Republic of Slovenia

10 years Ombudsman anniversary human rights

Annual Report 2004

The relationship between human rights and tolerance in a democratic society is a reciprocal one: championing human rights is a key element of tolerant behaviour

HUMAN RIGHTS OMBUDSMAN

Republic of Slovenia

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Tenth Annual Report

Introduction

Ten years is by all means a time when we can determine whether an institution has successfully lived through its childhood and become a member of society in the way that was expected upon its founding. The publication of the tenth annual report of the Human Rights Ombudsman gives us the chance to make a brief assessment of what we have achieved so far. And I believe that the results of ten years of work confirm not only the correctness of the decision to establish this institution but also the success of its endeavours. The Human Rights Ombudsman has become recognised by the people, people who have problems trust the ombudsman – this is demonstrated by the number of complaints we receive, and our findings and recommendations are respected to a great degree by the state institutions we monitor. Of course, a great deal cannot be accomplished: either the problems which people bring to the ombudsman are outside of the ombudsman's authority, or they are simply insoluble, and sometimes the state or its institutions will not listen. In any case, we are able to solve a great many of the problems of individuals which without this institution would remain unaddressed and unresolved, and we are slowly changing the state's attitude towards the needs and wishes of its inhabitants.

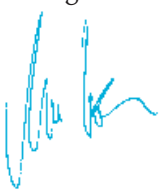
Since the work of the Human Rights Ombudsman is orientated above all towards solving problems, let us take a look at the most pressing problems which have to be eliminated as soon as possible.

Although quite a few constitutional decisions were implemented last year, several still remain unimplemented. The most imperative of these are mental health and the attitude toward the erased. With regard to the resolving of the first of these problems, there is a sense of indifference towards a group of people who have little political influence, while the second problem has become a prime means of vote gathering. And instead of politicians trying to convince their voters by displaying a positive attitude towards resolving the problems of this minority, they do so by promising to circumvent not only their rights, but also the decisions of the Constitutional Court. Unfortunately the attitude towards other minority groups and their problems is similar. We could say that this year, minority groups have played the crucial role of the scapegoat for the majority of Slovenia's problems. We need only remind ourselves of the events surrounding the efforts of the Muslims to build a religious centre, or the attitude towards the Roma. The erased were even the subject of a special referendum.

And since active tolerance of minorities is closely connected with the attitude towards human rights, we can state that indifference to the problems of people, whether they belong to minorities or to the majority, remains one of the biggest problems in this society. Therefore I repeat: we can observe that the responsible individuals and institutions not infrequently spend more time looking for excuses to explain why they cannot do something than they would actually spend solving the problem. The proposals of the ombudsman, and of others, are often overlooked or sidestepped. One of such proposals is the commitment to a non-violent society, which we presented in the 2003 Annual Report. We proposed that a commitment be accepted at all levels (government, local communities and civil society) to consistently abstain from all forms of violent behaviour, beginning with verbal aggression. Unfortunately, however, we can assess 2004 as the peak of such behaviour.

Since it is the obligation of the state to ensure equal living conditions for all people, as well as respect for the Constitution and international human rights documents to which it is a party, I believe that our lives will move in that direction. And the Human Rights Ombudsman will continue to do everything in his power to contribute to that goal.

Matjaž Hanžek, Human Rights Ombudsman



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Assessment of respect for human rights and legal security in the country **1.**

We still cannot say that we are satisfied with the protection of human rights in Slovenia: despite the warnings of the Human Rights Ombudsman, various problems continue to recur, and new ones are also appearing. However, it is also true that the number of individual topics is decreasing, but more because they have been exhausted than due to the good work of state institutions. This mainly includes problems of citizenship and denationalisation. Again, attention needs to be drawn to the lengthy judicial procedures and delivering judgments within a reasonable deadline, delays in the resolution of administrative disputes in first and second-instance courts, and the unfriendly attitude towards users of services, and little has been done to protect the rights of children in accordance with the Convention. We are continuing to see an indifferent attitude towards people's problems, where certain institutions spend more time looking for excuses to explain why they are not competent for solving a problem than they would spend actually solving the problem. The ethics of public speech have become a new or even more serious problem, including the writings of certain media as well as expressions of intolerance by various politicians and attempts at overt and veiled discrimination in connection with them. Relations with the Constitutional Court have somewhat improved, as only five decisions are still pending execution, while in 2003 there were ten such decisions. Another positive note is the adoption of new anti-discrimination legislation and the establishment of the institution of the Equal Opportunities Advocate, although the election results indicate that the situation has worsened.

In last year's report we drew attention to the visit by two international human rights institutions and their observations, which were quite unfavourable for Slovenia, especially with regard to expressions of intolerance. These were the European Commission against Racism and Intolerance (ECRI) and the Commissioner for Human Rights at the Council of Europe, Álvaro Gil-Robles. Unfortunately, this situation deteriorated considerably in 2004. None of the deficiencies which they found were eliminated, and some actually became more pronounced. It should also be emphasised that even stronger passions came to light in both the European and the Slovenian elections. Instead of competing for votes by emphasising tolerance, politicians all too often emphasised differences between people and their mutual exclusivity. Most conspicuous in this respect are attitudes towards Muslims regarding problems with the construction of their religious and cultural centre, and attitudes towards the erased, as the decision of the Constitutional Court has yet to be implemented. Instead of the Government and the National Assembly passing a unified law on the Roma and a strategy for solving Roma issues whereby the Roma would be included into Slovenian multicultural society in order to provide a better life for us all, this problem has been left to the local communities and inhabitants, which only deepens and extends the conflicts. The situation is similar for the erased.

Attempts at solving the problem were overly tentative and developed unnecessarily into a controversy which involved the entire society, even forcing a referendum, as if the erased were the biggest problem in Slovenia.

But it is about time that we learned that a democratic society means much more than just pluralism – the coexistence of people who come from different cultures or subcultures, or have different lifestyles, who tolerate each other to a greater or lesser degree. It means the personal and social choice of two-way relations and cooperation between different social groups and at the same time the rejection of intolerant and aggressive practices in the everyday and political life of society. It is the striving to achieve an inclusive society which

does not marginalise 'others', but tries to take advantage of the wealth of differences in order to achieve a new quality of life. A lifestyle decision, which is based on tolerance, cannot be conceived of as a matter of a benevolent attitude of the majority groups in society towards minorities; the foundations of tolerance come from a respect for human rights. Tolerance does not simply mean passively "putting up with others and people who are different from yourself", but arises from the conviction that one must consistently respect the rights of people exactly as they are: universally accepted (apply to everyone without exception), inalienable (no-one may take them away from anyone for any reason) and indivisible (it is not possible that we would be entitled to some rights and not to others). The relation is mutual: **advocacy of human rights is a key element of tolerant behaviour**; and without the decision to be tolerant it is impossible to achieve a proper level of respect and the exercising of human rights.

When meeting with representatives of the **Italian and Hungarian minorities**, the main issue expressed was concern due to the decreasing membership of both minorities between the two censuses. In addition, there is still a problem with the actual possibilities for using the languages of both minorities when dealing with state bodies, mainly due to the employment of civil servants who do not speak the minority languages.

This illustrates a problem which is also common in other areas, where rights which are guaranteed by the Constitution or by law can not be exercised in full due to discrepancies between what is declared and what actually exists. Therefore we must again emphasise that it is not enough for the state only to formally guarantee the special rights of both of the constitutionally recognised minorities, but also that it is their duty to enable them to be exercised effectively in everyday life as well.

Despite numerous warnings from the ombudsman and decisions by the National Assembly, there is still no coordinated policy with regard to solving **Roma issues**. Last year, the Government adopted a plan for providing education for the Roma, which we welcome, but it is still only a partial solution, since there is still no law which would regulate the arrangement of the special rights of the Roma community in a comprehensive and systematic way, nor coordinated policies in all areas: education, residence problems, employment and social security. Many people, and all too often politicians as well, see increased police surveillance as the only solution to Roma issues. Owing to years of avoiding the taking of a comprehensive approach, and especially the transferring of the solution of Roma issues to the municipalities where the Roma live, as well as agitation by various politicians, in the last year we have seen increased and more high-profile disputes and the overt expression of intolerance towards the Roma.

Also, the **protection of the collective rights of national minorities not specially defined in the Constitution** is not sufficiently regulated. The Ministry of Culture provides financial assistance to various associations, but this is insufficient. The lack of clarity surrounding the definition of the concept of autochthony and the poorly defined competencies of the Government Office for Nationalities further contribute to the lack of arrangement of the status of these minorities. With regard to the fact that some of these minorities in Slovenia are made up of fairly large groups of people, the Government must propose solutions in discussions with representatives of these minorities as soon as possible which will guarantee their continued existence as cultures and nationalities in Slovenia.

Last year the problem of the **ethics of public speech** became especially pronounced, frequently underscoring the helplessness of individuals when the media, especially the commercial media, make unjustifiable intrusions into their privacy, disclosed their identity or issued false information. We have also seen that legal remedies are often ineffective. The fact that politicians are often the first in line to express intolerance towards various minorities is also especially worrisome.

In the area of **religious freedom**, the most high-profile cases last year were the opposition to the construction of the Islamic religious and cultural centre and the Jehovah's Witnesses' educational centre. We could describe the activities which occurred around these events as the sum of all the intolerance which the individual actors attempted to conceal behind other (technical and administrative) reasons. Here we also have to mention the poor work of the Government's Office for Religious Communities, which despite years of demands by the ombudsman has not prepared criteria for giving state assistance to religious communities.

In the two **elections** and one referendum we observed systemic irregularities which the ombudsman drew attention to years ago, but have yet to be eliminated. Although the Constitutional Court established in 1997 that the method of determining the election outcomes of postal ballots is at variance with the Constitution, the unconstitutionality has not yet been eliminated. A similar situation exists with the determination of who is eligible to vote by post. Access to elections for disabled persons and the guaranteeing of equal opportunities for both sexes when running for elected office are also inadequate.

Major discrepancies exist between normative requirements and the actual situations with regard to **personal data protection**, where direct conflicts often occur between two constitutional rights: the right to privacy and the right to access to public information, and owing to the inflexibility of the legislation, the balancing of the rights is made difficult if not impossible. Privacy in the workplace is increasingly threatened, and mechanisms of supervision have to be devised.

Slovenia has not yet ratified the Facultative Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. By ratifying the protocol, Slovenia would bind itself further to respecting international standards in the treatment of persons who have been deprived of their freedom. However, at this time we have not found any special systematic irregularities in inspections of prisons and detention centres. The biggest problem remains the overcrowding of the majority of prisons and especially the detention centres, which additionally worsens conditions which are marked by shared sleeping quarters, worn equipment and fittings, a lack of organised activities, insufficient movement outside of closed areas, etc. The new prison in Koper, the only institution of its type in Slovenia which entirely conforms to European standards, has somewhat contributed to the improvement of conditions.

Mental health: another year without change. Last year the Constitutional Court established that the part of the Non-litigious Civil Procedure Act which refers to this area is at variance with the Constitution. We expected that the competent state bodies would eliminate the unconstitutionality at least after receiving a repeat instruction from the Constitutional Court, and at the same time comprehensively arrange the conditions and procedures for admitting patients to psychiatric hospitals and social care institutions, and the rights and status of these persons during and after treatment. But nothing was done. We can say that this is yet another case where the National Assembly, the Government and the ministries failed even to respect the decisions of the Constitutional Court, much less the warnings of the Human Rights Ombudsman.

The legislature, the Government and the competent ministries merely concur with the viewpoint that legal arrangements which are in accordance with the Constitution have to be adopted as soon as possible, and then proceed not to do so. Perhaps in the eyes of the politicians these are seen as less important issues which do not garner any political points or votes.

With the opening of the new **asylum** centre, the majority of the deficiencies and errors which were observed in previous years were eliminated. At the time of the unannounced

inspection at the Centre for Foreign Nationals in Postojna, renovations were just being performed, which indicates the improvement of living conditions for that group of people as well. We also observed cooperation between the centre and non-government organisations, which help foreigners to improve their living conditions by conducting various campaigns.

Repeated complaints about **violations of the right to adjudication within a reasonable time frame** is an annual constant, and there is nothing new to report this year, although there is constant talk of improvement. Very few courts respect the statutory deadline for scheduling trials in criminal matters. Unfortunately, it is the opinion of the Supreme Court that the two-month statutory deadline pursuant to Article 286 of the Criminal Procedure Act (ZKP) "is not a true statutory deadline, but is a so-called instructional or monitory deadline, which is intended to provide procedural discipline..."!? Frequently there are also violations of the statutory deadlines for drawing up court rulings in civil and criminal procedure. Even though the law binds judges to draw up a judgement in writing within 30 days, and within 15 days in detention cases, we observed cases where the defendant waited for adjudication for up to as much as half a year. It is difficult to accept the assertion that statutory provisions do not apply to judges, since it is the judges above all others who must stand as examples to other citizens by obeying the laws. In addition, the majority of complaints lodged with the European Court of Human Rights from Slovenia refer to adjudication within a reasonable time frame, which confirms our findings. Any delay of a court ruling has serious consequences, and this is especially true for social and labour disputes, which further increase the already serious existential problems of the complainant.

In the area of **public prosecutors**, the most frequent complaints were related to lengthy decision making on criminal information or disagreements with its dismissal. Complainants often reported that more than a year had passed since the criminal information had been submitted, but they still had not received any information about what the public prosecutor had done. In order to avoid such problems, the ombudsman proposes that the public prosecutor confirm the receipt of the criminal information to the informer and notify him about the procedure within reasonable time limits. Here the public prosecutor's office must also prevent abuse through the use of unjustified criminal information with the intention of obstructing court procedures, as we have also seen cases where the defendants have submitted criminal information against everyone involved in the procedure in order to exclude them from the procedure or to get revenge.

However, attempts at such abuses must not influence the public prosecutor's office to give serious consideration to all criminal information submitted. Therefore the ombudsman expects that the public prosecutor's office will weigh criminal information more carefully before making decisions about it in such cases.

Complaints against the **police** are not different from those in the past, as they are similar with regard to both average number and content. Complainants most often protest the methods of exercising the powers which the police are granted in order to perform their tasks; i.e. unlawful or improper use of means of restraint, most often physical force, and handcuffing and binding. On the other hand, complainants cite the (in)efficient performance of the tasks which are given to the police. Therefore there are two conflicting assertions: on one hand excessive 'enthusiasm' in doing their work, and on the other, a failure to perform their required duty. Therefore it should again be emphasised here that the police are duty bound to protect human rights, which also include the protection of people's lives and property. In carrying out this duty they are obliged to do so properly, and they may not overstep the authority which is vested in them by law. This also includes collecting information in a lawful manner, since only legally acquired evidence can be used to determine the truth and does not violate human rights and dignity. In the detention areas which were inspected we observed considerable improvements, although some problems still remain.

The most important new feature relating to **administrative matters** was the founding of the Ministry of Public Administration, which incorporates various services which have been dispersed up to the present. With this, the Government has implemented the proposals of the ombudsman from past years, as gathering the services in one place enables the taking of measures for the more rational, efficient and user-oriented work of the public administration. One of the expected results of the work of this ministry is the establishment of improved interdepartmental coordination.

Otherwise there are no major changes in comparison with previous years. It is in any case worth mentioning the delays in resolving administrative matters at the first and second instance, the inappropriate organisation of decentralised units of the state administration, and the frequently unfriendly attitude towards users. The biggest problem, which has been dragging on for years and has acquired international proportions, is the regulation of the status of the erased, which has unnecessarily poisoned the political atmosphere. The ombudsman has issued a special report about this issue, which includes all of the issues and the path towards their solution. This is possible only through respecting the decisions of the Constitutional Court.

In some areas the once considerable amount of complaints has decreased. This is true especially for foreigners (with the exception of the erased), citizenship, denationalisation, procedures pursuant to the 'war laws' and in connection with conscientious objection to military service. The complaints which we continue to receive in these areas are mainly related to the excessively slow work of the administrative bodies.

Complaints in connection with **taxes and customs** are also most often due to lengthy complaints procedures, and also due to serious social hardship as a consequence of tax debt. Communication between the central tax office and the ombudsman has improved, but this is not entirely true with regard to the relations of the tax authorities with taxpayers. Here we should draw attention to incomplete records, which could be corrected with the introduction of a better information system. Certain cases of dubious use of regulations, to which we have drawn attention in the past, were resolved in 2004 by the Constitutional Court with five decisions which confirmed the views of the ombudsman. The ombudsman's views and warnings are not binding, but it would be worthwhile to pay more attention to them without waiting for the decision of the Constitutional Court, since this would allow the state to save money and their reputation, while the people would have fewer difficulties with the state.

Complaints relating to education also pointed to an increase in insufficiently resolved issues and doubtful procedures in the past year, while complaints relating to charges for the use of construction land highlighted the incompleteness of the new provisions for charges for the use of undeveloped land.

The suspicion which we expressed last year that housing provision problems would worsen have already come true this year. In addition to the difficulties of tenants in denationalised housing, the poor and the young (we described the situation in a special report in 2002, but our proposals were not included in the housing act), the position of tenants and people searching for housing was made worse by the new housing act, which leaves the field of housing excessively under the control of the market and the municipalities. The market does not provide friendly assistance to the poor and young families in the resolution of housing problems, and smaller municipalities in particular cannot afford to build new housing. The radical introduction of liberal market relations in the housing field worsens the position of tenants, while the newly introduced fault-based reasons for termination, limitations of tenants' use of housing and the possibility of sharp rent increases have burdened some tenants with serious social hardships. We recommend that the government prepare amendments to the housing act as soon as possible, which also take into account the social and demographic component in the provision of housing.

Although the competences of the Human Rights Ombudsman do not extend directly to the private sector, we nevertheless receive a great deal of complaints from private sector employees. Moreover, their numbers are increasing, and their content is extending into new areas. With regard to the problem of fixed-term employment and the continual extension of such contracts, which we observed and commented on last year, this year we also received more information about harassment and vexation in the workplace. Unfortunately the complaints are usually anonymous, or the complainants identify themselves only to the ombudsman, and do not desire intervention since they are afraid for their jobs. This underscores the seriousness of such activities. To this we have to add several allegations of sexual harassment in the workplace, which additionally indicates the lack of protection for employees, who submit to various forms of pressure in fear of losing their jobs. Since the ombudsman has no competence for employers outside of the public sector, whenever possible we informed the Labour Inspectorate, who usually responded in a proper manner and affirmed the allegations. Our opinion is that the measures taken against employers in such cases are sometimes too soft, since the inspectorates deem such activities to be misdemeanours and do not propose the initiation of criminal proceedings.

Unemployment and the social hardships associated with it, exacerbated by the lack of social housing and subsidies, continue to be the most significant source of problems which we encounter in the broader area of **social security**. The competences of the ombudsman are limited in this field: most often we find ourselves merely providing legal first aid, which is not the ombudsman's primary task. We send people to social services centres or demand that the centres take action. There are also frequent problems due to domestic conflicts, which most often involve other hardships, or are their source or their consequence. Also on the rise are homelessness and the problems which arise from demographic trends: the ageing of the population. The state and local communities should be more attentive to the plight of the homeless through opening additional accommodations or care facilities, also in cooperation with non-government organisations, which have already expressed a great willingness to cooperate. Although facilities for the elderly have increased greatly in recent years, indicating the relatively good functioning of the state in this area, such capacities remain insufficient.

In the area of **pension and disability insurance** we have drawn attention to a problem which could affect a great number of people. The law which came into effect at the beginning of 2000 prescribes that the insurance period can only include the period in which the prescribed contributions were paid. Therefore the Institute of Pension and Disability Insurance of Slovenia was required to set up records of payments of on the basis of data from the Tax Administration of the Republic of Slovenia at the latest by 2003, but they failed to do so. Since there are no records, and the law did not establish any mechanism by which individuals could determine whether their employer actually paid the contributions and in what amounts, individuals will not be able to retire despite having satisfied the legal conditions. The Ministry of Labour, Family and Social Affairs will have to resolve this problem this year. In the area of health care, the biggest problem remains the legal regulation of patients' rights and complaints procedures, which will have to be settled as soon as possible.

We can sum up the problems in the area of children's rights by stating that there is still a great deal of confusion as to the definition of **the child's best interests**: the legal standard is still an excessively elastic concept, which is interpreted in very different ways, or simply ignored. Here we are not referring merely to the obtaining of the child's opinion, but also to the child's cooperation in deciding his or her own fate, the opportunity to express their opinion and views, to cooperate in the making-decision process, and to help create changes. This means giving children and young people an equal role in decision-making and changing practices, and especially changing 'adult' approaches and concepts. Therefore it is first necessary to develop and strengthen the convictions of adults that it is reasonable, necessary and important to consider and include those who we are making

decisions about into the process. Here it should be further emphasised that judicial procedures are too long and frequently do not take into account, or even obtain, the child's opinion. In cases of conflicts between the parents, institutions (various social services centres, courts and the police) are often too passive or even act in opposition to the child's best interests. We are aware that interventions into families are an extremely sensitive matter, but in cases of risk to the child, decisive and fast intervention is essential. All too often we encounter situations where institutions pass the decision to take measures between each other, and only the decisive intervention of the ombudsman gets the situation moving. We repeat: it seems that some institutions use more energy searching for excuses for inaction than they would by taking action in the first place.

The rest of the pressing issues in the area of **children's rights**, similarly to the majority of other areas, continue to appear year after year. Children are frequently hostages and are the subjects of the clearing up of unresolved conflicts between divorced parents, who either do not pay maintenance or prevent contact with the other parent, while the responsible institutions (social services centres, courts) are insufficiently decisive when intervening in the interest of children. Here we must emphasise that both maintenance and contact with the child are not only the rights of the other parent, but are above all the rights of the child. Children who are the victims of violence are also not handled appropriately, and the state has not yet passed any prohibition of corporal punishment. In institutional care we still encounter cases of poor relations between teachers and students, violence among children in schools, and inappropriate or belated measures by school staff. Schools will have to pay more attention to these problems. We can also still detect the unequal status of children with special needs, where lengthy processes of placement and the lack of technical adaptation of school facilities for these children, as well as insufficient understanding of their issues, are still especially problematic.

Information on the work of the ombudsman **2.**

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Forms and methods of work 2.1.

The office of the Human Rights Ombudsman **protects individuals in relation to state bodies**, local government bodies and bearers of public authority, and oversees the functioning of such bodies. Its task is to identify and prevent violations of human rights and other irregularities and to eliminate their consequences. This occurs on two levels. On the first level, the ombudsman deals with specific violations, while the second level is of a systemic, promotional and preventive nature. In this regard, **public relations** are an indispensable part of its work. Public relations principally provide the most effective tools for achieving the correction of injustices, and also function preventively; they contribute to raising public awareness and education about human rights and to promoting and providing information about avenues of self-assistance. Due to the increasingly large scope of work in the area of prevention, a two-person public relations department was formed in 2004.

In order to provide more and better information about the work of the ombudsman and about the available avenues of self-assistance, we publish a free **newsletter** entitled "**The Ombudsman – How to Protect Your Rights**", which is available throughout Slovenia at administrative units, hospitals, clinics, libraries, employment offices, university and secondary school halls of residence, faculties, old people's homes, non-governmental organisations, social services centres, prisons, police station, etc. Since the existing website of the ombudsman's office was unsuitable and not adapted to the needs of individual target groups, in 2004 we designed **new contents and format for the ombudsman's website**, which is aimed at the four main target groups which are important to the work of the ombudsman. These are: potential complainants, professionals or interested parties among the general public, the media, and children and young people. In addition to the regular annual report we also prepared **two special reports**: "The Erased" in the Annual Reports of the Ombudsman and "Domestic Violence – Paths to Solutions".

In the spirit of warning about the increasing forms of intolerance and discrimination, with the help of external associates we carried out a project entitled "**Forms of Intolerance in Slovenia**". The project comprised a series of events which were held from 9 to 30 December 2004; an exhibition called Jara kača nestrpnosti (The Never-Ending Story of Intolerance), a documentary film called BRČV2004, an exhibition entitled Kaleidoscope of Movement and a round-table discussion entitled Intolerance between Normal and Extreme. Also, as in previous years, the ombudsman dedicated special attention to **children and young people** with regard to promotion and education. The ombudsman met several times with elementary and secondary school children, either at events, workshops or round tables which were prepared by the children themselves or were prepared by the children's rights team at the ombudsman's office. As part of Children's Week, an event marking the first anniversary of the "**My Rights**" project was especially well received. At this event, thirty Slovenian schools received the title of "Children's Rights-friendly School". The project included 87 elementary and secondary schools from all over Slovenia, 1200 teachers and more than 50,000 children and their parents. The project was also presented outside of Slovenia at the EIP international conference, a meeting of the OSCE, and at the office of the UN High Commissioner for Human Rights. The Human Rights Ombudsman was also present at the **Peace Festival** which was held in Slovenj Gradec on United Nations Day.

All information on the work of the ombudsman's office was available at the event, a presentational film was shown which presented the ombudsman's work with elementary and secondary schools, and television advertisements aimed at promoting children's rights under the slogan "Children's Rights Are The Law!" were aired throughout 2004 on TV Slovenija, which provided us with free air time.

As in every year up to the present, the ombudsman's office also shared their experiences with **university students**. In cooperation with the Faculty of Law in Ljubljana, a project of the Law Clinic entitled "Legal Advice Centre for Refugees and Foreign Nationals" was completed in May, and was started again in the new academic year with a new topic. The ombudsman co-financed the costs of the application for the escort for the René Cassin European Human Rights Competition in Strasbourg, where a team of Slovenian students took sixth place. Once again, this year we offered student internships. We also helped all students who requested assistance from us in completing seminar, degree and Master theses.

In January, before Slovenia's accession to the EU, Slovenia was visited by **European Ombudsman** P. Nikiforos Diamandouros. His purpose was namely to inform citizens of the accession countries about his work and in what cases and where to seek the assistance of the European Ombudsman. Also in 2004, the ombudsman attended **international seminars and conferences**, and as a representative of an institution with a high international standing, frequently presented our own papers. We attended a conference on the 10th anniversary of the founding of the European Commission against Racism and Intolerance (ECRI). We shared our experience of the relation between the ombudsman and parliament at a meeting of ombudsmen in Capadoccia, Turkey. Turkey intends to establish the institution of a national ombudsman in the near future. In March we attended a working meeting on the European Convention on Human Rights and the role of the ombudsman, which was held for parliamentary deputies in Bosnia and Herzegovina. In May we attended an international seminar on democratic institutions and democratic administration in the OSCE in Poland. Deputy Ombudsman Aleš Butala participated as an expert in the field of prevention of torture and inhumane treatment in a seminar for the preparation of a subcommittee for prevention of torture pursuant to the Facultative Protocol of the UN Convention against Torture. Human Rights Ombudsman Matjaž Hanžek is also still one of the four Directors of the European section of the International Ombudsman Institute. The Human Rights Ombudsman, whose office includes a specialised group of advisors dedicated to the rights of children and young people, for the third time attended the annual meeting of the European Network of Ombudsmen for Children (ENOC), which was held in Wales this year. The greatest amount of attention at the meeting was dedicated to working with children up to five years old, advocacy of the culture of children's rights in schools, and the United Nations Study on Violence against Children.

Pursuant to the Personal Data Protection Act (ZVOP, 2001), the Human Rights Ombudsman also performed the duties of an independent institution for monitoring the protection of personal data – Deputy Ombudsman Jernej Rovšek was responsible for performing the duties in question, and in that role attended two meetings of the working group for the protection of personal data working within the framework of the European Commission, the annual conference of institutions which operate in the area of protection of personal data, and the European conference on data collection in order to measure the extent and influence of discrimination.

The year 2004 was also no exception with regard to **sharing our experiences with other** ombudsman institutions which have just been founded or are in the process of being founded, as well as others who work in the area of protection of human rights. To this end

we visited the Montenegrin ombudsman and the Regional Ombudsman's Office in Vojvodina. The Office of the Human Rights Ombudsman also offered expert assistance to the delegation of the Complaints Office from the Brčko district in Bosnia and Herzegovina, the nine-member delegation of the Ombudsman of Kosovo, and the Ombudsman of the Autonomous Region of Vojvodina and his deputies.

In order to present our work to international institutions we issued a summary of our annual report in English, and on the tenth anniversary of the ombudsman's office we also published a shortened version of a special issue of our newsletter "The Ombudsman – How to Protect Your Rights".

Cooperation with **civil society** is an exceptionally important part of the work of the ombudsman. During the commotion surrounding the construction of the Islamic Religious Centre and the demand for a referendum at which voters would vote on the construction of the mosque, the ombudsman made public appeals to politicians on several occasions to do everything they could to prevent discrimination. As a sign of opposition to violence against women, Amnesty International's international campaign Stop Violence Against Women was also launched in Slovenia with symbolic hand prints. The hand prints campaign was also joined by Human Rights Ombudsman Matjaž Hanžek. The ombudsman also attended a forum entitled Intolerance, Discrimination and the European Union, prepared by the Peace Institute in cooperation with the Cankarjev Dom cultural and congress centre. We attended an international conference entitled "Education and Prevention in Mental Health: Education for a Change", which was organised by Mental Health Europe and the Slovenian Mental Health Association ŠENT. We also attended a professional and cultural meeting entitled "Are We Aware?", organised by the Ključ (Key) Association – Centre for the Fight against Trafficking in Human Beings.

The ombudsman also met with most of the representatives of religious communities in Slovenia. In the framework of discussions in Murska Sobota, the ombudsman met with the Bishop of the Evangelical Church, Geza Erniša. We also met with the Paroh of the Serbian Orthodox Church, Peran Boškovič, and towards the end of the year also with the Archbishop of the Catholic Church, Alojz Uran. We also met twice with representatives of the United Nations High Commissioner for Refugees (UNHCR).

The office of the ombudsman relies greatly upon the **media**. This involves regular press conferences and press releases where we issue warnings about violations which we have encountered in our work. In addition, as of this year, the ombudsman has begun informing journalists about current cases, through which we wish to make up-to-date warnings about violations which we encounter in our work. The current cases are also published on the ombudsman's website. In October, the ombudsman supported the journalists' strike, at which a new collective agreement was demanded, thereby emphasising the importance of a free press and its autonomy.

The central task of the Human Rights Ombudsman is the resolution of the specific complaints of **complainants**, who turn to the ombudsman for help in order to solve their difficulties with written complaints, by telephone or directly at interviews in or out of the office. On average, the staff at the Ombudsman's office speak with ten complainants per day, and the information centre receives on average 100 calls a day on the toll-free telephone number 080 15 30, where individuals are given basic information on the work of the institution and instructions on how to submit complaints. The ombudsman held out of office talks several times this year in various towns in Slovenia. The main purpose of working outside the office is to make it possible for people all over Slovenia to meet with the ombudsman

and to become familiar with the problems. We published a new leaflet with a form for submitting complaints. The leaflet provides basic information in an accessible manner on the Human Rights Ombudsman of the Republic of Slovenia, its competences, and how to contact the ombudsman. The leaflet with the form was also published in English, since foreign nationals can also turn to the ombudsman for help when state bodies, local government bodies and bearers of public authority violate their rights. The English version is available at temporary accommodation centres and asylum homes, at border police stations, at non-governmental organisations which have contacts with foreign nationals, etc.

In 2004 the Human Rights Ombudsman had 33 **employees** (including the ombudsman and the deputy ombudsmen) among its staff. These include 6 functionaries, 18 officials and 9 professional and technical staff workers. Twenty-three of the employees have university degrees (including one PhD and three 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.

Finance 2.2.

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 406.300 million from the national budget for the work of the institution in 2004. Expenditure amounted to SIT 380.704 million. The remainder was returned to the national budget.

Statistics 2.3.

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

Cases being handled

Table 2.3.1. presents data on the total number of cases being handled by the ombudsman in 2004 by individual area of work. As we have already said, cases being handled include cases opened on the basis of complaints in 2004, cases carried over for handling from 2003, and cases reopened in 2004.

The table shows that in 2004 there was **a total of 2992 cases being handled**, of which:

- 2631 cases were opened in 2004 (88 per cent);
- 260 cases were carried over from 2003 (8.7 per cent);
- 101 cases were reopened in 2004 (3.3 per cent of all cases being handled).

The largest number of cases being handled in 2004 were in the areas of:

- judicial and police procedures (893 cases, or 29.8 per cent);
- administrative matters (488 cases or 16.3 per cent);
- social security (393 cases or 13.1 per cent).

A detailed presentation of the number of cases being handled in 2004 by individual area of work is given in the table overleaf.

AREA OF WORK	NUMBER OF CASES BEING HANDLED				Share by area of work
	Cases opened in 2004	Cases carried over from 2003	Cases reopened in 2004	Total cases being handled	
1. Constitutional rights	90	4	2	**96**	3.2 %
2. Restric. of personal liberty	130	9	4	**143**	4.8 %
3. Social security	335	33	25	**393**	13.1 %
4. Labour law cases	175	20	4	**199**	6.7 %
5. Administrative matters	406	64	18	**488**	16.3 %
6. Judicial and police proced.	792	85	16	**893**	29.8 %
7. Environ. and spat. planning	89	2	7	**98**	3.3 %
8. Commercial public services	75	4	3	**82**	2.7 %
9. Housing	127	9	0	**136**	4.5 %
10. Personal data protection	20	2	0	**22**	0.7 %
11. Children's rights	162	12	5	**179**	6.0 %
12. Other	230	16	17	**263**	8.8 %
TOTAL	**2.631**	**260**	**101**	**2.992**	**100 %**

Table 2.3.1.

Closed cases

Table 2.3.2. shows the number of closed cases by area of work in the period 1998-2004. In 2004, **2665 cases were closed** (compared to 3505 in 1998, 3727 in 1999, 3443 in 2000, 3132 in 2001, 3087 in 2002, and 2947 in 2003), representing an **8.4 per cent reduction in the number of cases closed** compared to 2002.

Comparing the number of cases closed (2665) with the number of cases opened **in 2004 (2631) we note that in 2004, 1.3 per cent more cases were closed than opened**.

Table 2.3.2.

AREA OF WORK	NUMBER OF CLOSED CASES							Index
	1998	1999	2000	2001	2002	2003	2004	(03/02)
1. Constitutional rights	57	50	33	67	89	75	77	102.7
2. Restriction of personal liberty	226	210	211	196	116	133	130	97.7
3. Social security	438	439	464	494	413	410	369	90.0
4. Labour law cases	234	216	179	192	156	140	177	126.4
5. Administrative matters	687	730	623	437	520	505	416	82.4
6. Judicial and police	959	1.009	1.113	921	863	821	786	95.7
7. Environment and spat. plan.	65	108	104	124	102	77	85	110.4
8. Commercial public services	38	79	43	58	59	84	79	94.0
9. Housing	161	132	124	139	123	121	129	106.6
10. Personal data protection					26	24	16	66.7
11. Children's rights					40	124	147	118.5
10. Other	640	754	549	504	580	311	254	81.7
TOTAL	**3.505**	**3.727**	**3.443**	**3.132**	**3.087**	**2.827**	**2.665**	**94.3**

Selected cases **3.**

Selected cases **3.**

1 - ALLOCATING STATE SUPPORT TO RELIGIOUS COMMUNITIES WITHOUT CRITERIA

We drew attention to this issue in the 2001 Annual Report. We established that budget funds are allocated without pre-determined criteria and without public calls to tender, and therefore in a hard to follow manner. On the basis of the Legal Status of Religious Communities in the Socialist Republic of Slovenia Act (ZPPVS), in adopting the budget for the budget user the Slovenian Government's Religious Communities Office (UVRSVS), the National Assembly decides each year on the amount and type of financial support for religious communities in the framework of the items "contributions to clerics" and "assistance to religious communities". The allocation of the funds from these items is decided by the Director of UVRSVS after receiving the applications. In preparing the draft budget, the UVRSVS estimates the approximate amount of funds for the budget item contributions to clerics, or estimated needs for the coming year based on the number of recipients in the current year, the expected fluctuation of salaries and the percentage of coverage of the contributions, in accordance with the explanations of the decision of the Government, i.e. the Executive Council, of 18 March 1991. The conditions for the allocation of financial support, which the Act does not precisely define, are derived from the reasonable explanations of this decision. This makes possible unequal and even discriminatory treatment of individual religious communities and individual clerics.

In 2001 we proposed that the Slovenian Government adopt criteria for apportioning financial support to religious communities and their clerics. The Government ordered the Office, through the obtaining of appropriate expert opinions, to additionally study the possibilities for establishing legal regulation of the criteria for allocating financial support to religious communities which had registered their founding in the Republic of Slovenia. With regard to this issue, the Office has requested a large number of expert opinions to date, and in the middle of 2003 ordered external consultants to formulate professional bases for the normative regulation of the entire area of religious communities in the Republic of Slovenia. We published our findings and recommendations with respect to resolving these issues in our Annual Report for 2003.

In 2004 we again received a complaint with regard to this issue, which turned out to be justified. The UVRSVS several times and without providing grounds for the decision rejected applications filed by one of the religious communities for the payment of a part of the monthly contributions for social, medical and pension insurance for their clerics. Since the summer of 2003 when we first asked for certain explanations and even after two interventions by the Government Secretary-General, public exposure of the work of the Office of Religious Communities at a press conference and an article published in the ombudsman's newsletter, the Office still has not yet answered a simple question: why did it not allocate a proportion of contributions for social, medical and pension insurance for clerics to this particular religious community, and why did it not provide these funds to this religious community at least in the following budgetary periods?

It is unacceptable that since our request in 2001 and our constant drawing of attention to this issue nothing has changed in more than three years, and that the situation is practically the same as it was when the ombudsman established the existence of irregularities and proposed a solution. It is still uncertain when a law will be passed in the area of religious communities and what its contents will be. At this point it is clear that the state funds

are allocated to the religious communities at the will of the Director of UVRSVS, and this will continue in future as well. The ambiguous, misleading and evasive responses of UVRSVS in the process of dealing with the complaint in question additionally support our fear that unequal treatment of religious communities is occurring in this area. We informed the Government Secretary-General about the above-stated findings. We suggested that he investigate the legality and expediency of the usage of budget funds at UVRSVS's disposal, and take appropriate measures within the framework of his authorities against the Director of UVRSVS. The Government Secretary-General ordered the Director of UVRSVS to carry out immediate measures for the elimination of unequal treatment of the complainant. At the same time he ordered the General Internal Revision Service to perform an extraordinary revision of the operating processes within UVRSVS. **1.0-8/2003**

2 - PROTECTION OF THE PRIVACY OF FORMER CONVICTS

A complainant drew our attention to an extremely sensationalist article on 'record murders' in one of the tabloid newspapers, which among other things described a murder of five people committed by the complainant in a pathological affect in 1966. The complainant was 18 at the time, and he served out his sentence twenty years ago. In addition to the details of the offence, the names of the victims and the perpetrator, a present-day picture of the perpetrator was published with a caption stating that he is one of the cruellest serial killers. The complainant asserted that this constant bringing up of the crime for which he served his time, regrets and tries to forget, seriously encroaches upon his privacy.

There is no doubt that such persons also have the right to expect that their personal rights are respected. However, it is sometimes hard to determine where the limits of invasion of their privacy are. In 1997, in connection with another similar article published in the same newspaper, the complainant opted for judicial protection, however, the case has not yet been finally adjudicated. Since he is in a weak financial position we took the view that he is not in a position to opt for such protection in the case at hand as well. Therefore we assessed the possibilities that the ombudsman himself would submit a complaint to the Board of Arbitration for Journalism Ethics (NČR) to assess the ethicality of the journalist's actions, and simultaneously discuss the broader issue of the manner and scope of publishing information regarding former convicts who served their sentences for their crimes a long time ago. No particular public interest could be seen with regard to the detailed informing of the public of all the circumstances of such events which happened such a long time ago. This case also opens broader questions relevant to the protection of human rights and fundamental freedoms and for legal certainty in the country, ranging from the protection of privacy to the right to rehabilitation. In this particular case the ombudsman did not file an assessment complaint because the complainant turned to the ombudsman too late, i.e. after the expiration of the deadline for the handling of a complaint prescribed by the Rules of Work of the NČR. **1.0-5/2004**

3 - ALLEGED GRANTING OF PRIVILEGES TO ROMA

Accusations of unjustified granting of privileges to the Roma community frequently refer to spatial regulations (spatial planning documents, building permits, measures by inspectorates, ensuring municipal infrastructure, etc.), to questions related to security (police authorisations, determination of penalties in misdemeanour procedures, criminal cases, etc.), and employment, and also with regard to cultural activities and education. We received one of such letters together with an 'advertisement' which was also published in various media, and was circulated especially via email (Become a Rom).

When we visited representatives of the Romany Association they explicitly referred to the disputability of such advertising. The ombudsman expressed the opinion that the advertisement completely unjustifiably labelled all persons of Roma origin (e.g. as illegal builders, perpetrators of misdemeanours, etc.) and that it was a case of unjustified stigmatising of the entire Roma population, which stems from negative prejudices or stereotypes about them. Evidence of the expression of intolerance can also be read in such behaviour, and some Roma justifiably feel ostracised and personally slandered. **1.2-10/2004**

4 - PRINCIPLE OF GOOD ADMINISTRATION AND VOTERS WITH RESTRICTED MOBILITY

A person with restricted mobility notified us that during elections and referendums they could not vote in the area designated for voting at the polls where he is enrolled in the register of voters. This area is located on the first floor of a school building which is also not otherwise accessible for people in wheelchairs. When regulating the methods for exercising the right to vote, the National Assembly Elections Act (ZVDZ) specifically takes into consideration several life situations, but not the restricted mobility of disabled persons. We judged that despite that, the ZVDZ gives disabled people not only the formal but also the actual possibility to exercise the right to vote at elections and referendums. The ZVDZ explicitly enables some groups of people to vote by post or at home. Cases of the inaccessibility of individual polling stations can also be solved through voting ahead of time.

The ombudsman handled the complaint from a broader perspective than just the accessibility of the individual polling stations. We have observed that access for disabled persons to court houses, school buildings, etc. is not always provided, that the state does not have an overview of the existing situation and that this issue is not consistently regulated, which is why we addressed an inquiry in May to the Republic Election Committee (RVK), which is the central body authorised for carrying out elections and supervision of election procedures. In our inquiry we specifically stated that the complaint is being handled from the viewpoint of compliance with the principles of good administration, and expressed our opinion that the issue of the accessibility of polls for people with restricted mobility could be solved more efficiently in practice through taking various steps, for example with appropriate determination of the location of polls or voting areas with appropriate access (e.g. wheelchair ramps, etc.).

After sending reminders we received a response from the RVK only three work days before the elections for the National Assembly. The RVK does not believe that it would be possible to seek a solution simply through the amending of the ZVDZ which would provide that each voting district would determine a special polling station where people with restricted mobility (including for instance the blind) could vote, whereby those persons would have to give prior notification to the district voting personnel about their intention so that they could be entered in a special register of voters and removed from the general register.

The fact that the RVK did not respond to the inquiry constitutes a failure to observe the principle of good administration. Although we consider some points about difficulties in determining the location of polling stations to be well-founded, we believe that the response is also inappropriate in terms of content. We consider as inappropriate the mere stating by the RVK of the role of the district voting commissions (which directly determine the location of the polls), the lack of budget funds and other potential solutions in the Act. The RVK pursuant to Article 37 of the ZVDZ is also in charge of ensuring the legality and the uniform application of the provisions of the ZVDZ which refer to election procedures, harmonises the work of the voting commissions of the voting units and the district voting commissions, gives professional instructions in connection with the implementation of

the ZVDZ and supervises their work. It also determines uniform standards for election materials and other material conditions for the execution of election procedures.

From the above-stated competences of the RVK, it undoubtedly follows that it has the possibility to inform the bodies which directly determine the location of polling stations in time about the problem of access for persons with restricted mobility and possibilities for solving such problems. We believe that suitable instructions could eliminate many problems which unnecessarily arise at the lowest levels of the organisation of election procedures. Due to the above stated we consider the complaint to the ombudsman to be partially justified. **1.7-3/2004**

5 - NIGHT-TIME REST FOR ALL PRISONERS

While serving his sentence at the Dob pri Mirni prison, a prisoner complained about disturbance of his night-time rest. He stated that another prisoner shared the common sleeping room who suffered attacks of illness during sleep time, which was disturbing since other prisoners woke up in the middle of the night because of this.

With the mediation of the ombudsman, the National Prison Administration (UIKS) confirmed that living in an area in which a prisoner is placed who has occasional attacks of epilepsy is disturbing for the other prisoners. It assured us that it had warned the prison in Dob about this matter. As a consequence of this, a decision was passed that the prisoner with epilepsy would be moved into a double room. He was also given a suitable roommate who was prepared to live with him i.e. assist him during his attacks, since it was impossible to move him into a single room or a common sick room. **2.2-16/2004**

6 - MEDICAL EXAMINATION FOR PRISONER AFTER INTERVENTION OF THE OMBUDSMAN

A prisoner at the Dob pri Mirni prison complained that the prison doctor had requisitioned a medical examination for him at a health-care institution, but the prison administration had not allowed him to visit the doctor. They demanded that he use a free release pass for this purpose, which was given to him as a privilege, with which he did not agree.

UIKS explained that the complainant had arranged the date and time of the specialist examination by himself, even before he reported to the prison doctor. Despite this, the prison doctor ordered that the prisoner be sent to this medical examination. On the day that the prisoner was supposed to attend the medical examination, Dob prison did not supply transport i.e. an escort to the doctor outside the prison owing to a lack of available guards due to their being overburdened. He was (only) given the opportunity to attend the medical examination by using his free release pass, but the complainant declined to use that opportunity.

The doctor who performs the medical activities at the prison makes the decision about sending the prisoner for a medical examination or treatment in a health-care institution outside of the prison, about which he is obliged to inform the warden of the prison (sixth paragraph of Article 59 of the Enforcement of Penal Sentences Act (ZIKS)). There is no doubt that the prison doctor made the decision about the medical examination of the prisoner, since he issued a referral for that purpose on 14 June 2004, thus confirming that a medical examination was necessary.

In a repeat intervention we warned that the prison was bound to enable the attendance of the medical examination and to take all measures necessary to that end. Perhaps through

more efficient work organisation it would be possible to foresee such circumstances in advance and to provide prisoners with transport to the health-care institution. Here it is also unimportant that the prisoner arranged the date and hour of the specialist examination outside the prison himself, since the prison doctor approved this through issuing the referral. Therefore we suggested that Dob prison arrange a medical examination pursuant to the referral issued on 14 June 2004 as soon as possible.

The UIKS followed our suggestion. It reported that Dob prison had ensured that the prisoner was transported to the medical examination at the external health-care institution pursuant to Article 59 of the ZIKS. **2.2-38/2004**

7 - CONFINEMENT AT A PSYCHIATRIC HOSPITAL WITHOUT THE PRESENCE OF AN ADVOCATE

The complainant was hospitalised against his will on the locked ward of the Ljubljana Psychiatric Hospital. In a non-litigious confinement procedure the Local Court in Ljubljana issued a decision on 27 January 2004 that the complainant should be confined on the locked ward for at most one month.

The confinement decision did not take into consideration the decision of the Constitutional Court (CC) no. U-I 60/03-20 dated 4 December 2003 (Official Gazette of the RS, no. 131/2003). Through the stated decision the CC established the unconstitutionality of provisions of Articles 70 to 81 of the Non-litigious Civil Procedure Act (ZNP). At the same time it determined that for the period up to the removal of the determined unconstitutional elements, in the instigation of the confinement procedure courts must **ex officio provide an advocate** for the forcibly confined person. This is a fundamental procedural guarantee, which is required by the stated decision of the Constitutional Court, and was not observed in the confinement procedure against the complainant.

In the confinement procedure the court failed to appoint an advocate to the confined person. The data in the file indicate that during the proceedings the complainant was incapable of exercising his rights and legally protected interests, and to participate in the hearing as an equal party. He was opposed to the confinement and treatment (this can already be seen from the fact that he submitted a complaint to the Human Rights Ombudsman), but he did not avail himself of any legal remedy (appeal, revision) in the procedure before the court of general jurisdiction.

On the basis of Article 385 of the Civil Procedure Act (ZPP) the Supreme State Prosecutor General of the Republic of Slovenia may submit a request for the protection of legality against a final court decision. It may submit a request against a decision by a first-instance court against which no appeal has been lodged within three months of the day when the decision may no longer be challenged by an appeal.

The failure to provide an advocate constitutes a violation of a fundamental procedural guarantee which is otherwise guaranteed by the Constitution with the guarantee of equal protection of rights in procedures before courts pursuant to Article 22 of the Constitution. Since the complainant was not ensured representation in the confinement procedure as required by the decision of the CC, a material violation of the procedural provisions pursuant to point 11 of the second paragraph of Article 339 of the ZPP in connection with Article 37 of the ZNP also occurred. With respect to this we established that this was not an isolated case of failure to observe a decision of the Constitutional Court. This could have serious consequences for the legal certainty of persons confined against their will on locked wards of psychiatric health-care institutions.

Therefore we sent an initiative to the Supreme State Prosecutor General of the RS that they submit a request for the protection of legality against the stated decision issued in the confinement procedure. In their response the Supreme State Prosecutor confirmed the procedural violation in the matter of the complainant's confinement, but at that time the final deadline for confinement determined pursuant to the decision had already expired. The decision in the procedure for protection of the legality therefore could not (any longer) influence the complainant's situation. This means that there was no longer any legal interest in challenging the confinement decision, which is a prerequisite for the admissibility of this extraordinary legal remedy. Therefore the Supreme State Prosecutor General did not submit a request for the protection of legality. **2.3-2/2004**

8 - CONDITIONING OF DENTAL SERVICES WITH HIV TESTING

In a complaint to the ombudsman, the complainant stated that he was refused further dental treatment at a private health-care institution, which alleged that he was a former drug addict and that he could also be infected with the HIV virus, and therefore he would have to submit an appropriate medical certificate indicating his health status to the institution.

In answer to our inquiry, the health-care institution sent us a lengthy response with the history of the complainant's treatment and a description of the disputed event as seen from the employees' point of view. In the response special emphasis was placed on the fact that they had already been familiar with his treatment for addiction to illegal substances, but they claimed that they had never conditioned his treatment with any kind of tests. They stated that the complainant himself had not kept to the agreed appointments for individual examinations and did not keep his appointment for tooth polishing, but appeared unannounced a month later and demanded immediate treatment.

During the examination at the health-care institution the complainant was observed to have severe coughing spells which would obstruct the tooth polishing procedure, since the convulsions of his upper body made it impossible to carry out the services properly, and at the same time there would also be a great danger of injury. Therefore they recommended that he visit his general practitioner, who is authorised to administer appropriate treatment pursuant to the law, since dentists are not authorised to make diagnoses and treat other diseases which fall within the work competence of the general practitioner. The complainant's reaction to the refusal was quite strong; he expressed the wish to switch his chosen dentist and then left the clinic. On that day the representatives of the health-care company spoke with the complainant's mother several times and attempted to explain the situation. On this basis the complainant's mother later came to the clinic and demanded that the complainant needed a written statement from the dentist about which tests should be performed. Therefore the dentist issued the complainant's mother a 'note to the doctor', a copy of which was also submitted to us by the complainant.

We were unable to determine from the above-mentioned response from the health-care institution that the complainant's human rights were violated, nor his patient's rights as determined by the health-care legislation. The response was convincing in the part where it explained the reasons for the refusal of treatment, which were due to the complainant and were of an objective nature, and therefore in our opinion in that part we cannot accuse the dentist of unethical behaviour. We informed the complainant of our findings and told him that he had the possibility to request a judgement by the competent bodies of the Chamber of Physicians of Slovenia if he did not agree with our position. We also told the complainant that in addition to patient's rights, the health-care legislation also prescribes the patient's obligations, whereby it is important that the patient follow the instructions of

the doctor, otherwise the doctor can refuse to continue treatment. In any case the doctor-patient relationship is based on mutual trust, and therefore in accordance with the regulations on compulsory health insurance there is also a possibility to select another dentist if one no longer trusts one's present one. If he did not decide to switch dentists, we recommended that the complainant report to the clinic and schedule an appointment, since he had already been approved to receive a prosthetic device and a delay would not be of benefit to his health. With regard to a possible civil lawsuit which the complainant mentioned in his letter to the health-care institution, we recommended that he consult a lawyer or another person with legal skills, since the result of a potential damages suit, according to our assessment of the data which was available to us was rather uncertain.

The complainant did not return to us, so we do not know whether he followed our recommendations, but we expect that he resolved the disagreement, since the health-care institution especially expressed their preparedness to continue his treatment at any time.
3.4-16/2004

9 - REFUSAL OF BLOOD DONOR DUE TO HIGH-RISK LIFESTYLE

The complainant has voluntarily given blood more than sixty times, and recently a health-care institution refused him, stating that he was known as having a 'high-risk lifestyle' and therefore could no longer participate in blood donor campaigns. The complainant believes that he was unjustifiably discriminated against and stigmatised by the health-care institution.

In the procedure we wished first to obtain an expert opinion about when it is possible to refuse the blood of a certain donor, and then to determine whether the refusal of the complainant was performed on an appropriate professional basis and in an appropriate manner. The professional basis was sent to us by the Blood Transfusion Centre in Ljubljana and we also informed the complainant about it. The Centre informed us that the information about the high-risk sex life of the complainant was broadcast with his consent in a television programme and in a local newspaper, and therefore he was refused as a voluntary blood donor on the basis of a professional standpoint that sexual behaviour can be a reason for the permanent refusal of a blood donor who owing to his sexual behaviour is exposed to increased risk of the transfer of serious infectious diseases which can be transmitted by blood. The Centre explained that they are obliged to proceed in such manner pursuant to Directive 2004/33/EC of 22 March 2004 implementing Directive 2002/98/EC of the European Parliament and Council as regards certain technical requirements for blood and blood components, Annex III, Eligibility criteria for donors of whole blood and blood components, point 2.1., Permanent deferral criteria for donors of allogenic donations. Such donors are refused in order to protect both the recipients of blood as well as the donor.

We assessed that the response of the Centre was correct and appropriately clarified the complainant's assertions that his constitutional rights had been violated. In our estimation in deferring him the health-care institution violated neither his human rights provided by the Constitution of the RS, nor the rights provided by the health-care legislation. The fact is that blood donation is a humanitarian activity for which donors are by all means deserving of recognition and appreciation, but the state must through its measures ensure that this activity is performed in accordance with current regulations and standards which ensure the maximum safety of the donors, and especially of the patients who receive the donated blood.

Neither in the complaint nor from the other documents were we able to discern the complainant's accusation that the health-care institution had "unethically branded him a

shameful person" (his assertion), since the institution nowhere published the information that they had refused the complainant's blood. In an internal memo, a copy of which was enclosed to the complaint, the transfusion department explained only the refusal with the fact that the complainant was presented as a person with a high-risk lifestyle on national television and in a local newspaper, which was confirmed by the complainant himself. Since the circumstances and contents of this presentation were not known to us, we were unable to assess whether the complainant's rights had been violated through these actions, especially since he did not even assert these violations. **3.4-20/2004**

10 - DISCRIMINATION AGAINST HOMOSEXUALS AT HEALTH-CARE INSTITUTIONS

A non-governmental organisation informed us that dentists at certain health-care institutions use forms whose contents discriminate against homosexual patients and unjustifiably encroach on their privacy, since they demand a statement about sexual habits and a signed statement that they are not infected with the HIV virus.

In an inquiry at a health-care institution we demanded their position on the described behaviour, and were interested above all in the legal basis for such collecting of data. The professional director of the health-care institution explained that the data are collected on the basis of Article 50 of the Health Services Act, which prescribes that everyone is obliged to give factual data about their state of health to a doctor or health-care worker to whom they are entrusting their treatment. The contents of the questionnaire was approved by a professional stomatology committee and is in conformance with the recommendations of the FDI (Federation Dentaire International), adopted in 1989. A dentist may perform his or her work professionally and safely for the patient only if they are familiar with the patient's overall state of health. The use of questionnaires is monitored by the Chamber of Physicians of Slovenia when applying professional supervision and consultancy.

In 2001, the health-care institution prepared their own questionnaire which partially differs from the above-mentioned questionnaire. Among other changes, question number 11 was taken out of the old questionnaire, which read:
"Could you be exposed to the AIDS (HIV) virus due to:
a) homosexual or heterosexual activity
b) prostitution
c) the use of hypodermic needles for treatment or other use YES NO"

According to the statements of the professional director of the health-care institution, some dentists are continuing to use the old questionnaire, so the problems which we were informed about arose in practice. Immediately after our inquiry the health-care institution notified all dentists at the institution that they had to use the updated questionnaire consistently in their work. According to information we received, the old questionnaire is also no longer used elsewhere in Slovenia, or the disputed question has been removed.

According to data from the health-care institution, patients fill out the questionnaire voluntarily, and up to the present there have been no complaints about dentists refusing to perform services if the questionnaire was not filled out. The filled-out questionnaire was a supplement to the patient's dental records and was kept in a locked file cabinet which prevents access to personal data by unauthorised persons.

We informed the complainants that in our estimation we could not detect discriminatory behaviour by the health-care institution from the stated facts, since the disputed questionnaire was used only to collect personal data which as part of the medical records was

necessary for the effective and safe treatment (for both the patient and the doctor). The doctor-patient relationship has to be based on trust, therefore any procedure involving an invasion of the patient's bodily or spiritual integrity was permissible only on the basis of the patient's consent. A violation of the regulations or discrimination due to personal circumstances would occur only if health-care workers conditioned the services to which patients are entitled with certain types of behaviour or states of health of the patients. In this particular case, on the basis of the data collected it was impossible to confirm the statement of the complainants that patients "have to sign statements guaranteeing that they did not have AIDS".

With regard to the above-stated, we assessed that the complaint was justified, since the health-care institution ensured that dentists would no longer use the disputed questionnaires, since the disputed question actually did not serve the purposes which the medical records are supposed to provide. **3.4-29/2004**

11 - PROBLEMATIC DELETION FROM UNEMPLOYMENT RECORDS

The complainant sent us for our edification a Report on the Performance of Investigation and a Declaratory Order, both composed on the same day. No Record of Investigation was enclosed to these documents pursuant to Articles 25 and 26 of the Rules on the Manner and Procedure of Performing Investigations of the Fulfilment of Obligations of Unemployed Persons. This record includes any disagreement and comments by the person being investigated. The person being investigated may decline to sign the record. If they are not present during the writing of the record, they may add their verbal or written comments to it within three days. In our case, the complainant stated that he was never informed of the contents of the record, although the comments to the record are the only opportunity to object to the findings of the investigation, since pursuant to the second paragraph of Article 258 of the General Administrative Procedure Act (ZUP) no appeal against the order is admissible. In the event that an unemployed person has no access to the Record of Investigation, they may therefore only appeal the decision whereby they are already deleted from the records of unemployed persons and other consequences may arise. The complainant denied that he was unavailable at his home address, but he was not given access to the record even in the following days. He was therefore unable to add his comments, although they might have changed the further course of the procedure. We believe that the conduct of the Employment Office in connection with the deletion from the records of seekers of employment was overly hasty, and we advised them to reconsider their decision. Our opinion was accepted by the Employment Office. **4.2-25/2003**

12 - QUESTIONABLE TERMINATION OF EMPLOYMENT FOR A FIXED TIME PERIOD

The complainant stated that an agreement between herself and the director of a public institution was not fulfilled with regard to the date of the termination of employment, which was concluded for a fixed time period. She had expected to conclude employment for an indefinite time period, since she is a good worker and had also completed additional training to which her employer had sent her. She enclosed the work schedule, from which it could be seen that in January 2004 she was still listed as a worker at the institution, although the employment for a fixed time period had expired on 31 December 2003. Since the employee had also not used all of her regular holiday days for 2003, we justifiably concluded that the negotiations for extending the employee's employment, either for a fixed time or an indefinite time, were actually in process. The employee turned to the Postojna

branch of the Labour Inspectorate for assistance, and also filed a lawsuit at the Labour and Social Court. We assessed that this could be a case of the violation of labour rights, and wrote to the director of the public institution. We recommended that they reconsider their decision to terminate employment, and attempt to achieve an agreement with the employee and thereby avoid unnecessary court costs. In other words, we believed that the employee would win her lawsuit. The director followed our recommendations, accepted the assessment of unlawful behaviour and achieved a settlement with the employee. She was employed for an indefinite time period, without an interruption of employment. **4.3-1/2004**

13 - DETERMINATION OF CITIZENSHIP IN DENATIONALISATION PROCEDURE

The complainant informed us that the Ministry of Culture was delaying the resolution of a denationalisation claim which referred to the return of a property.

After reviewing the documentation we established that the matter was being dealt with at an administrative unit, the Sector for Administrative Internal Affairs, and therefore we asked them for an explanation. We received information that they had carried out the procedure of determining citizenship for the beneficiary pursuant to the third paragraph of Article 63 of the Denationalisation Act. On 8 April 2004 in a repeat procedure they issued a decision, against which the complainant lodged an appeal with the Ministry of the Interior. The Ministry has not yet decided on the appeal.

The determination of the citizenship of the beneficiary is a preliminary issue which has to be resolved before dealing with the matter at the Ministry of Culture. The complaint is justified in terms of content. Every year we observe the excessively slow resolution of denationalisation claims, including the problem of lengthy resolution of the preliminary issue of the citizenship of the beneficiaries. The reasons for this can be found both in the bodies which do not perform their work sufficiently well and expediently, as well as the parties to the procedures who occasionally make excessive use of the available legal remedies against the decisions when they are finally issued. In this particular case of course, the ombudsman cannot supersede the decision making of the competent bodies, nor can it successfully force them to work more expediently. **5.3-22/2003**

14 - SUPREME COURT REPORTS INCORRECT INFORMATION

The complainant is one of the creditors, an injured party with respect to the company Zdenex, d.o.o., which is undergoing bankruptcy proceedings. The tax body issued decisions to the claimants on repeating the procedure for assessment of income tax due to subsequently determined interest income, which the Central Office confirmed in the appellate procedure. The complainant instigated an administrative dispute, and after the dismissal of his lawsuit in April 2000, he continued the procedure before the Supreme Court. After waiting for four years for the court's decision, he requested the intervention of the ombudsman.

When we asked the Supreme Court when the complainant could expect the resolution of his appeal, we received the response that they did not have any information that they had received his appeal in 2000. They stated that they were dealing with his appeal in connection with another matter. The complainant reported to us that the information which the Supreme Court sent to the ombudsman was not accurate. He submitted to us a letter from the court informing him that his appeal in the stated matter had been received on 18 May 2000 and would be heard as a non-priority case according to the schedule of non-priority cases.

We wrote back to the court with regard to this information. They admitted that the contents of their first response were not accurate. They supplemented their apology with an explanation that some matters had been accidentally deleted from the computer records for the year 2000. **5.5-10/2003**

15 - IF YOU HAVE NOT PAID YOUR TAX DEBT, YOU CAN NOT WORK (FISH FOR MULLET)

Once again we encountered a case of the incomprehensible behaviour of the state, when instead of giving an individual the opportunity to work and create income with which he could pay off his tax debt, it established rules which prevented him from working and creating income.

The complainant is a professional fisherman. Owing to the non-payment or irregular payment of taxes in the past he had a tax debt. The Ministry of Agriculture, Forestry and Food issued an invitation to tender for participation in collective fishing for the winter migrations of mullet, in which among other things it set the condition that collective fishing for mullet could only be participated in by fishermen who had settled all of their obligations to the state. The complainant was unable to participate in mullet fishing due to his tax debt. Since we believed that the minister did not have the authority to set such a condition in the invitation to tender, we demanded an explanation from the ministry.

The ministry responded that all of the procedures for the mullet catch up to 2001 had been carried out by the administrative unit competent for the territory. Since only fishermen from the Municipality of Piran had had the right to collective fishing up to that time, this caused a great deal of dissatisfaction, altercations and disputes. In order to regulate the situation, it was decided that all fishermen would be invited to participate in the collective fishing of mullet in the 2001/02 season through an invitation to tender, and the conditions for participation in this fishing would be determined by the ministry pursuant to Article 11 of the Marine Fisheries Act then in effect. With these conditions, the ministry wished to limit the participation of those fishermen who did not engage in commercial fishing throughout the year.

Article 11 of the Marine Fisheries Act (Official Gazette of the Socialist Republic of Slovenia, no. 25/76 with amendments and supplements) determines the types of commercial fishing and provides that the conditions and methods for commercial fishing shall be determined by the Republic Secretary of Agriculture, Forestry and Food. In accordance with the Act, the Rules on the Conditions and Methods for Commercial and Sport Fishing (Official Gazette of the SRS, no. 20/77) were issued on 7 October 1977. The authority to determine more precise conditions and methods for commercial fishing was implemented by the minister through the adoption of the said rules. On the basis of the transitory provisions of the Marine Fisheries Act then in effect (Official Gazette of the RS, no. 58/2002 – ZMR-1) the rules continued to be applied until the issuing of the new executive regulation. If it was true that the minister held the statutory authority to determine the conditions in the invitation to tender, it would mean that the conditions would change each year depending on his individual decisions. The fishermen would be in constant confusion. This is in contradiction to the principle of legal certainty.

We wished to clarify the legal basis for the determination of the stated limitation, and at the same time we communicated our thoughts with regard to the handling of the case in question. We expressed the opinion that the condition of fulfilling the fisherman's obligations to the state could not be included in the contents of the regulations of marine fisheries, much less a condition of every individual invitation to tender. The determination of these

rights and obligations is the subject of other regulations, the fulfilment of which is within the competence of bodies which in the framework of their competences monitor and supervise the operations of business entities and the fulfilment of their obligations to the state.

At the time of writing of this report we had not yet received a response from the ministry. **5.5-8/2004**

16 - A MATTER WAS LISTED AS RESOLVED IN THE COMPUTER, BUT NO DECISION WAS ISSUED

Already in 1998 the complainant demanded the refunding of excess income taxes paid for 1995, 1996 and 1997. Since no decision was made about his demand, he turned to us for intervention. The Tax Office admitted that the complainant's application had not been resolved. When they were resolving his claim from 1996 (decision on the assessment of income tax for 1995), which they considered to be an appeal, since the complainant had in addition to the refunding of income tax also demanded the itemisation of his debt, they sent him only a letter with a printout from the data analyser, but not also a new decision. They considered his matter to have been resolved in terms of content, and it was listed as such in the computer, but for unexplained reasons no printout of the decision was issued. On the basis of our inquiry they rechecked the status of the matter and discovered the error, and issued the complainant a new decision on the assessment of income tax for 1995 and replaced the previous decision with it. On the basis of the new decision the complainant will be refunded the excess income taxes paid for 1995 together with interest.

The complainant thanked us for our intervention and commented: "Without your intervention on my behalf the matter would undoubtedly still be sitting in their computer." **5.5-27/2004**

17 - APPELLATE PROCEDURES IN CUSTOMS MATTERS ARE ALSO LENGTHY

As a disabled person, the complainant imported a personal car and exercised his right to exemption from paying customs duties. Upon an inspection of the use of the car it was determined that he was not using the vehicle pursuant to the second paragraph of Article 35 of the Decree on Enforcing the Right to Customs Duty Exemptions, and was ordered to make a subsequent payment of customs duties. He paid his customs debt, and at the same time initiated an administrative dispute. The Supreme Court overturned the decision of the Administrative Court, approved the claim and overturned the decision of the customs body. It based its decision on the decision of the Constitutional Court of the RS, which annulled the disputed decree. In a repeat procedure it was decided to return the paid customs debt to the complainant. The complainant believed that he was also entitled to the costs he had to bear in connection with the procedure as well as the default interest, therefore he lodged an appeal against the decision. The appeal was sent to the competent body on 27 August 2003.

Since the entire matter had already taken seven years to be resolved, the complainant asked the ombudsman to accelerate the handing of his appeal with regard to the refunding of the costs of the procedure and the default interest. When we inquired at the competent body of the Ministry of Finance about the time frames for dealing with appeals in the area of customs matters, they replied that the complainant's appeal, which was accepted into the resolution procedure on 4 September 2003, was not listed in the schedule of matters to be resolved in 2004. The appeal will be listed in the schedule of matters to be resolved in 2005 and was expected to be resolved in the first or second quarter of 2005.

We were of course speechless upon receiving such a reply (we have already written about a similar response in the 2003 Annual Report, p. 198). The ombudsman's warning that state bodies should organise their work so that they could adopt their decisions continuously, i.e. within the legal time frames, once again proved to be necessary and justified.

Obviously the need for a faster resolution of appeals is not being considered from the costs aspect. If the complainant succeeds with his appeal, the obligation of the state, which does not decide on the appeal, will increase due to interest. The consequences of lengthy procedures will have to be settled by the state from the budget. **5.5-31/2004**

18 - SOCIAL ASSISTANCE FOR THE PAYMENT OF CONTRIBUTIONS FOR HEALTH INSURANCE?

The complainant is 96 years old and has been bedridden for 17 years. She has been cared for by her sister, and now that she has also become infirm, by her niece. The complainant is a widow and receives a pension from the USA after her husband, who was employed in a mine and never returned from working abroad. Until 1985 she regularly paid her contributions for health insurance, and then became ill. She did not wish to participate in her treatment, but wished to die. Also now, after so many years of being bedridden, she wants to die. She refuses medical assistance. She refuses to pay her contributions, which she stopped paying in 1985. From the moment when her sister visited the regional unit of the Health Insurance Institute of Slovenia (ZZZS) in 1996 and made some inquiries on her behalf, she has been kept in their records as liable to pay and has been sent money orders for the payment of contributions. The complainant rejected them, and now they are disturbing her by sending her final reminders prior to the initiation of a lawsuit. The interest has already exceeded the principal, so that she is unable to repay the debt, which amounts to over 800,000.00 tolars.

The complainant does not have enough money to move to a retirement home as she receives a pension of only 58,000.00 tolars per month. Costs for her care in the home, since she is bedridden, would amount to around 200,000.00 tolars per month. Despite everything, the home is prepared to accept her. She cannot understand that with all of the facts, owing to which she would expect a careful study, the ZZZS is treating her case so bureaucratically. Her application for the write-off or reduction of her contributions for compulsory health insurance was rejected by the regional unit. In the procedure she had to submit among other things a confirmation from the Employment Service of Slovenia that she is not entered in the register of unemployed persons. She lodged an appeal, and sent a copy to the Ministry of Health. The Ministry of Health sent the ZZZS a letter in which they called on the Institute to study the case from all angles. The second-instance body granted the appeal, since it established that with regard to her advanced age, state of health and financial position the potential execution of a decision would threaten her subsistence. For the complainant the problem of the past debt was resolved, but the issue of the payment of her contributions for the future remains open. The ZZZS in its decision(!) recommended that she request social financial assistance in order to be able to pay.

Although including the complainant in the system of compulsory health insurance is not disputable and the obligation to pay contributions also arises from this (if the person liable to pay is able to pay without it threatening his subsistence), from the viewpoint of good administration of public affairs and the (unified) system of social security it is incomprehensible that the write-off of a few thousand tolars of monthly contributions for health insurance would be problematic, while the shifting of public funds from social assistance to contributions for health insurance is not, nor obviously is the additional payment of health-care costs in the retirement home in the amount of around 150,000 tolars per month. **5.5-51/2004**

19 - INSPECTORATE FAILS TO TAKE ACTION

The complainant asked us for help because the spatial planning inspectorate took no action in connection with the illegal construction of an extension to a barn which her neighbours built on the north side of her residential building.

With regard to this matter the inspectorate reported to us in 2000 that a decision on the removal of the extension to the existing barn had been issued on the basis of Article 73 of the Act on Urban Planning and Other Forms of Land Use; at the beginning of 2001 that the deadline for the removal of the illegal use of land was the end of May 2001; and in 2003 that the decision of the urban planning inspectorate was enforceable and included in the schedule of administrative executions in 2003. Since no execution was performed, in 2004 we asked the Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning (IRSOP) why no execution had been performed.

The inspectorate responded that the removal of the extension to the barn had been ordered and an order on the approval of the execution was adopted in an execution procedure in 2003. In an appeal against the order, the investor challenged the status of investor, so the procedure of proving who the actual liable party in the procedure of the building inspection was is still not concluded, and therefore the compulsory removal of the disputed extension has also not yet been performed.

After obtaining additional documentation we were interested in the reason that the inspectorate from the regional administrative unit sent the investor's appeal to the ministry only after more than one year from the issuing of the order on the approval of the execution. We received the answer that the reason lay in the large amount of building inspections and personnel problems. The case is also not among the matters which the building inspectorate deals with as a priority matter, since reports and procedures are resolved according to their priority. Priority was given to matters where the structures interfere with the public benefit, threaten the environment or health, cause danger in the area, or lie on land not zoned for construction or in protected areas. According to the assessment of the inspectorate the case at hand did not fulfil any of the listed conditions and disturbed only the complainant, and therefore was not dealt with as a priority.

We cannot agree with the inspectorate's explanation with regard to the postponement of the execution both in terms of the reasons and the method, about which we have been warning for several years. A great amount of work and personnel problems are not a justifiable reason for the lengthy delay of such a simple action as sending an appeal to a second-instance body. The public interest in the taking of action by the inspectorate was also the same at the time of the decision on the removal of the structure, the time of the issuing of the order on the approval of the execution and in 2004, and there is no basis for the inspectorate changing the understanding of the concept of the public interest. If it is not true that the public interest is established upon the issuing of a decision and with the issuing of the decision itself, an assessment of whether and to what extent the public interest has later disappeared can be highly arbitrary. **5.7-52/2003**

20 - ESTABLISHING AN ACTUAL PERMANENT RESIDENCE

The complainants, who live together in extramarital cohabitation, turned to the ombudsman each with their own position. The female complainant did not agree with the initiation of a procedure to determine her actual permanent place of residence and the actual permanent place of residence of her minor children, stating that the issue of her co-ownership at the address which is registered as her permanent residence is still not resolved.

The Vrhnika Administrative Unit informed us that in the (repeat) procedure it issued a declaratory decision that the complainant and her two daughters do not reside at the address which is registered as her permanent residence. The complainant did not challenge the decision with legal remedies, and so the decision became final. On the basis of the final decision the complainant and her two daughters were deleted from the register of permanent residence. The procedure for establishing the actual permanent residence of the complainant and her daughters was then initiated out of their official duty by the Ljubljana Administrative Unit, which issued a decision on the establishment of the (new) actual permanent residence of the complainant and her daughters. On the day this decision became final a change of the address of their permanent residence was entered in the register of permanent residence.

In connection with the procedure at the Ljubljana Administrative Unit the male complainant stated that the administrative unit had registered the permanent residence of the female complainant and her daughters without his written consent at the address of the property of which he is the owner. He believes that the decision encroaches into his rights, owing to which he as the owner of the property would at least have to be informed about the procedure. Therefore he demanded at the administrative unit that the female complainant be deleted from the stated address, since he as the owner did not give his consent to the registration of her permanent residence at that address. On this basis, a repeat procedure was initiated at the Ljubljana Administrative Unit in order to establish the actual permanent residence of the female complainant and her daughters, which had not been concluded at the time when we received the response to our inquiry.

We did not detect the irregularities in the procedures and in connection with the procedures which the female complainant alleged in her complaint. We explained to the female complainant that pursuant to Article 8 of the Residence Registration Act (ZPPreb) the competent body initiates the procedure for establishing the actual permanent residence if it doubts that the individual permanently resides in the settlement or at the address where they registered their permanent residence, or if it is informed that the individual does not permanently reside there. Therefore the Vrhnika Administrative Unit was obliged, on the basis of the report/notification from her mother that she did not reside at the permanent residence address, to initiate ex officio a procedure for establishing her actual permanent residence. We explained that in this procedure the competent body determines the actual permanent residence of an individual through a decision and thereby attempts to fulfil above all the purpose of the ZPPreb, which is the completeness of the records of permanently and temporarily registered individuals in the territory of the RS.

Pursuant to the third point of the first paragraph of Article 3 of the ZPPreb, the permanent residence is the settlement where the individual settles with the intent to permanently reside there, since that settlement is the centre of their life interests, and this is assessed on the basis of their occupational, economic, social and other bonds, which indicate that there actually exist close and long-lasting connections between the individual and the settlement where they live. The female complainant did not report her temporary residence at the new address. The Vrhnika Administrative Unit also warned the female complainant of the importance of these circumstances. According to the court practice of the Supreme and Constitutional Courts, for a judgement of whether the statutory definition of the actual settlement is given, both the circumstances that the individual has a registered temporary residence as well as reasons of an objective nature which prevent the individual's presence every day at the particular address are important. With respect to the fact that after moving from the address of permanent residence she did not report (at least) a temporary residence, this circumstance could not be legally taken into consideration in the procedure.

We explained to the male complainant that in the procedure for establishing actual permanent residence, the individual whose permanent residence is being established is the

(only) party pursuant to Article 42 of the General Administrative Procedure Act (ZUP). There are no other parties to the procedure, nor can there be. In the procedure, the only thing which is determined is a fact which pertains to the person who has a registered permanent residence at a particular address, and the rights or legal interests of other persons are not decided upon in this procedure. Therefore the claims of the male complainant that he should have been informed about the procedure as the owner of the property at the address of which the permanent residence was being registered were also not justified. The circumstances to which he referred do indicate his actual interest, however pursuant to Article 42 of the ZUP this is not a basis for the individual being recognised as a party to the procedure. The right to participate in the procedure is granted to an individual only if the individual is protecting his or her rights or legal interest in the procedure.

It could also be seen from the male complainant's statements that he does not deny the fact that the female complainant and her daughters actually reside in the house of which he is the owner. On this basis we can also conclude that he is not opposed to their residing there. We explained to him that we cannot see the reason for his opposition to their having the address at which they actually reside registered as their permanent residence, also because as the owner of the property he has the property at his free disposal and also decides whom he will allow to reside there. He cannot however decide who will have their permanent residence registered at the address where his property lies and whose owner he is if they actually live there. We also explained to him that the reporting of permanent residence and permanent residence itself so not give an individual a basis for enforcing ownership rights to property where he or she has their registered permanent residence. **5.7-4/2004**

21 - IS IT DIFFICULT TO APOLOGISE FOR A MISTAKE?

The complainant received an invitation from the Labour Inspectorate (IRSD), Kranj Regional Unit, to attend an special inspection, addressed to a company of which he is the owner and director and therefore also its lawful representative. Since the invitation was not sent to the correct address, he received it completely by accident, while picking up other postal shipments at an authorised office of Pošta Slovenije (the Slovenian Post Office). Since he was not able to attend the inspection, he apologised for his absence and notified the inspectorate that the invitation had not been sent to the correct address. Despite this, when picking up another postal shipment he again accidentally received a repeat invitation to attend an special inspection with a threat of forced production and a monetary fine if he did not respond to the invitation without an apology. Although this invitation had also been sent to the wrong address, the complainant responded to it.

The inspectorate had instigated the inspection procedure on the basis of a report by a worker employed at the complainant's company. In her report, the applicant gave the address to which the invitations of the inspectorate were sent. The inspectorate established that the invitations had been sent to the wrong address, and therefore the threatened sanction (forced production and the imposing of a monetary fine) was not executed.

The actual situation determined on the basis of an inquiry showed that a mistake or irregularity actually occurred in the procedure of serving the invitations, since despite the special notification by the complainant of the correct address, the invitations were not sent to that address. We established that owing to this no detrimental consequences arose for the complainant, since the threatened forced production was not executed nor was a monetary fine imposed. Irrespective of this, we could not agree with such conduct, so we recommended that the Kranj Regional Unit of the IRSD apologise for the mistake in writing to the complainant.

The inspectorate explained that this administrative mistake did not in any way affect the administrative procedure and the rights of the complainant in it, and therefore they did not

intend to apologise. At the same time the inspectorate also drew our attention to respecting the agreed manner of communication, whereby all written communications should be sent to the office of the Chief National Labour Inspector.

Despite the fact that this is an isolated case, we apologised for the mistake made in communications with the Kranj Regional Unit of the IRSD, since we believe that all mistakes demand an apology, especially when the mistake is made by a state body in relation to an individual while performing their duties. Therefore we still believe that an apology would be appropriate also because of the incorrect invitation of the complainant in the inspection procedure against a company of which the complainant is the lawful representative. **5.7-67/2004**

22 - RIGHT TO SCHOLARSHIP FOR STUDENT WITH SPECIAL NEEDS

A secondary school student with special needs asked the ombudsman for assistance in obtaining a national scholarship. She enclosed documents to her letter with which she proved that she had been applying for the scholarship for several years, but her applications had been rejected every time owing to exceeding of the limit for income per family member. In processing her application, her special needs, i.e. her special status, was not taken into consideration.

The provision of Article 12 of the Rules on Awarding of Scholarships provides that in the establishing of the income per family member in the case of the special needs of the candidate or family member, an extra family member can be added to the actual number of family members, owing to which the income level would be proportionately lower. In order to prove her special needs, the secondary school student enclosed to her application a medical certificate from the Clinical Department of Endocrinology, Diabetes and Intestinal Diseases, which the competent personnel did not take into account.

In processing her appeal, we established the lack of grounds for the decision of the first-instance body on the refusal of the right to a scholarship for the school year, where the competent personnel simply did not take any position with regard to the enclosed medical certificate or diagnosis. The secondary school student did not appeal the decision at the time. We expect that with a high-quality and complete explanation of the grounds for the decision she could definitely obtain appropriate proof of her state of health and might therefore have obtained a scholarship for the 2003/2004 school year. In the autumn of 2003, after again receiving a negative decision and once again not being able to see the reasons for not taking into consideration the medical certificate about her state of health in the grounds for the decision, she lodged an appeal. The second-instance body rejected the appeal, but at least corrected the poor and incomplete grounds for the decision, since it explained that in order to prove a special family or personal situation, a decision or order from the Placement Committee was required, from which it could be seen that it was a case of more serious or serious mental or physical disability, i.e. the functional impairment of the candidate or family member.

We explained to the complainant that due to the changes in the regulations and practices in the area of the establishment and determination of children's special needs, the decision on placement which would be issued by the competent unit of the National Education Institute on the basis of the expert opinion of the Committee for the Placement of Children with Special Needs would probably be appropriate, if of course she demonstrated an appropriate type and level of impairment or difficulties. We recommended that her parents file a demand for the instigation of a placement procedure, which they did at the beginning of 2004. The procedure took several months (also owing to a back-up in financing members

of the committee at the Ministry of Education, Science and Sport, who conditioned the issuing of expert opinions with payment for their work), but at last the girl obtained a placement decision whereby with regard to the type and level of handicap, impairment or disability, she was ranked among chronically ill children and was placed in an educational programme with adapted implementation of programmes and additional professional assistance.

The complainant was convinced that she would not have any difficulties in exercising her right to a scholarship for this school year. But things went wrong with her application this year as well. Once again she received a decision on the rejection of her application for a scholarship, since despite the decision of the competent body on her special needs the third paragraph of Article 12 of the Rules was not taken into consideration. The grounds for the first-instance decision did not include any reason which would explain the decision not to take into account the candidate's special needs.

The complainant lodged an appeal against the decision and her appeal was successful. The second-instance body, in the explanation which it sent to us with a copy of the decision on annulling the first-instance decision and on approving the scholarship for this school year, wrote that in the processing of the party's appeal it took into account the decision of the National Education Institute on the placement of the student in the educational programme with adapted implementation of programmes and additional professional assistance, into which she was placed due to her chronic illness, as the fulfilment of the condition for taking into account the above-mentioned provision of the Rules. Owing to the recognition of an additional family member the student no longer exceeded the set amount of income per family member. **5.8-46/2003**

23 - PARENTS' COMPLAINT ABOUT SCHOOL ADMINISTRATION AND CONDUCT OF TEACHER TOWARDS STUDENTS

The parents of fourth year pupils at an elementary school complained to the ombudsman about the slow response of the Education and Sport Inspectorate to a report of irregularities in the administration and operation of the school, failure to observe regulations and violation of the rights of the pupils. They accused the headmaster of obstructing the work of school bodies, uneconomical management and squandering of budget funds, performing an afternoon activity which would negatively affect the reputation of the school, covering up and distorting the truth about conditions at the school, not responding to the questions and complaints of parents, putting pressure on teachers and other school personnel, and a series of other irregularities. The teacher was accused of violating the Rules on Testing and Assessing the Knowledge and Progress of Pupils in Elementary Schools, inappropriate measures against pupils who had broken school rules, and violation of children's rights. In the opinion of the parents, the school administration had not responded appropriately to demands for the taking of disciplinary measures against the teacher owing to unacceptable conduct with pupils. They informed the competent authorities about the events at the school immediately after the appearance of the problems, and since after four months an inspector still had not made a decision on their complaint, they believed that his response was weak and ineffective. They expected the ombudsman to effect the settling of relations in the school, so that school bodies and other institutions would be objectively informed and that school bodies would be able to make decisions about the administration of the school. The school and its bodies should not be run by people who had been reported to the education inspectorate as violators of children's rights.

After our inquiries it was shown that the education inspector did respond to the parents' report and made several special inspections at the school, in which he reviewed documentation

which referred to the alleged violations, questioned the headmasterl, obtained a legal opinion from the Ministry of Education, Science and Sport on the legitimacy of the school council after the replacing of parents' representatives in the council and the opinions of two pedagogy experts on the performance of educational activities by the teacher and the measures she took against the pupils. He issued the records he had made of the inspections. After establishing the actual situation he concluded that he had no legal basis to enforce any measures against the school, its administration and the teacher. He issued a decision with which he stopped the procedure.

From the inspectorate's report we established that the inspector had not checked all of the assertions and complaints of the parents, the resolution procedures had been lengthy, and the final results were not in concordance with the wishes, expectations and convictions of the parents that it would be necessary to enforce disciplinary measures against the teacher and to dismiss the headmaster. In making the decision on the findings of the special inspections, the inspector perhaps had difficulties owing to the fact that individual activities touched on labour inspection, i.e. in later reports of violations in the field of supervision of other inspection services, which is of course not a reason for not handing the matter over to the competent authorities. The most doubtful were his findings that the measures and conduct of the teacher were not defined as improper in the school regulations, but were in accordance with unwritten rules, which was supposed to have been confirmed by the two pedagogy experts.

In connection with the complaint we also made an inquiry with the school's founder, the Ljubljana Municipal Council, which explained that they were familiar with the situation in the elementary school, and that the municipal council, although it was the school's founder, could not take any action before the conclusion of inspection procedures. However, they will hold a discussion with the school administration and attempt to appease the situation.

In a response to our letter, the President of the Parents' Council explained the role of the Parents' Council and emphasised that in the past the Parents' Council had on several occasions dealt with questions and individual complaints of parents which referred to the work of various teachers, and forwarded them to the headmaster, since their resolution was within his competence. He explained that in this particular case owing to the complaint by the parents and pupils about the work of the teacher, who was also the class teacher for the fourth year, the principal dismissed her from the position of class teacher and reassigned her to a position of subjects teacher. The parents were not satisfied with this measure, but they accepted that it was a step towards the normalisation of the situation. They wanted the school bodies and the appropriate external institutions to deal with the alleged irregularities. Only a final clarification of the accusations and their undisputed rejection, and the elimination of the errors and any deficiencies would in their opinion constitute the normalisation of the situation, the improvement of relations, and gradually also a better atmosphere at the school.

We could not determine from the school's response the position of the School Council with regard to the complaints of the parents about the school administration and the teacher. We also could not see that the School Council had at any time in the past dealt with any kind of complaint by parents and in connection with them adopted any decisions.

The disagreements between the parents and the school, reciprocal complaints, suspicion, embittered relations and bad atmosphere thus continued until the end of the school year.

One of the parents, who was a representative of the parents of the fourth year and was also a member of the School Council, appealed against the decision by the inspector to stop the procedure. The inspector rejected the appeal with a decision, stating grounds that the

appellant did not have the position of a party to or a participant in the inspection procedure. After the appeal, the Ministry of Education, Science and Sport established that the decisions which were issued contained deficiencies, such as an indeterminate operative part, no decision on the subject of the procedure and on all of the demands of the parties, the grounds for the decision were incomplete, and therefore it annulled the decisions of the inspectorate with a decision against which the school filed a lawsuit in an administrative dispute. The events at the school will thus reach their denouement in the courts.

At the beginning of the new school year changes had been made in the school administration, since the headmaster had reached the end of his term. A new headmaster was appointed, and it seems that there are real possibilities for the improvement of the situation at the school, for the regaining of the reputation and public image which the school once enjoyed. This will of course take some time. A good school atmosphere and reputation is more easily and quickly lost than established and maintained. We are convinced that at any rate the competent authorities should have taken more decisive and faster measures with regard to the events at the school: the municipal council as the school's founder and the departmental ministry, since last but not least the public image of the institution was at stake, and this should have been a matter of concern for both the Ljubljana Municipal Council and the Ministry of Education, Science and Sport. **5.8-8/2004**

24 - CRIME REPORT AGAINST POLICE OFFICERS DECIDED SOLELY ON THE BASIS OF POLICE DOCUMENTATION

The complainant, who sustained bodily injury in a police action on 12 July 2003, was released after three days in hospital with a diagnosis of: concussion, bruising on the head, bruising on the left side of the chest, bruising in the kidney area and suffusion and swelling of the tissue around the left eye. He filed a complaint due to the conduct of two police officers during the intervention and also submitted a crime report at the police station. His main allegation was that **one of the police officers had hit him with his fist in the area of his left eye**, at a time when his arms were handcuffed behind his back and the police officers were escorting him to a police vehicle.

In the complaint procedure, the police assessed the complainant's complaint as unfounded, and sent a report to the Trbovlje branch of the Ljubljana District Public Prosecutor's Office with an assessment that there was no basis for the crime report. In the report it can be seen that the complainant disturbed the public order and peace at the sports stadium in Trbovlje, and refused to present a personal document at the request of a police officer. During the procedure he insulted and threatened the police officer, and also got up suddenly, grabbed the police officer's shirt and tie with his hand and pulled him towards himself. In order to prevent an attack the other police officer attempted to control the complainant using a professional hold – a choke hold. Since the complainant was "much taller" than the police officers, and physically "very strong", they were not able to control him immediately. During the complainant's resistance, when he attempted to escape the officers' grasp, all three fell on the ground, where the police officers gained control over him and handcuffed him using physical force. In this connection the statement of both police officers is interesting, that when all three fell on the (concrete) floor, one of the police officers, "who is quite heavy", fell on the complainant.

The report establishes that the bodily injuries of the complainant occurred during the "lawful use of forcible measures". This is also true of the injury to the eye, whereby the occurrence of this injury "is confirmed by visible bloodstains on the concrete surface at the scene of the procedure". At this place an injury to the nose occurred, "and in all probability the injury around the eye also occurred along with this injury". At the same time the report

refers to the "opinion of prof. doc. dr. Branko Ermenc" of the Institute of Forensic Medicine, that "the injury (to the eye) could have occurred as a result of a blow with a fist as well as that part of the face hitting a hard surface, **although the first possibility is more probable**".

The District State Prosecutor in Trbovlje demanded the supplementing of the police report in order to determine whether the use of force (beating) was perhaps used when the complainant was already under control. She also warned that the injury around the eye had probably occurred as a result of a blow with a fist "and therefore it was necessary to determine in what circumstances, in what phase of the procedure and which of the police officers allegedly hit the applicant in the face with his fist".

The police supplemented their report with the finding that the police officers had used physical force – professional holds – "in order to ward off an attack and because they were not able to otherwise control" the complainant's resistance. They ceased using physical force at the moment when they handcuffed the complainant and did not use it any more. The police estimate that the lawful use of forcible measures was the consequence of the conduct of the complainant. His conduct had all the signs of an attack on the police officers, and the latter with regard to the circumstances (night-time, size and "bodily constitution" of the complainant) could have used even more serious forcible measures.

After the supplementing of the report, the District State Prosecutor dismissed the crime report. In her dismissal order the crime report of the complainant is not listed, but instead the 'crime report' of the Ljubljana Police Department, although the latter sent the prosecutor only a report, since it believed that there was no basis for the crime report.

In her dismissal order, the state prosecutor concludes that the injuries to the complainant occurred during the lawful use of forcible measures. She mentions the "opinion of Dr. Branko Ermenc from the IFM in Ljubljana", that "the injury was more likely the result of a blow with a fist, as well as the face hitting a hard surface". Here she draws attention to the bloodstains on the concrete surface "at the scene of the procedure, where an injury occurred to the nose and most likely also an injury around the eye". She does not go into greater detail about the mechanism of the appearance of the injury by the left eye (if it was perhaps the result of a blow with a fist). The order simply established that the police officers ceased using physical force at the moment the complainant was handcuffed and that they did not use it against him later.

The order to dismiss the crime report against the police officers was based solely on statements collected by the police themselves. The only documentation not contributed by the police was the crime report of the complainant and the medical documentation of his injuries and treatment. All other information went through the hands of the police during the collecting of statements in the form of official notes, work orders and reports of the on-duty police officer. The crime report was dismissed, **without the state prosecutor or any third party independent of the police** collecting relevant information **and at least discussing the matter with the injured party**. The crime report against the police officers was therefore **dismissed on the basis of materials which were collected, written and submitted to the prosecutor's office by the police alone**.

Article 161 of the Criminal Procedure Act (ZKP) authorises state prosecutors to collect the necessary statements and carry out other measures in order to establish criminal offences and identify the perpetrator. To this end, the ZKP explicitly authorises state prosecutors to invite (to an interview) the person who submitted the crime report. The ombudsman assesses that when the subject of the crime report is the unlawful use of police authority, it is especially important that the state prosecutors collect all of the necessary data themselves, and not rely (solely) on materials submitted by the police.

Official police note deficient

The official note of the collected statements, which is **compiled by a police employee**, does not necessarily contain the contents which were actually given or established. It is only a document which the police employee draws up (perhaps even from memory) after an official activity has been performed. The contents of the official note are determined solely by the person who compiles and draws up the document. The person whose statement is (or is supposed to be) written in the official note does not even know what is written about their statement. That person does not see the official note, does not read it, does not authorise its contents and does not sign it. The official note is signed only by the police employee who collected the statements, performed the interview and also compiled and drew up the official note. This can lead to unintentional deficiencies of content or inaccuracies in writing (for example due to inattentive listening to an interlocutor, misunderstandings, inaccurate summaries of statements, superficial observation or lack of professional knowledge of the field which is the subject of the record, etc.). It is also impossible to exclude the possibility that the writer of the official note intentionally (also possibly for collegial reasons) writes down the facts which he observes or the statement which he receives in such a way that it does not correspond to the truth. **These circumstances alone require that state prosecutors apply special diligence when deciding about crime reports against police officers**, and whereby they rely (exclusively) on materials collected in the form of official notes by police employees.

The fact that the state prosecutor and the police **consider the official note of the police interview with "prof. doc. dr."** Branko Ermenc to be **(his?) 'opinion'** is especially worrisome. The official note is not, nor can it be, the opinion of a person whose statement is written in it. Such a document is simply the official note of an interview which a police officer conducted. "Prof. doc. dr." Branko Ermenc did not see, read, sign or authorise the official note of the interview, and is also not responsible for its contents. The official note of his statement is therefore **not his** (expert) **opinion, but simply the police officer's notes on the interview**. We can illustrate the (un)reliability of the contents of the official note in question simply with the manner of addressing the person whose statement is recorded in it. The official note thus addresses this person with the title "**prof. doc. dr.**", while from an expert opinion pertaining to this case which the ombudsman obtained, it follows that he is an assistant professor ("docent") with the professional title of Doctor of Stomatology ("dr. stom."). The official note, which the prosecutor's office also defined as an 'opinion' in order to establish the mechanism of the appearance of the injury **in the eye area**, is in fact **only a police officer's record of the statement of a person** with (a formal) **education as a dentist**. We also should not overlook the fact that the statement which this person gave to the police officer was given solely on the basis of **medical documentation which was shown to him at the time by the police officer**, without conducting an interview and a medical examination of the injured person, or seeing his photographs of the injuries he sustained.

After the use of forcible measures the police put the complainant into police detention. **He was only taken to the Trbovlje General Hospital at his own request more than 12 hours after the event**. Upon reception the doctors established a swelling and suffusion in the area of the left eye and bruises (contusions) on various parts of his body. The complainant was also examined at an ophthalmology clinic, where he repeated the assertion that he had been "hit in the eye". Photographs of the face of the complainant, which were taken during and after his period of hospitalisation, also **indicate injury in the area of the left eye which is characteristic of a blow with a fist** (photographs enclosed).

Procedure deficient without a forensic medicine expert

The ombudsman believes that state prosecutors, when they are informed of allegations that the police have used force unlawfully (excessively), **should immediately order an**

expert opinion from a suitable forensic medicine specialist. This is especially important in cases where (visible) bodily injuries have occurred, attested to by medical documentation. The expert would have to be given an order to perform a medical examination and conduct an interview with the injured person and to record their statements about the appearance of the injuries, as well as an objective report on the results of the bodily examination and on the basis of existing medical and other documentation (including photographs). Then the expert would have to compare the allegations of the injured person with the objective findings from the medical examination and documentation, and assess the concordance of the allegations with the possible mechanisms of the appearance of the injuries received.

In the official note of the interview with "prof. doc. dr." Branko Ermenc, a blow from a fist is listed as the more probable cause of the appearance of the injury to the eye. The police considered this 'opinion' as a confirmation of the appearance of the injury to the eye, which was supposedly connected with the visible bloodstains on the concrete surface at the scene of the action. This was then connected with the lawful use of forcible measures: when the police officers attempted to control the complainant while he resisted, all three fell on the ground, at which time the complainant's face hit the ground. A similar view can be seen in the order to dismiss the crime report, wherein the most important finding for the state prosecutor is that the police officers ceased to use physical force once the complainant was under their control. The order to dismiss the crime report explicitly does not take a position on how the injury in the area of the left eye appeared.

Since the police officers and the state prosecutor did not decide to obtain professional assistance in the form of an expert opinion in order to establish the nature of the appearance of the complainant's injury in the area of the left eye accurately and with a higher level of certainty, this was done by the ombudsman. We asked the Institute of Forensic Medicine in Ljubljana for an expert opinion on the mechanism of the appearance of the complainant's injuries, especially that in the area of the left eye.

The expert explained that swelling and suffusion of the soft tissues around the eyeball, which is the injury sustained by the complainant, **is most often the result of a blow to that part of the body with a hand clenched into a fist**. In the case in question it is not possible to completely exclude the possibility that when several people involved in the incident fall, a blow to that part of the body could occur from a part of an upper limb (for instance an elbow or part of the forearm). We should state that theoretically such a possibility of course exists, but none of the participants asserted or even mentioned it. The expert assessed the possibility that such an injury would occur in a fall to the ground and the head striking a hard surface as **extremely unlikely**, since **such an injury would undoubtedly be accompanied by injuries to other parts of the face** in the form of skin abrasions and suffusions on 'prominent' parts of the face, such as e.g. the nasal pyramid or the forehead.

We sent the expert opinion to the prosecutor's office and the police. In her response, the District State Prosecutor stated that the expert opinion "has no effect on an already adopted prosecutor's decision". She sees the essence of the dismissal of the crime report in the fact that the police officers used force in order to ward off the attacks of the complainant and because they were not otherwise able to control his resistance in the time "up to his being handcuffed". At the same time, the prosecutor reported that **she had invited the complainant to the prosecutor's office**, and "informed him of the contents of the record and the expert opinion". The complainant therefore perhaps obtained the opportunity to state his view of the matter before the state prosecutor's office, unfortunately however **only after the procedure had been concluded, after the dismissal of the crime report and after the intervention of the ombudsman**.

In their response, the police confirmed that the expert opinion could have served as the basis for potential different conclusions on the use of forcible measures by the police officers.

During the phase of collecting statements, the expert opinion could have served as a useful guide to processing the matter, especially in explaining the use of forcible measures. The police further stated that it will monitor the actions of the District State Prosecutor and carry out all of her demands to take additional measures.

In connection with the ombudsman's criticism that the police obtain doctors' 'opinions' in the form of official notes, the police stated that the means for obtaining such expert opinions are available (only) to the courts, and the police "precisely because of this use such opinions only in exceptional cases". In the framework of collecting statements they conduct interviews with doctors and experts and compile official notes about the collected statements, since this method does not require additional funds. **Nevertheless, after the intervention of the ombudsman they slightly changed their practice** with regard to requests for expert opinions. Now, detectives in individual cases when it is not otherwise possible to explain the appearance of bodily injuries, request expert opinions **in writing** from the Institute of Forensic Medicine. **We recommend** that the police completely do away with the practice of obtaining 'opinions' in the form of the above-described official notes and (also financially) arrange their operations in such a way as to ensure the higher credibility of records of opinions of experts which they require in the performance of their duties.

Criminal prosecution is the duty of the state prosecutor

The complainant followed the legal caution in the order to dismiss the crime report and took on the criminal prosecution of the two suspect police officers by himself. Since in doing so he filed an incomplete application and later failed to supplement and correct it (within the set deadline), the court rejected it. The injured party could have used free legal assistance for this, but the dismissal order did not contain any information about such a possibility. The ZKP does not require such content in the legal caution, but it would not be contrary to the law if the prosecutor's office were to provide it. Here it should be emphasised that **the prosecution of the perpetrator's criminal offences, which are prosecuted ex officio, is the duty of the state prosecutor**, and not of the injured parties. The taking on of criminal prosecution by the injured party also involves a financial risk for the injured party, since in the case of failure he undertakes to bear the costs of the criminal proceedings.

With the findings, critical comments and recommendations which arise from this case, we wanted to draw attention to the fact that in the work of the police and the prosecutor's office there are reserves **which could be of significant help, as early as the phase up to the prosecutor's decision on the submitted crime report, in the determination of the material circumstances with a higher degree of certainty**. This is especially important in cases where the subject of the hearing is alleged unlawful (excessive) use of forcible measures by the police.

Persons who allege that they are victims of police brutality have the right to an impartial and fair procedure in which the contents of their allegations are fully dealt with, and a decision is made solely on the basis of convincingly (correctly and completely) established decisive facts. Therefore the ombudsman expects that the District State Prosecutor has not yet given the last word in the complainant's matter. **6.1-72/2003**

25 - UNLAWFUL MONITORING OF TEMPORARY ABSENCE FROM WORK BY SECURITY PERSONNEL

The complainant notified the police several times that he had been harassed and bothered by personnel from a private security company who were monitoring the 'sick leave' of his

daughter on the orders of her employer. The police responded to his calls for assistance and verified the individual statements or demands for intervention, but they did not take action because they did not establish any disturbance of the public order and peace, or violation of the Private Security Act. Police officers from the Ljubljana Polje Police Department also explained to the complainant that the security personnel have the authorisation to perform monitoring of sick leave and advised him to file private charges.

After the intervention of the ombudsman, the Police and Other Security Tasks Directorate of the Ministry of the Interior issued an opinion from which it can be seen that private security companies or private security services and their employed security personnel do not have the right to invade the information privacy of individuals. Private security companies may perform their activities (security!) on the basis of the Private Security Act, but they may not perform the monitoring of sick leave, since the security personnel would in that case violate the provisions of the fourth paragraph of Article 29 of the Detective Activities Act (performing detective activities without a detective's licence).

Therefore the Moste Police Station issued a report to the Republic of Slovenia Internal Affairs Inspectorate, since there is a suspicion that the employees of the private security company in question performed an activity without the appropriate licence. The competent inspectorate is bound to take measures if it establishes unlawful performance of detective activities. The Uniformed Police Administration was informed of the police officers' failure to take proper action, so that all police officers would be informed about the correct measures during training so that such irregularities will not occur in future. **6.1-26/2004**

26 - REPORT SENT TO PROSECUTOR'S OFFICE ONLY AFTER OMBUDSMAN'S INTERVENTION

The complainant filed a report with the Gornji Petrovci Police Department against an unknown perpetrator due to the criminal offence of violating the inviolability of a dwelling pursuant to Article 152 of the Penal Code of the Republic of Slovenia. On this basis the police collected the necessary reports, but in the reported action did not establish the elements of a criminal offence which is prosecuted ex officio. The police reported that it had notified the Local Court in Murska Sobota about the collected statements in a report.

The state prosecutor as the prosecuting body is the dominus litis of pre-criminal proceedings. Therefore it is important that the police as the body of discovery notify it of its activities and findings with regard to criminal offences for which the perpetrator is prosecuted ex officio. Pursuant to the provision of the seventh paragraph of Article 148 of the Criminal Procedure Act (ZKP) the police must send a report to the state prosecutor even if there is no basis for submitting a crime report on the foundation of the collected statements. Although the police carried out measures pursuant to Article 148 of the ZKP, it did not notify the competent state prosecutor as prescribed by law after collecting the statements. The complainant's complaint with a report was given to the Local Court in Murska Sobota. However, it should not be overlooked that the third paragraph of Article 147 charges the police with the obligation to send crime reports which it has received immediately to the competent state prosecutor, and not to the court.

Therefore in the intervention we recommended that the police send a report about the measures taken and the findings to the state prosecutor, together with the complainant's 'complaint'. The police agreed with our finding, that the police officers who did not establish a basis for a crime report through collecting statements should send a report to the District State Prosecutor's Office in Murska Sobota. Such a report was therefore sent only after the intervention of the ombudsman, more than a year after the complainant's report. **6.1-53/2004**

27 - ALL'S WELL THAT ENDS WELL

The District State Prosecutor's Office in Maribor filed charges against the complainant due to the committing of the criminal offence of slander, with the allegation that on 1 February 2002 in a telephone conversation with an employee of the Maribor District Court she said: "I've had enough of this fucking court, damned state, which does nothing, aren't we aware that they killed her son."

Prosecution of the criminal offence of slander is instigated on the basis of a motion if the action is committed against a state body or public official in connection with the performance of their job within that body. The motion for the prosecution against the complainant was made by the Maribor District Court. The District State Prosecutor filed charges on the basis of the submitted motion for prosecution.

The complainant and her husband have been in contact with the ombudsman for several years, as they are convinced that numerous state bodies, including the courts, have not provided them with effective judicial protection in finding and sanctioning the person who was responsible for the death of their son eleven years ago. In several cases in the past the ombudsman assessed that their complaint against the work of the courts was justified. In at least two cases in the ombudsman's annual report we have written about judicial proceedings in connection with their suffering.

The ombudsman does not advocate the punishing of parties due to circumstances connected with judicial proceedings if there are no specially justified grounds. The state, which is disproportionately powerful in comparison with the individual, must base the exercising of its powers on the strength of its arguments, not on the argument of its strength. The principle of expediency allows the state prosecutor not to begin criminal prosecution even though a reasonable suspicion is established that a criminal offence has been committed, for which the perpetrator is prosecuted ex officio. For such reasons we intervened at the District State Prosecutor's Office and the District Court in Maribor.

The head of the prosecutor's office reported to us that the prosecutor who filed the charges against the complainant is no longer employed there, and only he could explain the circumstances surrounding the filing of the charges.

We were however surprised by the response of the Maribor District Court, that pursuant to the provisions of Article 145 of the Criminal Procedure Act (ZKP) they submitted 'a crime report' against the complainant at the state prosecutor's office. Article 146 of the ZKP prescribes that "the failure to submit a crime report with regard to a criminal offence is in itself a criminal offence, therefore the court does not intend to dismiss the crime report in question".

Upon receiving such a response we took the liberty of informing the court that the criminal offence which the complainant is charged with is prosecuted ex officio **only if the injured party submits a motion for criminal prosecution. Criminal prosecution is therefore completely dependent on the will of the injured party**, since the state prosecutor may instigate the prosecution for the criminal offence only on the basis of the injured party's motion for the prosecution for a criminal offence.

We stated that the District Court in Maribor **had not submitted a crime report** against the complainant, **but (only) a motion for criminal prosecution**. Therefore the appeal to Article 146 of the ZKP, that the failure to submit a crime report with regard to a criminal offence is in itself a criminal offence, is unjustified. In this context we mentioned that that not even the failure to submit a crime report necessarily constitutes a criminal offence, since in such a case it is a criminal offence only when so determined by law. The injured party's not

filing of a motion for criminal prosecution even less constitutes a criminal offence. It is entirely dependent on the will of the injured party whether they will file a motion for criminal prosecution, and there is no sanction if they do not do so. Only if they file a motion for criminal prosecution is criminal prosecution performed ex officio. Also in this case the criminal prosecution proceeds according to the will of the injured party, since the latter may withdraw the motion for criminal prosecution up to the end of the main hearing without committing a criminal offence or interfering with public interest.

Criminal prosecution due to a motion from an injured party is an exception to the principle of the prosecution of criminal offences on the basis of official duty, since the criminal prosecution is dependent upon the will of the injured party. We expected that the President of the District Court in Maribor had considered the court itself to be the injured party, and that the motion for criminal prosecution was so filed. The state prosecutor would be allowed to file criminal charges solely on the basis of a filed motion for prosecution.

Therefore we recommended that the court reassess all of the circumstances due to which the complainant became the subject of criminal proceedings owing to her alleged words. At the same time we reiterated our conviction that guaranteeing a fair and effective trial means more to the reputation and dignity of the court than a criminal proceeding due to slander.

Soon after our repeat intervention, on 21 September 2004 the Maribor District Court notified us that they had reviewed the 'crime report' and that with regard to the arguments stated in the ombudsman's letter, they had decided to withdraw from 'criminal prosecution'. The complainant later reported to us that on 13 October 2004 the Maribor District Court had issued an order on the dismissal of the criminal charges, which meant the end of the criminal proceedings against her. **6.3-20/2004**

28 - DELAYED DECISION ON THE NEED FOR FURTHER TREATMENT AND CARE IN A HEALTH-CARE INSTITUTION

Article 64 of the Penal Code of the Republic of Slovenia limits the duration of security measures of compulsory psychiatric treatment and care in a health-care institution for insane persons who commit criminal offences to at most 10 years. At the same time, it prescribes that the court shall terminate the security measure when it establishes that treatment and care in the health-care institution are no longer necessary. **The court must make a decision after each year** about whether further treatment and care in the health-care institution are still necessary. Similarly, the health-care institution in which the security measure is being implemented must notify the court which issued the decision on the measure immediately when it believes that treatment and care in the institution are no longer necessary. **The health-care institution is also bound to report to the court once a year** on the implementation of the measure and the success of treatment. Through such prescription of the supervision of compulsory psychiatric treatment and care in a health-care institution, the legislature wished to prevent the use of sanctions of a repressive nature in the guise of health-care measures, since such security measures represent the infringement of the constitutional rights to personal freedom and voluntary treatment.

On visiting the Ormož Psychiatric Hospital we examined the case of an individual who under case ref. no. K 130/99 was sentenced to compulsory psychiatric treatment and care at a health-care institution as a security measure by the Murska Sobota District Court on 14 September 1999. The psychiatric hospital first reported on the implementation of the measure on 14 December 2000, and the court on **12 January 2001** (which clearly already involves a delay of several months) decided that further treatment and care at the health-care institution were required. The second report from the hospital was received by the court on

31 January 2002, and in the following months it received supplements such that the court decided on further implementation of the measure only on **11 October 2002** (i.e. a nine-month delay from the expiry of the time-limit after the issuing of the previous decision). The last report was sent to the court by the hospital on 28 February 2003 and was supplemented six months later, and the court concluded that further treatment and care at the health-care institution were necessary on **21 November 2003**, again with more than a month's delay.

Regular and timely (judicial) supervision is prescribed in the interest of the individual so that the security measure lasts the shortest possible amount of time. The case described indicates that the courts and the health-care institutions do not always take the time constraints for prescribed supervision into consideration. Thus delays occur at health-care institutions in reporting on the implementation and success of treatment, as well as at courts in deciding on whether to continue or discontinue the measure. We find it interesting that in the case in question, the court in its response to the ombudsman's inquiry explained the time frame of the case, but did not state the reasons for the delays in the decisions on further implementation of the security measure.

We are worried that this is not an isolated of failure to obey the law, which could have serious consequences for the legal certainty of the individual. More consideration is needed from both health-care institutions and (especially) the courts so that violations of the law and consequently unlawful infringements of the inviolability of bodily and spiritual integrity and the right to personal freedom of involuntarily hospitalised people do not occur. **6.3-54/2004**

29 - JUDGEMENT DRAWN UP IN WRITING AFTER MORE THAN SIX MONTHS

In a criminal matter at the Local Court in Ljubljana under ref. no. III K 197/2003 a judgement was pronounced on 13 July 2004, and drawn up in writing and dispatched only on 17 January 2005. The president of the court was informed about the delay in the drawing up of the pronounced judgement only due to our intervention. The judge informed her about the delay (verbally) only on 27 December 2004, but did not mention when the judgement had been pronounced. At the same time the judge assured the president that the judgement would be drawn up at the latest by the end of 2004. She also wrote this in a report dated 27 December 2004, which the president demanded as a result of our intervention. She excused the delay stating the size and complexity of the matter.

After the intervention of the ombudsman, the president of the court also held a discussion with the judge on 17 January 2005. The judge admitted making the mistake and assured her that it would not happen again. She explained that she was dealing with cases involving domestic violence, "in which the evidentiary procedures are very long, and dealing with these matters is much more psychologically demanding on a judge than dealing with other criminal offences". In 2003 she also sat several high-profile cases, in addition to which she was overloaded and did not have the opportunity to work outside of working hours. She is aware that these are not sufficient reasons for such a major delay in the drawing up of a judgement. She promised that a verbal warning would be sufficient such that it would never happen again.

As a consequence of the established delay, the president of the court ordered a review of the timeliness of the drawing up of court judgements in all the cases which that judge had sat in 2004. She assured us that after obtaining this data and consulting with the head of the criminal division she would make a decision on the potential introduction of official monitoring of the work of the judge in question pursuant to Article 79.a of the Judicial Service Act.

A pronounced judgement must be drawn up in writing within fifteen days of its pronouncement, if the defendant is in custody, in other cases within thirty days. If the judgement is not drawn up within that time limit, the president of the panel *must inform* the *president of the court* why this was not done. The president of the court must take *appropriate actions so that the judgement is drawn up as soon as possible* (first paragraph of Article 363 of the ZKP).

The time limit for the drawing up in writing of a judgement is an instructive but nevertheless a statutory time limit. Violation of the prescribed time limit for drawing up a judgement constitutes a violation of the law. Judges are bound to uphold the law. We expect this matter will have repercussions such that similar conduct will not be repeated and that if such circumstances are established, appropriate measures will be instigated against the judge. **6.3-85/2004**

30 - JUDGE LEAVES HIGHER COURT DECISION IN DRAWER FOR TWO YEARS

The complainant appealed against a decision by the Local Court in Škofja Loka dated 17 April 1997, ref. no. I 1254/96. The Higher Court in Ljubljana, in decision ref. no. III Cp 710/97 dated 1 October 1997 decided on the appeal and returned the file to the first-instance court on 10 October 1997. The decision was sent to the complainant only on 6 May 1999 and was served on 12 May 1999.

The president of the District Court explained that the judge "did not state a sufficient reason for the delayed order to serve the decision". She warned him that there is "no objective or sufficient reason for such a work method". We additionally requested a statement from the judge. But his statement does also not explain why the Higher Court decision was served on the complainant so late.

While monitoring the work of the judge, the president of the court had previously established several irregularities. Therefore she proposed to the President of the Personnel Council of the Higher Court in Ljubljana that the Personnel Council should make an assessment of judicial service of this judge. The President of the Higher Court ordered official monitoring of the work of the judge. The Personnel Council of the Higher Court in Ljubljana issued an assessment of judicial service of the local court judge on 20 May 2004 and established that the "local court judge is not suitable for judicial service". (Also) in connection with the delay in sending the decision on appeal, the judge was removed from judicial function. **6.4-416/2003**

31 - IMPOSSIBLE LIVING CONDITIONS DUE TO IMPROPER REGULATION OF TRAFFIC

Residents of a street in Maribor allegedly lived in impossible living conditions due to improper regulation of traffic. Among others, they addressed the bodies of the local community about their problems, which according to their statements did not respond appropriately. They allege that the Ministry of the Environment, Spatial Planning and Energy in the matter in question has not yet responded to their writing despite a repeated appeal.

The Maribor Municipal Council established that the regulation of traffic in the affected area is not at variance with the provisions on public roads and on road traffic safety. Despite

this, they offered two solutions, which were economically questionable with respect to an assessment of the necessary financial investments. The arrangement of road markings indicating a pedestrian walkway, a driving lane, and a standing/parking lane was acceptable. To this end, the Traffic Office at the Maribor Municipal Council, the public municipal enterprise Nigrad, d.d., Maribor, also issued an order. This was supposed to have significantly improved the living conditions and traffic safety of the participants in traffic, i.e. users of that street.

We established that the Maribor Municipal Council responded to the difficulties of the residents of the street and adopted certain measures in order to eliminate them. The ombudsman was unable to assess the contents and the justification of the measures, since this was mainly a professional/technical issue. At our appeal, the Ministry of the Environment, Spatial Planning and Energy also gave the complainants an appropriate response. **8.4-1/2004**

32 - MINISTRY ARBITRARILY INTERPRETS REGULATIONS

The complainant turned to the ombudsman while on maternity leave since the social services centre did not want to pay her assistance funds to which she was eligible pursuant to the Parental Protection and Family Benefit Act (ZSVDP) in order to resolve a housing issue. The complainant wished to use the assistance funds to lower the amount of the housing loan which she had used to purchase her apartment, however, the centre asserted that the assistance funds could only be used for the payment of the purchase price upon purchase, and not for the payment of loan annuities, even though the loan was intended to resolve a housing issue.

The ZSVDP prescribes what is considered as solving a housing issue, and states in particular the purchasing of an apartment. We believe that it is not disputable that an apartment is not purchased as a consumer good with cash, but that the majority of the inhabitants of the RS also use housing and other loans for that purpose, since it is a long-term investment in one of the basic conditions for the forming and development of a family. The intention of the Act was by all means to assist (young) families in certain areas where the state can actually assist families without excessively interfering with the families and the rights of individuals.

The Act determined (limited) the amount of the assistance funds and defined their purpose, but it nowhere provided authorisations to the minister so that he could determine additional special conditions for the payment of the assistance funds by adopting an executive regulation. Pursuant to the second paragraph of Article 53 of the Act, the minister may prescribe only a more detailed procedure for exercising specific types of rights, the content of forms and types of proof. The fact that neither the Act nor the rules prescribe the payment of assistance funds for the payment of annuities on a housing loan, as stated in the response from the ministry, is totally irrelevant, since the Act does not explicitly forbid this, and the rules simply did not envisage it, which in our opinion constitutes a legal gap which should be eliminated through the appropriate supplementing of the rules. It is unacceptable to refer to the fact that the rules did not envisage something and therefore the rights which are determined by law cannot be exercised. The rules as an executive regulation must enable the implementation of the provisions of the law, and not the limit their implementation.

We believe that the ministry's interpretation of the Act is at variance with the law, since it arbitrarily limits a right determined by the Act. Moreover, such interpretation forces an eligible person who wishes to use assistance funds in order to reduce already accepted obligations to attempt to circumvent the legal arrangements and to obtain a fictitious cost estimate for the renovation of a practically new apartment. According to our information this

is already occurring in practice, since neither the social services centres nor any other state body monitor the intended use of paid out assistance funds. Therefore it is all the more unreasonable to insist on limitations which have no legal foundation.

With regard to the above-stated we proposed that the ministry study our comments and formulate appropriate changes to the Rules on Procedures for Claiming Rights Deriving from Childcare Parental Insurance, which will enable the payment of assistance funds for the payment or reduction of housing loans.

The ombudsman also met with the Minister of Labour, Social and Family Affairs, and placed special emphasis on the fact that the ministry in their responses pretended ignorance and did not want to understand the problem. The minister expressed his preparedness to make appropriate supplements to the rules if such a proposal is formulated at a meeting of experts from the ministry, the Government Legislation Office and the ombudsman. No such meeting was held, and therefore we intervened in the minister's cabinet, but to no avail. **11.0-2/2004**

33 - RIGHTS OF CHILDREN WITH SPECIAL NEEDS TO FREE TRANSPORTATION

The interpretation of Article 56 of the Elementary School Act (ZOsn) is a difficult conundrum for the competent bodies in cases where children are placed by decision in special educational programmes which are performed at social welfare institutions. From their explanations it arises that the type of public institution is the reason for the fact that these children, even though they are obliged to attend school, do not have the right to free transportation.

The problem was presented to the ombudsman by several complainants, and we notified the Ministry of Education, Science and Sport (MŠZŠ). The authorities reported to us that they had detected the problem and that together with the Ministry of Labour, Family and Social Affairs (MDDSZ) they would eliminate it in the shortest possible time. Since the number of complaints with regard to this problem increased further this year, we again demanded an explanation from the competent authorities about how far they had come with the preparations of the solutions which would enable children with special needs to exercise their right from Article 56 of the ZOsn irrespective of the type of institution which was performing the programme in which they are placed. The ZOsn does not limit rights with regard to the type of institution in which children are being educated. The Placement of Children with Special Needs Act (ZUOPP) also does not anywhere condition the rights which arise from this and other regulations in the area of education with the type of institution which performs a certain educational programme. The administrative division of departments among the various ministries and other state bodies should not have as a consequence unequal treatment with regard to these circumstances, which are not connected in any way with the content of the right. Since elementary education is mandatory for everyone, it is impossible to accept the view that the performance of this obligation and of course also the fulfilment of this right should extend only to pupils who are educated in schools. The pupils are placed in the programme by a decision of a state body and do not attend social welfare institutions by their own will, or the will of their lawful representatives. The fact that a certain institution is not classified as educational but as social welfare should not affect the rights of the pupils to free transportation. The decision that institutions besides educational ones should perform certain programmes was adopted by the state, and therefore there should be no difference in the treatment of the children who on the basis of state decisions are placed in programmes which fall within the competence of another ministry.

In the most recent explanation from the MŠZŠ, the authorities explained that they notified the MDDSZ, which is competent for social welfare institutions, about the problem in 2002. They established that the right to education and the right to the refunding of transportation costs is regulated by the ZOsn, while the Organisation and Financing of Education Act (ZOFVI) and the Social Security Act (ZSV) determine the method of financing. Since social welfare institutions fall within the competence of the MDDSZ, the rights to free transportation of children who are included in special programmes at these institutions are not specially defined in these executive regulations. The view of the MŠZŠ is that the problem is not within their competence. They proposed to the MDDSZ that they should supplement Article 16 of the Social Security Act such that the addition would also include the right to free transportation of children.

We do not agree with their view. In our opinion this is a case of unequal treatment of children, which is at variance with Article 14 of the Constitution of the RS. We believe that it is also impossible to determine rights through executive regulations, since that is at variance with Article 87 of the Constitution of the RS, and therefore such pretence of ignorance is inappropriate. We expected that the competent state body would take into consideration the provisions of the Convention on the Rights of the Child and with an assessment of a potential legal gap or a negative competency dispute would propose an appropriate solution to the Government of the Republic of Slovenia. We demanded that the authorities should once again thoroughly study our view and take a stance with regard to the alleged violation of equality. From their response, however, it follows that there is a legal basis for unequal treatment and that the MŠZŠ does not intend to resolve the issue. **11.1-63/2003**

34 - JOINT PARENTHOOD AND THE CHILDREN'S BEST INTEREST

In August, on the proposal of the father, through a temporary order the court entrusted two minor children (aged 5 and 7 years) to their parents (between whom there is no communication) in joint parenthood, such that the children remain in the apartment while the parents alternate every week, and deposit money for the children's care into a joint bank account. As was expected according to the opinion of the social services centre with regard to the relations between the parents to date, such a decision is in no way in the best interest of the children. The children are constantly in stressful situations (fights during each changeover, changing locks, threats, provocation, open apartment and broken locks, doors glued shut, destruction of personal property and clothing, writing degrading notes, manipulating the children, father does not remit money to the joint account). Despite several reports by the police and letters from the social services centre, by the end of 2004 the court had still not granted the mother's demand for a change to the temporary order, which she filed in September.

In this case the court totally overlooked the fact that our legislature *did not adopt joint custody and child rearing as a rule but as an option of a joint decision by the parents*, i.e. their consent, since joint raising and care in the best interest of the child is possible only in the case of good communication between the parents and constant cooperation. In the opposite case such a decision is forcible and contrary to their best interest. **11.1-39/2004**

35 - BEARING THE COSTS OF ARCHAEOLOGICAL RESEARCH

The Cultural Heritage Protection Act (ZVKD) prescribes that any type of work on construction land which extends into an archaeological find is permissible only after preliminary archaeological research, which is funded by the investor in the framework of the

equipping of the land with infrastructure, and is performed by the Institute for the Protection of Cultural Heritage of Slovenia. The question arises of whether such arrangement is in conformance with the Constitution. According to the Constitution the preservation of cultural heritage is the responsibility of the state and municipalities. The Constitution binds everyone to protect cultural monuments in accordance with the law, but pursuant to the ZVKD cultural heritage may have such status only if it contains elements which demonstrate the continuity of, or an individual level of, the development of culture and civilization, or if they are a high-quality creative achievement. In the discovery of a new find which has not yet been archaeologically researched, the responsibility of the investor pursuant to the ZVKD cannot be considered as a more detailed legislative breakdown of a constitutional obligation, but as the result of original legislative regulation. The question is whether the legal provisions cannot be accused of placing an excessive financial burden on individuals in order to perform the public service of preserving the cultural heritage. Such doubts arise especially in construction in older urban areas where by the nature of things cultural artefacts from previous periods are very common. We dealt with the case of a complainant who lives in Ptuj, the oldest town in Slovenia. The above-stated provisions seem disputable even from the aspect of expediency, since they do not encourage the protection of cultural heritage, but can even have the opposite effect. Not only that there is no interest for investors to report discovered finds, but that they could even cover them up or destroy them only in order to avoid further unpleasantness, among which the fact that the costs of archaeological research are not the cheapest. **0.4-26/2004**

36 - UNLAWFUL EXTRAORDINARY TERMINATION OF EMPLOYMENT CONTRACT

On the basis of a demand by the ombudsman, the labour inspectorate performed an inspection at the employer's premises and established that the procedure of extraordinary termination of employment contract was performed contrary to regulations. It also established that the employer had unlawfully conditionally delayed the effecting of the performance of the extraordinary termination by one year, whereby he did not remove the complainant from the social insurance system and did not conclude employment, but made it possible for him to continue working pursuant to the existing employment contract. During the inspection, the employer assured the inspector that he would hand the worker a written revocation of the entire procedure and the extraordinary termination. Since he actually did so and sent the inspector proof of the above, she did not instigate measures against him in this regard. The inspector issued a regulatory order to the employer due to irregularities in ordering overtime work and also sent a motion to the misdemeanours judge. The inspector also established irregularities with regard to subtracting time and payment for coffee breaks. The employer, who in accordance with regulations guaranteed his workers a 30-minute lunch break, may express coffee breaks in terms of effective work time only by extending the work time by the time of the coffee break, however, this must be visible in the time sheets for every individual worker. The employer was also issued a regulatory order owing to irregularities in connection with the keeping of work records. **0.4-69/2004**

List of abbreviations used

A. Regulations

KZ	Penal Code
ZDen	Denationalisation Act
ZKP	Criminal Procedure Act
ZNP	Non-litigious Civil Procedure Act
ZOFVI	Organisation and Financing of Education Act
ZOsn	Primary School Act
ZPP	Civil Procedure Act
ZPPreb	Residence Registration Act
ZPPVS	Act on the Legal Position of Religious Communities in the Socialist Republic of Slovenia
ZSDP	Parental Protection and Family Benefits Act
ZSV	Social Security Act
ZUOPP	Placement of Children with Special Needs Act
ZUP	General Administrative Procedure Act
ZVDZ	National Assembly Elections Act
ZVKD	Cultural Heritage Protection Act
ZVOP	Personal Data Protection Act

B. State bodies and other bodies

CSD	Social Services Centre
DZ	National Assembly
ISM	Institute of Forensic Medicine
IRSD	National Labour Inspectorate
IRSOP	National Environment and Spatial Planning Inspectorate
MDDSZ	Ministry of Labour, Family and Social Affairs
MF	Ministry of Finance
MK	Ministry of Culture
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
MŠZŠ	Ministry of Education, Science and Sport
MZ	Ministry of Health
NČR	Journalism Ethics Council
OE	Regional Unit
PP	Police Station
PU	Police Directorate
RVK	National Election Commission
UE	Administrative Unit

UIKS	**National Prison Administration**
US	**Constitutional Court**
UN	**United Nations**
UVRSVS	**Government Office for Religious Communities**
VČP	**Human Rights Ombudsman**
ZPKZ	**Prison Service**
ZRSZ	**National Employment Office**
ZZZS	**National Health Insurance Institute**

C. Miscellaneous

OSCE	**Organization for Security and Co-operation in Europe**
LP	**Annual Report**
RPS	**Slovenian Legislation Register**
RS	**Republic of Slovenia**
TV	**Television**
USA	**United States of America**

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