HUMAN RIGHTS OMBUDSMAN

Republic of Slovenia

Annual Report 2003

The Ninth Annual Report
Ljubljana, March 2004

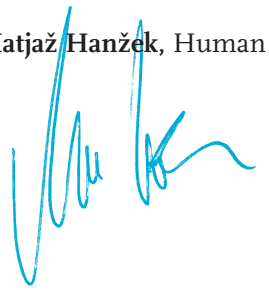
HUMAN RIGHTS OMBUDSMAN

The ninth annual report of the Human Rights Ombudsman of the Republic of Slovenia covers the work of the ombudsman in 2003 – work, which was to a large extent based on the treatment of the complaints we dealt with from 1 January to 31 December. Although the ombudsman is required by law to submit his annual report (in which he reports on his work and offers his assessment of respect for human rights and fundamental freedoms and legal security in the country) to the National Assembly by the end of September, this year's report was submitted in April. The main reason for this is our desire to have the report dealt with as quickly as possible so that parliament can more quickly adopt its recommendations for the elimination of the irregularities and shortcomings we have identified.

Since the area of work of the Human Rights Ombudsman of the Republic of Slovenia is not limited to addressing the complaints of individual complainants who believe that state authorities, local community authorities, or other bearers of public authority have violated their rights, but can also cover broader issues important for the protection of human rights and fundamental freedoms in the country, last year we also dealt specifically with such issues. Last year we observed problems, which in previous years had been partially hidden, either because society as a whole was not sufficiently aware of them, or because it had put off dealing with them. The most notorious cases are of course the final regulation of the position of "the erased" and the right of the Muslim religious community to its own religious centre; problems which have remained unresolved for more than a decade. Although events surrounding the attempts to address these issues point to considerable intolerance in our society, the will to finally overcome ignorance suggests that there is hope for improvement. The problem of hidden intolerance towards those who are different has already appeared in past years, in relation to various events (refugees, Roma, homosexuals, etc.), and this is something to which we have constantly drawn attention, but it appears that matters reached a peak in 2003. Here, we should mention the frequently insincere or evasive work of state bodies (the government and, above all, the government offices whose task it is to monitor specific issues). It is the duty of the State to guarantee to all citizens the same conditions for life. It is also its duty to implement the provisions of the Constitution and adopted international documents without delay. It is probably not superfluous here to repeat the proposal we made in last year's report, namely that in Slovenia we need a national institution for monitoring discrimination and intolerance – something to which, in the last instance, we are also bound by a European Union directive.

It should also be emphasised that our observation of the conduct of a range of institutions allows us to conclude that the nine years of work of the ombudsman are beginning to produce results: we can observe an increasingly serious attitude from the bearers of authority, both towards the Human Rights Ombudsman, and towards respecting the rights of citizens. We hope that this is a trend that will continue and grow.

Matjaž Hanžek, Human Rights Ombudsman



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1. ASSESSMENT OF RESPECT FOR HUMAN RIGHTS AND LEGAL SECURITY IN THE COUNTRY

Our analysis of the state of human rights in Slovenia cannot be a cause for satisfaction. On the one hand, certain irregularities and violations of human rights continue; on the other, the development of society and people's increasing awareness of their rights mean that new violations are coming to light – violations which the ombudsman has not come across in his nine years of work to date, or which he has observed in a different form. They include various forms of hidden discrimination, which attempt, through abuse of legal means, to limit the legitimate rights of individuals or social groups. Even more alarming than this, however, is the work of state bodies. These often fail to prevent such discrimination and indeed even participate in these processes themselves. It is however true that the attitude of bearers of authority towards citizens is slowly improving. There is a clear strengthening of the awareness that state bodies must become, above all, a service for citizens. From this point of view there has also been a marked improvement in the attitude of the majority of state bodies towards the ombudsman. We are seeing them responding to our warnings, and often even taking them into account when preparing or putting into effect new normative solutions.

Last year two international human rights institutions presented their observations on the situation in Slovenia: the European Commission against Racism and Intolerance (ECRI) and the Commissioner for Human Rights at the Council of Europe, Álvaro Gil-Robles. The problems indicated by these reports are the same ones to which the ombudsman has been drawing attention for years: intolerance (above all in relation to "the erased", the building of a Muslim religious and cultural centre, and the Roma community), denationalisation (in particular the problems of tenants of denationalised housing). After several years of deferring the addressing of the problems of the erased and the mosque, the authorities have finally begun tackling the problem. This, however, has provoked serious resistance among some groups of the population, encouraged by the intolerant actions of certain political parties. The ambiguous and evasive measures taken by the authorities have further deepened the confusion and intolerance. This shows that the government still does not have a clear strategy of antidiscriminatory action. Nevertheless, hopes for improvement can be seen in the recommendations on the need for an antidiscrimination strategy adopted by the National Assembly during its consideration of last year's report by the Human Rights Ombudsman. The government responded swiftly and in December began preparing a corresponding law. Information and education on human rights will also be indispensable.

A range of findings from previous years still hold true. Indifference to the problems of people in conditions of hardship is still very present in the work of state bodies. This is mainly evident in cases of evasion of responsibility and buck-passing. Some of the most notorious problems have been the consequence of such behaviour: institutions have been aware of a problem – thanks also to the ombudsman's warnings – but have failed to act, on the grounds that the problem lies within the competence of another body. It is therefore still true to say that some institutions spend more energy avoiding decisions and looking for excuses for not acting, than they do tackling problems. Worse still, they often oppose the expert decisions of other bodies merely so that they do not have to fulfil their responsibilities (cases relating to the implementation of the decisions of social services centres at administrative units in relation to children).

Social stratification is another reason why there is a need for a more decisive policy of common development of society as a whole, the main goal of which will be the active inclusion of all groups in this development. This type of discrimination is most apparent in the case of those groups that are somehow "insufficiently productive": the disabled, women with young children, the elderly, the sick, Roma, and others. It frequently seems as though the State is using (cash) social transfers to maintain marginal groups on the margins, instead of incorporating them into society.

The attitude of the State, as also the legislater, towards human rights and a state governed by the rule of law, is also illustrated by the fact that at the end of the year as many as ten decisions of the Constitutional Court establishing the unconstitutionality of statutes were waiting to be implemented; the oldest of them has already been waiting eight years. It is unacceptable that the National Assembly should show, by acting in this way, its indifference towards the highest judicial institution responsible for the protection of human rights. The protection of the collective rights of national minorities not specially defined in the Constitution, is not sufficiently regulated. Additional confusion is created by the lack of clarity surrounding the concept of autochthony. This problem, to which attention was drawn by the ECRI when it presented its second report on the situation in Slovenia in October, will need to be resolved as soon as possible. The government, and in particular its nationalities office, will need to tackle this problem more systematically. Also lacking is a coordinated policy for addressing Roma issues: both the statutory regulation envisaged by the Constitution and, more seriously, activities for the integration of the Roma community into the social and political life of the community and the labour market. The election of Roma representatives to some municipal councils is a first urgent step in this direction, albeit one that does not go far enough. Discrimination is also felt by religious communities, particularly the smaller ones. A further contribution to this problem is the work (or lack of it) of the Office for Religious Communities, which has also failed to respond to the ombudsman's requests, or has offered incomplete and evasive answers. We have therefore had to request the intervention of the secretary-general of the government, although even this has only made a slight difference. As well as failing to meet its obligations to register religious communities, the office has still not issued the criteria for allocating financial support to religious communities. This can lead to arbitrariness and thus violate the principle of equality before the law.

The problems of the protection of personal data derive, above all, from incomplete legislation that on the one hand enables the disproportionate collection of personal data, and on the other, allows an unrealistic limitation of the accessibility of data which interferes with the public's right to access to information of a public nature. Attempts to balance the two constitutional rights – the right to privacy, and the right of the public to information – have not yet borne fruit.

Following a detailed inspection of six prisons and their departments, our assessment remains the same as last year: significant overcrowding of prisons and even greater overcrowding of detention premises. Of those prisons that we visited, only the open department of Ljubljana Prison at Ig can be said to not be overcrowded. Moreover, there are still spare capacities which, if filled, would slightly reduce the overcrowding in other departments. It is clear that the courts too rarely make use of the legal possibility of open prison for persons sentenced to up to three years' imprisonment, and indeed there was only one such case at Ig in the first eleven months. Overcrowding could also be mitigated by means of more planned implementation of alternative punishments, settlement or postponement of prosecution in the case of minor offences – since in this case sending offenders to prison does not as a rule have the desired preventative effect and is the most expensive

option for the State. The National Assembly's internal policy committee also joined in the efforts to address these issues and set up a special group, which is of course encouraging. We can hope that with their help, conditions will at least partially improve. Overcrowding is further worsened by poor conditions in prisons such as shared bedrooms and poor and inadequate equipment, which has an adverse effect on cleanliness and thus puts prisoners' health at risk. Another urgent problem is inadequate psychiatric care, in particular the inadequate treatment of addiction. Here it should be particularly stressed that the implementing regulation on the execution of the measure of compulsory treatment of alcoholics and drug addicts is already almost three years overdue. Insufficient security for prisoners – particularly protection against violence from other inmates – can also be observed in prisons. This is also a consequence of overcrowding and staff shortages. Spiritual care is also wanting: only one prison has premises for religious services. This needs to be remedied as soon as possible. Here there is a lack of activity on the part of the Office for Religious Communities, which is responsible for proposing measures to regulate these issues. In the area of restricting personal freedom we noted some other isolated examples of violations such as unlawful production, isolation without a court decision or retention in custody after a final judgment.

For a number of years the ombudsman has been warning the National Assembly that an act regulating in its entirety the area of mental health, including the rights of mental patients, urgently needs to be adopted. Although every year we listen to assurances that this will be done immediately, the situation remains the same. We know that the National Assembly has a lot of work to do regulating other areas of the life of citizens, but we do not understand why it has no sensitivity at all to the problems of this group of people. In last year's report we wrote: "For the sixth year running now, the National Assembly has not found the time or inclination to set in law the area of mental health; it would appear that political prestige is more important than help for marginalised people." Unfortunately in this year's report the only thing we can change about this sentence is the number of years – it is now the seventh year running. For this reason the Constitutional Court intervened in the ombudsman's hitherto ineffectual efforts to achieve regulation of this area and ordered the National Assembly to rectify the unconstitutional state of affairs by 24 June 2004. Let us hope that the National Assembly will at least respect the binding will of the Constitutional Court, if not the ombudsman's warnings, which are not legally binding.

The state governed by the rule of law envisages above all the guaranteeing of the dignity of the courts – from district courts all the way up to the Constitutional Court. In past years, however, this has dignity has often been questionable. The National Assembly ought to be a model here, since its attitude provides a model of behaviour for other institutions and individuals. For years the ombudsman has been warning that the National Assembly frequently fails to observe the decisions of the Constitutional Court. In 2003, circumventing the decisions of the Constitutional Court became an almost daily activity of some parts of the National Assembly and the government; I am thinking above all of course of the decision on "the erased". Not even the intervention of international human rights institutions helped improve attitudes. As long as a lack of respect for the Constitutional Court remains normal conduct among politicians in order to win votes, we cannot expect citizens to behave any differently.

Respect for the dignity of the courts is also dependent on the work of judges. Impartial, fair and quality judging without procrastination is the best way to bolster the reputation of the judiciary and judges. From the complaints we receive, however, we can establish that frequently the judiciary itself makes a not-insignificant contribution to reducing its own standing. The most common case here is failure to give a judgment within a reasonable

time, something which has been a constant ever since the organisational changes in 1995. The changes designed to bring an improvement in the judiciary established a mass of smaller courts where the absence of just one judge contributes to the accumulation of backlogs. Even the Hercules project, which was supposed to cut through the Gordian knot of backlogs, has in three years brought no noticeable changes for the better. Several years waiting for a hearing at court does not instil much confidence in a right, while if the interests of a child are concerned it is completely unacceptable. Children must not be allowed to be victims of an unregulated situation. It is therefore vital to adopt measures which will bring faster decision-making – at least for children – as soon as possible. Here, attention also needs to be drawn to the serious consequences of lengthy decision-making at labour and social courts: waiting too long for a judgment causes the appellant serious hardship. A person who has been unfairly dismissed cannot wait years for a judgment.

Lengthy decision-making can also often be observed at the prosecutor's office, although what is most important is quality. Increasingly frequently, complaints to the ombudsman point to an unacceptable lack of uniformity of practice with regard to informing victims that they may themselves commence the prosecution if the prosecutor has decided not to. Most of the complaints the ombudsman receives regarding the work of lawyers contain allegations of unconscientious work. Attorneyship is an independent service within the system of justice and even the Constitution acknowledges its special role in the State governed by the rule of law. The position given to lawyers by the State is in some cases that of a monopoly, and correct and professional work is expected of them. For this reason expert and independent supervision of their work is indispensable. This supervision is carried out by the chamber of attorneys. However, the series of complaints we have received over the past year indicates that this supervision may not be impartial. The disciplinary committee often rejects complaints against lawyers without communicating the reasons for such a decision to the prosecutor. In some cases we have therefore tried to examine the decision-making procedure followed by the disciplinary commission, but the chamber of attorneys has refused to allow the ombudsman to inspect the files. We cannot agree with this, since the monopolistic position of attorneyship in itself requires public supervision.

Although the number of complaints to the ombudsman about police procedures has increased considerably, we cannot say that the situation in this area has worsened compared to a year ago. The contents of the complaints are similar to last year: the exercising of police powers, improper use of means of restraint, disproportion in decisions on detention, and so on. In 2001 the ombudsman submitted to the Constitutional Court a request for a review of the constitutionality of that section of the Rules on Police Powers which stipulates when a police officer may use handcuffs, since the rules allow more lenient criteria for the use of such measures than the law does. In the amending act the legislator removed the discrepancy even before the decision from the Constitutional Court was known. Since we have ascertained that the Police Act (ZPol) allows too much arbitrariness in establishing identity, we have sent the Constitutional Court a request for a review of the constitutionality of this section of police powers. In previous reports we have drawn attention to the lack of impartial addressing of complaints against the police. This has been improved by the amendments to the ZPol, since it is now no longer the body against which the complaint is lodged that decides on the complaint of a citizen, but the ministry. The police have also responded to the findings of the ombudsman from last year's report that detained persons must be acquainted with their rights, and have prepared a special leaflet which will be available in all places of detention. We do not however agree with the amendment to the Act which no longer considers arrest to be a deprivation of liberty. By not counting arrest as a deprivation of liberty, the rights of the arrested person are reduced. This increases the possibility of wrongful conduct by the police. The amended regulation is also questionable from the point of view of the protection of personal liberty as provided by the Constitution.

A series of measures for the rationalisation of work, along with documents and implementing regulations adopted during the past year, indicate a serious approach on the part of the government to regulating the public administration, although it seems that solutions are not always sufficiently weighed up, which means that regulations have to be amended again. The problem of poor organisation of territorial units, and the connections between them, remains. Despite more successful efforts at rationalisation, the problem of the breaching of statutory deadlines for second-instance decisions on appeals remains an urgent problem. This is particularly problematic when the fate of children is being decided. It is unacceptable that in the case of silence from the body concerned, some ministries refer complainants to judicial protection rather than making a decision within the deadline. Complaints show that the problem of a guaranteed source of income as a condition for granting citizenship is still a major problem, above all for the spouses or children of Slovene citizens. We consider this requirement to be unrealistic, since by making it more difficult for a parent to obtain Slovene citizenship, the living conditions of the other members of the family – who are Slovene citizens – are worsened. After long years of keeping silence, the government has begun to address the problem of "the erased". However, resistance from some political parties have made an international case of what should have been an easily resolved problem. The improvement in cooperation between the ombudsman and the government is also apparent in the response of the central tax office, which has improved its communication with the ombudsman and, more importantly, with taxpayers. Nevertheless, it seems that decisions on collection of taxes are not always the most rational either for the State or for the individual and that more flexible decision-making on writing off taxes could save many social cases. Strict and too inflexible insistence on collection of taxes through the seizure of a bank account sometimes renders further business impossible, which further aggravates the problem: the State does not receive paid claims, the debtor is prevented from working and the State gains a new social case.

With regard to redressing wrongs from the past, procedures under the ZPKri are still too slow, as is progress in the concluding of denationalisation and the failure to adopt final positions on compensation for material and non-material damage to materially injured parties, prisoners of war and persons conscripted into the German army.

The issue of the ombudsman's jurisdiction in respect of the Environment and Spatial Planning Inspectorate was clarified in last year's report. It appears, however, that matters are still not clear. The Inspectorate still feels that the ombudsman's inquiries represent a disturbance to its work and refuses him jurisdiction since in its opinion the cases in question are not controversial from the human rights point of view. We cannot agree with this, since in addition to classic violations of human rights committed by state bodies, the ombudsman can also deal with other irregularities, not least the violation of the principle of good management. The problem of the lack of clarification about the competences of various inspectors in cases where an (unlawful) activity violates several areas is particularly urgent and shows that the interventions of the ombudsman are necessary. In cases of overlapping jurisdictions, it is not uncommon to observe all the inspectorates involved trying to pass the buck and shift the responsibility for action onto someone else.

The two most urgent issues in the housing sphere remain the questions of tenants of denationalised apartments and social housing. The ombudsman prepared a special report on the first of these problems in 2002, which was considered by the working bodies of the National Assembly and read at a plenary session at the same time as the new Housing Act. Although the majority of members of parliament agreed with the findings of this report, the Act did not introduce the solutions it proposed. The biggest problem are unprotected tenants who are often subjected to vexatious treatment by the new owners, who wish them to move out as soon as possible. It appears that we will continue to encounter this problem

in years to come. Also contentious is the system that leaves to municipal councils the decision on building social housing, since municipal councils often do not have enough funds to build social housing.

Unemployment and the social problems deriving from it are still the most urgent problem in the sphere of employment. The unemployment rate is still high and, despite efforts, is falling too slowly. Unemployment also affects the position of the employed: often workers dare not resist maltreatment by their superiors for fear of losing their job. A particularly urgent problem is older workers and the disabled. The State guarantees certain benefits to companies that employ disabled persons. Part of the reason for this is to enable them to be competitive on the market despite the lower productivity of disabled workers. A number of cases show however that sheltered enterprises are often founded merely for the benefits to the owners and not for the benefits to disabled workers. The majority of complaints from the sphere of social security relate to the serious material hardship in which individuals and families find themselves, in most cases when one or both parents is no longer entitled to unemployment benefit but cannot get a new job.

In the area of health care, too, the ombudsman drew attention to a number of urgent problems. Here we can mention above all the intolerable conditions at the oncological institute and the fear that the introduction of the family doctor will encroach on the work of some other specialists, particularly paediatricians and gynaecologists. The government immediately got involved in rescuing the Institute of Oncology; while with regard to the health care reform the health minister gave an assurance that the level of rights will not be reduced. We are also observing cases were decisions on fitness for work appear to depend on the role of the doctor rather than on the state of the illness. There are frequent cases where personal doctors, including specialists, consider that an individual is not fit for work, but the appointed doctor (commission) at the ZZZS thinks differently. We cannot agree with the opinion of the chamber of physicians that the different opinions are the result of the different roles of the doctors. The decision on the right to sick leave must only depend on the illness and the nature of the work of the individual – and not on the financial capabilities of the insurance company. In any case the ombudsman's observation from previous reports still applies: there is a need for statutorily regulation of complaints procedures in health care and a precise definition of the competences of the individual bodies involved in these procedures. We expect this to be regulated within the framework of the proposed health care reform.

The relatively numerous complaints from the area of education have drawn attention to the fact that conditions in some institutions are not fully regulated, and also to certain substantive and procedural questions, and in particular to the position of young people with special needs.

Inconsistent decision-making, evading decisions and buck-passing are still the main features of the work of some institutions responsible for addressing the problems of children. Institutions are still not aware that the first guiding principle is the good of the child. More intensive work by the children's rights group set up two years ago at the ombudsman's office has begun to be reflected in a changing attitude towards children's rights, but this is still too slow and inconsistent. A particular problem are lengthy court procedures, where proceedings relating to the benefit of children are lost among a mass of other cases. Even priority treatment at court is of little help, since even this can last several years. While we can to a certain extent accept that for decisions on other matters – an inheritance for example – it is necessary to wait two or three years, when a child's life is involved we cannot accept this. A delay of even a few months can mean a catastrophe for the child. For this reason it is essential to provide the appropriate specialisation of judges and to consider set-

ting up special court departments. Until then, a partial solution would be the elaboration of an additional priority list exclusively reserved for decisions relating to children. We have observed similar conduct at some administrative units: delays over the execution of the decisions of social services centres. Moreover, instead of implementing the decisions of the centre without delay, they sometimes engage in polemics with the centre and question the professionalism of its work. Here we must emphasise that every institution should carry out its own work quickly and efficiently and leave the professionalism of others to other experts. The ombudsman's closer collaboration with schools shows that children's awareness of their rights – and also the awareness of teachers and parents – is increasing. This is a very useful investment for the future.

Domestic violence, and in particular violence against children, is a topic to which we devoted special attention last year. Here we note a situation similar to that which exists in many other areas: lack of awareness or even ignorance on the part of society; evasiveness on the part of the institutions that are supposed to take measures, and shifting the responsibility to others. In order to seek jointly the appropriate systemic solutions for prevention and action in the case of domestic violence, we organised a conference in November which was attended by more than 130 experts from different fields who are professionally involved in the problem of violence and can contribute to building a suitable system of work with victims and also with the perpetrators of domestic violence. According to the assurances of the Ministry of Labour, Family and Social Affairs, a domestic violence bill will be submitted to the National Assembly this year. Until the complete regulation of this area is in place, we will continue to monitor carefully the exercising of the powers that the police and the public prosecutor's office are granted on the basis of the applicable legislation.

2.

ISSUES DEALT WITH

2.1 CONSTITUTIONAL RIGHTS

2.1.0 Introduction

After a marked increase in 2002, the number of complaints classed in the area of constitutional rights fell slightly last year (index of 93). The main reduction was in the number of complaints we class under minority rights. In 2003, the highest number of complaints were those statistically classified in the sub-area of "other", something that also points to the inappropriate classifications in this area. For this reason we have already decided to expand the sub-areas of constitutional rights with three new categories, these being freedom of conscience, voting rights and access to information of a public nature. In this way it will be possible in future to monitor more accurately the trend in the number of complaints in individual areas of constitutional rights.

What was numerically the largest sub-area classification of "other constitutional rights" was highly diverse in terms of the content of complaints received. The majority of complaints required simply replies involving legal advice or legal explanations of the situation in question, such as: Is it possible in Slovenia to scatter the remains of a deceased person, and which body is competent for this? What is the situation regarding the right of access to aquatic or marine assets in the event of compulsory payment of admission fees for the beach? Plus the use of an alcohol breath test at the work place, inspection of the contents of a shopping bag by a department store security guard, the use of a driving licence as an identification document in the bank and so forth. Our intervention was required, however, by a complaint relating to the right to privacy of the female occupant of a single person's room. We believed that the house rules of the temporary accommodation centre encroached upon this right excessively. In accordance with our opinion, the owner of the centre changed the contentious provision of the house rules (see selected cases, no. 1).

In this area we cannot overlook the disturbing fact that at the end of 2003, as many as ten decisions of the Constitutional Court, whereby it had determined the unconstitutionality of laws, were still awaiting execution. The oldest of these is a decision from 1996 in which the Constitutional Court determined the variance of provisions in the Personal Income Tax Act (ZDoh), if exemption is not provided entirely for those sums that parents must provide for the maintenance of their children in order to ensure a minimum standard of living. We also report on certain other Constitutional Court decisions still pending execution in other parts of this report.

2.1.1 Ethnic and other minorities and communities

Viewed statistically, there were fewer complaints relating to the rights of ethnic and other minorities than in the previous year. Nor did we receive a single complaint asserting discrimination on the basis of nationality or ethnicity. This does not mean, however, that we did not receive such cases in connection with the violation of rights in other areas under the ombudsman's jurisdiction. We checked all complaints received in 2003 against this criterion, and even after checking key words in the complaints, we could not find many

that might indicate discrimination based on nationality, race or ethnicity in the claiming of various social and other rights.

No protection provided for collective rights of ethnic communities

In the 2002 report we had already drawn attention to the fact that no protection is provided for the collective rights of ethnic communities that are not specifically named in the Constitution. We have in mind here chiefly the members of nations and ethnic groups from the former Yugoslavia, who became *de facto* a minority in Slovenia after independence, and who account for the largest proportion of the country's inhabitants who have not declared themselves to be Slovenian. We also drew attention to the unclear concept of being autochthonous, and to the overly narrow definition of competence for the Slovenian Government Nationalities Office, which on the basis of its founding acts deals only with the issues of ethnic groups named in the Constitution.

On 14 October 2003, we took part in a round table of the European Commission against Racism and Intolerance (ECRI), which functions under the aegis of the Council of Europe. At this round table there was a presentation of the Committee's report for Slovenia, which was made on the basis of study visits and other factors, and an examination was made of the issues of legislation against racism and racial discrimination, the status of minorities from the former Yugoslavia in Slovenia, and the manner of dealing publicly with these issues in Slovenia. The round table was also the occasion for the first public presentation of a joint appeal by representatives of minorities from the former Yugoslavia, who are demanding the constitutional and legal arrangement of their status in Slovenia. The Human Rights Ombudsman did not receive this in the form of a complaint, but we did receive a similar complaint from the Bosniak [Bosnian Muslim] Cultural Association of Slovenia. This association addressed a request to the government for formal recognition of the Bosniak minority in Slovenia, and backed up the request with the provisions of international documents in the area of human rights and protection of minorities, and with the views of international organisations that have recommended Slovenia take certain steps to recognise the ethnic minorities currently not named in the Constitution, and to secure their more equal treatment in comparison with those minorities specifically named in the Constitution. We answered the complainants that we expected first and foremost an appropriate response from the competent government bodies to their complaint. We are certain that sooner or later a debate will have to be opened up in Slovenia on the constitutional provisions regarding the status and rights of ethnic minorities. This debate is urgently needed. We believe that the first step could be taken by the Slovenian Government, by commissioning expert institutions with the relevant capacity to make a special analysis of the status of ethnic minorities that are currently not specifically mentioned in the Constitution.

2.1.2 The Roma community

We also monitored the issues of the Roma through participation at round tables, consultations, meetings and symposiums, and also through personal talks with the members of that community.

Need to comprehensively address Roma issues

We have drawn attention several times to the need for adoption of a special Roma law that would regulate comprehensively the status and special rights of this community. We believe that the partial regulation of Roma issues is not appropriate, and does not address these issues to an adequate extent. Our opinion has been heeded by the Slovenian National Assembly, which upon examination of the Ombudsman's 2002 report recommended that the Slovenian Government attend to the comprehensive legal regulation of the status of the Roma community in Slovenia.

In dealing with Roma issues we received both complaints from the members of this community and complaints against individual Roma groups. The residents of a certain local community asserted, for example, that they were under threat from the intolerable behaviour of illegally settled Roma. They saw a solution in the resettling of the Roma in another location. Some complaints also referred to relations between individual Roma groups, which often have different views regarding individual problems.

We received from Roma persons primarily general complaints relating to suspected discriminatory attitudes in the area of employment, to their problems in obtaining Slovenian citizenship and regarding their living conditions. In personal conversations, individual Roma advised us of the negative attitude in the media towards members of the Roma community, and this attitude is supposedly demonstrated in the media's explicit citing of their ethnic affiliation in describing negative events. The media supposedly does not report on the positive achievements of their community as a whole and of individual members, such as successful entrepreneurs of Roma origin.

In 2002, Novo Mesto Municipal Council explained to us in relation to dealing with a complaint that in respect of regulating Roma housing, illegal constructions needed to be legalised in the spatial planning sense and in the long term through a proper regulatory plan. In April 2003, we participated in a consultation on "determining the real state and position of the Roma in the Municipality of Novo Mesto". It was agreed at the consultation that in resolving the Roma problems in the territory of the municipality, the representatives of that community should also be involved, and that a timetable should be drawn up for resolving their problems. Later, we received one more complaint from the Roma community in the area of Novo Mesto. Eight Roma families were supposedly living in an unsuitable, run-down communal building, since certain individuals had not settled the water charges, and they had apparently gone more than three years without potable water.

The Novo Mesto Municipal Council settled the problem of supplying the Roma settlement with water in cooperation with the complainant before we actually intervened. Meanwhile it also adopted a decision on amendments and supplements to the regulatory plan for the aforementioned Roma settlement, on the basis of which it should be starting actual physical works in that settlement. It also had another two regulatory plans for the other two Roma settlements lined up for adoption and fulfilment. The project council set up on the basis of the April agreement to resolve Roma issues agreed on the formulation of a strategy to deal with this issue. A draft in the area of social work and infrastructural physical work was expected to be ready for debate by the end of March 2004. In dealing with this case, we were able to conclude that Novo Mesto Municipal Council has been tackling the resolving of Roma issues within its territory more seriously.

We must conclude otherwise, however, for the municipality of Grosuplje, at least in terms of the right of the Roma community to have a representative in the municipal council. Despite the decisions of Slovenia's Constitutional Court, Grosuplje Municipal Council has still not amended its statutes and has no elected Roma councillor.

2.1.3 Religious communities

The majority of complaints from religious communities and their members related to the work of the UVRSVS, the Slovenian Government's Religious Communities Office. The Office has been accused of unequal treatment in allocating financial support to religious communities and funds for social, health and pension insurance for clerics, the non-

resolving of their open questions with the state (see selected cases, no.3) and the registration of their operations.

We have determined that the majority of complaints were justified and that the UVRSVS is not performing or performing badly certain tasks entrusted to it by law and by its founding acts. And the responses from the UVRSVS to our requests for clarification and specific answers were as a rule incomplete and evasive. We had to request answers several times, or even request the intervention of the Secretary General of the Government.

Poor work of the Government Religious Communities Office

The UVRSVS did not respond in writing to applications for the registration of founding of religious communities, nor did it deal with them. One position the UVRSVS Office adopted was that in this procedure there was no need to act pursuant to the provisions of the General Administrative Procedure Act (ZUP). We took the view that the ZUP contains a perfectly clear provision stating that the administrative procedure is applied *mutatis mutandis* in other matters of public law, if such matter is not governed by a special procedure. Since the ZPPVS does not contain any special provisions on the procedure applied in issuing certificates of registration of the founding of religious communities, the application of ZUP provisions as needed is therefore justified. Registration of the founding of a religious community, which can have material consequences and is even sanctioned with penalty provisions, can be considered to be a matter of public law.

The UVRSVS also justified its non-fulfilment of registering the founding of religious communities through the outdated and under-regulated nature of the Legal Status of Religious Communities in the Socialist Republic of Slovenia Act (ZPPVS). We advised the Office that this was not an adequate or justifiable reason for their inaction and non-response to applications for registration of religious communities, since the Office should draw the attention of the Slovenian Government to this or offer timely proposals for appropriate amendments to the law. Since no such steps had been taken, the decision not to deal with the registration of religious communities was in our opinion arbitrary and unlawful, since the valid law and the Decision founding the UVRSVS require it to keep a list of religious communities and carry out the registration of them. If the law does not contain special conditions and provisions regarding the procedure for this, the UVRSVS is then bound to carry out registrations in compliance with the law without special conditions and through the application *mutatis mutandis* of the ZUP provisions.

We also made this suggestion known to the secretary general of the Slovenian Government, who issued binding instructions to the UVRSVS on 18 July 2003, requiring the Office to implement Article 6 of the ZPPVS in respect of dealing with registration of the founding of religious communities and application of the ZUP provisions in this procedure. It was only on this basis that after several years of inactivity the UVRSVS started again to register new religious communities in Slovenia.

Through non-fulfilment of its obligation to provide registration, the UVRSVS breached the principle of equality before the law regarding **allocation of material support to religious communities**, since only those religious communities registered in compliance with the law have been able to participate in this support. Back in October 2001 we suggested to the Slovenian Government that it adopt criteria for apportioning financial support to religious communities and their clerics. During this time the UVRSVS addressed this issue by merely requesting nine different parties for expert opinions, and has supposedly still not received responses from all of them. It is unacceptable that, in this area, since our request nothing has changed in more than two years, and that the situation is practically the same as it was when the Ombudsman first dealt with the matter, determined irregularities and suggested a solution.

We had already observed in 2002 the problems of the Islamic community in Slovenia regarding their intended construction of an Islamic cultural centre in Ljubljana. At that time the procedure was held up in the stage of drafting replies to the remarks offered during the public unveiling of the spatial planning document for determining the location of the Islamic cultural centre. In the opinion of the former mayor, the issue also went beyond the bounds of the local community's jurisdiction. We took the view that this particular case involved discrimination, evident in the hindrances to the progress of the procedure. The newly elected mayor kept her promise, and irrespective of her predecessor's opinion, continued the procedure. At the end of 2003, the Ljubljana Municipal Council confirmed the amendment of the spatial planning document for the zone where the Islamic religious and cultural centre is expected to stand. It is disturbing, however, to note the intolerant response of certain political circles in resolving this issue and in the events accompanying the progress of this procedure.

2.3.1 Implementation of the Equal Opportunities for Women and Men Act

The Equal Opportunities for Women and Men Act (ZEMŽM) entered into force on 20 July 2002. According to the data available to us, ministries have already sent to the Equal Opportunities Office a list of officials performing the tasks of coordinator, ensuring implementation of tasks necessary for consistent adherence to equal opportunities for women and men (Article 13). The Office has already organised a meeting for coordinators, and called upon non-governmental organisations to draw up their proposals of criteria that the Office should observe in co-financing projects. Via a working group the Office is drafting guidelines for an Anti-discrimination Act, which the European Council requires of Slovenia in connection with implementation of directives 2000/43/EC and 2000/78/EC, and which would ensure non-discrimination on the basis of any personal circumstance. We welcome the work of the Office and intend to cooperate in their activities in line with our competence.

The general impression regarding implementation of the ZEMŽM is that a great deal will still have to be done before it is truly applied in practice. Ensuring equal opportunities for women and men means that equal representation of both genders is needed under equal conditions. The stereotypical arguments, such as that women are not prepared to become involved in politics or to take responsibility for decision-making in other senior management positions, do not stand up to scrutiny. Only a balanced representation of both genders in the decision-making processes on the important issues in the life of our society will translate into the possibility of optimal and of course compromise solutions that are acceptable for both genders. A statistical look at the (in)equality of women's representation in decision-making processes confirms the suspicion that we have only just begun.

The circumstance whereby in our society almost three years ago the need arose to set up the Coalition for Establishing Balanced Representation of Women and Men in Public Life, also speaks for itself. The Coalition has not yet concluded its mission, since it is only able with difficulty to pave the way towards a different kind of thinking in the views of those who make decisions. Nevertheless, it can boast success in getting the National Assembly to adopt a decision in favour of amending Article 44 of the Slovenian Constitution in such a way that would ensure greater scope for equal representation of both genders in decision-making processes and in politics.

2.2 PERSONAL DATA PROTECTION

2.2.1 General

In the 2002 report we noted certain systemic deficiencies in the protection of personal data in Slovenia, both on the regulatory level and in the sense of oversight mechanisms. Slovenia's Personal Data Protection Act (ZVOP) is what is termed a systemic law, which permits the establishing of personal databases in the public sector **only on the basis of special legal authorisation**. In all areas of life in society, therefore, sectoral laws should clearly and unequivocally lay down which personal databases will be set up, the type of personal data individual databases will contain, the method of data collection, the time of storage, protection of confidentiality and the purpose of the collected personal data. These requirements of the systemic law, which has been in effect more or less unchanged for more than thirteen years, have thus far not been sufficiently fulfilled in legislation. This is also evident from the annual reports of the inspectorate for personal data protection. This is generating major problems both in practice and in overseeing implementation of the ZVOP. In the public sector, therefore, personal databases can be set up exclusively on the basis of a law. It cannot be done through implementing regulations. So if the need arises to establish a new personal database, for example owing to a new form of disease, a sectoral law must be adopted or amended. In Slovenia's system for setting up personal databases in the public sector there is no other possibility. In the private sector it is possible to process personal data on the basis of written consent from the individual in question, whereby the ZVOP requires that before consenting, the individual must be familiarised in writing with the purpose of the data processing, the intended use of such data and the time of storage. This provision, too, is only rarely observed with consistency.

It is clear that such strict requirements in Slovenia's systemic law on personal data protection cannot be fulfilled to such an extent that we might say this area is in proper order. The gap between regulatory requirements on one hand, and actual observance of the law, along with the day-to-day needs of actual practice, especially through the development of information technology, on the other hand, have led to numerous cases of non-observance of the ZVOP. The personal data protection inspectors have consistently maintained the view that in this area everything is prohibited, unless it is expressly (by law) permitted, but at the same time it is physically impossible to prevent and sanction all violations. Two inspectors, of whom one is also performing management tasks, cannot sanction numerous cases of non-observance of the ZVOP. With this level of staffing, the inspectorate can only operate reactively on the basis of complaints, and has less scope for making inspections, overseeing data protection measures and so forth. And it cannot devote itself to preventive work, whereby through education and awareness-raising for individuals it could draw attention to their rights and possible misuse of personal data, and thereby achieve shifts in this area towards greater respect of privacy. A low level of preventive activity leads to a low number of complaints. Compared to other countries, therefore, Slovenia has very few complaints and a disproportionately low number of overseers monitoring encroachments on privacy and personal data protection. In previous years, too, we pointed out that the majority of the referrals by personal data protection inspectors to misdemeanours judges have lapsed, so that actual cases of sanctions being applied in this area are very rare.

New personal data protection act needed

In last year's report we suggested that consideration should be given to changing the regulatory system for personal data protection, at the same time as the formation of a special unified independent body to oversee the establishing of databases and the use of personal data. Such a requirement also derives from Directive 95/46/EC, which has not been adequately regulated in Slovenia, something observed also by the European Commission. On

this basis and on examination of our report, the National Assembly adopted three decisions relating to personal data protection. In its third decision it recommended that, particularly in view of the development of new technology, the Slovenian Government should study increasing the jurisdiction and professional independence of the personal data protection inspectorate. In its subsequent decision it recommended that the government draft at the earliest opportunity a new personal data protection act which would be harmonised with EU Directive 95/46/EC. We do not know what activities the government has initiated on the basis of these National Assembly recommendations.

We believe that a new law should serve to establish more flexible and in practice more easily applicable solutions for setting up personal databases in different sectors. It will be difficult to persevere in the supposition that the establishing of each database will require an explicit legal basis that must unambiguously lay down both the type of personal data that may be collected and the manner and time of collection and storage, the purpose, method of protection and other factors proceeding from the valid ZVOP. The majority of EU member states have adopted laws empowering independent institutions for personal data protection, so that on the basis of legal criteria in individual cases, setting up personal databases is permitted, and at the same time the conditions for their use is determined, and this is overseen. Such solutions allow greater flexibility in establishing new databases, and facilitate more effective and responsible oversight.

Independent institution for personal data protection needed

Article 28 of the EU directive requires that each state establishes a completely independent institution to protect personal data, precisely in order to carry out the above tasks. Independence is directly linked to the tasks and responsibility of such an institution. In compliance with the directive, the independent body should participate in all the drafting of regulations and other administrative measures in the protection of the liberties and rights of individuals in personal data processing. It should also offer opinions on the justification of setting up databases and regarding exceptions allowing them to be set up while adhering to the legal criteria. The independent body should also have the possibility of direct participation in administrative and court proceedings, including the possibility of active verification in court proceedings. From the above jurisdiction and powers, it is clear that the independent body for personal data protection in the country must be able and ready to weigh up different rights and to independently adopt decisions as to whether and under what conditions it will permit in individual cases an intrusion on privacy.

In Slovenia, the personal data protection inspectorate has no such role, and does not weigh up different rights linked to the protection of personal data, such as the right of the public to be acquainted with information of a public nature on the one hand and the right to privacy on the other. Yet personal data protection is expressly the kind of area that frequently requires a consideration of different rights, and on this basis decisions as to which right in an individual case takes precedence. Our current system proceeds from the presumption that such consideration will be performed by the parliamentary deputies who grant legal authorisation for the establishing of individual personal databases. Practice has shown, however, that such expectations have been overly idealistic.

Excessive encroachment on privacy even under the law

An example of a law that allows excessive encroachment on privacy and a disproportionate collection of the most intimate personal data, is the Health Care Sector Databases Act (ZZPPZ). There was no extensive debate on the content of the law in the National Assembly, and the main substance is in fact evident in its annexes, which allow the introduction of numerous personal databases in the health sector, which in effect all contain personal national ID numbers (EMŠO). The records on treatment of drug users (IVZ 14), for example, require – in addition to the EMŠO, sex, date of birth, permanent residence and other identifying data – the collection of data on sexual orientation, sexual relations to

date, the number of sexual partners, the use of condoms, psychiatric diagnoses and even police and court records. At the end of 2003, we started dealing with a complaint from one of the centres for prevention of drug addiction, which very clearly illustrates the excessive nature of the data that must be collected, and the deficiencies of the procedure for collection, since individuals are not informed in writing about who may then be supplied with the information and for what purpose. Individuals who have contacted such a centre generally have no idea that such data must be collected and then forwarded to the Institute for Health Protection. And the information is supplied in such a way that it is fairly easily identifiable. For records, the ZZPPZ as a rule, prescribes a storage period of 15 years or even permanently, and data are supposedly used chiefly for monitoring and analysing individual diseases. The penalty provisions of the ZZPPZ provide sanctions only for those that do not collect, process and supply the required data, but no sanctions are prescribed for cases of abuse of data thus collected. It is obvious, therefore, that the drafting of the ZZPPZ, and especially its annexes, involved the collaboration of only one profession, that is the health care profession, which has an interest in collecting as much data as possible for its research needs, but here there was clearly no weighing up of other rights involving encroachment on individual privacy and the possibility of abuse of personal data thus collected. This example best illustrates how even the best intention of a systemic law can lead to different kinds of impact, that is to clearly excessive intrusion on privacy, albeit in compliance with the law. If an independent institution for personal data protection were to decide on this, the set of data that would need to be collected in the health sector would undoubtedly be more restrictive and more thoroughly considered.

The solution we propose is the formulation of such a law that will allow on the basis of legal criteria the establishing of personal databases founded on the consent of an independent institution for personal data protection, which will assume responsibility both for establishing certain databases and responsibility for overseeing their use, protection, time of storage and other details that are frequently not possible to envisage in advance in a law. Such an institution should have the authority to act both in the public and private sectors. The current arrangement, whereby the ombudsman provides oversight, but in a limited scope, and only in the public sector, while the inspectorate performs oversight in both sectors through executive authorisation, but is not independent, is poor and a target of criticism by EU bodies. Slovenia is one of those rare accession countries that does not have an independent institution for protection of personal data, with all the necessary powers both in the public and private sectors. The proposed system, which we believe is not counter to Article 38 of the Constitution, would also be entirely harmonised with the requirements of Directive 95/46/EC of the European Parliament and Council on protection of individuals with regard to the processing of personal data and on the free movement of such data.

Police should not disclose identity of accused persons

The unrealistic and inflexible nature of the present system of setting up, using and overseeing personal data has also been demonstrated by the decision of the police, on the recommendation of the personal data protection inspector at the end of 2003, no longer to disclose to the media the initial letters of the name and surname of persons suspected of crimes. This measure met with a predictably sharp response from journalists and media organisations, which cite the right of the public to be acquainted with information that is publicly important. We support the police decision, since apart from anything else it signifies a fulfilment of the suggestions, which we have repeated in our annual reports since 1996. The minister of the interior gave us the promise of such a decision several years ago. One question that remains unanswered, however, is who will take responsibility for the decision whereby in exceptional cases that are of public importance, publication of full names will actually be allowed. Through its last decision the police transferred responsibility for the disclosure of names to journalists, who are of course avoiding this responsi-

bility. Based on his position that everything that is not explicitly permitted is prohibited, the personal data protection inspector sees a solution in the adoption of a legal provision that would take account both of the interest of the public in important information and the protection of the right to privacy and protection of personal data. We believe that no legal provision can delineate with sufficient precision which right will have precedence in a given case. Such a weighing up can only be performed by taking into account all the circumstances of the individual case, and this can be done by an appropriately qualified institution, or individual possessing the knowledge and authority to recommend, in specific cases, which right should take precedence. If an affected person demands judicial protection, the final decision will always be made by a court. This case also shows, therefore, that there is an urgent need to change the present system and establish an independent and professionally powerful institution which will be capable of weighing up the public and private interest in the area of personal data protection.

2.2.2 Dealing with complaints in the area of personal data protection

In 2003, the number of complaints classed in the area of personal data protection fell in comparison with the preceding year. Our assessment is that the highest number of complaints thus far, in 2002, was in consequence of the amendment in 2001 of the Personal Data Protection Act and of the new powers of the Human Rights Ombudsman in this area. If the complaints related exclusively to violations in the private sector, we forwarded them to the inspectorate with the proposal that they investigate them and act in line with their powers, and then report back to us. Here we must express a criticism of the inspectorate, since in two cases we did not receive replies within the proposed deadlines, and despite renewed requests we did not close the cases in 2003.

In terms of content, the largest number of complaints still ask a variety of questions about how the provisions of the ZVOP should be fulfilled and interpreted in different life situations. Many complaints were premature, since the complainants' claims indicated that no violation had yet occurred. For the most part we therefore explained to complainants how the provisions of the ZVOP should be understood, and referred them to the competent bodies. This demonstrates that awareness of the need to protect personal data and privacy in Slovenia is low, so more educational and promotional campaigns should be conducted on the national level.

Unlawful publication of student exam results

Our intervention was demanded by a complaint whereby the Pedagogical Faculty (PF) in Ljubljana apparently placed on the public notice board, alongside the names and surnames of students, all their data on tests passed, the number of repeated exams and information on whether the person was sitting the exam as a full time or external student. We forwarded the complaint to the inspectorate with the suggestion that they perform an appropriate inspection.

After performing an inspection, the inspectorate determined that the PF had no basis for such handling of personal data, either in law or in the written consent of the affected individuals. In a decision which was amended following appeal at the Ministry of Justice, the PF was ordered to desist from including the personal names of students along with the exam results that are placed on the notice board. The exam results already on the board and containing alongside other data the personal names of students had to be removed immediately by the PF. In addition to information such as the subject, lecturer, date of exam, type of assessment, place, time, permitted number of registrations and serial numbers, the exam results placed on the notice board can only set out the enrolment numbers of stu-

dents, exam marks, data on the number of repetitions and the method of study. Owing to the suspicion of a violation of individual provisions of the ZVOP, a referral was made for instigating misdemeanour proceedings against the PF and its responsible officer.

Public prosecutors attempted to set up unlawful personal database on domestic violence

We investigated this issue on our own initiative. In one of our files we came upon correspondence from the District Public Prosecutor's Office in Novo mesto that was addressed to the national Public Prosecutor General. In the letter the District Public Prosecutor provides information on the content of an action plan for preventing domestic violence, which apparently incorporated the obligation of the criminal police office to set up a database on perpetrators and families where domestic violence has occurred. In addition to information on previous dealings with the police and previous convictions, such a database was supposed to contain information on social anamnesis of potential perpetrators and notification of other institutions (shelters, the Human Rights Ombudsman and civil society institutions). Such data thus obtained would supposedly contribute to more effective measures by public prosecutors on the reporting of domestic violence cases and the easier justification of grounds for custody.

Further to our request from the Slovenian Public Prosecutor's Office for an explanation of the content and the legal basis for setting up the aforementioned personal database, we received responses from the office of the District Public Prosecutor, which insisted that this did not involve a personal database pursuant to the ZVOP, but a legitimate agreement on operational methods of work, based on the provisions of the professional instructions on the cooperation between the police and public prosecutors in discovering and prosecuting the perpetrators of crimes.

We sent a reply to the Public Prosecutor General, in which we supported the intention behind the collection of personal and other data that would contribute to more effective work by law enforcement bodies, but we insisted that this involved the setting up of a personal database that required a basis in law. Since we are well aware of the issue of domestic violence and the need for more effective – including preventive – action, we suggested that the establishing of a database on perpetrators of crimes associated with domestic violence should be legally regulated in line with the requirements of the ZVOP. We took the view that setting up such a database without a legal basis was unlawful.

The Public Prosecutor General agreed entirely with our view, and also informed the head of the District Public Prosecutor's office in Novo Mesto of this. She proposed that the office should not persist in carrying out the agreement with the police on setting up a database of potential perpetrators of domestic crimes. Via the General Police Administration she verified and determined that the police authority in Novo Mesto does not collect any kinds of notification, nor indeed has it set up a database as proposed by the head of the Novo Mesto District Public Prosecutor's office. She has given an assurance that the police will not set up databases that are not envisaged in Article 59 of the Police Act (ZPol).

2.3 ACCESS TO INFORMATION OF A PUBLIC NATURE

For several years the Human Rights Ombudsman has drawn attention to the fact that the human right provided by Article 39, paragraph two of the Slovenian Constitution (that everyone has the right to obtain information of a public nature pursuant to the law), cannot be fulfilled without an appropriate law. In the fourth regular annual report, for 1998,

we devoted a special chapter of the report to the fulfilment of this right (point 1.3 Access to information of a public nature). We underlined that the public nature of the work of state bodies, their openness and transparency, which are fulfilled through the possibility of access to information of a public nature, are important elements of a modern democratic state based on the rule of law. Through appropriate provision of information, openness and the possibility of oversight, the confidence of citizens in the work of state bodies and the entire state administration is strengthened. If their functioning is closed, there is greater scope for irregularities, abuse of power and corruption, which ultimately reduces their effectiveness and the trust of the public.

We are pleased, therefore, that our proposals were fulfilled in 2003 with the adoption of the Access to Information of a Public Nature Act (ZDIJZ). This is a modern law deriving from the principle that all information is accessible save for that excepted in a lawful manner. The act also introduces important new features in the obligations of state administration bodies, whereby they must actively familiarise the public, through publication on the Internet, with important information on their work, the regulations in their area and other information that may be important for users of public administration services. The act has already affected visible shifts in this area, with increasing numbers of state and local bodies setting up web sites and using them to post a substantial amount of information that could otherwise be obtained by citizens only with a lot of effort or by special request. Another very useful feature is the new state portal, which alongside the aforementioned information contains links to useful information connected to what are termed "real-life events".

The act will have long-term effects, since its implementation will require changes to the entire culture of functioning in state administration bodies. They will have to operate more openly and in a more regulated way, since the act also requires the publication of catalogues of information accessible to the public. As stated, the act implements the rule that everything is accessible unless it is specifically and in a legal manner excepted from access, so it is already apparent that there will be a problem harmonising these principles with the system of personal data protection. Under the Personal Data Protection Act, everything is inaccessible unless it is explicitly defined as public in a special law. This could mean that regarding access to information of a public nature, different criteria will apply in respect of personal data protection than in the fulfilment of the ZVOP. There is also a difference in the fulfilment of the two laws. The ZDIJZ requires the weighing up of various conflicting rights, while the ZVOP is applied mechanically: whatever is not expressly permitted by law, is prohibited. We believe that this variance will need to be eliminated through a new personal data protection act, where a new importance will be assumed by our proposal that a unified, independent, institution should see to the fulfilment of both laws.

Mechanisms for ensuring access

In the previously mentioned ombudsman's report, in addition to the proposal that the government draft a law as soon as possible that would regulate the manner of fulfilling the right to obtain information of a public nature, we also suggested that a study be made of establishing a body that would provide extra-judicial efforts to ensure implementation of this law (2nd indent in Chapter IV: Suggestions and recommendations). A special feature of implementing this right involves the requirement alongside judicial protection of rapid and effective informal protection of the individual's rights. In some countries this task is performed on the basis of special laws by national ombudsmen (Ireland), special ombudsmen (Hungary) or similar institutions, where there is an increasingly frequent merging of the areas of personal data protection and access to information of a public nature (United Kingdom, Germany, Canada and Australia). The EU ombudsman performs the majority of his tasks in fulfilling the transparency of functioning in EU bodies and of the rights of individuals regarding access to information which these bodies possess.

At the ombudsman's office we not only criticised the solutions proposed in the ZDIJZ, but also proposed concrete solutions in the form of supplements to the law. Together with non-governmental organisations, we proposed a completely new chapter to the law relating to oversight and incentive mechanisms, including a special information technology ombudsman, linked organisationally to the existing ombudsman. Informal oversight of implementation of the ZDIJZ would be entrusted entirely to the independent IT ombudsman, who would also perform advisory and promotional tasks. Separate from these informal tasks, which must be carried out by a body independent of the government, would be the formal complaints procedures at bodies that are competent to rule in second instance administrative procedures. Indeed these tasks are not compatible. **The same body cannot at the same time advise bodies on implementation of the law, for example on what is information of a public nature and what is not, and then decide on the same matters in an administrative procedure**.

Prior to the adoption of the law, the ombudsman wrote a special letter to the president of the National Assembly pointing out the deficiencies of the proposed mechanisms of oversight and incentive, and also pointing out the non-systemic placement of the proposed authority in the legal system. Unfortunately these points, too, produced no response.

Finally, after several draft versions, the ZDIJZ proposed solutions whereby a special authority would be set up for access to information of a public nature. Under the law this authority has only one task, which is deciding in administrative procedures at the second instance. Promotion and advice in connection with access to information of a public nature, including familiarising the public with the manner and conditions of access to information of a public nature, advising other bodies in connection with the application of the ZDIJZ and other promotional and developmental tasks, are entrusted explicitly in Article 32 of the act to the competent ministry, that is, the Ministry of Information Society. The first experiences of implementing the act have shown that, especially in the initial phase of implementing the act, there is still a great need to familiarise eligible persons with their rights in this area and for advice regarding implementation of the act. Many people have been approaching the ombudsman with questions of this nature, and now they are also approaching the authority. The authority is prepared also to perform this task, but as stated, this activity is not compatible with formal decisions in administrative procedures on the same matters. It would therefore be appropriate to transfer promotional and advisory tasks as far as possible to providers in the non-governmental sector, since these tasks must be performed by a body that is independent from the executive branch.

Accessibility of local community regulations

In dealing with certain complaints we encountered the issue of accessibility of local community regulations. Formally, of course, accessibility is ensured through their publication in the public organs of municipalities or in the Official Gazette of the Republic of Slovenia (*Uradni list RS* – hereinafter: UL). But only actual accessibility of regulations makes possible the familiarisation of citizens with their rights and duties, and ensures the predictability of actions by local authority bodies.

Some municipalities publish their regulations in the UL. Individuals who are not familiar with the regulation they are seeking, are helped only by the contents list of each issue and the combined contents that conclude the publication of the organ. Browsing through the UL contents lists (e.g. for a ten-year period) is extremely arduous, and for the average member of the public an almost impossible task. The problem is extremely critical, for example, when an individual does not know whether some area or sector is actually regulated legally in that municipality. Equal confusion arises when an individual encounters numerous amendments to some regulation that they do not even know about. In such cir-

cumstances, neither actual accessibility of issued regulations, nor actual familiarisation with their content are ensured, even though the regulation is formally accessible.

In a somewhat different light, a problem also arises in those municipalities that publish their regulations in their own (or joint) publications. This problem is encountered especially by people who live outside the territory of the municipality, but who are liable to be potentially affected by its legal regulations (such as owners of property).

Actual accessibility of regulations can be increased through the formation of a register (catalogue) of local community regulations or a common register of local community regulations, and transparency of regulations can be increased through the formulation of clarified versions of the wording of regulations.

The Official Gazette of the Republic of Slovenia Act (ZUL) charges the Government Legislation Office with issuing a **register of regulations** issued in the UL. In practice, despite this it only issues a register of national regulations issued in the UL. On the basis of the ZUL the government issued a Regulation on the Computerisation of Databases on Regulations. In this way it undertook to keep a unified register of all regulations that are valid or applied in the Republic of Slovenia. We understand that this applies both to national and local regulations.

The ZDIJZ is also binding on local community bodies. It requires the formulation of **consolidated wording of regulations** relating to their area of work, and binds them to post such wording on the Internet. Members of the public can therefore familiarise themselves simply and free of charge with the valid regulations, and they also have the possibility of downloading them. On the basis of the ZDIJZ the government adopted a Regulation on Provision of Information of a Public Nature, whereby it laid down in detail the manner of publishing the content of local community regulations. Every local community authority should publish on the Internet a consolidated wording of valid regulations and a register of its regulations. The Regulation also gives notice of the formulation of a central Internet collection of unofficial consolidated wording versions of regulations.

The legal provisions adopted in 2003 therefore responded to the described problem. The formation of registers and consolidated wording of regulations is therefore binding on both the state and local communities. But the deadlines for carrying out these legal obligations have expired, without the problem being reduced significantly in practice. The information on web sites indicates that many municipalities have not fulfilled their obligations (a significant number of municipalities do not even have their own web site), although exemplary exceptions can also be found. The Government Legislation Office, too, only enables trial Internet use of the unified register of regulations, which is itself markedly incomplete (local community regulations summarise the situation in 2001).

The ombudsman expects all competent state and local community bodies to cooperate actively in fulfilling the adopted obligations. We will continue to monitor actual accessibility of local community regulations in 2004.

Publication of equal rights coordinators at ministries

In dealing with one complaint we suggested to the government's Equal Opportunities Office that its web site should publish the contact details of the coordinators for the equal rights of women and men at ministries, on the basis of Article 13 of the Equal Opportunities for Women and Men Act (ZEMŽM).

The director of the Equal Opportunities Office replied that in respect of publishing details about the coordinators of equal rights for women and men on their web site, they had con-

sulted with the personal data protection inspector. His view was supposedly that such publication could be controversial from the aspect of personal data protection, since the law does not provide anywhere that such information must be published. In his opinion this would involve the processing of personal data, which state bodies are not permitted to do without an express legal basis.

We disagreed with this view of the inspector for several reasons. The first reason lies in the provisions of the ZDIJZ, which in line with the constitutional provision on accessibility of information of a public nature (Article 39, paragraph two of the Constitution) defines as publicly accessible all information except that which is defined as an exception in Article 6 of the law. Alongside passive accessibility, that is the supplying of information on special request, the act also defines the active obligations of public administration bodies to publish in an appropriate manner catalogues and other information of a public nature, and post such information on the Internet (articles 8 and 10 of the ZDIJZ). The actual content of catalogues of information of a public nature is set out in detail by the Regulation on Provision of Information of a Public Nature (UL, no. 115/2003). The Regulation binds bodies to publish, among the general information in the body and information of a public nature, an organigram containing the addresses and contact details of internal organisational units and indications of the heads of internal organisational units (name, surname, title), if they are official persons (Article 2, paragraph one, point 2.a of the Regulation).

Irrespective of the new rules introduced by the Access to Information of a Public Nature Act and the aforementioned regulation, we believe that in such cases it is necessary to weigh up two rights: the right of access to information of a public nature and the value of protecting personal data. In this specific case there are several reasons in favour of publishing the contact details of persons performing the tasks of coordinator of equal opportunities for women and men. The sense of Article 13 of the ZEMŽM lies precisely in the public nature of data on those responsible for these tasks, so that they might be approached by those that have problems owing to suspected discrimination based on gender. Account must also be taken of the principle that those responsible for offices and tasks in public administration are essentially public persons, they are paid from public funds or rather by taxpayer contributions, and that the reasons for protecting their personal data, which are only data on their name, surname and function or duties, do not outweigh the legitimate right of the public to be familiarised with information on those holding public office and on other responsible persons in public administration.

We communicated this opinion to the Equal Opportunities Office and the personal data protection inspector, to whom we suggested taking this into account in future.

Dealing with this case illustrates again the difficulties presented by the literal and mechanical understanding of personal data protection on the basis of the valid ZVOP, along with the urgent need to weigh up different rights, something that can only be done by a professionally powerful and independent institution for protection of personal data, or for access to information of a public nature.

2.4 RESTRICTION OF PERSONAL LIBERTY

2.4.1 Detainees and convicts serving prison sentences

In 2003, we conducted visits with minute inspections at the prisons of Dob and Maribor, at the Radovljica and Novo Mesto sections of Ljubljana prison, and at the Nova Gorica section of Koper prison (*Institution for the Serving of Prison Sentences – ZPKZ*). We also visited Koper prison and talked with a large number of prisoners. On these visits we conducted talks with several hundred prisoners, and we also received 108 written complaints from imprisoned persons (detainees 41, convicts 67), which is 20 per cent more than in 2002.

Rapid procedure in remand cases

The duty of all bodies participating in criminal procedures is to act especially quickly if an accused person is in custody. In 2003 we again detected several cases where the higher courts had exceeded the three-month instructional, but legal, deadline for appeal decisions in criminal custody matters. Appeal decisions lasting five and even almost eight months represent a violation of the law, for which there can be no excuse, even if objective circumstances are cited, such as personnel problems and the large volume of criminal files.

When a court ruling is final, it is right that a convict in detention should be sent to serve the prison sentence within the shortest possible time from the final ruling taking effect. A wait of almost a month, when a remand detainee has already been given the judgement from the court of second instance and has therefore been informed of the final ruling, does not suggest particularly rapid action, although this was the duty of the court with regard to the detention ordered. The revised version of Article 361, paragraph 6 of the Criminal Procedure Act (ZKP-D) of 2001 does not express the will of the legislators to extend remand detention following the pronouncement of the court sentence, it served merely to remove an error, whereby there is now a legal basis for detention even after a judgement takes effect. The amendment of the law does not therefore permit longer detention, as if this is urgently needed.

Convicts on remand must be sent to serve their prison sentences as soon as this is physically possible. Immediate transfer to serve the prison sentence is especially in the interest of the prisoners themselves, since detention on remand is generally carried out in premises and circumstances that are much worse and less favourable than serving a sentence in prison.

Room still available in open sections

We visited for the first time the Ig Open Unit of Ljubljana prison. Thus far we have received no complaints from convicts serving prison sentences at this prison section, which has the freest regime permitted by Slovenian law. Our visit showed that the situation is well ordered, and the atmosphere relaxed, which is also clearly a consequence of the low level of security and restriction of freedom of movement for the convicts. The majority of them had been transferred to the open unit, while serving sentences in units with stricter regimes (closed or semi-open).

For convicts given prison sentences of up to three years, the court may order the sentence to be served at an open section of the prison. The criteria for such decision include whether the convict's personality is sufficiently steady and whether he can be reasonably expected not to abuse the freer regime of the sentence. Clearly the courts only rarely make use of this legal option, since in 2002 there was only one such case at Ig Open Unit, and up to the middle of November 2003 there had been no court orders for prison sentences to be served at the open unit. Although the official capacity of the Ig Open Unit is 27 convicts,

there were only 18 there on our visit. Here one should not forget the large-scale overcrowding of Ljubljana prison, which with a capacity of 128 persons detained an average of 220 remand prisoners and convicts during 2003. The decision to transfer an inmate within the same section is made by the governor of the facility, and this also applies in transfers to sections with more open regimes. The effects in this area might perhaps be more encouraging if the composition and implementation of the programme of individual treatment was indeed always based on encouraging the convict to cooperate actively in his social rehabilitation.

Prison overcrowding and conditional release

In 2002, overcrowding was again the main feature of Slovenian prisons; this was highest in Ljubljana prison, at 50 per cent and more. We determined only very slightly better circumstances at Maribor and Dob prisons. In Maribor there is an especially marked overcrowding of the remand section, since on our visit there were 49 detainees, while the official capacity permits the accommodation of only 27 persons. Although the optimal organisation and capability of effective and secure functioning of a prison is provided only through occupation under the full capacity, prison facilities are in fact bound to receive all detainees and convicts that are sent there to serve sentences in compliance with the valid regulations.

In its session of September 2003, the National Assembly home affairs committee addressed the issue of "implementing alternative execution of sentences, settlement, postponement of criminal prosecution, serving prison sentences and conditional release". The committee adopted several decisions for the increased establishment of the institution of alternative serving of sentences, settlement, postponement of criminal prosecution and conditional release. It set up a special group of committee members and experts to monitor the situation in prisons, and "still within the current calendar year it will visit at least two prisons in the Republic of Slovenia". The ombudsman welcomes the discussion of this issue in the home affairs committee and the decisions adopted.

For several years, the ombudsman has been pointing out the increasing numbers of imprisoned persons. Overcrowding has already been evident now for five years, especially in prisons with stricter regimes for sentence-serving. In this connection we drew attention in the 1999 annual report to the Recommendation of the Committee of Ministers of the Council of Europe, no. R (99)22 regarding prison overcrowding and the increasing number of prisoners. The substance of the recommendation is precisely alternative sentencing and encouraging other measures that will reduce the length of the actual prison term served (such as conditional release). In the 2000 annual report we paid special attention to the institution of settlement, where by agreement between the accused and the victim it is possible to avoid criminal proceedings for less serious crimes. The procedure of settlement and use of conditional postponement of criminal prosecution contribute to fewer short-term custodial sentences being handed down. And the use of alternative sentencing, where the legal conditions are met for this, always makes a significant contribution to reducing and eliminating prison overcrowding.

Sending the perpetrators of crimes to prison facilities, especially where this involves shorter sentences, does not as a rule have the desired preventive effect, and is probably also one of the more expensive responses of the state in the fight against crime. Of course crime policy does not mean just stamping out crime through repression, but primarily through ensuring a system of appropriate measures for its prevention.

Conditional release is not a right, it is simply a possibility whereby a convict may be released early from imprisonment. The use of conditional release depends primarily on the convicts themselves and the circumstances in their favour. A convict may be released

early if there are reasonable grounds to expect that he will not repeat the crime. Of course the decision on conditional release, as we pointed out in the 2002 report, must be based to the greatest possible extent on verifiable objective circumstances.

The loose and insufficiently clear provisions of regulations merely facilitate arbitrariness, bias or even abuse of authority in deciding on conditional release, on awarding privileges and generally on all issues relating to the life and accommodation of convicts while serving prison sentences. The substance of the Recommendation of the Committee of Ministers of the Council of Europe, Rec (2003)22 of 24 September 2003 on conditional release will also be welcome for the forecast legislative changes of this nature and for the adoption of implementing regulations. The recommendation encourages the use of conditional release as one of the most effective measures for preventing repeat offences, with the early release of convicts from prison being accompanied by measures of help and supervision during the term of the conditional release. The use of conditional release can be rendered conditional on the circumstances on the side of the individual convict (for example, that he compensates for the damage done to the victim of the crime, that he opts for treatment for illicit drug or alcohol addiction which is clearly linked to the perpetration of the crime, or that he enrols in education and professional training and so forth). The recommendation on conditional release shows that there are reservations in the legislative area, and especially in practice, over this institution becoming more established than hitherto. In illustration of this we should mention that convicts at the closed section of Dob prison are on average released conditionally only after serving 75 per cent of their sentences. The basic rule established in the Criminal Code allows conditional release after half the prison sentence has been served.

Common sleeping rooms at Dob prison

The negative consequences of overcrowding are exacerbated in the majority of Slovenian prisons owing to the still predominant practice of communal accommodation for those serving sentences. At Dob prison there are only around 30 single rooms. There are only a token few rooms with two or three beds, and for the most part dormitory rooms have a larger number of beds, where special mention should be made of rooms covering 60 m^2. Such rooms accommodate as many as 12 inmates each, and even more during periods of higher occupancy at the prison. This then gives only 5 m^2 per inmate, which is less than the prescribed 7 m^2, the area required in multi-bed rooms per inmate, if we adhere to the provision of Article 27 of the Rules on enforcement of prison sentences (PIKZ). It is true that the standards pursuant to this article are applied to new constructions or, in line with possibilities, in the renovation of existing prisons, but three years after the entry into force of the Rules on execution of prison sentences this provision signifies a commitment to take all reasonable measures to see that the provisions regarding the prescribed surface area of sleeping rooms are fulfilled also at the biggest Slovenian prison. It is also important to recall Article 42 of the ZIKS, which provides that convicts should as a rule be allocated single rooms, and that common sleeping rooms for inmates should have a maximum of eight beds. The premises in which convicts are accommodated at Dob prison represent a breach of the law.

The common dormitory room with 12 beds at Dob prison has a sanitary area available that provides only one flushing toilet, a urinal, two washbasins and a hand-washing basin, and one shower cubicle. This is inadequate, especially at peak times in the morning. The situation whereby the same toilet, washbasins and shower are used by a large number of persons also has an effect on the **cleanliness** of the space itself and on the possibility of proper personal hygiene for the inmates. Here we should mention the complaints of the inmates who are accommodated in common rooms that Dob prison provides insufficient washing materials and disinfectants, and their quality is also poor.

In direct connection with the communal sleeping and sanitary accommodation for those serving prison sentences, many inmates drew attention to the **threat to** their **health**, owing to their accommodation together with persons who are suffering from serious, dangerous and perhaps even infectious diseases. Although information on the state of health of inmates should be confidential, since this involves the confidential relationship between patient and doctor, it is clear that news quickly spreads in the prison about the various states of health and diseases of individual convicts (hepatitis B and C). The prison must ensure such provision for inmates, including accommodation and other premises, whereby the health and life of the individual will not be threatened as a result of communal accommodation and contact with fellow inmates. If, however, this involves merely an unfounded fear, since a knowledge of medical science would indicate no reason to fear that there could be infection or the communication of disease to healthy inmates, then inmates should be familiarised with this through appropriate information and instruction, and in this way their fears and concerns could be assuaged.

Improvement of living conditions

The state is nevertheless striving to improve conditions. At Dob prison we were informed that a complete renovation is in hand. This should be affected in the coming years in line with financial possibilities. Maribor prison is drawing up a programme of rearrangement of the premises, so that through adaptation of the female section, which typically has considerably more capacity than its actual occupancy, additional space can be provided for the male section. In the male section, prisoners are generally accommodated in 20 prison cells measuring 9.13 m^2, including the sanitary area. Although the size of these cells is more appropriate for one prisoner, there are usually two, and occasionally even three, placed in such cells.

In any case, the remand sections of Slovenian prison facilities merit special attention also because those in custody are (still) **locked up in their cells for 22 hours a day**. There is minimal opportunity offered for detainees to work or to spend several hours a day outside their cells. Owing to the restrictiveness that generally prevails in remand cells, the Spartan conditions and the lacking or worn-out furnishings, often with just poor daylight, poor ventilation of the rooms and owing to other similar, negative circumstances, it would be possible to conclude that in certain remand sections there was almost inhuman treatment of detainees. There was even a noticeable lack of cutlery and crockery.

There is the promise, however, of an imminent improvement of living conditions for over 100 detainees in the opening of the new Koper prison at the beginning of 2004. The basic feature of the new prison is the one and two-bed cells measuring 9 and 14 m^2, which signifies a fulfilment of the standards established in this area by Slovenian legislation. In the new Koper prison, remand prisoners and those serving sentences will be accommodated in 72 cells with wooden furniture and their own sanitation and shower.

Spiritual provision for imprisoned persons

Koper prison is the first Slovenian correctional facility with a special room intended and appropriately furnished for spiritual care. Other Slovenian prisons still have no space that could be devoted solely for performing religious devotions, or at least as a prayer room. At Dob prison the performing of religious devotions is assigned to the space in the corridor in front of the classrooms, while conversations with priests and other representatives of religious communities are conducted in a classroom. Of course these spaces are not arranged for this activity, and are not furnished with any special indications or signs typical of a space for prayer or worship (chapel).

It would be right for the presence of representatives of religious communities in prisons to be properly regulated, since we were given to understand from talks with a member of

the clergy that he did not have access to all areas of the prison where there were inmates. A Roman Catholic priest regularly visits the prison, and representatives of other religious communities also have the same possibility.

The state is bound to ensuring security of imprisoned persons

Prisons are bound to take all reasonable steps to ensure for individual inmates **security in relation to fellow inmates**. There is no doubt that physical violence exists between convicts, and especially in communal accommodation for serving sentences. If physical clashes are not always possible to predict and prevent, then at least rapid and effective action must be ensured if they arise. Upon our visit to Dob prison we determined that in the afternoons and evening, at the end of the week, on days without work and holidays in individual sections (in each block) there are only two guards present. In any more serious incident, two guards are insufficient for effective intervention, and help from guards in other sections cannot be immediate. Supervision of goings-on in sections must also be provided outside the morning time, when prison staff are present in their greatest numbers.

During our visits, especially to larger prisons, the governors have often pointed out that many of the deficiencies found are the result of personnel problems. There is a particularly acute lack of prison guards; at Maribor prison, there are seven systemised guard positions vacant, and at Dob there are six. The smaller number of guards leads to them being overworked, including excessive overtime hours. The problem could perhaps be resolved through the employment of customs officers.

Deficient psychiatric care

The complaints from prisoners who assert a lack of health care are repeated from year to year. It appears that this will be the case until health care in prisons is provided within the framework of the public health network. This also applies to psychiatric care, where it should be remembered that in general Slovenia has markedly unfavourable indicators for mental health. With the deprivation of liberty, problems of a psychiatric and psychological nature simply mount. We thus determined the clearly inadequate presence of a psychiatric doctor, who comes to Maribor prison once a week, but in all for only six to ten hours a month. In no way can this be sufficient for 160 and more (even 200) imprisoned persons. It is also disturbing to note the brief and irregular visits by the psychiatrist to Dob prison. The psychiatrist should supposedly come once a week for five to six hours. As the inmates said, however, the psychiatrist does not come regularly each week. And even if she did come, this level of presence by a psychiatrist is decisively inadequate. Inmates have pointed out that they spend months waiting for their turn to be seen. There is no need to highlight especially how important it is to provide psychiatric care for imprisoned persons, and what the consequences can be if the state does not fulfil this obligation. Here it should also be mentioned that in neither of these two prisons do the nurses have any specialist psychiatric training, although in its response to the Council of Europe Committee for the Prevention of Torture report of October 2002, the Slovenian Government assured that the provision of such training for nurses would be ensured.

2.4.2 Mentally disturbed persons

In 2003, we received 15 complaints in the area of mental health, which in terms of quantity shows no change from the previous year. The same is true of the content, which related primarily to involuntary hospitalisation of patients in closed sections of health institutions. Unfortunately the complaints still lead one to surmise that social security institutions often do not adhere to the prescribed procedure for confinement of persons. They do not send notification of confinement to the competent local court so that there might be judicial control over the involuntary placement of individuals in social security institutions.

For a number of years now the ombudsman has drawn attention to the fact that a law is urgently needed that will regulate entirely the area of mental health, including the rights pertaining to mental patients. Although all the relevant recommendations thus far from the ombudsman have not been sufficient, since of course they are not legally binding, a significant change was achieved in 2003 with a decision of the Constitutional Court of 4 December 2003, no. U-I-60/03-20 (UL, no. 131/2003). This decision determined that the provisions of articles 70 to 81 of the Non-litigious Civil Procedure Act are at variance with the Constitution, for reasons cited in the explanation attached to the decision. The Constitutional Court therefore binds the National Assembly to eliminate the established variances with the Constitution within six months of publication of the decision in the Official Gazette of the Republic of Slovenia (UL), and therefore by 24 June 2004. This offers a reliable promise that we will finally acquire this law that is so important for protecting the rights of forcibly detained persons in psychiatric hospitals. For the period up to removal of the determined unconstitutional elements, the Constitutional Court determined that in the instigation of the confinement procedure, courts must *ex officio* provide an advocate for the forcibly confined person. The notification of confinement, which the authorised officer of the health institution is bound to send to the court, must contain the reasons justifying the urgency of confinement.

The Constitutional Court opted for a six-month period in which the legislator must rework the procedure for forced confinement of persons in psychiatric hospitals, since it understood from the ombudsman's report that a proposed new law had already been drafted, and that this would comprehensively regulate the institution of confinement in closed sections of psychiatric hospitals. The ombudsman now expects that the National Assembly, which has also been reminded by the Constitutional Court, will eventually take appropriate action and within the given deadline eliminate all the established unconstitutional elements, and at the same time comprehensively set in order the conditions and procedures for receiving persons in psychiatric hospitals and social security institutions, the status and rights of such persons during treatment and provision for their treatment outside hospital.

2.5 JUSTICE

2.5.1 Judicial procedures

In 2003, the ombudsman received 717 written complaints relating to judicial procedures, which represents an increase of over five per cent compared to 2002, and more than a 26 per cent share of the entire influx of complaints. Among these complaints, the highest proportion pertained again to civil procedures. We thus received 409 complaints linked to civil litigious, non-litigious and execution matters, followed by criminal cases with 86 complaints. Apart from the lengthy duration of judicial procedures, complaints deal increasingly with other circumstances linked to the right to a fair trial, and also simply to the (im)proper treatment of people who find themselves parties in court and under the authority of the judge performing the judicial function.

The scapegoat for the court backlogs is the organisational changes to the courts carried out in 1994–1995. At that time we acquired a multitude of courts, especially small local courts. The majority of courts in Slovenia have less than 10 judges, and 17 courts have as few as two or three judges. The absence of one judge from such a small court can have an immediately

decisive impact on the number of unresolved cases, and in this way on the emergence or extension of court backlogs. Moreover the "infection" of judges, who consequently cannot judge a specific case, can in a small court represent an obstacle to ensuring regular and continuous judgement of cases. At courts with small numbers of judges, their specialisation is also rendered difficult, if not actually impossible, which may in view of the increasing complexity of cases affect the time and quality of judicial hearings and rulings.

Ensuring the dignity of the judiciary

The ombudsman has stressed several times how important it is for a democratic state based on the rule of law to ensure the dignity of the judiciary. The opinions and views of the ombudsman regarding the functioning of the judiciary are often critical, but the ombudsman takes this approach only if this is supported by the specific case with which he is dealing. Otherwise the ombudsman advocates and encourages a respectful attitude of the individual as a party in relation to judges and the courts. Only a court that is a state body with the highest standing and authority can enjoy trust.

In the system of checks and balances, the judicial branch of power does not represent a closed system and is not untouchable. The independence of judges is written into the Constitution in the interest of people who are parties to judicial procedures, and who may justifiably expect fair adjudication in a reasonable amount of time in proper procedures. In order to ensure independence and impartiality, judgement as the substantive decision-making lies within the exclusive jurisdiction of the judicial branch of power, and above all with the judges themselves. This does not apply, however, to the accompanying circumstances, which should in particular ensure effective, regular and current judgement.

The general public's assessments of the working of the judiciary are not enviable. The judiciary itself does not deny certain serious problems, linked especially to violation of the right to adjudication within a reasonable time frame. In recent years there have in truth been an increasing number of encouraging indicators that give grounds to expect that in the foreseeable future the situation will ultimately be significantly improved. Nevertheless it is right that the judiciary patiently listens to the critical views and assessments of its work.

The complaints received by the ombudsman allow us to conclude that the respect and moral authority of the courts and judges depend primarily on the judiciary itself. Impartial, fair and high-quality adjudication without any unnecessary delay contributes most to the standing of the judiciary and judges themselves. The public and individuals that find themselves in court proceedings justifiably expect such adjudication. In situations without circumstances that would justify a debate on improvement of the state of the judiciary, it will be possible to deal much more easily, and with greater authority, with such imputations as a defendant permitted himself in relation to a judge who pronounced a judgement of conviction when that defendant indicated that she should go and clean the toilets in the court. The ombudsman is convinced that ensuring fair judicial procedures in all their elements will signify more for the standing and dignity of the judiciary than criminal proceedings owing to the utterance of abusive words.

Waiting years for the start of a hearing

Despite the encouraging developments in eliminating judicial backlogs at certain courts, we can still derive no satisfaction whatsoever from the state of the judiciary in terms of ensuring adjudication within reasonable deadlines. Statistics on the number of unresolved cases in 2003 again show no remarkable shift towards more rapid and efficient adjudication. This is also evident in the complaints sent to the ombudsman owing to the length of judicial procedures. Here it should be stressed that for some courts (including local) the ombudsman does not receive complaints that would assert the unjustified dragging out of procedures. At the same time he is swamped with countless such criticism levelled at

other, especially larger local courts, as well as certain courts that decide in appeal proceedings. There is no shortage of cases where judicial procedures have only started moving again after the ombudsman's intervention.

Things can come to a standstill even in such important cases as the trial of a person charged with the crime of sexual assault on a person under 15 years. In the criminal case at the Celje District Court, the charge was brought on 13 January 1997. Although to date only one trial hearing had been conducted, the judge "could not call" a new hearing, even in 2003, "owing to the great number of (other) demanding and extensive custodial cases". After the ombudsman's intervention he provided an assurance that a hearing would be called in the first quarter of 2004, in other words seven years after the charges were brought. There is no need to highlight especially what such a burden signifies for the victim, who must wait years for the judicial epilogue. A long, drawn-out trial can only serve the defendant himself, since the passage of time renders the production of proof increasingly difficult, while the victim of the crime will after several years have to relive the entire tragedy of the sexual assault that is the subject of the charge.

It is still not uncommon to have to wait three, four, five or even more years from the receipt of a case (when an action is brought) to the first appointment for a hearing. In September 2003 the Local Court in Ljubljana informed us that a civil case initiated with an action in 1998 would only come up for a hearing in the first half of 2004. In August 2003 this court was still dealing with "cases that could technically be resolved" from 1995-1996, indicating an **eight-year backlog**. The same court thus responded to one complainant that it could not accommodate his "proposal for an urgent resolving" of a case that was started with an action brought in 1998. So five years after the action was brought, the time had still not come for an "urgent resolving" of the case, let alone for resolving non-priority cases from the same year, which will clearly still have to wait patiently for some time before proceedings are started. On the other hand, this finding comes as no surprise, given the explanation of the acting president of the Ljubljana Local Court that, on taking up office in March 2003, a judge was given more than 450 files to deal with. How what was very probably an entirely inexperienced judge could make any effective headway here is another story altogether.

Waiting for execution by executor

Despite the revised version of the Execution and Security Act (ZIZ), which should speed up in particular the performance of execution, numerous local courts are still facing problems in this area. There are still many complaints that assert the slowness and ineffectiveness of execution and problems with executors. At numerous local courts the number of unresolved execution cases runs into the thousands, if not the tens of thousands. In this connection we discovered upon a visit to the Local Court in Slovenj Gradec that on 31 May 2003 there were 12,759 unresolved execution cases, and their number is growing, while the executors are still being allocated cases from 1998. In the opinion of the court president, this will be the situation up until the end of 2004. And this means a **wait of five years for execution**, which is far from the rapid action that the ZIZ requires of courts.

We also heard of similar problems on a visit to Nova Gorica, where there is a lack of rooms for adversarial hearings in the court building. The president of the Local Court in Nova Gorica pointed out that in the execution procedure there is still too much administration, especially with the work of executors, which indicates that there is still room for improvement in the legal framework provided for efficiency of execution. Although in individual execution cases the executor may perform direct actions of execution and securing throughout the territory of Slovenia, the president of the court stressed that the bottleneck was caused by there being only one executor appointed to perform execution services in the territory of the Nova Gorica Local Court.

Land register promises better times

According to the information available to the ombudsman, the process of computerising the land register is making effective progress. As a rule, however, a year and more may still pass between the submission of a proposal and the issuing of a land register decision.

The new Land Register Act entered into force in 2003, and this brings extensive changes to the legal arrangement of the land register. Since the land register is the cornerstone for the regulation of legal relations in the area of immovable property, this involves a significant legislative amendment of the legal arrangements, and it should ensure greater security in performing legal transactions with real estate.

Long duration of appeal decisions

The problems of ensuring adjudication in reasonable and legal time frames are also besetting the higher courts, which decide on appeals in civil and criminal cases. It appears that all the higher courts without exception require on average more than one year each to rule on appeals in civil cases, and the civil section of the Higher Court in Maribor needs up to three years and more. We are also still observing excessive time differences in the resolving of appeal cases allocated to different judges at the same higher court, which produces in the party concerned at the very least the feeling that certain individuals are privileged, if not accusations of biased adjudication, as we pointed out back in the 2002 report. By changing the method of allocating cases to individual judges it would be possible to ensure better harmonisation of the time spent on appeal rulings.

Problems of timing are also being experienced by the judges at the Higher Labour and Social Court, who for several years now have determined an increase in the influx of social law cases, especially in 2003. Although four higher judges deal with these cases, at the end of 2003 they still had two unresolved cases from 2000 and 26 cases from 2001. This signifies a wait of more than two years merely for an appeal ruling in a social dispute, which is unacceptable. The same goes for appeal rulings in labour disputes, where even in priority cases such as termination of employment, there is a wait of at least one year.

Exclusion of judge or prosecutor as a national sport

There are various reasons for judicial procedures lasting several years. Alongside the complexity and scope of the case, the reasons may also lie on the side of a party in the procedures, including the defendant. In determining whether adjudication has gone beyond a reasonable deadline, it is therefore essential to assess the actions of the parties themselves and their possible contribution to making the procedures longer. Of course, it should be stressed here that even where there is an extensive and complex case, the parties are justified in expecting the court to rule on the case without any undue delay.

The right to a fair trial requires not just the impartiality of the person performing the judicial function, but also the appearance of impartiality. No circumstance can be given that might arouse in any of the parties mistrust or a suspicion of bias. It is precisely for this reason that the Civil Procedure Act (ZPP) and the Criminal Procedure Act (ZKP) lay down the possibility of excluding a judge (and also the public prosecutor in criminal procedures), if circumstances arise that would raise doubts about their impartiality. Not just a *iudex inhabilis*, who is the object of exclusion, but also a *iudex suspectus*, who is the object of rejection (suspicious or affected judge), may not rule, in order to avoid an unfair trial.

Numerous complaints received by the ombudsman lead one to surmise that parties (too) frequently use the institution of exclusion. Sometimes it seems that defence counsels in criminal procedures wish through frequent requests for exclusion to enhance their reputation among their clientele. It is enough for them that their proposal of evidence is not allowed, and they immediately seek exclusion.

Exclusion of judges (and public prosecutors), especially where there are no proper grounds for this, more than anything extends the procedure and puts off a final ruling. Of course, for the individual who requires judicial protection, it is extremely important that he is adjudicated by an impartial judge. If there is any doubt about this, he has the possibility of requesting exclusion of the judge. But there are clearly also abuses here, which in addition to increasing the length of the court procedure can have other negative effects.

Just recently the ombudsman has dealt with several cases where a defendant has lodged against a judge and public prosecutor criminal information, a subsidiary charge or charge, as well as a civil damages suit. A typical example is a case linked to criminal proceedings at the Ptuj District Court, where just in 2003 the defendant lodged with the Ptuj District Public Prosecutor as many as 55 criminal information charges against persons who in any way participated in the criminal proceedings, that is, against judges, public prosecutors, experts, police officers and witnesses. In a case at the Nova Gorica District Court, a defendant backed up his assertions of violations and illegalities in the criminal procedure by submitting damages suits and several criminal information charges against the judges and court presidents who decided in his criminal case or in the procedures stemming from this criminal case.

For judges or public prosecutors, who can suddenly find themselves in the role of defendant in a criminal or civil case, such circumstances are unpleasant and burdensome. Judges (and also public prosecutors) must be enabled to perform their function unimpeded and without fear. At the same time there is a need to prevent abuse of the procedural institution of exclusion, if it serves unlawful aims and not the ensuring of impartiality in adjudication.

Lodging a damages suit, criminal information or subsidiary charge against judges or public prosecutors can affect the impartiality of their action in court procedures. So in this connection an actual circumstance may arise that permits or even requires the institution of exclusion. When such circumstances truly arise is the real question. The decisive factors are simply the circumstances of the specific case.

The circumstance merely that a defendant has for example lodged a charge against an investigating judge and public prosecutor, is not (yet) sufficient in itself for exclusion. It would be entirely different, however, if as a result of charges being laid against them a judge or public prosecutor dealt with and ruled on a criminal case against a defendant (who was at the same time a subsidiary plaintiff) in a biased way, or in some other way violated the right to a fair trial.

It would be a case of abuse if, by using the institution of exclusion, a defendant could choose a judge or public prosecutor. By lodging criminal information, a criminal charge, charge or suit for damages, the defendant would (artificially) create the impression of a certain relationship of reasons for rejection between himself and the judge or public prosecutor from the criminal proceedings against him. If the request for exclusion was granted simply because the defendant had lodged criminal information, a criminal charge, charge or suit for damages against a judge or public prosecutor, then this would actually give rise to a situation where defendants could simply exclude every single judge or prosecutor that might act or take on a role in the criminal proceedings against them. Such an interpretation of the institution of exclusion would deny the right to natural justice, since it would *de facto* enable the defendant to select a judge and public prosecutor at will.

We also handled a case where after lodging a subsidiary criminal charge against the investigating judge and public prosecutor, the defendant demanded their suspension. Article 95

of the Judicial Service Act provides suspension in the event that criminal proceedings are brought against a judge owing to a **reasonable suspicion** of having committed a crime through abuse of the office of judge. Article 49 of the Public Prosecutor Act (ZDT) makes similar provision, but does not explicitly require that criminal proceedings are instigated owing to a reasonable suspicion of having committed a crime. But the logical interpretation of this legal provision leaves no doubt that for public prosecutors, too, reasonable suspicion of having committed a crime must be established, otherwise the instigation of criminal proceedings cannot have the automatic consequence of suspension. If this were not the case, district public prosecutors who press charges in specific criminal cases would be at the mercy or otherwise of the defendant seeking their suspension. In a social state based on the rule of law, it is impossible to make such a broad interpretation of the authority for suspension pursuant to Article 49 of the ZDT.

Protecting the interests of the child in court settlements

On 5 November 1997, a minor sold a residential building in Maribor, which she had inherited from her mother. In concluding the contract of sale, she was represented by her father as her lawful representative. Clearly he also received the purchase money for the sold building. Later, through a court settlement made at the Maribor District Court in 1999, this contract of sale was annulled. The subject of the court settlement was the annulling of the contract, and as a party to the settlement, the minor girl was bound to return to the purchaser the purchase sum equivalent to 80,000 DM in tolars. In this court procedure, and in the actual conclusion of the court settlement, the minor was again represented by her father as the child's lawful representative.

In concluding the court settlement, the subject of which was annulment of the contract of sale of real estate, as well as the obligation of the child to pay the sum equivalent to 80,000 DM in tolars, only the father acted on the side of the minor. In principle, parents can of course conclude legal transactions on behalf of their children and for their account as lawful representatives, but this requires the consent of a social work centre, if an action based on the representation by parents has the consequence of a major change to the property (especially immovable) of the child. The provisions of Articles 110, 111, 122, and also 191/1 of the Marriage and Family Relations Act (ZZZDR) restrict independent disposal by parents, in order to protect the child's interests in the area of property. The obligation to protect the interests of the child in the area of property lies not just with the social work centres, but with all state bodies, including the courts (compare Article 3 of the UN Convention on the Rights of the Child).

It is especially important to exercise caution when parents represent children but their interests may well be counter to those of the actual child. In the case in question, the purchase sum for the sale of the house was clearly taken by the father. Yet in the court settlement on the annulling of the contract of sale, the obligation to return the purchase sum was placed on the daughter, and therefore on a minor. It came as no surprise that the purchase sum received was not returned, and today a procedure of execution is being conducted against the minor girl through the sale of her property, in order for the non-repaid purchase sum to be paid.

Settlement of the dispute was concluded in court, and therefore in the form of a judicial settlement. This means that the **judge permitted the concluding of a judicial settlement** of such substance, although the minor was being represented (only) by her father as the lawful representative. The court did not inform the competent social work centre of the civil proceedings and of the actual concluding of the judicial settlement. Neither, of course, did any of the parties to the litigation, not even the lawful representative of the minor girl. The judge who conducted the proceedings and permitted the judicial settlement, clearly also took no other step towards protecting the interests of the minor party in the litigation.

Although perhaps some circumstance pursuant to Article 82 of the ZPP had arisen, whereby the court could appoint a temporary guardian, this possibility was clearly not even discussed.

We realise that there is no use in crying over spilt milk. And it would probably be hard today, if not impossible, to determine the reasons for the judge's decision in proceedings over four years ago. We did consider this, however, to be an important issue, which can clearly have a major impact on future life, as was evident from the case of the minor girl. For this reason, in the role of *amicus curiae* we requested from the Maribor District Court for an assessment of whether the judge had acted properly in 1999 when she permitted the parties in the litigation to conclude a judicial settlement of such substance, whereby the minor plaintiff in the suit was represented "only" by her father as a lawful representative, who had himself a few years earlier acted in the same role to conclude a contract of sale and received the purchase money, while now he had bound the daughter to return the purchase money to the purchaser. Unfortunately we received no response from the court within the requested time.

2.5.2 Public prosecutors

The Act Amending and Supplementing the Public Prosecutor Act (ZDT-B) entered into force in 2003, and this represents an extensive and important revision of the Public Prosecutor Act. The Slovenian Government gave as the aim of the proposed revision the more effective exercising of powers by the public prosecution service and the facilitating of additional professional support for the work of the public prosecutors. Changes have also been made on the symbolic level, since the ZDT-B provides that public prosecutors offices are independent state bodies as part of the justice system. Although in the system of division of power the public prosecutors are probably closer to the executive than the judicial branch of power, it is beneficial to understand such a declaration primarily as a guarantee of the independence of public prosecutors in their work. It is therefore emphasised that public prosecutors perform their tasks (only) on the basis of the Constitution and law.

The ZDT-B expressly binds public prosecutors to resolve cases assigned to them without any undue delay. We are certain that public prosecutors were well aware of this duty of theirs before the supplementing of the act. Nevertheless this is a welcome addition to the wording of the act, even if it is primarily symbolic.

Apart from the length of the decision-making process, complaints linked to the work of public prosecutors frequently assert circumstances that give rise to accusations of insufficient care and quality in their work. For the individual, just as important as having the case resolved without undue delay is having a decision by a public prosecutor that is impartial, professional, correct and lawful in the actual and legal aspects. Here it is worth reiterating how important it is that the reasons recorded in the decision to dismiss criminal information are exhaustive, logical, convincing and explained in a way that the (lay) person bringing the criminal information can understand them. Dealing with a case too quickly can bring with it the danger of being insufficiently solicitous, scrupulous and precise, which can affect the quality of the work performed. We are certain that the individual in question would rather wait a little longer, so that the decision of the state body might take into account truly all of the decisive circumstances and be legally well-founded in compliance with the law.

The corrective factor for any potentially erroneous decision by a public prosecutor is the right of the injured party to begin or continue criminal proceedings. For this reason the

injured party must always be advised of this possibility whenever the law provides. Complaints sent to the ombudsman lead one to suspect that this is not always the case.

Article 66, paragraph 5 of the ZDT re-frames the right of the individual to view documentation held by public prosecutors. This right pertains to any person that expresses a legitimate interest in doing so, and if this does not jeopardise the interests of the proceedings, the secrecy of procedures or the privacy of persons. The new provisions are significantly more favourable, since prior to implementation of the ZDT-B, on the basis of the provisions of the ZDT the individual in effect had no prospect of viewing documentation held by public prosecutors. Yet since in respect of the right to view registers, directories and records, it should probably be interpreted in connection with the restrictions provided by Article 69 of the Public Prosecutor Act, only actual practice will show how far the new provisions actually give this possibility to the individual.

A number of complainants requested us to make enquiries at the district public prosecutors office about what had become of the criminal information they had brought. The problem lies in the fact that the person bringing such information as a rule does not receive any details of what is happening in connection with the charges, except when the public prosecutor dismisses the information. So a year or more can pass without the informer, who is generally also the injured party, receiving any kind of information or explanation regarding the fate of the criminal information or regarding the actions of the public prosecutor based on such criminal information. The ZDT does not provide the right of the informer as the injured party to receive such information, but this is probably no obstacle to implementing the practice of the informer receiving in a reasonable time some information about the actions and decisions linked to the charges submitted, including when no decision to dismiss the charges has been issued. The informer, especially when this also involves being the injured party, cannot be denied the interest in finding out about the (further) actions of the public prosecutors regarding the criminal information brought to them.

Right of injured party informer to start proceedings

The complaints addressed to the ombudsman indicate differing practices among public prosecutors regarding the use of the legal note pursuant to Article 60, paragraph 1, and Article 161, paragraph 1 of the ZKP, whereby injured parties may themselves instigate prosecutions. A consequence of this is the disaffection of individual informers, who assert that the cited criminal act renders them injured parties, something that the public prosecutors, however, did not take into account in deciding to dismiss the criminal information.

The function of criminal prosecution of those committing crimes lies primarily within the jurisdiction of the state. Here, however, the institution of subsidiary charges acts as a corrective against the monopoly and possible incorrect views of the public prosecutor in assessing the question of whether grounds for criminal prosecution have been established. The injured party as prosecutor performs the function of bringing charges in the public interest, although in doing so he is perhaps guided chiefly by motives of an entirely personal nature. Of course the role of subsidiary prosecutor can only be assumed by the person reporting the criminal act (informer) who has the status of injured party. A person who is not an injured party may not therefore be a subsidiary prosecutor. Pursuant to Article 144, 6th indent of the ZKP, an injured party is a person for whom any personal or property right has been violated or endangered by the criminal act.

It is possible to interpret the expression of the injured party more broadly or more restrictively. Yet the status of injured party can probably be granted to any person that asserts a violation of rights that are the object directly or indirectly of protection in the specific criminal act.

This is also indicated to us in the following example.

A complainant brought criminal information to the District Public Prosecutor in Nova Gorica against the director of the hospital, accusing him of taking and appropriating her health documentation. The public prosecutor took the view that the asserted actual state did not contain indications under law to constitute the crime of theft pursuant to Article 211 of the KZ, although it could constitute the crime of preventing the production of evidence pursuant to Article 290 of the KZ. The criminal information was dismissed, since the view was that the collected data did not support the suspicion that the indicated criminal act had been committed. In the decision to dismiss the information, the prosecutor did not advise the complainant that she could instigate a prosecution as provided by Article 60, paragraph 1 of the ZKP.

In this connection the complainant approached the Supreme Public Prosecutor of the Republic of Slovenia, which sent her letter to its external department in Koper for perusal. In a reply copied for information to the ombudsman, the head of the Koper department affirmed the action of the district public prosecutor in Nova Gorica in not advising the complainant pursuant to Article 60, paragraph 1 of the ZKP in the dismissal decision.

The response from the head of the Koper department confirms the view of the Nova Gorica public prosecutor, that the only true qualification of the act cited in the criminal information is the crime of preventing production of evidence pursuant to Article 290 of the KZ. And since this crime falls under the chapter on crimes against justice, "where there are no injured parties as natural persons", in the decision to dismiss the information "the legal note pursuant to Article 60 does not enter into consideration".

Such a strict (absolute) view, that in criminal acts against justice pursuant to chapter 28 of the KZ there cannot be injured parties, seems dubious. We envisage that the object of criminal law protection in such crimes is to ensure unimpeded working of the justice system, which at least from the point of view of the individual can only lie in the objective of (effective) ensuring of the right to fair adjudication. According to the already quoted definition of the term injured party, this status is accorded to any person for whom any personal or property right has been violated or endangered by a criminal act.

Committing the crime of preventing the production of evidence pursuant to Article 290 of the KZ can lead very quickly to the violation of or at least a threat to the right of the individual to a correct and lawful decision in (judicial) procedures. If the director of a hospital concealed (or even destroyed or damaged) the health documentation of his patient, in order to prevent production of evidence showing unprofessional treatment, then this is above all an encroachment on the rights and legally protected interests of that patient, who can claim damages in an indemnity suit in consequence of the assertion of unprofessional treatment. At least indirectly, then, an object of protection in this crime is the right of the individual who is the victim of prevention of evidence being produced in judicial procedures. With such an interpretation, the informer in this case could also be granted the status of injured party and thereby the right to press subsidiary charges.

We requested the Public Prosecutor General to examine the opinion expressed in the response from the head of the external department in Koper in the light of the above considerations and reservations of the ombudsman, and to communicate her view to us.

The Deputy Public Prosecutor General responded with the information that he agreed entirely both with the substance of our complaint and with all the arguments therein. He suggested to the District Public Prosecutor's office in Nova Gorica that it send to the

injured party a decision dismissing the information but with the legal note pursuant to Article 60, paragraph 1 of the ZKP. Since this is a very important issue, regarding when a person that has been affected by a crime has the status of injured party pursuant to Article 144, 6th indent of the ZKP, a special article on this will be published in the internal magazine for the public prosecution service. They will recommend that public prosecutors interpret the concept of injured party broadly and thereby in less clear cases leave the assessment of this issue to the courts.

Restraint in informing the public

There have been regular complaints from affected individuals, to the effect that the police or public prosecutors have released to the public information that enabled the disclosure of the individual's identity in connection with the accusation of a criminal act, for which it was shown later in criminal proceedings that the accusation was unfounded. This involves especially the dissemination of information in the earliest stages of the preliminary criminal procedure, where it has merely been established that there are reasons to suspect that a crime has been committed for which the perpetrator is prosecuted *ex officio*. Reasons for suspicion signify less probability that the suspect committed the crime than is the case in a well-founded suspicion, which then permits the start of criminal proceedings. Since reasons for suspicion involve a lower quality or lower level of probability, in spreading information about accused persons on this basis, state bodies should act more scrupulously and carefully, and should take into account that a level of certainty, including subjective certainty, is needed for a criminal conviction. Experiences show that there is a long and uncertain path in judicial procedures leading to such a final result. Hasty and, for the affected person, damaging public information can lead to violation of the constitutionally guaranteed rights of individuals that protect their privacy and personal dignity.

In providing information to the public, greater attention should be paid to the presumption of innocence. In a state based on the rule of law, it is only the judicial branch of power that can convict a person in proper procedures, and under no circumstance can such a "judgement" be pronounced by the police or public prosecutors, especially when this happens perhaps even before the instigation of judicial procedures.

2.5.3 Misdemeanours judges

Misdemeanours judges are in a period that could be described as a "transition". The new Misdemeanours Act (ZP-1) entered into force on 8 February 2003, and will begin to apply on 1 January 2005. The entry into force of the ZP-1 has terminated the validity of the "old" Misdemeanours Act, although its provisions will still be used until the ZP-1 begins to be applied. In short: the law which has ceased to be valid, is being applied, while at the same time the law that is valid is not being applied. This situation seems a little complicated, but we trust that it will have no negative consequences in practice, especially in the work of misdemeanour procedure bodies.

In 2003 the largest number of complaints relating to misdemeanours judges were those that asserted inaccuracies in the actual situation recorded in the penalty proposal, especially in respect of misdemeanours under the Road Traffic Safety Act. At the same time these complaints accuse misdemeanours judges of exercising insufficient objectivity in pursuing penalty proposals, without listening carefully to the opposing view of the defendant. Complainants desire the intervention of the ombudsman particularly in cases where they have been given the punishment of a suspended driving licence.

We were surprised by the response of the Celje Misdemeanours Judge, when we made enquiries owing to the long duration of procedures. In two procedures, defendants were

summoned ten times in one year, but they continually made excuses without responding to the summons. The reasons they gave in their excuses were not justifiable, especially not given their repetition (such as absence owing to business travel). We took the view that such actions, where the defendant can clearly evade proceedings, threaten the standing of the misdemeanours judge as a state body. For this reason we pointed out the authority to forcibly produce in court a properly summonsed person who does not respond to the summons. We also understood in this light the explanation of the misdemeanours judge that the "cases are in the stage of a search for means of ensuring the presence of the defendants at hearing appointments and for the possible continuation of the misdemeanours proceedings".

2.5.4 State attorney

State attorney for several judicial procedures

The state is responsible for ensuring the regularity and effectiveness of judicial decision-making. At the same time it is also contributing a great deal itself to the situation whereby Slovenia's courts are overworked, since it is acting as a party in several thousand judicial procedures.

With a greater readiness on the part of the state to resolve disputes by agreement, it would be possible in a proper and professional way to achieve out-of-court settlement of many situations of dispute. The complaints received by the ombudsman often indicate that in disputes, the state and public prosecutors as its lawful representatives, simply do not want to adopt a final position or make a decision on the demands of the opposing side, and prefer to pass the buck on to the courts. It is as if the state officials are scared to take responsibility for their decisions which they might have to make in connection with the work and tasks they perform for their employer. Unnecessary judicial procedures are not simply an additional burden on the courts, they also usually generate even more cost to the state and the budget. There is probably no need here to highlight the ill-will and disappointment of individuals, who owing to the rigid views of state officials must wait several years for the outcome of a judicial procedure, even though it would often be possible to achieve a rapid out-of-court settlement regarding the disputed right or legal relation.

The above is demonstrated by the example of a complainant, who sent a properly reasoned request for damages from the state to the state attorney. The state attorney's office responded with a brief note to the effect that it rejected entirely the request. At the same time it instructed the complainant, in the event that she did not agree with this response and persisted in her request, to bring an action in court.

The complainant approached the state attorney on the basis of Article 14 of the State Attorney Act (ZDPra), which provides a preliminary procedure whereby the situation is resolved prior to the initiation of civil or other proceedings. Under this legal provision, the state attorney must within 30 days take appropriate action and inform the proposer of its position regarding the proposal.

We are convinced that one of the objectives, which the legislators are trying to achieve through this provision, is the prevention of judicial disputes. This applies especially where the state is a party to the disputed (damages) relations. We understand the legal provision of Article 14 of the ZDPra to mean that the legislators are thereby trying to ease the path of the injured party to obtain indemnity, and that an agreement be achieved out of court if this is possible. If the lawful representative of the state takes the view that the claim for damages is not founded, he will then communicate this (in good time) to the claimant and

thereby enable the latter to compare his position with that of the opposing side, before any possible decision to bring an action.

Given the response as received by the complainant, we requested a clarification of whether this was the regular practice of the state attorneys, whereby they responded to submitted damages claims simply with a terse statement of position rejecting the claim, without at the same time explaining the reasons for this position. Indeed we doubt the correctness and propriety of such action, in view of the purpose and objective of the preliminary procedure, before the affected person perhaps decides to start a judicial procedure. We are convinced that with appropriate explanations and reasoned responses, the state attorneys could contribute a great deal to raising the legal culture, as well as helping parties to familiarise themselves with all the aspects of the case before they decide to continue down the judicial route. True, state attorneys represent the state, but as such they are also bound to act above all in the interest of the state's inhabitants. The state exists for people, and not people for the state.

In reply the state attorney's office informed us that they could not go into any extensive detail regarding the reasons for rejecting damages claims, since such detail is considered in drafting responses to actions that are brought. This might **mislead the client**, who might "have all kinds of damages claims owing to erroneous opinions or responses to requests".

Such a response surprised us. There is no apparently justifiable reason for state attorneys not presenting their views (or the view of the represented state body) to the opposing side during the preliminary procedure stage. Otherwise we arrive at an unfair position for the damages claimant, who is **bound** to use the preliminary procedure and in doing so to **set out** all his arguments regarding the claim, while the opposing side (the state) can deal with its obligation to cooperate in the preliminary procedure simply with a statement rejecting the damages claim. Such a method of work does not ensure fair and equal procedures, where the two parties to the dispute present their views, and where if the matter goes to litigation, they will contend as equal parties. The question is, then, why create privileges for the state attorneys and thereby the state, when the preliminary procedure is without doubt intended for out-of-court settlement of disputes, and also as help for individuals to settle their disputes with the state without any expensive and lengthy judicial procedures.

We have even greater difficulty understanding why reasoned responses to damages claims could **mislead** clients, who could then claim damages based on erroneous opinions or responses to requests. After all, the state attorney service is a highly professional body, which owing precisely to this quality has been entrusted with the important role of conducting preliminary procedures. We see no reason why with proper, fair and professional work state attorneys "could mislead clients", who might consequently "have all kinds of damages claims owing to erroneous opinions or responses to requests". By the response in this section it was probably not implied that the state attorneys are worried about the correctness and professionalism of their views and responses and for that reason do not wish to communicate them to the other side.

2.5.5 Attorneys

Chamber wants to decide on disciplinary violations of attorneys without external oversight

A client who approaches an attorney justifiably expects professional, efficient and beneficial services. The relationship between client and attorney cannot per se be equal, since the client's position is subordinated and dependent, and they turn to attorneys owing to their difficulties and problems, which have associated personal and often even mental stress.

For this reason the law binds attorneys to represent clients conscientiously, honestly, scrupulously and according to the principles of their professional ethics.

In 1997 a complainant agreed with an attorney to bring an action. Despite assurances to the contrary from the attorney, four years later he found out from the court that the action had not been brought. He felt cheated and he was convinced that owing to unconscientious work, the attorney had committed a disciplinary violation. He reported the attorney to the Chamber of Attorneys of Slovenia (OZS). On 26 February 2002, the disciplinary prosecutor at the Chamber requested the instigation of disciplinary proceedings against the attorney. At the oral hearing before the disciplinary commission of first instance on 22 January 2003, the disciplinary prosecutor withdrew the request for disciplinary proceedings. On the basis of the complainant's enquiries of 6 March 2003, the Chamber of Attorneys sent him a copy of the final ruling, which rejected the request for disciplinary proceedings against the attorney. This communication gave no reasons for the decision of the disciplinary prosecutor.

The disappointment of the complainant at such a decision by bodies of the Chamber of Attorneys was indescribable. Since we wished to find out the reasons for the decision, on 4 April 2003 we **requested the Chamber to send us for perusal the disciplinary file** with the decision of the disciplinary prosecutor to withdraw the request for disciplinary proceedings. Over a month later, in May 2003, we received a reply that the Chamber's administrative board had discussed the ombudsman's request in its session of 6 May 2003. The reply did not say so, but it was possible from its substance to conclude that the **administrative board was not disposed to accommodate our request** to send to the ombudsman the disciplinary file for perusal.

Since we did not entirely understand the reply from the Chamber of Attorneys, we requested further clarification, with an explanation of their negative position. We stressed that we desired a clear written view regarding our request to see the disciplinary file, since ultimately any further steps we took would depend on this.

Does the ombudsman have the right to view disciplinary file against an attorney?

We presented to the Chamber of Attorneys additional arguments in support of our request that it send the disciplinary file to us for perusal. One must consider here the constitutional role of the ombudsman and international legal comparisons of the institution of the ombudsman in other democratic countries based on the rule of law, which provide for this kind of oversight in effect the unrestricted right to all data and information and to access and view all data and documents of state bodies, local self-government bodies and holders of public authorisation. Without the broadest scope of access to all data and documents, the ombudsman would not be able to perform the tasks within his jurisdiction and authorisation.

As part of the justice system, attorneys provide an independent service that is regulated by law. The provision such as that of Article 137 of the Constitution emphasises the role and importance held by attorneys in a democratic state ruled by law. The role of attorneys is important especially within the framework of exercising judicial authority. The fundamental task of attorneys is to represent clients in the courts and at other state bodies. The ZOdv and laws governing judicial and other procedures lay down the rights and obligations of attorneys in relation to the courts and other state bodies, and also in relation to the clients they represent. The right to the legal assistance of an advocate is provided as a basic constitutional right for anyone deprived of their liberty or accused of a crime. The state accords to attorneys a privileged, almost monopoly position, since clients can generally be represented in court only by attorneys. Certain procedural laws recognise the right of advo-

cacy or representation only to an authorised person who is an attorney. Certain procedures even lay down representation by an attorney as obligatory.

In line with the importance of the attorney service and its role in the functioning of the entire justice system, special emphasis is laid on the **public interest in the proper and lawful performance of attorney services**. In representing clients, attorneys are bound to act conscientiously, honestly, scrupulously and according to the principles of their professional ethics. They are liable in disciplinary and indemnity terms, whereby the Attorneys Act (ZOdv) entrusts the disciplinary treatment of attorneys to the Chamber of Attorneys. The disciplinary procedure is regulated by law, and for the detailed provisions on procedures before a disciplinary commission the law authorises the Chamber's statutes. The Slovenian Government grants its consent to the Chamber's statutes, which is a consequence of the fact that the Chamber carries out tasks in the public interest as provided by law.

Attorneys who perform the profession of attorney in Slovenia are obliged to be members of the OZS. This Chamber has been established by law to carry out public authorisations based on the law. It was therefore established to perform tasks that are in the public interest. The statutes of the Chamber, where it regulates in detail the procedure before a disciplinary commission and lays down the acts that signify disciplinary violations, are a general act issued on the basis of public authorisation.

Oversight by the ombudsman covers state bodies, local self-government bodies and holders of public authorisation. This means that the jurisdiction of the ombudsman is established in relation to the Chamber of Attorneys, which is a holder of public authorisation. This applies especially to that portion of its authorisation incorporating activities linked to determining disciplinary liability, disciplinary penalties and in general the conducting of disciplinary procedures against attorneys. And precisely on this basis we requested the Chamber to send us for perusal the disciplinary file.

Chamber of Attorneys denies ombudsman access to disciplinary file

We suggested to the Chamber of Attorneys that it study our views and opinions and communicate its position to us. At the same time we repeated our proposal that it **send for perusal the requested disciplinary file**. Despite the expiry of the deadline, we received no response as requested.

After several reminders, in December 2003 the Chamber reported that "certain factors were unclear" regarding whether the ombudsman was entitled to request perusal of the disciplinary file. The administrative board therefore adopted a decision whereby the Chamber would request the Institute for Comparative Law at the Faculty of Law for an opinion on the justification of the ombudsman's "requests". At the same time it would request the consent of the attorney in question to the Chamber sending to us the disciplinary file in her case for our perusal. The Chamber sent us the requested file more than nine months after our pertinent request. And even then, the file was sent to the ombudsman only on the basis of the consent of the attorney who was dealt with in the disciplinary procedure, and not because the Chamber recognised the ombudsman's right to view the file.

The responses, without any substantive explanation of the Chamber's negative position, can only be assessed as prevarication, putting off the decision regarding the presentation of the disciplinary file to the ombudsman for perusal. The behaviour of the Chamber described can be understood as **persisting in preventing external oversight** of the treatment of attorneys in disciplinary procedures. And here the ombudsman is absolutely determined that procedures in disciplinary cases against attorneys should not and cannot be merely a matter for the Chamber of Attorneys, for attorneys themselves and their good will.

Honour among thieves

Except in the most serious disciplinary violations, where the jurisdiction of a disciplinary tribunal is provided, disciplinary cases against attorneys are decided by a disciplinary commission. In compliance with the valid legal provisions, the president and members of the disciplinary commission are elected by the Chamber of Attorneys from the ranks of attorneys. So attorneys themselves decide on complaints against attorneys. The disciplinary prosecutor, too, is elected by the assembly of the Chamber of Attorneys. **Attorneys therefore decide on attorneys**. Where they are ineffective, disciplinary commissions of first instance in particular do not give an impression of independence and impartiality in their decision-making. Concealing disciplinary files from the eyes of the public merely serves to reinforce the suspicion of "collegial" handling of disciplinary procedures against attorneys at the Chamber of Attorneys.

Perhaps it is precisely the lack of will to make disciplinary decisions against a professional colleague that leads to incomprehensible impasses in the work of disciplinary commissions. Such a state of affairs does not generate trust in the professional organisation of attorneys such that they will act rapidly and effectively in the event of violation of duty in performing the profession of attorney, and in the event of actions amounting to breach of the conscientious performance of work and practice in an attorney's office. There is therefore an urgent need for a different kind of approach from disciplinary commissions and in general from the Chamber of Attorneys, in order to ensure rapid, effective and objective decision-making. If the Chamber and attorneys are not able or unwilling to ensure this, we suggest that the **composition of disciplinary bodies be changed in order to protect the public interest** that pertains to the profession of attorney in a democratic country based on the rule of law.

2.6 POLICE PROCEDURES

In 2003 we received 132 written complaints dealing with police procedures, signifying a rise of almost 70 per cent over 2002. Of course it is not yet possible to conclude on this basis that the work of the police in 2003 was worse and involved more unlawful encroachments on human rights and fundamental freedoms. Complaints against the work of police officers are also covered by the rule of subsidiarity, whereby the affected person must first approach the complaints body within the system where the claimed impropriety occurred. It is only when this complaints avenue does not satisfy the expectations of the complainant that a complaint addressed to the ombudsman can be contemplated. More complaints owing to asserted improprieties in the actions of police officers could mean in fact that the avenues of complaint within the police force do not enjoy the trust of individuals, rather than an increase in the aggressiveness of Slovenia's police force. The above does not mean, however, that the ombudsman does not deal with complaints linked to police procedures if the complaints possibilities within the police have not yet been exhausted. While the ombudsman expects individuals first to address complaints to the complaints body entrusted with resolving complaints against the police, we do also deal directly with such complaints where the assessment is that the circumstances of the individual case demand it. Otherwise complainants are advised to take their complaint first to the police or to the Ministry of the Interior. The ombudsman oversees, but cannot substitute for the complaints procedures within the police force or the interior ministry. It is therefore extremely important that the complaints avenues for dealing with complaints against actions or dere-

lictions by police officers are known to the public, easily accessible, rapid and effective, and above all, impartial and fair.

In 2003 again the largest number of complaints received related to the exercising of powers that police officers have in performing police assignments. A considerable number of complaints asserted unlawful or merely improper use of forcible measures, most frequently physical force and means of restraint. Among the powers that encroach on personal liberty and freedom of movement, complaints most commonly referred to a lack of proportion in deciding on police detention, especially regarding its duration.

Request for assessment of constitutionality

In 2001 the ombudsman lodged a request for assessment of constitutionality and legality of Article 113 of the Rules on Police Authorisations, which provide when police officers can use means of restraint (binding and handcuffing). In the request we noted that the challenged provision of the Rules goes beyond laying down the method of carrying out police authorisations that may constitute the substance of an implementing regulation, and encroaches on statutory law by laying down examples of permissible restriction of rights and freedoms. In the revised ZPol-B, the wording of Article 113 of the Rules on police authorisations is encapsulated in Article 51.a of the ZPol. At the same time, it deleted the provisions of Article 51, paragraph 1 of the ZPol, which were cited in the submitted request for an assessment of constitutionality and legality, whereby the criteria provided by the rules for use of means for handcuffing and binding are less strict than those of the law. In this way, the legislators responded even before the decision of the Constitutional Court, adopting amendments and supplements to the ZPol and removing the established variances. The ombudsman therefore withdrew the request for assessment of constitutionality and legality.

In 2003 the ombudsman did, however, lodge with the Slovenian Constitutional Court a request for assessment of the constitutionality of Article 35 of the ZPol, which governs police powers for establishing identity. As we already noted in the 2002 report, we had previously forwarded the view of the Kranj Police Authority, which indicates that a police officer may determine a person's identity in effect at any time, to the Ministry of the Interior. Since amendments and supplements to the ZPol were being drafted, we took the view that this would be an opportunity for a renewed and more precise look at whether Article 35, paragraph 1 of the ZPol satisfied the requirement for a specific and unambiguous regulation of this police power (*lex certa*). In an extensive reply to the ombudsman, the Minister of the Interior wrote that appearance can be just one of the circumstances of reference which, on correct interpretation and with professional guidelines, precludes any prohibited or discriminatory, discretionary decision-making by police officers. The minister therefore believes that amendment of the law in this part is not necessary. Yet since cases of the use of powers to determine identity in connection with a suspicious appearance are relatively frequent and have a high public profile, and practice indicates a different interpretation of this legal provision, the ombudsman took the view that it was right for the Constitutional Court to rule on the constitutionality of Article 35, paragraph 1 of the ZPol.

Greater care with seized items

Time and again, practice shows the recurrence of problems associated with the exercising of the police power to seize items. If a person whose items have been seized has not been placed under a procedure at the competent body (such as criminal proceedings), the items must be (immediately) returned, unless they are dangerous objects or there exist other legal reasons for the items to be confiscated. Most importantly, seized items must be returned to their owner immediately upon cessation of the reasons for seizure or safekeeping provided by law. Of course in this connection responsibility lies not just with the police, but also with the public prosecutors and the courts.

Article 506.a, paragraph 1 of the ZKP binds the court that has approved the safekeeping of seized items to act especially quickly in such cases, and to handle seized items with the diligence of a good manager. The case we dealt with, whereby a seized private car had already spent three years in "safekeeping" outside, exposed to the mercy of the elements and other factors, while the owner was waiting for further progress (the end?) in criminal proceedings, probably does not fulfil the legally established criteria of rapid action and careful handling of a seized item. A merely declarative legal standard is clearly not sufficient insurance against unwarranted damage being caused to the owner of a seized item, when the state exercises the power to seize items.

In connection with the return of seized items, we pointed out in the 1995 report that it is inadequate for the state body (the police) to issue a notice to the individual that they should come to the police station to pick up the seized item. The law (ZKP, ZPol) indeed lays down the obligation to return the seized item, and not the right of the owner to come and pick up the seized item. The word "return" indicates that this involves a *debt payable at the creditor's domicile*, and not a *debt collectible at the debtor's domicile*. For the former it is the debtor that is bound to bring the thing owed to the location of the creditor's domicile. We expressed our disagreement with actions contrary to this in the case of a complainant from Muta na Koroškem, who had to travel 200 km to Kranj, at his own expense, in order to pick up an item seized from him. Upon our intervention the General Police Authority informed us that it had requested an expert opinion from the Supreme Court and Supreme Public Prosecutor's Office of the Republic of Slovenia as to whether this involved a debt returnable to the creditor or a debt collectible from the debtor, but "despite reminders" they had not yet received an opinion.

Only a trained police force protects human rights

The police are bound to carry out effectively the tasks that are entrusted to them in a democratic country based on the rule of law. Human rights and fundamental freedoms are limited by the rights of others, and the job of the police is to ensure effectively the protection and observance of these rights and freedoms. Dereliction of the duty to act by police officers, in contravention of their entrusted tasks and powers, threatens the security that people justifiably expect from the state and its bodies. For this reason it is essential through continuous education and development to train police officers for the difficult and responsible work they perform on behalf of the state for its inhabitants. And of course the police are always bound to act in such a way that their intervention does not cause greater harm than is brought by the danger for which they are exercising their powers. The police may therefore encroach upon human rights and fundamental freedoms only in order to achieve a lawful and legitimate objective, and in strict observance of the principle of proportionality.

The tasks of the police, especially police powers, must be laid down by law, regulated unambiguously and formulated in such a way that police officers and also individuals understand their substance, scope and purpose, and are clear about the circumstances and conditions that permit their use. The legal provision of police powers must ensure the predictability of cases in which a specific power can be used. At the same time, effective legal oversight must be ensured, along with appropriate and effective means against abuse of police powers.

Police personnel are personally responsible for their actions and derelictions, and also for orders given to subordinates. This is especially important given the major changes to legislation (ZKP-E, ZPol-B and ZP-1), which present the police with new and responsible tasks in preliminary criminal procedures, misdemeanours procedures and at the same time extend the scope of their powers (for example banning orders for persons coming near a certain place or person, pursuant to Article 39.a of the ZPol). For this reason we should also welcome those provisions of the ZPol-B that regulate more precisely (professional) oversight of the police, performed by ministry staff with police powers. This new

feature should eliminate the situation from the past, where oversight by the interior ministry of the work of the police was impeded. Unimpeded and comprehensive oversight of the work of the police is a precondition for a democratic state based on the rule of law.

Offenders should not go unpunished

In overseeing the police force and resolving complaints made against police officers, circumstances may be established that would provide grounds for instigating disciplinary proceedings. The timely and consistent instigation of disciplinary proceedings is an important security against the conscious abuse of police powers and illegal encroachment on human rights and fundamental freedoms. Decisive action in this area sends a clear signal to police officers that no illegal or arbitrary action in carrying out tasks, and especially in exercising police powers, will go unpunished. Such a clear position adopted by the superiors also has a preventive effect, with the message that the state (the police) will not permit such behaviour, and will respond immediately and decisively in all cases.

Unfortunately the ombudsman is still receiving signals from the police that do not indicate a consistently convincing desire to instigate disciplinary proceedings and to determine the disciplinary liability of police officers. This category covers, for example, a communication from the Postojna Police Authority, that disciplinary proceedings "were not instigated, since they had lodged criminal information and in agreement with the plaintiff were waiting for an investigation into the existence of elements of a criminal act and consequently further steps by the prosecutor". There is no basis in law for such waiting, since the actual state in a breach of discipline is not the same as in a criminal act. This also applies to postponing the instigation of disciplinary proceedings until the end of the procedure dealing with a complaint lodged by an individual against a police officer. Here again, two different things, two separate procedures are involved. If an actual basis for disciplinary liability is established, there is no reason to wait for the outcome of the complaint procedure.

Postponement and late instigation of disciplinary proceedings can very rapidly result in a lapsing of the case. Pursuant to Article 128 of the ZJU, the possibility of instigating disciplinary proceedings for less serious breaches of discipline expires within one month, and in serious cases three months, from the day the violation and perpetrator were discovered. The Celje Police Authority thus explained unconvincingly that the case against a police officer lapsed, since a written decision to instigate disciplinary proceedings was not delivered to the officer in time. Following intervention by the ombudsman, the Director General of Police confirmed that the police authority had not used all the possibilities provided by law for the effective delivery of such communications.

In the case of another police officer, the same police authority explained that disciplinary proceedings had been halted "for reasons of expediency". Halting disciplinary proceedings on such a basis is not supported in law. The police authority justified its decision with the explanation that "instigation of disciplinary proceedings would generate major costs owing to the calling in of external witnesses, and owing to the short expiry deadlines it would be difficult to bring the proceedings to a close". Here they also mentioned the clean record to date of the police officer and the fact that the instigation itself of disciplinary proceedings had a certain impact.

We could only agree with the Director General of Police, who upon intervention by the ombudsman took the view that the police authority should determine whether the officer had committed the imputed violation, whether he was responsible for it, and in the event of his responsibility for the disciplinary violation being established, an appropriate disciplinary measure should be imposed. Only such actions are consistent with the law and provide a clear message that violators will be punished.

Dealing with complaints against the police

In earlier annual reports the ombudsman has already taken a critical look at the procedure for dealing with complaints from individuals who assert that through the action or dereliction of a police officer their rights or freedoms have been violated. With the adoption of the ZPol in 1998, the legislators provided a complaints procedure within the police force. The experiences of the ombudsman in observing the functioning of the complaints procedure within the police were not bad, although his views were not always the same as the findings in the police complaints procedure. There is also no doubt that an effective and credible internal complaints procedure can successfully – and for the complainant satisfactorily – resolve the majority of disputes.

In the complaints procedure within the police force, the conducting of the procedure and the actual decision-making is left primarily to the police themselves. For the complainant this can arouse a lack of trust and the suspicion that independent, objective and impartial decision-making has not been ensured. For this reason the ombudsman takes the view that for complaints against staff of a body with such extensive powers to encroach on human rights and freedoms, a better solution lies in decisions on complaints being made outside the police force. The ombudsman therefore welcomed the amendments to the ZPol enacted in 2003, whereby complaints are not decided upon by the body against whose actions a complaint has been lodged, but are now transferred to the jurisdiction of the Ministry of the Interior.

The amendment to Article 28 of the ZPol therefore brings the promise of a fair procedure with impartial treatment and objective decision-making. At the same time the amendment improves the actual appearance of impartiality, since the focus of dealing with complaints is transferred to a body outside the police force. Another feature of the revised Article 28 of the ZPol is the more precise legal framework for the actual procedure of dealing with complaints, which prior to this revision was in effect under the exclusive jurisdiction of arrangement through an implementing regulation issued by the minister. And where the legislators have set out the main outline of the procedure for dealing with complaints in the part relating to reconciliation at the police and at the panel for resolving complaints at the interior ministry, they also of course set out more precisely the substance of the regulation on the procedural details in dealing with complaints.

The minister's regulation on the detailed procedure for resolving complaints (Rules on Resolving Complaints) must be issued within six months of the entry into force of the ZPol-B, and therefore by 27 February 2004. It is (only) through the entry into force of this regulation that the conditions will be provided for complete implementation of the procedure for dealing with complaints pursuant to the amended Article 28 of the ZPol. In this connection praise is due for the fact that the rules were actually issued before the legal deadline, and were published in the UL no. 1/2004 of 9 January 2004, with entry into force set for 27 February 2004.

The common thread running through the ombudsman's efforts in complaints procedures against the police is the greater presence of the complainant in the procedure of dealing with the complaint, including the possibility of his contribution in gathering evidence and in determining the decisive actual state.

The rules allow the verbal submission of complaints. In such cases a record is made up, and this is signed by the complainant. The proposed rules provided that for complaints submitted in this way, the complainant is given simply a confirmation of submitted complaint, and not also a copy of the actual complaint record. Clearly on the suggestion of the ombudsman, who pointed out that the record of a complaint submitted verbally is the doc-

ument that will afford the complainant a longer-term familiarity with the substance of the complaint, the rules lay down that the complainant should be handed a copy of the record.

In the procedure for verifying complaints, complainants may submit documents and other evidence, and in addition to the submitted complaint may additionally contribute to gathering evidence and determining the actual state. Complainants also have access to documentation and evidence kept by the police and which relate to the submitted complaint. It is not clear whether the possibility of such access includes the right to make transcripts and photocopies of documents.

The head of the police organisational unit or the reporter may conduct an interview with the complainant and with the police officer against whom a complaint has been made, but such interviews are not laid down as obligatory. Experiences based on the earlier system of dealing with complaints show that interviews with complainants were rather the exception than the rule, although this procedural act can signify a contribution towards an impartial and objective determination of the actual state.

The procedure for verifying the complaint is followed by the investigation of the complaint by the head of the police organisational unit. The complainant is called (compulsorily) to an interview, and the record of investigation of the complaint takes down the complainant's statement once he is acquainted with the findings and steps taken. Participation of the complainant in this part of the procedure is restricted simply to a statement regarding the facts (and the possible steps taken) as determined by the police in verifying the complaint. His agreement with the findings allows the procedure of dealing with the complaint to be closed. In the event of disagreement or not concurring with the findings, the views of the complainant are also taken down in the record of dealing with the complaint, and at the same time this signifies the end of this part of the complaint procedure.

With a procedure set out as above, which is in effect simply taken from the legal provision, an understanding between the police and complainant is clearly only possible if the complainant agrees and concurs with the findings presented to him by the head of the police organisational unit. The rules do not envisage the possibility of negotiation or joint verification of the correctness of the determined actual state. Clearly in this part the complainant does not have the possibility of influencing the findings of the police, but may simply state that he agrees with them or not. There is in fact no room to manoeuvre for a possible consensual correction of the findings, and on that basis for a resolving of the complaint by agreement. So the question is, how far the intention of the legislators, that the largest possible number of complaints are resolved in this stage of the procedure, will actually be fulfilled in practice.

The further procedure in dealing with complaints is conducted by the interior ministry. The ZPol-B itself provides that complaints at the ministry are dealt with by panels composed of three members, comprising a ministerial reporter and two representatives of the public. The panel adopts its decisions by votes. A decision is adopted if at least two members of the panel are in favour. Such an arrangement of Article 34 of the rules takes into account the ombudsman's criticism of the Rules for Resolving Complaints, which left the decision-making simply to a representative of the police.

Praise is due for the possibility of greater participation by the actual complainant in the procedure of dealing with the complaint in the panel. Article 30 of the rules provides that the complainant and the police officer against whom the complaint has been made are called to the panel's session in a written invitation. The draft rules provided that the police officer

may secure legal assistance at his own expense. Upon the ombudsman pointing out that the complainant himself has the right to participate in a panel session together with an empowered advocate, the rules now contain a general provision whereby in complaints procedures, complainants and police officers may secure legal counsel at their own expense.

The complainant and police officer may give their versions of the facts surrounding the complaint, and the members of the panel may put questions to them, thereby enabling a determination and assessment of the circumstances asserted by each party in the dispute, that is, both complainant and police officer. Such a system provides for a more transparent and adversarial procedure, with the complainant (and also the police officer) being able to participate in the procedure and contribute to a correct determination of the decisive actual state. Such a system is in line with the proposals and recommendations of the ombudsman in connection with arranging the procedure for dealing with complaints.

The rules provide a single instance procedure, since a resolution of the complaint in the panel is final. In accordance with the panel decision, the head of the panel draws up and signs a written reply to the complainant. The draft of the rules contained no provisions regarding the actual content of the written reply whereby the complaint procedure is concluded. Such an arrangement could tend to have the undesired effect of the written reply to the complainant not being appropriately explained. Apart from being told the actual decision in the final reply, the complainant should also be given exhaustive reasons to back up the decision adopted. The reasons must address the actual, professional and legal facets of the adopted decision regarding the justification or otherwise of the submitted complaint. The complainant must be given a reasoned reply to his grounds for complaint, such that the reply contains clear views regarding all the relevant and reasonable assertions or accusations in the submitted complaint. This is especially important since the written reply signals the conclusion of the complaint procedure, and the complainant is then left with (only) other (formal) legal remedies for the protection of his rights and freedoms. The minister clearly followed up on this caution from the ombudsman, since the rules lay down that the substance of the panel's decision must be explained. Article 36 provides that the complainant must be given a reasoned reply to the grounds for complaint, such that the reply contains clear views regarding all the relevant and reasonable assertions or accusations in the submitted complaint.

The true value of the rules in terms of impartial, fair and effective procedures for dealing with complaints will only be shown by practice. Nevertheless, our assessment is that the rules signify a major improvement over the previous regulatory arrangement. Praise is due especially for the provision of dealing with complaints in a panel, which attempts to ensure propriety in the procedure through conscientious, scrupulous and credible determination of the decisive actual state. Despite the expression of reservations, the rules still contain (Article 13) a provision whereby the reporter may be an employee of the ministry or the police. The reporter, who is empowered to perform tasks in the procedure of dealing with the complaint, that is in resolving the complaint in the panel, may therefore also come from the ranks of the police. It is he whom the authorised person of the ministry who heads the panel for resolving the complaint, authorises to verify the complaint and to draw up a report for study in the panel. It is probably impossible to deny that the person who draws up the material for examination by the panel, has an important, if not decisive, influence on the scope of the facts studied by the panel. This could tend to have repercussions of its own in the actual decision on the complaint, despite the provision of Article 32 of the rules, binding the head of the panel to ensure that the complaint is examined and weighed up in all its aspects.

Arrest is also deprivation of liberty

The ZPol-B introduced at first glance a small, but important amendment to Article 44 of the Police Act. The earlier system deemed deprivation of liberty to include arrest, which Article 41 of the ZPol defined as temporary restriction of movement for a specific person for the purpose of the police producing that person, detaining them or performing some other action provided by law. The ZPol-B, however, clearly no longer deems arrest to be deprivation of liberty, something evident in Article 51.b, which explicitly distinguishes between arrest, production and deprivation of liberty. But is not arrest also deprivation of liberty?

Article 19 of the Constitution guarantees the protection of personal freedom, and talks here of deprivation of liberty [*odvzem prostosti*]. This collocation leads one to understand any restriction or deprivation of liberty, including arrest [*prijetje*]. Deprivation of liberty means any position where an individual cannot freely go from or leave a given place. Restricting the movement of a certain person for the purpose of the police producing them, detaining them or performing some other action provided by law, is of such intensity that in substance it is nothing other than deprivation of liberty. Here through the expression arrest, one is given to understand primarily the moment signalling the starting time of deprivation of liberty.

In the revised Article 44 of the ZPol the provision is made not for deprivation of liberty upon arrest but only for detention (and being held in custody pursuant to the provisions of the Control of the National Border Act). This article binds police officers to inform only persons who are detained (held), and not arrested persons, of the constitutional requirement, which is the Slovenian version of what is called the "Miranda rights". This means that on arrest, police officers give no information to the arrested person or advice as to their rights, something that is required by Article 19 of the Constitution in the event of deprivation of liberty.

We had already observed such practice in the field during visits to police stations (for example at the Ajdovščina Police Station). Arrest alone, as we saw in practice, can last several hours (as much as five or six hours), during which time the arrested person's movement is restricted within a police vehicle or at the police station. If the police later take the view that the conditions have been established for detention, only this changes the status of the arrested person and then follows deprivation of liberty.

Such an (artificial) differentiation between arrest and deprivation of liberty carries with it the danger that the police might deprive an individual of their liberty for more time than is permitted by the Constitution and law without a decision by the judicial branch of power. If arrest does not mean the (start of) deprivation of liberty, the police will not count deprivation of liberty as being from the very beginning of the actual deprivation of liberty, in other words from the arrest, but only from the start of detention, that is, from the time when they decide that the arrested person should be detained (and placed in premises for detention). Such an understanding of arrest, which is now no longer set in law as deprivation of liberty, makes it possible for the police not to count the duration of arrest in the legally provided time for police deprivation of liberty, even though the period of arrest does actually signify deprivation of liberty.

In its explanation of the proposed revision, the Slovenian Government as the proposer of the ZPol-B advocated the view that the wording of the original first paragraph of Article 44 (which speaks of arrest) was "too broad", since it also involved arrest in cases of production for establishing identity, when "informing a person of the Miranda rights made no sense, since then the procedure of establishing identity is not possible". We understand such an explanation as simply a fear that persons informed of their right not to say anything, will

by exercising the right of silence prevent the establishing of identity. This view is untenable by the very fact that in the event of non-cooperation on the part of a person being dealt with, the police can avail themselves of the possibility of conducting the identification procedure as provided by Article 35 of the ZPol. Nor should it be forgotten that the right to remain silent is guaranteed as a privilege against self-incrimination, and does not exclude a person informed of this right from telling the police their personal data enabling their identity to be established.

Perhaps more importantly, it should be stressed here that information about a person's rights, provided when that person's liberty has been deprived, is not provided merely to ensure the legal guarantees in criminal procedures. The right to information, whereby on the person's request the police are bound to inform those close to that person of their deprivation of liberty, also has a humanitarian aspect, and prevents the mental and social isolation of a person deprived of liberty. At the same time this excludes the possibility of so-called "incommunicado" detention, where the outside world has no knowledge of the deprivation of liberty, something that might have an influence on the actions of the police (which is another purpose behind advising of the right to an attorney and doctor).

Access to an attorney enables a detained person to effectively draw attention to, claim and demand the sanctioning of any kind of maltreatment, including extorting confessions or specific statements. Access to a doctor enables a professional determination of the physical and mental state, and especially of possible physical injuries and their appearance during arrest and deprivation of liberty. In short, information about rights given to a person deprived of liberty does not serve merely the procedural guarantees, but signifies a fundamental guarantee against unlawful maltreatment of the detained person. And precisely for this reason, the exercising of these fundamental guarantees for detained persons must be made possible **from the very beginning of deprivation of liberty**, irrespective of how that moment is defined in law (apprehension, arrest, detention etc.). The change represented in this area particularly by the revised Article 44 of the ZPol signifies a backward step in ensuring a state based on the rule of law. The amended provision is also suspect from the aspect of protection of personal freedom pursuant to Article 19 of the Constitution.

Must a police officer give his surname?

The police perform their tasks in the name of the state. They act in the public interest. The tasks of the police are performed by police officers, and in doing so they have the authority (police powers) to restrict human rights and fundamental freedoms – of course only in cases provided by the Constitution and law.

Precisely in order to perform their tasks and to exercise police powers, police officers must be easily recognisable simply by their appearance. For this reason they generally perform their work in uniform. If they perform work in civilian clothes, they must first establish their identity with an official ID card. If the circumstances do not allow this, they must introduce themselves verbally as police officers. As soon as it is possible, they must also establish their identity with an official ID.

In performing their tasks, therefore, police officers must always identify themselves as belonging to the police. In every intervention, they generally identify themselves as being the police simply by their outward appearance (uniform, equipment, police car). Alongside their actual police status, in interventions officers must normally identify themselves also in their professional capacity. This involves the introduction of the police officer as an individual, as a specific member of the police force. The requirement that before, during or after police intervention has been conducted, officers introduce themselves, is closely connected to the personal responsibility of police officers for their actions or derelictions. In a

state based on the rule of law, laws apply equally for all citizens. Police officers, too, like every other citizen, are personally responsible for their actions. In this respect the police uniform does not give any privileges to the individual (police officer) wearing it. In performing their tasks, police officers are bound to act in compliance with the Constitution and the law, and to respect and protect human rights and fundamental freedoms. Without the effective prospect of establishing identity, the personal responsibility of police officers would from the point of view of the public be simply empty words on paper. The public, and thereby each individual, is justified in expecting police officers to demonstrate their membership of the police force and to introduce themselves, so that their personal identification is also made possible.

In determining the method of establishing the identity of individual police officers, there is a need to balance the public interest in identifying police officers who perform certain police tasks, and the interest of the police officers themselves in maintaining their (personal and also family) safety. As has already been stated, in doing their work police officers do not expose themselves in their own interest, but owing to the nature of their work in the interest of people and generally of society and the state.

Article 11 of the Rules on Police Authorisations provides that police officers have a duty to give their surname and the name of the unit to which they belong, if a person against whom police powers are being used requests this and if this does not impede the performance of the assignment. The implementing regulation therefore binds police officers to give their surname and the name of the unit, but this is not an absolute requirement. Police officers are not bound to act in this way despite the request of a person against whom police powers are being used, if this would impede the performance of a specific assignment.

Given such a legal (implementing) arrangement, it is worth stressing that establishing the identity of individual police officers does not of necessity require information on their surname. Surnames are personal data, and police officers, too, have the right to protection of personal data, if their identity can be established by other means. As a member of a police unit and the police force in general, a police officer can also be identified in other ways, such as by means of a number or other sign that can enable the establishing of their identity. If an individual police officer can be recognised on the basis of his official number or other appropriate sign, then the purpose of individualising police officers as individuals is thereby achieved. In the event of a complaint, the police or other complaints body will easily establish which officer is involved. The requirement that police officers give their surname is not intended as a courtesy in introductions, but is provided in order to establish effectively the personal responsibility of police officers in connection with the performance of police tasks. This objective can also be achieved by methods that intrude less on the personal data of police officers, yet still enable their individualisation.

The ombudsman has stressed several times that it would be worth re-examining the current (implementing) regulation whereby police officers are bound to give their surnames in any intervention. It is beyond doubt that persons against whom police powers are being used, have the right to find out the professional identity of police officers. But this information does not of necessity involve their surname. Establishing identity in order to ensure personal responsibility of police officers can also be ensured by means of other (visible) indications, such as the police officer's number and similar.

It is also worth stressing that in respect of the current implementing regulation, police officers will be acting improperly if on request they do not give their surname, where this does

not impede the performance of their tasks. Yet such a dereliction does not justify a person against whom police powers are being used from not heeding the cautions, orders or other powers used lawfully by police officers.

Human head vs. police car

A complainant made a complaint about the actions of the police. He accused a police officer who dealt with him in a procedure of "pulling" him from his bicycle and "shoving him roughly against the edge of his police car". In doing so he "split his lip and broke his tooth". These injuries were also indicated in a doctor's certificate. The police do not deny such physical injuries, but ascribe them to the complainant, who is described as having deliberately hit his head against the police car and in this way injuring himself. We suggested to the police that they investigate the matter.

In response, upon conclusion of the complaint procedure, the police stated that the assertions of the complainant and the police officers on the way the injuries were sustained were contradictory, so the Ljubljana Police Authority could "neither confirm nor deny" them. So "owing to contradictory statements ... and the absence of independent witnesses" the Ljubljana Police Authority could not determine the actual state.

The ombudsman has stressed several times that a high degree of conscientious and scrupulous attention is required in assessing the circumstances of an individual case where two differing descriptions of the same event are given. Even when this involves a "determined" position of both the parties involved (therefore the police or the affected individual), the conclusion that it is not possible to confirm or deny the assertions of the complainant, should be merely an exceptional solution *in extremis*, where previous to this all possible means of determining the actual state have indeed been exhausted. This does not just involve proof, where it should be reiterated that the police are not bound by any rules of evidence. In establishing the decisive facts, the police must also take into account empirical rules, including the rules of logic, in weighing up, comparing and evaluating the assertions and views of the two sides. Equal attention must be paid to verifying both the credibility of the description of events given by the affected person, and the description of events given by the police officer.

The burden of proof lies especially with the police, if an individual has been physically injured in a police procedure. In such a case the police, and not the individual, must prove and explain convincingly when, how and why the injuries were sustained.

With all due respect to police officers and to the responsible job they perform, it is nevertheless impossible to rule out the interest of the individual police officer in describing events differently from how they occurred in reality. For this reason the ombudsman is convinced that the police should only conclude a case with the explanation that they were not able to determine the actual state owing to contradictory statements from participants in the procedure, in cases where they have **exhausted** all other possibilities, and even empirical rules and the rules of logic offer no other result.

We looked over the Ljubljana Police Authority file relating to the complainant's case. Our examination aroused certain doubts that the determination of the actual state and evaluation of the whole matter was not in fact as complete and thorough as it could have been:

The description of events, which is a constituent part of the motion to instigate misdemeanours proceedings, states that the complainant cried out and wailed, and (thereby) aroused (drew) the attention of nearby (passers-by) people, which may be understood as the police confirming that the event was observed by at least several random and therefore uninvolved persons. Nevertheless, the police were unable to list by name a single witness

who observed the event. It might be expected that once the police realised that the complainant had injured himself with a blow against the car, they would protect themselves by noting down from amongst the eyewitnesses at least some witnesses who could confirm this. But absolutely nothing was produced from the assertion about witnesses to the event, when there was a need to call these witnesses to confirm the claim of self-injury.

The two police officers who stated in the motion for instigating misdemeanours proceedings that their procedure with the complainant and his self-injury had been observed by several persons, but did not secure this evidence and did not record any information about these persons, do not actually arouse any strong sense of reliability. Upon malicious self-injury of the person involved in the procedure, the police should in any event have secured information on the eyewitnesses available. In this way they could have "exposed" the self-injuring complainant and protected themselves from unfounded accusations. Yet in the procedure of dealing with the complaint, the police closed the case with the explanation that "owing to contradictory statements ... and the absence of independent witnesses" they could not determine the actual state. And that, despite the police (in their own assessment) having "verified and weighed up in all its aspects" the complaint.

The record of the complaints panel session indicates that the panel did not affirm the assertions of the complainant, that in the use of forcible means of restraint he sustained injuries to his head. In the record the panel attaches absolutely no clarification, explanation or reasons to the view that it does not affirm the complainant's claims. It does determine, however, that the police officer used forcible means against the complainant. So the record dismisses in a very cursory way the complainant's assertion that he received his injuries in consequence of the (unlawful) action of the police officers. This decisive circumstance merits just one sentence, to the effect that they did not affirm this claim by the complainant. Considerably more extensive, for example, is the part of the record dealing with the reimbursement of travel expenses for the panel members. We may only hope that this sense of proportion in the scope of the two items in the record does not also reflect the scope of the actual debate on the two subjects.

One cannot overlook the circumstance that the complainant sustained injuries during a police procedure. There was no face to face encounter between the police officers and the complainant during the complaint procedure. And in this procedure there is no hint of any evaluation of the assertion by the police officers, that eyewitnesses were present – eyewitnesses about whom the police obtained no information. Equally, it is hard to accept that a rational person would cause himself injuries with such permanent effects as a broken tooth, even if he wanted to besmirch the police.

The report sent pursuant to Article 148 of the ZKP by the police to the District Public Prosecutor does not assess, present or even note the assertion of the complainant which is key to the case, that the police officer "shoved him roughly against the edge of the police car" and in doing so split his lip and broke his tooth. The report merely states that the complainant supposedly without warning "struck his head against the police car and in doing so injured his lower lip and chipped his tooth". This wording is set out in the report in such a way as to present the incident as self-injury by the complainant. The report does state that the substance of the complaint clearly indicates elements of the crime of violating human dignity through the abuse of an official position or official rights pursuant to Article 270 of the KZ, but at the same time no description is given of the asserted actions whereby the police officers are alleged to have committed this crime during their procedure with the complainant. Based on a report of such content, the public prosecutors cannot determine the complainant's accusation. This is only possible from the complainant's own complaint attached to the report and from the official record of the interview with him.

If the police are incapable of explaining convincingly and rationally the injuring of a person who was dealt with in a police procedure, then responsibility for the state of affairs that arose must clearly be ascribed to the police. The excuse of self-injury in the police procedure of the person dealt with would otherwise tend to become an all-too frequent conclusion in other similar cases.

For the reasons stated above, the ombudsman does not therefore accept the conclusion that the police cold not determine the actual state, since in this regard they did not in fact exhaust all possibilities, and the report sent to the prosecutor could have been better balanced.

Later the General Police Authority informed us that they concurred with the findings of the ombudsman relating to taking all steps to determine the complete actual state. They therefore ordered the Ljubljana Police Authority to take additional steps. The Ljubljana Authority arranged a face to face meeting with the police officer, but the complainant declined this when it was explained to him that apart from the police and himself, no one else would be present. Since he did "not believe in a proper and impartial assessment of the procedure", without the presence of "someone from the civil society" he did not wish to take part in the meeting. At the same time it is clear from the complainant's assertions that he is seeking satisfaction in court proceedings.

Inspection of detention rooms at police stations

In 2003 we inspected detention rooms at the police stations in Tržič, Ajdovščina, at the Border Police Station of Vrtojba and the detention rooms at 5, Povšetova Street in Ljubljana. After each visit we sent a report on the determined state with suggestions for eliminating deficiencies to the police station and the General Police Authority. The police responded appropriately to our findings and recommendations.

During our visits to police stations we observed that attention to the rights of detained persons is only drawn by a poster in the duty officer's room, and not also in the corridor outside the detention rooms and the cells themselves. We note with satisfaction that the police have responded to our suggestion in this regard with an assurance that they will also place posters detailing the rights of detained persons in the corridor outside the detention rooms.

At the same time the police informed the ombudsman that they are preparing a special leaflet on the rights of persons deprived of liberty. The leaflet will be available at all premises for detention. And like the posters, the leaflet will also be translated into 18 foreign languages. We regard this action, too, as a response to the ombudsman's recommendation set out in last year's annual report, that the police should hand to detained persons a copy of the official record or other appropriate document setting out the rights pertaining to persons deprived of liberty. This will ensure that such persons have the possibility of familiarising themselves "in their own time" with their rights even after the procedure has been completed, they have been read their rights and have confirmed this with a signature. The current police practice is indeed such that detained persons confirm by signing the official record that they have been advised of their rights upon detention, but at this point the police do not hand them a copy of the signed official record. By placing posters outside the detention rooms and systematically handing out leaflets upon the actual deprivation of liberty, detained persons will be more fully informed of their rights.

As regards its content, the leaflet "information on the rights of persons deprived of liberty" clearly has the purpose of including all the legally provided cases of deprivation of liberty. Here it should be stressed that this information on rights, which represent procedural guarantees in criminal procedures, are adequate only for the time from 30 July 2004, when application begins of those provisions of the ZKP-E that give the police the right to

conduct formal interrogations of suspects in preliminary criminal procedures. After this new feature begins to apply, the advice on the rights of persons who are suspects deprived of liberty pursuant to Article 157 of the ZKP will in fact be more extensive, including an explanation that anything such persons say may be used against them in court.

Right to medical attention

The leaflet also mentions the right to medical attention. It sets out that detained persons may themselves choose a doctor. If they need urgent medical help, the police are duty bound to provide this. Such information is of course welcome, and also follows up on the relevant reports made previously by the ombudsman.

Unfortunately the right of access by detained persons to a doctor has not (yet) been regulated by law. Despite the ombudsman's suggestion of framing this right in law, the opportunity presented by the revision of the ZPol in 2003 was not taken. Detained persons must be accorded the right of access to a physician, including the right to be examined by a doctor of their own choice, in addition to any possible medical examination performed by a doctor selected by the police. Medical examinations of detained persons must be conducted beyond the hearing and, if possible, outside the field of vision of police officers (unless the doctor in a specific case requests otherwise). Doctors must officially record not just the results of their examinations and their findings, but also all relevant statements by detained persons. Such records must be made available to the detained persons and their attorneys.

Medical examinations are in the interest of the detained person and also of police officers, especially when forcible means of restraint have been used. They make it possible to determine possible injuries and the mechanism by which they were sustained, both of which play an important part in verifying accusations of maltreatment during the actual arrest and deprivation of liberty in police custody. Along with the right of persons to have third parties of their choice informed of their arrest (such as a family member, friend, consulate etc.) and the right to an attorney, the right of access to a doctor completes the three fundamental guarantees against maltreatment of detained persons.

2.7 ADMINISTRATIVE MATTERS

2.7.1 General

Recently the Government and the Ministry of the Interior (MNZ) have been devoting the kind of attention to issues of development, organisation and the working of the public sector that they deserve. The orientation towards an overall and continuous regulation of these issues is most encouraging. In the middle of the year the Government adopted the Strategy for further development of the Slovenian public sector 2003-2005, and at the end of the year it confirmed the document entitled Policy of quality in Slovenian public administration. The ombudsman can only agree with the vision and goals of the

For a better public administration

Strategy: the functioning of public administration according to the principles of legality, legal safety and predictability, political neutrality, an orientation towards the user, openness and transparency, quality, success and efficiency.

The Government and MNZ adopted a range of implementing regulations to implement laws adopted in 2002, especially the State Administration Act (ZDU-1) and the ZJU. It appears

that on the regulatory level (including in laws) provisions are not always sufficiently weighed up, and the consequence of this is the rapid and frequent amendment of regulations.

On an operational level, certain steps have been taken for the more rational organisation of government services and bodies within ministries. Unfortunately no changes have been made to the organisation of territorial units of public administration, which means that no steps have been taken to link up state bodies on the local level, something we have advocated a number of times and for which several professional bases have already been drawn up.

Among the other steps and activities, mention should be made of the setting up of a portal for administrative units, activities to eliminate backlogs in their work and greater efforts to coordinate this work. Since according to our observations, users have even numerous difficulties with other state administration bodies (ministries and certain holders of public authorisation), it seems especially important to us that the latest steps by the Government also relate to ministries. They are required to draw up catalogues of the administrative procedures which they conduct, to publish on the Internet information about their services and standardised application forms, to put into practice the possibility of paying administrative taxes and other costs of procedures by debit/credit card, to determine how satisfied clients are with their services and so forth. In view of the fact that it is precisely the violation of legal and often also any kind of reasonable deadline for second-instance decisions that provides one of the common reasons for complaints to the ombudsman, and the situation in some areas is too slow, while in other areas it is showing no improvement at all, there may be an urgent need for effective measures in these bodies to eliminate backlogs and also for "systemic" reviews by administrative inspectors in compliance with Article 307 of the ZUP.

The effects of all the described activities will of course not be entirely visible in a short time, nor is it easy to determine them. In our work during 2003 we observed these effects only exceptionally, and we note this separately in another section of the report. Meanwhile the number of new complaints received rose from 468 to 503 (a rise of 7.5 %), without it being possible to identify any special problem that might have caused this increase. We received significantly more complaints in the sub-areas of public activities (especially education) and tax and property matters, while the number of complaints in other sub-areas was practically the same as in 2002, or slightly lower.

2.7.2 Citizenship

The number of complaints in this area fell again slightly this year (we received 48 complaints, and 51 in 2002), but the content remained very similar. This year the ombudsman was approached by several complainants either owing to non-fulfilment of one of the conditions pursuant to the Citizenship of the Republic of Slovenia Act (ZDRS) and the Act Amending and Supplementing the Citizenship of the Republic of Slovenia Act (ZDRS-Č), owing to dissatisfaction with the decision of the MNZ regarding their application for citizenship, or because they desired simply explanations regarding the conditions and procedure for obtaining citizenship, especially based on Article 19 of the ZDRS-Č. Fewer complainants approached the ombudsman owing to the length of procedures for granting citizenship. Based on enquiries we determined that the MNZ issues decisions with an interval of six months (this applies especially to procedures pursuant to Article 19 of the ZDRS-Č) to two years, depending on what type of naturalisation procedure is involved. The timetable is longer for regular naturalisation based on Article 10 of the ZDRS and naturalisation with exemptions pursuant to Article 12 of the ZDRS.

The number of complaints received and their content indicate that fulfilment of conditions for ensuring means of support still remains a problem for those spouses of Slovenian citizens who do not meet the requirements under Article 19 of the ZDRS-Č. We have already set out extensive argumentation in favour of more flexible application of the Regulation on Criteria for Determining Fulfilment of Certain Conditions for Obtaining Citizenship of the Republic of Slovenia (the Regulation) in such cases in earlier annual reports, so we will not repeat them here. We do, however, reiterate our motion that the issue of more lenient conditions for spouses of Slovenian citizens and the issue of more flexible implementation of the Regulation be studied again, since the revised ZDRS-Č offers no kind of facility or exemption in the naturalisation procedures for this category of applicant regarding fulfilment of the condition of means of support.

2.7.3 Aliens

This year, too, saw a continued fall in the number of complaints (by nine per cent). The ombudsman was approached by only four complainants owing to the length of procedures for issuing permanent residence permits pursuant to the Aliens Act (ZTuj-1). The small number of complaints indicates that with the transfer of competence to decide in cases of issuing permanent residence permits from the MNZ to administrative units (*Upravne Enote* – UE), implemented on 16 May 2003, backlogs in resolving these cases have finally been reduced. We do not, however, have any information on whether the administrative units are processing applications within the legal time frame. Based on the fact that in this connection we received only one complaint, we may conclude that the administrative unit are appropriately organised for implementing the ZTuj-1A. It appears that also a number of other changes introduced by the ZTuj-1A, have turned out well in practice, since we received no complaints regarding these issues. We received only one complaint owing to the length of procedure for granting asylum, and we discuss this elsewhere. There was also a reduction in the number of complaints owing to the length of procedures for issuing permanent residence permits on the basis of the Act Regulating the Status of Citizens of Other Successor States to the Former SFRY in the Republic of Slovenia (ZUSDDD), since we received only one such complaint. The MNZ informed us that a decision was made on 3 March 2003 regarding a complainant's application submitted at the end of December 1999. It appears that the MNZ has finally dealt with the majority of applications pursuant to the ZUSDDD. Many of the aliens who approached the ombudsman wished to obtain simply explanations regarding fulfilment of the conditions and the procedure for obtaining one or other of the residence permits, and explanations about the settling of status for those "erased" retroactively. These enquiries represented the majority. We were approached by quite a number of alien citizens of other republics of the former Yugoslavia who left Slovenia and are still not living in Slovenia today, but would now like on the basis of former registration as permanent residents in Slovenia to claim in particular rights deriving from employment, the restitution of what was termed the housing right and compensation for the period of their unlawful erasure from the register of permanent residents of Slovenia. In these cases we sent relevant explanations to complainants and brought them up to date with current developments in the legislative area in connection with the settlement of status for those "erased".

Shorter backlogs

In decision no. U-I-246/02 of 3 April 2003 the Constitutional Court determined that the ZUSDDD was at variance with the Constitution, because:

The erased

- citizens of other republics of the former SFRY (Yugoslavia) who were erased on 26 February 1992 from the register of permanent residents are not granted permanent residence from that day;

- it does not regulate the obtaining of permanent residence permits by those subjected to the measure of forced expulsion of an alien under Article 28 of the ZTuj (UL, nos. 1/91 and 44/97);
- it does not prescribe criteria for determining fulfilment of the condition of actually living in Slovenia for obtaining permanent residence permits.

At the same time the Constitutional Court annulled the first and second paragraphs of Article 2 of the ZUSDDD in those parts where they lay down a three-month deadline for submitting applications for permanent residence permits. It also ruled that the permanent residence of citizens of other republics of the former SFRY from 26 February 1992 on be determined through permanent residence permits issued on the basis of the ZUSDDD or previously on the basis of the Aliens Act (of 1991, 1999 and 2002), if from that day they were erased from the register of permanent residents. The MNZ must issue them *ex officio* supplemental decisions determining their permanent residence from 26 February 1992 on. The Constitutional Court set a six-month deadline for the elimination of certain other established variances.

The Constitutional Court decision speaks only of the erasure on 26 February 1992, but undoubtedly the decision also applies for erasures of a later date (two months after issuing a negative decision given on the basis of Article 40 of the ZDRS). On the basis of this decision there is a need in our opinion to recognise for those who obtained citizenship later on another basis (and who therefore reside in Slovenia on the basis of a permanent residence permit) that they were permanent residents during the time from erasure up until the obtaining of citizenship.

A final settling of the position of those erased would require:
- the issuing of a supplemental decision determining permanent residence in Slovenia from 26 February 1992 up until a permanent residence permit or citizenship was obtained and
- the drafting either of amendments and supplements to the ZUSDDD or a special law and:

- a new deadline for submitting applications to be determined;
- the prescribing of criteria for determining fulfilment of the condition of actually living in Slovenia, and observance of the view of the Constitutional Court that leaving Slovenia for up to one year cannot be deemed termination of actually living in Slovenia;
- regulation of the possibility of obtaining permanent residence permits for those who were subjected to the measure of forced expulsion from the country;
- where necessary, the prescribing of everything else to finally settle the status of citizens of other republics of the former SFRY who remained in Slovenia as aliens.

The Slovenian Government decided that the issue of the erased persons would be resolved through legislation in two parts, with a technical and a systemic law. The purpose of the technical law was to ensure a legal basis for the issuing of decisions determining permanent residence retroactively, and thereby to fulfil point 8 of the Constitutional Court decision on the issuing of supplemental decisions.

The technical law, by name the Act Executing Point 8 of the Constitutional Court Decision no. U-I-246/02 (ZIOdlUS246/02) was adopted by the National Assembly (NA) on 29 October 2003, but a suspensory veto was pronounced on it by the National Council (NC). On 25 November 2003 the NA voted out the suspensory veto with the necessary majority, and adopted the technical law, against which NA deputies lodged a request for the calling of a subsequent legislative referendum. The NA submitted a request to the Constitutional

Court to decide whether rejection of the ZIOdlUS246/02, which the NA adopted on 25 November 2003, in a subsequent legislative referendum requested by 30 deputies, would give rise to unconstitutional consequences. In decision no. U-II-3/03-15 of 22 December 2003 the Constitutional Court rejected the NA request. In its decision, the Constitutional Court included the finding that unconstitutional consequences, which are laid down as a reason for the unconstitutionality of a request for calling a subsequent legislative referendum by the Referendum and Popular Initiative Act (ZRLI), had already been caused through the unobserved expiry of the deadline for execution of the Constitutional Court decision and also through non-adherence to point 8 of that same decision. And any prevarication in executing the aforesaid Constitutional Court decision signified a continuance of the unconstitutional state of affairs.

As the Constitutional Court noted, the possible rejection of the aforementioned law in a subsequent referendum would still not remove the duty of the NA to execute the Court's decision, nor would it remove the duty of the MNZ to immediately begin execution of point 8 of the Constitutional Court decision. For this reason a potential rejection of the law in a referendum would not cause the asserted violation of human rights.

We expected the legislators to resolve all key and open issues relating to the status of the erased persons, within the deadline laid down by the Constitutional Court. Unfortunately the process of adopting legislation that would ensure fulfilment of the Constitutional Court decision of 3 April 2003, has become very complicated, such that at this time it is not possible to predict when and how it will end.

Exchanging foreign driving licences for Slovenian licences

In this area we received five complaints, of which two were owing to missing the deadline for exchanging driving licences, and one related to the problem of exchanging foreign driving licences held by citizens of other republics of the former Yugoslavia, who meet the conditions for obtaining permanent residence permits under the ZUSDDD, but who obtained such permits prior to the entry into force of this law (1 May 1998), or who submitted at the same time an application for a permanent residence permit and an application for citizenship, and who were granted citizenship before the conclusion of their procedure under the ZUSDDD.

We drew attention to the fact that this category is left out of the Constitutional Court decision no. U-I-119/99 of 23 May 2002, back in the 2002 annual report. At that time we communicated our opinion to the MNZ that there was no reason to treat these persons any differently from those who have or will obtain permanent residence permits pursuant to the ZUSDDD. This year the ministry replied that it had re-examined these issues and problems, but had not changed its opinion. They stressed that the Road Traffic Safety Act (ZVCP), prior to the entry into force of the revised ZVCP-C, regulated the exchanging of foreign driving licences for Slovenian ones equally for all aliens and Slovenian citizens. And the Constitutional Court decision of 23 May 2002 provided a category of aliens (citizens of other successor republics to the former SFRY who obtained permanent residence permits under the ZUSDDD or in compliance with the same submitted applications for permanent residence, but whose applications had not been finally adjudged) and prescribed their exemption from the standardised arrangement under Article 135 of the ZVCP. In the opinion of the MNZ, extending the circle of persons for whom a specific arrangement would be provided in respect of exchanging foreign driving licences for Slovenian ones, would lead to an unsystematic approach and even to variance of the ZVCP with the Slovenian Constitution.

We also received two complaints owing to disagreement with the requirement that the complainants re-take the practical part of the driving test if they wish to exchange their foreign driving licences for Slovenian ones.

2.7.4 Denationalisation

In the area of denationalisation we received approximately the same number of new complaints as in 2002. As in previous years, complaints related chiefly to speeding up procedures, explanations of individual provisions of the Denationalisation Act (ZDen), and advice on how to act in individual situations or stages of a procedure. There are also cases where owing to the complexity and their lack of familiarity with denationalisation procedures, complainants expect solutions that are not possible in terms of the provisions of both the ZDen and the ZUP. Among complainants this causes dissatisfaction and unjustified criticism of administrative bodies.

Length of procedures

The reasons for the length of procedures remain the same as in previous periods. In 2003 we again encountered cases where the processing of individual denationalisation requests was still in the initial phase, for which there is of course no excuse. The latest monitoring of fulfilment of the planned concluding of the denationalisation process indicates that the plans set out have not been entirely fulfilled. In line with the time frame drawn up and adopted by the Government on 23 January 2003, the administrative units planned for there to be a total of 2,031 unresolved denationalisation cases as at 30 September 2003, while in fact there were 3,995, in other words 1,964 more than planned.

Eligibility of Austrian citizens

In two previous reports we drew attention to the fact that the issue of which former owners had the right to obtain indemnity from the Republic of Austria was still not cleared up, so the decisions of administrative bodies and courts were not consistent. We were in favour of administrative bodies not delaying any decisions in these cases. This would give clients the possibility of ultimately lodging constitutional complaints to claim their rights and also to obtain a ruling from the Constitutional Court.

The Constitutional Court gave a ruling on this issue in decision no. Up-547/02-22 of 8 October 2003. The decision indicates that the circumstance whereby persons deemed themselves to be Yugoslav citizens during nationalisation, was important in deciding on the right to denationalisation, if during nationalisation such persons were not Austrian citizens. Persons who up until the entry into force of the State Treaty for the Re-establishing of an Independent and Democratic Austria on 28 November 1955 (ADP) had not acquired Austrian citizenship, undoubtedly had no right to indemnity pursuant to Article 27, paragraph 2 of the ADP, irrespective of the basis on which their property was nationalised. If a former owner deemed himself to be a Yugoslav citizen, simply because he was an Austrian citizen on the entry into force of the ADP, it is not possible to deny his eligibility for denationalisation. Persons who on the entry into force of the ADP had Austrian citizenship, and during the nationalisation process had the citizenship of some other state, can be denied eligibility to denationalisation only in the event that they had the right to receive compensation from the state of which they were citizens during nationalisation. In the event of it being established that a person deemed himself to be a Yugoslav citizen, owing to the rights under the ADP his eligibility to denationalisation can only be denied if during the period of nationalisation he also had Austrian citizenship.

2.7.5 Property law matters

In this area we received 32 new complaints, nine more than in 2002. This area involves cases under the jurisdiction of local self-government bodies.

As in pervious years, complainants approached the ombudsman because municipal bodies were dealing with their requests too slowly or were not even responding to applications.

They asked for our intervention in speeding up the processing of cases and responding, and occasionally also for us to become actively involved in settling cases. We also received requests for help with legal advice.

Complainants lodged complaints about municipal councils:
- because they wished to purchase land owned by the municipal council in order to use it as functional land around their buildings, but the municipal council was not prepared to sell the land to them or the process was halted because they could not agree on a price (the valuers appointed by the municipality usually determine the lowest possible price),
- because they were not paid compensation for land parcels appropriated in the past (some requests had already lapsed),
- because a municipal council made a contract with a complainant who permitted the reconstruction and asphalting of a forest road, promising to apportion the road and pay compensation; the apportioning and transfer of the land to the public benefit was effected, but the complainant received no compensation,
- because the municipal council paid no compensation for land whose apportioning the complainants agreed to and on which it then built a public road,
- because they did not agree to a road running through their parcels becoming a public road,
- because owing to lack of finances, the municipal council did not fulfil the project of installing public lighting in a settlement,
- because the municipal council was not prepared to sell to a complainant commercial premises which it had rented,
- because the municipal council was not prepared to cooperate in arranging access to a complainant's house,
- because the municipal council at first promised to exchange its land with that of the complainant, but later reconsidered, so as not to cause a dispute between neighbours,
- because the municipal council constructed a sewerage system, without supposedly requesting a contribution for its construction from all residents,
- because the municipal council did not provide for the proper use of a school recreation centre, since it was remiss in maintaining the municipal access,
- because municipal council services overseers were not doing a good job.

In these cases we made enquiries as to the position of the other side, and intervened primarily to ensure that the resolving of cases moved along and that complainants were appropriately informed of this.

2.7.6 Tax and customs

Compared to the previous year, the number of complaints in this area in 2003 rose from 60 to 83, representing a 38 per cent increase. Alongside certain unresolved issues from the past, which we will not repeat here, the following problems stood out:
- grave social hardship of families owing to tax debts arising,
- the issue of freezing funds of sole traders in all accounts (including those in which pensions or funds exempted from execution are received),
- the consequences of compulsory collection of debt by attachment of the liable person's bank account, thereby preventing his continued performance of business,
- seizure of royalties and payments to persons performing independent activities as their main occupation, to a level of 90 per cent,
- unlawful working of the ZPIZ in deciding on writing off of contributions,
- inconsistency regarding recognition of the right to relief at the ZZZS and ZPIZ in the payment of contributions,
- refund of tax on motor vehicles purchased to transport disabled children,

- inconsistency in taking into account child disability benefit in the basis for assessing the parents' income tax,
- payment of contributions from the compensation paid to workers in lieu of the notice period on termination of employment.

Resolving complaints

The head office sends us monthly reports on the situation regarding the resolving of complaints. In this way they keep us up to date with information on backlogs and deadlines for resolving complaints by individual area or type of tax obligation. It appears that efforts are directed towards resolving the greatest possible number of complaints at the first instance, within the framework of the competence held by the body that made the challenged decision. The reports received indicate that more than three quarters of complaints are resolved in this way. Most complaints relate to the assessment of income tax, followed by complaints against decisions on assessment of the charge for use of constructed land, then complaints relating to assessment of the charge for the regular operation of facilities in drainage and irrigation systems. It is interesting to note that the ombudsman did not accept these for processing – despite their numerical weight. There were also numerous complaints against the tax authorities on the implementation of compulsory collection procedures.

The time frames for resolving complaints are still not satisfactory. This applies especially to resolving complaints against decisions regarding the refunding of excess excise duty paid. In terms of complexity, decisions on excise duty refunds are comparable to decisions on the assessment of income tax, so there is no clear reason why they should not be processed with similar speed. We were therefore surprised by the response of the Ministry of Finance (MF) that in connection with a complaint lodged in August 2002 over the refund of excise duty, the complainant can only expect a resolution at the end of 2004 or in 2005. The tone of the reply is indifferent, as if exceeding by more than twenty times the legal deadline for a decision would not arouse at least a certain discomfort, let alone the desire to seek measures for a rapid improvement of the situation.

The above leads us to conclude that the reorganisation of the Tax Administration of the Republic of Slovenia (DURS) and the transfer of second instance decisions to the MF have not had sufficient influence in speeding up the resolving of complaints and in securing more efficient work in the complaints body. Since tax reforms are imminent, with numerous changes predicted, one may fear that it will still be a long time before being able to count on any elimination of backlogs and more rapid processing of cases.

The stranglehold of tax debt

There are increasing numbers of cases where complainants approach the ombudsman for help owing to serious hardship resulting from high tax burdens, intensified by added interest. These involve tax debts that arose at a time when such persons performed registered activities as sole trader entrepreneurs. The tax debts are for many people generally so great that they simply see no way out of the situation. The feeling of being powerless and of a suspected injustice that has been done to them, alongside the feeling of personal failure and guilt towards their family, marks them for their whole lives. The consequences of this are serious psychological trauma, illness and often the disintegration of families. In dealing with such cases we often ask ourselves whether the problem could not be settled in some other way and even prevented. We have in mind a greater flexibility in collecting tax debts, with an emphasis on enabling entrepreneurs to the greatest possible extent to perform their activities and in this way to create income and later to pay the tax debt. Such solutions would certainly be more suitable for all concerned. It regularly occurs, however, that measures imposed by the tax authority (freezing funds in their business account, preventing them from performing business activities) force those liable to close their business. In this way the state often does not receive the debt, in fact the opposite happens, whereby the state must itself through social policy measures resolve the social and mate-

rial problems of affected debtors and their families. In view of this there is no surprise in the thinking of one complainant, who on the termination of his private business simply does not dare take up employment, because the tax authorities would instantly freeze his bank account and seize his income.

Attachment of self-employed earnings

In connection with forced collection of tax debt with attachment of bank account funds, we encountered the problem of attachment of freelance fees, which were the complainant's only income. The complainant is a freelance journalist, and performs his work as a self-employed business person. Owing to tax debt, the procedure was implemented involving compulsory collection with attachment of funds in his account up to a level of 90 per cent of payments received. After attachment, the complainant was only left with 3,500 tolars in his account, on which it is of course not possible to live. In dealing with this case, we are forced to make a comparison with the arrangements under Article 50 of the ZDavP, which relates to attachment of personal income. According to this provision, only up to a third of the amount cleared from pay, payment in lieu and other earnings may be appropriated. The law also provides that no appropriation may be made from such income if the income is less than the amount of monetary assistance paid as the sole source of support under the social security regulations. Taxpayers who are employed and whose salary is their only income from such employment are therefore better protected in law than those who support themselves outside employment. Since the forms of creating and providing means of support are increasingly more diverse, and full-time employment is progressively less predominant, we were faced with the question of equal treatment of taxpayers and also the appropriateness of the legal provisions.

In connection with the above doubt the MF replied that the cause should be sought in the improperly arranged status of these persons. Since they are not employed and do not have salaries, they pay social security contributions in compliance with the ZPIZ-1 from the determined insurance basis. Since they do not have salaries, their unpaid contributions cannot be seized; seizure may only be made of movable and immovable property or income these persons receive in a business account. The suspected inequality between employed and "self-employed" persons would be removed if there existed a regulation that would provide the same basis in earnings for settling social security contributions for those persons who perform an independent occupation, and would at the same time enable them to be treated in the same way as others both in the accounting and paying of compulsory contributions and in all other procedures (termination of legal persons and independent entrepreneurs under the Forced Settlement, Bankruptcy and Liquidation Act). If there were restrictions on the collection from their earnings of tax debt relating to unpaid compulsory contributions, this could mean in the opinion of the MF that the burden of compulsory contributions would be transferred to the state, while these taxable persons would, in comparison with employed persons, from whom the employer calculates and deducts contributions from employment, themselves be in a privileged position.

Double payment of contributions

We dealt with a case of the application of regulations relating to the payment of social security contributions. An employer cancelled his employees' contract of employment on the basis of Article 88 (business reasons) of the Employment Act (ZDR). The employees' employment record booklets were closed, they were de-registered from compulsory health and pension insurance and in compliance with the provision of Article 94 of the ZDR he made an agreement with the workers on compensation. He paid them compensation in lieu of the notice period, and severance pay owing to cancellation of their employment contract for business reasons. In line with instructions from the local tax office, he also settled all taxes and contributions from the compensation paid. When the complainant went to the doctor a month after termination of his employment contract, he was turned away from the health centre since he did not have properly arranged health insurance. It was

explained to the employer that he was not in any way obliged to pay contributions for social security on the compensation payments, and that the workers should arrange their own insurance. This was done immediately by all the employees except for our complainant, since they wished to avoid any possible difficulties with the doctor. The MF, Ministry of Labour, Family and Social Affairs (MDDSZ) and the Head Office did not provide any unambiguous and well-founded explanations in connection with the situation that arose. If the compensation was in lieu of pay which the worker would have received during the notice period, and if it signifies earnings from employment, from which taxes and contributions are paid, and if social security contributions have indeed been paid, then it is not understandable why in spite of this the complainant had no insurance cover. Alongside the problem of conflicting interpretations of regulations regarding the duty to pay taxes and contributions, this also raises the issue of unlinked records.

Compulsory collection of fines

We already wrote in the 2002 annual report about the problem of compulsory collection of fines for misdemeanours handed out by police officers to offenders at the scene of the violation, owing to reservations about the injustice of collection (on the instigation of the compulsory collection procedure the fine had already been paid, the penalty notice was cancelled owing to objection from the offender, delivery of the penalty notice was not proven). Owing to a suspicion that the reasons for this problem arising lie in the exchange of information between the police, who report what fine needs to be compulsorily collected, and the tax bodies that carry this out, we looked into the matter. The explanations of the MNZ indicate that in future there should no longer be any problems. By means of an appropriate computer software system, data on paid or unpaid fines are collected in the central police computer, and then on expiry of the 45-day deadline within which the fine should have been paid, the data are sent electronically to the tax authorities for collection. With the introduction of forms that should preclude possible errors and mistakes, there should no longer be any problems. Nevertheless it is dubious practice for the MNZ not to send the tax authority data on the executability of the penalty notice. According to their assertions, they send the original of the penalty notice, with information added regarding its executability, only on the request of the tax authority, in other words only if an appeal has been lodged against the decision on compulsory collection. According to the ZDavP the provision of data on when the penalty notice, as the basis for execution, became executable, is a compulsory and constituent part of the decision on compulsory collection. For this reason both the MNZ and the tax authority should ensure the completeness of data in all cases, and not only when an appeal is made. Complete decisions reduce the possibility of the successful challenging of mistakes and other irregularities, and in this way also potential demands for refunds of unlawfully collected fines.

Income tax relief

We continue to encounter problems with income tax. We have already written a great deal in previous reports on the ZDoh and its arrangements relating to the regulation of individual issues, especially relief for maintained family members. We also criticised the attitude of the legislators to execution of the decision of the Constitutional Court, which has dealt several times with the constitutionality of individual legally provided relief in articles 10 and 11 of the act, most recently on 20 November 2003, when it adopted decision no. U-I-259/01-8 on the variance of Article 10, paragraph 1, sentence three of the act. The decision relates to the non-granting of an equal increase in relief for children and step-children in the same family community. We received from the territory of a certain tax office three complaints from parents of children granted disabled status under the Social Care for Mentally and Physically Handicapped Persons Act. The children receive disability benefit, which is paid by the ZPIZ after being refunded by the MDDSZ. For the parents who claimed relief pursuant to Article 10 of the act, the tax authority counts this income as the children's own funds, and reduced the relief by the relevant amount. The ZDoh provides that the amount of relief for maintained family members is not reduced if they receive

funds under Article 19, point 4 of the act (care supplement to pensions, unemployment benefit, social assistance for children, cash benefit as the only source of support, one-off monetary assistance under special regulations). Unfortunately, it does not provide that the amount of relief for maintained family members is not also reduced for income from disability benefit persons receive under the regulations on social security for mentally and physically handicapped persons, even if this involves income that is otherwise tax-exempt. If disability benefit which society allocates to persons with moderate, serious and severe mental and physical disability constitutes social assistance for such persons (who live with their parents and owing to their disability are incapable of independent life and work), then it sticks in the throat that pursuant to Article 10 of the ZDoh relief is not reduced even for income that pupils or students receive via student or youth organisations, these often being much higher than disability benefit and the amount of relief. Such a system is not fair. The parents of these children also point out the problem of the inconsistent practices of tax authorities in connection with taking such relief into account. The above indicates how great a need there is for a thorough legal arrangement of income tax in general and especially of relief for maintained children.

2.7.7 Other administrative matters

Victims of wartime aggression

The influx of cases in this area fell to less than half their previous number. There was a reduction especially in the number of complaints owing to the slow resolving of appeals at the MDDSZ and owing to the long time taken to issue decisions on the level of compensation at the SOD. The largest proportion of complainants approached the ombudsman for clarification regarding the conditions and procedures for claiming rights under the so-called war laws, and owing to disagreement with negative decisions by the competent bodies in these procedures both at the first and second instance.

Correction of injustices

The number of complaints in this area increased. The largest group of complainants who approached us were those who had been granted status on the basis of two acts – the Victims of Wartime Aggression Act (ZZVN) and the Correction of Injustices Act (ZPKri). The content of these complaints was that the SOD had issued to complainants decisions on the level of compensation accorded to them as eligible persons on the basis of recognised status under the ZZVN, and that a part of the compensation granted on this basis had also been paid. But they had not also been given decisions on the level of compensation pertaining to them as eligible persons on the basis of recognised status under the ZPKri.

Payment of compensation

At the end of March the SOD explained that the majority of those eligible and whose correct data had been supplied to date, had been issued decisions on the level of compensation. In this way a total of 66,670 decisions had been issued on the level of compensation, of which 63,215 were eligible under the ZZVN and 3,438 eligible under the ZPKri. The reason for the SOD not being able to issue at the same time two decisions to an eligible person who is due compensation under several laws, was of a technical nature, since the computer programme and database of those eligible, as set up now, does not permit the issuing of two or more decisions to the same claimant at the same time. Owing to the technical complexity of working in the database of eligible persons and the fact that this involves a relatively small number of eligible persons who have at least under one law already received compensation, the SOD dealt with the software for working with the database only after the issuing of the first decisions on compensation, so that all those eligible for compensation under several laws could expect to be issued supplementary decisions or decisions on the level of compensation due to them from a different quarter no later than 15 May 2003. Despite this assurance, the SOD issued to those eligible persons who had

approached the ombudsman supplementary decisions with another delay, in the majority of cases a month later. Since we received no further complaints with this content later, we conclude that the majority of those eligible were finally issued supplementary decisions.

On the basis of a complaint from a former political prisoner, we were able to determine that there are still major backlogs in the work of the Commission for implementing the ZPKri. The fact that the work of the Commission is not organised so that it could decide on submitted requests within the – sufficiently long – legal deadline (12 months), is entirely unacceptable for claimants, who are elderly people and who have waited decades for the correction of injustices.

Reparation for material and non-material damage

In last year's report we wrote that the issue of war reparations between Slovenia as a successor to the SFRY and Germany remained open, although it was possible to conclude from the statements of certain German partners that the German side considered the matter closed. This year we were approached by a new category of claimants – Slovenians who were forcibly mobilised into the German army. They are organised in an alliance of three societies. They wish to familiarise the general public with the facts demonstrating that they were indeed forcibly mobilised, and they accuse the state of doing precious little for them. After several years of efforts they were incorporated into the ZZVN, but they do not have the right to a pension, although they have acquired the right to compensation under the ZSPOZ. They requested the support of the ombudsman in claiming compensation from Germany.

Last year we had already noted that in a session on 9 May 2002, the Government adopted a decision whereby it required the MDDSZ to adopt a position regarding the issue of paying war compensation for non-material and material damage caused by the occupying forces from 1941-1945 in Slovenia, and to propose tasks of individual ministries and institutions in resolving this issue. As far as we know, the material was prepared, but owing to the differing views of the other ministries involved, it was not studied in a Government session.

The ombudsman drew attention to this at a meeting with the Prime Minister on 6 March 2003. The Prime Minister assured us that the Government would address this issue. In its session of 19 June 2003 it adopted a position to the effect that the issue of compensation payments for war damage (material and non-material) with Germany remained open. The Government took the decision to renew and revive the work of the interdepartmental committee for examining war damage. The committee was only appointed towards the end of the year. It may be expected to perform its work as soon as possible and draw up for the Government a proposal of activities for conclusively resolving this issue.

Issuing public documents with photograph of holder wearing head-covering

The ombudsman was approached by complainant who is a Slovenian citizen of the Muslim faith, and who submitted an application at the Jesenice administrative unit (UE) for a driving licence. She enclosed with her application a photograph showing her wearing a headscarf, which she wears in line with the customs of her faith. The administrative unit rejected her application for a licence, citing the provision in Article 5 of the Rules on Driving Licences (UL, no. 117/2002). The complainant could not understand this action, since the same administrative unit had without any complications issued her with a passport in which she is photographed wearing a headscarf.

Pursuant to Article 5 of the Rules on Driving Licences, applications for driving licences must enclose a photograph that shows the true likeness of the person and is not retouched, while the person must be photographed frontally, with forehead uncovered, without a hat, cap or headscarf. Here it should be pointed out that Article 3 of the previously valid Rules on Driving Licences and certificates of knowledge of the regulations on road traffic safety

(UL, no. 3/83 and UL, no. 5/92) also provided that the photograph must show the eligible person from the shoulders up, frontally and without any head covering.

Article 11 of the Rules on Implementing the Passports of Citizens of the Republic of Slovenia Act (UL, no. 10/2001), requires that applications for passports enclose a photograph showing the true likeness of the applicant without being retouched, with the applicant being photographed frontally, with uncovered forehead, and without a hat, cap or headscarf. Photographs showing the applicant in a headscarf or cap may in exceptions be submitted by older people who according to their popular customs wear such a scarf or cap as a constituent part of their clothing. Exactly the same provision is made in Article 9 of the Rules on Implementing the Personal Identity Document Act (UL, no. 43/98). But the Rules on Driving Licences do not provide for such an exception, and neither did the previously valid Rules on Driving Licences and Certificates of Knowledge of the Regulations on Road Traffic Safety provide any exceptions.

In response to our intervention the MNZ informed us that, in studying the complainant's case they had determined that the individual implementing regulations governing the area of different public identification documents were not consistent with each other. This then gave rise to cases where on the basis of one photograph a client could obtain one specific type of public document but not another. The Rules on Driving Licences allows no exceptions regarding the requirement for how the person is photographed, while the Rules on Implementing the Passports of Citizens of the Republic of Slovenia Act and the Rules on Implementing the Personal Identity Document Act allow certain exceptions. The ministry assured us that it would in the shortest possible time harmonise the provisions of the implementing regulations and standardise the area of public identity documents. In order to ensure standardised practices for issuing public documents the ministry would send guidelines and instructions to all administrative units . At the same time, in order to eliminate the inconsistency, the ministry suggested to the Jesenice administrative unit that it nevertheless issue a driving licence to the complainant.

2.7.8 Social affairs

The number of complaints in this area continues to grow significantly (by 62 per cent compared to the previous year). For the most part this involves complaints in the area of education, while there was an almost negligible amount of complaints in the areas of science, sports and culture. The substance of these complaints does not indicate violations of human rights and fundamental freedoms, since they involved primarily issues to which we responded in line with our jurisdiction, and referred complainants to the relevant official bodies.

Education

The content of complaints relating to education can be divided up into the following groups:
- assessment of knowledge and the attitude of staff to students and pupils,
- procedures in settling certain matters in kindergartens and schools,
- introduction of new curriculums and changes to study programmes,
- employee problems,
- the status of young people with special needs in the education system, about which we write in the section on Protection of children's rights.

Since the area of education is a specifically administrative area, owing to the difficulties encountered by those involved in the education process in exercising their rights at the

competent bodies, we are convinced that the provisions of regulations should be clearer, more complete and more adapted to the special nature of this field. All variances from the general arrangements under the ZUP should be regulated in school laws, something we drew attention to in last year's report. We would like to stress that this does not mean supporting (excessive) regulation. This area is already regulated, just not entirely appropriately: since this involves administrative or at least public law matters, all procedures are governed directly or *mutatis mutandis* by the ZUP, whose provisions are too rigid, however, to regulate certain relations in education. In view of Article 3 of the ZUP, a different kind of system is possible only through a law. In truth many practical questions could be answered by instructions from the Ministry of Education, Science and Sports (MŠZŠ), which would also ensure standard practice in educational institutions. In dealing with complaints we encountered specific official documents that indicate how urgently such instructions are needed.

Relations between teachers and students and pupils

Assessment of knowledge, the attitude of teachers to students and pupils and verifying teaching methods are tough nuts to crack in determining the justification of complaints and how to resolve them. Everyone has the right to be properly and fairly assessed in terms of their knowledge, and upon any lack of knowledge to be dealt with appropriately, without any unnecessary (insulting) remarks or judgements from teachers. In ensuring the rights of pupils against a teacher's suspected unacceptable teaching methods and verification and assessment of knowledge, the procedures for determining the justification for complaints are lengthy and complicated, while the measures taken by those in authority are rarely visible to complainants and insufficiently effective. For this reason those who complain are most commonly convinced that in the future it is senseless and worthless to make complaints, since in any event they have achieved nothing other than a more severe and worse situation than they had before complaining.

A typical case of this is the complaint made by third-year pupils of a secondary school, who complained about the teacher's working methods in interpreting the education material and in verifying and assessing knowledge. They are also bothered by the teacher's attitude towards them. The actions of the inspectors was quite proper, and they responded rapidly to the complaint. The procedures prescribed and necessary in such cases lasted a fairly long time (four months), wherein no one spoke about this to the pupils and they were not informed of events in an appropriate manner. After extraordinary inspection oversight was conducted and irregularities determined, the head teacher was supposed to have ensured imposition of the measures ordered. Given the expressed fear that the teacher would not prepare them adequately for the *matura* final school exams, and the pupils' desire to have him replaced, the inspectors submitted the pupils' written work for analysis and evaluation to appropriate expert institutions, of which the school was supposedly informed later. Yet in view of all the possible steps available to the class teacher, the advisory service and the head teacher as the pedagogical superior, with timely and appropriate action it would have been possible to resolve the problem at the school itself.

Decision-making processes

Judging by the number of complaints, decision-making processes at kindergartens did not cause any major problems. A complaint owing to the transfer of children to another section of a kindergarten was resolved at the municipal council after intervention by the MŠZŠ, since the municipal council did not insist on the decision and the children were accepted into their enrolled section.

Several justified complaints were sent to us by parents of school and university students, who in arranging various matters in schools ran up against some unusual procedures. The unusually long time frame for correcting a mistake in a certificate was the reason for a complaint from a person pursuing adult education, with the educational establishment

taking as much as a year to amend an incorrectly noted grade in the certificate, yet after our intervention they dealt with the matter in one day.

In dealing with a complaint in which the affected person did not receive a certificate thirty years earlier, we ran into the problem of issuing, distributing and delivering education certificates.

A considerable number of complaints related to the procedures for nostrification of education certificates obtained abroad. In none of the cases did the ombudsman in any way intervene or take action owing to a violation of human rights or fundamental freedoms being established. We communicated to the MŠZŠ the common features and criticisms in the complaints received, and these should in our opinion be taken into account in the drafting of new regulations, since the current ones have been in force since 1972 (Nostrification of Education Certificates Obtained Abroad Act, UL, no. 42/72) and 1984 (Rules on Documentation for Nostrification of Education Certificates Obtained Abroad, UL, no. 34/84). At the same time there is a need to draw up adequate implementing regulations, since the issued instructions only deal with problems as a stopgap, and cannot substitute for individual provisions in regulations. Since a law was a constituent part of the Slovenian Government's work programme for 2003, whereby the month of September was set as the final deadline for its adoption, we requested information from the ministry on how far work had progressed on drafting a new Nostrification of Education Certificates Obtained Abroad Act. In October they informed us that the draft of the law was still being harmonised within the ministry.

Changes to school and study programmes

Some ambiguities were generated by the introduction of the nine-year school programme and by changes to school and study programmes. It does not appear that there is any general lack of people being informed here, since there were not many complaints, and also upon verification at the competent authorities we cold not conclude that this was the problem. Individual parents were complaining about the organisation and implementation of graded classes at school, about the temporary introduction of two-shift classes owing to lack of space after transition to the nine-year programme, about the (excessive) burden on pupils at primary and secondary schools, about the greater number of class hours than is provided by regulations, and about irregularities in conducting the vocational *matura* exam and in assessing the *matura* subject of mathematics owing to printing errors and similar.

Students experienced certain problems with the co-financing of postgraduate study, since upon verification of data the MŠZŠ determined that they were first enrolled in postgraduate courses in previous years and in view of this they were no longer eligible to co-financing of studies in their second year. It turned out that students eligible for co-financing of postgraduate study were not sufficiently well and punctually informed, nor did individual faculties make special contracts with them regarding mutual rights and obligations. They were therefore convinced that if the ministry had co-financed their courses in the first year, it would also continue to co-finance them. We responded to complainants on the basis of the explanation from the ministry, and the Government also adopted the Decision Amending and Supplementing the Decision on Co-financing of Postgraduate Study, whereby it set out more clearly the provision regarding which students are eligible for co-financing.

A complaint from 60 students and the student council of the Mechanical Engineering Faculty in Ljubljana contained a request for support in arranging extension of the deadline for completing studies under the 8-semester university curriculum. The arguments set out by the students seemed to be convincing. Owing to the exceptionally short deadline by which decisions were supposed to be made, we requested the University vice-chancellor to call together at the earliest opportunity the body competent for deciding on this issue. We understood from his reply that after studying all the relevant legal regulations, the

University senate had granted the request of the students and student council of the faculty, and had determined 30 September 2005 as the final deadline for completion of studies.

Problems of employees

There was not any great number of complaints from employees in the area of social affairs. The reasons perhaps lie in the fact that they were able to find reasonable and acceptable common solutions with employers, or in claiming their rights they approached the appropriate complaints bodies. Some complaints were sent to us owing to a lack of response from those competent regarding their questions and complaints. Individual complaints indicated problems such as: unacceptable methods of a director in connection with ordering job assignments and verifying work performed; the demand of a head teacher for the securing of consent from parents for the method of a teacher's assessment of students' knowledge that was not in compliance with regulations; suspected abuse of position and powers by a director with a proposal to the institution's council for her dismissal (lack of clarity regarding the ombudsman's jurisdiction); objectionable sanitary and hygienic conditions, and depressing conditions generally in premises where classes are given; evaluating the work of presidents and secretaries of school examination boards in holding the vocational *matura* exam; improper use of criteria for determining surplus workers and similar. We advised complainants of the complaints avenues and referred them to the appropriate bodies.

2.8 ENVIRONMENT AND SPATIAL PLANNING

2.8.1 Issues dealt with

The number of complaints received in the area of the environment and spatial planning fell slightly in 2003 compared to the previous year; there was a greater reduction in the number of complaints concerning spatial planning than in those concerning environmental encroachments.

In terms of content, complainants approached the ombudsman with more or less similar problems to those in previous years. There are still frequent complaints relating to **emissions** in the operation of various commercial and other activities. A number of complaints were made about the excessive environmental burden of **noise from catering establishments**. We also dealt with a complaint relating to excessive noise caused supposedly by church bells. The IRSOP ordered measurements to be taken, and this should show whether reasons exist for the inspectors to act.

A considerable number of complaints related to **procedures for adopting municipal spatial planning documents**. These complaints frequently indicate that for one or another reason complainants are not involved in the procedures for adopting such documents, and are only informed of the status of their land when they intend to sell it or build on it. Here they often learn with disappointment that the land is not or no longer designated in the way they anticipated. Here of course they expect the ombudsman to intervene regarding the change to the status of their land or that he will become actively involved in procedures and in representing their interests.

The **construction of mobile telephone antennae** is another problem that drives complainants to approach the ombudsman with increasing frequency. For the most part they complain that they were not informed of the intended construction and were not involved

in the administrative procedure for obtaining permission to build, since they believe that this represents an encroachment with environmental impacts that should require their involvement. Most certainly the issue of determining the possible effects of non-ionising electromagnetic radiation (EMR) on people and the environment is becoming increasingly urgent. One of the reasons for anxiety and unhappiness among people is without doubt not being informed, and deficient or misleading information in the public, which arouses in people resistance to the installing of mobile telephone base stations. To this should be added occasionally the envy aroused by the compensation operators pay for the use of structures and land on which mobile telephone systems are placed. So a resolution of this issue will require the cooperation of professionals, state bodies, civil groups and those that generate EMR. To this end the Ministry of the Information Society, together with the Ministry of the Environment, Spatial Planning and Energy (MOPE), the Administration for Protection from Radiation, the Institute for Non-ionising Radiation and the majority of the main producers of EMR have decided to set up the project Forum EMR (*Forum EMS*). The main mission of the project is the objective, comprehensive and professionally supported informing of the widest circle of the public regarding the possible impacts of electromagnetic radiation on humans and the environment, and professional support for interested subjects in resolving urgent problems in the field of EMR in Slovenia.

We have observed that in connection with procedures under the Building of Structures Act (ZGO-1) and the Spatial Planning Act (ZUreP-1), complainants approach the ombudsman particularly regarding explanations linked to location permit information or changes to spatial planning documents. We have not dealt with any complaints relating to individual procedures under the new legislation. We believe that it is still too early to assess the reasons for this. The reason could lie in the procedures, which have for the most part already been conducted on the basis of the old legislation; perhaps the purpose of the new legislation has been achieved, in other words a simplification of procedures.

2.8.2 Inspectorate for the environment and spatial planning

In connection with inspection procedures, complainants approach the ombudsman owing to non-response from the IRSOP (the environment inspectors), inadequate responses, non-execution of inspectors' decisions (reporting illegal constructions) and also owing to the execution of these decisions (investors and owners of structures). The latter for the most part believe that they are in an unequal position to others who have also been issued with executable inspection decisions, but which are not executed. On the basis of complaints received, we may assess the IRSOP as being slightly more effective than previously in executing inspection decisions. Complainants point out suspected irregularities in inspection procedures. We have observed that there are fewer complaints owing to non-response from the IRSOP than in the past.

Despite observations that indicate the more effective work of the IRSOP, there remain several issues over which we have a differing view from that of the IRSOP. We cleared these up through the 2002 annual report and in dealing with complaints in 2003. We can divide them into three groups.

a) Non-awareness and/or non-recognition of the ombudsman's role

In connection with the work of the IRSOP we receive a large number of complaints throughout the year. For this reason we also make numerous enquiries at the inspectorate. If their response is not complete or is of dubious substance, we try to clear this up. In line with the ombudsman's role, we try to check the conducting of an individual procedure, in

order to be able to respond to the complaint fully and flawlessly. If we encounter dubious actions, the views, opinions and advice we offer are considerate and well-intentioned. Their purpose is to contribute towards better work.

The IRSOP, however, clearly regards our enquiries as interference in their work. They assert that the job of inspectors is work in the field, and not writing responses to those making reports and to various official bodies. If there is anything wrong with the decisions made by inspectors, possible breaches of procedural and material law can be claimed through legal remedies. Under the regulations on the ombudsman, no exchange of views between the ombudsman and official bodies is envisaged. In one case they took the position that they would send us additional information and the necessary explanations when they received our official decision on investigation. In their opinion, the cases dealt with do not in any way concern human rights. It is interesting that such responses are only given in (certain) cases where they would be required to respond to specific, demonstrable deficiencies, errors or dubious actions in individual procedures, and not in ordinary enquiries. It should be recognised, however, that despite their described positions, the IRSOP responds to our enquiries within the specified deadline, with rare exceptions.

Regarding these positions, the following should be noted:
- pursuant to Article 7 of the ZVarCP, the ombudsman may send to official bodies suggestions, opinions, criticisms or recommendations, which such official bodies are bound to examine and respond to in the deadlines given by the ombudsman;
- on the basis of Article 25 the ombudsman may communicate to any body his opinion in a case, irrespective of the type or level of the procedure which is under way;
- heed must also be taken of Article 3 of the act, whereby in his interventions the ombudsman may cite the principles of good administration;
- alongside violations of human rights or fundamental freedoms, the ombudsman may also determine other irregularities (Articles 30 and 39 of the act);
- breaches of the principles of good administration or other irregularities may in fact be very close to (or at the same time actually involve) violations of human rights;
- the decision as to the method of dealing with a complaint is up to the ombudsman, so there is no basis for a body rendering its response conditional upon receiving a prior official decision to launch an investigation;
- it is hard to imagine that better work at the Inspectorate would not also be the objective of its management, and why therefore would they not eliminate established deficiencies immediately and with effect for all inspectors, instead of waiting for the outcome of procedures through legal remedies in an individual case?

b) Burden of non-executed inspection decisions

According to IRSOP data from the beginning of 2003, around 14,000 executable inspection decisions were awaiting execution. It is not possible to force through the execution of such a high number of decisions by the inspectors, nor would the budget support that. Thus their orientation whereby they focus primarily on the immediate removal of major illegal encroachments on the environment, while they execute older decisions according to certain criteria. These include a large number of decisions relating to simple structures for which under the new ZGO-1 there is no need to obtain a construction permit, and location permit information suffices. However, the ZGO-1 did not define the rules of procedure for these (legally enforceable and non-executed) inspection matters. In their view, the ZGO-1 mitigated the sanctions for simple structures and provided greater scope for their legalisation. They acknowledge that a case cannot be considered to be closed if the inspector's decision has not been executed. They do believe, however, that they cannot (any longer) forcibly execute inspection decisions regarding structures for which under the new act location per-

mit information has been provided to the effect that the structure meets the conditions for permission to build.

Our view of this issue is briefly as follows:
- in principle one can agree with the orientation of the Inspectorate, but this must be carried out in the stage of issuing the inspector's decision, meaning that decisions should not be issued in cases where according to the Inspectorate's orientation there will be no decisive action for their execution; we are not certain, however, whether there is any legal basis in regulations for this kind of differentiated action;
- our cautions – which have not always been properly understood – have been to the effect that even in cases where for illegal constructions positive location permit information has been issued, and it would therefore be unrealistic to forcibly remove such a building, there remains the provision of the ZGO-1 whereby inspection procedures that were begun prior to its entry into force should be concluded pursuant to the previously valid regulations, there remains the provision whereby the investor must obtain location permit information prior to the start of construction, and there remains the issue of how to conclude the inspection procedure, if in spite of the aforementioned provisions they decide to construct; there is no clear and unequivocal basis in regulations (and should these now be provided?) for the halting of the procedure or for execution, including on the basis of cancellation or annulment of the decision;
- relying on the fact that the new legislation will via location permit information enable a resolving of the greater part of this problem, is illusory – municipal spatial planning documents still continue to be valid, and if thus far they have not permitted the issuing of a positive decision of consent for some construction, then positive location permit information is not possible either;
- the problem of non-executed (older) Inspectorate decisions therefore remains to a large extent unresolved, and along with it the problem of inequality, on the one hand between legal builders and illegal builders, who to a greater or lesser extent have got around the prescribed sanctions for violating the legal order, and on the other hand between the illegal builders themselves, who have been hit harder or softer by sanctions depending on the timing and other circumstances of the individual procedure, or in extreme cases (if no referral was made for a misdemeanour penalty or the procedure with the misdemeanours judge lapsed) not at all;
- the ombudsman is not a body whose special concern it should be to sanction illegal construction; yet the ombudsman cannot respond to complainants who turn to him because their illegal construction has been removed while other similar ones have not been, or to complainants whose neighbours have constructed illegally and who are not always simply stirring up trouble or vengeful, but whose rights and benefits have truly been encroached upon by the illegal construction, and who wait years for the execution of the inspectors' decisions, that everything is all right with such procedures.

c) Inspection procedures

It is hard to determine how far the dubious or improper actions in individual procedures are the consequence of the described orientation of the Inspectorate, and how far this involves a more or less established modus operandi. In view of the fact that such actions are observed not just regarding simple structures, the latter is more probable.

Inspectors conclude procedures (too) rapidly

As we have already described several times, inspectors are wont to find all too quickly some obstacle to continuing a procedure or execution, if procedures regarding individual issues related to illegal construction are conducted at other bodies. Here this involves sometimes simply actual staying of execution, or they make use of the arrangement of the general administrative procedure for extending deadlines, terminating a procedure and postpone-

ment of execution. This frequently actually nullifies the non-suspensory nature of legal remedies in inspection procedures. We encountered a case where the inspection procedure was terminated by a decision, although pursuant to Article 153 of the ZUP there was no reason for this. We also observed non-standard practice in deciding on postponement of execution regarding the issue of whether this is possible prior to the issuing of a decision permitting execution or not. The inspectors justified non-execution of certain decisions by claiming that there was no public interest in execution or that such interest was not strongly expressed, something about which we wrote in last year's report.

Complaints owing to non-response or incomplete responses from the inspectors to those reporting illegal constructions were justified in several cases. The IRSOP makes a very narrow interpretation of the provision of Article 24 of the Inspection Oversight Act (ZIN), whereby the inspector must inform a person reporting, on the latter's request, of steps taken. We saw, for example, a notification that contained only the information that the inspector had instigated the procedure, and nothing on what he had actually done. The provision should be fulfilled in connection with Article 36 of the same law, whereby an inspector who determines that a liable person's breach of the law or other regulations encroaches on the rights of other persons, must on the request of such persons inform them of his findings, measures ordered and other information necessary for those affected to exercise their rights.

The position of other people in inspection procedures will have to change owing to the decision of the Constitutional Court no. Up 257/03-9 of 2 October 2003, which terminated the administrative and judicial practice to date that acknowledged the status of client in an inspection procedure only to the investor, owner or administrator of a site. In connection with this procedure, others supposedly could not exercise their legal interests and benefits, but only their actual ones, which never seemed very convincing to us. The Constitutional Court decided that an inspector's decision could indirectly mean also a benefit or change to the legal status of other persons. So persons whose rights or legal benefits have been affected by measures of inspection oversight, have the status of client in the inspection procedure. For this reason the inspection body will have to deal with the relevant assertions of other people and judge whether its decisions could affect their legal benefits, and justify appropriately its view regarding their participation in the procedure.

Perhaps this Constitutional Court decision has already had an effect in the case of a complainant whom as the person reporting an illegal construction an inspector did not allow access to the file, claiming that only the client had that right. We describe this case among the selected cases in this annual report.

Ombudsman's view of inspectorate inaction confirmed

In the 2002 report we described broadly the issue of inaction by inspectorates in cases where commercial activities are performed in structures without construction or use permits, but which were built with location permits during the validity of the old regulations on the building of structures and spatial planning. The market inspectors do not act or do not prohibit the performance of activities, since in such cases the buildings inspectors are supposedly competent. During the whole of 2003 we received no position of principle from the IRSOP regarding measures in such cases. The inspectorate clearly did not understand this problem, something that was also evident in its comments on this part of the 2002 report. After several reminders, only at the beginning of 2004 did we finally receive a response of principle to the question posed. The chief inspector of IRSOP replied that for structures built on the basis of a location permit, but which did not have a construction permit, on the basis of the ZGO inspectors could order only the measure of halting further works. This response confirmed our view that in such cases no one acts, nor does anyone prohibit the performance of activities, so those directly affected in such cases may be justifiably dissatisfied with the effectiveness of the inspection bodies.

2.9 COMMERCIAL PUBLIC SERVICES

In this area we have identified a major increase in the number of complaints received (index of 140), chiefly in the classification sub-areas of "municipal services" and "transport". **In the area of municipal services**, complainants for the most part claimed purported irregularities in paying the costs of water supply and sewerage, disconnection from water mains points, construction and connection to the public water mains and sewerage system, the performance of chimney-sweeping services, removal of municipal waste and the method of charging for these costs, payment of certain contributions and taxes to the local community and the assessment of municipal contributions. Suspected violations in the area of **communications** related to cutting off the telephone connection, settling obligations towards telecommunications operators, and to the radio and TV (RTV) licence contribution. In the area of **energy**, complainants objected primarily to the level of costs for heating and electrical energy. In the area of **transport** we encountered difficulties regarding the annual charge for road use, emissions caused by traffic, regulating the legal ownership relations in connection with roads, determining traffic regulations in individual zones and constructing road transport links. In the majority of cases we simply gave complainants an explanation of the actual and legal state of the matter in question.

Payment of the RTV contribution

Complaints against Slovenia's public broadcasting service, RTV, stood out again in 2003. RTV had supposedly placed an unjustified burden on complainants to pay the RTV licence contribution. Complainants can be classified into two categories. The first is those who in procedures for forced collection of the RTV contribution challenged the legality of RTV actions in previous procedures, and the second is those who challenge the actual way the RTV contribution is accounted. In dealing with complaints we observed that the majority are unfounded, or that the reasons for objection by complainants were the subject of decision-making by the competent bodies. We note that many complainants, including in other areas, in lodging legal remedies, present them for the knowledge of various state bodies and institutions – including the human rights ombudsman. At the same time we have observed that complainants are not sufficiently acquainted with the legal provisions regarding the duty to pay the RTV contribution. We therefore explained to them that in compliance with the Radio and Television of Slovenia Act (ZRTVS) the RTV contribution must be paid by anyone who has a radio or television receiver in the territory of the Republic of Slovenia where the technical conditions are ensured for receiving at least one RTV station. Legally it is presumed that a radio or television receiver is possessed by every legal or natural person registered as a consumer or customer of electrical energy in the public electricity system. Those liable to pay the RTV contribution can relieve themselves of the duty to pay this contribution if they submit a statement that they do not have their own radio or television receiver, nor in their premises do they use anyone else's, and that they have been apprised of the legal consequences of making a false statement.

We intervened only in a case where RTV unjustifiably seized part of a complainant's monetary income because she had not paid the RTV contribution. Although the complainant had not used the available legal remedies, RTV assured us that in line with the principle of fairness it would refund the forcibly collected money in the shortest possible time.

Charging for municipal services

In dealing with complaints we observed that some complainants, especially in the area of removing municipal waste, accused the commercial public services of unjustifiably charging for their services. We explained to the complainants that for the purpose of meeting public needs, material public benefits are provided in the public interest. The local community performs local affairs of public importance, including arranging, managing and ensuring local public services. The local community is bound to ensure the performance

of public services that it determines itself, and public services laid down by special laws. Activities in the area of municipal services are defined as compulsory local commercial public services, primarily in the Environmental Protection Act (ZVO). So municipal councils, for example, independently organise the collection and removal of municipal waste. Provision of drinking water, and the removal and treatment of municipal waste water and precipitation are compulsory local commercial public services. Chimney sweeping is defined as a compulsory local commercial public service for protecting the environment. With the purpose of promoting less burdening of the environment, local communities may in line with the provisions of the ZVO also prescribe certain taxes. Certain complainants indeed also believed that local communities had no legal basis for this.

In line with the provisions of the Energy Act (EZ) and the ZVPot, the price of energy and water supplied must be charged to the consumer after the actual supply shown at their measuring point (meter), if the technical possibilities in existing buildings make this possible. The Rules on the Method of Dividing and Charging Costs of Heating in Residential and Other Buildings with Several Consumers, adopted in 2003, regulated the manner of determining consumer shares and dividing up and charging for the costs of heating in buildings where the technical capacities do not allow measurement of heating supplied to individual recipients. We advised the MOPE that a similar problem arises in charging for water use in such and similar buildings. They explained to us that Rules on Minimum Technical Conditions for Constructing Residential Buildings and Apartments were being drafted, and these would resolve also the issue of cold water used in new buildings. We believe that the MOPE's answer is acceptable, since this issue in existing multi-apartment buildings is primarily a matter for the internal management of the individual building. An entirely different issue, however, is new constructions, for which conditions can be laid down in advance for charging for actual use. The anticipated rules were adopted at the end of 2003, after the expiry of the legal deadline set for this. Following expiry of the envisaged legal deadline, the aforementioned rules were also adopted.

In the area of transport, we intervened in a case where a village community close to the border with Croatia supposedly had no direct road link to other parts of Slovenia. The DRSC explained to us that a decision had already been published in the *Uradni list RS* on a location plan for this area. The financial means for further work and activities in connection with construction of the road link are supposedly envisaged only in the Slovenian national budget for 2005.

We pointed out to the Ministry of Transport that it was entirely unacceptable for the needs of Slovenian residents – which they are bound to meet – to be provided for only indirectly, with a transit across the territory of another state. What was even more unacceptable was the length of the procedure to deal with this problem. Making reference to a lack of budget funds should not be a reason for a year and a half of inaction in dealing with this issue; especially since the budget for 2002 already envisaged funds for elaborating projects for obtaining construction permits and for execution, which because no location plan was adopted, it was not possible to use, so the funds were reallocated to other projects, as the DRSC stated. We suggested to the Ministry that it deal with this matter as a priority.

The Minister of Transport assured us that the budget for 2004 envisaged funds for obtaining the prescribed investment and technical documentation, which is expected to be completed in 2005. They will strive to fulfil the project as soon as possible. They will speed up activities within the framework of budget funds, so that construction should begin before 2006. Since the ombudsman has no authority to intervene in determining priority in road construction, we had to be satisfied with these assurances from the minister, although the local residents who approached us cannot be satisfied.

2.10 HOUSING MATTERS

The number of complaints received in the area of housing in 2003 remained on the level of previous years, but their structure changed slightly. There were therefore almost no more complaints over the issue of what are called military apartments, but problems are growing in the management of privately owned apartments and of relations between co-owners, as are problems of housing provision, especially for young families and low-income applicants. There were also more complaints owing to problems in paying rents, which have recently risen sharply and which many people find hard to settle immediately. Unfortunately many people approached the ombudsman too late, when court proceedings had already reached the execution stage and complainants faced eviction. Some exercised in time the possibility of submitting confirmation from a social work centre on social hardship, which might have prevented proceedings to cancel tenancy contracts owing to unpaid rent.

Less tenders for social and non-profit housing

In 2003 there were fewer complaints in connection with tenders for allocating non-profit and social housing in municipalities. This is without doubt linked to the adoption of a new housing act, which changed the criteria for allocating non-profit housing and eliminated the category of social housing. The act envisages new national rules on allocating non-profit housing for rent, which had not yet been adopted by the end of 2003. Owing to the questionable nature of the valid municipal rules, during this transition period the municipal councils have clearly not entered into new tenders for allocating non-profit housing for rent. It is still too early to assess the consequences of adoption of the new housing act, especially for those applicants on low incomes and who thus far have applied for the eliminated category of social housing for rent. Our assessment is that the resolving of these types of housing problems are still left too much to the municipal councils, which as we stated in the 2002 report, are not sufficiently motivated to allocate a greater proportion of housing to the lowest-income categories of applicants.

Dissatisfaction with housing managers

The majority of complaints related to the issue of housing management. Clearly owners are becoming increasingly more aware of the obligations and responsibilities that come with the management of apartments. This involves primarily the division of operating and other costs, and overseeing their use. From the complaints it is clear that many owners are not happy with the work of residential building managers, and have comments regarding the quality of their work, and especially regarding the expenses they present. Often the situation involves poorly arranged relations between neighbours in multi-apartment buildings. Complainants cite various disturbances on the part of other residents, who through their manner of using apartments and common areas annoy the other owners on that floor. One case dealt with demonstrates the impotence both of the owner of an apartment, in this case the municipal council, and of the other owners on the same floor, to instil some discipline or even attempt to move tenants who were not only disturbing other residents, but also causing damage to common areas and facilities. In this case the municipal council threatened the clearly psychologically disturbed tenants with moving them, but this cannot be a lasting solution, since moving them could disturb residents or owners elsewhere. The new housing act, together with the code of property law, enable what are termed exclusion suits, with the exclusion and sale of individual sections in privately owned floors, if an owner or other user seriously violates the basic principles of neighbourly coexistence, the house rules or their own duty pursuant to a contract on mutual relations. It will be interesting to monitor the actual practice regarding the practical application of these legal possibilities.

On the basis of certain complaints received, despite our limited scope for intervention we monitored the unfolding of events in connection with the damage caused to purchasers of

protected housing in Zbiljski gaj, who demonstrated the need for better regulation in law of the issue of legal protection for those buying apartments.

In this report, too, we must level criticism against the operations of the Maribor Public Inter-municipal Housing Fund, which aroused the dissatisfaction of a number of complainants. We set out two such cases in the selected cases in this annual report. In the first, for no apparent reason, a complainant who previously held the housing right to a solidarity apartment, did not have a tenancy contract, for which reason she was threatened with removal, while at the same time she could not exercise her right to a reduction in the non-profit rent. In the second case, the predecessor to the current fund promised a complainant in a decision in 2000 that it would resolve her housing needs in one month, and later, when the decision had not been fulfilled, it made the excuse that the reorganisation of the municipal fund had terminated all the current lists of applicants, including the decision and promise to the complainant. We believe that giving assurances that cannot be fulfilled is improper and irresponsible.

Tenants in denationalised housing

Every year in the annual report we describe the issue of tenants who through no fault of their own have ended up in a position that causes insoluble problems between them and the owners who through denationalisation have acquired their apartments in ownership but not also in physical possession. At the beginning of 2002 the ombudsman sent to the National Assembly a special report on this issue, and it was debated for a long time in the National Assembly working bodies, then being debated in a plenary session as the new housing act. The majority of deputies and deputy groups agreed with the findings of the special report, which indicates problems that such tenants encounter, but the act did not bring them any expected solutions. We received several complaints from tenant associations, who are disappointed at the new act and who point out the daily and real problems that such tenants encounter, while also proposing amendments to the Housing Act (SZ-1). The feeling remains that this problem, which can be ranked among the injustices caused in the past by the state, has not been resolved owing primarily to the material obligations that the resolving of this problem would require. This category of citizens remains in an unenviable position, and there are fewer and fewer of them, since they are for the most part older tenants who do not know how to stand up for their rights as vocally as certain other categories of affected person.

The tenants association which also incorporates tenants in denationalised apartments, informs us that after adoption of the act their position has actually deteriorated. They state that many tenants are under constant pressure from owners. The pressures are worse in cases where new owners acquire an apartment through the sale of a residential building. These owners apply various means of vexation against tenants designed to make them move from their apartment as soon as possible or accept the new terms of tenancy. In this way, tenants are faced with the charging of unjustified operating and other costs, whose content and levels they cannot control. Any agreement with the owner or authorised manager is in effect impossible (the manager is often related to or commercially affiliated to the owner). Owing to the charging of higher costs, they are under the constant threat of having their tenancy contracts cancelled. The owners do not want to make tenancy contracts on the death or enlargement of family members, they prohibit tenants from making certain urgent repairs and improvements to apartments, they force them to pay profit-making rents, they demand the performance of various works and improvements in short and unrealistic time frames, they do not maintain apartments and common areas and facilities in buildings and so forth.

In such cases, where through their behaviour owners abuse the legal rights of tenants, the ombudsman's advice to those affected, directing them to claim judicial protection, is poor

comfort for them. It should be recalled that in these cases, regardless of the probability of success, judicial procedures are associated with severe financial and psychological burdens for those affected.

In view of the above, we may expect unfortunately to continue encountering the problem of tenants in denationalised apartments.

2.11 EMPLOYMENT AND UNEMPLOYMENT

The total number of complaints in the area of labour law remained approximately the same as last year, except that there was a slight increase in the number of complaints from workers in state bodies, alongside an equal reduction numerically in the complaints regarding actual employment and other labour law matters (primarily grants).

In the area of employment, 2003 was marked by the entry into force of a new Employment Act (ZDR). This caused a partial change to the content of complaints, since alongside complaints owing to violation of rights deriving from labour law, complainants approached the ombudsman with requests for explanations of the provisions of the ZDR.

Violation of worker rights

The largest number of complainants still desired intervention at their employers owing to violations of rights provided by labour legislation. The content of complaints indicates that employers continue to be – if not increasingly – orientated towards productivity and profit, that the attitude from workers is often bad and that many employers are not familiar with doctrines for dealing with people at work. Complaints related to inadequate pay, incorrect or irregular payment of wages and other benefits (paid leave, payment in lieu, severance pay), non-payment of social security contributions, the procedure for cancelling employment contracts, dismissal due to pointing out faults, coercion into consensual cancelling of employment contract, non-observance of enforceable court rulings, the right to working premises that are suitable for health and safety, vexation and exploitation by superiors, difficulties owing to the location or time of work, insufficient provision of information, violation of the rights of workers who are foreign citizens, and in several cases improprieties in general at a specific employer. We explained to complainants what legal options were open to them, and at the same time referred them to the IRSD (the labour inspectors), while advising them to inform us if they believed that the IRSD did not act in line with its powers. These complainants usually did not approach us again, so we may conclude that either they did not approach the IRSD (all too often owing to fear of their employer or of the consequences they might suffer by doing so), or else they were satisfied with its work. We also made several enquiries at the IRSD, primarily in cases where complainants had already from the outset complained at their inaction, and whenever there were anonymous, for the most part group complaints. The responses showed that action by the IRSD at employers was necessary and justified, and in general we assess the work of the IRSD as being proper and appropriate.

The new Employment Act

As we have already mentioned, complainants approached the ombudsman with requests for explanations of the provisions of the new ZDR. Most questions related to extraordinary cancellation of employment contracts, protection of the rights of disabled persons, older workers and pregnant women, the length and manner of taking annual leave, changing the location of work, the right to education and similar. Here we observed the same thing observed by the legal profession: that many provisions are not set out with sufficient thor-

oughness, and numerous questions arise in their application. In connection with individual questions, various views have already been taken by various legal experts and the Expert working group for monitoring implementation of the new ZDR, which operates at the MDDSZ. Where we were unable to provide complete and reliable answers to their questions regarding individual provisions of the ZDR, we, too, referred complainants to that working group. The MDDSZ wishes as soon as possible to clear up as many questions as possible that are generated by the new ZDR and to which neither the profession nor judicial practice yet have an answer. The views taken are published, albeit with a delay of several months, on the MDDSZ web site. Regarding numerous questions we will need to wait and see the answers provided by judicial practice that will gradually be formulated in this field. Precisely for this reason, the labour courts will supposedly be dealing with all labour disputes arising from the new ZDR as priorities, which is of course praiseworthy, but we cannot ignore the fact that this will place in a worse position all those who have already been waiting several years for the results of court proceedings.

There is considerable lack of clarity regarding the validity and use of collective agreements. Nine months after the entry into force of the ZDR (30 September 2003), those provisions of general employer acts regulating issues which in line with the ZDR need to be regulated by collective agreements, ceased to be valid. These issues may now be regulated by employers' general acts only if at the employer there is no union with which the employer might make a collective agreement. On this date, collective agreements did not also automatically cease to be valid, as is believed erroneously by some, but another problematic issue is which provisions of collective agreements can be applied and which cannot, in respect of compliance with the ZDR. The ZTPDR and the old ZDR provided the legal basis for making collective agreements, and the new ZDR has extended the application of these provisions up until the entry into force of the Collective Agreements Act. The proposed version of this act is unfortunately still being drafted; in view of the confusion that is arising in this area, its adoption should be speeded up.

In several complaints we encountered the provision of Article 111, paragraph 1, first indent of the ZDR, which provides that employers may extraordinarily cancel an employment contract if a worker violates a contractual or other obligation deriving from employment, and if such violation bears all the signs of a criminal act. Here two things are questionable: that the employer is free to judge the signs of a criminal act, and that the ZDR does not differentiate between crimes that are prosecuted ex officio and crimes that are prosecuted in private actions. We dealt with the case of two complainants employed in a public institute, whom the director fired simply because they accused him publicly of improprieties in his work. The complainants brought an action at the labour court, and they are also considering submitting a proposal for the assessment of constitutionality of this provision in the ZDR.

There is another dubious arrangement whereby workers who extraordinarily cancel their employment contracts pursuant to Article 112, paragraph 1 of the ZDR (chiefly because for more than two months the employer has not provided them with work and has not paid them the legally provided payment in lieu), do not have the right to settlement of obligations deriving from the rights of workers in the event of insolvency of their employer at the Public Guarantee and Maintenance Fund of the Republic of Slovenia (JPSRS), even though later bankruptcy proceedings have been instigated against the company and their employment was in actual fact terminated owing to insolvency of the employer.

Sheltered companies

We received several complaints from workers employed in various companies employing disabled persons. The state provides certain privileges to sheltered companies, representing indirect investment by the state in such commercial companies, and by means of

which, despite the lower productivity of persons with disability, they can maintain competitiveness on the market. Unfortunately it appears all too often that sheltered companies are set up simply in order to benefit from these privileges, and the founders have scant regard for their disabled employees. Given the aforementioned privileges, the state oversees the operations of sheltered companies. The MDDSZ oversees fulfilment of the conditions for maintaining the status of sheltered company, and without the prior consent of the Government, it is not possible to instigate bankruptcy proceedings against sheltered companies. In the selected cases we describe the complications in the granting of consent and the associated difficulties for workers.

Unemployment

Complaints relating to unemployment in 2003 indicate in fact the same situation in this area as was described in previous reports, so we will not repeat ourselves here. The complaints indicate the social hardship of unemployed persons, problems in finding work, in becoming involved in individual active employment policy measures and in implementing these measures, and in respect of monetary rights during unemployment, as well as certain improprieties and cases of inappropriate attitudes towards unemployed persons in labour offices. The unemployment rate is high, and despite the efforts of the Government, the MDDSZ and ZRSZ, it is being reduced too slowly. Moreover, one cannot avoid the suspicion that unemployment is in fact higher than the statistics indicate. After long years of searching unsuccessfully for work, many people have despaired, they are no longer actively seeking work and are therefore not covered by the statistics.

The efforts to show some success in reducing the number of unemployed persons can also be seen in the growth in the number of complaints owing to deletion of unemployed persons from the records of job seekers. In this way, usually after issuing a determining decision that an unemployed person is not fulfilling his obligations, the ZRSZ units stop maintaining such person in the unemployment records. This then terminates the rights that they enjoy from unemployment and from being registered in the records of job seekers, and they can only be registered again in the records after six months. In the procedure of determining obligatory presence, a record is drawn up of supervision performed in line with the provisions of Articles 25 and 26 of the Rules on the Manner and Procedure for Exercising Oversight of Fulfilment of Obligations by Unemployed Persons. The possible disagreement and comments of the supervised person are entered in this record. The supervised person can refuse to sign if they are not present at the writing of the record, and may give their comments on it verbally or in writing within three days. Several complainants assert that they were never acquainted with the content of the record. The possibility of giving comments on the record is in fact the only possibility of expressing disagreement with the findings of the supervision, since the determining decision states that in compliance with the provisions of Article 258, paragraph 2 of the ZUP, no appeal is allowed against this decision. In the event that an unemployed person has no access to the record of supervision, they may only appeal the decision of the competent ZRSZ unit whereby they are already deleted from the records of unemployed persons and other consequences may arise. In view of this the employment office should ensure that supervised persons as a rule receive for inspection the record of supervision performed, and that they can give their comments on it.

The work of the Employment Service of Slovenia

We have also received some complaints about the unfriendly, improper and arrogant behaviour of individual professional staff at labour offices in dealing with unemployed persons. It is hard to physically verify and prove such treatment. But in order to minimise it, at a meeting we had at the end of last year with the directors of the Employment Service of Slovenia (ESS), we recommended that measures be strengthened to ensure that professional employees at the service act in the most professional manner possible, and that they are also aware that they are usually dealing with persons who precisely because of the

hardship in which they find themselves, are especially sensitive. At this meeting they presented to us the organisation, work and issues faced by the ESS, the measures for increased client satisfaction, the introduction of a complaints book and so forth. We deliberated over the entire issue, which is described briefly in other parts of this report, and also formulated an assessment of the procedures conducted at the ESS, the not always satisfactory quality of specific administrative acts, the issue of collecting data in line with the revised ZUP and legal remedies in connection with implementing individual measures of the active employment policy, where the potential inappropriateness of applying the ZUP in this area should be remedied by the special arrangement of complaints avenues at the ZZZPB. The representatives of the ESS assured us that they monitor spending on a regular basis and that they also have more than 2,000 claims for funds not used in accordance with the purpose for which they were provided.

Workers in state bodies

For some time now we have observed that the violation of rights of workers in state bodies is either more frequent, or that these workers are approaching us more frequently (including by telephone).

In dealing with these complaints we have again determined that state bodies, too, are not adhering to the provisions of labour legislation, nor even to enforceable court rulings. We dealt with the complaints of two women who approached the ombudsman owing to difficulties with their employer in returning to work on the basis of a court ruling. Both cases required the intervention of the labour inspectors, and one case also that of the ministry in charge, for the body to finally heed the enforceable court ruling, and to accept the worker back at her job and provide her with work. It was even worse to encounter the case of a complainant who approached the ombudsman owing to problems with her employer upon returning to work after a long period of sick leave. In line with the decision of the appointed doctor, she currently works four hours a day, for which reason she has major problems at work. We explained to her what her legal options were, and offered her the possibility of the ombudsman's intervention with her employer, but owing to her fear of negative consequences she declined this offer.

On 28 June 2003 the Public Employees Act (ZJU) entered into force. We have not yet received any complaints linked to its implementation. The ZJU introduced a number of new features requiring the implementation of a range of activities to adapt the public servants system to the provisions and arrangements it provides. Clearly these activities will not be implemented without difficulties and not in the time frame envisaged. We anticipate that with greater scope for public servants to terminate their employment and in connection with the new employment contracts and the new system of public sector salaries, the number of complaints in this area will rise markedly.

2.12 PENSION AND DISABILITY INSURANCE

Correctness of ZPIZ decisions

The ombudsman receives frequent complaints regarding the allocation of pensions, where complainants doubt the correctness of decisions based on calculations by the Institute for Pension and Disability Insurance of Slovenia (ZPIZ). Since the ombudsman is not a body of oversight for the work of this institute in terms of verifying the correctness of calculations of individual benefits, we refer complainants to the competent offices at the ZPIZ or familiarise them with the legal remedies available to them.

Verifying eligibility to care supplement

By 31 March every other calendar year, beneficiaries of care supplements must submit to the ZPIZ evidence of income and assets that affect the right to this supplement; if the eligible person does not do this, he loses the right to the care supplement, and in this event payments are suspended with effect from 1 May.

In 2001, when this arrangement entered into force, the ombudsman dealt with several complaints from care supplement beneficiaries who had not submitted evidence of eligibility to receive the supplement. It was only upon payment of their pensions for May 2001 that they discovered they had not been paid the care supplement, then almost a month elapsed before they obtained first some relevant information as to why they were not receiving the supplement, and then a similar amount of time for them to assemble the required evidence on the basis of which the ZPIZ verified their eligibility to care supplement. This was then re-allocated to them, upon meeting the income and asset conditions, from the first day of the month following submission of the evidence and a new request, meaning that some complainants went several months without their care supplement.

The ombudsman could not accuse the ZPIZ of not publishing in the media notices to care supplement beneficiaries to the effect that they should submit evidence, but clearly many pensioners overlooked such notification. We therefore suggested to the ZPIZ that for 2003, when beneficiaries must again submit evidence of eligibility to the care supplement, that it consider such a form of notification that would include the largest possible circle of beneficiaries. The point is, many beneficiaries for entirely understandable reasons (old age, illness) do not follow the media closely enough to be informed thereby of their obligations.

The ZPIZ accommodated the ombudsman's suggestion, and in 2003 it sent every care supplement beneficiary a special notice or form for submitting evidence to verify eligibility to the care supplement.

2.13 HEALTH PROTECTION AND HEALTH INSURANCE

2.13.1 Health protection

Health reform

At the end of the year our office received several comments and suggestions in connection with the envisaged reform of health protection and health insurance, especially regarding the reduced rights of children and women, since what is termed the "white paper" introduces the family practitioner, who in certain cases would replace paediatricians and specialist gynaecologists in primary health care. Ministry of Health representatives have given several public assurances that the reform will not reduce the rights of insured persons, yet despite this the Human Rights Ombudsman publicly supported the cautions and appeals of the civil society against reducing the right of children to see a paediatrician, something our office will also monitor closely upon the drafting of amendments to health legislation, especially from the aspect of observing the Convention on the Rights of the Child.

Institute of Oncology

Alongside all the complications surrounding the construction of the new premises for the Institute of Oncology in Ljubljana, at the end of 2002 part of their already highly unsuitable premises was flooded by water from a damaged central pipe, and this threatened the unimpeded performance of the Institute's work, as well as the fulfilment of patients' basic

rights. The ombudsman received several suggestions and appeals to become actively involved in resolving the space problems of the Ljubljana Institute of Oncology. He visited and observed the exceptionally bad conditions that had arisen in the Institute of Oncology, and took the view that patients' rights were under threat. He therefore sent the Prime Minister and Minister of Health a special letter proposing the priority resolving of the situation. We were pleased that the Prime Minister responded to the letter immediately and announced that this issue would in large part be actually resolved in the coming year.

Unfriendliness of health workers

We received several complaints in connection with the improper behaviour of health workers and associates, with the main issue being their unfriendliness or lack of concern regarding the patient's actual state of health. In such cases we advised complainants about which avenues of complaint they should pursue, and which competent bodies they should inform about the asserted improprieties. Unfortunately we may still observe the same situation as in previous years: the avenues of complaint in the health sector are not adequately arranged, and the competences of individual bodies are not precisely determined, so complaints are frequently duplicated, while it also happens that patients prefer not to complain, since they believe that this would not resolve their dissatisfaction. Therefore the ombudsman's view, that there is a need to precisely and transparently arrange complaints procedures in the health sector, is still relevant, and we expect this issue to be finally resolved by new health legislation.

Access to health documentation at a home for the elderly

More than two years have now passed since the enactment in law of the patient's right to view health documentation, a special right of patients and their relatives, yet in practice we are still encountering the problem of health institutions not wanting to allow patients to photocopy their documentation, and we even dealt with a case where the doctor denied such access with the explanation that this would take her (the doctor) too much time. Following the ombudsman's caution regarding the unacceptability of such behaviour, the institution in question handed over to the patient a copy of all his results and data from his health file.

In connection with our involvement in the right of access to health documentation, we also dealt with the interesting issue of exercising this right in a social institution providing institutional care for the elderly (a pensioners' home). The daughter of one of the residents at the institution was not happy with the health care provided for her mother, and believed that the restraint of limbs (being bound to the bed at night) was not in line with medical doctrine, so she requested access to the medical documentation from which she might learn whether there existed any professional reasons for such a measure. Alongside the professional question that can only be resolved by the competent professional body, the question also arose as to who should and who could allow access to health documentation – the director of the institution or the doctor who is contracted by the home to provide health services.

The ombudsman was approached by the director of an old people's home who desired primarily some explanation regarding her responsibility in connection with the health services the home provides to those in its care. As a social security institution, the home provides certain health services, for which it is registered, but these services are performed by health workers and associates in line with health legislation, so the question arose as to the possible sharing of responsibility between the director and the doctor. Since at the same time the ombudsman was approached by the daughter of the resident at the pensioners' home with the question about who was responsible for health treatment in a social security institution, and who should enable access to the health file of a person in their care, we dealt with these two questions together.

Since the Human Rights Ombudsman does not have the authority to interpret regulations and their enforcement, as this would encroach on the tasks of the competent ministries, we suggested to the complainant that she approach the competent ministries, that is for health and social affairs, and regarding the significance of the issue from the aspect of human rights we also communicated to her our view of the issue in question, which is as follows:

The authority and tasks of the management body of a public institution are laid down by the Institutes Act, along with the institution's founding act and its general acts. These acts as a rule do not define the tasks of individual employees precisely enough for it to be known unequivocally in each individual case, what should be expected and what may be expected from individual workers in an institution. The problem is intensified particularly by the fact that the institution performs several activities (chiefly social and health care activities), which are governed by different regulations. Nevertheless we may determine as a general rule that the director is responsible for the work and running of the institution, and for the legality of its work. At the same time, the professional director must be answerable for the professionalism of the institution's work. If these functions are not separated, then of course the director is responsible for all the above.

The performance of special health measures and treatment itself fall under health care activities, which the institution performs in line with the law governing health care services and with the founding act, so this activity must be performed by appropriately qualified providers in compliance with health regulations. Under the law governing the medical service, only a physician is authorised to provide treatment, and therefore physicians are responsible for correct treatment and cannot transfer this responsibility to another person, nor may it be taken from them. For this reason the doctor at the institution is acting properly and requiring that in questions of treatment, those close to the patient should talk to her and not the director of the home. Put another way: the responsibility of the director of the pensioners' home regarding health measures lies in ensuring fulfilment of the appropriate conditions for providing health services, and for ensuring implementation of those health services prescribed by the doctor. The carrying out of probes or binding of arms (the complainant opposed this particular measure) is a professional medical question, and must be addressed within the framework of the medical profession, and of course prior to this the appropriate consent must be obtained from the patient or the patient's care provider.

With regard to health documentation, the provisions of the health services and medical services acts provide unambiguously that data from health documentation may only be given out by the physician treating the patient. So this does not involve the obligation of one or the other institution, but the obligation of the doctor as part of the duties of his job. It is only if there arose a dispute between the doctor and the person eligible to view the documents that the institution would have to ensure the exercising of the right provided to every patient by Article 49 of the health services act.

Assessing appropriateness of treatment

We received several complaints to the effect that we should assess the correctness of diagnoses provided by general practitioners and specialists, as well as the appropriateness of treatment. Such complaints demonstrate that patients are insufficiently aware of their rights and of the possible avenues of complaint by which they might exercise their rights, so we present here briefly our work in this area in one particular case.

Waiting for histological results

Despite the attention of the media surrounding the investigation of histological samples at Celje General Hospital, only one complainant approached the ombudsman, but the complaint, addressed to the professional director of the hospital, was only copied to us for our

information. We informed the complainant that the ombudsman does not deal with matters that are under court or other procedures, unless they involve unjustified prevarication or obvious abuse of authority. We therefore requested her to acquaint us with the response of the competent bodies against which she was complaining, since on that basis we could decide on intervention. We also suggested that she request from the competent bodies of the Chamber of Physicians of Slovenia that it take a position regarding the asserted breaches; indeed the Chamber is the organisation that can assess professionally individual procedures in the process of treatment, and determine possible breaches of ethics or professional errors. We are still waiting for a response or a possible request for intervention from the complainant.

Duty to explain side effects of medication

A complaint was sent to the ombudsman by a patient who asserted that the medication prescribed for him caused certain side effects of which he was not advised, either by his doctor or the pharmacist. He asserted that this then caused major harm to his health, and requested a determination of responsibility, although he did not attach any evidence or justification to his complaint.

We explained to the complainant that in compliance with the act governing medications, every medication licensed for circulation in the Republic of Slovenia has enclosed instructions regarding its use, and these draw special attention to their side effects. The instructions are intended for patients, who are expected to study them and monitor closely any possible reactions they have to the medication taken. In practice, doctors do advise patients of the main side effects of the medications they prescribe, and pharmacists must also give appropriate explanations regarding the medications they dispense. Of course one cannot expect the doctor's or pharmacist's caution to replace the care taken by the patient himself.

We suggested to the complainant that he communicate his problems to the Chamber of Physicians of Slovenia, which would be able to determine the possible liability of the doctor in neglecting to advise of the side effects of the medication, and also the Chamber of Pharmacists of Slovenia, which oversees the work of pharmacists. The complainant has not informed us of any procedures at bodies of these two chambers.

Access to medication

In a letter sent to the ombudsman a complainant asserted that he could no longer obtain in pharmacies the medication that successfully helped him to overcome problems with migraines. He believed that this thereby violated the rights he had as a patient, and in addition to this he was especially bothered by the fact that no one was able to explain to him the reason for the lack of this medication and when he would be able to buy it again.

In connection with this issue, the complainant would normally need to approach the Ministry of Health, which in line with the law is competent for this area, but we wished to help the complainant as soon as possible, so we made enquiries at the Slovenian Medications Office regarding registration and trade in the particular medication. We found out that the trading licence for this medication had expired, but during the period of our enquiries it was extended, so all the conditions were again met for pharmacists to be able to dispense it to patients. Registration of a medication does not mean automatically that the medication will also be in circulation immediately after registration is completed, since this depends on the commercial decision of the organisation marketing it. But the marketing representatives assured us that the medication would be on sale again in approximately one to two months.

In this process the ombudsman wished primarily to ascertain whether the competent state bodies were fulfilling their duty and ensuring that the market provided medications for all illnesses for which prescriptions were issued to patients. Yet the provision of medications

does not depend solely on state bodies, since it is up to producers and traders which specific medications will be available. If for whatever reason a particular medication is not available on the market, pharmacies must be able to offer another suitable medication (according to our information, during this time there were at least two other treatments for migraines on sale).

We acquainted the complainant with the actual state determined, and with the opinion that his rights had not been violated. We suggested that he inform his personal doctor that the medication he had taken to date was for the moment or until further notice not available, and he would be prescribed another appropriate medication, since his doctor was most familiar with his diagnosis and the possible side effects that substitute medication might produce.

Treating illicit drug addiction with methadone

The Human Rights Ombudsman was sent a complaint by a member of the public who had been included in the programme for treating drug addiction with methadone since 1996. He asserts that he wishes to exchange the methadone solution for tablets, which would make his treatment much easier, but the competent institution rejects this with the argument that treatment with tablets would go against the currently valid doctrine. The complainant believes that this violates his rights, since the treatment has to be provided in clinics, where he can be easily recognised and stigmatised as a drug addict. Every day he must stop at the clinic, where he must take methadone mixed with fruit juice in the presence of a nurse, while the tablets would enable him to take them on his own, without supervision, which indeed he does not need, since he is already around 50 years old.

In this process we wished to determine whether the doctrine of methadone treatment in Slovenia possibly violated the rights of patients to privacy, and above all we wished to determine the possibility of adapting treatment as far as possible to the needs of the individual. We were particularly interested in whether the methadone solution could in fact be replaced by tablets, and under what conditions. We addressed these questions to the Slovenian Drugs Office and to the Coordination of Centres for the Prevention and Treatment of Addiction.

Here we also acquainted them with the ombudsman's view in principle, that there is a need to weigh up the arguments for more flexible handling of patients who otherwise have no other social problems and who have demonstrated through their work and life to date that treatment of addiction could be continued successfully in another way more friendly to the patient. Our view is that addicts should be treated in the complete context of their social position, and not just from a medical standpoint, which perhaps does not take equal account of all the social aspects. It is probably not possible to deny the principle that the treatment of any kind of disease, including addiction, should be patient-friendly and suited to their standard of living, social status and so forth. Equally, account should be taken of the fact that each person chooses voluntarily to obtain treatment for whatever kind of disease, and also that treatment of drug dependence is not some form of penal sanction that must be administered in a strict and rigid manner. In any event we agree that in the initial phase treatment should be overseen more frequently, and later this oversight could be adapted to the normal circumstances of the patient, who would not continue to be stigmatised as a potential buyer of illicit substances or as an incurable addict.

The documents and responses received indicate that the doctrine for treatment of drug addiction in Slovenia was adopted in 1994, and forming a part of this are the instructions for implementing the maintained methadone programme. In line with these documents, methadone for treating drug addiction is prescribed in the form of a solution, and may not be prescribed as a prescription medication. All addicts who wish to join the programme are also informed of this method of treatment in advance.

The methadone preparation appears on the list of illicit drugs, so special conditions are laid down for its use. Article 8 of the Prevention of the Use of Illicit drugs and Treatment of Illicit Drug Users Act (*Uradni list RS*, no. 98/99) provides that the treatment of illicit drug users is conducted in the form of hospital and clinic programmes confirmed by the Health Council, and is conducted in institutions envisaged in Article 9 of the Act. Such a wording of the law, and also the instructions regarding implementation of the maintained methadone programme, which was confirmed in 1995 by the Health Council at the Ministry of Health, indicate that treatment of addiction with tablets and without constant health supervision is not possible. Here it should be underlined that up until July 2003, doctors could prescribe the medication Heptanone in tablet form exclusively for treatment of grave illnesses for oncological patients, and not also for treatment of addiction. Now the ZZZS no longer restricts the dispensing of Heptanone tablets covered by compulsory health insurance, and these could also be prescribed for treating addiction, if the valid doctrine allowed this.

The method of prescribing medications and their dispensing and use are professional questions which must take account not only of the health and pharmaceutical aspects but also the social aspects of treatment, especially since treatment of addiction can only be multidisciplinary. For this reason the Human Rights Ombudsman cannot and should not assess the appropriateness of an individual method, since he is neither competent nor capable of doing so. The ombudsman may, however, determine possible irregularities in the handling of individual patients, especially regarding their equal treatment under equal conditions. All the available information does not suggest that the treatment offered to the complainant was counter to the valid doctrine or that it might depart from the methods of treatment offered to other patients.

In view of all the above in the aforementioned case we could not determine any violation of the complainant's rights, since the health system offered him treatment in line with the regulations and valid doctrine, and under this treatment he was not placed in an unequal position compared to other, similar patients.

2.13.2 Health insurance

Right to benefit during temporary absence from work

The right to absence from work for health reasons is governed by the Employment Act, where the eligibility to absence from work in cases of incapacity for work owing to illness or injury is assessed in line with the regulations on health insurance. These regulations also govern the level of benefit for the period of this type of absence from work and the method for claiming benefit.

On 1 January 2003 the revised Health Protection and Health Insurance Act entered into force, and this re-defined the bodies that decide on the rights deriving from compulsory health insurance, which include the right to benefit during temporary absence from work.

The Constitutional Court ruled that the system which it annulled did not accord with the right to effective legal remedies (Article 25 of the Constitution), nor indirectly with the right to judicial protection (Article 23 of the Constitution). The Court took the view that where the basis for granting or not granting the rights was up to a doctor or committee of doctors, legislation should regulate the procedure for individuals claiming rights and protection in such a way that in providing the possibility of assessing professional decisions, it ensures the rapid and effective possibility of legal remedies and judicial protection.

Under the new arrangements, the committees of doctors of first and second instance valid to date have been suspended, with jurisdiction to decide on the right to payment in lieu during temporary absence (hereinafter: benefit) being transferred to appointed doctors and the health committee. The provisions of the law regulating the jurisdiction of a personal doctor and paediatrician regarding decisions on the right to benefit remain unchanged.

The revised act provides that in procedures for claiming rights from health insurance, decisions are made by doctors appointed by the administrative board of the institute. The act terms them "appointed doctor". These no longer have the quality of an expert body of the institute but they decide on rights in the administrative procedure and regarding their decisions they issue administrative acts – decisions.

Insured persons and employers can appeal against decisions of appointed doctors; under the act, the appeals body is the Health Committee, which is also appointed by the administrative board of the institute. The Health Committee is composed of two doctors and one lawyer, and they issue official decisions regarding their determination, such decisions being final. The Health Committee does not have the quality of an expert body, either, and decides on appeals in administrative procedures and also issues administrative acts (decisions).

Appeals against decisions of appointed doctors and also judicial protection of the right against a final decision issued by a health committee do not stay execution of the decision. This means that insured persons must act in compliance with the decision and begin work on the day the appointed doctor has closed the period of sick leave.

The new legal arrangements have not in themselves triggered a wave of new complaints, since complainants are in fact indifferent to whether their eligibility to sick leave is decided by an expert or administrative body; what is important for them is that they are successful in these procedures. For this reason, however, complainants who are not successful in these procedures assert irregularities in the work of bodies that decide on their temporary (in)capacity for work; they claim in particular that it is not right for them to have to start work when there has still been no decision made on their appeal.

Moreover complainants also assert that their personal doctors refer them to the appointed doctor of the institute, because their doctors have indeed determined that the complainants are still not capable of work; often such a referral is drawn up on the basis of results from specialists who in the actual results also note their assessment that the complainant is still not capable of work. Despite a referral documented in such a way by the personal doctor, the appointed doctor decides and issues a decision that the complainant is capable of work.

From the aspect of the legal arrangements, the decision of the appointed doctor of the institute is not in dispute, since it is quite clear that only an appointed doctor of the institute is competent to decide on eligibility to sick leave in the cases provided by law.

The question that is interesting in these procedures, but which has never been sufficiently explained, is what are the entirely professional, in other words medical, reasons for a differing decision on whether the complainant is capable of work or not, of course under exactly the same actual state both of the illness and the work the person performs. **Are there within the medical profession differing interpretations about in which cases of illness, states of illness or injuries persons are capable of performing their work or not**, such that the difference in the opinion of the personal doctor or specialist and the opinion of the appointed doctor may be ascribed to this circumstance?

We addressed this question to the Chamber of Physicians of Slovenia, Committee for Legal and Ethical Issues, since at least in our opinion, there existed a high probability that the Chamber had already previously adopted a position regarding the role of doctors who are members of committees of doctors or members of disability commissions; such a position would also be welcome to the ombudsman because he would then be able to explain to complainants in an understandable way, why given the same diagnosis the opinion of the personal doctor or specialist regarding an individual's capacity for work differed from the opinion of the institute's appointed doctor (or doctor who is a member of a disability commission).

In response the Chamber of Physicians states that differing opinions arise owing to the different role of a doctor who is an appointed doctor, because he is assessing rights under the regulations on health insurance. This is therefore not a question for the professional organisation of physicians, but for the Health Insurance Institute of Slovenia (ZZZS).

The ombudsman takes the view that such a position of the legal and ethics committee of the Chamber of Physicians might mean acceptance of the fact that when doctors have the function of appointed doctor or member of a health committee, they are bound more to observe the policies of the institute conducted in connection with the spending of funds for benefit payments, than simply to their medical profession and ethics, and in our opinion this is open to dispute.

Compensation payment to workers suffering from occupational disease from exposure to asbestos dust

At the Ministry of Justice (MP) there is a Committee for procedures of agreement to award compensation pursuant to the ZPPPAI. According to information supplied to the ombudsman by the union, it is clear that the National Assembly has allocated insufficient funds for the fair compensation of workers who have been affected with occupational disease owing to asbestos exposure. The union believes that precisely this circumstance is contributing to the lengthy procedures of coming to agreement on awarding compensation; according to this information, 506 workers who have already been certified as having occupational disease, have been waiting more than a year and a half for the procedure of agreeing on compensation awards. The other thing pointed out by the union is the level of compensation; this was determined in 1998, and their value has not changed since that time.

The MP itself also sees the reason for the length of the procedures as lying in the fact that in offering settlements to victims, the Committee is tied to the available funds. An interesting point: although the Committee works within the MP, the funds are planned in the budget at the Ministry of the Economy, which also disposes of the funds. Technically, the Committee could offer all certified victims, of which there were 350 on 8 October 2003, settlement, whereby the average compensation offered now is 2,500,000.00 tolars, but it is precisely the level of funds envisaged for this purpose in the budget that is the only obstacle preventing this from being carried out. The limited financial resources are also the reason that has prevented the valuation of compensation levels by individual criteria. Without any increase in budget funds for compensation payments, an increase in the amount of compensation would translate into a smaller number of settlements offered.

In this area of implementation of the ZPPPAI the ombudsman has determined inconsistent action by the National Assembly itself. If it had all the reasons for adopting a law, there is no understandable reason why it did not also ensure sufficient funds for its implementation in the national budget.

2.14 SOCIAL SECURITY

General and already known problems

Increasing numbers of complainants are approaching us and drawing attention to the extremely poor living and material conditions in which they have to exist and survive. Unfortunately the ombudsman has no mechanisms whereby he might exert influence to improve the standard of living for individuals. Therefore after making enquiries (either at social work centres or at employment offices, municipal councils and administrative units) we can most often merely write complainants letters of sympathy or advise them where they might turn for help.

As an institution that protects human rights, we will need in future to devote even more attention to problems relating to the broader social security of individuals, families and social groups. These are problems of unemployment, a lack of housing (including homelessness), inadequate monetary welfare assistance (which in our opinion does not even ensure a minimum level of existence), problems of social exclusion, alcoholism, illicit drug dependence, suicide, problems of mental health and health in general, problems of older citizens, and also problems of the attitudes of employers to employees and problems of the values that prevail in our society. All these circumstances exert a major influence on the level of rights for all the inhabitants of a society (including children), and are an indicator of violence both in the family and in the general social environment. There is an urgent need therefore for the attention of the state and its bodies to be drawn continually to an appropriate **social policy**, which would ensure social security for citizens (and not just services and contributions within the framework of social security), and would therefore offer at least basic rights on all levels. Proper provision for the problems of broader social security in this country would gradually and most certainly reduce the number of violent acts and other negative phenomena, and would ensure for its inhabitants a higher standard of living.

The majority of complaints in the area of social security therefore relate to acute material hardship in which individuals and families find themselves, generally after one or both parents are no longer eligible for unemployment benefit, and unfortunately they cannot find a new job. Social hardship owing to material marginalisation therefore needs to be addressed in a broader framework.

When we speak about social hardship, we cannot get around the universally familiar case of the Črni les Hotel. This showed what a lack of accommodation possibilities can mean for sick, elderly people and disabled persons, as well as for their close relatives. Inappropriate oversight by the responsible institutions (ministries, inspection services, local government) and the maintaining of such a situation for a long period of time signifies for certain groups of people the loss of basic human rights such as the right to appropriate accommodation, care and provision, and also the right to chose in the sense of who will provide it and where it will be provided.

What about the elderly?

This year there were many complaints relating precisely to the elderly, both those who receive home care or some other institutional care, and those who live alone and abandoned at home. We cannot assert that society has no mechanisms to provide old people with a good life in our society. Nevertheless, we find all too often that their children and relatives, who are caught up in the struggle for a better future, leave them to social institutions, which often only stir themselves when they are admonished (cases of old people in old people's homes, persons in social institutions, and of old people living alone at home).

We have also observed that despite assertions to the contrary from the competent bodies, there is still a glaring insufficiency of space in old people's homes, and the waiting lists are too long. This is especially true for sick old people, who are not capable of independent life and who upon discharge from hospital cannot be rapidly accommodated anywhere. We believe that in all major urban centres it is essential to ensure an adequate number of what are called care beds (and best of all as part of hospitals), where the elderly could be provided with continued health and social care for the period until they obtain free beds in a home or some other appropriate arrangement is found for them.

There are quite a few cases where we have been approached by elderly people who tell us that they are alone, sick and often only partly mobile. In such cases we immediately request the competent social work centre (CSD) to visit such persons and to determine how they can be helped. Usually home help is organised immediately for such people, and where needed also care in a home. Our intervention in this way has always been successful.

As for cases of old people in homes and those in institutional social security care who approach the ombudsman owing to purported inappropriate care, the attitude of the staff caring for them, the quality of the food, and their lack of opportunity to participate in important decisions that relate to the organisation of life in the home, we deal with these by immediately verifying the allegations or by a personal visit to the home or social institution. Our intervention usually turns out well, and sometimes we are merely an intermediary for achieving an agreement.

It still regularly turns out, however, that in actual fact, the problem is not poor or improper care, but simply the loneliness of the elderly person, who desires the closeness of other people, conversation and human warmth. We are insufficiently aware that the closeness of a friendly fellow human for everyone, especially for a sick or elderly person, is particularly important. Here we may note categorically that in terms of the need for communication and closeness of other people in our old people's homes, there are most definitely insufficient staff employed. With a restrictive employment policy, minimalist standards do not allow employees in homes and other institutions to take a little extra time for a simple friendly chat with individual residents.

We suggest, therefore, that new, additional employees be taken on at such institutions. As part of the programme of public works, a sizeable number of suitable unemployed persons could be trained to work with this group of society (the problem will be even greater owing to the abolishing of compulsory national service), including on a voluntary basis. There is a need to ensure the best possible awareness of the civil society, in the form of organising people into voluntary and charitable organisations, since no society is so rich that it could finance all the contributions and services itself. The assistance of people who want to help and who also want to be trained to give such help is an invaluable asset for any society.

We should not forget, however, one other circumstance – that is, the commitment to enabling the largest number of old people possible to live for as long as possible in their own homes. This, too, will require an expansion of the programme of home help, and training public sector workers and volunteers who would participate actively in ensuring for our elderly citizens a more secure and agreeable today and tomorrow. Equally, we should consider more appropriate and equitable arrangements in paying for help in the home, since in some municipal councils this help is for the moment free, while in others the service must be paid for. Inequalities also arise in payment for services of health care and care for the elderly in homes, which are covered by health insurance companies, and non-payment of the same services where they involve old people who wish to stay at home and receive home help.

We must also emphasise the ombudsman's demand that all old people should be ensured good-quality sanitary and other health aids, since it would be entirely impermissible for there to be any repetition of the notorious story of the nappies which just a short time ago had to be used in old people's homes. From the aspect of protecting human rights, making savings at the expense of human dignity is entirely unethical and impermissible.

The rights of illicit drug addicts

Compared to the previous year, in 2003 we received fewer complaints in which we were approached by illicit drug addicts. Despite this we have observed that addicts (and also those who are taking treatment) are frequently stigmatised in our society (for example with a separate entrance to a health centre), that society is not sufficiently familiarised with the dimensions and consequences of this type of dependence, and that people have no knowledge of the process of treating addiction (rejection and unjustified fear of those being treated, which is a consequence of ignorance and lack of familiarity).

According to the World Health Organisation (WHO) definition, addiction is a disease, so in line with the regulations, provision must be made for the right to treatment, to urgent medical assistance with the aim of preventing any deterioration in the state of health, and free choice of doctor. Particular concern in such treatment must be devoted to especially vulnerable groups (pregnant women and their partners), which is provided through the doctrine of methadone use (European methadone guidelines).

The medical profession and other experts have still not yet arrived at a final position on the justification of refusing treatment in the event of a person who is being treated, in contravention of a signed therapy agreement, breaking the agreement and committing a disciplinary violation. The question arises for us, whether upon a disciplinary violation having been committed, suspension of treatment – with the consequent potentially acute state of illness – through an (excessively) rapid reduction in the daily allocation of methadone is really the only possible "punishment", or whether other more appropriate forms of caution are possible? Here it is not entirely clear who – and how (criteria) – judges the "seriousness" of the disciplinary offence, and judgements may therefore be highly arbitrary.

We wish to emphasise a positive change that we identified in the decision-making by doctor committees in connection with granting the right to temporary absence from work and through this the right to sickness benefit for those illicit drug addicts who were employed prior to inclusion in the treatment programme. The treatment programme does not just involve a medical component, but also of necessity includes what is called the psychosocial part of rehabilitation. This progresses for a longer time and is carried out in therapeutic communities in Slovenia and abroad. Such patients must be granted benefit for the whole time of treatment for addiction. After the Constitutional Court had annulled Article 145, paragraph 2 of the Rules on Compulsory Health Insurance, the Human Rights Ombudsman pointed out several times the imperative of having such a provision.

We also anticipate further positive changes in the handling, rehabilitation and later incorporation of illicit drug addicts into society with the adoption of the National Programme in the Area of Drugs 2003-2008, drawn up by the Drugs Office, and whose adoption as soon as possible we support.

We would like to point out that in this country we still (all too) often encounter the unwillingness of local residents to accept among themselves different people, including illicit drug addicts who have opted for treatment. The problem often arises in the opening of new treatment centres, where illicit drug addicts would perform their second phase of treatment, in other words once they had dealt with the problem and were completely abstinent.

From experience we know that even so-called pre-preparation and comprehensive provision of information about the persons and the method of treating them do not convince local residents. For the most part these people are inflexible, full of prejudice and have no serious arguments in rejecting any kind of placement of these people seeking treatment in their vicinity. Everything should be done to prevent the arbitrariness founded on prejudice and rejection of anything that is not acceptable for the average Slovenian mentality. After all, we are quite content to tolerate and accept a multitude of alcoholics, simply because they are a part of our "folklore".

2.15 PROTECTION OF CHILDREN'S RIGHTS

Special nature of work

With the creation of a special group within the expert service of the ombudsman we have joined the efforts to improve the situation in the area of children's rights, since we wished to cut through the years of debate about what to do and where to begin. This area is specific and requires a special method of work, which is reflected in the approaches, aims and tasks of the group that is dealing with this issue. This work differs from that in other areas of the ombudsman's work, and in addition to dealing with complaints, it covers the following tasks:

- monitoring and implementing the Convention on the Rights of the Child,
- encouraging a positive attitude to children on the state and local level, in politics and in the civil society,
- proposing positive changes to legislation, politics and practice,
- working to improve cooperation between state bodies on the national and local level and non-governmental organisations,
- developing direct links with children and youth for them to express their opinions and views and encouraging the authorities and public to respect their opinions,
- collecting and publishing data on the position of children,
- promoting advocacy,
- supporting and encouraging research.

Fulfilling the Convention on the Rights of the Child (CRC)

In order to fulfil the obligations placed on signatory states by Article 42 of the CRC, the national strategy must be aimed at fulfilling the convention on all levels of society.
In monitoring issues in the area of children's rights and dealing with specific complaints, we have observed that there is still much work to be done in this area. In implementing certain measures for protecting the rights and benefits of children, problems still frequently arise regarding how to transfer legal standards (the provisions of the CRC) into practice. While the CRC treats children as subjects of rights and holistically, in Slovenia children are still for the most part treated as objects of care and are "apportioned" to individual departments. This then generates considerable uncertainty as to the active participation of children in procedures and difficulties in cases where urgent interdisciplinary and inter-departmental cooperation is needed for rapid and effective action.

The strategy must therefore by aimed both at familiarisation with the principles and provisions of this convention and at pointing out responsibility vis-à-vis their specific transfer into practice – into actual activities, both on the national and local levels.

Here the Human Rights Ombudsman is aware of his role, which he sees both in the promotional and critical aspects of fulfilling the CRC provisions, as follows:

- drawing attention to issues and expanding good practices (annual report, describing cases, press conferences, newsletter etc),
- familiarising people with the CRC and promoting the active teaching of children's rights (the project My Rights), open door day, workshops and various activities in schools, cooperation with the media),
- cooperation in formulating the National Development Programme for improving the position of children in Slovenia for the period 2003-2013,
- participation in the Council for Children (professional advisory body) which operates at the MDDSZ,
- cooperation with non-governmental organisations: the project My Rights, the Alternative report of non-governmental organisations on fulfilment of the CRC by Slovenia, with the National Network of Telephones for Children and Youth (TOM), in the Committee for Children's Rights at the ZPM of Slovenia and in numerous activities of individual non-governmental organisations,
- cooperation in the Children's Parliament.

Promoting the active teaching of children's rights

Rights are worth little if children (and sadly adults, too) are not familiar with them or if they are presented in an incomprehensible way. For this reason the ombudsman believes that appropriate promotion for awareness-raising is an essential part of the process, and devotes much attention to this.

In seeking the possibility of getting through to children and at the same time to teachers and parents, and familiarising them with these rights in an appropriate manner – not through instruction, but via empirical learning and active participation in ensuring their rights – last year we linked up with the Slovenian Peace School, a non-governmental organisation (project coordinator) which has already been active in this field. Given that schools are the one place where all children, and indirectly also parents, are included, we aimed our activities at cooperation with schools.

Later this cooperation was joined by all the major non-governmental and government organisations that have thus far been active in the area of children's rights. In this way we carried out together the project My Rights, which has become a national project for the promotion and teaching of children's rights.

My Rights project

The questionnaires carried out in cooperation with the ombudsman by the Peace School among pupils of seven grades and their social studies teachers indicated clearly that both have a poor familiarity with the important and influential provisions of the Convention on the Rights of the Child. The result of the questionnaires is among other things a consequence of the fact that in Slovenia, during study teachers do not find out sufficient about the methods of teaching human and children's rights.

In terms of content (teaching included in the school curriculum; intellectual knowledge and social skills included; based on experience and perception, the importance of the academic climate, preparation of teachers) and in other ways the project is extraordinarily topical (the UN decade for teaching human rights is ending, and 2004 marks the 15th anniversary of the adoption of the Convention on the Rights of the Child). It is planned in such a way that the teaching of rights can become a part of the permanent curriculum and can contribute towards the creation of a positive feature in the school. Through a familiarisation with rights and through the building of high-quality mutual relations, children should acquire the knowledge that a right is at the same time a responsibility (to oneself and to others) and the capacity for dialogue, which is a condition for mutual understanding, the active inclusion of children in various processes and their active participation.

Through the project, we wish to support teachers and students in their activities aimed at familiarisation with and acceptance of children's rights. Within the framework of the project, pictorial and methodical material has been prepared for work in class. In the desire to bring children's rights truly closer to children in their everyday lives, we prepared for them "credit cards" of children's rights (the illustrations are the work of children), which they will be able to carry around with them all the time and swap. Teachers have been provided with didactic material, comprising a folder with two sets of postcards with illustrated and age-appropriate wording of children's rights, together with short methodical activities for practical use. The folder also contains a CD-ROM with additional methodical and pictorial material. On the project web site, which also has a link to the ombudsman's site, students, teachers and possibly even parents will be able to find a range of information and hints for teaching children's rights. Every month we will appeal to them to carry out various proposed activities for a pre-determined children's right. At the end of the school year there will be a concluding event with a declaration of the most children's-rights friendly schools in Slovenia. These will receive certificates and citations for the most active classes/individuals/schools.

Of course, through the promotion we also make it possible for them to contact the ombudsman via the web site and the toll-free telephone number 080 15 30. Our wish is for them to take maximum advantage of this possibility, too, and to collaborate with us. We want children themselves to write the text of the convention or at least the text of the articles that are most important for them, in their own words.

Cooperation with educational institutions

Young people spend a significant amount of their childhood in school. For this reason we have devoted greater attention to direct cooperation with educational institutions, where we have pursued the following goals: familiarisation with human rights in connection with responsibilities, recognising and respecting one's own rights and those of others, education for peace, tolerance and cooperation, promoting non-aggressive communication, encouraging active participation, understanding one's responsibility to respect the rights of others and familiarising young people with the methods and scope for helping and with various avenues of complaint upon violation of their rights.

In selecting individual schools we pursued the goal of visiting various schools in various parts of the country, including primary and all types of secondary schools, student halls of residence and also institutions for training children, adolescents and adults with special needs. With the aim of different schools being able to link up with us, and with the agreement of the Minister of Education, Science and Sport, the possibility of participation was also mentioned in the circular that the education ministry sends to schools every year before the end of the academic year. Thus in various ways we collaborated with around 20 schools. We were incorporated into their planned activities for learning about human rights as part of classes in individual social sciences subjects or in compulsory elective subjects and special interest activities. We drew some schools to cooperate, and together with students and teachers we prepared a project day or week aimed at learning about human rights. We talked with young people about awareness of rights and the responsibility for respecting the rights of others, and we presented to them the work of the Human Rights Ombudsman, familiarised them with interesting and typical cases of violation of their rights, discussed with them awareness of the complaints avenues and presented to them the possibilities and methods of obtaining help upon violations. We also conducted class hours on rights.

Contacts with both parents are a child's right

The signatory states adhere to the right of children who are separated from one or both parents to maintain regular personal contact and direct links with them both, unless this would be counter to their interest (Article 9, paragraph 3 of the Convention on the Rights

of the Child). So any parent that does not make possible such contact is acting against the interest of the child.

In all reports to date we have devoted considerable attention to the issue of a child's parental contact being prevented by the parent with whom the child is living, and have pointed out that the legislative arrangements need urgent amendment. In view of the fact that the act amending and supplementing the marriage and family relations act brings quite a few important changes in this area, we wish this time to point out merely the inappropriate action of the social work centres in cases where there are problems in the progress of the child's contact on the part of the parent with whom the child is not living. Here we have pointed out the difficulties in cases where on the wish of the parent contacts are maintained, but with little regularity. In these cases we have observed that there is still no adherence to the fact that it is the child who holds the right to have contact. It is unacceptable that despite the fact that we are bound to this by the Convention on the Rights of the Child, the rights and benefits of children are not appropriately protected, and are often even ignored.

In the cases dealt with, a social work centre was advised several times of the irresponsible behaviour of the parent with whom a child was not living, and of the hardship of the child, who frequently waited in vain for the agreed contact. On the proposal of the parent with whom the child was living, that in the interest of the child it should take and issue an official decision and thereby precisely determine the contact, the centre explained that only the parent who was not living with the child was a client in this procedure (Article 106 of the ZZZDR), and took no action other than talking to the parents. From the cases dealt with it is clear that there was no kind of communication between the parents, which certainly caused complications in the maintaining of contacts, and the victim of this was the child.

It is in the child's interest that parents cooperate and are aware of their parental responsibility, and especially that children should not be the victims of their unresolved relationship. The rights and duties of parents are defined in Article 54 of the Slovenian Constitution, and in greater detail in Article 4 of the ZZZDR, which clearly provides that parents have the right and duty to care for the life, personal development, rights and benefits of their minor children. It is therefore unreasonable that in cases where an irresponsible attitude of a parent is hurting the child, professional workers do not take decisive action in the interest of the child. A child's contact with parents must be taken seriously, with all due responsibility and awareness of the harmful consequences for the child in the event of irresponsible behaviour by the parents.

It makes no sense here to cite Article 106 of the ZZZDR, since through such action the centre merely sends the wrong signal to the violator, and this exacerbates the already threatened position of the child. On the basis of its general authorisation (Article 119 of the ZZZDR) the centre is entitled and bound to do everything necessary for the protection and raising of the child or the protection of the child's property and other rights and benefits. In cases involving complications in maintaining contact, professional staff must establish a clear dividing line between the issue of contact and the issue of the unresolved relationship of the parents. Parents must be faced with their own share of responsibility and help to build up responsible parenting. If parents decline this possibility of help in arranging quality contact, the centre should in no way acquiesce with the arbitrary behaviour of the parent that is behaving irresponsibly. An administrative procedure needs to be initiated, and an official decision made as soon as possible determining responsibility, which is the parents', and not the child's.

We believe that in all procedures affecting children, especially in those where the parents are unable or incapable of representing them, they should have a person to represent them.

Representing children

We already pointed out the need for the function of representing children in last year's ombudsman's report. This year we point out this need especially in procedures of decision-making by social work centres (CSD) on the education and care of children in institutions or with another person. In these procedures in the same case the CSD operates in the role of provider of professional care tasks on the one hand and an administrative body (with public authorisation) on the other. In cases where parents do not wish to, or cannot represent the interests of the child, the CSD acts in a third role. Here we would wish to draw attention especially to the principle of equality of arms (the possibility of giving one's opinion and equal access to all information). The representative must be the voice of the child – an essential value and a fundamental principle of representation, both in the decision-making process and in the time of placement outside the family. Depending on age and capacity to understand, the representative should give the child all the necessary information, advice, representation and support. They must ensure that the opinions and wishes of the child are heard, understood and recorded. This would give children a sense of safety and certainty that their rights will be respected and their voice heard.

Equally, children should have the possibility of cooperating with a representative also in the time when they are separated from their families. Representatives should help them to understand what is happening, help them communicate (so that here they can freely express their opinion and wishes), encourage adults to accept children's views, and where possible, they should help them to select a solution.

The representative must represent the child and no one else (independence), and be committed to the child's rights and needs. Only in this way can children feel confident that their interests will indeed be represented.

Verifying reform school measure

The ZZZDR provides that every three years a check should be made to determine whether the reasons still exist for which a reform school measure has been ordered, only for measures of sending children to institutions owing to their personality or behavioural disorders that significantly endanger their healthy personal development.

Article 25 of the Convention on the Rights of the Child indicates that children have the right to have every decision on the basis of which for care, protection or the safeguarding of their physical or mental health they have been separated from their families verified from time to time and adjusted to changed circumstances.

In view of this requirement of the convention, it would therefore be necessary with every measure of removing children from parents for the purpose of protecting the rights and benefits of the child to provide also in law, the compulsory verification at specific times of whether there still exist reasons for implementing the measure, and also to provide a relevant report. This should bind the CSD and parents such that in cases where it would be possible to make arrangements for a return of the child to the family, they draw up an appropriate plan with the aim of the earliest possible return of the child to the family, and to ensure that as soon as the reasons no longer exist for removal of the child, the child is returned to the parents.

Given that fostering should be viewed as a short-term measure, it is all the more essential to regularly determine the benefit of children continuing to stay with foster families. This gap should now be filled by the individual project group, comprising the social worker of the competent centre for the child, the social worker of the foster parent, the foster parent, the biological family and the foster child. The tasks of the individual project group are the planning and proposing of appropriate action and professional handling of the foster child,

direct monitoring of the foster child in the foster family, and at least once a year in the child's centre to submit a written report in which it would propose further measures in connection with fostering. Practice will show whether this is a sufficient security valve so that adjustments can be made as soon as possible to changed circumstances for the benefit of the child.

From monitoring the issues in this area we have determined that individual project groups in some centres are already very active, but unfortunately not at all centres.

Administrative units - execution of CSD decisions

In dealing with complaints we have observed that administrative units often procrastinate over the execution of CSD decisions on removal of children, although it is absolutely clear from both the explanation of the decision and from the frequent cautions from the CSD that rapid action is essential. Despite the explanation that every delay is detrimental to the endangered child, administrative units often seek a variety of reasons for delaying execution. It happens here that they get involved in verifying the professional decision of the centre. Given that the ZUP clearly indicates that the execution procedure is an independent and separate procedure from the administrative procedure, such action by the units (UE) is not only pointless, but also irresponsible and unlawful. The execution procedure does not involve any decision-making about the rights and obligations of the parties, it involves simply the enforceable execution of the obligation about which a decision has already been made in an administrative procedure.

Both the CSD and the UE must, each within their own competence, contribute to the effective fulfilment of children's rights, especially when the risk to the child demands rapid action. Coordinated work in turn demands adherence to the demarcation of competence and mutual respect for the rules of the profession, which alongside the regulatory basis lay down the work of the CSD on the one hand and the work of the UE on the other. The primary concern, and at the same time the guiding principle for both, must be the interests of the child. Article 3 of the Convention on the Rights of the Child clearly provides that in all activities in connection with children, irrespective of whether they are performed by state or private institutions for social protection, the courts, administrative bodies or legislative bodies, the guiding principle is the benefit of the child. In Article 7, the European Convention on Fulfilment of the Rights of the Child binds signatory states to the duty to act quickly in all procedures affecting children. In cases involving removal of an at-risk child, most commonly time is a very important factor and any procrastination is counter to the child's benefit.

Unfortunately both, in the cases we present especially, and in other cases, children all too often suffer harm owing to the inappropriate actions of individual offices, whose shortcomings are reflected in their inconsistency in policy and practice, and in poor communication and coordination between individual offices.

Children's rights in other areas

Although there is still no assessment in Slovenia of the fulfilment of children's rights in practice, on the basis of meetings with youth and analysing their complaints, we may summarise that we have achieved a fairly high level of awareness of the rights of children and adolescents and of their protection. The main problems they assert and which derive from their complaints or from complaints made by parents or lawful representatives, are linked to seeking and respecting their opinions, various forms of physical and mental aggression, poverty, social exclusion and stigmatisation owing to differentness, unequal treatment on the basis of regulations and ensuring high-quality educational, health and social security services for all in line with the principle of ensuring equal opportunities.

The content of complaints handled indicate that the greatest problems lie in the areas of:
- violence against children outside the family,
- violence among peers,
- exercising the right to various supplements,
- the rights of children and young people with special needs.

Various forms of physical and mental aggression, and seeking and respecting the opinions of young people, are without doubt topical problems in schools today. Owing to the frequently inadequate sensitivity of staff to the opinions and complaints of young people, what start as minor problems grow into insurmountable, even violent conflicts, which cannot be resolved in such a way that continued working together would still be supportable. In comparison with the previous year, therefore, there were more written complaints and also telephone calls from young people and their parents owing to unusual, inappropriate and improper action by staff in educational institutions that was not in accordance with regulations. For the most part, parents sought from us advice on how to act, and whom they should talk to at school so as not to offend the heads of school and teachers, since their children had confided to them details of goings-on at the school that they would like to verify, hear the other side of and also talk about the problems, if perhaps they exist in their children. We responded to them in line with our competence and referred them to the appropriate bodies.

Complaints involving **violence among peers** were numerically slightly higher than in the previous year (5). Violent events at school often come to light and always arouse wonder, anger and questions about the responsibility of staff who are unable in good time to identify violence, to notice it, prevent it and, when it happens, to act appropriately. In such moments what schools need is not censure and public condemnation but advice, since every day they are increasingly the scene of various oppositions that arise between all participants in the educational process. Here it would be irresponsible to impose the burden of resolving conflicts and eliminating opposition simply on each individual school as an institution of the system in which everyone entering it should be appropriately equipped with a knowledge of the rights, duties and responsibilities, where they should above all be significantly more tolerant and willing to cooperate. Coordinating values is an essential process in every school, and this can only be affected in a peaceful way, with the sufficient respect, confidence and personal culture of all participants. For this reason the rules and procedures valid in schools must be clearly formulated, unambiguous and written down. Violent events are shocking, and are always stressful for pupils, parents and school staff. But they are also an opportunity to consider focusing more sharply on the issue of responsibility of individual professional staff, who are also at the school to act in such cases in a considered, unequivocal, professional and effective way, and thereby to contribute to the more equitable division of responsibility on several levels and not just to leave it to the school management. Since certain situations at school cannot be prevented, when they do arise it is useful to have a previously prepared "crisis plan", which incorporates essential action and sets out a sequence of procedures, those in charge and their responsibilities. Staff should be as well prepared and organised as possible for this, so that they will cause the least errors and harm. The substantive basis for this lies in the provisions of the Rules on Rights and Duties of Pupils at Primary School, which prescribes the procedures upon the determination of breaches of school rules, the manner and process of ordering reformatory measures and those in charge of procedures. In this respect there is a need to supplement the school house rules and to familiarise pupils, parents and school staff with this. We support an increase in the supervision of pupils by professional staff by raising the number of duty teachers (which should take precedence over external security staff!) and by continuing the professional training of employees to make early identification of the

signs of violence and in this way to ensure greater prospects for preventing it and for correct action in violent events.

In **exercising the right to various supplements**, complainants expressed above all criticism of the procedures and conditions that those eligible must fulfil to claim them. Poverty, social exclusion and stigmatisation for being different are still frequent reasons for complaints from parents, who are convinced that the state's measures do not do enough to mitigate or eliminate these problems. We dealt with complaints about the difficulties they encountered in exercising the right to child supplement and the rights to other family benefits as provided by the Parental Protection and Family Incomes Act (ZSDP). Many parents of special needs children have stated that in these procedures they must continually expose the differentness of their children and prove it in every way, and in this they cannot accept the length of the procedures and the pitying and occasionally insulting attitude of individual officials. All of the complaints of this kind involved primarily (excessively) long timetables for resolving procedures at second instance bodies, which as a rule last from 6 to 10 months, and sometimes even longer.

Those affected, drew our attention to unequal treatment on the basis of valid regulations, with differences arising, for example, in the level of cash benefits. We can see no reason for the high differences in the level of benefit for help and assistance for adult persons who have been disabled since birth or from early childhood, and those who became disabled later, as adults. The explanation lies in the fact that the type, cause and time disability arose are still more important than the actual needs of the disabled person, which stem from the level of handicap, impairment or disorder.

A child with cerebral palsy, who requires a wheelchair for movement, cannot easily obtain a disabled parking sticker, but after 18 years of age, upon assessment of the level of physical disability, he can obtain one.

The unequal position in ensuring protection for seriously mentally or physically impaired children and in deciding on the right of parents to part payment for loss of earnings was pointed out by complainants, and this has been dealt with by the entry into force of amendments to the Social Security Act. Under the previously valid regulations this right could be claimed by one of the parents caring for such a person under 18 years old, while parents with older children could not claim this right and their complaints were therefore justified.

One interesting case involved a special needs child, who in order to exercise the right to education and rights in the area of social security was dealt with at almost the same time by two professional committees. Both of them assessed his impairment and disorders, and his residual capacity. The opinion of the Expert Committee of Physicians of the Paediatric Clinic, that the child was (only) moderately impaired, had the consequence of the competent social work centre deciding on the right of the parents to a supplement to care for a child which the ZSDP provides in a lower amount. However, the Committee for Placement of Special Needs Children determined in its professional opinion that owing to the type and level of handicap, impairment and disorder the parents were eligible to claim supplement for care of a higher category, and they could also claim the right to part payment for loss of income if they so decided. The case is illustrative owing to the division of rights into "academic", "social" and "health" and points to the deficiencies of the current arrangements in various regulations that govern in substance the same problem: the right of a special needs child and support for that child's family. It would make sense to harmonise this in such a way that the child would be provided with all rights, whereby it should not be important which "department" they fall under. In this way, the child would be examined

by one single professional committee, and not by a new committee of a different ministry for each right separately.

Rights of special needs children

The rights of children and young people with special needs to education, on the basis of equal opportunities to obtain the highest level of health standards and services and such care and help that should be appropriate to their state and to the capacities for their greatest possible social inclusion, have been highlighted most commonly by their parents, but also by the young people themselves. In some cases, the complainants were professional staff of educational institutions, and in one case a non-governmental organisation. The difficulties they encountered were diverse and in our opinion they stem from what is professionally not an entirely clear and not sufficiently refined concept of including children and young people with special needs in all forms of life in society, a concept that lacks, apart from solid professional foundations, a comprehensive action plan with a financial framework that would provide a basis for fulfilment of inclusion. Difficulties are therefore experienced by all groups within the category or children whom the Placement of Children with Special Needs Act (ZUOPP) defines as having special needs, and in all age groups from pre-school through primary school, secondary school to university. The highest number of complaints related to children with impaired mental development, and with behavioural and personality disorders, while we also identified problems of those with long-term illness who are treated in hospital kindergartens and schools.

In our opinion, the actual position of children and young people with special needs has not changed in comparison with the previous year, although this year saw the adoption of certain previously lacking implementing regulations, instructions for the adapted implementation of programmes with additional professional help, adapted educational programmes of 9-year primary school, norms and standards and elements for systematising jobs in 9-year primary schools with adapted programmes. We received the largest number of complaints (20) precisely in this area.

The complaints from parents and their lawful representatives, in some cases from pupils and students and from individual educational institutions, point to a professionally challenging, multidisciplinary set of issues. Resolving them would require a high level of interdepartmental linking and coordination. In terms of content they involve issues of the rights to education and training on the basis of equal opportunities and to assistance that would be appropriate to their state and the capacities for their greatest possible social inclusion and personal development. Our assessment is that the regulations governing this area are insufficiently consistent in accommodating international documents such as the Convention on the Rights of the Child, the Salamanca Declaration (1994), the Resolution on inclusion of disabled children and adolescents in general education systems (1990) and Recommendation R(92)6, adopted in 1992 by the Committee of Ministers of the Council of Europe on a harmonised policy for rehabilitation of persons with disability.

Despite the fact, therefore, that the ZUOPP regulated the fundamental issues, it left several issues without any regulatory provision, including those concerning the rights and duties of persons with special needs and the method of meeting their needs. So it does not provide for all children capable of attending school, for example, the possibility of being at regular schools alongside their peers who do not have special needs. Students who are educated under special programmes do not have the possibility of attending regular schools. Since the law left the decision on where children will be educated to the school board or the regional unit of the Board of Education, which performs this task under authorisation, the accusation from parents of discriminatory access to education is understandable. The official decision on placement determines which form of education a special needs student will attend. Alongside the education programme, the decision also determines the school,

and the ZUOPP does not even offer guidelines and instructions of principle to the administrative body in selecting the school. This means that it is up to the body to select either a regular school or a school with an adapted programme. Such an indeterminate arrangement can be the basis for discriminatory access to education, something that the parents also assert in complaints. Proceeding from the Convention on the Rights of the Child, which is valid law in Slovenia, all special needs children should be provided with education and training in a manner that enables their greatest possible integration into society. There will therefore probably be a need in our opinion to examine whether it is essential to persist in allowing entry into forms of regular education only to those who are capable of handling a more demanding educational level. The purpose of inclusive education is primarily social integration of special needs children, and not the ensuring without conditions of the level of knowledge of a regular school. Since they are a part of society, the non-discriminated section of citizens must create the possibilities, conditions and climate for inclusion to succeed.

The complaints from parents of children with delayed mental development express criticism of the existing system, which in their opinion does not function in accordance with the provisions of the ZUOPP. Their main criticism is that the state has not set up a system with a network of regular schools which alongside primary schools with adapted programmes would accept children with slight delays in mental development and which would at the same time enable others with moderate and (or) additional specific difficulties to transfer between programmes. They are convinced that existing curriculums (the adapted programme with an equal educational standard and that with a lower educational standard) are rigid and do not allow advancement within the programme for children who aside from slight delays in their mental development have some specific difficulty in an individual area.

In their complaints, parents have also voiced the demand that in formulating professional opinions the Committees for Placement of Special Needs Children should also take account of their desire for children to be educated in regular schools together with their peers, or that children should have a realistic prospect of transferring between programmes, something the ZUOPP also provides. Some parents, who have not come to terms with referrals to education in primary schools with adapted programmes, are no longer sending their children to school, because they do not wish to enrol their children in "special schools". They educate their children themselves, or with the help of instructors at home, which is not (yet) governed by the regulation envisaged by the ZUOPP that is still lacking. And this is unacceptable, since the law determined a one-year deadline for the issuing of all implementing regulations.

We identified a problem in the treatment of adolescents in educational institutions, who apart from behavioural and personality disorders have pronounced psychiatric disorders, and those who regularly use illicit drugs, or who are in programmes for addiction. Through official decisions, these adolescents are streamed into institutions for behavioural and personality disorders, and they require multidisciplinary management, and often also relatively demanding medical care, which given the current material and personnel conditions cannot be provided in these institutions. In the middle of last year the education ministry (MŠZŠ) set up an inter-departmental expert group, which should formulate the most appropriate solutions for managing adolescents with such difficulties. We have no information on when these expert solutions will be prepared.

The rights of children with long-term illness to education during the period of their hospital treatment were emphasised by members of the Forum for the Rights of the Child in Hospital. Since the financing of pre-school education, including pre-school education in hospital, falls within the jurisdiction of municipal councils, this activity is arranged diffe-

rently from region to region. Its arrangement is exemplary in Ljubljana, while elsewhere there is a range of problems. Considerably better provision has been made for primary and also secondary education of those with long-term illness, and this is under state jurisdiction.

In dealing with a complaint from the parents of a pupil with a long-term illness, we ascertained a series of errors in the procedure of his placement: irregularities in the decisions of the placement committee, non-adherence to regulations, correction of errors and mistakes in an unacceptable and unlawful way, and violation of the legally provided deadlines. The CSD did not determine the errors of the expert placement committee prior to the issuing of the placement decision. After it became legally enforceable, following the intervention of the MŠZŠ the placement committee corrected the professional opinion and the CSD issued a decision annulling the previous decision. The parents then appealed against this. Following the decision of the second instance body, which rejected the appeal, they did not seek judicial protection, since the girl in question had finished school.

We encountered the issue of the preciseness of regulations governing enrolment in university education programmes in dealing with the complaint of a school student who a few years previously had suffered a serious traffic accident. We describe this case separately. Following our intervention, the complaint of a student at being forced to move out of her hall of residence, was accepted by the management of the halls of residence. The decision to move her was cancelled, and her contract to live in rooms which owing to her special needs had been appropriately adapted, was exceptionally extended for a further 10 months. It turned out that there was no violation of her rights, since the student did not fulfil the conditions for such accommodation as laid down by regulations. In this way her accommodation was exceptionally extended for the second time.

Children who are victims of crime

The complaints associated with violence against children drew attention to the inappropriate action of bodies for discovering criminal acts, which place the interests of the investigation above the interests of the child, which for the Human Rights Ombudsman is unacceptable and impermissible.

The ombudsman believes that the rights of children who are victims of crimes should be urgently protected through the introduction of a system of "**advocates**" for children and adolescents, in which a trusted adult would continuously accompany the child.

Children and adolescents who are victims of crimes should first and foremost be treated as **children**.

Children and adolescents have the right to their **own opinion** and to express this opinion in all matters that affect them – for example in deciding on their return to their original family or on accommodation with a foster family, a residential group and so forth.

Children must be **familiarised with all information** that concerns their specific position, their rights, available forms of help, the duties of others and possible solutions. Explanations must be adapted to their age and emotional maturity – everyone must be familiarised with everything in a way that they are able to understand given their age and maturity.

The **privacy** and **identity** of victims who are minors must be protected. In no event should the public be given information on the basis of which it would be possible to recognise a child or his family.

Consistent observance of international documents that have followed the CRC mean that social services, all doctors (and especially paediatricians, family doctors, and specialists in

school medicine) and those in charge of educational processes (educators, teachers at primary and secondary schools) should upon suspicion of neglect or any kind of abuse immediately **inform** the locally competent bodies for discovery and prosecution. They should also be informed if a child is assessed as being at risk. Non-government organisations should also inform the social services and police about cases of neglect or abuse of minors, if they have information about this (irrespective of the confidentiality of procedures) and inform their users of this.

"Advocates" – appointing trusted persons or escorts

As soon as victims are identified, they should be allocated a trusted adult person to accompany them throughout the entire procedure – until the best solution is found in line with the child's interests and needs (hereinafter also "escort", either male or female).

"Advocates" (escorts) could be provided by the social services or non-government organisations under previously determined professional criteria for the selection of such persons. Providing a trusted adult person should be permanent, and the victim should be accompanied throughout by one and the same trusted adult.

Trusted adults should have appropriate qualifications (psychologists or special teachers), additional special knowledge and the necessary working experience to be able to attend fully to the needs of victims and ensure their rights. Among other things this means funds provided by the state for the continuing education of escorts, a system of overseeing the quality of work and supervision.

A trusted adult (the child's "advocate") should:
- ensure that all decisions are in the child's interest, and so should of necessity be included in the work of any multidisciplinary team,
- ensure immediate appropriate/necessary accommodation and care for the child, if the circumstances demand this,
- ensure a continuation of the educational process,
- ensure an advocate in criminal and civil matters,
- inform the child of their rights and possible solutions,
- present the child's needs to the competent services and ensure they are met,
- participate in contacts the child has with the social services, representatives of the discovery and prosecution bodies, justice, health and so forth,
- help the child find a family (where this involves a victim of the traffic in children),
- ensure reintegration and psychosocial rehabilitation of the family, if this is in the child's interest.

The escort should be present in all contacts the child has with the police, prosecutors and the judiciary. If he were to consider that the child needed further legal instruction, he would have to temporarily halt procedures and ensure additional legal assistance. Personnel from the discovery and prosecution bodies would have to respect such requests, irrespective of what would be called the interests of the investigation. The **child's benefit** would have to be placed permanently above other interests and benefits.

Domestic violence

We wished to encourage all those with responsibility to be involved in improving the overall system of protecting children's rights, and within this framework particularly that they deal systemically with the prevention of domestic violence. For this reason, at the beginning of 2003 the ombudsman in cooperation with the Public Prosecutor General invited the collaboration of the heads of institutions governed by legislation or the implementation thereof prescribing the duty to combat domestic violence, to help victims and to protect victims and society from the damage caused by domestic violence.

The ombudsman proposed that a special law should ensure:
- the removal of a violent person from a family through appropriate judicial protection (police),
- rapid and effective prosecution of violent persons (prosecutors),
- defining specialised groups/department at district courts for family issues (he supports specialisation and not reform in the form of establishing family courts),
- appropriate penal and post-penal management of violent persons (justice department, social work centres),
- the necessary psychosocial handling of violent persons and victims (social work centres, non-governmental organisations),
- the duty to report (doctors, teachers, educators, health care),
- coordination and a system of work and information provision among individual departments.

Assessment of situation and substantive suggestions

In the desire to round off the year-long efforts in this area, on 19 November the Human Rights Ombudsman held a professional consultation to which he invited primarily practitioners from various services and non-governmental organisations. The professional consultation was attended by 120 experts, but of those invited to the initiative set in motion by the ombudsman and the Public Prosecutor General, it was attended only by the latter and by a representative of the Ministry of Justice. The absence of leading representatives from individual bodies with responsibility in fact in itself demonstrates their attitude to the problem.

The Human Rights Ombudsman invited to the professional consultation non-government organisations, social work centres, the police, judiciary and prosecutors, ministries, representatives of the media and parliamentary deputies. Taking part in the discussion were also students from Grammar School I of Celje, which served as a reminder of the anniversary of adoption of the Convention on the Rights of the Child, which was one day later. Victims of domestic violence also spoke to participants about their difficulties and experiences with the police, judiciary and social work centres.

The consultation drew attention particularly to the difficulties encountered by professionals in practice, and are summarised briefly as follows:
- Stereotypical views of domestic violence.
- Lack of systematic primary prevention.
- The offer of help to victims is concentrated in Ljubljana, so access to help for numerous victims who do not live in Ljubljana is difficult or impossible.
- There are no self-help groups, or rather they only exist in Ljubljana and Maribor.
- Lack of effective cooperation from all the competent and responsible services.
- Individual institutions do not have established protocols for cases of domestic violence, so it is left too much to the sensitivity and capacity (or otherwise) of individual experts.
- Very rare use of banning orders and other legal possibilities for protecting victims.
- Excessive length of judicial procedures, with no specialised departments in the courts.
- Problem of payment for expert opinions in judicial procedures.
- Lack of knowledge and supervision for the area of domestic violence in institutions such as the police, prosecution service and social work centres.
- Operation of different players with no coordination of timing and substance.
- Lack of therapists, long waits, financial inaccessibility.
- In health: inappropriate anamnesis, which does not contain enquiries about domestic violence; many injuries dealt with in emergency sections, and time of medical attention restricted to a minimum; incapacity of health personnel to identify victims of domestic violence; inappropriate premises for confidential interviews with victims of violence; action is left to the person that discovered the domestic violence.

- Insufficient space in shelters – homes for mothers perform the function of shelters, although they cannot ensure security for residents.
- Problem of accommodating children over 15 years old who cannot be in shelters.
- No specialised shelters (safe houses) – victims of violence with special needs (restricted movement, psychiatric hospitals) are discriminated against.
- No accommodation possibilities for foreign victims of violence.
- No one arranges for the housing of victims after they leave shelters, so as many as half of them return to the violent environment that they fled.
- Counselling programmes for perpetrators exist only in Ljubljana and Maribor.
- In prisons housing convicts there are no effective programmes to help them cease using violence upon returning to their original environment.
- Lack of financing for the work of non-governmental organisations.
- Non-application or inconsistent application of existing legislation.
- Sensationalist reporting in the media.

In order to understand more easily the duty of those who must act upon violation of children's rights, which exposure to domestic violence certainly is, we must continuously search for the reason WHY there was any violation at all. The answers to the question "WHY?" are the causes of the actual violation, and always originate in the child's environment. The behaviour of adults/parents or guardians, the action of institutions and experts, and also cultural norms, values and practices in society are determining factors of this environment.

Solutions in the multifaceted area of domestic violence are linked to correct intervention and eliminating deficiencies. The inadequate functioning of systems, which is a consequence of lack of motivation to act, can be overcome through the creation of professional standards and solutions of doctrine, through oversight and transparent complaints procedures. Measures aimed at deficiencies or at eliminating them contribute to the best protection of children's rights.

The Human Rights Ombudsman will therefore devote his attention on the one hand to the rights of children, and on the other hand to a continuous checking of the capacities of those with responsibility – in the area of motivation, power (authority) and resources needed for action. The Human Rights Ombudsman is committed to overseeing fulfilment of the provisions of the CRC in terms of adherence and protection. Oversight of the work of state bodies, holders of public authorisation and of local government is also possible from the aspect of rights-orientated assessment and analysis of the child's environment. **Domestic violence is an undisputed violation of children's rights, to which state bodies are bound to respond**.

In 2004, the Human Rights Ombudsman anticipates a previously announced, appropriate and comprehensive legislative solution. He will participate actively in informing the public and in line with his authorisation will also oversee fulfilment of the legal provisions in practice.

2.16 OTHER

2.16.1 Legislative complaints

The Human Rights Ombudsman is often approached by individuals and also civil society organisations with suggestions to the effect that he should ensure appropriate legal arrangement of a given issue. In this way we received several complaints in 2003 proposing amendment of legislation on aliens, on the central register, on pornography and also specific proposals for changes to the hunting act, the personal name act, the marriage and family relations act, the housing act and the restriction of the use of tobacco products act. Usually we explain to complainants the jurisdiction of the ombudsman and refer them to the competent ministry, which can draft specific amendments or supplements to regulations. We ask them to let us know the response of ministries, since the views of ministries on individual issues can be interesting for our further work, and we may also assess from their response the readiness of a ministry to respond to questions from the public that fall within good state administration. Unfortunately, complainants for the most part do not communicate such information to us, so we do not have any accurate data on how ministries respond to such complaints and suggestions. We might hazard a guess, however, that complainants very rarely receive any kind of response at all.

In January 2003, we received an appeal which had been addressed to the Slovenian public by one of the civil society organisations and which demanded a plebiscite on Slovenia joining the European Union, and to this end it had also drafted a law on which the "plebiscite" would decide. The society expected the support of the Human Rights Ombudsman in submitting the proposal for legislative procedure. We explained to the complainants that the ombudsman has no constitutional power to make legislative proposals, nor indeed within the framework of his tasks does he get involved in political projects of state bodies, but of course he supports the fundamental principle that the expression of popular will in a referendum is the most direct form of democracy, and one which should be used in all cases of what are termed "historic decisions". Here we emphasised that the incorporation of Slovenia into the European Union, in terms of its substance and the consequences it would have especially for future generations of Slovenians, was of course just such a decision.

Irrespective of the ombudsman's lack of jurisdiction, we did advise the complainants of the contentious provisions of their draft law, which envisaged upon incorporation into the EU the cessation of the state of Slovenia. By acceding to the EU, none of the European countries have ceased to exist as independent and sovereign states, nor have they demanded this from the candidate countries. For this reason we declined to offer any support for the draft law. The complainants did not contact us again, nor was their proposal made public.

In November 2003, we received a proposal from the Council of Disabled People's Organisations of Slovenia (SIOS) for the support of a constitutional amendment, which would include disability in the non-discriminatory circumstances laid down in Article 14 of the Constitution. We informed the complainants that as part of his authorisation the Human Rights Ombudsman supports all provisions that will prevent or eliminate any form of discrimination, irrespective of the legal nature or hierarchy of such provisions. We pointed out that the individual citing of circumstances that should not affect an individual's equality before the law, could have the effect of legal acts not envisaging certain circumstances, and in this way in fulfilling such a provision it would generate doubts about the correct interpretation of equality. We believe that it would be more appropriate to have a general definition of equality, which would make no mention at all (not even as examples) of individual personal circumstances.

Since the current procedure for amending or supplementing the Constitution is not conceived as a complete revision of all constitutional provisions, which in view of the multitude of initiatives and proposals will sooner or later be needed, we did support the SIOS proposals in the sense that it needs thorough examination, and should not be rejected merely with the justification that it lacks sufficient foundation, as the expert group of the Constitutional Commission did. In our opinion there is sufficient reason for a serious and in-depth examination of the SIOS proposal in the very fact that the proposal summarises the wording of the future European constitution, which means that it reflects the general conviction of democratic countries that disability should be especially emphasised in their supreme legal documents as a personal circumstance that should not cause any discrimination.

The proposal was adopted in the Constitutional Commission and is now included among the proposed constitutional amendments.

Among the more interesting complaints, we may mention one from the staff of a primary school who assert that the Restriction of the Use of Tobacco Products Act (ZOUTI) unjustifiably discriminates against workers in education (and in health institutions), since it prohibits them from smoking on school premises and does not provide them with the possibility of having at least a separate room for smoking. In this way the act has supposedly excessively curbed the rights of school staff.

We explained to the complainants how they might secure amendment of the law in the National Assembly, and how they could submit a proposal to Slovenia's Constitutional Court for an assessment of the constitutionality of the legal order, which they accuse of being discriminatory. Moreover, we familiarised them with the ombudsman's position regarding the alleged discrimination, and this is as follows:

Out of concern for the health of the population, the legislators wished through the ZOUTI to limit the use of tobacco products. This is most certainly a legitimate objective for the legislators. It even signifies their constitutional duty, since the duty of the state is to ensure the health protection of everyone (basic right to health protection, Article 51 of the Constitution). With this orientation it is entirely legitimate that in future the legislators should attempt to limit as much as possible the possibility of health problems arising, especially those that appear in the form of serious and chronic illness. The high costs of health services, which undoubtedly arise in such cases, may indirectly have a powerful influence on the scope and especially on the quality of health services for all people.

It is also understandable that children and adolescents are the most vulnerable category of people whom the law is attempting directly to protect from the use of tobacco products. The legislative measure attempts primarily to prevent the influence of using tobacco products, to which adolescents would be exposed if they were exposed to tobacco smoke. The law is therefore aimed at protection of the basic human right to a healthy living environment, pursuant to Article 72 of the Constitution. Account also needs to be taken of another obvious and legitimate goal of the measure, that is, the need to reduce the possibility of circumstances arising whereby adolescents could become accustomed to the use of tobacco products. These circumstances would most certainly include smoking by teachers and educators. During the period of adolescent development, teachers are their models whether we like it or not. The aims of the legislative measure are therefore curative, but also and primarily preventive in nature.

We explained to the complainants the provisions of the Constitution, where Article 15 lays down the general rules on the permissibility of encroaching on basic human rights. Human rights may be restricted only if this is explicitly allowed by the Constitution, but

under certain conditions they may also be encroached upon by law. This is constitutionally permissible only if this is essential owing to the nature of these rights or if this is demanded by the substance of other basic human rights. The point is, human rights are limited in the Constitution itself by the rights of others. Moreover, from the aspect of the need for precision and predictability of the law it is therefore understandable that the legislators regulate the "boundaries between rights". These boundaries are a subject of the weighing up of values.

In its decision on the content of the ZOUTI, the National Assembly therefore had to make a value judgement. In "delineating between rights" it had to weigh up all the constitutionally guaranteed benefits. In this way it also adopted willy-nilly a decision on the hierarchy of these values, and decided that concern for adolescents was a more important value. It is also understandable, therefore, that the measures for preventing tobacco product use are stricter in educational institutions.

The complainants did not communicate to us their decision regarding further deliberation over their complaint, nor indeed do we know of any request on their part for an assessment of the constitutionality of the ZOUTI or of any lobbying for its amendment.

3.

INFORMATION ON THE WORK OF THE OMBUDSMAN

In this chapter we offer information relating to the work of the Human Rights Ombudsman in 2003. We set out in detail the forms and methods of the ombudsman's work, his contacts with state bodies, the media, civil society and other institutions, his work away from the main office, public relations work, international cooperation, education, the staff of the ombudsman's office and finances. We also provide statistical data on the work of the ombudsman in 2003, and a comparison with previous years.

3.1 FORMS AND METHODS OF WORK

3.1.1 PUBLIC RELATIONS

In addition to dealing with specific complaints, the ombudsman's functions include informing the public about violations of human rights and fundamental freedoms. The ombudsman takes part in public debate, responds to urgent questions, and draws attention to violations.

The principal function of public relations is communication between the organisation and various sectors of the public. The ombudsman communicates with the public in various ways: through articles in the media, annual reports, special reports, the newsletter, press conferences, the website, promotional material, and so on. In 2003 he once again devoted attention to those sectors of the public who more rarely turn to the ombudsman. This is because the absence of complaints does not necessarily mean an absence of problems. In fact the opposite may be true. The reasons for the absence of complaints are often a lack of information about rights, insufficient knowledge of the system, a lack of trust in society, fear, etc. For this reason, public relations activities in 2003 were mainly directed towards weaker social groups.

Public relations directed towards weaker social groups

In the information society, where individuals are particularly dependent on sources of information, we can also talk about segments of society which are "poorer" in information terms; people who do not have the information necessary to guarantee their own rights, or to help themselves. The members of these groups often have poorer access to the mass media, and in particular, to the new electronic media which, in the 21st century, have become a window to the world and our first port of call when searching for the information we need. The "information poor" are usually members of marginalised groups who are already in a disadvantaged position. Moreover, they do not know – or are not taught about – the possibilities that exist to improve their lives, or the opportunities they have to exercise their rights.

The ombudsman's main purpose in devoting attention to weaker groups is the desire to inform and educate them about their rights, and show them how they can help themselves in addressing their problems. This year, the ombudsman devoted even more time, energy and resources to education and the promotion of human rights. Effective work in this field can, however, only be achieved through in-depth cooperation between various sections of the public.

3.1.2 Education

The work of the ombudsman is not only about overcoming existing problems, it is also preventative. In 2003, this was apparent in the ombudsman's concentration on children's rights. In January, Tone Dolčič was appointed deputy ombudsman for the area of children's rights. The already established children's rights group at the ombudsman's office carried out a series of activities at primary and secondary schools. In cooperation with schools, the ombudsman organised a project week and a round table on the topic "Your Rights – My Rights". The ombudsman's work with schools is mainly about raising children's and teachers' awareness of the importance of knowing their rights (and responsibilities), teaching about recognising and respecting rights, teaching about peace, tolerance and cooperation, and encouraging children to use non-violent communication. In this way, the ombudsman tries to encourage children to reflect, to cooperate actively, and to express their own opinions. Another goal is to familiarise children and teachers with methods and possibilities of obtaining help when children's rights are violated.

"My rights"

In the 2003/04 academic year, the ombudsman, in collaboration with the School for Peace and other NGOs, began implementing the joint project "My Rights" for the promotion of knowledge about children's rights. The main aim of the project is to carry out activities in the area of education on children's rights, which is based on the long-term and systematic coordination of governmental and non-governmental organisations in the area of knowing, implementing and respecting the provisions of the Convention on the Rights of the Child in the school environment, and in the broader social environment.

Within the framework of this project, a series of activities takes place at primary schools, where one children's right is dealt with every month. In addition to these programme activities, the School for Peace has designed promotional material (a series of postcards, each of which presents one children's right) which helps children learn more about their rights with the help of visual cues and offers teachers methodical help for classwork.

Open Day

Once again this year the ombudsman held an Open Day, the main purpose of which was to draw the attention of the general public to the International Day of the Child and, in this way, to the responsibility of society and the State for the respecting and protection of children's rights. The ombudsman received the children whose drawings had been chosen to make teaching aids for the "My Rights" project, pupils from Loški Potok primary school (the school the ombudsman worked with during the "Your Rights – My Rights" project week), and pupils from Miran Jarc primary school, who collaborated in the running and organisation of the Open Day. The Open Day continued at the Miran Jarc primary school with a short cultural event, at which the children were addressed by UNICEF ambassador Milena Zupančič. After this, the pupils took part in two workshops on the theme of children's rights, organised with the help of Amnesty International and the Society of Art Teachers.

Rights Focus

The ombudsman did not overlook secondary schools this year either: as in previous years, he organised a Rights Focus (*Prepih pravic*) event to mark the anniversary of the Convention on the Rights of the Child. This year, the event was held at the First Grammar School in Celje. The main purpose of the event was to achieve the greatest possible level of participation and active reflection on the part of the children themselves, with regard to the problems that affect them. Throughout November, at the ombudsman's suggestion, pupils from the second and third years held workshops on "violence in the family", where they reflected on this problem both out loud and independently.

The ombudsman offers knowledge and experience to students

Neither was the student population forgotten by the ombudsman. In 2003, he collaborated with the Faculty of Law on a project called "Legal advice centre for refugees and foreign nationals". A legal advice centre is a modern form of education, which allows students to gain practical work experience while studying. Since November 2003, two students from the Faculty of Law have been carrying out free practical work under the supervision of two representatives of the ombudsman's office. The project is continuing in 2004. Through practical work at the ombudsman's office, students have an opportunity not only to learn about concrete cases, but also to get to grips with the method of dealing with cases, which because of its informal nature, differs significantly from other, largely formalised procedures. Above all, they can use their theoretical knowledge in concrete cases. A three-week period of work experience at the ombudsman's office was also completed by a third-year student from the Faculty of Social Sciences. The ombudsman also gave information and advice to all other students who turned to him for help with seminar papers or degree theses.

In the information society, education and promotion are increasingly intertwined. Since the human being is a symbolic and imaginative being, he often tries to talk like others and to imitate authorities – or simply obey them. In today's information age, authorities and identification models are not only represented by the people with whom we have direct contact, they can also be media heroes, stars, idols, etc. People today borrow models from media figures and imitate their image and assume their way of speaking and behaviour. For this reason it is important to have a media education which goes beyond formal educational frameworks and becomes part of a broader social dialogue.

Since, however, there is a shortage of funds to create programmes and broadcasts, the easiest and cheapest way to influence the general public is through advertising. This type of advertising is known as social advertising and represents the promotional element of social marketing. Social marketing is becoming increasingly important for organisations that wish to have an effective influence on individuals and on society in general. For this reason, in 2003 the ombudsman built on an already established strategy and, in terms of promotion, relied on the concept of social marketing.

3.1.3 Promotion

Another of the ombudsman's functions is raising the general public's awareness of problems and in this way changing society's attitude towards existing problems. As well as promotion of solutions at the systemic level, through promotion of changes to legislation, there must be a parallel changing of the attitude of the general public, since without this, legal solutions cannot be optimally realised. This of course does not merely mean the promotion of these ideas – it also involves forging links with the non-profit sector, schools and state bodies, and working as a coordinator of such ideas.

Social marketing

In trying to raise the awareness of the general public about various social problems, we have been assisted greatly by social marketing. Social marketing is the application of commercial marketing technologies to the analysis, planning, implementation, and evaluation of programmes designed to influence the voluntary behaviour of target audiences in order to improve their personal welfare and that of their society. In contrast to commercial marketing, which directs the majority of its attention towards the selling of products or services, which it does primarily for the needs of the organisation and to increase profit, social marketing is aimed at improving the quality of life of individuals and society in general. In this way, social marketing embodies responsibility for the wishes and needs of the individual on the one hand, and the long-term needs of society on the other. This is a concept

that extends and modernises the marketing concept of orientation to the user, and adds to it the new dimensions of an activity that is orientated towards surpassing dissent between what is of the individual and what is of society.

Another segment of social marketing is promotion, or what is termed social advertising. Social advertising is advertising that promotes social behaviour, products and ideas, such as volunteering, a better attitude towards marginalised groups, and a changed attitude towards various issues, such as violence in the family. The ultimate objective of social advertising is to change behaviour, and this behaviour is changed slowly and step by step.

In 2003 the ombudsman did a great deal of work with schools and actively included children, adolescents, teachers and parents in education on children's rights. With the help of NGOs he formulated a project for education on and promotion of children's rights. At the systemic level he submitted an initiative for the formulation of a special "violence in the family" bill and to this end he called several meetings with various ministers and an expert conference, which is adopting an interdisciplinary approach to the problem. Because the ombudsman already cooperates actively with schools, NGOs, the government and the professional public, it was necessary to put into effect an appropriate promotion aimed at raising the awareness of the general public. We concentrated on the three most common causes of violations of children's rights (violence in the family, contacts of separated parents with children, and parents' attitude to children), which are illustrated in the advertising campaign.

Children's rights are the law!

In 2003, the ombudsman's office ran an advertising campaign entitled "Children's rights are the law!", aimed at the promotion of children's rights. Since the majority of violations of children's rights are caused by adults, often the parents of children, it is adults who were the target group of the campaign. The mass media enabled us free broadcasting of three television advertisements. We have also reserved the back page of the newsletter for a social advertisement, where each issue will feature one of the problems presented in the television advertisements. The campaign began on 10 December 2003 – Human Rights Day – and will continue in 2004.

The strategy for the advertising campaign was devised in its entirety at the ombudsman's office. In addition to the strategy, we devised scenarios for individual advertisements, and proposals and designs for printed advertisements. A good campaign depends on good knowledge of the target group. We have this knowledge, thanks to the cases we deal with and our collaboration with various experts and practicians and NGOs. This is the advantage of an institution that works at both the concrete and general levels, since knowledge of concrete cases enables better knowledge of the target group and thus more effective promotion and education (http://www.varuh-rs.si/cgi/teksti-ang.cgi/Show?_id=fddb).

3.1.4 International relations

The strong emphasis on education and the promotion of human rights and children's rights has also revealed the need for a National Institution for Human Rights, which would place an emphasis on the more general aspects of the protection of human rights. The need for such an institution is evident, since the ombudsman is taking on a range of general functions, which do not fall directly within his working jurisdiction. Moreover, entry to the European Union obliges us to put into effect the contents of a series of directives in this area. Among the documents which specifically require the setting up of a special national body for the fight against all forms of discrimination, is the Council Directive 2000/43/EC of 29 June 2000. This is the Directive on implementing the principle of

equal treatment between persons irrespective of racial or ethnic origin, which EU Member States must implement before 19 July 2003 and Acceding Countries after formally joining the EU in 2004. In order to learn more about the directives, one of the deputy ombudsmen attended a conference in Greece on the implementation of European antidiscrimination legislation.

Round table on a national institution for human rights

During the visit of the Council of Europe's Commissioner for Human Rights, Álvaro Gil-Robles, in May 2003, the ombudsman received further confirmation that a national institution for human rights is urgently necessary. With support from the Council of Europe, the ombudsman organised a round table on the national institution for human rights in 2003, the main purpose of which was to obtain opinions from international and domestic experts, and solutions to the open questions surrounding the establishing of a national institution for human rights. With the help of international and domestic experts, the ombudsman tried to find the best solution for the founding and organisation of the institution (http://www.varuh-rs.si/cgi/teksti-ang.cgi/Show?_id=d826).

The ombudsman attends the ENOC annual meeting for the second time

For the second time, a representative of the ombudsman's office attended the annual meeting of the European Network of Ombudsman for Children (ENOC), where the most significant achievements and/or difficulties of the past year were presented. Special working groups discussed the inclusion of children, juvenile delinquency, the setting up of a network secretariat in Strasbourg, the application of the European Social Charter in guaranteeing the rights of children and adolescents, and the abuse of children for commercial ends. Within the framework of this meeting there was also a one-day seminar for representatives of children's ombudsmen, or children's departments at ombudsman's offices. The seminar was aimed at presenting the activities of the expert group of the Council of Europe and reaching agreement on further activities in this part of Europe.

Cooperation in the ENOC is extremely useful to the Slovene ombudsman since through exchanges of experience, exposure to different models and active cooperation, it contributes to the protection of children's rights and, above all, to better implementation of these rights in practice.

Meeting of ombudsmen of the Western Balkans

At the invitation of the ombudsman of Bosnia-Herzegovina, the Human Rights Ombudsman Matjaž Hanžek attended the first meeting of ombudsmen of the Western Balkans, in Sarajevo. The focus of attention at the meeting was the work of state officials, although the ombudsmen also discussed ways in which they themselves can help make the work of state officials more efficient. Within the framework of this meeting, the ombudsmen's public relations representatives also got together and discussed the importance of the standing of the ombudsman's office, and swapped experiences in this field.

Deputy ombudsman Jernej Rovšek, who in accordance with Personal Data Protection Act (ZVOP) also discharges the functions of an independent institution for the protection of personal data, attended, in this role, two meetings of the working group for the protection of personal data working within the framework of the European Commission, a technical workshop and the annual meeting of institutions of this type. At the invitation of a related institution in Germany, he prepared a report on the situation in Slovenia in these areas for the international symposium on access to information of a public nature, transparency and e-administration projects in central and eastern Europe, held in Potsdam in November 2003.

In October, the ombudsman attended the annual meeting of the voting members of the European section of the International Ombudsman Institute. This year's meeting, which took place in Cyprus, focused on the changing nature of ombudsman institutions in Europe. In November, the ombudsman attended the eighth round table of European

ombudsmen in Oslo, where the participating ombudsmen discussed the rights of persons in custody, the rights of minorities, the right of access to information of a public nature, and the powers of ombudsmen in relation to the courts. A representative of the ombudsman's office gave a presentation of the ombudsman's work with persons in custody.

The ombudsman shares his experiences abroad

While on the one hand, Slovenia has received the experiences of foreign experts, it has also, like last year, shared its own knowledge from the protection of human rights sphere. We have communicated our experiences, above all, to the countries of eastern and south-eastern Europe. The Albanian ombudsman benefited from our experience in March, when the ombudsman attended an expert seminar in Tirana, where he lectured on the topic of "The ombudsman in cooperation with the media and NGOs in putting into effect the promotion of human rights". In September a delegation of legal experts from the Albanian ombudsman's office visited Slovenia, and we offered them professional training in the various fields of our work. The ombudsman also helped set up the Montenegrin ombudsman's office, both by cooperating in the formulation of legislation on the ombudsman, and by giving advice on the design and organisation of the ombudsman's office in Montenegro. For this purpose, Montenegro's ombudsman and his colleagues participated in professional training at the Slovene ombudsman's office, where they learnt about the work, organisation and areas of work of the Human Rights Ombudsman and gained an insight into how the office should be set up and organised. The ombudsman's office also hosted a study visit by representatives of governmental and non-governmental organisations from Bulgaria, Latvia and Lithuania. Their main objective was to familiarise themselves with programmes designed to benefit children in the area of family, social and education policy in the Republic of Slovenia.

In May 2003, Erwan Fouere, the head of the Delegation of the European Commission in the Republic of Slovenia, had a meeting with the ombudsman. The main purpose of the meeting was to obtain from the ombudsman, more detailed information about the human rights situation in Slovenia.

With the setting up of a liaison network under the auspices of the European Ombudsman, even better cooperation is being established with the international public and, above all, with ombudsman's offices within the European Union. At this year's conference representatives of the ombudsmen of the Accession Countries were present for the first time. The main purpose of the liaison network is to share experiences among the participants and to present different national practices in the protection of human rights, and ensure better and more effective connections between ombudsman's offices within the European Union. This conference included a presentation of the Slovene ombudsman's work in the field of human rights promotion and education – a practice that is still quite rare among EU ombudsmen.

Communication with the general international public mainly takes place with the help of the website, where information about the work of the ombudsman and promotional and educational material is available in English (http://www.varuh-rs.si).

3.1.5 Relations with civil society

The ombudsman's cooperation with civil society is very important, since the strength and recognisability of civil society are an indicator of the democratisation of society, and thus, of the protection of human rights. Civil society is usually the first to identify problems and to begin to draw attention to them – and to offer appropriate solutions. Thus, it also helps the ombudsman in his work.

The Human Rights Ombudsman works as a kind of mediator between civil society and bodies of authority. However, he often works in the same areas as civil organisations. This has been particularly evident this year, when the ombudsman has used various programme activities in an attempt to get even closer to the public. Cooperation with civil society was essential for the realisation of these programme activities. There is an evident need for a harmonious relationship between the ombudsman and civil society if we wish to resolve problems in an integrated way.

Hand in hand with non-governmental organisations

In 2003, the ombudsman began implementing the joint "My Rights" project with a number of NGOs coordinated by the School for Peace. The main purpose of the project is to teach children and teachers (and, indirectly, parents) about children's rights and obligations. Thus the ombudsman is progressing to concrete actions, which take the abstractness away from rights, and transfer them to real life on the basis of concrete and tangible cases. The ombudsman is attempting, through this approach, to achieve greater awareness among the general public about their rights and obligations, and methods of help. And since the "world rests on the shoulders of the young", this process of raising awareness needs to begin with the youngest members of society.

In addition to this project, the ombudsman, like every previous year, continued relations with various organisations from the civil sphere, holding meetings with them throughout the year. He discussed the problem of human trafficking among refugees with representatives of the UN High Commissioner for Refugees. A representative of the ombudsman took part in the press conference organised by Amnesty International on Refugees' Day. The ombudsman attended – and opened – a conference on citizenship organised by the Peace Institute. He also took part in the introductory part of the international educational seminar held in Maribor for teachers, researchers and NGO activists from 17 countries of south-east Europe, and prepared by the School for Peace in collaboration with the Peace Institute and the European Council.

He also met representatives of religious communities and intervened at the Office for Religious Communities for the registration of religious communities. With regard to the non-registration of religious communities, the ombudsman also responded via the media and stressed his disagreement with the procedures of the director of the Office for Religious Communities and called for legal irregularities to be addressed. He also met the leader of the Muslim community (the *mufti*), on which occasion the problem of building a Muslim religious centre in Ljubljana was once again discussed. With regard to this problem the ombudsman once again interceded with the mayor of Ljubljana, and drew attention in the media to the right of religious communities to have a religious building, and called upon Slovene citizens to be tolerant and accept difference.

The ombudsman calls for tolerance

On several occasions this year the ombudsman met representatives of the Association of the Erased. In connection with the erased, the ombudsman called upon the government to respect the decision of the Constitutional Court and retroactively redress wrongs as quickly and efficiently as possible. The ombudsman also drew attention to this issue via the media, since as a result of political incitement the problem has achieved unimagined dimensions, which are being reflected in outbreaks of intolerance and xenophobia.

One of the tasks of the Human Rights Ombudsman is to draw attention to and attempt to suppress the social causes which are the basis for the violation of the rights of those who are the object of intolerance and who usually represent a minority section of the population, which is already weaker and thus much more vulnerable. Failure to do this could mean that human rights are no longer the rights of every individual, but instead, become simply the rights of the majority.

3.1.6 Relations with the media

A key role is played at the ombudsman's office by the media, with whom the ombudsman works closely, in particular through his regular monthly press conferences. At these conferences, the ombudsman draws attention to examples of poor work by state bodies, which are identified on the basis of the complaints dealt with. It is also with the help of the media that the ombudsman operates in the areas of education and awareness raising.

The media have four basic functions: information, interpretation, socialisation and entertainment. By socialisation I am thinking of the transfer of knowledge, values and norms from one generation to the next, which means that the media also have a very important educational function and, consequently, a great responsibility.

The ombudsman's role here is to contribute to ensuring a media policy that is as democratic as possible, and which serves the interests of the people. The mass media should be used to inform individuals, not to manipulate them. The mass media offer new possibilities for communication and cultural expression – above all, to privileged, well-situated and educated people. It is therefore the ombudsman's task not to forget about the underprivileged majority and to try to enable them the same conditions for social communication and information.

The media have a great responsibility

From this point of view, the media have a great responsibility, since through their influence they can either benefit or harm individuals and groups. Here, the ombudsman has, above all, drawn attention to how children are abused by having their identity revealed in the media. If reporting on children and adolescents who are the victims of violence, maltreatment and abuse is not sufficiently considerate and their identity does not remain secret, this can lead to additional suffering. This means that the victims of abuse are abused twice.

In 2003, cooperation with the media was largely directed towards raising the general public's awareness with regard to violence in the family, children's rights and other urgent problems. With the free broadcasting of television advertisements, the advertising campaign mentioned above, we were given access to the general public and were able to raise public awareness, as per Article 46 of the Media Act. The ombudsman aims to achieve a different orientation of the general public with regard to existing problems, and in this way make them easier to spot and, consequently, to eliminate. Until there is general awareness of existing problems, it will be more difficult, if not impossible, to resolve them. It is therefore the ombudsman's task to ensure general public awareness of the problems he encounters.

Free newsletter: "The Ombudsman - How to Protect Your Rights"

A new publication has been designed to this end: a free newsletter entitled "The Ombudsman – How to Protect Your Rights". The main aim of the newsletter is to educate people about their rights, show them ways to seek help and redress wrongs, and in this way contribute to reducing violations. The first issue appeared on 10 December 2003, on Human Rights Day. The newsletter will be published three or four times a year. We hope, above all, to reach the "information poor" – those segments of society who are bypassed by the information that we find in the mass media – and to teach them about their rights and show them how to help themselves. The newsletter is available at administrative units, hospitals, clinics, libraries, employment offices, pupils' boarding houses and university halls of residence, old people's homes, non-governmental organisations, social services centres, prisons, police stations, etc.

Monitoring the media enables us an additional insight into the work of the ombudsman in relation to various sections of the public. At the ombudsman's office we monitor the media with the help of the press clippings that are collected in an "infobase". In 2003, refe-

rences to the work of the ombudsman appeared in approximately 500 articles in the press. The ombudsman continues with his fortnightly column in the *Dnevnik* newspaper, where he gives his comments and views on current events and violations of human rights.

3.1.7 Relations with state bodies and other bodies

At the beginning of 2003, members of parliament unanimously supported the appointment of Tone Dolčič as the fourth deputy ombudsman, empowered to protect rights in the areas of social care and children's rights. As a result, the ombudsman was able to devote even more attention to addressing the issue of violence in the family in 2003. This, however, cannot happen without changes to legislation and the development of national programmes, where state bodies play a fundamental role.

At the initiative of the ombudsman and the public prosecutor general, a number of meetings with representatives of various ministries were called in 2003. The main purpose of these meetings was to find appropriate solutions for addressing this urgent problem. A multidisciplinary approach is needed to tackle this problem, since it includes all segments of society and requires legal and other solutions at various levels. The activities required include work with victims and offenders, education and awareness raising among the general public, coordination among professions, etc. The ombudsman is therefore committed to a systematic addressing of the problem of violence in the family. In the second half of the year, the ombudsman's efforts produced some results: representatives of the Ministry of Labour, Family and Social Affairs presented the contents of a national programme for children, a national programme for the family and a project on the prevention of violence in the family. However, for the time being these projects only exist on paper and are still waiting to be put into action.

Violence in the family – ways to solutions

To promote the more rapid addressing of the problem of violence in the family, the ombudsman organised an expert conference in November under the title "Violence in the Family – Ways to Solutions", where experts from various fields presented their practical experience and requirements and proposals for overcoming difficulties in the field of violence in the family. The expert conference was attended by 130 participants from social services centres, ministries, courts, university faculties, health care organisations and NGOs. This high level of participation clearly shows that there are far too few such conferences and that continuous cooperation among experts should be established, since addressing this problem requires an interdisciplinary approach. At the end of the conference it became evident that the greatest difficulty in eliminating violence in the family was the fact that there is no cooperation between some professions. For this reason, a national coordinator needs to be appointed to fill this gap.

National institution for human rights

In the ombudsman's cooperation with state bodies, his efforts in the direction of the establishing of a national institution for human rights also bore fruit. In Slovenia we have long felt the need for a special research and development institution or agency to carry out in one place certain important functions in the field of protecting human rights – functions which are currently, either not being performed, or are being performed in a limited and uncoordinated manner by a few government offices, ministries and the ombudsman. The setting up of such an institution is also a matter of the obligations deriving from the international treaties to which Slovenia is a signatory. During the discussion of the ombudsman's eighth regular report at the National Assembly, members of parliament proposed to the government, the formulation of an antidiscrimination policy strategy and, within its framework, the studying of the possibility of setting up a special independent institution (the National Institution for Human Rights) responsible for preventing discrimination in all spheres.

This of course does not mean that the work of state institutions is good and does not require the supervision of the ombudsman. Far from it. This was particularly apparent in the response of the director of the Office for Religious Communities to the ombudsman's warning about registration of religious communities. After repeated urgings and pressure from the ombudsman (even via the mass media), registrations slowly began to be carried out in August 2003.

Prompter consideration of the ombudsman's annual report

An agreement has been reached between the ombudsman and the president of the National Assembly on the prompter consideration of the Annual Report of the Human Rights Ombudsman. The main reason for this is to enable problems to be dealt with more rapidly and effectively, and to draw attention to current violations rather than to old ones. This year's report should therefore be presented at the spring session of parliament.

3.1.8 Relations with complainants

The main task of the Human Rights Ombudsman is to deal with concrete complaints from complainants. Complainants are individuals or groups who turn to the ombudsman with their problems via written complaints addressed to him, or in person at the ombudsman's office or elsewhere.

Staff at the ombudsman's office discuss specific problems with, on average, 10 complainants a day. Several times this year, the ombudsman organised discussions away from the office, the main purpose of which is to enable people all over Slovenia to meet the ombudsman and get acquainted with problems that fall under his jurisdiction.

New method of work away from the office

In 2003, the ombudsman introduced a new method of work away from the office, which means that he no longer only meets complainants, but within the context of his visits to a particular region, also devotes attention to other sections of the public and bodies within the region. This requires better organisation and preparation, since the ombudsman's representatives are divided into several working groups, which in addition to dealing with the problems of complainants, try and familiarise themselves with the work of state bodies within the region.

The main purpose of this method of work away from the office is to obtain as much information as possible from the various bodies and sections of the public. This can create a more objective picture of conditions in the area of human rights in an individual region. It can also make it easier to identify problems and, with the help of different views, find ways to overcome them. This method of work away from the office should become standard practice for the ombudsman, and a way to resolve existing problems more easily and effectively. In 2003, the ombudsman visited Maribor, Slovenj Gradec, Nova Gorica, Črnomelj, Hrastnik and Kobarid. In the course of these visits he talked to 153 complainants.

A special form of work away from the office are visits to prisons and other establishments housing persons deprived of their liberty, and other institutions where freedom of movement is restricted. The main purpose of these visits is to inspect premises and living conditions. In 2003, the ombudsman and his colleagues visited the prisons in Dob, Koper and Maribor, Complainants can also obtain information and instructions on how to submit a complaint by calling the free telephone number 080 15 30, or by visiting the ombudsman's website (http://www.varuh-rs.si).

3.1.9 Staff

At the end of 2003, the number of staff employed at the ombudsman's office was 33 (including the ombudsman, his four deputies and the general secretary); there were also two fixed-term trainees. The number of staff is two higher than last year. Twenty-three members of staff hold university degrees (one also holds a PhD and three hold MSc's), three have diplomas of higher technical education, two have college diplomas, four have certificates of secondary education and one has completed an abridged programme of secondary education.

Internal news

In 2003, a weekly electronic internal news bulletin was introduced to keep staff in the office better informed. The bulletin is sent to all employees every Monday by email. This enables staff a better insight into the work of their colleagues, keeps them informed about forthcoming events and the work of the ombudsman, and rounds up press clippings from the previous week. The main purpose of the internal news bulletin is to make staff more aware of the work of their colleagues and thus facilitate cooperation and coordination within the office.

Exchange of knowledge among staff

To allow better exchange of information and experience, the ombudsman introduced weekly internal lectures for staff in 2003. These are prepared by members of staff for their colleagues in order to improve knowledge about work and facilitate better cooperation, which is the basis for an interdisciplinary approach to addressing problems.

3.1.10 Miscellaneous

Once again this year, the ombudsman produced summaries of his annual report in English in order to present his work to international human rights professionals and the ombudsmen of other countries. The annual report can also be accessed in English on our website: http://www.varuh-rs.si.

As in previous years, the ombudsman held a reception on Human Rights Day for the highest representatives of government, universities, religious communities, NGOs working in the field of the protection of human rights, national organisations for the disabled, and diplomatic representatives of other countries. This year the reception was enlivened by a presentation of the advertising campaign and the newsletter, both of which were published on Human Rights Day.

3.2 FINANCE

The Human Rights Ombudsman is an autonomous budget user and, as such, an autonomous proposer of the funds to be set aside for the work of the Human Rights Ombudsman. This position is a constituent element of the ombudsman's independence and autonomy, which the executive branch of power is bound to respect. At the proposal of the ombudsman, the National Assembly approved total funds of SIT 319.371 million from the national budget for the work of the institution in 2003. This can be broken down into a budget of SIT 248.213 million for salaries (including contributions and other personal receipts), a budget of SIT 61.563 million for material costs and a budget of SIT 9.595

million for investments. During the course of the year, a further SIT 38.776 million was provided from budget reserve funds for salary payments in accordance with prior agreement, with the result that the actual budget was SIT 286.989 million for salaries in 2003. As regards material costs, additional funds of SIT 11.966 million were provided in order to allow the institution to realise its goals in the promotion of human rights, with the result that the ombudsman's material costs budget was actually SIT 73.862 million (including a transfer of SIT 0.333 million from the investments budget). As regards the investments budget, taking into account funds in the amount of SIT 4.200 million obtained on the basis of a resolution by the Government of the Republic of Slovenia and a reciprocal agreement on the transfer of a fixed asset for the use of another budget user against payment, and taking into account the transfer of SIT 0.333 million to the material costs budget, the total investments and investment budget was SIT 13.462 million.

Expenditure on salaries and other staff expenditure including tax on salaries paid amounted to SIT 286.989 million in 2003. This can be broken as follows. Salaries and benefits: SIT 211.371 million; annual leave bonus: SIT 4.362 million; expenses and allowances: SIT 11.475 million; performance bonuses: SIT 2.612 million; overtime: SIT 0.246 million; other staff expenditure: SIT 0.609 million; employer's social security contribution: SIT 34.636 million; and tax on salaries paid: SIT 21.678 million. As stated above, additional funds needed to be provided for staff salaries. When adopting the budget for 2002 and 2003, the Ministry of Finance failed to take into account the ombudsman's carefully argued budget proposal, and instead arbitrarily allocated a lower amount of funds for the ombudsman's work in these years (both for salaries and for material costs). Considering the ombudsman's programme of work and the staffing plan, this amount was completely unrealistic. The higher expenditure under these two lines of the budget is the consequence of the fact that in January 2003 a fourth deputy ombudsman was appointed in the National Assembly to assume the competences of the ombudsman in the area of the Protection of Personal Data and the realisation of resolutions adopted by the National Assembly on the occasion of the reading of the ombudsman's annual report.

The funds available under the material costs budget line amounted to SIT 73.862 million and total expenditure by the end of the year was SIT 72.399 million, broken down as follows. Office material, general material and services: SIT 40.620 million (the biggest costs include the printing and design of the ombudsman's annual report in Slovene and English, the costs of translating the annual report, special reports, complaints submitted in foreign languages, reports, papers and articles, and advertising services); transport costs: SIT 2.597 million; energy, water, municipal services and communications: SIT 11.546 million; expenses arising from travel relating to official business: SIT 6.075 million; running maintenance: SIT 3.053 million; and other operating costs: SIT 8.162 million.

As stated above, funds to the amount of SIT 0.333 million were transferred during the course of the year from the state bodies investments and investment maintenance budget line to the material costs budget line. Expenditure on investments in 2003 amounted to SIT 13.445 million. The purchase of computer hardware and software accounted for SIT 8.894 million, while the remaining funds went on the purchase of office furniture, telecommunications equipment and other equipment. On the basis of Agreement No. P 1811-2003-0010 of 24 July 2003 and Government Decision No. 465-120/2003 of 31 July 2003, a Mercedes-Benz E 280 was transferred against payment (SIT 4.200 million) to another budget user (the Ministry of External Affairs) during the course of the year. As a result of this transfer against payment of a fixed asset, the ombudsman's investments budget increased by a corresponding amount (SIT 4.200 million), and these funds were used for the purposes listed above.

The total funds available to the Human Rights Ombudsman in 2003 were thus SIT 374.313 million. Expenditure amounted to SIT 372.834 million. The remainder (SIT 1.479 million) was returned to the national budget.

3.3 STATISTICS

This subchapter presents statistical data on the handling of cases by the ombudsman from 1 January to 31 December 2003.

1. **Open cases in 2002**: cases opened between 1 January and 31 December 2003.

2. **Cases being handled in 2003**: in addition to *open cases* in **2003**, includes:
   - *Cases carried over* – unconcluded cases from 2002 handled by the ombudsman in 2003.
   - *Reopened cases* – cases where the handling procedure at the ombudsman was concluded as at 31 December 2002 but owing to new substantive facts and circumstances their handling was continued in 2003. Since this involved new procedures in the same cases, in such cases we did not open new files. In view of this, reopened cases are not counted in open cases in 2002, but simply in cases being handled in 2003.

3. **Closed cases**: this includes all cases being handled in 2003, which were concluded as at 31 December 2003.

Open cases

Table 4.4.1 shows the number of open cases in 2003 by individual area of work. Data for the period 1997-2002 are also given to provide a comparison of individual years.

From 1 January to 31 December 2003 there was a **total of 2754 open cases** (in 1997 there were 2886, in 1998 3448, in 1999 3411, in 2000 3095 in 2001 3304 and in 2002 2870), which means a 4 per cent reduction in cases received compared to 2002.

As has been the case in previous years, in 2003 the highest number of open cases related to:
- judicial and police procedures: 849 or 30.8 per cent;
- administrative matters: 503 or 18.3 per cent;
- social security: 375 or 13.6 per cent of all open cases.

The table shows that the greatest increase in the number of open cases in 2003 compared to 2002 was in the area of children's rights (from 60 to 127, which is an increase of 111.7 percent) and the area of commercial public services (from 58 to 88, an increase of 51.7 percent)

On the other hand the biggest reduction in open cases in 2003 compared to 2002 may be observed in the other matters field (a 55.1 per cent reduction), environment and spatial planning (a 30.2 per cent reduction) and the protection of personal data (a 26.7 per cent reduction).

A graphic presentation of the comparison between the numbers of open cases by individual area of work in the period 1997-2003 is given in Figure 4.4.1.

AREA OF WORK	OPEN CASES														Index
	1997		1998		1999		2000		2001		2002		2003		
	No.	Share %	No.	Share %	No.	Share %	No.	Share %	No.	Share %	No.	Share %	No.	Share %	(03/02)
1. Constitiutional rights	43	1.5	58	1.7	45	1.3	35	1.1	86	2.6	73	2.5	72	2.6	**98.6**
2. Restriction of personal liberty	128	4.4	213	6.4	174	5.1	166	5.4	190	5.8	110	3.8	1271	4.6	**115.5**
3. Social security	397	13.8	404	12.1	409	12.0	432	14.1	472	14.3	377	13.1	375	13.6	**99.5**
4. Labour law cases	138	4.8	221	6.6	217	6.4	157	5.1	202	6.1	150	5.2	146	5.3	**97.3**
5. Administrative matters	663	23.0	697	20.8	635	18.6	534	17.5	523	15.8	468	16.3	503	18.3	**107.5**
6. Judicial and police proced.	776	26.9	881	26.3	946	27.7	990	32.4	941	28.5	757	26.4	849	30.8	**112.2**
7. Environment and spatial plan.	71	2.5	56	1.7	97	2.8	84	2.7	130	3.9	96	3.3	67	2.4	**69.8**
8. Commercial public services	26	0.9	37	1.1	72	2.1	37	1.2	67	2.0	58	2.0	88	3.2	**151.7**
9. Housing	126	4.4	158	4.7	105	3.1	116	3.8	150	4.5	119	4.1%	121	4.4	**101.7**
10. Personal data protection											30	1.0	22	0.8	**73.3**
11. Children's rights											60	2.1	127	4.6	**211.7**
12. Other	518	17.9	623	18.6	711	20.8	508	16.6	543	16.4	572	19.9	257	9.3	**44.9**
TOTAL	**2.886**	**100**	**3.448**	**100**	**3.411**	**100**	**3.059**	**100**	**3.304**	**100**	**2.870**	**100**	**2.754**	**100**	**96.0**

Table 4.4.1.

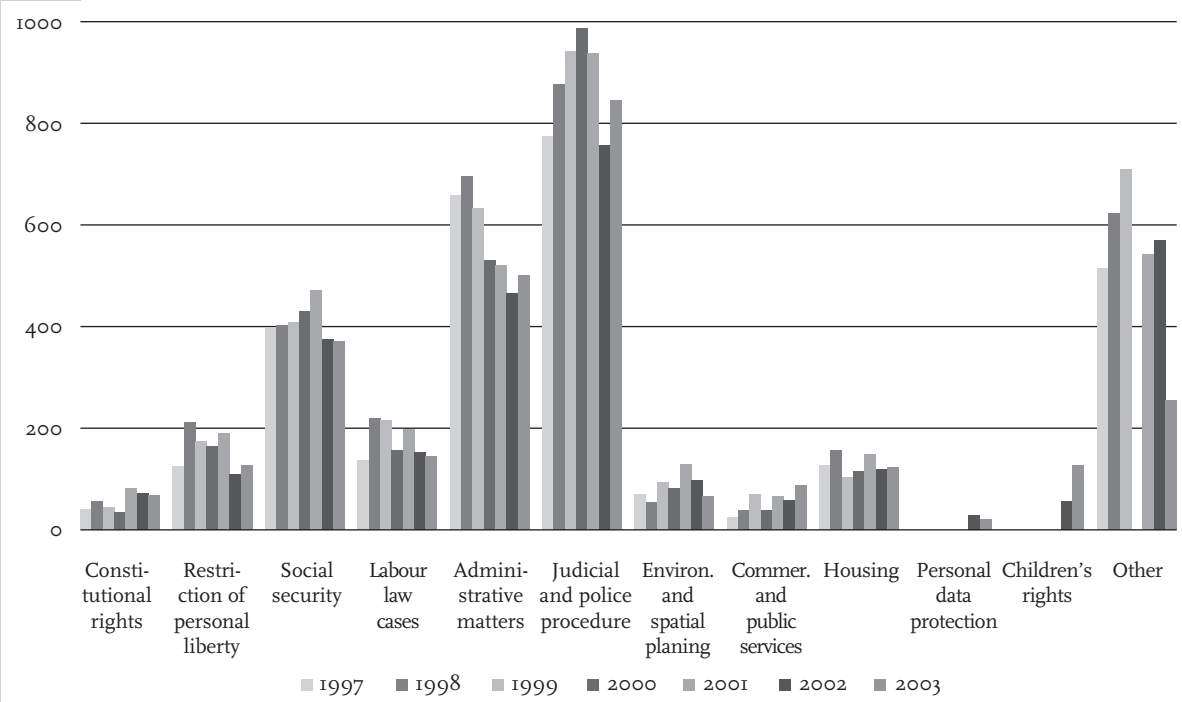

Figure 4.4.1.

Cases being handled

Table 4.4.2 presents data on the total number of cases being handled by the ombudsman in 2003 by individual area of work. As we have already said, cases being handled include cases opened on the basis of complaints in 2003, cases carried over for handling from 2002 and cases reopened in 2003.

The table shows that in 2003 there was **a total of 3208 cases being handled**, of which:
- 2754 cases were opened in 2003 (85.8 per cent);
- 403 cases were carried over from 2002 (12.6 per cent);
- 51 cases were reopened in 2003 (1.6 per cent of all cases being handled).

The largest number of cases being handled in 2002 were in the areas of:
- judicial and police procedures (929 cases, or 29 per cent);
- administrative matters (613 cases or 19.1 per cent);
- social security (451 cases or 14.1 per cent).

A detailed presentation of the number of cases being handled in 2003 by individual area of work is given in the table below.

AREA OF WORK	NUMBER OF CASES BEING HANDLED				Share by area of work
	Cases opend in 2003	Carried over from 2002	Cases reopened in 2003	Total cases being handled	
1. Constitutional rights	72	7	2	81	2.5 %
2. Restric. of personal liberty	127	17	1	145	4.5 %
3. Social security	375	61	15	451	14.1 %
4. Labour law cases	146	20	-	166	5.2 %
5. Administrative matters	503	93	17	613	19.2 %
6. Judicial and police proced.	849	72	8	929	29.0 %
7. Environ. and spat. planning	67	14	2	83	2.6 %
8. Commercial public services	88	8	1	97	3.0 %
9. Housing	121	11	1	133	4.1 %
10. Personal data protection	22	4	-	26	0.8 %
11. Children's rights	127	22	-	149	4.6 %
12. Other	257	74	4	335	10.4 %
TOTAL	2.754	403	51	3.208	100 %

Table 4.4.2.

A comparison of the numbers of cases being handled by the ombudsman by individual area of work in the period 1997–2003 is given in Table 4.4.3.

Table 4.4.3 indicates that in 2003 there were **8.1 per cent fewer cases being handled** compared to 2002 (3208 in 2003 and 3490 in 2002). The most significant reductions in the number of cases being handled compared to 2002 were in the areas of:
- other matters: from 648 to 335, which is a fall of 48.3 per cent;
- protection of personal data: from 43 to 26, which is a fall of 39.5 per cent.

AREA OF WORK	CASES BEING HANDLED														Index
	1997		1998		1999		2000		2001		2002		2003		
	No.	Share %	No.	Share %	No.	Share %	No.	Share %	No.	Share %	No.	Share %	No.	Share %	(03/02)
1. Constitiutional rights	54	1.4	65	1.6	53	1.3	38	1.0	90	2.5	85	2.4	79	2.5	92.9
2. Restriction of personal liberty	179	4.6	260	6.5	227	5.6	217	6.0	206	5.7	134	3.8	145	4.5	108.2
3. Social security	528	13.7	487	12.2	478	11.7	493	13.6	549	15.2	468	13.4	451	14.1	96.4
4. Labour law cases	181	4.7	246	6.2	233	5.7	180	5.0	213	5.9	174	5.0	166	5.2	95.4
5. Administrative matters	855	22.2	852	21.4	831	20.4	675	18.6	591	16.3	632	18.1	613	19.1	97.0
6. Judicial and police procedure	1.086	28.2	1.073	27.0	1.118	27.4	1179	32.5	1041	28.8	925	26.5	929	29.0	100.4
7. Environment and spat. plan.	119	3.1	83	2.1	121	3.0	108	3.0	143	4.0	118	3.4	83	2.6	70.3
8. Commercial public services	38	1.0	46	1.2	84	2.1	45	1.2	68	1.9	69	2.0	97	3.0	140.6
9. Housing	178	4.6	185	4.6	141	3.5	130	3.6	154	4.3	134	3.8	133	4.1	99.3
10. Personal data protection											43	1.2	26	0.8	60.5
11. Children's rights											60	1.7	150	4.6	250.0
12. Other	636	16.5	683	17.2	788	19.3	565	15.6	564	15.6	648	18.6	335	10.4	51.7
TOTAL	3.854	100	3.980	100	4.074	100	3.630	100	3.619	100	3.490	100	3.207	100	91.9

Table 4.4.3.

Figure 4.4.2 presents the shares of cases being handled by the ombudsman by individual area of work in 2003

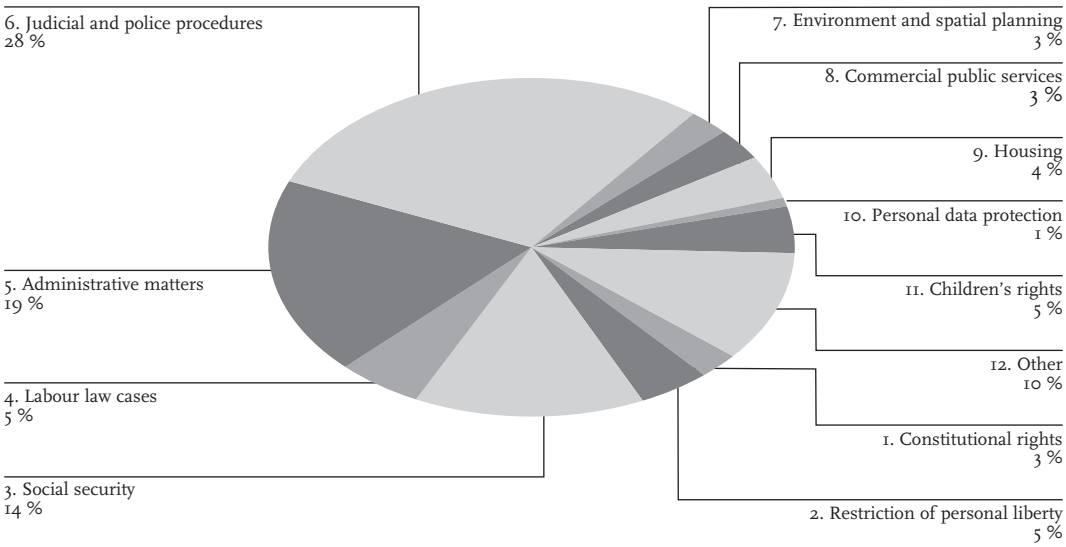

Figure 4.4.2.

Cases by state of progress

1. **Closed cases**: cases, which were closed as at 31 December 2003
2. **Cases being resolved**: cases being handled as at 31 December 2003
3. **Cases pending**: ceses in which, on 31 December 2003, we were expecting a response to our queries and other actions in the proceeding

Table 4.4.4 shows a comparison between the state of progress in the handling of cases at year end for the period 1997-2003.

In 2003 a **total of 3085 cases were being handled**, of which a total of **2825 or 91.6 per cent** of all cases handled in 2003 **had been closed** by 31 December 2003.

A remaining 260 cases or 8.4 per cent were still being handled, including:
- 209 cases pending;
- 51 cases being resolved.

STATE OF PROGRESS OF CASES	OPEN CASES														Index
	LETO 1997 (situation as at 31.12.1997)		LETO 1998 (situation as at 31.12.1998)		LETO 1999 (situation as at 31.12.1999)		LETO 2000 (situation as at 31.12.2000)		LETO 2001 (situation as at 31.12.2001)		LETO 2002 (situation as at 31.12.2002)		LETO 2003 (situation as at 31.12.2003)		(02/01)
	No.	Share %	No.	Share %	No.	Share %	No.	Share %	No.	Share %	No.	Share %	No.	Share %	
Closed	3.442	86.7	3.505	88.1	3.727	91.5	3.443	94.8	3.132	86.5	3.087	88.5	2.825	91.6	**91.51**
Being resolved	308	8.0	261	6.6	187	4.6	61	1.7	308	8.5	141	4.0	51	1.6	**36.10**
Pending	204	5.3	214	5.4	160	3.9	126	3.5	179	5.0	262	7.5	209	6.8	**79.77**
TOTAL	**3.854**	**100**	**3.980**	**100**	**4.074**	**100**	**3.630**	**100**	**3.619**	**100**	**3.490**	**100**	**3.085**	**100**	**88.40**

Table 4.4.4.

Closed cases

Table 4.4.5 shows the number of closed cases by area of work in the period 1997-2003. In 2003 **2825 cases were closed** (compared to 3442 in 1997, 3505 in 1998, 3727 in 1999, 3443 in 2000, 3132 in 2001 and 3087 in 2002), representing an **8.4 per cent reduction in the number of cases closed** compared to 2002.

Comparing the number of cases closed (2825) with the number of cases opened in 2003 (2754) we note that **in 2003 2.6 per cent more cases were closed than opened**.

AREA OF WORK	NUMBER OF CLOSED CASES							Index
	1997	1998	1999	2000	2001	2002	2003	(03/02)
1. Constitutional rights	48	57	50	33	67	89	75	84.3
2. Restriction of personal liberty	144	226	210	211	196	116	133	114.7
3. Social security	466	438	439	464	494	413	410	99.3
4. Labour law cases	157	234	216	179	192	156	140	89.7
5. Administrative matters	718	687	730	623	437	520	505	97.1
6. Judicial and police	931	959	1.009	1.113	921	863	821	95.1
7. Environment and spat. plan.	93	65	108	104	124	102	77	75.5
8. Commercial public services	30	38	79	43	58	59	84	142.4
9. Housing	156	161	132	124	139	123	121	98.4
10. Personal data protection						26	24	92.3
11. Children's rights						40	124	310.0
10. Other	599	640	754	549	504	580	311	53.6
TOTAL	3.442	3.505	3.727	3.443	3.132	3.087	2.827	91.5

Table 4.4.5.

Handling of cases by area of work (Table 4.4.6)

In area **1. Constitutional rights** a total of 79 cases were handled in 2003, which relative to 2002, when 85 cases were handled, is a fall of 7.1 per cent. The reduced number of complaints handled is the consequence of a fall in the number of complaints in the sub-area of minority rights (from 12 to 4). Complaints from the area of constitutional rights account for 2.4 per cent of all complaints handled.

The number of cases handled in area **2. Restriction of personal liberty** increased by 8.2 per cent in 2003, in comparison to 2002 (from 134 to 145). The growth in the number of cases being handled in 2003 is the consequence of a 35.7 per cent increase in the number of cases involving psychiatric patients (from 14 to 19), and a 23 per cent increase in the number of cases involving convicted persons.

In area **3. Social security** the number of cases being handled in 2003 fell by 4,6 per cent in comparison to 2002 (from 468 to 451). The largest share in the sub-areas was accounted for by cases relating to provision of social security (157 cases or 34.8 per cent) and cases relating to pensions insurance (97 cases or 21.5 per cent). It is in these sub-areas that we have observed the greatest reduction in the number of cases handled in comparison to the previous period: in the social security sub-area a fall from 205 to 157 (index: 76.6), and in the pensions insurance sub-area a fall from 108 to 97 (index: 89.8). It is important to highlight the sub-area of health insurance, where the number of cases grew from 30 in 2002 to 61 in 2003 (index: 203.3).

In area **4. Labour law cases** the number of cases being handled in 2003 (166) fell by 4.6 per cent relative to 2002 (174). The greatest reduction in the number of cases being handled

can be identified in the sub-area of employment (from 70 to 63 – a 10 per cent drop) and the other matters sub-area (from 21 to 11).

Area **5. Administrative matters**, with a total of 613 cases handled and a 3 per cent reduction relative to 2002 (623), accounts for the second largest group of cases handled by the ombudsman in 2003. Attention should be drawn to the 42.9 per cent increase in the number of cases involving property law (from 28 to 40), and the 31.9 per cent increase in cases from the public activities sub-area (from 69 to 91). On the other hand we should highlight the administrative procedures sub-area, where the number of cases fell from 227 to 196 (a fall of 13.7 per cent), and the fall in the number of cases relating to citizenship (from 63 to 53), which represents a further reduction in the number of cases handled in this area since 1996 (381 in 1996, 244 in 1997, 194 in 1998, 112 in 1999, 86 in 2000, and 72 in 2001).

In 2003 the largest number of cases handled by the ombudsman was once again in area **6. Judicial and police procedures** (929 cases or 29 per cent). This area includes cases relating to police, pre-trial, criminal and civil procedures, procedures in labour and social disputes, administrative judicial procedures, misdemeanour procedures, and cases relating to the public prosecutor's office, the attorney general's office, notaries and lawyers. The index of movements in the number of cases handled in 2003 relative to 2002 (100.4) shows that there was no significant change in the number of cases in this area (925 in 2002 and 929 in 2003). Within this area, however, major changes in the number of cases handled can be noted. The largest share of all cases being handled in this area is accounted for by cases in the sub-area of civil procedures. These fell from 508 to 451 (an index of 88.8). We should also mention the fall in the number of cases in the procedures before labour and social courts sub-area (from 83 to 47). On the other hand, the largest increase was in the area of police procedures – from 93 to 150, or 6/1.3 per cent.

In area **7. Environment and spatial planning** we have observed in 2003 a 29.7 per cent reduction in the number of cases being handled compared to 2002 (from 118 to 83). A considerable reduction can be seen in the area of cases involving spatial planning, with the number of cases being handled falling from 35 in 2002 to 20 in 2003 (a 42.1 per cent reduction).

The number of cases being handled in area **8. Commercial public services** increased from 69 in 2002 to 97 in 2003 (an index of 101.5). Within this area we can observe major increases in the sub-areas traffic (from 10 to 21), communications (from 21 to 29) and municipal services (from 25 to 32).

In area **9. Housing** the number of cases handled in 2003 did not change significantly in comparison to 2002 (134 in 2002 and 133 in 2003). Within this area we note an increase in the number of cases in the sub-area housing relations (from 88 to 100) and a reduction in the sub-area housing industry (from 18 to 13).

In areas **10. Personal data protection of** and **11. Children's rights**, which since 2002 have been classified as separate areas, major changes in the number of cases handled are to be noted. While in the area of personal data protection there is a reduction from 43 cases in 2002, to 26 in 2003 (an index of 60.5), in the area of children's rights we observe a growth from 60 cases in 2002 to 150 cases in 2003 (an index of 250).

Area **12. Other** includes those cases that cannot be placed in any of the other areas. In 2003 we handled 335 such cases, which means a 48.3 per cent reduction compared to 2002 (648 cases). This is the result of our efforts to place as many cases as possible in concrete categories.

A detailed presentation of the number of cases being handled in 2002 and 2003 by area and sub-area of work is given in Table 4.4.6.

AREA OF WORK	Cases handled 2002	Cases handled 2003	Index (03/02)
1. Constitutional rights	85	79	92.9
1.2 Minority rights	12	4	33.3
1.3 Equal opportunities	6	8	133.3
1.4 Ethics of public speech	8	9	112.5
1.5 Assembly and association	8	7	87.5
1.6 Security services	1	1	100.0
1.8 Other	50	50	100.0
2. Restriction of personal liberty	**134**	**145**	**108.2**
2.1 Detainees	52	46	88.5
2.2 Convicts	61	75	123.0
2.3 Psychiatric patients	14	19	135.7
2.4 Military personnel	3	0	0.0
2.5 Youth homes	2	2	0.0
2.6 Other	2	3	150.0
3. Social security	**468**	**451**	**96.4**
3.1 Pensions insurance	108	97	89.8
3.2 Disability insurance	68	74	108.8
3.3 Health insurance	30	61	203.3
3.4 Health care	37	40	108.1
3.5 Social care	205	157	76.6
3.6 Other	20	22	110.0
4. Labour law cases	**174**	**166**	**95.4**
4.1 Employment	70	63	90.0
4.2 Unemployment	36	41	113.9
4.3 Workers in state bodies	47	51	108.5
4.4 Other	21	11	52.4
5. Administrative matters	**632**	**613**	**97.0**
5.1 Citizenship	63	53	84.1
5.2 Foreign nationals	84	70	83.3
5.3 Denationalisation	57	53	93.0
5.4 Property matters	28	40	142.9
5.5 Taxes	76	96	126.3
5.6 Customs	6	4	66.7
5.7 Administrative procedures	227	196	86.3
5.8 Public activities	69	91	131.9
5.9 Other	22	10	45.5
6. Judicial and police procedures	**925**	**929**	**100.4**
6.1 Police procedures	93	150	161.3
6.2 Pre-trial procedures	22	40	181.8
6.3 Criminal procedures	101	91	90.1
6.4 Civil procedures	508	451	88.8
6.5 Labour and social court procedures	83	47	56.6
6.6 Misdemeanours	41	46	112.2

6.7 Administrative judicial procedure	19	30	157.9
6.8 Other	58	74	127.6
7. Environment and spatial planning	**118**	**83**	**70.3**
7.1 Environment encroachments	67	53	79.1
7.2 Spatial planning	35	20	57.1
7.3 Other	16	10	62.5
8. Commercial public services	**69**	**97**	**140.6**
8.1 Municipal services	25	32	128.0
8.2 Communications	21	29	138.1
8.3 Power	8	7	87.5
8.4 Transport	10	21	210.0
8.5 Concessions	2	1	0.0
8.6 Other	3	7	233.3
9. Housing	**134**	**133**	**99.3**
9.1 Housing circumstances	88	100	113.6
9.2 Housing industry	18		72.2
9.3 Other	28	13	7.4
10. Personal data protection	**43**	**26**	**60.5**
11. Children's rights	**60**	**150**	**250.0**
10. Other	**648**	**335**	**51.7**
TOTAL	**3.490**	**3.207**	**91.9**

Table 4.4.6.

Open cases by region

Table 4.4.7 presents open cases by region and administrative unit. As in the previous years, in 2003 we categorised open cases by region and administrative unit taking into account the same basis for the geographical division of Slovenia (Ivan Gams: *Geografske značilnosti Slovenije,* Ljubljana, 1992, Mladinska knjiga). The criteria applied in categorising cases by individual administrative unit included the permanent residence of the complainant, and for persons serving prison sentences or being treated at psychiatric hospitals the place of their temporary residence (the location of the prison or hospital).

Among the 2,754 open cases in 2003, there were 73 relating to residents of other countries (mostly from Croatia and Serbia and Montenegro), and 58 anonymous applications or general files. We open general files where broader issues rather than individual problems are involved. The handling of general files can begin on the ombudsman's own initiative, or on the basis of one or more substantively linked cases that point to a specific broader problem.

The largest number of cases in 2003 were opened from:
- Central Slovenia region (901 or 32.7 per cent of all cases opened in 2003), of which 704 cases were from the area of the Ljubljana administrative unit;
- 382 cases or 13.8 per cent from the Podravje region, of which 241 were from the area of the Maribor administrative unit;
- 291 cases from the Savinja region (10.6 of all opened cases).

We observed the largest reduction in cases in 2003 compared to 2002 from:
- the Gorica region: from 109 to 84 cases (a fall of 22.9 per cent),
- the Gorenjska region: from 289 to 224 cases (a fall of 22.5 per cent).

An increase in the number of cases received in 2003 relative to 2002 was observed from the Zasavje region, from 57 to 70 (an increase of 22.8 per cent) and the Koroška region, from 76 to 93 (an increase of 22.4 per cent).

In Table 4.4.7 we present data on the number of cases per thousand inhabitants by individual administrative unit and region. We have taken as the source for the number of inhabitants by administrative unit the data from the Statistical Office of the Republic of Slovenia published on the website http://www.stat.si/eng/index.asp in the standard table "Citizens of the Republic of Slovenia by administrative unit, gender and age group as at the last day of September 2003".

The largest number of cases per thousand inhabitants was opened from:
- the Central Slovenia region: 1.9 cases – with the highest in the Ljubljana administrative unit, at 2.34 cases per thousand inhabitants;
- the Coastal-Karst region: 1.79 cases – primarily from the Izola administrative unit, where the ombudsman opened 2.02 cases per thousand inhabitants.

If we compare the influx of cases by administrative unit, we may establish that in 2003 the ombudsman opened the largest number of cases per thousand inhabitants from Ljubljana (2.34) and Trebnje (2.29) and the lowest number from Ilirska Bistrica (0.36) and Laško (0.37). Regarding the data for Trebnje it should be noted that the open cases from this administrative unit include the cases of those persons serving prison sentences at ZPKZ Dob pri Mirni.

Figure 4.4.3 presents data on the influx of open cases in 2003 by region.

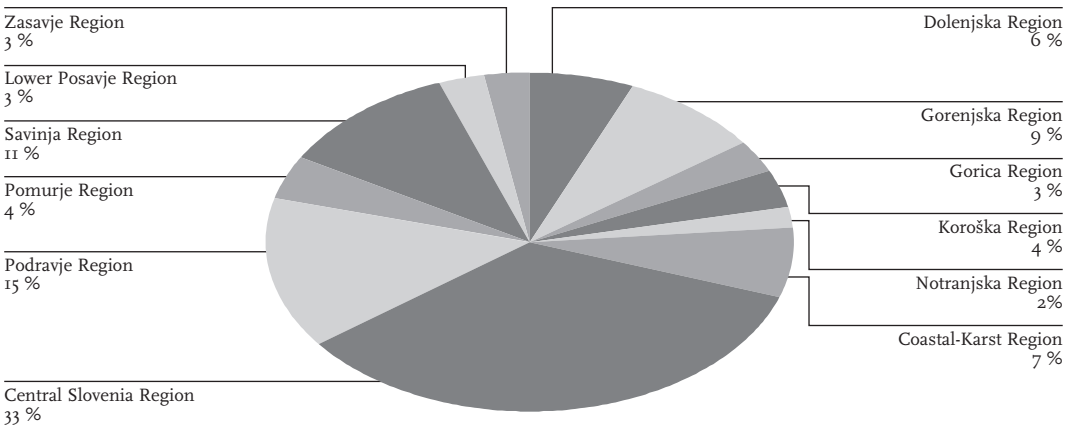

Figure 4.4.3.

REGION	2002	2003	Index (03/02)	No. cases/ 1000 inhabs.
Dolenjska Region	**143**	**167**	**116.8**	**1.57**
Črnomelj	24	32	133.3	1.74
Metlika	4	8	20.0	0.48
Novo mesto	72	68	94.4	1.18
Trebnje	43	59	137.3	2.29
Gorenjska Region	**289**	**224**	**77.5**	**1.47**
Jesenice	48	37	77.1	1.45
Kranj	116	92	79.3	1.55
Radovljica	61	42	68.9	1.75
Škofja Loka	37	34	91.9	0.91
Tržič	27	19	70.4	1.77
Gorica Region	**109**	**84**	**77.1**	**0.93**
Ajdovščina	25	31	124.0	1.09
Idrija	13	5	38.5	0.77
Nova Gorica	59	34	57.6	1.02
Tolmin	12	14	116.7	0.61
Koroška Region	**76**	**93**	**122.4**	**1.03**
Dravograd	6	12	200.0	0.69
Radlje ob Dravi	21	18	85.7	1.24
Ravne na Koroškem	32	30	93.8	1.21
Slovenj Gradec	17	33	194.1	0.78
Notranjska Region	**37**	**51**	**137.8**	**0.74**
Cerknica	15	12	80.0	0.95
Ilirska Bistrica	5	13	260.0	0.36
Postojna	17	26	151.9	0.85
Coastal-Karst Region	**182**	**177**	**97.3**	**1.79**
Izola	29	27	93.1	2.02
Koper	93	76	81.7	1.97
Piran	34	42	123.5	1.98
Sežana	26	32	123.1	1.14
Central Slovenia Region	**979**	**901**	**92.0**	**1.90**
Domžale	73	44	60.3	1.46
Grosuplje	36	37	102.8	1.08
Kamnik	24	43	179.2	0.78
Kočevje	22	13	59.1	1.26
Litija	31	21	67.7	1.58
Ljubljana	746	704	94.4	2.34
Logatec	8	14	175.0	0.70
Ribnica	20	12	60.0	1.48
Vrhnika	19	13	68.4	0.89
Podravje Region	**373**	**382**	**102.4**	**1.19**
Lenart	15	15	100.0	0.82
Maribor	225	241	107.1	1.64
Ormož	17	17	100.0	0.96

Pesnica	20	15	75.0	0.78
Ptuj	52	55	105.8	0.79
Ruše	14	9	64.3	0.58
Slovenska Bistrica	30	30	100.0	0.87
Pomurje Region	**119**	**106**	**89.1**	**0.84**
Gornja Radgona	13	9	69.2	0.42
Lendava	28	10	35.7	0.40
Ljutomer	23	30	130.4	1.62
Murska Sobota	55	57	103.6	0.94
Savinja Region	**313**	**291**	**93.0**	**1.13**
Celje	118	133	112.7	2.13
Laško	12	7	58.3	0.37
Mozirje	12	12	100.0	0.72
Slovenske Konjice	21	28	133.3	1.23
Šentjur pri Celju	18	9	50.0	0.45
Šmarje pri Jelšah	28	18	64.3	0.55
Velenje	51	42	82.4	0.95
Žalec	53	42	79.2	1.06
Lower Posavje Region	**67**	**77**	**114.9**	**1.09**
Brežice	25	32	128.0	1.33
Krško	29	24	82.8	0.85
Sevnica	13	21	161.5	1.14
Zasavje Region	**57**	**70**	**122.8**	**1.55**
Hrastnik	6	16	266.7	1.57
Trbovlje	33	32	97.0	1.80
Zagorje ob Savi	18	22	122.2	1.28
Other countries	**57**	**73**	**128.2**	/
General files. anonymous applications	**69**	**58**	**84.1**	/
TOTAL	2.870	2.754	/	/

Table 4.4.7.

Cases closed by justification

Table 4.4.8 shows the classification of cases by justification

JUSTIFICATION OF CASES	CASES CLOSED				Index (03/02)
	2002		2003		
	No.	Share %	No.	Share %	
1. Justified cases	353	11.4	321	11.4	90.9
2. Partly justified cases	337	10.9	344	12.2	102.1
3. Unjustified cases	531	17.3	437	15.5	82.3
4. Conditions not met for case to be handled	1370	44.4	1330	47.1	97.1
5. Outside ombud. jurisdiction	496	16.1	393	13.9	79.2
TOTAL	3.087	100.0	2.825	100.0	91.5

Table 4.4.8.

The share of justified and partly justified cases in 2003 (23.6 per cent) did not change significantly relative to the previous year (22.3 per cent). **We note that in comparison to kindred institutions this share is quite high.**

1. **Justified case**: The case involves a violation of rights or other irregularity in all the claims of the complaint.

2. **Partly justified case**: Violations and irregularities are established in certain of the claims made in the complaint or unclaimed elements of the procedure, and in other claims they are not.

3. **Unjustified case**: For all the claims in the complaint we determine that no violations or irregularities are involved.

4. **No basis for handling the case**: In the case a specific legal procedure is in progress where no delays or significant irregularities can be identified. We offer the complainant information, clarifications and pointers for exercising their rights in an open procedure. This group includes also non-received complaints (tardy, anonymous, insulting) and stopped proceedings due to the non-cooperation of the complainants or withdrawals of complaints.

5. **Outside ombudsman's jurisdiction**: The subject of the complaint does not fall within the framework of the institution's jurisdiction. We explain to the complainant the other possibilities that are available for exercising rights.

Cases closed by department

Table 4.4.9 provides a presentation of cases closed by government department in 2003. Individual cases are categorised under the relevant department relative to the substance of the problem that prompted the complainant to approach the ombudsman.

The table shows that the largest number of cases closed in 2003 related to the following departments:
- Justice (842 cases or 29.81 per cent);
- Labour, Family and Social Affairs (632 cases or 22.37 per cent);
- Environment and Spatial Planning (403 cases or 12.42 per cent of all cases closed).

Taking into account those government departments whose share of all closed cases in 2003 amounted to at least one per cent, the number of open cases in 2003 relative to 2002 increased most in Transport and Communications (from 31 to 60) and fell most in Local Self-Government (from 57 to 36).

DEPARTMENT	CASES CLOSED				Index
	2002		2003		
	No.	Share %	No.	Share %	(03/02)
1. Labour, Family and Social Affairs	651	21.09	632	22.37	97.08
2. Economic Relations and Development	18	0.58	12	0.42	66.67
3. Finance	91	2.95	87	3.08	95.60
4. Economy	29	0.94	18	0.64	62.07
5. Agriculture, Forestry and Food	6	0.19	8	0.28	133.33
6. Culture	12	0.39	8	0.28	66.67
7. Interior (Home Afairs)	296	9.59	275	9.73	92.91
8. Defence	35	1.13	9	0.32	25.71
9. Envir. and spat. planning	403	13.05	351	12.42	87.10
10. Justice	983	31.84	842	29.81	85.66
11. Transport and Comm.	31	1.00	60	2.12	193.55
12. Education and Sport	89	2.88	106	3.75	119.10
13. Health	88	2.85	109	3.86	123.86
14. Science and Technology	1	0.03	1	0.07	100.00
15. Foreign Affairs	11	0.36	12	0.42	109.09
16. Government Offices	10	0.32	17	0.57	170.00
17. Local Self-Government	57	1.85	36	1.27	63.16
18. Other	276	8.94	242	8.57	87.68
TOTAL	**3.087**	**100.00**	**2.825**	**100.00**	**91.51**

Table 4.4.9.

4.

SELECTED CASES

1 - ENTERING A WORKERS' HOSTEL ROOM WITHOUT THE CONSENT AND PRESENCE OF THE USER

According to the complainant, the house rules of the Pošta Slovenije (PS) temporary hostel contained the following: "The authorised officer of the owner and internal affairs bodies have the right to enter rooms at any time in order to carry out preventive/security measures and controls." The complainant considered that this violated her right to privacy. The PS did not agree and justified its opinion by appealing to the provisions of the Housing Act (SZ) under which rooms in workers' hostels do not have the status of a dwelling. This would mean that the provisions of the Act do not apply to them and that the owner can freely determine the conditions of residence and the house rules.

We replied to the PS that we cannot agree with their explanations. If no provisions relating to users of rooms in workers' hostels are to be found in the SZ, this does not mean that the owner can act with complete freedom with regard to these rooms. The owner's right to private property is limited by, among other things, the users' right to privacy, which is directly realisable under the Constitution of the RS. Entering a user's room at any time without his approval and knowledge, as in the case of the contested provision of the house rules, is an inadmissible encroachment on his privacy. The PS accepted our opinion and amended the disputed provision in such a way that entry to a user's room is only possible with his consent and in his presence, while in the case of urgent maintenance work the owner's authorised agent has the right to enter without the presence of the tenant.
1.0-4/2003

2 - ACCESS TO THE MINUTES OF A GOVERNMENT SESSION

The complainant has apparently been trying unsuccessfully for almost a year and a half to obtain from the Government of the RS and the MNZ the minutes of the government session relating to the exclusive use of the labels SI, SVN and 705 in all designations. The complainant states that the Government replied that the minutes are not on file and have been lost. The Government of the RS denied this and delivered to us the resolutions relating to the representation of the name of the RS in accordance with the ISO 3166 standard which it adopted at its session in 1994. We forwarded these resolutions to the complainant.
1.0-7/2003

3 - PROTRACTED TREATMENT OF OPEN QUESTIONS RELATING TO RELIGIOUS COMMUNITIES

The complainant stated that in early 2001 he submitted to the UVRSVS for the second time an initiative for the setting up of a mixed commission for the resolution of their open issues. He considered that their religious community did not enjoy the same treatment as other religious communities with regard to the setting up of a mixed commission at the Government of the RS. On the basis of the statements of the complainant and the explanations of the UVRSVS, we were unable to find sufficient circumstances and evidence to justify the violation alleged by the complainant.

We did however warn the UVRSVS that the procedure of the resolution of the complainant's open questions is unacceptably long, since in a period of almost three years it had not in principle even begun to address them substantively. We reminded the office that within the framework of its competences it should play a more active role in this. **1.0-19/2003**

4 - RACIAL DISCRIMINATION IN EMPLOYMENT

The complainant, a Slovenian citizen of Palestinian extraction, stated that he has been applying unsuccessfully for jobs since 1991. He considered that the reason for his failure was his racial origin. He also made the latter accusation to the MID when he failed to be chosen to fill an advertised job vacancy despite fulfilling all the conditions required. In its reply, the MID did not offer a response or explanation regarding his complaint alleging a violation of the statutory prohibition of discrimination. In response to our invitation, the MID gave the complainant a response with regard to the alleged discrimination, in accordance with the provisions of the EU Directive on the implementation of the principle of equal treatment regardless of racial or ethnic origin and the provision of the ZDR.
1.3-7/2003

5 - INTERVENTION OF THE OMBUDSMAN FOR AN OPERATION FOR A DETAINEE

The complainant was a detainee in a criminal matter at Slovenj Gradec District Court under Case No. K 143/2002. As a result of medical problems affecting his left knee, a date for an operation had already been set. However the operation was not carried out because he was deprived of his liberty and in custody. His left knee was further injured during custody and he was therefore sent to a trauma specialist. Since his condition did not improve, he was referred to an orthopaedic surgeon, who discovered that an operation was necessary, since the changes to his knee were already giving him trouble. However the chair of the court panel did not permit the operation, citing another opinion from a specialist orthopaedic surgeon (obtained in connection with the commencement of imprisonment) that an operation was not urgent.

If a detainee needs to be treated in a health care institution, this treatment is ordered by the competent court at the proposal of the institute doctor (second paragraph of Article 32

of the Rules on the Implementation of Custody). The condition for such a decision of the court is that hospital treatment is necessary. The Rules therefore provide that treatment in a health care institution must be necessary. It does not however have to be urgent. The application of the stricter criterion – that treatment in a health care institution mutatis must be "urgent" – can therefore be to the detriment of the person in custody.

Detainees must be treated humanely while in custody, and therefore their physical and mental health must be protected. Only those restrictions necessary to prevent escape or conspiracy which could prejudice the outcome of the procedure may be used against a person in custody.

We felt that the complainant was not permitted his operation because of the application of a legal standard contrary to the valid regulation. In our intervention we therefore drew attention to the second paragraph of Article 32 of the Rules on the Implementation of Custody, according to which the competent court shall order treatment in a health care institution at the proposal of the institute doctor if such treatment of the detainee is necessary.

On this basis, the chair of the court panel gave permission for treatment in a health care institution and Maribor Prison registered the complainant for the operation. **2.1-35/2002**

6 - DELAY IN SENDING A DETAINEE TO BEGIN A PRISON SENTENCE

In the case of a detainee who had been in custody since 27 June 2001, the court of appeal reduced his sentence to three years and six months. The appeal decision, together with the case file, was returned to the court of first instance on 5 December 2002 and the second-instance judgment was served on the detainee on 9 December 2002.

Although the judgment handed down in the detainee"s case became final on 21 November 2002 when the appeal court decided on the case and became enforceable when it was served on the parties to the proceeding just over two weeks later, the detainee was not sent to begin serving his prison sentence until 7 January 2003. During this time the convict protested via his counsel that he was still on remand. Ljubljana Prison, where the convict was on remand, also advised Ljubljana District Court that a delay was occurring in the execution of the sentence. The judge entrusted with the execution of the prison sentence by authority of the court president did not receive the order for the execution of the prison sentence from the criminal division of the same court until 3 January 2003 or later, and ordered the transfer of the convict to begin his prison sentence on 6 January 2003. A day later Ljubljana Prison transferred the convict to Dob pri Mirni Prison to begin serving his sentence.

In response to our intervention the court president emphasised that they are aware of the duty to act especially quickly if a convict is in custody. For this reason certain organisational changes have even been made in the operation of the criminal office in order to achieve faster circulation of files. The purpose of these measures is to achieve the shortest possible time from the enforceability of the judgment to the commencement of the sentence. Although the ZKP does not explicitly specify the time frame within which final orders must be drawn up and, in this context, the order for a sentence to begin, the court endeavours to ensure that the order is issued without delay if the person concerned is in custody. The court president assured us that the order to transfer a detainee to prison to

begin his sentence is issued as soon as the order to begin the sentence is received – as a rule within two working days. He also drew attention to the possibility of a detainee requesting to begin his sentence early, from the day the judgment is handed down. The court "approves such requests without exceptions". Here it is worth emphasising that the existence of the possibility of a detainee being sent to prison even before the judgment becomes final does not in any way oblige the bodies involved in the criminal proceeding to act especially quickly. This also applies to the phase of the proceeding after the judgment becomes final and before the sentence begins.

Any wait that exceeds a reasonable period of a few days after a judicial decision to send a detainee to begin a prison sentence becomes final and enforceable is rightly considered by the convict to be a delay in the execution of the sentence. The wait ought to be even shorter in the case of the execution of a final judgment issued in a criminal proceeding before the same court. In order to justify its delay in sending the complainant to begin his prison sentence, Ljubljana District Court appealed to "the circumstances of the specific case". It is however difficult to imagine what circumstances could justify a delay of almost a month in the execution of the sentence. Evidently courts should devote more attention to the handling of the file after a criminal proceeding is completed, so that even when a convicted prisoner needs to be transferred to a prison to begin his sentence, detention really has lasted for the shortest time necessary. **2.1-1/2003**

7 - LENGTH OF CUSTODY

The complainant complained that he has been in custody for almost 16 months but that the criminal procedure is still not finished. He stated that the reason for this is evidence from a witness which the court still wishes to take. The court has already summoned the witness several times but the witness has not responded. Since he is on the run and in another country, it is not to be expected that a summons will be successful. The consequences of this are cancellation of the trial and a lengthy proceeding.

The court confirmed that the complainant has been in custody since March 2002. The chair of the court panel assured us that he has worked continuously on the case throughout. To date several main hearings have been called and have actually taken place. The exceptions are one occasion when the hearing did not take place because of the exclusion of a judge and another occasion because of a problem with one of the lay judges.

The fact that a witness is abroad and does not respond to a summons is however a circumstance that can affect the duration of custody and the criminal proceeding. The ZKP binds the court and the state bodies participating in a criminal procedure to establish, accurately and fully, the facts necessary for the issuing of a lawful decision. Here they must test and establish with the same care both the facts incriminating the accused and the facts that are in his favour. Evidence includes all facts that the court considers to be important for a correct verdict. At the same time the decision on what evidence should be taken in order to establish the decisive facts is taken by the court (alone).

We explained to the complainant that the court will have to decide, if it will not be possible to examine the witness within a reasonable time, whether or not it is possible to further extend custody. It will have to decide whether it is still admissible to wait for the exam-

ination of a witness without this simultaneously constituting a violation of the right of the detainee to personal liberty. It is the case here that detention is an extraordinary encroachment on the right to personal liberty and is only permitted for as much time as is unavoidably necessary for the progress of criminal proceedings and to ensure public safety. Custodial matters require rapid and priority treatment and this naturally also applies in connection with a witness whom the court may have trouble getting hold of because he lives abroad. According to the provision of the fifth paragraph of Article 207 of the ZKP, detention may last for a maximum of two years after the presentation of the indictment. This is of course is the latest timelimit. If a judgment of conviction is not handed down within this period, the accused is released from custody regardless of the phase the criminal proceeding is at. **2.1-22/2003**

8 - CUSTODY UNTIL THE EXPIRY OF THE SENTENCE AT THE LONGEST

The complainant remained in custody for almost a month after a criminal judgment of conviction became final and enforceable before he was sent to prison to begin serving his sentence. A convict who is in custody should be sent to begin serving his prison sentence in the shortest time possible after the judgment becomes final or enforceable.

Any wait that exceeds a reasonable period of a few days after a judicial decision to send a detainee to begin a prison sentence becomes final and enforceable is rightly considered by the convict to be a delay in the execution of the sentence. After examining the relative circumstances of the implementation and possible interpretation of the amended sixth paragraph of Article 361 of the ZKP, we assessed that it would perhaps be worth further amending this provision slightly so as to avoid any erroneous interpretation in practice.

Even in the case of custody ordered by the court after handing down a judgment of conviction, the rule applies that it may only last the shortest necessary time. It is the duty of all bodies taking part in the criminal procedure to act especially quickly if the defendant is in custody. The act amending the ZKP-D supplemented the regulation, which did not take into account the fact that the finality and enforceability of a criminal judgment do not come into effect in the same moment, since the final judgment must also be served on the parties to the criminal proceeding. A judgment becomes final on the day that the court of second instance makes its decision, but it is "only" enforceable from the day the appeal decision is served on the parties to the proceeding.

The sixth paragraph of Article 361 of the ZKP provides that custody, following the pronouncement of a judgment of conviction, may last until the judgment becomes final or until the serving of the sentence begins, but not beyond the expiry of the period of the sentence handed down in the judgment of the court of first instance. The longest possible duration of detention is therefore limited by the expiry of the sentence handed down in the judgment of the court of first instance. However during the appeal procedure a change can be made to the first-instance judgment, and thus also to the sentence handed down at the first instance. For this reason it would perhaps be better, from the point of view of the intelligibility of the wording of the Act, to limit the maximum duration of detention after the pronouncement of the judgment of conviction to the expiry of the sentence handed down, which clearly also takes into account the possibility that the sentence handed down in the judgment of the court of first instance is changed (reduced or increased) by the appeal decision.

At present, not only does the ZKP permit detention to last until the judgment becomes final (as it was before the adoption of the act amending the ZKP-D), to permits it to last until the beginning of the serving of the sentence, which is related to the enforceability of the criminal judgment. Since however the sixth paragraph of Article 361 of the ZKP talks about the sentence handed down in the judgment of the court of first instance, this wording could be mistakenly interpreted as meaning that it is not necessary to take into account any changes to the sentence under the second-instance judgment. Thus it could happen that a sentence reduced in the judgment of the court of second instance could have already expired, but not the higher sentence handed down in the judgment of the court of the first instance. We therefore proposed an appropriate change to the text of the sixth paragraph of Article 361 of the ZKP so that the law will not allow an interpretation of this statutory provision which would permit an unconstitutional encroachment on the right to personal liberty.

The Ministry of Justice did not agree with our proposal. They took into account the fact that when reducing a pronounced sentence on the basis of the decision of the court of second instance, the judgment of the court of first instance changes. Thus the legal wording that following a judgment of conviction detention may last no longer than up to the expiry of the sentence contained in the first-instance judgment also contains the possibility of a change, during the appeal process, to the first-instance judgment in the sense of a shorter sentence than that contained in the "basic" decision of the court of the first instance. The ministry therefore considers that the already applicable statutory provision appropriately limits the possibility of a convicted person remaining in detention longer than the time of the finally pronounced sentence. **2.1-23/2003**

9 - RETURN OF A LETTER

A detainee at Maribor Prison complained that the Ministry of Justice had not accepted a letter of his.

In response to the ombudsman's intervention the ministry explained that the complainant's letter was insufficiently stamped and the consignee did not have the money to pay the corresponding charge. Since this was the first time such a situation had occurred, the consignee was not prepared for it. The ministry assured us that such cases will not occur again. It will ensure that those responsible for receiving mail have enough money to pay any unpaid postage.

As the addressee, the ministry was obliged to accept the detainee's letter, since it could have contained a complaint from a person in custody. It is not right that the state body responsible for deciding on a complaint fails to accept a letter from a person deprived of his liberty. The state body responsible for supervision of the treatment of persons in custody must in fact have sufficient funds available even for cases when it is necessary to pay postage on a letter sent from a prison or place of detention. In the light of the assurance given by the ministry, we do not expect cases of this nature to occur again. **2.1-26/2003**

10 - VIOLATION OF THE STATUTORY DEADLINE IN CUSTODY CASES

Under the second paragraph of Article 396 of the ZKP, the court of second instance must send its decision together with the court records to the court of first instance within three months of the day on which it received them from the latter if the defendant is in custody. In 2003 we monitored quite a number of cases where appeal courts breached this instructional but nevertheless statutory deadline, the purpose of which is to ensure that detention lasts for the shortest necessary time. The necessity of a rapid appeal decision in detention matters also derives from the fact that after the issuing of a judgment of conviction at the first instance, and right up until the end of the appeal procedure, the ZKP does not envisage a test of whether grounds for detention exist that would justify a deprivation of liberty before the criminal judgment becomes final.

The three-month deadline ought to be sufficient for an appeal decision. At least occasionally, however, this is disproved by practice. In the criminal matter under Case No. Kp 179/2003 Celje Higher Court took five months to return the file with the appeal decision in a custody matter to the court of first instance. As an excuse for the delay, the judge rapporteur cited several objective reasons, including the size of the case file, which ran to over 1500 pages, while at the same time the same judge was working on another custody matter running to more than 2000 pages. In a custodial criminal matter running to 900 pages, Ljubljana Higher Court needed almost eight months to return the file with the appeal decision to the first-instance court. The court president stressed that the criminal division of this court has already been working all year with reduced staff (minus three judges). The judge rapporteur and the other judges of the division were overburdened at that time with dealing with custodial matters and other priority cases, in particular those where the limitation of criminal prosecution was approaching.

Regardless of the subjective circumstances that can accompany decision-making with such a delay (despite the situation regarding cases and staff in the division the court president gave the judge rapporteur a verbal warning), it is necessary above all to point out that within the context of judicial and court administration the State is bound to ensure the organisational, personnel and other conditions for the regular and routine work of the courts. Judges are only people. If they are overburdened with work, this cannot be overlooked in establishing the causes of a delay in judicial decision-making. Of course this does not excuse failure to observe a statutory deadline and a longer detention than is legally admissible. **2.1-32/2003**

11 - IRREGULAR VISITS TO DETAINEES AT THE NOVA GORICA UNIT OF KOPER PRISON BY THE COURT PRESIDENT

Supervision of the treatment of detainees is carried out by the president of the district court. Pursuant to the provision of the second paragraph of Article 213.d. of the ZKP, the court president or a judge chosen by the court president must visit detainees at least once a week and if he considers it necessary, even without the presence of warders, ask them how they are being treated. He is obliged to do everything necessary to rectify the irregularities he observes during his visits to the institution.

During a visit to the Nova Gorica unit of Koper Prison in 30 September 2003, the ombudsman inspected the book detailing inspections by the court president. He found that the president of Nova Gorica District Court does not visit detainees regularly once a week. On some occasions in 2003 fourteen days would pass between visits.

The ZKP does not specify exceptions with regard the obligation of a court president to visit detainees once a week. If the court president is unable to carry out the visit, detainees are visited by a judge chosen by the court president. There can therefore be no excuse for this form of supervision not to be carried out at least once a week. The court president justified the irregular visits on the grounds that the judge who was supposed to carry them out had too much work. She assumed the responsibility because she did not check whether the visits were being carried out regularly. She responded to our warning with an assurance that the visits will be carried out regularly in the future. **2.1-36/2003**

12 - A PERSON IN CUSTODY WITHOUT CORRESPONDENCE WITH OR VISITS FROM HIS PARTNER

The complainant, who had been punished for a misdemeanour, did not agree with the decision of the Nova Gorica unit of Koper Prison which prohibited him correspondence with and visits from his partner.

The UIKS confirmed that the Nova Gorica department had not permitted the complainant correspondence with or visits from his partner because of the suspicion that she was helping him obtain and take illegal drugs. The professional staff of the prison department also doubted whether the complainant's partner really cohabited with him.

A convict has the right to correspond without restrictions with his immediate family members. A convict must also be able to receive visits from immediate family members at least twice a week. Under the provision of Article 10 of the ZIKS-1, immediate family members include a person who cohabits with the person against whom a penal sanction is being applied. It is not possible to prohibit visits from and correspondence with immediate family members but it can be ordered that they take place under supervision if it is considered that reasonable grounds exist for this.

The prison department should have established the nature of the relationship existing between the complainant and the person wishing to visit him or correspond with him as an immediate family member at the time of the first visit or when permitting correspondence. Since the prison department failed to do this, the UIKS, as a consequence of our intervention, assessed this as a shortcoming. At the same time it saw to it that measures were taken to ensure that the irregularity will not be repeated. **2.2-9/2003**

13 - IRRESPONSIBLE BEHAVIOUR OF A FATHER IN HIS CONTACT WITH HIS MINOR SONS

It is clear from the complaint that for a considerable time, and in particular since December 2002, the complainant has been drawing attention to the difficulties in the personal contacts between her two minor children and their father. She alleges that on 13 December 2002 she and the children's father signed an agreement on the regulation of contacts at the CSD, but that the father is increasingly adapting this agreement to his own wishes and needs. The contacts are decreasing even though the children would like to be with their father. Given that he does not contact the complainant and picks up the children directly from school, she often does not know whether he will come for them. Thus the children are frequently disappointed and problems occur, particularly in the case of the older son, who has behavioural difficulties and is hard to manage when there are no clear rules or agreements. The complainant believes that the father adapts the contacts to his current mood. She says that it sometimes happens that the children wait for their father outside the school and he does not turn up, or he brings them back early, especially if he knows that she is not at home. The complainant does not want to prevent contacts because the children are attached to their father. She does however want a court decision on contacts in the interest of protecting the rights and the benefit of the children, since she hopes that clearly defined contacts would put an end to the arbitrary behaviour of the children's father.

It follows from the CSD's report that difficulties are occurring in the progress of the contacts because of the poor relations between the children's parents. The CSD has tried to resolve this problem through counselling, but without success, since they did not even manage to establish basic communication. As regards the proposal of the children's mother that the contacts be defined by a court decision, the CSD, appealing to Article 106 of the ZZZDR, proposed to the children's father that he submit a proposal for a decision to be made on contacts in an administrative proceeding. The children's father did not agree with this. The CSD acceded to the father's wishes and concluded the report with the opinion that they did not see the sense in deciding on the contacts by means of a court decision.

Following our repeated intervention in December and our proposal that the CSD, in accordance with its competences, take action as swiftly as possible in favour of the children and, on the basis of its general authorisation under Article 119 of the ZZZDR, do everything necessary to protect the rights and the benefit of the two minors, the CSD called a team meeting. They adopted the decision to call an oral hearing at which the parents would have the opportunity to agree a compromise on contacts. Failing this, the CSD would issue a decision in the briefest time possible. **3.0-17/2002**

14 - INCORRECT WORK BY THE BODIES OF THE CHAMBER OF PHYSICIANS

For a considerable time now the ombudsman has been dealing with a complaint in which the complainant alleges mistakes in the treatment of her late mother in 1993 and, furthermore, an unsuitable attitude and failure to observe regulations in the hospital where her mother was being treated and before bodies of the Chamber of Physicians of Slovenia (ZZS). On the basis of Article 32 of the ZVarCP the ombudsman does not commence a

procedure if more than a year has passed since the action or last decision of the body concerned unless he considers that the matter is so important that his action is justified regardless of the time that has elapsed. In this case the ombudsman considered that there was no basis for his intervention with regard to the alleged incorrect treatment, since in the time since the death of her mother the complainant could have proved professional mistakes in a procedure before a court, which on the basis of an expert opinion could have established a responsibility and blame. With regard to the alleged irregularities in notification, or the alleged violation of the provisions of the Health Services Act and irregularities in the work of bodies of the ZZS, the ombudsman decided to commence proceedings, since his findings could have a more general importance and have the effect of improving the whole area of the protection of patient's rights.

The complainant claims that the Dr Peter Držaj Infirmary, Clinical Department for Rheumatology, Internal Medicine Clinic of the Ljubljana Clinical Centre, contrary to regulations, did not order a postmortem examination of a patient who died in the hospital or did not obtain the consent of her daughter to omit the postmortem examination. In response to this accusation, which the ombudsman has also presented specially to the hospital, the hospital replied that the ombudsman "clearly does not know the law sufficiently well, and practice even less so" and that in the case of the deceased patient there were neither legal nor professional reasons for a postmortem examination. Such an evasive answer did not satisfy the ombudsman and he drew the hospital's attention to the concrete provisions of the law and the rules that in the case in question were not observed. In its reply the hospital affirmed that "the procedure of waiving the postmortem examination of the deceased was carried out in accordance with the second paragraph of Article 61 of the Health Services Act". The hospital did not receive neither an oral nor a written request for a postmortem examination immediately after the death and therefore believes that this wish came about later, at the institution of the proceedings through which the professional mistake is supposed to have been proved. The hospital however admits that the complainant did not sign a document waiving the postmortem examination, with regard to which it considers that this is a consequence of the fact that it is very unusual for relatives to want a postmortem examination to be carried out.

The ombudsman believes that the legal regulation of the postmortem examination is unambiguous and intelligible, although he does not offer an assessment of the content or suitability of the individual provisions. The obligation to carry out a postmortem examination of every patient who dies in a health care institution or while under the care of a private health care worker is stipulated by the second paragraph of Article 61 of the Health Services Act:

"A patient who dies in a health care institution or while under the care of a private health care worker must be subjected to a postmortem examination. The professional director of the health care institution or department may on his own judgement or at the request of the patient's relatives decide to waive the postmortem examination if the cause of death is unquestioned and if the doctor who treated the deceased patient agrees."

It follows from the above that the legislator himself has already decided to allow exceptions to the rule of compulsory postmortem examination, but only in statutorily defined cases when this is decided by the professional director of the institution or department, but not by any doctor who took part in treatment. The decision on the postmortem examination is only tied to professional grounds and is not dependent on the will of relatives, since under the Act the relatives can only affect the waiving of the postmortem examination but not the decision to carry out a postmortem examination. The wish of the relatives that a post-

mortem examination be carried out or waived can therefore not be counted as a right under this Act, since the decision on this is merely based on professional grounds.

It should be stressed here that in October 1993 the health minister issued rules on the conditions for and method of providing a postmortem service (UL, 56/93). These rules provide that a postmortem shall also be carried out at the wishes of adult children if these do not agree with the established cause of death. This regulation, however, did not enter into force until October 1993, while the complainant's mother died in March of that year, which means that these provisions cannot be applied in this particular case.

After inspecting the documentation the ombudsman established that the document covering the waiving of the postmortem examination was signed by the ward doctor but not by the relatives, despite the fact that the document refers to the wishes of the relatives and contains a space for their signatures. It should also be pointed out here that the hospital was using a postmortem waiver form based on an invalid law, since this section of the Health Care Act had not applied since 1 March 1992, in other words over a year before the event in question. The use of such a form does not in itself mean a violation of the rights of the patient or his relatives. It does however point to a negligent attitude on the part of the hospital towards the regulations that were currently in force. The ombudsman considers that referring to invalid regulations is a violation of the right of the patient or his relatives to information, in particular since the change to the legal regulation significantly changes the position of the patient's relatives. The right of relatives to express their wishes to have the postmortem examination waived in any case envisages that the hospital will inform the relatives of this possibility in good time and also obtain a corresponding written statement. In the case in question the hospital acted wrongly when it sent the unsigned postmortem waiver form to the Institute of Forensic Medicine/Institute of Pathology.

For this reason the ombudsman agrees with the opinion of the second-instance arbitration board of the ZZS, which judged that "the procedure surrounding the waiving of the postmortem examination was carried out unsuitably" because in its opinion the hospital's action meant that the right to timely and correct information was violated, and that the procedure of deciding to waive the postmortem examination was not conducted in accordance with law. From the document mentioned above it is not clear that the decision to waive the postmortem examination was taken by the professional director of the institution or the head of the department, and the document does not contain the consent of the doctor who treated the deceased.

In relation to the alleged violations of procedure before the arbitration board at the ZZS, the ombudsman considered above all how, in the case of supposed mistakes in treatment, the right of patients or their relatives to protest to the competent body of supervision is guaranteed, if the complainant believes that ethical principles were violated (ninth indent of the first paragraph of Article 47 of the Health Services Act). The Rules on the Organisation and Work of the Arbitration Board of the ZZS that applied at the time the complaint was dealt with state that the arbitration board shall deal with and decide on the responsibility of doctors for violations of medical ethics, the statute of the chamber and other irregularities in providing a medical service (Article 3). The arbitration board is organised as an internal body of the chamber, which is a professional organisation of doctors and dentists, and therefore in procedures for establishing responsibility patients or their relatives do not have an active role, since the Rules do not grant them the character of party to the proceeding. The only parties to the proceeding are the defendant and the prosecutor (Article 12). Thus the patient who alleges an irregularity in treatment has as it were no rights in the procedure with regard to proposing evidence, witnesses or experts

and submitting legal remedies. Thus the role of the patient is limited to reporting irregularities and possibly appearing as a witness. On the basis of Article 48 of the Rules, a report can be sent to the arbitration board by "a citizen in his capacity as a user of health care". Then, following the preliminary procedure carried out by the president of the arbitration board, the president sends the collected material to the prosecutor. The prosecutor can present an indictment at the first-instance arbitration board or abandon the continuation of the procedure by means of a written order (Article 54). It follows from these provisions of the Rules that the prosecutor has a similar role in the procedure to that of a public prosecutor in a criminal proceeding, but that there is a significant difference is in the role of the injured party since in a procedure before an arbitration board the injured party can in no case assume the prosecution or become a party to the proceeding.

The declaration of the complainant related to a period when the Chamber did not yet have all of its Rules and bodies in place and thus the legal basis for taking action. Despite this the arbitration board decided to deal with the declaration "from the ethical point of view", but on the basis of the collected evidence it dismissed the complainant's declaration.

In February 2000 the complainant proposed that the procedure be repeated. This was however refused by the president of the arbitration board on the grounds that the grounds for a repetition of the procedure set out under Article 96 of the Rules did not exist. Clearly, the arbitration board considered whether grounds for a repetition of the procedure existed, from which it could be concluded that the arbitration board, contrary to the Rules, recognised the complainant's status as a party to the procedure – since otherwise it would have dismissed her application on other grounds. Unfortunately the arbitration board's conclusion contains no explanation and it is therefore impossible to test it. In the ombudsman's opinion this is a procedural defect.

The complainant appealed against the conclusion but the arbitration board at the second instance decided that the appeal did not contain new facts as per Article 96 of the Rules and therefore "confirmed the decision of the arbitration board which arbitrated at the first instance." This decision also shows that the arbitration board de facto recognised the complainant as a party to the procedure, particularly since the explanation of the conclusion contains substantive assessments of the correctness of treatment. In the ombudsman's opinion this conclusion of the arbitration board also contributed to consolidating the complainant in her mistaken belief that she was in the position of a party to the procedure and thus enjoyed the rights relating to this position.

Almost a month after the decision of the second-instance arbitration board, the president of the arbitration board summoned the complainant "in the capacity of witness" to a discussion "in the preliminary proceeding or to the main hearing", thus misleading her into believing that the appeal procedure was ongoing. This could be considered deliberately misleading, since there are no justifiable grounds for summoning witnesses after a decision has been taken and the procedure concluded.

The complainant did not respond to the summons to the hearing but proposed the exclusion of the president of the arbitration board since his wife had decided at the first instance and he, as minister of health, had dealt with the case within the framework of the request for administrative supervision. The president of the chamber decided that the proposal for exclusion would not be approved since "in the concrete case there are no grounds for the exclusion of the president of the arbitration board". In the ombudsman's opinion this is a disputable decision. The president of the chamber could and should have known that a decision on the request for a repetition of the procedure at the second instance had already been taken over two months earlier and that therefore the proposal for exclusion was

meaningless. Also substantively disputable is the decision that grounds for exclusion do not exist – which cannot be tested since the explanation of the conclusion does not mention this even though it could be established even without a special inspection of the file that circumstances existed which could have raised doubts as to the impartiality of the president of the arbitration board.

With this conclusion, the president of the chamber decided to hand over the disputed case, together with all the documentation, to the prosecutor of the chamber – for which however he had no legal basis, since a decision had already been made on the matter and the procedure concluded. This decision misled the complainant and confirmed her in her belief that the procedure would continue.

On the basis of the above, the ombudsman was unable to assess whether the complainant was treated vexatiously or deliberately erroneously informed with regard to her rights in the procedures before the ZZZS. He does however consider that the competent bodies made incorrect decisions from the legal point of view, or that their decisions were contrary to the general acts of the chamber. Naturally the ombudsman does not oppose a system which would give a patient and his relatives more rights in appeal procedures. Quite the opposite: he has been advocating such a system since the institution of ombudsman was founded. However, such a system should also be regulated normatively and not left to the arbitrary actions and moods of the decision-making bodies. The assessment as to whether and to what extent the conduct of the competent bodies of the Chamber of Physicians affected the establishing of the material truth in the dispute in question can be given by the chamber's prosecutor and on this basis a decision made on any proposal to repeat the procedure. The ombudsman believes that the procedural errors identified above require thorough consideration and a complete assessment.

We also informed the Dr Peter Držaj Infirmary and the Chamber of Physicians of the above findings and in early 2004 invited the latter to inform us of the decision regarding the repetition of the procedure. The Rules on the Work of the Arbitration Board of the Chamber of Physicians of Slovenia have already been amended and partly take into account the ombudsman's findings. We do however feel that the appropriate position of the patient in procedures before professional health care bodies should be guaranteed by a law which will regulate appeals procedures in full. **3.4-6/01**

15 - ASSESSMENT OF THE SUITABILITY OF TREATMENT

A complainant proposed to the ombudsman that he assess the suitability of treatment by a specialist, since she believes that a health care institution had treated her negligently.

We replied to the complainant that we cannot give an assessment of whether her treatment was in accordance with medical doctrine or whether the unpleasantness was the consequence of negligent treatment since we are not qualified to do this and this is the competence of the appropriate experts from the medical field. We therefore proposed to her that she first have a detailed discussion with her own doctor so that he could explain to her the usual course of treatment, from which it will be possible to establish whether hers is actually a case of mistaken treatment or merely an unfortunate coincidence that could not be predicted or prevented by medical doctrine. We also explained to her that if on the basis of the conversation with her doctor she considers that she was not given suitable treatment,

she can also put in a specific claim for damages against the Clinical Centre. Since in such a claim it is necessary to substantiate all the elements of liability for damages (blame or responsibility, the causal link between incorrect treatment and the consequences and the existence of damage), we recommended her to seek the assistance of a suitable legal expert or lawyer, since the ombudsman is not competent for legal aid. We also advised the complainant that in the case of the institution refusing her claim she will have to assert her rights before a court, which would undoubtedly appoint an expert from the medical profession to establish the correctness or otherwise of treatment and the amount of damage. Since court procedures are extremely time-consuming and also expensive, we proposed to the complainant that she avail herself of all possibilities of extrajudicial settlement before turning to the courts. **3.4-6/2003**

16 - PROTRACTED DECISION-MAKING BY THE MDDSZ

In 2001 the complainant addressed a complaint to the ombudsman because he had still not received payment of the difference between already paid sums of child benefit, as determined by a CSD decision dated 1 July 1994 and the right to child benefit granted by a court decision on 14 May 1998.

Following our intervention the Ministry gave the reply that in the field of family receipts, which includes child benefit, delays are occurring in addressing cases. It explained that they expected to resolve the matter the following month (in December 2001).

We acquainted the complainant with the Ministry's reply and suggested that he let us know if this did not happen. In November 2003 the complainant wrote to the ombudsman again and indignantly explained that he had still not received anything. Following our repeated intervention the Ministry finally issued a decision on 23 December 2003 annulling the CSD's decision of 1 July 1994 and remanding the case to the first-instance body. **3.5-104/2001**

17 - REGULATING BASIC LIVING CONDITIONS

The complainant has no fixed abode, lives is a beggar and is very sick. We intervened at the CSD of his last place of permanent residence and the procedure has begun to provide basic social security such as somewhere to live, financial social assistance, arrangement of health care, etc. **3.5-71/2003**

18 - ANGRY ABOUT AN ADMONITION FROM THE OMBUDSMAN

We received an unusual response from the staff of the Polde Eberl-Jamski home for the eldery: in response to our request for a report and our suggestion that they have as many humanly friendly conversations as possible with residents, they told us that they would be happy to do so if they did not have to write reports such as the report for the ombudsman and similar. **3.5-78/2003**

19 - THE SPEED OF PAYMENT OF SOCIAL ASSISTANCE IS IMPORTANT

We intervened at the competent CSD to get them to forward the decision on the right to financial social assistance to the MDDSZ for payment more quickly because the complainant was in serious financial difficulties. The main reason for the delay was the director of the CSD withholding her signature even though the complainant was entitled to assistance. **3.5-94/2003**

20 - MISSING THE DEADLINE FOR SUBMITTING PROOF OF FULFILMENT OF CRITERIA FOR PAYMENT OF A SCHOLARSHIP

The ombudsman received a complainant from an individual who had received a decision from the Velenje branch of the ZRSZ by ordinary mail (not registered mail) stipulating that her right to a scholarship was suspended in the current academic year because she had missed the deadline for submitting proofs of fulfilling the criteria for further payment of the scholarship. She lodged an appeal against the decision.

Article 41 of the Rules on Scholarships provides that scholarship-holders must submit to the institute proofs of meeting the criteria under these Rules by no later than the expiry of the application period or after the conclusion of the education programme. However, Article 3 of the Contract on the Rights and Obligations of Zois Scholars stipulates, inter alia, that the scholarship-holder's right to the scholarship shall be suspended if he has finished the year and within 30 days of the end of the academic year does not submit proofs of fulfilment of the criteria from the Rules. The complainant submitted proofs to the regional unit on 20 September 2002.

We made inquiries at the ZRSZ. Enclosed with their reply was the decision by means of which the complainant's appeal was refused. In the explanation of the decision they stated, inter alia, that the Rules are a higher act than the contract and that they are a general regulation which must be observed before the contract in the case of the provisions of the contract not being in accordance with the provisions of the Rules. They also say that the warned the complainant by post of the deadline for submitting proofs.

Because we felt that such treatment was wrong, we sent an opinion to the ZRSZ in which we explained that the relationship between a higher act and a lower act is not such that the

higher act prevails in general if this is not specially laid down in regulations. This applies even less to the relationship between a general act and a specific administrative act or contract which means the implementation of the general act. In the case of civil law contracts a mere change to the regulation does not change the contract. Informing the contracting parties of these changes by mail is an insufficient substitute, particularly if the letter is sent by ordinary mail and there is no evidence of whether the addressee actually received it. On the basis of the above, it is not possible to accuse the scholarship-holder of relying without basis on the provisions of the contract that state the deadline for submitting proofs of meeting the criteria for the further payment of the scholarship. In the case of general act being amended, an addition to the contract must be agreed. We proposed that they take into account our comments in the future regulation of contractual relationships and that they re-examine the complainant's case and judge whether there is a possibility of changing their decision.

In its reply, the ZRSZ states that the article of the contract to which the complainant referred does not specify a date by when proofs of meeting criteria must be submitted. The deadline for submission is set descriptively as 30 days after the conclusion of the academic year. In the relevant period the complainant had finished the education programme for which she was receiving the scholarship – by 21 June 2002. In the same article of the contract the following is also agreed: after every completed academic year, by no later than the expiry of the application period or after the conclusion of the education programme, the scholarship-holder must submit to the institute proofs of meeting the criteria set out in the applicable rules on scholarships.

Thus the institute believes that the complainant, if she were acting according to the provisions of the contract, would have had to submit proofs of concluded education within 30 days of the end of the academic year, i.e. by 21 July 2002, or at least before the expiry of the application period, i.e. by 6 September 2003. This she did not do.

With regard to the hierarchy of administrative acts, they agreed that the explanation in the decision is not the most suitable. They will therefore take into account our comment in the future explanation of their decisions. They also claim that in the case of a change to the rules they conclude annexes with contracting parties.

On the basis of the above we can state that we have been partially successful in our efforts, since the ZSRZ accepted our view with regard to the hierarchy of acts. It is not however possible to agree with the statements regarding the end of the academic year (Article 34 of the Grammar Schools Act clearly defines the duration of the academic year as being from 1 September to 31 August) and the sending of consignments by standard mail. **4.0-12/2002**

21 - THE RIGHT TO REDUCED WORKING HOURS BECAUSE OF PARENTHOOD

The complainant had exercised the right to reduced working hours because of parenthood on the basis of the first paragraph of Article 48 of the Parental Care and Family Benefits Act (ZSDP), which provides that one parent who is looking after a child up to three years old has the right to work half the full number of hours. The third paragraph of the same article provides that in this case the employer shall guarantee the eligible party the right to payment according to actual labour obligations, while the RS will provide payment of social security contributions from the proportionate part of the minimum wage until the eligible

party returns to full labour obligations. The complainant is a sole trader and as such does not have a contract of employment. For this reason the Nova Gorica CSD refused her claim and the MDDSZ refused her appeal. The complainant filed a complaint against the decision of the MDDSZ. In the explanation of its decision the MDDSZ states that a sole trader is not in employment and therefore does not have an employer who can issue a resolution on reduced working hours and is therefore not entitled to the payment of social security contributions because of reduced working hours.

We sent the MDDSZ an opinion stating that parental care insurees under the ZSDP include the self-employed. For parental care the insuree pays a contribution and the employer pays a contribution. In the case of the insuree being self-employed, he is also liable, in accordance with Article 11 of the ZSDP to pay the employers' contributions. If, then, self-employed persons pay all contributions for parental care (both insurees' contributions and employers' contributions), we can see no reason for a narrower scope of parental care rights. We consider that the complainant should not be deprived of parental care rights for which she has paid contributions merely because she does not have an employer. As a self-employed person she should not be in a worse position than a mother who is also the founder and director of a unipersonal company and who can therefore issue herself a resolution on reduced working hours. We proposed to the MDDSZ that they re-examine the whole case taking into account the views stated above, and that if they identify regularities they should evaluate the possibilities of changing the decision that is in their own competence. When we finally received their reply after five months, it merely repeated the positions stated in the explanation of the decision by which they refused the appeal of the complainant against the decision of the first-instance body. **4.1-63/2002**

22 - BANKRUPTCY OF A SHELTERED COMPANY

The complainants are employees of a sheltered company and have been waiting for several months for the company to pay them the statutorily defined remuneration. The company management has proposed the institution of bankruptcy proceedings because of insolvency and indebtedness but because of circumstances indicating an intentional bankruptcy the MDDSZ did not want to consent to bankruptcy until it was explained how the unsuitable and detrimental measures had come to be taken.

We made several inquiries. The MDDSZ informed us that the expert commission that supervises conditions for retaining the status of sheltered company had carried out its first control on 24 May 2002, on which occasion it identified numerous irregularities. It then made three further written requests to the sheltered company for a reassessment of the purpose of operation of the sheltered company and regulates employment in accordance with the law and rectify the irregularities identified during the inspection. However in its supervision of sheltered companies the MDDSZ commission mainly concentrates on the fulfilment of conditions relating to programmes, premises and personnel and is not competent for detailed supervision of financial operations. On 7 August 2002 the MDDSZ therefore handed the matter over to the DURS. Because they did not receive a reply, on 9 April 2003 they contacted them once again.

The MDDSZ also informed the general state prosecutor about the matter. The question of the circumstances that led to the bankruptcy of the sheltered company is now being dealt with by the public prosecutor's office and the competent criminal investigation service.

The MDDSZ assures us that given its competences it is unable to evaluate the grounds for the bankruptcy of the sheltered company, but that it has done what was possible under the circumstances so that the competent services could do this.

In the hope of speeding matters up and in this way helping the workers who for several months now have been without a means of subsistence, we made an inquiry at the DURS. On 25 August 2003 Maribor Tax Office informed us that they were planning an inspection at the sheltered company and that the procedure would be carried out before the end of 2003, while a finding (a decision) could be expected within two months of the inspection being completed, in other words almost a year and a half after they were first acquainted with the matter.

The IRSD did everything possible under the circumstances. Because of the extremely poor financial situation, after a lengthy agony and a painful wait, the majority of the disabled persons gave the employer extraordinary notice under Article 112 of the ZDR, although some of the workers had worked at the company for 20 years. They only did this because of social security, since in this way they were able to pass to the ZRSZ and get unemployment benefit. They obtained the right to severance pay stipulated for the regular termination of a contract of employment for business reasons, and for compensation at least equivalent to their lost earnings during the notice period, but not the right to settlement of liabilities deriving from the rights of workers in the case of insolvency of the employer at the JPSRS. **4.1-13/2003, 4.1-16/2003, 4.1-27/2003, 4.1-29/2003**

23 - OPENING HOURS OF SHOPS

We had two meetings with the leaders of the Retail Workers' Union of Slovenia (ZSSS) and discussed the opening hours of shops. The ombudsman clearly defined the position that longer opening hours cannot be at the cost of violating the rights of workers deriving from a contract of employment. Employers must provide staff for longer opening hours either with new workers or by agreement with those workers who wish to work longer hours, in exchange for appropriate overtime payment or the possibility of utilisation of hours.
4.1-20/2003

24 - EMPLOYMENT OF AN ELDERLY UNEMPLOYED PERSON

The handling of a case of looking for a job for an elderly unemployed person ended successfully, thanks to our persistent interventions at both the MDDSZ and the competent unit of the ZRSZ, with the employment of the complainant for a fixed term of two years. The complainant is university educated, has many years of work experience and is in good health, and thus apart from his age – 56 – there were no "poorer employment possibilities". The complainant is convinced that without our intervention he would never have found a job again. **4.2-20/2002**

25 - DELETION FROM THE REGISTER OF UNEMPLOYED PERSONS

The complainant was deleted from the register because she failed to respond to an invitation from the labour office that she did not receive because she had moved house. A post office employee failed to keep an agreement regarding the delivery of all mail addressed to the complainant, and thus a misunderstanding occurred. The complainant also alleged a lack of involvement on the part of the office in seeking ways to improve her employment possibilities. On the basis of our intervention the complainant was re-entered in the register of jobseekers, drew up a new employment plan and reached a precise agreement on the contact method (mobile phone) so that such misunderstandings would not occur again.
4.2-16/2003

26 - INTOLERABLE WORKING CONDITIONS

A complaint was sent to the ombudsman by the typists from Ljubljana District Court and Ljubljana Local Court. They drew our attention to the intolerable working conditions in some of the typing offices at the two courts: a serious lack of space and no possibility of suitable ventilation, intolerable heat, noise, no air conditioning, no partitions, no lockers for the typists to leave their personal effects, an insufficient number of telephones to take internal orders, only two toilets for 60 people, and so on.

We requested an inspection visit, which turned out to be partly justified. A regulatory order was issued and the employer was told to rectify some of the inadequacies and ensure that the provisions of the Health and Safety at Work Act were respected.
4.3-18/2003 and 4.3-20/2003

27 - RECTIFYING AN ERROR IN ENTERING CITIZENSHIP IN THE REGISTER

The complainant was born in the Netherlands in 1982 and via the consular mission there was entered into the register of births as a citizen of the Socialist Republic of Slovenia and the SFRY. In 1985 it was established that her father was not a citizen of the Socialist Republic of Slovenia but of the Socialist Republic of Bosnia-Herzegovina. The mistaken data was deleted from his entry in the citizenship register in Koper but in the case of his daughter it was not deleted. The father obtained Slovenian citizenship on the basis of Article 40 of the ZDRS. When submitting his application he asked whether he also had to submit an application for his daughter but the administrative body assured him that this was not necessary.

The complainant was informed by Ljubljana Administrative Unit that a mistake had occurred in the registering of her citizenship and that she was not actually a citizen of the Republic of Slovenia. For the purpose of rectifying the mistake it was proposed to her that she submit an application for citizenship on the basis of Article 19 of the ZDRS-Č. She decided not to submit this application because she felt that the state body should correct

its own mistake. It is possible to agree with her views, since individuals should not be made to bear the responsibility for and consequences of mistakes that they have not made. This applies to all mattes, and in particular to important matters such as citizenship.

After making inquiries at Koper Administrative Unit we received the reply that they were aware of the mistake made by the administrative body back in 1982 during the subsequent entry of birth, because before entering the fact in the register of births it had not established its correctness and truth in accordance with official records. The mistake was rectifiable in 1985 and even in 1992 but was not identified.

They agreed with our statement that parties should not have to bear the responsibility for and consequences of mistakes that are not their fault. They are also aware that citizenship is such an important matter that interfering with it could have far-reaching consequences for the party concerned. They therefore agreed to preserve the existing situation in the case in question, since the mistake cannot be rectified without the cooperation of the complainant. **5.1-1/2003**

28 - MISTAKENLY ENTERED CITIZENSHIP DATA

In 1992 the MNZ issued the complainant confirmation (yellow card) that she was a citizen of the RS and on 5 September 1994 the then City Secretariat for Internal Affairs of the city of Ljubljana issued her a Slovenian passport valid until 5 September 1999. The complainant's mother and sister were granted citizenship on the basis of Article 40 of the ZDRS via a decision of the MNZ dated 2 March 1992. All three received confirmation of citizenship of the RS dated 11 September 1992. Since the complainant was born in Slovenia and the MNZ had also issued her confirmation that she was a Slovenian citizen and the administrative unit had issued her a passport, the complainant's mother did not request Slovenian citizenship for her. Before the expiry of her passport the complainant requested a new one at the Ljubljana Administrative Unit, where however she was given the explanation that the data on her citizenship had been mistakenly entered into the computer record of citizens of the RS and that the Administrative Unit could not therefore issue her a new passport.

The Ljubljana Administrative Unit explained that at the end of 1990 the MNZ set up a central computerised register of citizenship. The data on the complainant's citizenship was entered wrongly in this register since the person who input the data on citizenship into this register typed X6 – SR Slovenia instead of X6 – SR Serbia. On the basis of the mistakenly entered data the complainant was issued a confirmation of Slovenian citizenship and a Slovenian passport. The Administrative Unit believes that if the data on Slovenian citizenship of the complainant had not been entered wrongly in the central computerised register, the mother of the complainant, who was a minor at the time, would have submitted on her behalf an application for citizenship on the basis of Article 40 of the ZDRS. Since 2000 the Administrative Unit has dealt with a number of similar cases arising from mistakenly entered data on citizenship. In these cases it has notified the parties concerned of its findings, compiled a report and corrected the data in the computer records and directed the parties concerned to submit a citizenship application. However in the period when the complainant was trying to renew her passport such matters were not dealt with in this way. **5.1-30/2003**

29 - INEQUALITY IN THE REPLACEMENT OF FOREIGN DRIVING LICENCES

The ombudsman received a complaint from a person who has lived in Slovenia since 1981 and was registered as a permanent resident. As the result of an interruption in his residence he did not return to Slovenia until 14 June 1997. From then until 3 July 2001, when he was issued a permanent residence permit on the basis of the ZTuj, he lived in Slovenia on the basis of a temporary residence permit. His first temporary residence permit was issued in November 1998. Then he wished to change his driving licence for a Slovenian one at the Koper Administrative Unit but was unable to do so because at the Administrative Unit he was told that he could not exchange his driving licence until he obtained a permanent residence permit. When the latter was issued he made two requests to exchange his driving licence at the Koper Administrative Unit but both his applications were rejected on the grounds that he had missed the deadline. He challenged the decisions by means of appeals, which were refused by the MNZ. He even brought and administrative dispute action against the last decision of the ministry since he feels that because his permanent residence permit was issued on the basis of the ZTuj he was placed in an unequal position compared to those foreign nationals who were issued a permanent residence permit on the basis of the ZUSDDD. **5.2-1/2003**

30 - PROTRACTED PROCEDURE FOR THE GRANTING OF ASYLUM

A family from Kosovo has lived in Slovenia since 1998 on the basis of temporary asylum. This ceased on 1 May 2000 on the basis of an order of the Government of the RS and the procedure of forcible removal from the country began. They were supposed to leave Slovenia by no later than 30 June 2000. On 30 August 2000 the family, or rather the husband and wife, requested asylum on humanitarian grounds for themselves and for their two children, with a further request on 4 September 2000 for their newborn son. However the MNZ has still not made a decision.

The MNZ explained that on 13 September 2000 two refugee counsellors had declared authorisation to represent the couple and their children in the procedure for granting asylum. On 15 December 2000 on of the counsellors informed the MNZ that she was handing the case, which related to the wife and children, to another refugee counsellor. This counsellor did not receive the ministry's summons to the first hearing on 30 August 2001 (posted on 23 August 2001) until 10 September 2001 and informed the MNZ by telephone that he did not know where the client was. In its reply the ministry further explained that it had not called the hearing before 30 August 2001 because of a telephone request from the non-governmental foundation Gea 2000 to defer the resolving of the applications because the family was still waiting for a reply from the Australian immigration authorities about their request to immigrate.

The summons to the hearing for the husband on 9 November 2001 was delivered to his representative on 19 October 2001, but one day before the hearing the MNZ received his request to move the hearing because he had to go abroad for work.

A summons dated 28 February 2002 which the representative received on 5 April 2002 summoned the wife to a hearing. The representative attended the hearing himself and

made the statement that owing to his commitments and because he had only received the summons on 5 April 2002 he had not been able to notify the client about the hearing in time; he requested that the hearing be moved.

A summons dated 28 February 2002 summoned the husband to a hearing on 16 April 2002 but one day before the hearing the ministry received a request from his representative to postpone the hearing because of illness.

Two summonses dated 25 April 2002 once again invited both spouses to a hearing. Their representatives received the summonses on 6 May 2002. Both applicants replied to the summons and attended the hearing (the wife on 28 May 2002 and the husband on 7 June 2002). The MNZ informed us that the family's request will be resolved within two weeks.

The reasons that the procedure as lasted so long are to be found in the actions both of the MNZ and of the family's representatives, while part of the fault lies with the family itself, which was still waiting for a reply from the Australian immigration authorities (it was in its interest to wait until receiving this reply before continuing with the procedure). The lengthiness of these procedures is, according to MNZ statements, largely due to understaffing at the Asylum Department and a large number of unresolved cases at this department some of which are given priority treatment (unaccompanied minors, mentally ill and very old people). Despite this we considered the complaint to be justified since more than three years since the lodging of the family's request for asylum a decision had still not been made. **5.2-36/2003**

31 - SPEEDING UP A DENATIONALISATION PROCEDURE

The complainant turned to the ombudsman because of the length of time taken to settle a denationalisation claim. She is the legal successor to a deceased denationalisation beneficiary. She filed the claim ten years ago but it has still not been resolved. At present a preliminary issue is still being resolved: establishing the citizenship of the beneficiary. The complainant asked us to speed up the matter at the competent bodies.

In relation with the case the UE issued a decision on 10 December 2002 establishing that the denationalisation beneficiary was not a citizen of the SRS and the SFRY and that even under the regulations on citizenship that applied in the territory of the RS from 28 August 1945 until his death he did not count as a Yugoslav citizen. The complainant did not agree with the decision and therefore appealed to the MNZ which however after more than two months has not decided on the case.

Following our warning that the statutory deadline for a decision had already expired, the ministry issued a decision within one week. **5.3-11/2003**

32 - NOTIFICATION OF THE RIGHT TO WRITE OFF CONTRIBUTIONS

The complainant requested the write-off of a debt arising from unpaid contributions for compulsory pension and disability insurance. He sent his application to the institute with all the necessary proofs. Horrified that the institute dismissed his application by means of an ordinary notification, he turned to the ombudsman for intervention. The complainant believes that the notification, signed on behalf of the administrative committee of the institute that decided on his application by the head of the competent service, is not appropriate. The notification was sent by ordinary mail. Neither is their any legal remedy against a decision of the administrative committee of the institute (the notification), and therefore the complainant proposed that the ombudsman take appropriate action. In his opinion specific rules both in the formal and substantive senses should apply to the Institute, which is a bearer of public authority, when deciding on the rights of insurees.

Naturally we fully agreed with his comments and agreed that this was not right. Since we also believe that such a situation must not be allowed to continue, we assured him that we will once again call on the competent ministries to propose the adoption of appropriate amendments and additions to the ZPIS-1 and the ZDavP or the adoption of other solutions if the proposal to amend these acts is not accepted. **5.5-33/2003**

33 - PROBLEMS WITH THE CONSIGNING OF DOCUMENTS

At the time of the serving of a decision on income tax, the complainant's mother was in hospital having suffered a stroke. When the postman left a note saying that the document had arrived, the complainant went to the post office and explained to the employee there that his mother could not collect it in person and, as a result of the stroke, could not give him her authorisation either. He showed the employee his identity card and that of his mother and proved their identity (same surname and same address thus proving that they were related). The employee refused to give him the document and insisted that it had to be consigned to the addressee in person or on the basis of his mother's authorisation.

The post office employee acted in accordance with regulations and the rules on post office services. She cannot be accused of doing anything wrong. But the question raises itself as to how to act in accordance with her instructions if it is simply not possible to do so. The person to whom the decision of the tax office was addressed could not receive it in person because of her illness, while she was also unable to authorise her son to do this for her since her hands were paralysed. In a case which is an extraordinary situation, where regardless of the regulation prescribing compulsory delivery in person a normal, realistic measure is to be expected, it is difficult to accept that it is not possible to act in any other way.

In response to our inquiry Pošta Slovenije told us that they have encounter numerous problems with compulsory personal service (of documents etc.) and that addressees are often dissatisfied. They therefore intend to have a meeting with the MNZ, which is responsible for the implementation of the ZUP, and inform them about the problems relating to service, including the problem deriving from this complaint. The DURS's reply focused on formal issues. They advised us to apply to the MNZ, which is preparing changes to the ZUP, and propose a suitable solution. Clearly they are not interested in the problem. **5.5-48/2003**

34 - A COMPLAINT FROM 2002 IS NOT ON THE SCHEDULE OF CASES TO BE SETTLED IN 2003 (OR EVEN IN 2004)

Dissatisfied with the decision of the first-instance customs office on the repayment of excise duty, the complainant appealed on 2 August 2002. The competent body had not decided on his appeal. We excused the delay in issuing the decision on his appeal on the grounds of possible delays in the transfer of competence from the Head Office of the Customs Office, the competent appellate body, to the Ministry of Finance. When after more than a year a decision had still not been made on the complainant's appeal we inquired about the time frames relating to the handling of excise duty appeals and on 17 November 2003 received the following reply:

"The Ministry of Finance [...] settles appeals with regard to time of arrival and in accordance with appeal settling schedules. [...] N.N's appeal, which was received on 20 August 2002, is not in the schedule of cases to be settled this year. The appeals schedule for 2004 has not yet been prepared but nevertheless we estimate that N.N's appeal will be settled at the end of 2004 or the beginning of 2005." No comment. **5.5-59/2003**

35 - THE RIGHT TO A TAX REBATE ON A MOTOR VEHICLE ONLY IF THE BILL OF SALE AND THE DRIVING LICENCE ARE ISSUED IN THE NAME OF THE DISABLED CHILD

The complainant is the father of twins, both of whom are registered as having a serious physical handicap or physical and mental development disorder. After buying a vehicle in order to be able to transport them, he claimed exemption from road tax. The tax body dismissed his application on the grounds that the invoice for the purchase of a new motor vehicle and the road licence do not refer to a disabled child. The complainant, who naturally appealed against the decision, questions the sense of the legal regulation to which the tax office refers and at the same time requests that the matter be resolved as soon as possible, since he believes that it involves a violation of rights, particular because it involves persons who as a result of their disability should already be entitled to have their applications addressed more rapidly. The complainant himself is a 100 per cent civilian war invalid. **5.5-79/2003**

36 - ERRONEOUS INTERPRETATION OF ARTICLE 24 OF THE ZIN

The complainant complained to the ombudsman that inspectorates are failing to respond to her reports of illegal activity. In response to our inquiry, the Labour Inspectorate replied that it had not sent a notification to the complainant because it considers that in accordance with Article 24 of the ZIN inspectors are only obliged to deal with reports on matters which fall within their competence and to send notifications to the persons making these reports if so requested.

We communicated to the inspectorate the opinion that such an interpretation of Article 24 of the ZIN is not in accordance with the regulation or with the principle of good adminis-

tration. The article in question provides that the inspector must deal with reports, complaints, communications and other applications in matters within his competence and inform the person making the report about the measures taken if requested to do so. Undoubtedly the inspector can only inform an applicant about measures that he has ordered in accordance with his competences, but he is obliged to respond to an applicant if the latter requests this even if he finds that there are no violations that could be the basis for measures or if he finds that the matter does not fall within his competence. Measures taken by an inspector, about which the applicant has the right to be informed, can be active or passive – a measure or the omission of a measure; the latter can also be the consequence of the matter not falling within the inspector's competence. The position is not so different to a case where a party requests the introduction of an administrative procedure, where there is not the slightest doubt that the party must receive a reply in a suitable form even when the request is not justified or if he has applied to a body that is not competent for the matter in question. If the body establishes that it is not competent to address a received application but there is no doubt about what body is competent, the first body is obliges to send the application without delay to the competent body or court and to inform the applicant of this (fourth paragraph of Article 65 of the ZUP). Referring to the fact that at the time of the inspection the authorised employee of the Labour Inspectorate did not find out whether the alleged offender had actually carried out the offence, and the fact that the market inspector and the planning inspector had already prohibited the carrying out of work at the stated location on several occasions, there cannot be a reason why the case was not passed on to the competent inspectorates, if it was established that it fell within their competence.

The Inspectorate replied that labour inspectors deal with every application they receive, as is also evident from the matter in question. Although it followed from the application that the matter did not fall within their competence, the inspector tried several times to carry out an inspection. Inspectors generally inform applicants about their measures, both active and passive, and this is also what happened in the case in question. According to the statements of the inspector who dealt with the case, information about the procedure was given to the complainant by telephone, and the competences of the Labour Inspectorate were explained to her. They do however confirm that the inspector did not inform the complainant of this in writing, since on the basis of a very general application and a verbal notification he considered that a conversation about competences would suffice. The inspector did not pass the report on to the other inspectorates but his decision not to do so was taken on the basis of the complainant's statement that she herself would report the matter to all the other institutions. **5.7-25/2003**

37 - PAYMENT OF ADMINISTRATION FEES IN THE PROCEDURE FOR DETERMINING PERSONAL CONTACTS BETWEEN CHILDREN AND PARENTS

The complainant informed us that in the procedure of determining contacts between children and parents Laško CSD had requested from one of the parties to the procedure payment of an administrative fee for the application and the decision. We established that such action by the CSD is in direct contradiction to the provision of Point 14.a of Article 28 of the Administrative Fees Act (ZUT). The Office for Organisation and Development at the MNZ and the MDDSZ informed us that the CSD had spotted the mistake in good time and that therefore the party concerned would not have to pay the administrative fee. At the same time the CSD apologised to the party for the mistake. We considered the complaint

to be justified since the CSD had not acted legally. The State or its bodies should not be allowed to make such mistakes, even out of negligence. In the specific procedure in question, the error had no detrimental consequences for the party concerned. We considered that CSD Laško's apology was appropriate. **5.7-33/2003**

38 - RENEWAL OF A DRIVING LICENCE

The complainant informed the ombudsman that he was a professional international heavy goods vehicle driver. As a result of his health problems he was first given Category III disability status and for this reason the company that employed him moved him to a job at the border crossing where he drove lorries from the Slovenian terminal to the Italian one and vice versa. At a regular medical examination for drivers of Category A, B, C and E motor vehicles carried out on 6 October 1994 he was assessed as being unfit to drive motor vehicles of Categories C and E. When his disability was reassessed on 14 November 1994 the disability commission of the ZPIZ in Nova Gorica gave an expert opinion on the basis of which he was granted Category II disability status because of illness. It was also established that as the driver of a lorry on the public highway he was not capable of doing his job on a full-time basis, but that as a driver (the category of vehicle is not stated) at the Vrtojba border crossing he was capable of working on a part-time basis. The complainant stated that he worked as a part-time driver at the border crossing until 1996, when the company that employed him ceased trading because of bankruptcy. Immediately following the bankruptcy of the company UE Nova Gorica invited him to surrender his driving licence and also informed him that his driving licence for category C and E vehicles had been invalid since 1994.

UE Nova Gorica informed us that the complainant was sent for a periodic medical examination for motor vehicle drivers at which on 6 October 1994 he was issued a doctor's certificate containing the assessment that he was permanently unfit to drive vehicles of category C and E. In the light of the findings of this medical examination the UE summoned the complainant on several occasions in 1995, 1996, 1999 and 2000 (!) in order to inform him that he had to replace his driving licence, but he failed to respond to the summons. Then on 5 January 2001 the UE issued a decision on the withdrawal of his licence to drive vehicles of categories C and E. The complainant responded to this decision and declared at the UE that he would submit to a new medical examination at his own expense because he did not agree with the finding contained in the doctor's certificate. The UE explained to him that he could file an objection to the doctor's certificate with a special medical commission within fifteen days of receiving it. Following a new medical examination on 6 February 2001 the complainant was issued a doctor's certificate containing the assessment that he is fit to drive motor vehicles of categories A and B for a period of seven years and permanently unfit to drive vehicles of categories C and E. In relation to this doctor's certificate the complainant declared at the UE that he would file an objection with the special medical commission but the UE has not received a doctor's certificate from this commission issued on the basis of the complainant's objection.

UE Nova Gorica further explained that in issuing and extending driving licences it is obliged to take into account only those doctor's certificates on the physical and mental ability to drive a motor vehicle that are issued by authorised medical organisations or authorised private doctors who carry out such examinations in accordance with the second paragraph of Article 161 of the ZVCP.

We explained to the complainant that the disability commissions of the ZPIZ are not among the organisations authorised to carry out medical examinations for the drivers of motor vehicles. Therefore the UE was not obliged to take into account their assessment or opinion in the procedure of issuing or extending a driving licence. The basis for this is provided by the law itself. Additionally a doctor's certificate for drivers of motor vehicles issued by an authorised organisation and an expert opinion given by a disability commission differ both in nature and in content, while even the purpose for which they are issued is different. Doctor's certificates for drivers of motor vehicles are issued by authorised medical organisations, whereby they establish the conditions defined by regulations that drivers of motor vehicles must fulfil in order for a driving licence to be issued or extended. Disability commissions, which are expert bodies of the ZPIZ, issue expert opinions when an expert opinion on, for example, disability, the need for permanent assistance and attendance, unfitness for work, etc. is necessary in order to establish the rights deriving from pension and disability insurance.

All of the above is of course true, despite the fact that it is unusual and disturbing that two medical commissions give different assessments of an individual's fitness for a given job, though in a different procedure and with a different purpose. **5.7-34/2003**

39 - ADAPTATION OF RESOLUTIONS TO THE GENDER OF INSUREES

A complainant informed the ombudsman that the Regional Unit of the ZZZS in Koper had issued him a resolution on temporary unfitness for work in the shape of a standardised form with non-gender-specific terminations (*zavarovanec/ka, imenovani/a, zdravnik/ca*, etc.). He felt that this was a personal communication and that through appropriate use of the database, which in addition to basic data contains a record of the gender of each individual, the ZZZS could ensure that its decisions were more personal and adapted to the gender of the person to whom they refer.

We proposed to the ZZZS that it study the possibility of the data of parties (and other persons mentioned) on forms and in decisions issued to parties be given with the gender-specific termination appropriate for the person to whom they refer.

The ZZZS informed us that they had introduced this method of work – including the use of standardised forms – mainly because of the large number of very different matters dealt with by appointed doctors and medical commissions (in the period 1 January 2003 to 31 March 2003 appointed doctors and medical commissions issued 96,165 resolutions). In order to avoid an even greater workload for the appointed doctors and medical commissions, the competent bodies of the ZZS issue resolutions on pre-prepared or standardised forms, which is enabled by the corresponding computer support. This solution is also in accordance with Article 144 of the ZUP, which regulates fast-track declaratory proceedings, and ensures the undisturbed work of the competent bodies of the ZZZS. If the ZZZS were to adapt standardised resolutions and other documents to the gender of the insuree concerned, this would be an additional burden for the existing computer application since it would double the number of forms or resolutions. As a result of limited technical capacities such changes would have the effect of prolonging the time necessary for a decision on individual rights. This however is not compatible with procedures that are defined as "fast-track" and on which can depend the employment of the insured person or specific treatment procedures. The ZZZS further emphasises that the fact that resolutions are not gen-

der-specific does not affect the right being exercised by the insured person. These considerations notwithstanding, the ZZZS will take into account our proposal and within the framework of the technical capacities of the existing computer program will try to find suitable solutions. **5.7-54/2003**

40 - INSPECTION OF ADMINISTRATIVE FILES

In relation to the handling of a complaint about the conduct of the IRSOP following the report of building work by a neighbour, the inspectorate informed us, among other things, that only the party to a proceeding has the right to inspect the file and copy documents. We drew their attention to the second paragraph of Article 82 of the ZUP, according to which, in addition to the parties to a proceeding, anyone else who can show that a legal benefit would derive from this has the right to inspect the files of a case and copy the necessary files at his own expense. It was therefore overhasty to refuse the applicant the right to inspect the file without first evaluating whether he had demonstrated a legal benefit. Notwithstanding the fact that the seventh paragraph of Article 82 of the ZUP provides that a special appeal against the refusal of the requests under this article is permitted even when a written resolution has not been issued, we proposed that the complainant's request be evaluated and a decision issued by means of and administrative act.

The inspectorate fully concurred with our opinion and ensured us that the competent inspector would make a decision on the request in accordance with Article 82 of the ZUP. **5.7-70/2003**

41 - PROTRACTED PROCEDURE FOR GRANTING THE STATUS OF VICTIM OF WAR VIOLENCE

On 16 January 1996 the complainant filed a request for acknowledgement of the status and rights of a victim of war violence/deportee. UE Ljubljana partially approved his claim. His appeal in administrative procedure and action in a subsequent administrative dispute were dismissed. He did however win his appeal at the Supreme Court, which overturned the judgment of the administrative court by means of an order dated 24 January 2002. In the new procedure the latter annulled the decision of the MDDSZ with a judgment dated 8 April 2002, after which the ministry annulled the appealed decision of UE Ljubljana with a decision dated 2 July 2002. After repeating the procedure, UE Ljubljana issued a decision dated 8 May 2003 against which the complainant lodged an appeal.

We have not gone into the content and explanation of the individual decisions in the case in question. However on the basis of the time frame within which the individual decisions were issued, we could not ignore the fact that from the filing of the complainant's request (16 January 1996) to the issuing of the first decision in the procedure over a year had passed, and that more than seven years passed from the filing of the request to the issuing of a new first-instance decision and that the UE needed almost a year for this from when its first decision was annulled by the ministry. There is no excuse for a procedure lasting seven years (and no end is yet in sight), since it has lasted beyond all reasonable limits. The

reasons for such a lengthy procedure, particularly in the case of individuals claiming status under the "war laws" who as a rule are elderly persons, are not relevant. This also applies to the complainant, who is 72 years old and who, with regard to the duration to date of the procedure for granting him the status and rights of a victim of war violence, wonders when, if ever, he will see the issuing of a lawful and correct decision.

Since from the ombudsman's point of view and from the point of view of good administration the described situation is unacceptable, we proposed to the MDDSZ that it decide on the complainant's appeal against the decision of the UE within the deadline specified under Article 256 of the ZUP. At the time of preparing this annual report we had still not received a reply from the MDDSZ. Despite the fact that we have received fewer complaints relating to the lengthiness of the appeals procedure at the MDDSZ in cases of granting the status and rights of victim of war violence, this case shows that the ministry is still not settling appeals within the statutory deadline. **5.7-86/2003**

42 - A PUPIL'S DIFFICULTIES IN ENROLLING IN A UNIVERSITY COURSE

A special needs pupil requested our intervention over her enrolment in the university course of her choice. She had stated three choices on the enrolment form because the school advisory service had not warned her in time that given her state of health following injuries received in a road accident she could only enrol in a course which she had some chance of completing and which would allow her to hold a job in her chosen profession. As a result the university enrolment and information service, despite her status as a special needs candidate, classified her in the programmes for which she wanted to enrol under the regular procedure in accordance with regulations. On the basis of the resolution she received on the result of the first round of the selection procedure for enrolment in the first year, she was classified in the last of the three study programmes she had indicated in her first enrolment application. She appealed against the resolution but the Commission did not grant her appeal since she was unable to prove a worsening of her state of health, which would be the only grounds for a new decision.

We advised the complainant to turn once again to the Appeals Commission of University Ljubljana. Thanks to the great understanding of the president and members, the commission found grounds for repeating the procedure and placed the candidate on her desired course. According to information from her mother, she is satisfied with her course since she is doing well despite the fact that it takes her more effort and more time to achieve her goals than it does the other students. **5.8-48/2003**

43 - A PROPOSAL FOR THE DISMISSAL OF THE DIRECTOR OF A PUBLIC INSTITUTION - THE OMBUDSMAN'S COMPETENCES ARE NOT CLEAR TO EVERYONE

Two members of the board of public institutions informed us in a complaint that they had sent to the board of the institution a proposal for the early dismissal of the director, whom they accused of irregularities in the running of the institution, in business and in her attitude towards employees. We replied with a request to the president of the board for a copy

of the reply that would be sent by the board to the signatories of the proposal. A few days later we received a letter from the director's lawyer in which she informed us that as the authorised agent of the institution she was not familiar with the case but that she would forward our letter to the president of the board. She stated that a public institution is not a state authority, local government authority or bearer of public authority and is therefore not obliged to respond to the ombudsman's inquiries. She then informed us about the ombudsman's statutory competences. She believed that the decision of the board about the proposal of two of its members did not concern their human rights and fundamental freedoms, for the protection of which the ombudsman's intervention would be necessary. She drew our attention to respecting the provisions of the law, where she considered that our letter did not mean exercising the functions of the ombudsman. For this reason her client was not obliged to respond to the ombudsman and in any case the decision would be taken by the board. She ended the letter by expressing the hope that the fact that one of the members of the board who had signed the proposal for the early dismissal of the director was related to an employee of the ombudsman's office would not influence the ombudsman's intervention or actions in the matter in question. It is possible to conclude from the lawyer's letter that she believes that with his response the ombudsman has already overstepped his statutory authorisations.

We explained our response to the lawyer. The founding charter of the institution defines its activity as a public service whose provision is in the public interest. The provision of educational programmes and the issuing of public certificates means that the institution is the bearer of public authority, which is also evident from its stamp, in the centre of which is the national coat-of-arms.

The statutory powers of the ombudsman allow him to appeal in his interventions to the principles of good administration (Article 3 of the ZVarCP). Besides the violation of human rights or fundamental freedoms he may also identity other irregularities (Articles 30 and 39 of the Act). In the case of violation of the principle of good administration or other irregularities we are often very close to a violation of human rights, since for example the failure of a body to decide on a matter for which it is competent, or an unsuitable justification of the decision of such a body does not only mean a violation of the principles of good administration or an irregularity but a violation of the rights to a legal remedy and judicial protection under Articles 25 and 23 of the Constitution of the Republic of Slovenia. Taking into account Article 25 of the Act, the ombudsman may communicate his opinion on a case to anybody, regardless of the type of stage of the procedure in progress. As regards the family connection between the board member and an employee of the ombudsman's office, we only found out about that from her letter and thus this circumstance could not have influenced our response. The handling of cases when family ties exist between the party to the procedure and the official conducting the procedure and deciding on it is regulated by the ZUP. In accordance with the Standing Orders of the Human Rights Ombudsman, in such cases its provisions on the exclusion of public officers are mutatis mutandis applied (Article 24 of the Standing Orders). The letter, in which we merely requested a copy of the reply to the signatories of the proposal, cannot therefore be considered an intervention of the ombudsman or a measure, since in the matter in question we first made the necessary inquiries, on the basis of which the ombudsman decides about further procedures. The ombudsman's "intervention" was thus in no way contrary to his statutory authorisations.

We did not receive a reply to our request from the board of the institution. We have however learned from the public media that the board has dismissed the director. **5.8-56/2003**

44 - A MAYOR'S DECISION ON PARENTS' APPEAL

The parents of a pre-school child complained to the mayor about a decision dismissing an application for a reduction in nursery school fees that they had lodged on the basis of Article 12 of the Rules Covering the Fees Paid by Parents for Nursery School Programmes because of a change in the economic situation in the family. The mayor dismissed the appeal and the parents turned to us, convinced that the mayor's decision was incorrect and the issued act incomplete.

After studying the complaint we established that even the explanation of the first-instance decision was inadequate since it was not evident from it how the average monthly income per family member was calculated. Likewise, without a thorough knowledge of the regulations it was not possible to understand the payment class classification. We also found unsuitability and inadequacy in the decision of the mayor, who as the second-instance body had dealt with the parents' appeal and refused it. The decision did not contain a decision on the appeal but a decision on the application to reduce the payment of fees, and neither did it rectify the inadequacies of the first-instance decision. The establishing of the actual economic situation of the family was inadequate and unexplained; there was a complete absence of an evaluation of the appeal allegations; the legal caution about the legal remedy was inadequate since it did not state the deadline for the institution of an administrative dispute or the addressee of a claim. The decision was therefore also contrary to the third paragraph of Article 215 of the ZUP and with the fundamental principle of the protection of the rights of the individual and the protection of the public interest (Article 7 of the ZUP).

We sent the mayor our opinion and proposed that he re-examine his decision while studying all the possibilities of re-adjudicating the matter. According to our information the mayor observed our proposal, and likewise in the new decision-making procedure the inadequacies we had identified were rectified. **5.8-75/2003**

45 - DELAYS WITH A DECISION IN DISCIPLINARY PROCEEDINGS

Despite the instruction of the complainant a lawyer failed to file an action at the competent labour court over the disciplinary measure of termination of employment. On 25 April 2001 the complainant reported the lawyer to the Chamber of Attorneys for unconscientious and negligent conduct. On 18 October 2001, the disciplinary prosecutor filed a request for the institution of disciplinary proceedings against the lawyer. Since the complainant has not received notification of the progress of the proceedings for almost two years, he turned to the ombudsman. He was afraid that the prosecution of the lawyer for the disciplinary violation would lapse.

The Chamber of Attorneys explained to us that the first-instance disciplinary commission had set the hearing of the complaint for 17 October 2003. The hearing of the case was therefore expected more than two years after receiving the report and only after the intervention of the ombudsman. **6.0-48/2003**

46 - THE POLICE FAIL TO RESPOND TO AN EMERGENCY CALL

The complainant's former partner had been served an injunction prohibiting him from going with a hundred metres of her. The former partner failed to respect this measure and entered her flat and remained there for a considerable time. Because of the breach of the injunction the complainant called the police on the emergency number (113). The police officer who took her call replied that the police could not intervene in her case. He suggested that she should call the police if her former partner was violent towards her, while in the case of other violations she should submit a proposal to Maribor police station.

The police confirmed that the complainant had called 113 and reported the violation of the injunction and violent behaviour on the part of her former partner. However, the police officer who took her call did not act in accordance with his authorisations. On receiving notification of the violation of an injunction he did not inform the competent police station or make a record of the notification. He should have sent police officers to the scene to collect the necessary information so as to inform the court that had ordered the injunction of their findings.

If a defendant fails to respect or flouts a court injunction to stay a certain distance from a specific place or person, custody can be ordered against him (second paragraph of Article 195.a of the ZKP). Thus only as a result of our intervention did the police officer write an official note of the complainant's call on the basis of which Maribor police station II reported the violation of the injunction to Maribor Local Court, which had previously extended this measure. As a result of the police officer's error, Maribor Police Directorate took steps in order to ensure that similar irregularities do not occur in the future. **6.1-9/2003**

47 - THE FORMS USED BY BORDER CONTROL POLICE SHOULD ALSO BE IN MAJOR WORLD LANGUAGES

A police officer at PMP Dobova who was on border control duty noticed, while checking the passport of a Spanish citizen, that on the page where the passport holder's photograph was attached, the protective film had come unstuck. This made her suspect that the passport could have been forged. Since the foreign national had no (other) document valid for crossing the border, he was denied entry to the Republic of Slovenia. Until the arrival of a train to take him back to the Republic of Croatia he was detained at the PMP Dobova and an official note drawn up and given to him to sign. Since the columns of the official note form were in the Slovene language, the police officer explained them to him in English. The foreign national did not want to sign the official note because the form was in Slovene, a language he did not understand, and he did not trust the verbal translation of the police officer.

Detention is a measure that encroaches on the personal liberty of the individual. The State Border Control Act obliges the police to immediately inform a detained person of the reasons for his detention. If detention lasts more than six hours, the police must issue a written decision. While the detention lasts, the detained person has the right to appeal against the decision on detention.

Circumstances at the border (in the case of the entry of a foreign national into the country) require suitably effective and rapid measures on the part of police officers and adaptation to the nature of the work. A verbal translation of a document which is given to a detained person to sign is one way of acquainting a foreign national with the contents of the document if he does not understand the language in which the document is written. However, in many cases foreign nationals do not know the language of the country they wish to enter. They do not know the country's legal system and the rights that pertain to them. Thus they can be mistrustful of a verbal translation made by the very body that is dealing with them.

A retained person signs a document written in a language that is foreign to him. By signing the official note he confirms that he is acquainted with the content of the form. While the detention lasts, the detained person has the right to appeal against the decision on detention. But a foreign national can only make full use of this right if he is acquainted with the content of the decision. A mere verbal translation is not enough here.

We communicated to the General Police Directorate the view that it would be a good idea if the forms used by the police when carrying out border control (particularly in the case of an encroachment on personal liberty such as detention) were also written in major world languages or in the language of the persons who most frequently cross the border at the border crossing in question. The detained person could thus read the form without difficulties and acquaint himself with its content. In this way it would be documented in a reliable way that the detained person really had been acquainted with the content of the form which he has signed.

The General Police Directorate agreed with our suggestion that the forms used by the police in border control could also be written in major world languages or in the language of the persons who most frequently cross the state border, and informed us that they had sent this suggestion to the competent technical service to study it and put it into effect.
6.1-60/2003

48 - THERE WAS STILL TIME TO PREVENT THE LAPSING OF CRIMINAL PROSECUTION

The complainant, the father of a juvenile injured party, drew our attention to the limitation of criminal prosecution in a case at Ljubljana Local Court under Case No. II K 251/99. As a result of the limitation of prosecution Ljubljana Higher Court refused the charge that the defendant had committed, to the detriment of his daughter, the criminal offence of endangering safety as per the first paragraph of Article 145 of the KZ. The complainant's requests and reminders in an effort to speed up the procedure and have it dealt with in good time so that prosecution would not lapse were in vain.

The court accepted the charge for hearing more than two years after it was filed. The trial was postponed twice. Over a year passed from the postponement of the trial to the next setting of a date for the trial. When the court reached a decision in the case and pronounced a judgment, less than two months remained until the absolute limitation of criminal prosecution. Given the threat of limitation, it was to be expected that the judge would quickly draw up the judgment in writing and see that it was served on the parties in good time. Rapid action in relation to the lodged appeal could have contributed to preventing limita-

tion. However, the judgment was dispatched almost a month after it was pronounced, while the lodged appeal was sent to the prosecutor's office (only) four days after it was received. The submission report did not contain a warning about the imminent limitation of criminal prosecution. Thus the appeal court was not warned about the chronological circumstances that it should have taken into account in setting its schedule. A timely decision on the appeal could have prevented the limitation of criminal prosecution, since despite the lack of time circumstances still permitted this (the appeal court had five days in which to make its decision).

We considered the complaint to be justified since we identified a violation of the constitutional right to judicial protection. The criminal proceeding was completed with a formal finding that criminal prosecution was no longer admissible.

While the defendant was perhaps satisfied about the limitation of criminal prosecution, this certainly does not apply to the complainant. As the father of the injured party the episode left a bitter taste, understandably, since the State had let him down and failed to protect the victim of a criminal offence. As the result of the limitation of prosecution a substantive decision on the charge was not actually made. Thus in this case too we can state that the court did not ensure a rapid and effective judicial procedure. **6.3-11/2003**

49 - TEST CASES

In order to exercise rights deriving from employment, employees of the Bank of Slovenia brought an action in 1995, and then again in 1996 and 1997. The court settled two cases as a test case. In its reply to the control appeal, it stated that it would continue the unresolved cases as soon as it had received the decision of the Higher Labour and Social Court on the appeals, and by the last quarter of 2002 at the latest. The complainant was informed that the higher court had decided on the appeals in June 2002. Nevertheless, the procedures in the other matters had still not begun by the beginning of 2003.

The Labour and Social Court in Ljubljana explained to us that the main hearings in some of the cases were fixed for 3 April and 10 April 2003. In the complainant's case the main hearing will probably take place at the end of April or in May. The cases have been waiting for a decision from the Supreme Court on the revisions that were submitted in the test cases.

There is no doubt that the test case is a suitable method in the case of a large number of identical claims. When its judgment is confirmed by a higher court, the court of first instance knows that its decision was the correct one. Subsequently the resolving of the other cases is easier and, above all, quicker. However, the court has to start dealing with test cases immediately and must resolve them with particular speed. Otherwise it can occur that the procedure in these cases lasts several years. In the case in question the Labour and Social Court responded that the cases would already be on the schedule at this court if they had not waited for the completion of the test procedures. **6.5-1/2003**

50 - A DECISION ON HALTING A GENERAL OFFENCES PROCEEDING WAS SENT MORE THAN FIVE YEARS AFTER IT WAS ISSUED AND IT TOOK MORE THAN A YEAR AND A HALF FOR A DECISION ON THE DECLARED COSTS

On 13 August 2001, the complainant, the counsel for the defendants in a misdemeanour procedure, sent an application to the Celje general offences judge in which in cases P 5890 and P 5891/95 he requested the issuing of a decision on stopping the proceeding because of limitation and at the same time declared the costs of his representation. Since over a year and a half later no decision had been made on his application, he turned to the ombudsman.

The general offences judge explained that a decision on the halting of the general offences procedure because of the limitation of prosecution was issued on 18 December 1997. However, this decision was not on that occasion sent to the counsel. The application of the complainant from 13 August 2001 in which he requested the issuing of the decision and at the same time declared the costs of his representation was placed in the files but the folder containing the two files was placed with other files. The general offences judge confirmed the mistakes in operation, which should not have occurred. He also referred to the fact that judges are burdened by a large number of cases, which causes difficulties in the transparency and manageability of cases.

We agreed that a case like this should not be allowed to occur. We also expressed a doubt that being overburdened by work in other cases can be an excuse for not sending a party a decision on the halting of a procedure because of limitation until more than five years after it was issued, and for not deciding on the declared costs of the procedure for more than a year and a half. The mistakes were probably more the consequence of insufficiently careful work by the judge, who should have seen to the serving of the issued but not sent decision on the halting of procedure and to a timely decision on the declared procedures. In the case of irregularity in the work of a state body in relation to the individual concerned, at least an apology is in order. We therefore proposed that the general offences judge send a written apology for the mistakes to the complainant.

The general offences judge additionally explained that even before this, the earlier practice – whereby decisions on the halting of a procedure because of limitation were not sent to the defendants but only to the proposer – had been changed. Given that all the systemised staff positions are occupied, and taking into account the fact that the influx of cases has not increased significantly in recent years, he does not expect a case like this one to occur again. **6.6-12/2003**

51 - A WAIT OF MORE THAN A YEAR AND A HALF FOR A DECISION ON AN APPEAL AGAINST SUSPENSION FROM SCHOOL

The educational measure of suspension from school until the end of the 2001/02 academic year was ordered against the complainant's son. The pupil, via his mother as his legal representative, filed an appeal against the final decision of the school board at the Administrative Court of the Republic of Slovenia on 8 March 2002 in order to ensure judicial protection of his rights. He proposes the annulment of the educational measure and that he would be allowed back to school.

Despite the fact that the appeal related to the education of a pupil, which is something that does not permit delay, at the end of September 2003 the pupil's mother informed us that no decision had yet been made on the action and requested our help.

Following the ombudsman's intervention, the president of the court informed us that a decision was made on the appeal on 21 October 2003. The matter was given "priority" treatment and its settlement was "additionally speeded up" on the basis of an order issued as a result of our intervention. However, more than a year and a half passed from the filing of the appeal to the decision of the court. Thus another academic year was lost for the pupil's education. **6.7-22/2003**

52 - ERRONEOUS CAUTION ON LEGAL REMEDY IN A MAYOR'S DECISION

In a decision of the mayor of Žalec Municipal Council the caution on legal remedy read as follows: "Against this decision an appeal is not permitted, while an administrative dispute is permitted. This action must be filed with the Supreme Court of the Republic of Slovenia within 30 days of receiving this decision or with any other court of regular competence."

The caution on legal remedy is a compulsory constituent element of a decision. By means of the caution on legal remedy the party is informed whether he can lodge an appeal against the decision or institute an administrative dispute or other procedure before the court (first paragraph of Article 215 of the ZUP). If an administrative dispute is possible against the decision, it must be stated in the caution, which court to turn to, and the deadline for doing this (third paragraph of the same article).

Adjudication in administrative disputes at the first instance usually comes under the jurisdiction of the Administrative Court of the Republic of Slovenia. Only in exceptional circumstances is the Supreme Court competent for adjudication in administrative disputes, in cases explicitly defined by Article 10 of the Administrative Dispute Act (ZUS). These cases do not include deciding in an administrative dispute on the legality of (final) individual acts issued by local self-government bodies. Likewise, regular courts of general jurisdiction have nothing to do with decision-making in an administrative dispute.

The ZUP and ZUS were published in the Official Gazette of the Republic of Slovenia and can therefore be presumed that everyone affected by these regulations is familiar with them and thus able to act in accordance with them. The operation of a state governed by the rule of law cannot, however, merely be based on this assumption. State bodies must actively strive to ensure that as many subjects as possible know the regulations and act in accordance with them. The caution on legal remedy of the mayor of Žalec Municipal Council quoted above is erroneous, since it directs the party to bring an action before bodies, which in the case in question are not competent to make a decision in an administrative dispute. A decision that does not contain a caution on legal remedy or which contains an incomplete or erroneous caution is defective, but not illegal to the extent that this is sufficient grounds to successfully challenge it by means of an action in an administrative dispute. However, an incomplete or erroneous caution on legal remedy may not have harmful consequences for the party to the procedure. It is true that in the case of the caution being incomplete, the party may act according to applicable regulations or within eight days request the body that

issued the decision to complete it (fifth paragraph of Article 215 of the ZUS); however, this provision is only relevant if the party actually knows the regulations.

We warned the mayor that the legal caution is contrary to the provisions of the ZUS on the competences of administrative courts for decisions in administrative disputes. We proposed to him that he ensure that final decisions of the mayor of Žalec Municipal Council on appeals be issued in accordance with the provisions of the ZUP, and that they also contain a correct and complete caution on legal remedy in accordance with the provisions of the ZUP and ZUS. The mayor took our proposal into account. **7.1-40/2002**

53 - PROTECTION OF LJUBLJANA GROUND WATER

The ombudsman received a petition from the List for Clean Drinking Water, represented at Ljubjana Municipal Council, expressing concern over the pollution of drinking water in Ljubljana with pesticides. The petition was supported by the signatures of 5,520 citizens, mainly from the Ljubljana area. Although the petition was mainly addressed to the competent state bodies, we made inquiries at the IRSOP, the Health Inspectorate of the RS and the Inspectorate for Agriculture, Forestry, Hunting and Fishing. We invited the addressees to explain to us the method and measures of the implementation of control over the use of pesticides whose introduction causes an excessive content of certain pesticides and their ingredients in the ground water in the Ljubljana area.

All of the bodies to which we addressed our inquiries sent us extensive replies with explanations of the legal regulation and supervision of the use of phytopharmaceutical substances or fertiliser in water protection areas. It is evident from their replies that this area is covered by several regulations and that several inspectorates are responsible for supervision. These are: health inspectors, phytosanitary and agriculture inspectors, environmental inspectors and water inspectors. Each inspector supervises the observance of regulations in his area of work, but if the violation is of such a nature that it affects the area of work of all the inspectors, all would have to act with regard to the facts of the case and the regulations that authorise them to take action. Given that in our experience supervision by inspectors is least effective when it is in the competence of several inspectorates, we asked the MOPE to inform us about the basis for the coordinated work of all the inspectorates in relation to the use of phytopharmaceutical substances, and requested explanations on the handling of this issue at the inspection council. The MOPE explained that the main reason the regulation of supervision by inspectors was inadequate before the entering into force of the new Waters Act was that until then the definition of the protection regime in water protection areas was in the competence of local communities, which however, did not have organised inspection services for this type of supervision. The new Waters Act charges the Government of the RS with defining water protection areas and adopting protection regime measures including supervision. On this basis the government has adopted a regulation on the protection of the Ljubljansko Polje aquifer, while a part of harmonising the draft regulations inter-ministerial coordination was carried out with regard to the scope of supervision by inspectors competent for agriculture, the environment, spatial planning and health. The ministry considers that this regulation could be model one that is satisfactorily coordinated with regard to inspection activities.

We forwarded the replies to the complainants, while also considering that our intervention had contributed to the more rapid addressing of the issue of the protection of the water

protection area in the Ljubljana area, and to the successful coordination of the bodies competent for the supervision of this area. **7.1-7/2003**

54 - REIMBURSEMENT OF ATTACHED AMOUNT IN ACCORDANCE WITH THE PRINCIPLE OF JUSTICE

On the basis of a compulsory collection order RTV Slovenia attached part of the financial receipts of the complainant because she had not paid her RTV contribution for a given period. The basis for execution was the same television set with regard to which it had already been established by two court judgments that the complainant had not used it during the period in question and thus was not liable to pay the RTV subscription. RTV Slovenia imposed on the complainant the payment of a subscription or contribution, the legal basis of which a court had refused to substantiate. Through the attachment, RTV Slovenia obtained an unjust pecuniary advantage. The complainant was also partly to blame for the situation, because she did not file an appeal against the RTV Slovenia decision. However, RTV Slovenia should not have imposed the payment on her without justification. It instituted collection procedures against the complainant even though it was already known that these funds did not belong to it.

We proposed to RTV Slovenia that in accordance with the principle of justice, it apologise to the complainant for the inconvenience and annoyance and return her the unjustly obtained funds together with the statutory default interest. RTV Slovenia assured us that on the grounds of justice they would return the forcibly collected money to the complainant in the shortest time possible. **8.2-16/2002**

55 - CONSEQUENCES OF OMITTING TO CONCLUDE A TENANCY AGREEMENT

The complainant is the former holder of the right of occupation of a "solidarity flat". She has lived in it since birth. The flat was allocated to her following the death of her father, who was the previous holder of the right of occupation. For unexplained reasons the public inter-municipal Housing Fund Maribor (the Fund) did not conclude a tenancy agreement with her. Meanwhile, the flat was returned to the heirs of the former owner. The owner sued her over irregular payment of rent. Since she does not have a tenancy agreement, the owner is also threatening her with eviction. The Fund, which placed her in this situation, refused to issue a tenancy agreement or a suitable document to replace it, claiming that the decision on the allocation of the flat was sufficient. They advised the complainant that the fact that she had not concluded a tenancy agreement was not decisive for the concluding of a tenancy agreement with the new owner and that she sue the owner for this. We were also disturbed by the fact that as a result of this, the complainant's request for the right to a reduction of non-profit rent was refused since – according to the decision of the competent service of the same Fund – she had not proved her tenant status by means of a tenancy agreement! They stated that she was living in the flat illegally. Later this was sorted out, since the complainant was issued a written explanation supposed to "confirm" the fact that on the entering into force of the Housing Act she met all the conditions

to conclude a tenancy agreement. On the basis of the above they granted her the right to a reduction in rent and in this way rectified their original decision.

The Fund was not able to give a satisfactory explanation for why a tenancy agreement had not been concluded. They tried to place the responsibility for this on the complainant on the grounds that she had not responded to an invitation to sign a tenancy agreement after competent workers who were "checking the situation in the field, left a notice telling her to call at the head office of Staninvest in order to sign a tenancy agreement".

Since the consequence of omitting to conclude a tenancy agreement are very serious for the complainant, and since under the Housing Act, the owner was the person who was obliged to conclude a tenancy agreement with the holder of the right of occupation within six months of the Act entering into force, we proposed to the Fund that it should do everything necessary to rectify the consequences of its failure to conclude a tenancy agreement and at the same time to help the complainant. **9.1-116/2001**

56 - IRRESPONSIBLE ASSURANCES

In 2000, the commission of a fund for the letting of non-profit housing issued the complainant a resolution on the extraordinary allocation of a flat because she apparently fell into the group of applicants who are most at risk because of their housing problems and other problems. In response to a question asked on 13 September 2000 as to when the complainant could expect the settlement of the resolution she had received, we received the assurance that this would be within a month or at the latest before the end of 2000. The fund did not put the resolution into effect. The complainant informed us of this on 12 February 2003.

The deadlock of already adopted resolutions in this procedure was explained by the transformation of the former housing fund of the Maribor Municipal Council into an intermunicipal housing fund. As a result of this reorganisation the competences of the former bodies of the fund were apparently terminated, while all existing lists of applicants were also supposed to cease to be valid.

We consider that the adoption of resolutions and the giving of assurances to the complainant and the ombudsman about the fulfilment of the adopted decision without possibilities for its execution is extremely incorrect, misleading and irresponsible. **9.1-13/2003**

57 - A TENANT DISTURBS OTHER RESIDENTS OF A BLOCK OF FLATS

The tenants of a block of flats drew our attention to the problems of communal living where a tenant living in a flat with her partner and a dog seriously disturbs the other flat owners through her behaviour and way of using her flat and common premises. With her behaviour (shouting, breaking things, physical attacks, offensive language) she seriously disturbs the other tenants with the result that because of her frequent violations they have

had to turn to the police for help. Despite several interventions by the police, the tenant has not ceased the violations and therefore the other householders turned to the owner of the rented flat, who warned the tenant that, within the framework of statutory possibilities for the protection of the flat owners and their property, she should cease the disturbance or he would propose the legal termination of the tenancy agreement. **9.1-77/2003**

58 - SUSPICION OF ILLEGAL COLLECTION OF DATA FROM A CUSTOMER'S BANK CARD

A cashier at a shopping centre in Ljubljana is supposed to have read the data from the complainant's bank card via a reader into the company's computer system without his consent.

We proposed to the inspectorate for the protection of personal data that it carry out an inspection control in this case. The inspectorate established that payment and credit cards (hereinafter: cards) contain several types of data on their magnetic strip. However, in operations via POS terminals only those data necessary for the authorisation and later processing of the financial transaction are read. These are the card number (PAN) and the expiry date of the card. The cardholder's name can be used for additional authorisation. A retailer who uses a POS terminal only has access to those data on the cardholder that are printed out on the transaction confirmation slip: the card number and expiry date. Some POS terminals also print out the name of the cardholder. The transaction confirmation slip also contains other data such as the title and code of the retailer, the date and time of the transaction, the type of transaction, etc.

In the case of payment with cards, "Merkur – trgovina in storitve, d.d." read certain information from the card via its own system, as well as via the POS terminal. For the purpose of dealing with any claims or irregularities, in addition to transaction confirmation slips it kept an additional computerised database containing data on the type of card, the number of the account, the date of the account, the card number, the value of the account, the value of the card and the number of individual types of card.

The inspectorate established that "Merkur – trgovina in storitve, d.d." thus illegally processes the personal data of cardholders, since it does not have a legal basis for the latter or the written consent of the cardholders. At the same time it found that for the resolving of potential irregularities regarding payment with cards, the transaction confirmation slip signed by the customer and kept by the retailer is sufficient. The inspectorate therefore ordered the company to cease processing personal data on the basis of reading the content of payment or credit cards at all points of sale within 45 days of being served the decision. On the same grounds the inspectorate filed a proposal for the institution of general offences proceedings against the responsible legal person and its responsible officer. We are continuing to monitor this case in 2004. **10.1-11/2003**

59 - URGENT TREATMENT OF A CHILD AND DELAYS WITH EXECUTION

A CSD was informed by the Paediatric Clinic that at an examination of a 14-year-old girl in February 2002 they had identified a serious illness that urgently requires treatment. The parents refused to have her treated and later did not even allow the girl to be examined or treated in institutions qualified for such treatment. Given that this constituted a serious risk to her health, and that a delay would also compromise the efficacy of treatment, the CSD was warned that it should act in the interest of the child.

Despite being fully familiarised with the risk to the girl, the CSD, by agreement with her parents, several times extended the final deadline for a repeat examination in a suitable institution because the parents assured them that they would submit another doctor's opinion.

In December, the CSD finally issued a decision from which it follows that the parents' parental right in respect of their daughter is limited in the sense that the obligation is placed on them to place their daughter in diagnostic proceedings within 8 days. Because the parents failed to meet this obligation, the CSD sent a request for execution to the Administrative Unit on 10 January 2003.

Despite the warning that any delay in the execution of the decision of the CSD could mean irreparable harm to the girl, the UE did not call a verbal hearing until 18 March 2003 and despite the non-cooperation of the parents did not carry out the execution.

The attention of the district public prosecutor was also drawn to the problem. The girl's father assured him that therefore were actively seeking the best solution for their daughter and seeking a second opinion abroad. Owing to the declarations of the parents that they were taking the girl abroad and would soon present a second opinion more favourable for treatment, the deadline for the execution of the CSD's decision was further extended. Throughout this time, the parents managed to manipulate everyone involved. Among other things, in order to help a faster diagnosis they requested the complete medical documentation from the Paediatric Clinic – although they did not come to collect it, despite offering various excuses to change the already fixed date. For this reason the ombudsman once again drew the attention of the district public prosecutor to the problem. The district public prosecutor initiated a criminal prosecution under Article 201 of the Penal Code of the Republic of Slovenia (neglect of a minor and cruel treatment). **11.1-13/2002**

60 - REMOVING A CHILD FROM FOSTER PARENTS – DECISION-MAKING TO THE BENEFIT OF THE CHILD?

The foster parents of a young girl refused all cooperation with the child's mother and despite intensive work on the part of the CSD from April 2001 onwards; in April 2002 she ceased to observe the agreement on the girl's personal contacts with her mother. Since at the same time she broke off her cooperation with the CSD and in this way made it impossible for them to supervise the fostering, in May the CSD issued a decision rescinding the fostering agreement. Given that it was clear from work with the foster parents to date that they would not voluntarily hand over the child, the CSD had a meeting with the UE and

explained in detail the reasons for the prompt execution of the decision with direct physical compulsion.

Although when the decision was issued, and subsequently on several occasions, the UE was urged in writing by the CSD and later by the ombudsman to execute the decision of the CSD, execution has still not taken place.

The correctness and legality of the decision have been evaluated by all levels of administrative decision-making, including the Supreme Court of the Republic of Slovenia. The case is currently before the Supreme Court for the second time. Given that the situation has become absurd, in that the foster parents whose fostering agreement was rescinded by the CSD in May 2002 are acknowledged more rights than the mother of the child, something which in no way follows the rights and the benefit of the child, we requested the Supreme Court of the RS to give priority treatment to the matter in the interest of protecting the rights and the benefit of the girl. We received the reply that as soon as it was received in November 2003, the case was assigned for priority settlement. In March 2004 we once again urged a decision.

A comment on the above is practically unnecessary, but we still wish to draw attention to how the irresponsible behaviour of some – in this case UE Maribor in particular – violates basic human rights and, along with the work of others who contributed to such a significant delay, contributes to the fact that for more than a year and a half the former foster parents are illegally withholding the minor. It is clear from the documentation that all who have contributed to this situation so far appeal to the principle of decision-making for the benefit of the child. Given the fact that contacts between the girl and her mother have been completely interrupted since April 2002, that since that date the mother has no news of her child, and that the child is being looked after by people who are behaving extremely irresponsibly, appealing to the benefit of the child is ironic and irresponsible. By immediately removing the girl, who was nine years old at the time, from the foster parents, they could have prevented the total alienation between the child and her mother. At that time removing the child would have been considerably less stressful and traumatic than it will be now. So where is the benefit of the child here? Who will bear the consequences? The child and her mother, who else! **11.1-16/2002**

61 - TAKING CHILDREN AWAY FROM THEIR MOTHER – INCORRECT WORK BY THE ADMINISTRATIVE UNIT

The CSD has for a long time been acquainted with the unsuitable conditions in which two minors are growing up (isolation of the mother and the children, the personal difficulties of the mother, shortages, housing problems, scarce contacts with the father). The children's mother has refused all cooperation with the CSD and their father has agreed to her demands. Despite promising to do so, they have not enrolled the older child in the first year of primary school or even in preparations for school. Constructive communication with the children's parents was not even possible after warning the parents that the CSD will have to take decisive measures to protect the benefit of the children. When despite numerous activities and warning from the CSD the child did not attend the first year of primary school, in December 2002 the CSD issued a provisional decision to take the children from their mother and place them in a foster family.

Although the CSD warned the UE that, given the established circumstances, rapid action in the interest of the children was urgently necessary, the UE, after embarking on verification of the professional decision of the CSD, continued to find excuses for not carrying out the requested execution. The interventions of the ombudsman were necessary. The execution of the decision was not carried out until June, and thus the older of the children has missed an entire year of school. **11.1-17/2002**

62 - SUSPICION OF SEXUAL ABUSE AND THE CONDUCT OF THE POLICE

The ombudsman was contacted by the mother of two girls, pupils in the fourth and ninth years of nine-year primary school. She described the difficulties she is experiencing with her former husband, with her parents (who support and approve of her former husband's conduct), and above all, with representatives of the criminal police who have apparently interviewed her daughters without informing her of this and without allowing her to be present at the interview. The complainant was horrified at the conduct of the management of the primary school in the described situation. She also mentioned the difficulties she is experiencing as a result of irregular payment of maintenance.

The incident (in her former husband's bedroom and in the changing room of a swimming pool), which in her opinion has had a traumatic effect on her younger daughter, was presented by the complainant in an unclear manner. The ombudsman was thus not able to understand what the mother reported to the police (the suspicion of a criminal offence) and what the role of the CSD was. She merely stated that an employee of this CSD had persuaded her to leave the children with her former husband. It was possible to make out from the continuation of her letter that the complainant had later been reported to the police and the CSD by her former husband and her mother. It later turned out that she and her new partner had been reported for sexual abuse.

We asked the complainant to complete and justify her statements. We made inquiries with the police, the CSD and the primary school. We also asked the complainant to contact us in writing or via the free telephone line and explain to us the current conditions. It seemed to us important to find out in what connection the criminal investigators wished to talk to the girls (i.e. what criminal offence was suspected), how the CSD is acting in this situation and what is happening with the girls. We also wanted to hear their side and therefore requested the complainant to ask them whether they would be prepared to tell us something about their difficulties.

The explanations we received from the CSD and the primary school placed the statements of the complainant in a slightly different light. The CSD has already been dealing with the family for thirteen years and has recently been conducting the procedure for regulating contacts. The mother clearly felt that by making a statement to the CSD she would prevent her daughters' contacts with their father. The CSD called a crisis team and brought in the criminal police and the school counselling service. The complexity of the declaratory proceeding interrupted contacts between the father and the girls. The latter apparently refused to say anything about family conditions because of the intimidation of their mother. Meanwhile, the father filed a petition for the custody of the children and for the setting of maintenance. He asks about the girls at school but is not allowed to see them.

The primary school explained that they have noted behavioural changes in both girls and permitted the interview with the criminal investigators because they were appealing to authorities, which exceeded the competences of the headmaster and the counselling service.

The Police Directorate informed the ombudsman that the criminal investigators had spoken to the girls at their father's request. The police dismissed the ombudsman's reservation that the practice of collecting statements from minors without the presence of their parents, guardians or other adult looking after their benefit is inappropriate. Referring to the fact that the children's father was acquainted with the intention of the criminal investigators does not in this context explain the case and does not convince the ombudsman. If the criminal investigators believed that through her presence the mother could influence the statement of the girls, they should have ensured the presence of the father or, in cooperation with the CSD which is dealing with the family and which knows it, prepared and held the interview in another way. If the social worker decided not to be present at the interview, this means that the girls were completely unprotected in relation to the state (the police).

The ombudsman does not simplify either this or other cases and consistently advocates a multidisciplinary approach. Agreement in principle does not of course mean that the opinion of the Criminal Police Directorate at the General Police Directorate on the professionalism of the procedure convinced the ombudsman, particularly since the police did not explain satisfactorily whether a criminal investigator really told one of the girls that she was as obstinate as a mule and that she would only call her mother after the child had answered all the questions.

The ombudsman proposed to the police and the Ministry of the Interior that the police should harmonise its procedures with the provisions of the Convention on the Rights of the Child and ensure that in cases like this an adult person is present to look after the benefit of the children or adolescents from whom the police are taking statements. Differentiating children as victims, witnesses and suspects does not relieve anyone of the obligation to look after their benefit. **11.1-21/2003**

63 - CHILD LEFT IN THE CARE OF A VIOLENT FATHER

The ombudsman was contacted by a twenty-year-old member of the Roma community who is the mother of a two-year-old girl. She was cohabiting with her former partner in a Roma settlement together with his parents. The complainant was exposed to mental, sexual and physical violence and restriction of movement, and her former partner had put cigarettes out on her body. The day before she gave birth he raped her and she went to give birth covered in bruises.

During one of many lengthy beatings the complainant jumped through a second-floor window and fled in fear of her life. She did not manage to take her child with her. She sought medical help and care and found her way to a safe house. It is evident from the documentation of the emergency trauma clinic that the police were informed about the incident. Since then she has not been able to get her child back. Her former partner has begun serving a prison sentence for his violent behaviour towards the complainant, but his parents have not even permitted her to see the child.

She asked the CSD for help but they did not help her get the child back. They cited the customs of Albanian Roma, according to which a child belongs to the father or the father's family. A professional social worker at the CSD explained to the complainant that her fear of her former partner's family was her own personal problem that she should resolve herself. She sent her to the police station. There they sent her back to the CSD with the explanation that the CSD is the only body in the country competent to issue a final decision on the custody of the child. The complainant visited the CSD several times and also submitted a written request for rapid action. She filed a petition for custody of the child and a proposal for the issuing of a temporary injunction. She turned to the ombudsman because the court had still not decided on her proposal, the CSD was not helping her and throughout this time she had not seen her child. The ombudsman decided to intervene immediately at the CSD.

The social worker at the CSD explained that the case involved Roma, among whom it is the fixed custom for a child to remain with the husband's family, and that therefore she did not expect the grandparents to want to hand over their granddaughter. She also said that she anticipated difficulties. The complainant had apparently waited too long before submitting a claim for temporary guardianship, and meanwhile her former partner would very soon be released from prison.

In subsequent contacts the social worker informed us that the former partner of the complainant had already been released from prison and was now himself appearing as a party to the guardianship proceeding. He was invited to the CSD to discuss the case and was apparently supported by the entire family, which was committed to looking after the little girl in accordance with Roma customs. For this reason they are less interested in discussions about contacts, since the child belongs to the father or the father's family just like the mother – for whom they paid the appropriate price.

The CSD offered the complainant advice and one-off financial assistance.

The social worker also admitted the possibility of the child being sold. She was convinced even in advance that the agreement on contacts would not work. This indeed turned out to be the case. The child's father was told by the same social worker that not even contacts at the CSD were a guarantee that the mother would not kidnap the child. Following this expert explanation, the father naturally decided not to permit contacts at the CSD until the court made its decision, although apparently the mother was allowed the possibility of seeing the child in the Roma settlement. The social worker explained that the fact that the complainant had been exposed to protracted violence in the Roma settlement and that she had fled from there had not occurred to her.

Meanwhile the court requested the opinion of the CSD. The social worker told the court that she was in favour of the girl remaining with her father since that was where she had been all along and she was used to the environment. She also felt that there was no need for a temporary injunction that the procedure should proceed regularly and that expert witnesses would be involved if necessary.

The ombudsman warned the CSD that careful and profound consideration was needed of whether it was in the child's best interest to live in an environment where she had already been witness to violence against her mother. The social worker replied that this was merely one way of looking at it. In reply to the question of whether it would not be a good idea to take into account the findings of developmental psychology and consider the needs of the

girl, for whom the mother is an extremely important figure up until the age of three (as is the case with all children), and most probably more important than a father who has been conditionally discharged from prison (having been convicted for a criminal offence with elements of violence), the social worker replied that she would go and see in what conditions the child was living, and ask the grandparents whether they were violent towards the child. Asked whether she expected them to give anything other than a negative reply to such a question, she replied that this was her job and that an expert team would make the decision. Asked whether she knew where the child actually was, given that she could have been sold a long time ago, as the complainant had warned, she replied that she could have no influence on that.

Two members of the ombudsman's staff visited the CSD and warned the managers that life in a violent family cannot be in the child's best interests. The managers told them that CSD staff are afraid to make home visits in the Roma settlement and promised that the CSD would try and organise contacts as quickly as possible.

After a few months, the CSD replied to the ombudsman's urgent request for an explanation of the situation and informed us that the complainant and her former partner had agreed on a compromise on contacts and that contacts between the complainant and her daughter were taking place twice a week in CSD premises. The father in particular was apparently failing to keep the agreement. He had apparently also consented to having the child examined by a court-appointed expert from the psychological profession, although he was not prepared to pay for this. The complainant has no income. The judicial procedure of deciding on the custody of, upbringing of, and care for the child is still going on.

The complainant expected help from the ombudsman since she believed that it was utterly impossible to leave the child in an environment where she had already witnessed protracted violence. The CSD, which knew about the conviction of the child's father, did not intervene directly because of its own fears about the nature of the settlement where the child was living. Disappointed, the complainant withdrew her complaint. **11.1-21/2003**

64 - A PARKING PERMIT FOR A CHILD WITH CEREBRAL PALSY

The parents of a seven-year-old child with cerebral palsy described to us the numerous difficulties they encounter bringing up their child and training him to lead as independent as possible a life. They drew our attention to the long and complex procedures for exercising various rights guaranteed to them under the applicable regulations. They are particularly disturbed that they have been unable to exercise the right to a disabled person's parking permit for their child, who has mobility difficulties and uses a wheelchair. An application for a parking permit must be accompanied by a document explaining the nature and severity (percentage) of the physical disability. However according to the competent authorities they cannot obtain this document until the child reaches adulthood. It appears that disabled children and adolescents with the severest physical disabilities are treated differently to adult disabled persons when it comes to the possibility of access to the premises of public institutions and state bodies, since the parents or legal representatives do not have the right to stop or park the vehicle in which they transport them in places where this is only permitted for vehicles with a disabled sticker (permit).

In relation to this issue we made inquiries at the MNZ as to how and under what conditions disabled children and adolescents who have had serious physical handicaps from birth can obtain a disabled person's parking permit, and whether the regulation of this area is envisaged within the framework of the changes and additions to the Road Safety Act (ZVCP). The reply from the competent bodies did not entirely confirm our expectations that this issue will be regulated by the act amending the ZVCP. We therefore proposed to the MNZ that the wording of the articles of the amending statute be coordinated with the MDDSZ in such a way that it will also be possible for the parents of a seriously handicapped child, in whose case the severity of disability is not established, to obtain a parking permit. **11.1-117/2003**

65 - PROBLEMS OF TENANTS IN DENATIONALISED HOUSING

An apartment building built immediately after the Ljubljana earthquake of 1895 has been home to some tenants for almost half a century. The age of the building and the needs of modern life have led many of them to renovate the flats with great care. Under the denationalisation procedure the building was restored to its owner who, without offering the possibility of purchase to the holders of the right of pre-emption, i.e. the tenants, sold it to another owner – a property agent.

The new owner immediately informed the tenants that they would be evicted within two years. Since then their life in the building has changed considerably. They live in constant fear and uncertainty. The building has meanwhile been sold again. The new owner is again a property company. Some of the flats have been sold to private purchasers, who are employing various forms of harassment, threats, blackmail and intimidation against the tenants. The owner is bothering them with frequently notices and telephone calls at home and at work and inviting them to talks to find out when they intend to move out. He has greatly increased the costs of maintenance and administration of the building. Among the costs, the level or justification of which the tenants are unable to check, there are items such "laundry costs", when the building does not even have a laundry, costs for "minor works" and so on. Some tenants have been charged a commercial rent even though they are only obliged to pay a non-profit rent. He has prohibited heating with paraffin and gas stoves and solid fuel stoves. Instead of heating by means of stoves he has offered them heating by means of old thermo-accumulation heaters. Thus, while the cellars are full of coal, they now have additional expenses for electricity. He requires various repairs to be carried out in the flats within impossible deadlines. While the owner requires the tenants to carry out general cleaning of the flats, he does not meet his obligations relating to maintenance. Plaster is falling of the façade, the chimneys are blocked, the balconies are crumbling and the courtyard is neglected. The tenants have not been allowed to whitewash and paint the flats themselves. In his capacity as property agent, the owner brings numerous prospective buyers to view the flats, which greatly upsets and disturbs the tenants.

One flat, which is occupied by a 74-year-old tenant, was sold to another owner without the tenant's knowledge. The new owner immediately began carrying out renovation work and knocking down walls. In view of the intolerable conditions, the tenant requested the intervention of the competent inspectorate. Immediately after that, the owner instructed the workmen to block his lavatory. The new owner's lawyer sent the tenant a letter with a warning that he owed the owner rent. The tenant had continued to pay the rent to the previous

owner (the property agent) who however, had not informed him about the change of ownership. The owner is now threatening the tenant with termination of the tenancy agreement on the grounds that he has not paid the rent.

To tenants who through no fault of their own have found themselves in situations like this, the ombudsman can only offer advice, since our warnings, which we have also made via a special report, have unfortunately not been heeded by the Government and the National Assembly. **0.1-15/2003**

A. REGULATIONS

ADP	**State Treaty for the Re-Establishment of an Independent and Democratic Republic of Austria**
EZ	**Energy Act** (UL, 79/99, 8/2000, 52/2002, 110/2002, 50/2003)
KZ	**Penal Code** (UL, 63/94, 70/94, 23/99, 110/2002)
PIKZ	**Rules on the Implementation of the Sentence of Imprisonment** (UL, 102/2000)
SOPS	**Agreement between the Republic of Slovenia and the Republic of Croatia on Border-Area Traffic and Cooperation**
SZ-1	**Housing Act** (UL, 69/2003)
ZD	**Inheritance Act** (UL (S)RS, 15/76, 23/78, RS/I 17/91, 13/94, 40/94, 82/94, 117/2000, 67/2001, 83/2001)
ZDavP	**Taxation Procedure Act** (UL, 18/96, 78/96, 87/97, 35/98, 82/98, 91/98, 1/99, 108/99, 37/2001, 97/2001, 105/2003)
ZDen	**Denationalisation Act** (UL/I, 27/91, 56/92, 13/93, 31/93, 24/95, 29/95, 74/95, 1/97, 20/97, 23/97, 41/97, 49/97, 87/97, 13/98, 65/98, 67/98, 76/98, 83/98, 60/99, 66/2000, 11/2001, 54/2002)
ZDoh	**Income Tax Act** (UL, 71/93, 2/94, 1/95, 2/95, 7/95, 11/95, 11/96, 14/96, 18/96, 44/96, 68/96, 10/97, 82/97, 87/97, 13/98, 1/99, 11/99, 36/99, 15/2000, 13/2001, 19/2002, 19/2003, 118/2003)
ZDIJZ	**Access to Information of a Public Nature Act** (UL, 24/2003)
ZDR	**Employment Relationships Act** (UL, 42/2002)
ZDRS	**Citizenship of the Republic of Slovenia Act** (UL/I, 1/91, 30/91, 38/92, 61/92, 13/94, 13/95, 29/95, 59/99, 96/2002, officially consolidated text of the ZDRS-UPB1 - UL, 7/2003)

ZDT	**Public Prosecutor Act** (UL, 63/94, 59/99, 56/2002, 105/2002, 110/2002, officially consolidated text of the ZDT-UPB1- UL, 14/2003)
ZDU-1	**State Administration Act** (UL, 52/2002, 110/2002, 56/2003, officially consolidated text of the ZDU-1-UPB1 - UL, 83/2003)
ZEMŽM	**Equal Opportunities for Women and Men Act** (UL, 59/2002)
ZGO-1	**Construction Act** (UL, 110/2002, 97/2003)
ZIKS-1	**Enforcement of Penal Sentences Act** (UL, 22/2000, 52/2002, 110/2002)
ZIN	**Inspection Act** (UL, 56/2002)
ZIOdlUS246/02	**Act on the Enforcement of Point 8 of Constitutional Court Decision No. U-I-246/02**
ZIZ Act	**Execution of Judgments in Civil Matters and Insurance of Claims** (UL, 51/98, 72/98, 11/99, 89/99, 11/2001, 75/2002, officially consolidated text of the ZIZ-UPB1 - UL. 16/2004)
ZJU	**Civil Servants Act** (UL, 56/2002, 110/2002)
ZKP	**Criminal Procedure Act** (UL, 63/94, 70/94, 25/96, 39/96, 5/98, 49/98, 72/98, 6/99, 66/2000, 111/2001, 32/2002, 110/2002, 56/2003, officially consolidated text of the ZKP-UPB1 - UL, 116/2003)
ZOdv	**Attorneys Act** (UL, 18/93, 24/96, 24/2001)
ZOFVI	**Organisation and Financing of Education Act** (UL, 12/96, 23/96, 22/2000, 64/2001, 101/2001, 108/2002, officially consolidated text of the ZOFVI-UPB1 - UL. 14/2003, ZOFVI-UPB2 - UL. 55/2003, ZOFVI-UPB3 - UL. 115/2003)
ZOUTI	**Restriction of the Use of Tobacco Products Act** (UL, 57/96, 119/2002, officially consolidated text of the ZOUTI-UPB1 - UL. 26/2003)
ZP-1	**General Offences Act** (UL, 7/2003)

ZPIZ-1	**Pensions and Disability Insurance Act** (UL, 106/99, 72/2000, 81/2000, 124/2000, 52/2001, 109/2001, 11/2002, 108/2002, 110/2002, 114/2002, officially consolidated text of the ZPIZ-1-UPB1 - UL. 26/2003, 29/2003, 63/2003, 135/2003)
ZPKri	**Redressing of Wrongs Act** (UL, 59/96, 68/98, 61/99, 11/2001, 29/2001, 87/2001, 47/2002, 34/2003, officially consolidated text of the ZPKri-UPB1 - UL. 47/2003)
ZPol	**Police Act** (UL, 49/98, 66/98, 93/2001, 52/2002, 26/2003, 48/2003, 79/2003, officially consolidated text of the ZPol-UPB1 - UL. 110/2003)
ZPP	**Civil Procedure Act** (UL, 26/99, 96/2002, 110/2002, officially consolidated text of the ZPP-UPB1 - UL. 12/2003, 58/2003)
ZPPra	**State Attorney Act** (UL, 20/97, 56/2002)
ZPPPAI	**Act on the Prohibition of Production of and Trade in Asbestos Products and the Restructuring the Asbestos Industry** (UL, 56/96, 35/98, 86/2000)
ZPPVS	**Act on the Legal Position of Religious Communities in the Socialist Republic of Slovenia** (UL, 15/76, 42/86, 5/90, RS-old 10/91, 22/91, RS/I 17/91, 13/93, 66/93, 29/95, 59/2002)
ZRLI	**Referendum and People's Initiative Act** (UL, 15/94, 13/95, 34/96, 38/96, 43/96, 59/2001, 11/2003, 24/2003, 48/2003)
ZRTVS	**RTV Slovenia Act** (UL, 18/94, 29/94, 73/94, 88/99, 90/99, 102/99, 113/2000, 35/2001, 79/2001)
ZS	**Courts Act** (UL, 19/94, 42/95, 24/99, 38/9928/2000, 26/2001, 67/2002, 110/2002)
ZSDP	**Parental Care and Family Benefits Act** (UL, 97/2001, 7/2002, 11/2003, 76/2003- officially consolidated text of the ZSDP-UPB1- UL, 110/2003)
ZSPOZ	**Payment of Compensation to the Victims of War and Postwar Violence Act** (UL, 18/2001, 111/2001, 67/2002)

ZTuj-1	**Aliens Act** (UL, 61/99, 9/2001, 87/2002, 96/2002, officially consolidated text of the ZTuj-1-UPB1 - UL, 108/2002)
ZTPDR	**Basic Rights Stemming from Employment Act** (UL SFRY, 60/89, 42/90, RS-old 4/91, 10/91, RS/I 17/91, 13/93, 66/93, 97/2001, 42/2002)
ZUOPP	**Streaming of Children with Special Needs Act** (UL, 54/2000)
ZUreP-1	**Spatial Planning Act** (UL, 110/2002, 8/2003, 58/2003)
ZUL	**Official Gazette of the Republic of Slovenia Act** (UL, 57/96)
ZUP	**General Administrative Procedure Act** (UL, 80/99, 70/2000, 52/2002)
ZUS	**Administrative Dispute Act** (UL, 50/97, 65/97, 70/2000)
ZUSDDD	**Act Regulating the Status of Citizens of Other Successor States to the Former SFRY in the Republic of Slovenia** (UL, 61/99, 54/2000, 64/2001, 36/2003)
ZUT	**Administrative Fees Act** (UL, 8/2000, 44/2000, 81/2000, 33/2001, 41/2001, 45/2001, 42/200276/2002)
ZVarCP	**Human Rights Ombudsman Act** (UL, 71/93, 15/94, 56/2002)
ZVCP	**Road Safety Act** (UL, 30/98, 33/2000, 39/2000, 49/2000, 61/2000, 100/2000, 21/2002, 54/2002, 67/2002, 97/2003)
ZVO	**Environmental Protection Act** (UL, 32/93, 44/95, 1/96, 9/99, 56/99, 22/2000, 67/2002)
ZVOP	**Personal Data Protection Act** (UL, 59/99, 57/2001, 59/2001, 52/2002)
ZVPot	**Consumer Protection Act** (UL, 20/98, 25/98, 23/99, 110/2002-officially consolidated text of the ZVPot - UPB1 - UL, 14/2003)
ZZPPZ	**Health Care Data Collections Act** (UL, 65/2000)

ZZZat	**Temporary Asylum Act** (UL, 20/97, 94/2000, 67/2002)
ZZZDR	**Marriage and Family Relations Act** (UL 15/76, 30/86, 1/89, 14/89, RS, 13/94, 82/94, 29/95, 26/99, 60/99, 70/2000, 64/2001, 110/2002, 42/2003)
ZZZPB	**Employment and Insurance Against Unemployment Act** (UL-old, 5/91, 10/91, 17/91, RS/I, 17/91, 12/92, 12/93, 13/93, 71/93, 2/94, 38/94, 80/97, 69/98, 65/2000, 97/2001, 42/2002, 67/2002)
ZZVN	**Victims of War Violence Act** (UL, 63/95, 8/96, 44/96, 70/97, 39/98, 43/99, 19/2000, 28/2000, 1/2001, 64/2001, 110/2002, 3/2003, officially consolidated text of the ZZVN-UPB1 - UL, 18/2003)

B. STATE BODIES AND OTHER BODIES

CE	**Council of Europe**
CSD	**Social Services Centre**
DARS	**Motorways Corporation of the Republic of Slovenia**
DDC	**National Highways Corporation**
DRSC	**Roads Corporation of the Republic of Slovenia**
DS	**National Council**
DZ	**National Assembly**
DURS	**Tax Authority of the Republic of Slovenia**
EU	**European Union**
GURS	**Geodesy Directorate of the Republic of Slovenia**
IRSD	**National Labour Inspectorate**
IRSOP	**National Environment and Spatial Planning Inspectorate**
IVOP	**Personal Data Protection Inspectorate**
JPSRS	**Public Guarantee and Maintenance Fund of the Republic of Slovenia**
MDDSZ	**Ministry of Labour, Family and Social Affairs**
MF	**Ministry of Finance**
MG	**Ministry of the Economy**
MK	**Ministry of Culture**
MID	**Ministry of the Information Society**
MKGP	**Ministry of Agriculture, Forestry and Food**
MNZ	**Ministry of the Interior**
MO	**Municipal Council**
MOL	**Ljubljana Municipal Council**
MOPE	**Ministry of the Environment, Spatial Planning and Energy**
MP	**Ministry of Justice**
MS	**Town Council**
MŠZŠ	**Ministry of Education, Science and Sport**
NGO	**Non-governmental organisation**
NIČ	**National Institution for Human Rights**

OS	**Regional Community**
OŠ	**Elementary School**
OZS	**Chamber of Attorneys of Slovenia**
PF	**Faculty of Law**
PMP	**Border Police Station**
PP	**Police Station**
PS	**Postal Service of Slovenia**
PU	**Police Directorate**
PVAC	**Motorway Maintenance Company**
RS	**Republic of Slovenia**
RTV	**Radio Television**
RTVS	**Radio Television Slovenia**
SFRY	**Socialist Federal Republic of Yugoslavia**
SI	**Republic of Slovenia**
SIOS	**Council of Disabled Persons' Organisations of Slovenia**
SOD	**Slovenian Indemnity Corporation**
SRS	**Socialist Republic of Slovenia**
SRBiH	**Socialist Republic of Bosnia-Herzegovina**
SVN	**Republic of Slovenia**
UE	**Administrative Unit**
UIKS	**National Prison Administration**
UVRSVS	**Government Office for Religious Communities**
VČP	**Human Rights Ombudsman**
ZN	**United Nations**
ZPIZ	**Pension and Disability Insurance Institute**
ZPKZ	**Prison Service**
ZRSZ	**National Employment Office**
ZZS	**Chamber of Physicians of Slovenia**
ZZZS	**National Health Insurance Institute**

C. MISCELLANEOUS

EMŠO	**Standardised Citizen's National Registration Number**
EMS	**Electromagnetic radiation**
ENOC	**European Network of Ombudsmen for Children**
EU	**European Union**
KOP	**Convention on the Rights of the Child**
LP	**Annual Report**
RMK	**Register of Births**
SABS	**Slovenian Asbestos Victims' Group**
TOM	**Telephone Help Line for Children and Adolescents**
UL	**Official Gazette of the Republic of Slovenia**
WHO	**World Health Organisation**
ZPM	**Association of Friends of Youth**

Colophon

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The following collaborated on the preparation of this annual report:

Bojan Brank
Nataša Bratož
Irena Burkeljca
Aleš Butala
Bojana Cvahte
Zlata Debevec
Tone Dolčič
Polona Drobnič
Ana Fröhlich
Matjaž Hanžek
Mojca Hribar
France Jamnik
Martina Jenkole
Irena Kavčnik
Renata Kotar
Uroš Kovačič
Nataša Kuzmič
Bojana Kvas
Kristijan Lovrak
Jure Markič
Andreja Novak
Martina Ocepek
Živan Rejc
Jernej Rovšek
Barbara Samaluk
Polona Selič
Marjana Simčič
Nada Skubic
Ivan Šelih
Neva Šturm
Brigita Urh
Boštjan Vernik
Jože Vrh

HUMAN RIGHTS OMBUDSMAN

www.varuh-rs.si

info@varuh-rs.si