those to be covered by parents are distributed.

Advisory Council for Education Accessibility has continued to work also in 2012 and in May the work has resulted in the Ombudsman’s report on the provisions to acquire primary and general secondary education free of charge in the educational institutions founded by local government.

On 23 May 2012 the Saeima Education, Culture and Science Committee has held a meeting on "Provision of Primary and Secondary Education without Charge Guaranteed by the Constitution of the Republic of Latvia". Ombudsman Juris Jansons has presented a report on provision of the right to acquire primary and general secondary education free of charge in the educational institutions founded by local government to the members of the Saeima Education, Culture and Science Committee and to the audience.

4. Opinions Provided by the Ombudsman's Office to the Constitutional Court in 2012.

1.	09.03.2012. No. 1-6/1	Concerning the matters considered eventually relevant by the Ombudsman to the Case No. 2011-21-01 "Concerning the Compliance of Section 8, Paragraph two of the Law on Reparation of Damages Caused by State Administrative Institutions with the third sentence of Article 92 of the Constitution of the Republic of Latvia".	Gundega Bruņeniece
2.	19.03.2012. No.1-6/2	Concerning the matters considered eventually relevant by the Ombudsman to the Case No. 2011-20-01 "Concerning the Compliance of Clause 1 of Paragraph one of Section 20 of the Law on State Social Allowances with Article 91 and 109 of the Constitution of the Republic of Latvia".	Liene Zariņa
3.	30.03.2012. No.1-6/3	With regard to position in the Case No. 2011-19-01 "Concerning the Compliance of Clause 4 of Paragraph two of Section 6 of the Law On the Rights of Landowners to Compensation for Restrictions on Economic Activities in Specially Protected Nature Territories and Microreserves with the first sentence of Article 91 and Article 105 of the Constitution of the Republic of Latvia".	Arvīds Dravnieks
4.	28.04.2012. No.1-6/4	Concerning the Compliance of Paragraph one of Section 11 and Paragraph one of Section 25 of the Law "On Referenda and Law Proposals" with Article 1, 77 and 78 of the Constitution of the Republic of Latvia and the matters considered eventually relevant by the Ombudsman's Office to the Case No.2012-03-01	Gundega Bruņeniece
5.	07.05.2012. No.1-6/5	Concerning additional position on findings in course of examination of budget requests (in addition to the letter No.1-5/319 of 22.12.2011.)	Ineta Rezevska
6.	04.06.2012. No.1-6/6	Concerning the matters considered eventually relevant by the Ombudsman to the Case No.2012-06-01 "Concerning the Compliance of Clause 3, 5 and 7 of Paragraph two of Section 128 of the Civil Procedure Law with Article 90 and 92 of the Constitution of the Republic of Latvia".	Gundega Bruņeniece

7.	15.06.2012. No.1-6/7	Concerning the matters considered eventually relevant by the Ombudsman to the Case No.2012-04-03 "Concerning the Compliance of Clause 6 and 7 of the Cabinet Regulations No.311 of 30 March 2010 with Paragraph two of Section 96 of the Law "On Capital Shares and Capital Companies of the Government and Municipalities" and Article 107 of the Constitution of the Republic of Latvia".	Ieva Dambe
8.	25.06.2012. No.1-6/8	With regard to position in the Case No. 2012-05-01 "Concerning the Compliance of Paragraph one of Section 141 of the Civil Procedure Law, as far as it does not provide the right to submit an ancillary complaint against the decision having allowed an application for setting aside the securing of claim, with Article 92 of the Constitution of the Republic of Latvia".	Santa Tivaņenkova
9.	03.08.2012.No.1-6/9	With regard to position in the Case No. 2012-07-01 "Concerning the Compliance of Section 179, Paragraph one of the Credit Institutions Law to Article 105 of the Constitution of the Republic of Latvia, and the Compliance of Section 179, Paragraph two of the Credit Institutions Law to the first sentence of Article 92 of the Constitution of the Republic of Latvia"	Juris Siļčenko, Ineta Rezevska
10.	20.08.2012. No.1-6/10	Concerning the matters considered eventually relevant by the Ombudsman to the Case 2012-09-01, Concerning the Compliance of subclause 1 of Clause 16 of Transitional Provisions of the Law "Law On State Pensions" with Article 91 and 109 of the Constitution of the Republic of Latvia"	Šarlote Bērziņa, Artūrs Kučs, Monta Tīģere
11.	06.09.2012. No.1-6/11	With regard to position in the Case No.2012-12-01 "Concerning the Compliance of words "until 31 December 2011 " in Clause 41 of Transitional Provisions of the Law "Law On State Pensions" with Article 91 and 109 of the Constitution of the Republic of Latvia"	Monta Tīģere
12.	21.09.2012. No.1-6/12	With regard to position in the Case No.2012-11-01 "Concerning the Compliance of Clause 1 of Section 50 of the Education Law with Article 106 of the Constitution of the Republic of Latvia"	Laila Grāvere
13.	02.10.2012. No. 1-6/13	With regard to position in the Case No.2012-10-01 "Concerning the Compliance of the words "but not later that within five years from the illegal administrative act of the institution has become effective or the day when actual action has been carried out" in Section 17 of the Law on Reparation of Damages Caused by State Administrative Institutions with Article 92 of the Constitution of the Republic of Latvia"	Inga Zonenberga

14.	04.10.2012. No.1-6/14	With regard to position in the Case No.2012-14-03 "Concerning the Compliance of Clause 84.[1] and 89 of the Cabinet Regulation No.899 " Procedures for the Reimbursement of Expenditures for the Acquisition of Medicinal Products and Medicinal Devices Intended for Out-patient Medical Treatment" of 31 October 2006 with Article 91 and Article 111 of the Constitution of the Republic of Latvia"	Monta Tīģere
15.	07.12.2012. No.1-6/15	With regard to position in the Case No.2012-16-01 "Concerning the Compliance of Paragraph three of Section 86 of the Law "On Judicial Power" with Article 102 of the Constitution of the Republic of Latvia"	Kristīne Ostrovska
16.	17.12.2012. No.1-6/16	With regard to position in the Case No.2012-13-01 "Concerning the Compliance of Section 483 of the Civil Procedure Law in Part of the right to Chair of Department of Administrative Cases of the Senate of Supreme Court to Submit a Protest with Article 92 of the Constitution of the Republic of Latvia"	Santa Tivaņenkova

5. Statistics of the Ombudsman's Office for 2012.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Submissions from persons received													
Area of civil and political rights	108	157	115	118	183	175	147	143	99	159	129	122	1655
Area of social and economical rights	59	53	43	55	58	50	49	45	67	82	63	42	666
Area of the rights of children	14	11	11	7	10	10	7	23	11	13	9	13	139
Area of anti-discrimination	11	14	14	9	9	8	6	10	11	7	7	8	114
Other personnel	5	1	5	1	6	-	1	12	8	13	2	5	59
Total	**197**	**236**	**188**	**190**	**266**	**243**	**210**	**233**	**196**	**274**	**210**	**190**	**2633**
Initiated verification procedures													
Area of civil and political rights	7	7	7	10	8	11	3	4	3	5	2	0	67
Area of social and economical rights	14	11	12	5	7	18	33	5	9	9	9	7	140
Area of the rights of children	6	2	6	6	6	5	0	9	8	7	5	3	63
Area of anti-discrimination	4	6	7	3	2	5	0	7	9	3	7	3	56
Total	**31**	**27**	**32**	**24**	**23**	**39**	**36**	**25**	**29**	**24**	**23**	**13**	**326**
including, on one's own initiative	**2**	**3**	**2**	**3**	**2**	**2**	**0**	**1**	**2**	**4**	**4**	**0**	**25**
Refusal to initiate the matter													
Area of civil and political rights	19	14	15	9	22	13	14	12	4	10	12	11	155
Area of social and economical rights	30	21	15	7	21	32	33	21	19	34	17	23	273
Area of the rights of children	7	3	2	4	3	3	3	9	3	2	3	6	48
Area of anti-discrimination	3	3	2	5	6	4	3	3	4	1	2	2	38
Total	**59**	**41**	**34**	**25**	**52**	**52**	**53**	**45**	**30**	**47**	**34**	**42**	**514**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Responses to submissions (that are not refusals)													

Area of civil and political rights	57	92	105	85	117	126	110	112	99	116	120	104	1243
Area of social and economical rights	27	21	15	12	24	22	24	26	12	18	47	64	312
Area of the rights of children	0	5	0	3	2	2	1	6	1	2	5	7	34
Area of anti-discrimination	1	4	4	0	5	9	0	1	1	4	4	1	34
Other personnel	2	2	4	0	5	3	2	4	9	8	4	1	44
Total	**87**	**124**	**128**	**100**	**153**	**162**	**137**	**149**	**122**	**148**	**180**	**177**	**1667**
Finalized or terminated verification procedures													
Area of civil and political rights	5	3	5	3	7	1	1	3	4	7	11	7	57
Area of social and economical rights	18	8	2	4	5	4	5	4	7	11	17	0	85
Area of the rights of children	7	2	2	4	4	8	4	4	4	3	6	4	52
Area of anti-discrimination	5	3	1	4	3	5	5	2	2	3	4	4	41
Total	**35**	**16**	**10**	**15**	**19**	**18**	**15**	**13**	**17**	**24**	**38**	**15**	**235**
Consultations													
Area of civil and political rights	30	34	36	35	33	30	33	36	28	52	43	24	414
Area of social and economical rights	35	34	18	18	15	13	19	25	32	39	31	10	289
Area of the rights of children	10	6	10	12	7	9	7	13	12	10	13	7	116
Area of prevention of discrimination	6	3	3	4	3	2	5	2	4	6	5	4	47
Telephone consultations	341	382	513	367	348	419	393	379	409	532	408	289	4780
Replies in e-mail	nd	nd	nd	67	79	60	91	66	44	58	38	53	556
Total	**422**	**459**	**580**	**503**	**485**	**533**	**548**	**521**	**529**	**697**	**538**	**387**	**6202**

nd-no data available

	Jan	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**	**Oct**	**Nov**	**Dec**	**Total**
Opinions													
To the State authorities with regard to draft laws	4	3	2	4	2	-	2	2	0	2	2	2	25

To the Constitutional Court	0	0	3	1	1	3	0	2	2	2	0	2	16
Total	**4**	**3**	**5**	**5**	**3**	**3**	**2**	**4**	**2**	**4**	**2**	**4**	**41**
Monitoring visits													
Total	**10**	**4**	**0**	**2**	**1**	**1**	**0**	**2**	**2**	**6**	**4**	**1**	**33**