

# ANNUAL REPORT OF THE HUMAN RIGHTS OMBUDSMAN OF THE REPUBLIC OF SLOVENIA FOR 2013

ABBREVIATED VERSION









**Annual Report  
of the Human Rights Ombudsman  
of the Republic of Slovenia  
for 2013**

Abbreviated Version

Ljubljana, September 2014



**NATIONAL ASSEMBLY OF THE REPUBLIC OF SLOVENIA**  
**Mr Janko Veber, President**

**Šubičeva 4**  
**1102 Ljubljana**

Mr President,

In accordance with Article 43 of the Human Rights Ombudsman Act I am sending you the Nineteenth Regular Report referring to the work of the Human Rights Ombudsman of the Republic of Slovenia in 2013.

I would like to inform you that I wish to personally present the executive summary of this Report and my own findings during the discussion of the Regular Annual Report at the National Assembly.

Yours respectfully,

Vlasta Nussdorfer  
Human Rights Ombudsman



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# 1

## THE OMBUDSMAN'S FINDINGS, OPINIONS AND PROPOSALS

Can a blade of grass break

The dead asphalt surface

To reach the light?

The power of a blade of grass

Is like the power of a poor man

Fighting oppression

In order to be a man.

The power of the mighty reminds one

Of the power of bulldozers,

Which take no heed

Of blades of grass or the like.

**Phil Bosmans**



Vlasta Nussdorfer,  
Human Rights Ombudsman

### **Dear Reader,**

many blades of grass seek to draw the world's attention to the injustices they undergo and also of the power of the bulldozers which the blades of grass cannot defy due to their smallness, fragility and powerlessness.

The Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) thus has a lot of work when investigating several thousand complaints and calls from frequently desperate people claiming that local or state authorities are violating their human rights and fundamental freedoms. I met them at the beginning of 2013, when I assumed the management of this institution as the fourth Human Rights Ombudsman in the Republic of Slovenia. More and more calls to the toll-free telephone number were recorded every month (8,701 calls in 2012; 10,875 calls in 2013), and there were more visits to the head office of the institution and interviews with people round Slovenia. We conducted business outside the office thirteen times and held 291 interviews. We received as many as 12,161 letters and e-mails at our official address at Dunajska 56 which is significantly more than in comparison to previous years, and all the work had to be implemented with fewer staff.

### **Too often people find themselves alone before the mighty and frequently closed door of the state**

All aforementioned communications with Slovenian citizens strengthen the belief that the state is not always at the service of people and does not protect the common public benefit or suitably meet the needs and interests of all citizens. In spite of numerous acts, regulations, guidelines, resolutions and programmes, people find themselves alone in front of the door of a powerful state or judiciary, and they often have low functional literacy and no legal aid. Free legal aid (FLA) is sometimes unattainable for those whose income makes it impossible to pay for legal services because they do not meet the legal requirements. Because applications for FLA take so long, this frequently comes too late. These are people with incomes burdened with debt or enforcements; some own property, but this does not provide them with funds to pay for legal services. The state and municipalities should do more to ensure legal protection and citizens' access to suitable legal aid.

### **Rash decision making when passing legislation**

I find that many acts are passed too quickly and rashly, even in non-compliance with the Constitution. Amending acts too frequently do not strengthen legal protection. The texts are frequently prepared superficially and are incomprehensible to people with no legal education. Such legislation does not reinforce the rule of law, but

allows various interpretations and arbitrary decision making. The amendments are sometimes the result of insufficiently considered legislative solutions, when the writers of such acts are only pursuing economic and financial objectives and disregard human rights and dignity. I therefore emphasise that the economic crisis must not be a reason for fast and reckless legislative changes, reducing the level of social and health protection, ending certain programmes of social assistance and displacing current burdens to better times. It would be better to earmark for the common good the thousands and even millions of euros which are always found to fill budgetary holes that occur due to the incorrect decisions of the authorities, to the non-functioning of the rule of law and uncontrolled leakage into private pockets.

### **Unacceptable duration of administrative and judicial proceedings**

Since its inception twenty years ago, the Ombudsman has been highlighting the duration of judicial and administrative proceedings and the violation of the right to trials within a reasonable time provided by the European Convention on Human Rights and Fundamental Freedoms. Slovenia has been denoted as a violator of the right to trial within a reasonable time over 250 times, which should be a clear and unambiguous sign to the state of the inefficiency of the current measures. The Ombudsman continues to receive many such complaints. Ineffective judicial protection contributes to a legally dysfunctional state, which is unable to protect fundamental human rights. When visiting the Ombudsman (11 June 2013), Dr Senko Pličanič, the Minister of Justice, gave assurances that the commitment to the citizens prepared and signed by the Supreme Court of the Republic of Slovenia and the Government of the Republic of Slovenia would serve as a guarantee that the executive and judiciary powers would prepare and implement measures to improve the efficiency and quality of the judiciary, eliminate backlogs and shorten judicial proceedings within a limited time (until 2014). The commitment is certainly not sufficient if the authorities fail to adopt efficient measures to improve citizens' legal protection. Due to pre-trial hearings, many criminal proceedings end more quickly because the accused admit their guilt. When discussing certain complaints, the violation of legally determined time limits for decisions on complaints in administrative proceedings was established. It is particularly worrying that complaint procedures involving scholarships, unemployment and financial social assistance submitted to the Ministry of Labour, Family, Social Affairs and Equal Opportunities are not resolved within legal time limits, but with a significant delay. The Ministry of the Interior and Public Administration was informed about the urgency of fast decision making in procedures for international protection, also due to the specific situation and vulnerability of protection seekers.

### **Should national institutions be trusted?**

We encountered an absurd case of utterly unacceptable practice when discussing the case of a complainant who had bought real estate entered in the land register with all her savings and additional loans. One day, inspectors knocked on her and her neighbours' doors and informed them that the non-compliant construction was to be demolished. No one could understand or accept how was it possible to purchase such real estate and obtain mortgage credit for it, and then lose everything. Furthermore, they would also have to pay for the demolition. Prior to the demolition, the complainant received her tax assessment. We discussed this case with the Minister of Justice, the Minister of Infrastructure and Spatial Planning, representatives of inspection services and the Surveying and Mapping Authority of the Republic of Slovenia (GURS) and the mayor. Due to the extreme situation, free legal aid was offered to the complainant, but few dare to predict a happy ending in this case, which is not an isolated one in Slovenia. I wonder what the law enforcement and judicial authorities are doing if justice does not extend to such real-estate dealers who commit fraud with unquestionable intent? Can a state answer the question – what attention should a citizen pay and to whom so not to purchase such cellophane-wrapped real estate perpetuated with state blessings? Systemic changes are needed to prevent such cases, which allow skilful constructors and investors to further prosper dishonestly at the expense of honest buyers, and who transfer their assets successfully to other entities by the time justice reaches them.

### **Insufficient supervisory mechanisms of the state**

A structured system of supervisory institutions and mechanisms is in force in Slovenia at the level of the state and individual sectors of authority. The supervisory function of the National Assembly which, in addition to passing

legislation, should constantly monitor the quality of implementation of all system solutions in order to ensure the efficient functioning of all authorities and institutions of the rule of law with amendments, adjustments and supplements is very important. The National Assembly ordered the Government to take suitable measures to comply with, and realise, the recommendations and findings of supervisory institutions of the state, including those of the Human Rights Ombudsman of the Republic of Slovenia. Unfortunately, I discovered that certain recommendations are repeated every year and that the Ombudsman is frequently unsuccessful when requesting compliance with international standards of human rights' protection and constitutional and legal norms. The supervision of the implementation of regulations is very important, since prompt and efficient work by all authorities including inspection services has to be ensured. Annually repeated claims that the inspection services are not efficient enough due to the lack of inspectors, insufficient or unsuitable authorisations are unacceptable. The state has to take measures to more effectively supervise all fields. Priority tasks should be determined by regulations which eliminate accusations of possible partial discussion of individual violators. Applicants have to be informed about the receipt of their applications and the duration of their consideration. The coordination of work between the inspection services provided by the Inspection Board is necessary. Positive changes have been noticed in this field, but these are still too few to be satisfactory. We know that supervision alone will not eliminate all violations, but it must nevertheless be organised in order to function curatively and preventively.

### **Intolerant discourse and hate speech are not acceptable**

In the past year, I paid a lot of attention to questions of ethics in public speaking. I asked myself every day whether to respond to every publicly expressed case of intolerance and hate. I determined that immediate public response and condemnation are important, particularly in cases when hatred and intolerance are expressed by politicians or state officials. These phenomena cannot be eliminated by punishment and criminal prosecution, but it is necessary to form case law which will set clearer standards regarding unacceptable incitement to hatred. It is important that not only the Ombudsman but particularly institutions and organisations where such statements are expressed condemn such unacceptable practices publicly. If hate speech occurs in politics then politicians should respond. I expect deputies and other politicians to adopt a code of ethics and form an arbitration panel which will respond to individual cases of hate speech. Spreading hate and intolerance is becoming a large problem also on websites, where individuals anonymously or under false identities spread intolerance, hatred, insults and lies.

### **Remedy of injustices caused by the state**

In the judgement of 26 June 2012 in the case *Kurič and Others v. Slovenia*, the European Court of Human Rights confirmed that the Republic of Slovenia had violated the rights of the erased, i.e. by violating the right to respect for private and family life and the right to an effective legal remedy. I expect the state to do as much as possible to facilitate the arrangement of the affected people's rights and the payment of suitable compensation. I also expect that the most responsible representatives will be able to express an apology on the state's behalf for the illegal, unconstitutional and, on the basis of international standards of human rights' protection, utterly unacceptable act of erasure.

I also emphasise respect for the human dignity of victims (and their relatives) of post-war extra-judicial proceedings and the obligation of the state to reveal the known locations of mass graves in Slovenia. The state must finally arrange a symbolic burial of the victims' remains and erect a suitable monument to enable a decent farewell for their relatives.

### **How to co-exist?**

The Roma and citizens who live near them frequently turn to the Ombudsman due to violations of human rights, mostly because of problems of co-existence. Both groups claim that their rights are being violated. The residents of Roma settlements frequently lack basic living conditions: access to drinking water, sanitation, electricity and a safe roof over their heads. Property rights and the right to safety of the majority population living in the vicinity of disorderly settlements are often violated. The circumstances in which individuals are born and where they



spend their childhood have an unfavourable effect on their success in education, employment and inclusion in Slovenian society. The Ombudsman's efforts are thus directed towards the local and state levels. When discussing complaints submitted by mayors who, in compliance with the legislation, are responsible for the legal and municipal arrangements of settlements, the Ombudsman suggests the inhabitants be provided with basic existential conditions, or at least access to drinking water. We noticed several examples of good practice in several municipalities (Žabjak, Mestni log and Ponova vas). The Ombudsman's efforts to improve the situation of Roma also involve the state, since the Ombudsman expects the state to take firmer action in cases when municipalities fail to fulfil their obligations.

The Ombudsman is still critical of state policy and its inefficiency when dealing with the accumulated problems, also because of the unduly slow process of amending of the legislation on the composition of the Roma Community Council, on which the poor presentation of areas with the most issues (in the Dolenjska region) is noted. The work of the Council should also be evaluated critically, since it deals with internal issues rather than discussing problems in the field.

It is necessary to provide conditions for the early inclusion of Roma children in kindergartens and primary schools; to enhance the offer of programmes for all children (including those not yet in kindergartens); to develop more successful practices for teaching children with linguistic deficiencies; to offer content and activities with which Roma pupils will obtain a sense of achievement, enhance their confidence and develop a sense of belonging to the educational and social environment. More will have to be done to include Roma culture and the cultures of other ethnic groups in schools and to preserve their cultural identity. The Roma assistants are of great help, since schools recognise them as important links in their efforts to improve education. Educating and informing Roma parents increase their awareness of their responsibility, which improves mutual respect and co-existence. Roma who respect human rights and actively participate in social life should become heralds for better co-existence practices which have to spread from north-eastern Slovenia to the southeast.

I have to stress again that the status of the Advocate of the Principle of Equality which should be an autonomous and independent institution to deal with discrimination has not been settled yet.

### **The police also have to respect human rights**

The police usually follow the Ombudsman's recommendations, which is particularly commendable, since they learn from bad practices and improve their work. We recommend greater attention of police officers when establishing the correct and accurate circumstances of offences and advocate the elimination of reoccurring deficiencies when establishing facts and collecting evidence. We emphasise that human personality and dignity have to be observed when conducting police tasks, and persons requiring additional attention have to be considered with particular care. Humane treatment of persons in detention requires consistent compliance with regulations and guidelines, particularly when detaining several people at once. We conducted control of police work in case of mass detentions during protests in Maribor at the end of 2012. We stress that whoever is charged with a criminal offence is considered innocent until their guilt is established with a final judgement. We pointed out that the exaggerated media exposure of suspects deprived of their freedom may interfere with the constitutional human rights of presumption of innocence and personal dignity. The aforementioned undoubtedly requires the adoption of measures to prevent media the exposure of the suspects, including ostracising their closest family members, and particularly children, when conducting searches of premises. Due attention and care must also be shown for victims of domestic violence.

### **What is happening in institutions with restricted freedom of movement?**

When monitoring institutions which restrict individuals' freedom of movement, we examined whether the state consistently observes constitutional rights and international standards of human rights' protection. The increase in the number of convicted persons and spatial and staffing issues in prisons call for a prompt solution in the form of new prisons or the more frequent application of alternative ways of serving prison sentences. Prisoners have to be enabled to work, and their right to fair and timely payment has to be observed, also for employees of public utility institutions. The situation in institutions for serving custodial sentences is critical; too few staff

results in overburdening, which is also seen in the violation of employment relationship rights. All of the above may even lead to uncontrollable situations in Slovenian prisons. In the past, ministers promised to employ new staff. We established that the Unit for at the Maribor University Medical Centre has been dealing with numerous problems (also due to the lack of a regulatory framework for its work) more than one year since its opening, particularly with overcrowding and a staff shortage, which hinders work and constantly confronts the unit with dilemmas about how to continue working.

### **The need to observe the principle of equality before the law**

When discussing an individual complaint, the Ombudsman has the right to file a request for a constitutional review and lawfulness of regulations and general acts issued for the implementation of public authority and also a constitutional complaint. In 2012, the Ombudsman filed a request for a constitutional review of the Fiscal Balance Act (ZUJF). In 2013, the Constitutional Court ruled that the contested arrangement did not comply with the Constitution and the reduction of pension benefits was completely arbitrary. The economic incapacity of the state to cover social contributions may be an admissible reason in terms of the Constitution, as a result of which legislators may reduce the statutorily determined and obtained rights from that point onwards; however, legislators should have taken into account the principle of equality before the law, which the Ombudsman had been emphasising before the passage of the ZUJF. Furthermore, legislators failed to discuss significantly similar situations of pension beneficiaries equally.

### **Where did the rights of workers and of the unemployed disappear?**

The state and legislation must no longer tolerate lack of payment discipline or non-payment of social security contributions by employers. The contributions are part of the workers' wages under the employment relationship and their non-payment is a theft of workers' earnings. This may also constitute a criminal offence of violation of the fundamental rights of employment relationships. More and more modern forms of exploiting workers and uncontrolled successive establishing of companies which deceive workers, who later cannot legally enforce their rights and material claims were established. All of the above empties the Treasury and pushes poor and mistreated workers to the extreme edge of existence, robbing them of their fundamental human dignity. Unfortunately, the heroes are those who dare and who know how to elude regulations, create capital only for themselves and time and again cross the boundary of what is permissible. I wonder about the ethics of fraudulent employers and the values of respecting human dignity, which have disappeared in an ambitious society that is growing more and more focused on material goods. In addition to prompt and effective control, systemic changes are also needed to enable the payment of wages without the payment of contributions. The Ombudsman may only draw the attention to this issue, but the state can solve this problem with its judicial, executive and legislative powers. Until when will the state with its law enforcement and judicial authorities and numerous inspection services (just consider, we have 25 inspection services) permit such behaviour and simultaneously wonder where to obtain money for the growing amount of social welfare? There are insufficient resources also in the health-care and pension funds, and the state must take urgent action.

In addition to the violation of employees' rights, the fundamental problem is the large number of unemployed working-age people, particularly among the young. Insecurity of employment, which is becoming a cruel reality, is spreading, including fixed-contract work. Workers are also pushed into the insecurity of part-time and occasional work, mobbed and humiliated, with no employment rights. They have no allowances for transport to and from work, for lunch, or holiday, sick and maternity leave, which makes them unable to settle liabilities for their homes, food, kindergarten or school, the repayment of loans for apartments or houses. The state must adopt and conduct a more active and efficient employment policy and reorganise the employment services, boost the economy and ensure greater economic growth, as these are the only measures to reduce unemployment and give people a chance to work for their living and thus avoid the need to seek help from humanitarian organisations, which for many is degrading.

## **A roof over one's head is a condition for survival**

The Ombudsman is not pleased with the situation in housing, since no progress has been seen in the systematic adoption and realisation of measures to resolve housing issues. Several recommendations in the past have still not been completely realised in this field; attention was particularly drawn to a better housing policy, a new national housing programme and a housing act, which would follow the needs of the most vulnerable groups and general social and economic conditions. More and more people live in fear of foreclosure and losing their homes. Many municipalities can no longer implement their tasks in compliance with housing legislation, and more active participation by the state is thus urgent.

The housing issue and the real property tax were also discussed at meetings with ministers, who were also informed about the problems posed by the Real Property Tax Act, for which a request for a constitutional review was filed. We recognised that the Act was also unfair to those real property whose owners cannot use their property (Roma settlements on private land, overhead power lines, roads, etc.). The request for a constitutional review was filed for the section which refers to the taxation of tenants in denationalised apartments and derogates from the principle that real property owners are taxed. The Act was recently annulled by the Constitutional Court.

## **The living environment is endangered**

I particularly emphasise that a clean, healthy and safe environment must become a fundamental human right. The Constitution of the Republic of Slovenia stipulates that the state must provide a healthy living environment; however, the Ombudsman has established that the state is not efficient enough. We are inseparably connected to nature and dependent on it, because environmental degradation also affects health and the quality of life. The public is gradually becoming aware of this, and its interest in being involved in decision making is also growing. The Ombudsman established violations of rights under the Aarhus Convention and rights to access information and public participation in decision making involving environmental issues. I believe that the role and significance of civil society and the non-governmental sector, with numerous associations, societies and foundations are important expressions of people's will to participate in the arrangement of environmental questions. The traditional monthly meetings with many environmental organisations at the Ombudsman's premises were upgraded with visits to regions, in which the step-motherly attitude of the state and polluters raises the question of capital or health. Together, we visited the environmentally degraded Celje region, Zasavje and the outskirts of Ljubljana, where citizens also point out many environmental problems. Health is a primary value and thus the state must pay more attention to providing a healthy living environment. To highlight numerous problems, a public consultation was held where we stressed that a uniform framework act for the rehabilitation of all polluted and brownfield areas has to be passed. The systemic regulation of sources of financing studies on environmental impacts assessments, not ordered and financed only by investors, since this is often the reason for doubting the professionalism and independence of studies, is necessary. The measurement of emissions should also be regulated to prevent doubts about measurements which in many cases are financed by the polluters. Noxious odours significantly affect the quality of life and it is necessary to adopt a suitable regulation, since the lives of people exposed on a daily basis to odours from biogas plants, wastewater treatment plants and other sources are unbearable. In spite of warnings in the field of assigning water rights and unsettled relations of ownership of water sources over the years, no significant progress has been seen. The number of unresolved cases in these fields remains the same; the situation is critical.

## **Accumulating health-care problems**

Extensive problems were also noted in the sphere of the Ministry of Health. In addition to requirements for the establishment of special psychiatric departments for the treatment of children (they are now being accommodated with adults), we also drew attention to the unduly long waiting periods, unbearable conditions at the emergency ward of UMC Ljubljana, too high temperatures in certain hospital wards in summer, the lack of paediatric psychiatrists and psychotherapists, problems in the field of diagnostics and treatment of children with special needs, problems of the unit for forensic psychiatry in Maribor, problems at the paediatric cardiac surgery, shortages of staff, also at the department for young invalids at an elderly home, problems with complementary and alternative medicine, including homeopathy, dilemmas about vaccinating children and others. Oversight of

complementary and alternative medicine is not suitably arranged, which the Ombudsman has been emphasising for a long time. Health reform recedes further with each year; ministers are appointed and then resign; their absence and unclear development strategies also have a significant impact on the state's care for an efficient, high-quality and accessible health system.

### **Enforcement of the rights of the disabled**

The disabled have to be provided with equal treatment and the realisation of all human rights, whereby their special needs have to be observed. The state must take more effective and suitable measures to enable the disabled to obtain and maintain as much independence as possible, including professional, and their complete inclusion and participation in all fields. However, the state's commitments on the basis of the ratified convention and the act cannot be implemented in a significant section without applicable executive acts. Young invalids, who have been pushed to the edge of life by being moved to elderly homes, also point out violations. Young invalids are still being accommodated in institutions intended for the elderly, although their needs differ greatly. The established case of discrimination against invalids in schools and their subsidised transport remains unaddressed. The field of employment rehabilitation and social enterprises is also not regulated suitably, with cases of exploitation of those who should be receiving special protection.

### **Social distress of many Slovenian citizens**

Poverty is seen in many fields and affects a growing number of people of various ages, even employees with low wages and pension beneficiaries to whom humanitarian organisations have to lend a helping hand. On the other hand, we are witnessing enormous differences in employees' wages in many branches. Certain directors, including foreigners, have higher monthly wages than the highest state officials, i.e. representatives of the legislative, executive and judiciary powers together. How can the workers thus understand that there is no money for their wages?

I wonder if the authorities do not know how to, cannot or will not, preserve legal and social stability. If they knew, they would take more effective measures to support young people, who hope that knowledge, certificates and diplomas will help them gain employment and a decent life at home, not abroad. They thus remain a burden on their parents and social funds. The authorities are not efficient enough in helping the elderly to live decent lives. On the contrary, people cannot cover minimum necessities with their pensions. Our society is ageing quickly; therefore, more has to be done for active old age and intergenerational integration. The number of homeless people is growing. The Residence Registration Act has to be amended urgently in order to allow the registration of the permanent residence of homeless people and those who cannot register their residence at the address they actually reside, which deprives them of certain social rights and prevents the delivery of postal items, including court mail.

Unfortunately, I discover that the crisis is particularly cruel for the most vulnerable and socially excluded groups of citizens. I emphasised these issues when meeting the Minister of Labour, Family, Social Affairs and Equal Opportunities; we met three times and discussed questions which mark the lives of people from birth to death, provide and limit social security and deal with employees, job seekers and people with special needs; in short, all whose social security is supposedly provided by Article 2 of the Constitution of the Republic of Slovenia.

### **Let us do more for children with special needs**

For the first time, the Ombudsman became actively involved in finding a solution for the construction of a new school, the Dr Ljudevit Pivko Primary School in Ptuj, for children with special needs who are being educated in dilapidated school premises. This motivated me in the search for options to begin the construction of a new school, after eight years of agony. I organised several discussions and meetings, also with the Minister of Education, Science and Sport and mayors of municipalities where the children live. On my first field trip in 2013 (27 March), I visited the aforementioned school and participated as a sponsor in the 'Ptički' campaign (which collected funds with text messages). Our activities were intended to send a clear message to the state that these

children, their teachers and parents deserve better school premises. Unfortunately, the school had been built only up to its roof by the time of writing of this report. The media forward sad and inauspicious messages about tense relations between municipalities, finding a scapegoat, many questions about the transparency of business activities, shifting responsibility for the construction and other things. At this point, the Ombudsman particularly stresses that this school serves the needs of several municipalities; unfortunately, some are not participating in the project, also with the argument that there are no children with special needs in their midst. It is unacceptable and irrational that all burdens should be carried by the municipality in which the school is located. The Ministry of Education, Science and Sport will have to find suitable systemic solutions to resolve such issues, which are not only local. Will we be able to state in the next Ombudsman's annual report that the school was built? At the time of writing this report, I truly hope that we are moving in the right direction.

### **A child's best interest has to become the primary consideration**

In the report, we particularly mention the project 'Advocate – A Child's Voice', which has been in the pilot phase since 2006, and which enables children's voices to be heard in many procedures, and which may sometimes be quite different from what is communicated to institutions, particularly the judiciary, by their parents or one of the parents. The report on the work of the project was presented to the Government and Parliament in the past year. Due to the financial conditions in the country, we do not expect this important institution to become autonomous soon. The Ombudsman is aware of this, and is prepared to continue this project, whereby we also stress the need to pass suitable legislation. A special department for children was established this year, and the UNICEF safe point. Children are too frequently exposed to their parents custody battles, which after long years of litigation may even end at the European Court of Human Rights. From there, at least one side returns disappointed and certain that the courts do not rule fairly. All of the above further deepens family crises and children's emotional scars. They also share the fate of their unemployed, ill or poor parents, which increases the suffering of children put in such situations through no fault of their own. Insufficient attention paid to children with special needs, from autistic children to children with Down Syndrome and others whose disorders are not diagnosed early enough and are later deprived of suitable education, health-care and employment, must also be mentioned. All of the above paces a burden on, and worries, their parents or guardians. The true wealth of a country is not only material, but is recognised in its social maturity and care for those who do not know how to help themselves.

### **Local self-government**

The arbitrariness or even self-service of certain mayors whose ignorance or disrespect for regulations leads them to violate the human rights of their citizens cannot be overlooked. The complaints received by the Ombudsman reveal that certain, particularly small, municipalities are unable to fulfil all their obligations and ensure legality in their areas. The Ombudsman noted many problems relating to resolving property rights issues between citizens and municipalities. The situation of housing is unsatisfactory. I particularly highlight unsettled ownership relations regarding the categorisation of municipal roads, which frequently disregard private property, while mayors ignore the proposals of the Ombudsman, state authorities and courts. Several times, complainants have even asked us how mayors may be dismissed. There are nevertheless also mayors who deserve praise for providing suitable welfare for their municipality and its citizens. The situation calls for changes to local self-government.

### **International cooperation**

Last year, the Ombudsman was also active and successful at the international level. In addition to meeting numerous diplomatic representatives, we also received several foreign delegations who wanted to learn particularly about the positive experience of the functioning of the Slovenian National Preventive Mechanism against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which is overseen by the Ombudsman. The meeting with many counterparts from the entire European network raised many questions about how to improve our work, particularly when there is an increased need to save and a deepening of poverty. All international activities are presented in more detail in a special chapter in the third section of this report.

## Provision of conditions for the functioning of the Centre for Human Rights

The Ministry of Foreign Affairs was informed about the Ombudsman's efforts to establish an institution for the protection and promotion of human rights (NHRI) in accordance with the Paris Principles. The Ombudsman has been pointing out this gap for a decade, and has mentioned this issue several times in annual reports, and proposed recommendations which were approved by the National Assembly; however the situation has remained unchanged. I expect the state to do more in the future to form such national institution for human rights as required by the obligations the state assumed in the field of human rights. This is, and should be, primarily in the interests of the state and to the benefit of its citizens, and would also contribute to improving Slovenia's international reputation, particularly with regard to its candidacy for membership of the UN Human Rights Council (2016-2018). The Ombudsman is prepared to enable such reorganisation of the institution if a (political) interest is expressed.

### The public is informed about our work accordingly

The Ombudsman's broad activity is presented on the Internet, from where e-news with information on past and future events are sent to about six hundred addresses weekly. We also publish the most important cases that expose the good and bad practices of state authorities and institutions, which are regularly presented also in *Pravna praksa* journal. Many press conferences were conducted at the head office and when working in the field, and we regularly replied to all questions from the press. In 2013, the Ombudsman recorded 365 events which indicated our broad activity; some events are presented at the end of every substantive chapter.

We deal with a growing number of requests from Slovenian citizens (so far, as many as 161) on a daily basis to arrange a personal meeting with the Ombudsman. For this purpose, Wednesdays were set aside for meeting people, either during field trips, meetings and interviews (personal or via the phone) with the Ombudsman at the head office. So far, I have conducted 110 personal interviews. There were additional 377 complainants, whom we met during my field trips, so the number of interviews is almost five hundred. Traditional meetings with people in Slovenian municipalities and towns were upgraded in 2013 with a new project called *An Evening with the Ombudsman*, which is organised at the end of each meeting with mayors and complainants in individual municipalities. We hope that with the 20th anniversary of the Office at the end of this year (the Ombudsman was officially established on 1 January 1995), we will be able to present to the Slovenian expert and general public the work of the past twenty years and reply again to frequently asked questions: who are we, what do we do, how successful are we and why do we even need an Ombudsman. This report also provides many answers to the aforementioned questions, also because we constantly, persistently and minutely monitor the work of the state and its institutions and inform the public about numerous violations of human rights and fundamental freedoms. I hope that state and local authorities take significant steps to implement the Ombudsman's recommendations and eliminate established violations.



Vlasta Nussdorfer

Human Rights Ombudsman

# 2

## WORK CONTENT AND REVIEW OF CASES DISCUSSED







# 2.1

## CONSTITUTIONAL RIGHTS

Area of work	Cases considered			Resolved and founded		
	2012	2013	Index 13/12	No. of resolved	No. of founded	Percentage of founded among resolved
<b>1. Constitutional rights</b>	<b>504</b>	<b>263</b>	<b>52,2</b>	<b>255</b>	<b>21</b>	<b>8,2</b>
1.1 Freedom of conscience	64	2	3,1	2	0	0,0
1.2 Ethics of public statements	372	183	49,2	180	14	7,8
1.3 Assembly and association	5	5	100,0	5	0	0,0
1.4 Security services	1	1	100,0	1	1	100,0
1.5 Voting rights	10	9	90,0	8	3	37,5
1.6 Personal data protection	49	49	100,0	46	2	4,3
1.7 Access to info. of public character	1	5	500,0	4	0	0,0
1.8 Other	2	9	450,0	9	0	0,0

In 2013, the Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) received almost 50 per cent fewer complaints than in the previous year in the field of constitutional rights. The reduction in the number of complaints, which are still numerous (263), relative to the long-standing average is the result of fewer complaints about the ethics of public statements and freedom of conscience. Many complaints were received in 2012 relating to the aforementioned fields also on the basis of the organised activities of individual associations and civil initiatives due to assumed hate speech and insults to religious sensibilities. Campaigns on assumed hate speech were fewer in 2013; the only exception were complaints relating to the manner of conducting the public presentation of opinions on hate speech organised by the Committee for Petitions, Human Rights and Equal Opportunities of the National Assembly in March 2013. Fewer complaints were received relating to voting rights, and the same number of complaints were discussed in the fields of assembly and association, security services' operations, personal data protection and privacy. More complaints were allocated to the field of access to information of public character, and those classified as 'Other' in the field of constitutional rights.

Only two complaints about freedom of conscience were discussed (as many as 64 in 2012). The complainants contacted the Ombudsman due to the supposedly unduly slow implementation of the Freedom of Religion Act and signing of the agreement for co-financing generally beneficial programmes according to this Act. The complaints were unfounded.

Somewhat fewer complaints were made regarding constitutional rights than on average, particularly due to complaints relating to the ethics of public statements and personal data protection. In both fields, the majority of complaints were premature – the available legal and other means had not been exhausted – and we were thus unable to establish or confirm violations.

## 2.1.1 Ethics of public statements

The number of complaints received dropped in 2013, although it remains high (183) relative to the long-standing average. The complainants mostly point out assumed cases of hate speech or hatred, and expected the Ombudsman's response or instructions on where to turn relating these issues. On this basis, it may be determined that many have recognised the Ombudsman as an institution which should have a special role and responsibility in the field of hate speech. Such recognition, however, is not in accordance with the role and powers of the Ombudsman as determined by the Constitution of the Republic of Slovenia and the Human Rights Ombudsman Act (ZVarCP). Namely, the Ombudsman lacks any jurisdiction in relation to private entities, the majority of the media and individual creators of media content. Pursuant to Article 9 of the ZVarCP, the Ombudsman may deal with wider issues important for the protection of human rights and fundamental freedoms and for the legal security of citizens of the Republic of Slovenia, but this is not the Ombudsman's primary duty. In accordance with the Constitution and the Act, the Ombudsman's main duty is the consideration of complaints relating to irregularities committed by national and local authorities or holders of public authority in relation to individuals during their work.

The complaints received by the Ombudsman relating to this field reveal different understandings of the so-called hate speech. Many complainants expect or even demand that the Ombudsman publicly condemn statements which in their opinion constitute hate speech. We also receive complaints which are evidently ideologically and politically motivated and which expect the Ombudsman's reaction to individual political statements or statements by politicians. If the Ombudsman consented to such demands, this would become our only daily task, and as a result, the Ombudsman would receive more criticisms on the basis of the responses. There would always be a case of possible hate speech to which the Ombudsman did not respond, and there would always be claims that the response to any of them was biased.

Many assumed cases of hate speech do not clearly meet the conditions for criminal prosecution; there is even a demand for condemnation of satirical contributions, to which strong protection applies according to all international criteria within the framework of freedom of expression, which is the basis of democratic societies. It is particularly difficult to explain to complainants that not every case of 'hate speech' is a criminal offence of public incitement to hatred, violence or intolerance as defined by the Criminal Code. **Due to the protection of freedom of expression and particularly the freedom of the media, the conditions for the criminal prosecution of spoken or written words are justifiably very strict.**

We particularly wish to point out that **the Ombudsman is not competent to provide an assessment of whether elements of a criminal offence are present in individual cases.** Such an assessment falls under the responsibility of prosecutors and judges, which is why individual complainants or journalists cannot expect the Ombudsman to take a position concerning the criminal nature of individual statements or messages. Furthermore, criminal prosecution is also the ultimate means of responding to incidents of hatred and intolerance.

The Ombudsman has frequently publicly **condemned all cases of incitement to intolerance and hatred.** Relating to individual responses, we try to comply with the criteria to respond only to those cases which indisputably display the elements prohibited by the Constitution. These particularly include cases of incitement to hatred against minorities who cannot respond themselves or lack access to the media. In Article 63, the Constitution clearly states that any incitement to national, racial, religious or other discrimination and inciting hatred and intolerance thereof are considered unconstitutional. No simple answer exists on how to respond to and limit expressions of hatred and intolerance. The Ombudsman joins those who believe that punishment and criminal prosecution are not the right answer and that these phenomena cannot be eliminated with such measures. **The public response and public condemnation of unacceptable practices are of particular importance.** It is also vital that the response is immediate and, if possible, in the forum where the unacceptable statements occur. If hate speech occurs in politics, then politicians should respond; if it occurs in web forums, the participants should respond, etc. Self-regulatory mechanisms for responding are welcome, such as the Ethics Committee of the Association of Journalists of Slovenia. The Ombudsman thus proposes that deputies and other politicians adopt an ethics code and form a tribunal to respond to individual cases of hate speech in politics subject to public condemnation.

## **Sanctioning public incitement to hatred, violence or intolerance as an offence**

Already in past reports from 2011 onward, the Ombudsman proposed that the Government examine the possibility of sanctioning public incitement to hatred, violence or intolerance as an offence. The Ombudsman wrote in her reports that with a suitable interpretation of the definition of a public space referred to in Point 1 of Article 2 of the ZRJM-1, Internet forms of communication could also be defined as public spaces, i.e. as a space which is “accessible to anyone under certain conditions”.

In its response, the Government expressed reservations about this interpretation of regulations on offences.

Irrespective of this official response from the Government, the Ombudsman is pleased to observe that the recommendation to test the **possibility of interpreting web space as public space** in practice in offence proceedings was at least considered. Information was noticed in the media in March 2014 for which the police fined an individual who had published hate content on Facebook for “indecent behaviour in a public place”. It will be interesting to follow up how such an attempt to interpret public space in terms of offences is established or whether it will undergo a judicial review.

## **Compensation due to unjustified interference with privacy by way of a public publication should be higher**

The Ombudsman has made several recommendations that the possibility of enacting a civil fine or compensation due to unjustified interference with privacy by way of public publication should be reviewed. According to the current system, an injured party has to prove material and non-pecuniary damage incurred due to a publication of unjustified allegations, which is why judgments awarding compensation for the interferences with personal rights are too low to have a deterrent effect on media that produces sensational news.

## **Violation of the rights of RTV Slovenia's viewers and listeners**

In the 2012 report, the Ombudsman expressed the opinion to RTV Slovenia that any viewer who submits a complaint due to the content of RTV Slovenia's programmes should receive a reply from the Ombudsman of Rights of Viewers and Listeners of RTV Slovenia. This position is based on the principle of good management and an explanatory note on the constitutional right to a petition. The Ombudsman believes that this should hold even more for a public institution operating in the interests of viewers and listeners and which has established a special body, the Ombudsman of Rights of Viewers and Listeners, for this purpose.

## **Protection of children from inappropriate content**

In recent years, several complainants turned to the Human Rights Ombudsman to express their concern about inappropriate content for children on television or in the cinema. When discussing these complaints, it was established that Slovenian legislation does not include special provisions relating to the protection of children from inappropriate content in cinemas, and the concern for children's interests is left entirely to the parents, who have to learn about the suitability of the film content at the cinema. They may do so by watching trailers (also with Slovenian subtitles) which are usually available on national and international websites. On the basis of the complaints discussed, the Ombudsman formed the opinion that cogent arguments exist for the legislative arrangement of children's protection from inappropriate content in cinemas.

## **2.1.2 Voting rights**

In the field of implementing voting rights, the Ombudsman received somewhat fewer complaints (9) in 2013 than in the previous year (13). The reason is that fewer elections were called in 2013. Among the substantive issues, two questions were at the forefront: the possibility of efficient legal remedies of a candidate for an alternate member of a municipal council in the case of a mayor's and other municipal bodies' inactivity, and potential abuse in procedures concerning elections of representatives of local interests to the National Council.

The Ombudsman's recommendation that legislative solutions have to be adopted to prevent the abuse of electoral procedures and inefficiency of legal remedies in electoral procedures of representatives of local interests to the National Council continues to apply. State authorities have to monitor the adoption of rules for implementing electoral procedures in municipalities.

For several years, the Ombudsman has drawn attention to the problem of postal voting for voters who are not at the place of their permanent residence on voting day and are not accommodated in homes for the elderly or in hospitals. The Government tried to solve this problem with a proposal for the Act amending the National Assembly Elections Act; however, the proposal has to be passed by a two-thirds' majority of all deputies and so far the proposal has not been passed. In the meantime, these issues are being resolved according to the instructions of the National Electoral Commission submitted to district electoral commissions. Nevertheless, the Ombudsman believes that such voting rules have to be laid down systemically in legislation.

The Ombudsman's recommendation that the Radiotelevizija Slovenija Act define the principles and rules for implementing pre-election and pre-referendum presentations and broadcasts on the public radio and television in order to avoid unequal treatment and different interpretations of the Act continues to apply.

## 2.1.3 Protection of privacy and personal data

The Ombudsman has termed section 1.6 the Protection of privacy and personal data since 2010. This field had previously included only the protection of personal data. The extension of this field proved to be justified; this is demonstrated by the number and diversity of complaints which opened questions relating to which the Ombudsman has not given an opinion yet. Some 45 complainants contacted the Ombudsman in 2013 with various questions relating to the invasion of privacy or violation of regulations governing the protection of personal data; in total, 49 cases were discussed, which is slightly fewer than the year before. A relatively high percentage (37.5 per cent) of complaints were founded.

In most cases, the complainants sought explanations about their rights or the legal means with which they could protect their rights to privacy and personal data protection. In most cases, the complainants were given specifications of their rights or instructions relating to the use of legal methods for the protection of their rights and interests. They were most frequently referred to the Information Commissioner (IC) or to other national supervisory bodies for personal data protection. If necessary, we contacted the IC for explanations about procedures and were pleased with their response. In one case in 2013, clarifications were sought in direct discussions at the IC, and the complainant received the relevant notification of the findings of the inspection supervision following our intervention.

In its reports, the Ombudsman frequently discussed question of archives in psychiatric institutions and recommended that the collection, protection, storage period and further processing of materials be regulated with an act, since according to the Ombudsman, the current (un)arrangement of this field may affect the protection of the privacy and individuals' personal rights to whom these materials refer. The Ombudsman was informed by Ljubljana Psychiatric Clinic of a problem regarding the handing over of material on the treatment of psychiatric patients requested by the Archives of the Republic of Slovenia pursuant to the Protection of Documents and Archives and Archival Institutions Act (ZVDAGA). Ljubljana Psychiatric Hospital opposes the handing over of such archives on ethical and professional grounds, substantiated by the position of the Commission of the Republic of Slovenia for Medical Ethics. In the first paragraph of Article 40, the ZVDAGA stipulates that all entities of the public law must deliver archival material to the Archives not later than 30 years after the production of the material. This obligation also applies to material containing sensitive personal data, including medical data on psychiatric treatment. Ljubljana Psychiatric Hospital believes that this data should remain in the possession of hospitals and used only for professional and scientific medical purposes. The Ombudsman approved this complaint and filed a request at the Constitutional Court of the Republic of Slovenia for a constitutional review of the first paragraph of Article 40 of the ZVDAGA. The Ombudsman believes that the contested provision is inconsistent with Articles 2, 35 and 38 of the Constitution of the Republic of Slovenia, since it does not regulate separately the delivery and regimen for handling material from psychiatric institutions that contains information on psychiatric treatment.

With Decision U-I-70/12 of 24 May 2012, the Constitutional Court of the Republic of Slovenia temporarily suspended the implementation of Article 40 of the ZVDAGA in the section referring to materials from psychiatric institutions containing sensitive personal data on psychiatric treatment until the final judgement of the Court on this matter. During the preparation of this report, the Constitutional Court had not yet reached a substantive decision on this matter.

### **Protection of personal data of victims and witnesses in criminal proceedings**

A complainant wrote to the Ombudsman in the belief that the collection of personal data of the accused and witnesses in criminal proceedings as stipulated in Articles 227, 239 and 240 of the Criminal Procedure Act (ZKP) is excessive. The complainant also stated that in order to access many personal data of the accused in criminal proceedings, private prosecutors instigate so-called mobbing proceedings which help them obtain certain personal data of the accused which they later abuse. The complainant suggested that the amending act (ZKP-L) which was being considered by the National Assembly at the time would limit the acquisition of personal data of the accused and witnesses to a selection of data necessary for the efficient implementation of the proceedings.

We confirmed the complainant's claims on the protection of personal data of the accused in criminal proceedings as founded. According to the Ombudsman, certain personal data collected within the framework of criminal proceedings are necessary for the identification of the accused or for establishing attenuating or aggravating circumstances when determining their punishment. No sufficient grounds or the purpose of their collection exist in the opinion of the Ombudsman for personal data, such as nationality, military status or decorations.

The Ombudsman sent an inquiry to the Ministry of Justice and Public Administration which pointed out that the legislature and the proposer of the amendments to the Criminal Procedure Act have not yet conducted a thorough weighing of the justifiability of the invasion of privacy and personal data of individual participants in criminal proceedings. We again stressed the issue of invasion of personal data and privacy of witnesses and of the accused in criminal proceedings and proposed weighing the proportionality of the invasion of rights of the affected with the first amendment to the Criminal Procedure Act, while particularly considering the current development of arrangements in this field in Slovenia and the European Union in general. The Ministry replied that the actual necessity and objective of collecting personal data have to be examined, and that this issue would be studied during an extensive substantive and systemic renewal of criminal proceedings which has already been scheduled. The Ombudsman expects that the Ministry will keep its promise and conduct a careful weighing of the invasion of privacy and personal data of participants in criminal proceedings on the basis of this Act on the occasion of subsequent amendments to the Criminal Procedure Act in the cooperation of the Information Commissioner.

## **2.1.4 Access to information of public character**

Since 2009, the Ombudsman has been reporting the reasons due to which we believe that the exceptions in the Public Information Access Act (ZDIJZ) do not provide for the protection of the principle of confidentiality of procedures conducted by the Ombudsman as defined by Article 8 of the Human Rights Ombudsman Act (ZVarCP). On this basis, the National Assembly also accepted the recommendation that the ZDIJZ incorporate a solution observing the principle of the confidentiality of procedures conducted by the Ombudsman relating to matters discussed by the Ombudsman on the basis of the ZVarCP and also comply with the principle of the transparency of work of the Human Rights Ombudsman of the Republic of Slovenia. This Ombudsman's recommendation has not yet been realised.



## 2.1.5 Review of activities

### Protecting human rights also when expressing political opinions

The Ombudsman studied the complaint relating to the protest against members of the Municipal Council of the Municipality of Maribor in the course of which the protesters visited the homes of individual municipal councillors on 9 January 2013. The Ombudsman informed the protesters publicly that the implementation of human rights and fundamental freedoms, including the right to peaceful assembly and association, is limited by the rights of others, their rights to privacy, personal dignity and safety and private property.

### The Prime Minister's speech included elements of hostility

On 11 February 2013, the Human Rights Ombudsman, Dr Zdenka Čebašek-Travnik, gave a statement to the media about a speech by the then Prime Minister, Janez Janša. The speech was made at a convention organised by the Assembly for the Republic on 8 February 2013. The Ombudsman assessed that the speech was political and included elements of inciting (political) hatred and intolerance in several places, which Article 63 of the Constitution of the Republic of Slovenia defines as unconstitutional. The competent state prosecutors will have to evaluate whether it also contained elements of the criminal offence of public incitement to hatred, violence or intolerance as per Article 297 of the Criminal Code, the Ombudsman added. Labelling people with contrary opinions as 'left Fascists' is a bad signal for anyone participating in public discussions, as it broadens the limits of what is acceptable in the direction of permitting hate speech or hatred and intolerance in public speaking.

### Politicians have a special responsibility when limiting hatred and intolerance

On 11 February 2013, the Human Rights Ombudsman, Dr Zdenka Čebašek-Travnik, publicly expressed her concern about new cases of hatred and intolerance. She publicly condemned graffiti that has clear expressions of hatred against Christians on 1 February 2013 and expressed her hope that the police would do everything to find the perpetrator(s) and that other measures to implement criminal proceedings would be taken.

She also protested against several occurrences of hatred and intolerance against members of the Hungarian community in the Prekmurje region. Among others, the perpetrators denied the existence of this community in Slovenia. More and more people are unemployed and living in poverty, and the idea of 'the others' being responsible for their problems seems very attractive in such circumstances. A greatest responsibility to deter such thinking is borne by politicians, who should promote tolerance and solidarity between different parts of society and not seek differences and incite intolerance.

### Consultation on hate speech

On 14 February 2013, Jernej Rovšek, the Deputy Ombudsman, participated in a consultation with representatives of state authorities, the prosecution service and the Information Commissioner organised by the Ministry of the Interior on the basis of a initiative of Dr László Göncz, the Deputy at the National Assembly representing the Hungarian community in Slovenia, relating to the occurrence of hate speech against this national community.

### Commemorating the anniversary of entering Huda jama

On 5 March 2013, Kornelija Marzel, MSc, the Deputy Ombudsman, attended a scientific conference at the Archives of the Republic of Slovenia commemorating the fourth anniversary of entering the crime site at the St. Barbara pit in the Huda jama mine shaft near Laško. The conference was organised by the Study Centre for National Reconciliation. The Deputy Ombudsman stressed the respect for the dignity of the victims of post-war extra-judicial proceedings and their relatives and the responsibility of the state to reveal the known locations of mass graves in Slovenia. The state should arrange a symbolic burial of the victims' remains and erect a suitable monument, thus enabling a decent farewell for their relatives.

### Public presentation of opinions relating to hate speech

The Commission for Petitions and Human Rights and Equal Opportunities held a public presentation of opinions on the topic of hate speech at the National Assembly of the Republic of Slovenia on 15 March 2013. Representatives of state

authorities and expert and civil societies tried to answer the questions of how to recognise hate speech, how to prosecute it and how to limit it. Jernej Rovšek, the Deputy Ombudsman, also participated in the discussion and mentioned that the number of complaints expecting condemnation of hate speech had risen.

### **Coexistence of constitutional rights and media reporting**

Jernej Rovšek, the Deputy Ombudsman, and Gašper Adamič, the Ombudsman's adviser, attended a round table panel at the National Assembly of the Republic of Slovenia entitled 'The Coexistence of Constitutional Rights and Media Reporting' on 8 April 2013. The discussions focused on the questions of coexistence of several constitutional rights and their demarcations; they discussed the right to freedom of expression (Article 39 of the Constitution), the protection of the privacy of correspondence and other means of communication (Article 37) and protection of personal data (Article 38) also in relation to the principles of ethical media functioning. The reason for the round table panel was an incident at the National Assembly where conditions for the work of journalists at the National Assembly were violated when a photographer was secretly reading and publishing another person's e-mails and thus encroaching on the privacy of a deputy.

### **Hate speech at the round table panel 'Crossing the Rubicon'**

Jernej Rovšek, the Deputy Ombudsman, and the Ombudsman's adviser, Gašper Adamič, attended a round table panel entitled 'Crossing the Rubicon: Freedom of Expression and Hate Speech' organised by the Pravnik academic society at the Faculty of Law in Ljubljana on 13 May 2013. The main speakers were Deputy Ombudsman Jernej Rovšek, lawyer Nina Zidar-Klemenčič and journalist Uroš Slak, who discussed the boundaries between freedom of expression and the criminal offence of inciting hatred and the problem of hate speech in politics and its spreading to other social fields.

### **The Ombudsman meets the Deputy of the Hungarian community**

On 22 May 2013, Vlasta Nussdorfer, the Human Rights Ombudsman, met Dr László Göncz, Deputy at the National Assembly of the Republic of Slovenia representing the Hungarian community in Slovenia. They discussed the protection of rights of the Hungarian community and highlighted the indeterminate supervision of the implementation of the Council of Europe's Framework Convention for the Protection of National Minorities. They stressed that Slovenia regulated the status of both indigenous national communities well at regulatory and institutional levels. However, this does not mean that violations do not occur in practice which are not reported to the Ombudsman. The Ombudsman thus asked Deputy Göncz to inform her of possible violations of the rights of representatives of the Hungarian community in Slovenia.

### **Inadmissible reporting of a web medium**

In January 2013, the Ombudsman encountered an article on a web medium about the assumed death of the son of the Prime Minister of the Republic of Slovenia. The article was based on unverified hearsay and severely encroached upon the privacy of the Prime Minister's family and was also an encroachment on the child's rights. The Human Rights Ombudsman, Dr Zdenka Čebašek-Travnik, severely condemned such publications which are not based on any interest in informing the public. The result of spreading such unverified information is solely the defamation of individuals and unjustified interference with their privacy and family life, which on the other hand means enhanced attention in the media and higher media profits. The Ombudsman highlighted that such publications should be limited by legal (criminal and civil) means.

### **Discussions on the electoral system**

On 18 June 2013, Jernej Rovšek, the Deputy Ombudsman, attended a round table panel entitled 'The Electoral System and Stability of State Authorities', organised by the Association of Constitutional Law at the Faculty of Law in Ljubljana. Another round table panel discussing a similar topic entitled 'The Electoral System and the Crisis' was also held at the Faculty of Law on 11 December 2013.

### **Privacy and supervision**

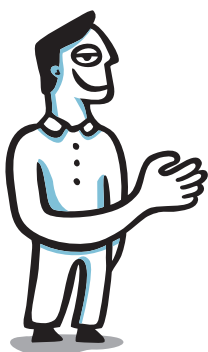
Deputy Ombudsman Jernej Rovšek attended a round table panel entitled 'When Privacy Meets Supervision in the World of Big Data' organised by the Information Commissioner on 1 July 2013. Jernej Rovšek, the Deputy Ombudsman, and Gašper Adamič, the Ombudsman's adviser, also attended a working consultation on the occasion of the International Right to Know Day at the end of September 2013.

## Public presentation of opinions on amendments to the Roma Community Act

On 22 October 2013, the Office of the Government of the Republic of Slovenia for National Minorities organised a public presentation of opinions relating to amendments to the Roma Community Act (Official Gazette of the Republic of Slovenia, no. 33/07) at the hall of the Administration Building of the Slovene Ethnographic Museum. The public presentation was followed by the opening of the photographic exhibition 'We All Have a Roma Inside!' which was the product of cooperation between the Umbrella-Dežnik Roma Association of Slovenia, the Roma Information Centre, Anglunipe, and the Slovene Ethnographic Museum.

## 2.1.6 Review of Recommendations on Constitutional Rights

1. The Ombudsman recommends that all who participate in public discussions, particularly politicians in their statements and writing, avoid the incitement of hatred or intolerance on the basis of any personal circumstance, and in cases of their occurrence, respond and condemn them immediately.
2. The Ombudsman repeats her recommendation that the Government examine the possibility of introducing a civil penalty for unjustified encroachment upon integrity, reputation and privacy by way of publication.
3. The Ombudsman recommends that RTV Slovenia introduce a more transparent system of responses to complaints, proposals and criticisms from listeners and viewers.
4. The Ombudsman recommends that the management of RTV Slovenia ensure that all complainants receive written replies to their written complaints. She also proposes that a record of complaints and replies be kept from which data on the complaints and functioning of the Ombudsman of Rights of Viewers and Listeners can be obtained.
5. The Ombudsman recommends that the legislators evaluate whether the field of children's protection from inappropriate content should be regulated in the Republic of Slovenia by indicating suitable ages for viewing films in cinemas, audio-visual media and computer games.
6. The Ombudsman recommends that the Government of the Republic of Slovenia examine the efficiency of procedures concerning the approval of alternate members of municipal councils, in particular the judicial protection of candidates for alternate members in the cases of mayor's or other municipal bodies' inactivity or obstruction.
7. The Ombudsman recommends that the Archives of the Republic of Slovenia, the responsible inspector of the Culture and Media Inspectorate of the Republic of Slovenia and the Ministry of Culture, provide consistent implementation of the third paragraph of Article 65 of the Protection of Documents and Archives and Archival Institutions Act.
8. The Ombudsman recommends that the Government conduct a detailed weighing of interference with privacy and personal data of participants in criminal proceedings when drafting future amendments to the Criminal Procedure Act.
9. The Ombudsman recommends that a solution in the Public Information Access Act be adopted to enable the realisation of the principle of privacy of procedures conducted by the Ombudsman in relation to matters handled by the Ombudsman pursuant to the Human Rights Ombudsman Act.





# 2.2

## DISCRIMINATION

Area of work	Cases considered			Resolved and founded		
	2012	2013	Index 13/12	No. of resolved	No. of founded	Percentage of founded among resolved
<b>2. Discrimination</b>	<b>74</b>	<b>80</b>	<b>108,1</b>	<b>59</b>	<b>24</b>	<b>40,7</b>
2.1 National and ethnic minorities	20	33	165,0	22	6	27,3
2.2 Equal opportunities by gender	1	0	0,0	0	0	0,0
2.3 In employment	4	2	50,0	1	0	3,0
2.4 Equal opportunities relating to sexual orientation	0	3	-	3	1	33,3
2.5 Equal opportunities relating to physical or mental disability (invalidity)	0	16	-	9	2	22,2
2.6 Other	49	26	53,1	24	15	62,5

### General

2013 saw more complaints related to discrimination; eighty such complaints were discussed, which is six more than in 2012. No complaints were received under the sub-section of equal opportunities by gender in 2013, and only two complaints under the sub-section of discrimination in employment. The largest increase in the field of discrimination was the 65-per cent increase in complaints under the national and ethnic minorities sub-section. The majority of these latter complaints refer to poor conditions in Roma settlements and their surroundings, which lack legal and infrastructural arrangements. The growing number of complaints is probably the result of the fact that the complainants have recognised the Ombudsman as an institution which actively points to problems of integrating members of the Roma community into Slovenian society, particularly in South-eastern Slovenia. **So far, the state authorities have not responded appropriately to the Ombudsman's recommendations**, so we expect many such complaints in the future.

Among the cases discussed by the Ombudsman in 2013, the highest percentage of founded complaints concerned discrimination, i.e. as many as 40.7 per cent of cases discussed. There were also many founded complaints concerning equal opportunities relating to sexual orientation and national and ethnic origin; the highest percentage of founded complaints fell under the sub-section of 'Other', which we were unable to classify elsewhere. Some of these latter complaints are presented among the most interesting examples in this report.

The number of complaints classified under the sub-section of 'Other' decreased significantly in 2013. This is attributed to our decision to introduce two new sub-sections in the field of discrimination at the beginning of 2013, i.e. equal opportunities relating to sexual orientation and equal opportunities relating to physical or mental disability (invalidity). Within the first sub-section, three complaints were discussed and sixteen within the second.

## 2.2.1 Mechanisms for protection against discrimination and the organisation of the state

### Arrangement of the status of the Advocate of the Principle of Equality

In April 2013, the Ministry of Labour, Family, Social Affairs and Equal Opportunities presented the Ombudsman with the idea of relocating the Advocate of the Principle of Equality to the Ombudsman's head office, where administrative and technical support for work would be provided. It was not clear in the initial phase how the relocation would be done, or what support or implementation of joint functions would be enabled by the Ombudsman. We explained to the Ministry of Labour, Family, Social Affairs and Equal Opportunities that the Ombudsman and the Advocate perform different tasks (in accordance with the Constitution, the Ombudsman oversees the public sector, and the Advocate also the private sector) and have different powers (the Ombudsman has investigating powers, the Advocate does not). Within their jurisdictions and functions, they are both autonomous and independent, so their joint implementation of tasks could be questionable, particularly from the view of the confidentiality of procedures which is ensured for the benefit of complainants. The Ombudsman again repeated that an advocate alone cannot implement efficiently all tasks combating discrimination without expert assistance. The Ministry of Labour, Family, Social Affairs and Equal Opportunities wanted to implement its proposal quickly. Several meetings were held at the Ombudsman's office, and the Ministry also submitted a working draft of the Act on Advocacy for consideration which would newly arrange the powers and status of the advocate. The Ombudsman participated actively in these discussions by submitting written comments and reserving premises which the advocate could rent in the same building. An assessment of minimum costs to implement the advocate's tasks in the same building where the Ombudsman has her premises was submitted to the Ministry. In 2013, we did not receive any response from the Ministry on this subject. The questions of combining powers and particularly of possibilities for the efficient and independent work of the advocate remain open, and thus the Ombudsman repeats her recommendation.

### State institution for the protection of human rights

The Ombudsman has been pointing out for several years that Slovenia lacks a state institution for the protection and promotion of human rights which would function on the basis of the Paris Principles relating to the Status of National Institutions, confirmed also by the General Assembly of the United Nations. These principles define tasks and conditions for the acknowledgement of such bodies which, according to their tasks (establishing status, promotion, awareness-rising, education) in the field of protection of rights, differ from the functions of ombudsmen, who discuss individual complaints in particular. In its legal conception, the Ombudsman is a classic parliamentary ombudsman, with somewhat broader powers (more on this subject can be read in the publication issued on the occasion of the 20th anniversary of the Human Rights Ombudsman Act available at [http://www.varuh-rs.si/fileadmin/user\\_upload/pdf/Razne\\_publikacije/20-Let-Zakona-o-Varuhu-clovekovih-pravic\\_WEB\\_LQ.pdf](http://www.varuh-rs.si/fileadmin/user_upload/pdf/Razne_publikacije/20-Let-Zakona-o-Varuhu-clovekovih-pravic_WEB_LQ.pdf)).

The Ombudsman has mentioned this issue several times in previous annual reports and proposed recommendations on the need to establish such an institution. The National Assembly confirmed the recommendations, but no further progress has been made relating to their realisation. The Ombudsman has tried to resolve this situation several times; three years ago, we proposed the continuation of work of the then closed Information Office of the Council of Europe in Ljubljana as a centre for human rights which would function within the Ombudsman's structure and serve as a short-term transitional solution. If the Government had supported (financially) this proposal at the time, the centre could have been the starting point for implementing educational, promotional and preventive activities in the field of human rights, including the prevention of discrimination, and would thus meet the criteria of the Paris Principles.

The Ombudsman continued her participation in the activities of the informal network of national institutions; however, never to the full extent, due to the lack of staff and funds for cooperation on the activities of UN bodies in Geneva and in the International Coordinating Committee of National Institutions for the Promotion

and Protection of Human Rights – ICC. With her contribution, the Ombudsman participates in monitoring the implementation of universal periodical reviews, which is the most important mechanism of the United Nations for monitoring the situation and the observance of human rights in individual UN Member States; however, we do not participate directly in these procedures.

The Ombudsman did not accept the invitation of UN bodies and other international authorities to apply for 'A' status within the International Coordinating Committee. We did not do that due to the lack of material and also staffing issues for certain activities which are expected from an organisation with this status. These involve, in particular, promotional, educational and research activities in the field of human rights. We applied for 'B' status (and received it in 2009), which is granted to institutions that do not meet all the criteria of the Paris Principles. It is not necessary to point out that we are thus considered a country which does not respect human rights.

The inter-ministerial working group for human rights within the framework of the Ministry of Foreign Affairs has stressed several times the need to establish a state institution in Slovenia. The group was dissolved in 2012 and re-established in 2013, also on the basis of the Ombudsman's efforts and recommendations in the 2013 report; however, the group does not include representatives of NGOs and experts working on the protection of human rights. The group is comprised of representatives of governmental sectors, so the group cannot function as a state institution, since it does not meet the criteria of independence from the authorities.

The Ombudsman and the state have to take an important decision: will we have a full-authorized institution for human rights which functions on the basis of the universally adopted Paris Principles or will we not participate in this sphere, and the Ombudsman will participate only in networks and associations of classic parliamentary ombudsmen. The decision has to be taken as soon as possible. The Ombudsman has to re-organise in such a way as to meet the criteria and conditions anticipated by the Paris Principles. **This process will be successful only if supported by the Government and other political decision-makers in the state.** This re-organisation is not as important for the Ombudsman as it is for the reputation and participation of the state in the international environment.

## 2.2.2 National and ethnic minorities

### General

In 2013, the majority of complaints concerning discrimination based on national or ethnic origin referred to the Roma community living in Slovenia. The complaints discussed different problems of members of these communities in individual Roma settlements; most related to living conditions. We also received several complaints from citizens living near such settlements, who pointed out poor security conditions in the vicinity of Roma settlements and the supposed unequal treatment of citizens. The state authorities responded promptly to the Ombudsman's inquiries; we particularly **commend the Office of the Government of the Republic of Slovenia for National Minorities**; however, certain municipalities were not very responsive.

### Special rights of national communities

No complaints were received claiming a direct violation of any of the special rights guaranteed to the two self-governing national communities and their members in the Republic of Slovenia by the Constitution and law. On this basis, we can establish that the position of both national communities is governed according to the system and institutional levels. Individual violations of constitutional and legislative rights certainly occur also in this field, but the Ombudsman is not informed about them for various reasons.

## Roma community

In general, the Ombudsman established that insufficient progress was made in the integration of members of the Roma community into Slovenian society in 2013. In certain cases, the conditions even deteriorated, e.g. in the Roma settlement of Dobruška vas, which is discussed later in the report.

The Roma Community Act (ZRomS-1) and strategic documents, particularly the National Programme of Measures for Roma for the Period 2010-2015, produced certain results, but the conditions are improving too slowly, or changes are obstructed at the local level and the state lacks mechanisms or the political will to overcome these barriers in individual fields.

With the establishment of the Roma Community Council of the Republic of Slovenia, some of the powers and responsibilities for solving of the situation of the Roma community were transferred to the members of this community. Nevertheless, it has to be stated that the current functioning of the Council has not met the expectations raised by the passage of the act. The Ombudsman has been highlighting the poor solution in Article 10 of the ZRomS-1 since 2007, which was the reason for opposing opinions within the Council that continued and also caused conflict in 2013. Therefore, it is time for the Government to accelerate its activity relating to amendments to the ZRomS-1 on the composition of the Council, even if only in regard to this provision.

From the systemic point of view, the Ombudsman is still critical of the conditions which allow the violation of human rights of the inhabitants of Roma settlements and citizens living in their vicinity about which the state is taking no action to eliminate, in spite of the obvious inactivity of municipalities. In 2012, the Ombudsman prepared and submitted the Special Report on the Living Conditions of the Roma in South-East Slovenia to the National Assembly.

The Ombudsman believes that in cases when municipalities fail to eliminate established violations of human rights, the state must remedy their (in)actions and ensure respect for human rights and fundamental freedoms. The state is bound to do so by Article 5 of the Constitution of the Republic of Slovenia and ratified and published international treaties on human rights. When the state fails to fulfil its obligations to provide protection of human rights, their violation is solely the state's responsibility.

### 2.2.3 Rights of persons with disabilities

At the beginning of 2013, a new classification field was opened for complaints on equal opportunities relating to physical or mental disabilities (invalidity). Sixteen complaints were discussed within this new sub-section in 2013, of which 22 per cent were founded. The majority of complaints referred to problems with parking spaces for persons with disabilities; due to their diversity, other complaints were difficult to classify in content sets. The more interesting and systemic issues discussed in 2013 arose from the new arrangement of subsidised transportation for secondary school pupils and higher education students and the results of the infamous Fiscal Balance Act, which created new problems by unequally treating certain categories of beneficiaries. The first issue was distance to/from school, which was resolved with an amendment to the act. The second problem, i.e. subsidisation of transportation for students with disabilities, remains unsolved systemically; it will be further discussed in 2014. Characteristic of both issues is the inclusion of several ministries, which, according to the Ombudsman's long years of experience, further aggravates the resolution of irregularities. Both cases are presented in more detail below.

In addition to discussing the above-mentioned complaints, we also considered several complaints which pointed out the organisation of associations of people with disabilities and rights of their members. The recurring problem encountered by the Ombudsman is the question of financing the activities of associations of people with disabilities. We thus provide an example within which the Foundation for Financing Disability and Humanitarian Organisations in the Republic of Slovenia fails to implement judgements of the Administrative Court.

## 2.2.4 Discrimination: Other

### **Subsidisation of transportation for secondary school pupils and higher education students**

A parent of a secondary school pupil wrote to the Ombudsman, saying that they have to pay EUR 43.20 for his monthly transport pass. He lives in Mengeš and commutes to Domžale, less than five kilometres away. Their neighbour, who commutes to Ljubljana, could exercise his right to subsidised transport and thus pay only EUR 20 for the monthly transport pass, which would also include free urban transport. This inequality is the result of a legislative arrangement which the complainant believes to be discriminatory, as it puts secondary school pupils who reside within the five-kilometre radius of their school in a less favourable position.

The Ombudsman submitted an inquiry to the Ministry of Infrastructure and Spatial Planning in which we asked them to state their position on the assumed violation of the prohibition of discrimination deriving from Article 114.b of the Road Transport Act (ZPCP-2).

On the basis of statements provided by the Ministry of Infrastructure and Spatial Planning, the Ombudsman established that the Ministry had failed to provide reasonable and grounded reasons for which Article 114.b of the ZPCP-2 discussed individuals differently relating to the distance of their place of residence from their school. The principle of equality under the second paragraph of Article 14 of the Constitution of the Republic of Slovenia stipulates that substantially equal cases have to be treated equally and substantially unequal cases correspondingly differently. The Ombudsman stated in her opinion that secondary school pupils and higher education students residing within a radius of more than two, and less than five, kilometres of their school were in a substantially equal position as those residing five or more kilometres from their school. Namely, both groups need transportation from their place of residence to school. The Ombudsman proposed that the Ministry of Infrastructure and Spatial Planning prepare the basis and propose to the National Assembly the adoption of suitable legislative amendments to eliminate the discriminatory criterion for the allocation of subsidised transport.

In its reply, the Ministry of Infrastructure and Spatial Planning informed us that they had prepared a proposal regarding the act amending the Road Transport Act in compliance with our opinion. The latest amendments to the Road Transport Act, which was passed unanimously at the end of April 2013, entered into force on 7 May 2013, and supplements the system of subsidisation of monthly transport passes for secondary school pupils and higher education students. The criterion of distance from the place of residence to school was in accordance with the Ombudsman's requirement amended from five to two kilometres. In this case, the Ombudsman assessed the response of the relevant bodies to the established violation as suitable.

### **Discrimination when allocating municipal financial assistance for newborns**

A citizen of the Municipality of Tolmin who is a foreigner with a permanent residence permit (she and her husband are also employed in Slovenia) wrote to the Ombudsman about a case of discrimination when allocating municipal financial assistance for newborns. The complainant stated that Pravilnik o enkratni denarni pomoči za novorojence v občini Tolmin (Rules on one-off financial assistance for newborns in the Municipality of Tolmin; Primorske novice: Official publications no. 22/2005; the Rules) is discriminatory because only citizens of the Republic of Slovenia can receive the financial assistance. Due to the disputed provision of the Rules, the complainant had already contacted the mayor and received the reply that her doubts were founded and sensible to a certain degree, but that the conditions were determined in order to prevent procedural anomalies and deliberate abuse, and that the implementation of the right to allocate assistance to newborn children was an autonomous decision of the local community, and that all other Slovenian municipalities whose regulations had been reviewed had the same condition, i.e. citizenship. The municipality replied that they did not agree with the claim that the condition of citizenship was a case of discrimination, so her complaint had not been resolved in her favour, although, they stated that they would consider a possible amendment to the Rules.

The Ombudsman assessed that the complaint could be founded. The Implementation of the Principle of Equal Treatment Act (ZUNEO) prohibits actions which denote direct or indirect discrimination due to any personal circumstance in any area of social life, explicitly with regard to social benefits. The Ombudsman established that the reasons provided by the municipality in their reply to the complainant did not repudiate the belief that the provision on citizenship in the Rules was discriminatory. According to the Ombudsman, the violation of discrimination cannot be overlooked by the municipality's intention to limit the abuse of the right with the disputed condition, since the prevention of the misuse of procedure is regulated with the penal provisions of the Rules. The Ombudsman agrees with the municipality's opinion that the allocation of assistance to newborn children is an autonomous matter for municipal bodies; however, the Ombudsman believes that when a municipality decides to allocate such assistance to its residents, the conditions for the allocation must not be arbitrary or contradict the principle of equal treatment. The Ombudsman further believes that the (alleged) discrimination cannot be justified with the alleged discriminatory treatment of other municipalities. In addition to the complainant's arguments that she and her husband as foreigners with permanent residence permits pay all legally required taxes, the Ombudsman provided the provision of the Parental Protection and Family Benefit Act to further support the complainant's claim, which regulates the (financial) childbirth allowance at the state level. In Article 64, this Act conditions the right to childbirth allowance upon the permanent residence of the mother or father in the Republic of Slovenia, not their citizenship.

The Ombudsman's opinion was submitted to the municipality, which was asked to prove, in accordance with the ZUNEO on the reversed burden of proof, that the provisions of the Rules do not violate the principle of equal treatment. In its reply, the municipality was unable to find solid reasons to justify the discriminatory provision of the Rules. The municipality agreed with the Ombudsman's opinion and started drafting amendments to the Rules according to which beneficiaries for the allocation of municipal financial assistance for newborns will be applicants with citizenship of the Republic of Slovenia or a permanent residence permit and permanent residence in the Municipality of Tolmin. **The complaint was founded and the response of the municipality to the established irregularities was assessed as suitable and prompt.**

## The Ombudsman files two requests for a constitutional review

### Request for a constitutional review of the Banking Act (ZBan-1L)

A representative authorised by several complainants (about 300) who were holders of subordinated bonds of Slovenian banks contacted the Ombudsman. The complainants stated that the provisions of the Act Amending the Banking Act of 22 November 2013 (ZBan-1L) in the section relating to measures for the termination or conversion of qualified liabilities violated their human rights and fundamental freedoms. The Ombudsman assessed that the complaints could be justified. On the basis of the disputed provisions of the ZBan-1L, the Bank of Slovenia may decide to terminate subordinated bonds or convert them partly or in full into ordinary shares of the bank with a decision on the exceptional measure.

According to the Ombudsman, such a decision on an exceptional measure could be a violation of the contractual relationship authoritatively and retrospectively. Since no legal remedy is available against it, the holders of subordinated bonds are placed in a inferior position relative to other bank creditors without good reason. This measure could mean an unconstitutional intervention in property rights of the complainants, and their right to a legal remedy and equality before law. Furthermore, a possible use of exceptional measures would be contrary to certain fundamental constitutional principles, such as the principle of legitimate expectation and the principle of the prohibition of the retroactive effect of legal acts.

The Ombudsman believed that it would be inexpedient for complainants to initiate lengthy judicial proceedings during which great, or difficult to redress, damage would be incurred and which would in any case end in the Constitutional Court. On 18 December 2013, before the disputed decision of the Bank of Slovenia, the Ombudsman filed a request with the Constitutional Court of the Republic of Slovenia for a constitutional review of Articles 15, 32 and 37 of the Act Amending the Banking Act (ZBan-1L) with added or amended Articles 261a, 261b, 261c, 261d, 261e, 347 and 350a of the Banking Act (ZBan-1), with a proposal for temporary suspension of the enforcement of the ZBan-1L and priority consideration of the matter.

## **Decision of the Constitutional Court on the request for a constitutional review of Articles 188 and 246 of the Fiscal Balance Act (ZUJF) which refer to the termination of employment contracts of public servants who meet the old-age retirement conditions**

In June 2012, the Ombudsman filed a request for a constitutional review of Articles 188 and 246 of the Fiscal Balance Act (ZUJF) which refer to the termination of employment contracts of public servants who meet the retirement conditions due to alleged violations of the following provisions of the Constitution:

- prohibition of discrimination relating to gender and age under the first paragraph of Article 14 of the Constitution in connection with Articles 49 and 66 of the Constitution of the Republic of Slovenia on freedom of work and security of employment;
- autonomy of universities stipulated in Article 58 of the Constitution in connection with freedom of science and the arts under Article 59 of the Constitution, and the principle of legitimate expectation as one of the principles of the rule of law under Article 2 of the Constitution.

The Rector of the University of Ljubljana wrote to the Ombudsman due to the austerity measure, which anticipated the termination of employment contracts for all public servants who met or had already met the retirement conditions in accordance with the regulations on retirement, stressing that this would have serious direct and long-term consequences for the professors affected, other teachers and the functioning of universities, their research and teaching activities, and for students.

According to the Act, women meet the retirement conditions earlier than men. A more favourable arrangement of retirement conditions for women should not be the reason for a less favourable arrangement of security relating to the termination of employment contracts. According to the Ombudsman, the contested arrangement denies older public servants any security from arbitrary and unfounded termination of employment on the basis of their age. In the Ombudsman's opinion, the intervention of the legislators in staffing arrangements of academic workers is contrary to the constitutionally ensured freedom of science and the arts, particularly due to the omission of preliminary harmonisation with the universities.

In December 2013, the Constitutional Court decided that the ZUJF had discriminated against gender, but not against age. The Court confirmed the encroachment upon human rights; however, this intervention was compliant with the Constitution because it passed the strict proportionality test. The decision was based on the assumption that the sole purpose of the ZUJF was not economising but also establishing a beneficial age structure of public servants and the prevention of possible disputes over whether individual public servants were able to do their work after a certain age, which could affect their dignity. The legislators were to eliminate the established discrepancy within six months after the publication of the decision in the Official Gazette of the Republic of Slovenia.

Relating to the autonomy of universities, the Constitutional Court held that the contested arrangement suitably enabled universities and higher education institutions to consider the particularities of their teaching processes, work and staffing structure by enabling the employers (also universities and other higher education institutions) to agree on the continuation of employment relationships in order to ensure uninterrupted work, irrespective of public servants' meeting the conditions for termination of employment (including higher education lecturers, scientific workers and higher education associates).

The extensive dissenting and separate opinions of three judges who questioned the section of the Constitutional Court's decision referring to discrimination against age should not be overlooked, as they pointed out that economising must not be a legitimate objective of such an intervention. An opinion was also heard that the Constitutional Court should present a preliminary question and request an explanation of European Union law from the Court of Justice of the European Union.

## **Suspicion of indirect discrimination when determining prices for leasing graves**

The Ombudsman received a letter from a complainant claiming that the price of leasing a grave was much higher in the Municipality of Jesenice for members of the Islamic community than for members of the Catholic religion. She also attached a copy of the notification from the municipal public utility stating that the price of

leasing a single grave was half the price of leasing a grave for one deceased person. The complainant believed this to be a discriminatory method for determining prices on the basis of religious affiliation.

The Ombudsman asked the municipality to state its position relating to the complainant's statements, while observing the provisions of the Implementation of the Principle of Equal Treatment Act (ZUNEO), i.e. to clarify the distinction between a single grave and a grave for one deceased person, the criteria for determining who is allocated a single grave or a grave for one deceased person, and the criteria for determining the price of leasing a single grave and a grave for one deceased person.

The municipality stated that the new item for a single grave for one deceased person was introduced in 2010 due to the fact that, if only one deceased person is buried in a single grave, the burial plot is thus occupied for the entire duration of the resting period. The municipality referred to Zakon o pokopališki in pogrebni dejavnosti ter o urejanju pokopališč (Cemetery and Burial Services and Landscape Planning Act - ZPPDUP) which stipulates that the burial service provider or the local community have to provide sufficient surfaces to bury the deceased for at least 30 years, which means that the cemetery will be filled up quicker with a large number of such burials, and the expansion of the cemetery will be required sooner. It further stated that the price of leasing a grave was determined in such a way to distribute the costs of arranging cemeteries per number of burial plots or units, which ensures the coverage of costs incurred for the maintenance of cemeteries. The difference between a single grave and a grave for one deceased person is that two coffins or four urns can be buried in a single grave, whereas only one person is buried in the same space in a grave for one deceased person at the request of the lessee of the grave. A suitable statement is obtained from the lessee for the establishment of the number of people buried in one grave, in which the lessee determines whether one or several people are to be buried in the grave, which also serves as the basis for determining the cost of leasing. The municipality rejected the complainant's claims that the lease for deceased of the Islamic faith was double that of the lease for deceased of the Catholic faith as unjustified, since all lessees of single graves with one deceased person pay the same amount thus determined, irrespective of their religion. The municipal public utility does not keep a record of the religious affiliation of the deceased or lessees and does not issue invoices relating to the location of graves at the cemetery. The municipality stated that all citizens are treated equally when implementing cemetery and burial services and that their traditions and customs are observed accordingly.

The Ombudsman believes that the municipality successfully repudiated the suspicion of direct discrimination with its clarifications, but not the suspicion of indirect discrimination on the basis of religious affiliation. The municipal decision on determining prices for leasing graves is a seemingly neutral regulation, which puts members of the Islamic faith in a less favourable position than adherents of other beliefs. According to the Islamic faith, members of the Islamic community cannot be buried in the same grave with another person, except in extraordinary conditions (e.g. war, natural disasters). Such rules do not apply to members of other prevailing beliefs in the Republic of Slovenia.

The municipality later clarified that material to amending the aforementioned decision had been drafted according to the Ombudsman's opinion. The Municipal Council of the Municipality of Jesenice discussed the material provided by the public utility or the cemetery and burial service provider at its session in September 2013 and decided to eliminate the item of single graves for one deceased person. **All lessees of single graves will be charged the same, regardless of the number of deceased persons buried in them.** For this reason, the municipal public utility will no longer obtain statements from lessees on the number of people to be buried in a single grave.

## 2.2.5 Review of activities

### The Ombudsman received the President of the Roma Union of the Dolenjska Region

On 24 January 2013, the Human Rights Ombudsman, Dr Zdenka Čebašek-Travnik, her Deputy, Jernej Rovšek, and colleagues received Dušica Balažek, the President of the Roma Union of the Dolenjska Region, Milena Tudija, the President of the Roma Association Romano veseli and active member, Bogdan Miklič. Among other items, the guests stressed the limitations of the Roma Community Act, which prevent them from participating equally in the work of the Roma Community Council, which should represent all Roma in Slovenia under equal conditions.



## **Participation at the session of the Commission for Petitions, Human Rights and Equal Opportunities**

On 13 February 2013, Jernej Rovšek, the Deputy Ombudsman, and Gašper Adamič, the Ombudsman's adviser, attended the 10th session of the Commission for Petitions, Human Rights and Equal Opportunities of the National Assembly of the Republic of Slovenia. The meeting discussed the second report on the situation of the Roma community in Slovenia and problems of national communities of members of nations of the former Socialist Federal Republic of Yugoslavia (SFRJ) in Slovenia, i.e. the resolution of the Government to terminate the Council of the Government of the Republic of Slovenia on the status of national communities of members of nations of former SFRJ in Slovenia. The Deputy Ombudsman drew attention to the Special Report on Living Conditions of the Roma in the Area of South-East Slovenia and the Ombudsman's recommendations, which were not adopted by the National Assembly and whose justification was later confirmed by subsequent developments.

## **The Ombudsman supported the development strategy of the Roma community in the Pomurje region**

On 26 February 2013, Vlasta Nussdorfer, the Human Rights Ombudsman, attended a presentation, 'Development Strategies of the Roma Community in the Pomurje Region Until 2020', organised by the Romano Kher – Roma House project group in Murska Sobota. During her first public speech as the new Ombudsman, Nussdorfer commended the first comprehensive strategic document prepared at the regional level, which meets the needs of Roma and seeks opportunities for integrated development and connects different bodies tackling the Roma issues.

## **Gaps between the legal and actual equality of men and women**

On the occasion of International Women's Day on 8 March 2014, Ombudsman Vlasta Nussdorfer publicly highlighted several still topical issues relating to the enforcement of the principle of gender equality in our society. Slovenia adopted several legislative, administrative and other measures to enforce gender equality; however, we cannot be completely satisfied with what we achieved, she stressed. Society has to pay more attention to the problems of unemployment, the status of older women in the labour market, single mothers, women with disabilities, female immigrants and members of ethnic minorities, women who are victims of violence and the representation of women in politics and in more visible positions in companies.

## **About women in top-level positions**

On 28 March 2013, Ombudsman Vlasta Nussdorfer attended a discussion on women in public life at the Slon Hotel in Ljubljana. The participants were greeted by Prime Minister Alenka Bratušek. The Ombudsman spoke about her experience in the prosecution service and as a humanitarian. The research 'Women in Top-Level Positions' conducted by Deloitte SheXO Club for businesswomen was also presented on this occasion.

## **On current topics with representatives of the Islamic community**

On 15 April 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, and her Deputy, Jernej Rovšek, hosted Dr Nedžad Grabus, mufti of the Islamic community in the Republic of Slovenia, and Nevzet Porić, Secretary of the Community. The discussion partners spoke about topical issues encountered by the Islamic community in Slovenia.

## **Representatives of the European Commission Against Racism and Intolerance visit the Ombudsman**

A delegation of the European Commission Against Racism and Intolerance (ECRI) was on a working visit to Slovenia on 22 April 2013. The ECRI is a body of the Council of Europe, whose work includes combating racism, racial discrimination, xenophobia, anti-Semitism and intolerance. Within its supervisory function, it studies the situation relating to the occurrence of racism and intolerance in each member state of the Council of Europe. Jernej Rovšek, the Deputy Ombudsman, met the ECRI delegation, which was preparing its 4th periodical report on Slovenia, at the Ombudsman's premises on 23 April 2013.

## **Subtle racism**

On 6 May 2013, Jernej Rovšek, the Deputy Ombudsman, was one of the speakers at a round table panel entitled 'Subtle Racism in Slovenia' at the Faculty of Social Sciences.

## The Ombudsman is acquainted with problems of the LGBT community

Ombudsman Vlasta Nussdorfer, her Deputies, Jernej Rovšek and Kornelija Marzel, MSc, and the Ombudsman's adviser, Gašper Adamič, met representatives of the lesbian, gay, bisexual and transsexual community (LGBT) on 3 June 2013. The Ombudsman was informed about the problems they have encountered, including the rejection of the Family Code at the referendum. They claimed that there is systemic discrimination against same-sex couples in Slovenia. They also discussed the lack of institutions to ensure preventive education on human rights and against discrimination, and institutions to control violations in the field of discrimination.

## The Ombudsman and her colleagues meet President Pahor to discuss the Roma issue

At the invitation of the President of the Republic of Slovenia, Borut Pahor, Ombudsman Vlasta Nussdorfer, her Deputy, Jernej Rovšek, and the Ombudsman's adviser, Gašper Adamič, attended a discussion with representatives of the Roma community on 2 July 2013. The discussion partners focused on problems concerning procedures of legalisation and municipal arrangements of Roma settlements.

## Drinking water for Roma in the settlement of Žabljak

On 7 August 2013, the Human Rights Ombudsman and her colleagues made a field trip to the Municipality of Novo mesto. The discussions focused on the co-existence of the Roma and majority population. The Ombudsman met the mayor of Novo mesto, Alojzij Muhič, who presented her with residents' problems. The Ombudsman and Milena Tudiija, a representative of Roma Union of the Dolenjska Region who is also the President of the Roma Association, Romano veseli, paid an unannounced visit to the settlement of Žabljak. The Roma asked them to intervene in the provision of drinking water in the settlement, which they were obtaining from a petrol station in neighbouring Bučna vas. Mayor Muhič responded promptly, also at the request of the Ombudsman, and a tank with drinking water was located along the Novo mesto-Mirna Peč regional road on the same day. After her visit to Novo mesto, the Ombudsman informed President Pahor and Prime Minister Bratušek about the worrying living conditions and relations between the Roma and majority population. She proposed that measures be taken to resolve the most urgent matters and a discussion be held with representatives of the local community and civil initiatives.

## The Commission of the Government of the Republic of Slovenia for the Protection of the Roma Community

The Commission, which also included Deputy Ombudsman Jernej Rovšek and Gašper Adamič, the Ombudsman's adviser, met on 4 October 2013. Other participants included the mayor of the Municipality of Škocjan, residents of Dobruška vas, representatives of NGOs and others. They discussed the issue of co-existence in this community from several points of view and the concern of the residents due to (unofficial) plans of the Municipality of Škocjan relating to the land of the Roma settlement in Dobruška vas. The Ombudsman received letters stating concern about threats of relocation and village guards who would be willing to accompany (also with violence) the forced displacement of residents from the Roma settlement of Dobruška vas. The Ombudsman stated publicly that the forced displacement of members of the Roma community from their (although illegal) homes would be a violation of human rights and fundamental freedoms.

## The Municipality of Ljubljana already supports programmes for LGBT

The Municipality of Ljubljana issued a booklet (from a series of publications Ljubljana – A Healthy City) in which the LGBT community in Ljubljana was presented. The booklet features the various activities (sport, health, culture, social life) of the LGBT community in Ljubljana and presents ten people and their views of Ljubljana, including contact data for LGBT organisations and their programmes. On 18 October 2013, Jernej Rovšek, the Deputy Ombudsman, attended the presentation of the booklet.

## On the Roma and the erased with representatives of Amnesty International Slovenia

On 23 October 2013, the Ombudsman and her Deputy, Jernej Rovšek, met representatives of Amnesty International Slovenia, Metka Naglič, the Deputy Campaign and Communication Director, and Blaž Kovač, the Project Manager. The representatives of the AIS were critical of actions taken by certain local authorities. They stressed that the state has to participate actively in solving such problems. They also focused on the message from Nils Muižnieks, Council of Europe Commissioner for Human Rights, concerning the issue of the erased. The discussion partners agreed that the erased have

to be provided with compensation and reintegration into Slovenian society for those who so wish, and special attention has to be paid to the children of the erased.

### **Project Romani Kafenava is an example of good practice**

The Human Rights Ombudsman learnt from the media that the inhabitants of the Magdalena district in Maribor oppose the opening of a restaurant in their midst and began collecting signatures to prevent the opening. The Ombudsman publicly expressed her certainty that the project Romani Kafenava of the EPEKA Association is a good example of social entrepreneurship, which is trying to improve the employability of the Roma population, which is one of the least employable groups, also due to discrimination against their ethnic origin or even multi-layered discrimination (e.g. due to her age and ethnic origin, an elderly Roma woman encounters even more difficulties when looking for a job than others).

### **Conference on living conditions of Roma**

The Council of the Roma Community in the Republic of Slovenia organised a conference, 'Living Conditions of Roma in Slovenia – Examples of Good Practice'. The conference took place at the Chamber of Commerce and Industry of Slovenia on 28 November 2013 and was attended by Gašper Adamič, the Ombudsman's adviser. In May 2012, the Ombudsman issued a Special Report on the Living Conditions of the Roma in the Area of South-East Slovenia, which was discussed by the National Assembly, which adopted the recommendations intended for state authorities.

## **2.2.6 Review of Recommendations on Discrimination**

**10.** The Ombudsman again recommends that statutory solutions be adopted which, in accordance with the Community acquis, ensure the impartial, independent and efficient handling of cases concerning violations of the prohibition of discrimination on any grounds and in all fields. For this purpose, an independent advocate has to be established which will have powers to investigate cases of violation of discrimination, including an efficient mechanism of measures to deter violators of the prohibition of discrimination in the public and private sectors.

**11.** The Ombudsman points out that Slovenia still does not have a national institution for human rights with full authorisation which would function on the basis of the universally adopted Paris Principles. Such an institution should monitor the situation in the field of human rights also from the viewpoint of the internationally accepted obligations of the state and stimulate and implement promotional and educational activities. The Ombudsman expects the state's support in the reorganisation of the Ombudsman's office into an institution which meets all conditions for functioning in accordance with the Paris Principles.

**12.** The Ombudsman proposes that the Government prepare amendments to the Roma Community Act to abolish the shortcomings identified in the Act, particularly relating to the unsuitable composition of the Roma Community Council of the Republic of Slovenia.

**13.** By way of its proposals and initiatives, the Roma Community Council of the Republic of Slovenia should become more actively engaged in procedures regarding the regulation and organisation of Roma settlements in municipalities within its powers, and should also become involved as a mediator between the Roma and local communities in the areas concerned. (page 45)

**14.** Municipalities without spatial acts or other measures to legally regulate and provide municipal utility arrangements in Roma settlements within their boundaries have to adopt these acts and measures as soon as possible.

**15.** Pursuant to the third paragraph of Article 5 of the ZRomS-1, the Government should take the necessary measures to arrange conditions in municipalities where people's health is severely endangered in Roma settlements, and where public order and peace have been disrupted for extensive periods, or where the environment is permanently threatened.

**16.** The municipalities have to provide their residents with suitable access to drinking water without differentiation, particularly in Roma settlements and irrespective of the legal status of the land in Roma settlements. Relating to the implementation of the right to drinking water as an internationally recognised human right, the Government should propose, and the National Assembly should adopt, suitable statutory solutions.

**17.** The Government should take concrete action when realising the National Programme of Measures for the Roma for the 2010-2015 Period and pay more attention to the legal and municipal arrangements of Roma settlements, particularly in the broader area of the Dolenjska region. Within this framework, it should clearly define the procedure concerning legal and municipal arrangements in settlements according to individual phases. A timetable should be envisaged for the implementation of each individual phase of the procedure concerning the arrangement of settlements, and a supervisory body should be appointed to monitor the implementation of individual phases of the procedure regarding the arrangement and organisation of settlements and to envisage sanctions for municipalities which fail to implement measures within prescribed time limits and to remedy their (in)actions.

**18.** For the implementation of the Convention on the Rights of Persons with Disabilities and the Equalisation of Opportunities for Persons with Disabilities Act, the Ombudsman recommends the prompt adoption of implementing regulations and measures to actually equalise opportunities for persons with disabilities.

**19.** The competent ministries should immediately prepare amendments to regulations to eliminate discrimination in the subsidisation of transport for disabled students.



# 2.3

## RESTRICTION OF PERSONAL LIBERTY

Area of work	Cases considered			Resolved and founded		
	2012	2013	Index 13/12	No. of resolved	No. of founded	Percentage of founded among resolved
<b>3. Restrictions of personal liberty</b>	<b>201</b>	<b>171</b>	<b>85,1</b>	<b>150</b>	<b>20</b>	<b>13,3</b>
3.1 Detainees	25	26	104,0	24	6	25,0
3.2 Prisoners	134	93	69,4	84	7	8,3
3.3 Psychiatric patients	20	33	165,0	27	6	22,2
3.4 Persons in social care institutions	8	6	75,0	5	0	0,0
3.5 Youth homes	1	1	100,0	1	0	0,0
3.6 Illegal aliens and asylum seekers	4	1	25,0	1	0	0,0
3.7 Persons in police custody	0	1	-	1	0	0,0
3.8 Forensic psychiatry	0	7	-	4	1	25,0
3.9 Other	9	3	33,3	3	0	0,0

This chapter contains some of the findings established from the discussed complaints relating to the restriction of personal liberty. These concern persons whose liberty was restricted for various reasons, i.e. detainees, prisoners serving their sentence in (home) confinement, persons in forensic units, minors in youth homes, minors in correctional and juvenile facilities and special education institutions, persons imprisoned for non-payment of fines, several people with mental disorders or diseases in social and health-care institutions, foreigners at the Aliens Centre and several seekers of international protection.

### General findings

In 2013, 26 complaints from detainees were discussed (one more than in 2012) and 93 complaints from prisoners (134 complaints in 2012) of which some were complaints from minors in correctional facilities. We continued to visit prisons and Radeče Juvenile Correctional Facility, which is further discussed in the report relating to the implementation of tasks and powers under the National Prevention Mechanism (NPM).

**Our work in this field was aimed at establishing whether the state consistently observes the rules and standards to which it is bound by the Constitution and international conventions to respect human rights when depriving people of their liberty, particularly human personality and dignity.** The complaints of detainees and prisoners were verified (in some cases with visits) at relevant bodies (e.g. courts), particularly the Prison Administration of the Republic of Slovenia, prisons or the Ministry of Justice. If a procedure was instigated, the prisoners were informed about the replies to our inquiries at relevant bodies and our findings

and possible other measures, e.g. recommendations to the relevant bodies. To establish a basis for further action, the complainants were sometimes asked to inform us if the clarifications they received were suitable or perhaps inaccurate and insufficient. If the complainants did not respond, we were unable to continue our inquiries. **Considering the aforementioned and the fact that we intervened only if the responsible bodies failed to present their position on the matter or did not consider it, the share of closed cases as per justification matches the result accordingly.**

Certain urgent issues were discussed at meetings with the Minister of Justice and other representatives of the Ministry of Justice, the Director-General of the Prison Administration of the Republic of Slovenia and his colleagues. We also spoke with the representatives at the conference of the Union of the Prison Administration of the Republic of Slovenia and the Trade Union of State Bodies of Slovenia.

The Ministry of Justice established (e.g. in its response to our last annual report) that the growing number of prisoners is alarming, due to which Dob pri Mirni Prison is still overcrowded (in spite of new facilities) by 120 per cent on average. The overcrowding in certain institutions (e.g. with certain temporary solutions, such as relocation to other less crowded institutions) somewhat decreased also with the reduction in the number of prisoners (also on account plea bargaining), but was not fully eliminated. **New facilities will be the long-term solution of this problem in the case of Ljubljana Prison, which the judgements of the European Court of Human Rights have reiterated.** We also note that the Government of the Republic of Slovenia delayed passing on the Reply to the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which visited Slovenia at the beginning of 2012. The CPT visited three prisons and thus provided many comments and recommendations in its report, which our state is obliged to comply with, and also eliminate all deficiencies established. The Ombudsman will closely monitor their realisation (as stated already in the previous annual report).

We further encourage efforts to eliminate overcrowding in certain prisons, including the better use of legal remedies in this field (and a search for new alternatives to the deprivation of liberty) as stated several times before. More will have to be done to enable prisoners spend their time on useful activities, particularly work (more on this topic in the continuation), education and other training, which would facilitate their reintegration into society after their sentence.

We again highlight that data on the higher number of prisoners in recent years demands the establishment and elimination of reasons for the increase in criminal offences. We have to stress again the **alarming information on the lack of staff** (particularly judicial police officers) in prisons, since the staff who are leaving (e.g. due to retiring) are not all being replaced due to cost-cutting (staff have been partly replaced by customs officers, and new staff are expected in 2014) and the overburdening of staff, which is evidenced in the ratio vis-à-vis prisoners and the provision of sufficient security or prevention of conflicts. Last year's report included complaints from staff claiming insufficient equipment for their work, a shortage of work clothes and urgently needed (additional) education and training. We point out that the shortage of funds is no justification, since judicial police officers and other staff cannot be expected to perform their tasks accordingly without basic means. **We thus support the search for long-term solutions, which is the task of the appointed project group, whose objective is to analyse the staffing situation, study work organisation in prisons and analyse the suitability of the organisation of work in prisons.** We also add that the reduction in funds must not threaten the requisite maintenance of prison premises and equipment.

### **Amendments to the ZIKS-1 (Enforcement of Criminal Sanctions Act)**

The amendments to the ZIKS-1E also included **amendments to the Rules on the implementation of prison sentences** (Official Gazette of the Republic of Slovenia, no. 51/2013). Most of these refer to the harmonisation of the Rules with the latest amendments to the ZIKS-1; some amendments are also of an editorial nature or less significant substantive corrections. **It is encouraging that certain (new) solutions provide improvements to prison arrangements (e.g. expanded options for overnight visits) and at least some of them follow our proposals to improve the situation (that if possible, prisons should have rooms for physically handicapped prisoners); unfortunately, some of them are less prisoner-friendly.** According to the proposed amendment to Article 27 of the Rules (in the draft amendments to the Rules which was submitted to us for review) which

regulated the accommodation of prisoners, each prisoner in a single-bed room would have (only) at least five square metres of space and prisoners in multi-bed rooms (only) at least four square metres of space. We believe that such an amendment is a step backwards; in our opinion, this would worsen the current commendable standards on minimum space of bedroom per prisoner, although they are not fully observed. We also noted that the proposed amendment would not solve the problem of overcrowding in Slovenian prisons. On the contrary, we assessed that this problem demands the adoption of (other) measures needed to improve the accommodation and particularly living conditions of prisoners. In our opinion, the proposed amendment is also problematic in terms of observance of the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which on the occasion of previous visits to Slovenia highlighted, for example, that if possible not more than one prisoner should be accommodated in rooms of eight square metres. We further noted that the judgements of the European Court of Human Rights state that the rights provided by the Convention (and also the CPT standards) denote minimum standards, and that protection provided by the national legislation should exceed the aforementioned minimum. **Our opinions were clearly considered in the drafting of the amendments to the Rules, since they maintain the current standards (single-bed rooms with nine square metres of surface and multi-bed rooms with seven square metres per prisoner).** Unfortunately, this standard is applied in new buildings and renovations of existing facilities only according to the conditions available in prisons or if this is permitted by the spatial conditions in prisons, which means that this obligation is being treated somewhat pragmatically.

The Prison Administration of the Republic of Slovenia also informed us about the draft **Handbook for prisoners who begin serving their sentence**. The handbook includes short summaries of the most important information and rules for prisoners serving their sentences in prisons in the Republic of Slovenia. We commended the preparation of the handbook (with a few minor comments), as we believe it to be a useful tool for the prisoners to quickly and easily familiarise themselves with vital information and rules when serving their sentence. We note that such a handbook would also be necessary for detainees.

## 2.3.1 Detainees

Detainees' complaints continued to refer particularly to the ordering and enforcement of detention. The detainees with such complaints were informed that the disagreement with individual judicial decisions (also with the orders of detention) can be enforced (only) in judicial proceedings with the aid of ordinary and extraordinary legal remedies, since the Ombudsman may intervene only if an obvious abuse of power or undue delays in proceedings are established. In certain cases, we also encouraged them to exploit the internal complaint channels enabled by Article 70 of the Rules on the implementation of remand, which stipulates that detainees may complain to the president of the relevant district court or the Director-General of the Prison Administration of the Republic of Slovenia if they believe that the prison staff do not treat them accordingly. The president or the Director-General are obliged to reply in writing in 30 days after receiving a complaint.

### Detainees' right to contact with their children

In the recent period, the Ombudsman received several complaints relating to visits of children of detained persons. A detainee informed us that the presiding judge did not permit visits by his four-year old son during his detention, even though he is very close to his son. The judge discussing his criminal case assessed that a visit to his father in an environment where detainees' human rights are limited would be harmful for such a small child. The presiding judge also supported her decision with the Constitution of the Republic of Slovenia, according to which children are subject to special protection and with international conventions on children's rights protection. The judge also considered circumstances from data in the file of the detainee's previous convictions.

The Ombudsman did not fully agree with the decision of the court. **We thus informed the court of our opinion that the assessment of the residing judge in the relevant case on whether the child was too young and immature to visit his father in detention should be based on the expert opinion of competent services, and that the judge as the representative of the state should not have intervened in family relations. Because the issue of the permission for a child's visit was denied (on unjustifiable grounds), i.e. without previously establishing which child's rights and interests would be endangered by visiting his father in detention and**

**how, we believe that the court encroached upon the right to respect for private and family life, which is ensured by Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such treatment could be understood as a violation of the child's rights to contact with people who are close to him, which was particularly stressed to the court.**

In spite of the Ombudsman's opinion, the court stated that the Criminal Procedure Act does not stipulate that the residing judge should obtain opinions of competent services when deciding on the issue of permission for a visit and that the judge also observed that minors are legally restricted (Article 294 of the Criminal Procedure Act) when visiting or participating in judicial proceedings due to possible harmful effects and that children are present as witnesses or clients only in exceptional cases where they also have special status. The aforementioned highlights the issue of children's or minor's participation in criminal proceedings. The residing judge also believed that prison premises intended for visiting detainees are even more traumatic or harmful for children (especially pre-school children) and that such an environment could prove harmful to them.

The Ombudsman cannot interfere with the reasons for this concrete judicial decision. However, we disagree with the position of the court (which was also noted in other cases) that the child's right to have contact with both parents should be limited solely in the child's interest because prison premises are unsuitable for visiting. More unsuitable or even more harmful for the child is the decision preventing the child from seeing one of the parents for a certain time. **The Convention on the Rights of the Child requires that when deciding on child's rights, the child's best interest is observed as the basic principle, which can certainly not be realised by merely prohibiting contacts.**

In our letter to the Ministry of Justice (the letter was also sent to the Supreme Court of the Republic of Slovenia and the Prison Administration of the Republic of Slovenia), we proposed that the state provide suitable premises in prisons which are also appropriate for children's visits or that other suitable premises be used for this purpose (i.e. so-called friendly rooms, which are now available at all eleven district courts) or to enable contact in another appropriate manner (e.g. video-conferencing; a mobile unit could also be used for this purpose). Until then, contacts should be limited only in exceptional cases (for example, if the child was the victim of a criminal offence committed by the parent who is in detention or prison).

In its reply to our proposal, the Ministry stated that the Prison Administration of the Republic of Slovenia was aware that the well-being of children visiting their parents in prisons was exceptionally important.

## 2.3.2 Prisoners

The complaints from prisoners (we received letters from groups of prisoners in certain cases) referred again to the start of serving sentences (house detention) as evident from the examples below and particularly to problems which they encountered when serving their sentences.

Among the complaints referring to problems which the complainants encountered while serving prison sentences were particularly: **poor living conditions, the regime of incarceration or relocation from a more liberal to a stricter regime, relocations to other prisons or departments (or premises), interruptions or suspensions of incarceration, endangerment by, or violence of, fellow prisoners, bonuses for work performed, possibilities for work, granting (or withdrawing) various privileges, visits and other communication with the outside world (e.g. problems with telephoning upon the implementation of the new telephoning system at Dob pri Mirni Prison), confiscation of personal belongings, health care, diet, escort by judicial police officers, parole and other.**

Prisoners serving their sentences were further informed that they could enforce violations of rights and other irregularities which are not subject to judicial protection as per Article 85 of the ZIKS-1 with a complaint to the Director-General of the Prison Administration of the Republic of Slovenia. If the prisoner fails to receive a reply to the complaint within 30 days or is not satisfied with the reply, the prisoner has the right to file a complaint with the ministry responsible for justice.

When writing to the competent bodies, we again highlighted the need to regularly remind staff of their **commitment to fair treatment (also verbal communication) and to discuss any such complaint and take suitable and firm**



**action.** The prison staff must be carefully selected and trained in order to mitigate possible tensions between prisoners (also in case of their inappropriate treatment or response) with a suitable manner of communication and human relations and thus contribute to a better atmosphere and the safety of prisoners and staff.

**Respect for the human personality and dignity must also be ensured during the deprivation of liberty.** We thus emphasise constantly that judicial police officers have the right to use coercive measures against prisoners only if they are unable to otherwise prevent escape, assault, self-inflicted injury or greater material damage. They may use only those coercive measures which have the least harmful consequences to the person against whom they are used. **No force or the use of coercive measures are permitted if no grounds exist for the use of coercive measures or their use after a person has been subdued.** At this point, it is encouraging to mention that only a few complaints were submitted which claimed ill-treatment by judicial police officers or other irregularities in their work. In one such case, the Prison Administration of the Republic of Slovenia established that it was impossible to ascertain with certainty in the appeal procedure that a judicial police officer had behaved incorrectly, insulted a prisoner and threatened him, since the statements of witnesses to the event were contradictory; however, the Prison Administration allowed the possibility that the manner of communication of the judicial police officer and that of the complainant could have been inappropriate.

#### Example

##### **Inappropriate conduct of judicial police officers when inspecting living quarters**

The complainant stated that he was absent from Dob pri Mirni Prison on 23 April 2012. When he returned and entered his living quarters, he found that judicial police officers had inspected them during his absence. He especially pointed out in his complaint that judicial police officers had 'scattered' his clothes and other belongings on the floor during the inspection. On this basis, he required judicial police officers to inform Trebnje Police Station (PS) of the destruction, because he wanted to file a complaint against them; however, they did not do as requested. He repeated his request on 24 April 2012 and emphasised it by holding a razor blade against his neck and not removing it until police officers from Trebnje PS arrived. He further stated that a certificate of the temporary confiscation of belongings had been left for him on the locker upon his return, which stated that he had not wanted to sign it. He queried how it was even possible that he could have refused to sign the certificate if he had not been at Dob pri Mirni Prison at that time at all.

At the time of the event, the Ombudsman was visiting Dob pri Mirni Prison on the basis of the authorisations and tasks of the National Preventive Mechanism (NPM). In the report on the visit, the Ombudsman stated findings regarding the inspection of the complainant's living quarters. When entering the complainant's living quarters, we established that the judicial police officers had conducted an inspection of the premises (only a short time before). We saw that some of the complainant's personal belongings (e.g. clothes) were also on the floor. Therefore, the conduct of judicial police officers in this case was not assessed as tactful or conducted to ensure respect for the human personality and dignity. On this basis, the NPM proposed in the report on the visit to Dob pri Mirni Prison that all measures be taken to ensure that judicial police officers carry out their authorisations professionally and decisively, but tactfully and without unnecessarily affecting the dignity of persons in the procedure.

In relation to the aforementioned findings of the Ombudsman and the NPM, the Prison Administration of the Republic of Slovenia explained that judicial police officers had decided to put the clothes on the floor during the inspection of the complainant's living quarters because there were too many personal belongings for these to be put on the bed. According to the Prison Administration, the inspection of the living quarters was carried out in compliance with the procedural rules learnt by judicial police officers during their initial training.

We did not fully agree with these explanations, so we contacted the Prison Administration again and requested additional explanations on the inspection of the complainant's living quarters, as, considering the explanations of the Prison Administration received, the findings of the NPM were different. We stressed that, during the visit, we did not see that the judicial police officers had 'put the prisoner's clothes on the floor during the inspection of the complainant's living quarters because there were too many personal belongings for these to be put on the bed'. As we saw for ourselves, the clothes were dumped and scattered on the bed, floor and also outside the two cardboard boxes in which the prisoner probably kept his belongings. We noted that, during the visit, the NPM saw the state in which the complainant's room had been left following the

inspection and the condition of the complainant. Therefore, the Ombudsman could not accept the Prison Administration's explanation that the inspection had been carried out in compliance with the procedural rules.

To our additional inquiry, the Prison Administration explained again that the judicial police officers had placed the belongings on the bed and cardboard box during the inspection, and naturally had not put them back. Following the inspection, the belongings were supposedly placed in clean spots and were not unnecessarily scattered about, which they also learn during training. Considering that in this case the clothes had been folded or laid on the bed and clean cardboard boxes, the Prison Administration believed that the judicial police officers had carried out their work professionally.

Based on such explanations by the Prison Administration (and because in the meantime the complainant had contacted the Ombudsman in writing), we decided to visit Dob pri Mirni Prison again and conduct a personal interview with the complainant and other persons involved.

At the meeting at Dob pri Mirni Prison (with the prison management and a representative of the Prison Administration), we again presented our findings in the role of the NPM regarding the inspection of the complainant's living quarters. We pointed to the inaccuracy of the explanations received, since representatives of the Ombudsman in the role of the NPM saw for themselves during the visit that the complainant's belongings were also on the floor (and not folded on cardboard boxes or other surfaces). Nevertheless, the representatives of Dob pri Mirni Prison insisted that the judicial police officers had first placed the belongings on the bed during the inspection and then on the cardboard boxes. Since (as mentioned above) these explanations did not match our findings, the photos of the room were submitted for the discussion partners to see. The head of security at Dob pri Mirni Prison additionally explained that the judicial police officers actually encounter problems during inspections of living quarters as to where to place the belongings of prisoners whose living quarters are being inspected, as they may have many and various items. We highlighted that the complainant did not file a complaint against the inspection of his living quarters, but against how it was conducted, since some belongings were 'scattered' on the floor.

We further investigated the complainant's statements regarding the certificate of temporary confiscation which had been supposedly issued after the inspection of the living quarters, and which showed inter alia that the complainant had been served the certificate at 10:15 am and that he had refused to sign it. The head of Unit I explained that the certificate had actually been served to the complainant after his return to Dob pri Mirni Prison, when he also received an explanation that an inspection of his living quarters had been carried out. The head of Unit I also said that the inspection had been carried out by two judicial police officers and that a witness, an inmate, had been present.

Following the meeting with the management of Dob pri Mirni Prison, the representative of the Prison Administration, the complainant and the witness of the inspection of the living quarters, it was agreed that the Prison Administration would prepare an amendment to the response, particularly with regard to the allegation as to how the belongings had been placed.

In an additional reply, the Prison Administration stated that the first response had already confirmed that the judicial police officers had placed the convict's belongings on the bed as well as on the floor during the inspection of the living quarters. Later, it was actually established that the judicial police officers had not acted in accordance with their training, since they had placed some clothes belonging to the convict directly on the floor (without prior laying a sheet, package, etc.) during the inspection of the living quarters. All judicial police officers will be informed that, during an inspection of living quarters, they must handle prisoners' clothes with care and must in no case put them on the floor without a clean lining. The Prison Administration also stated that this issue will receive more attention than currently at the central and further training of newly employed judicial police officers.

On the basis of the findings of the Ombudsman and explanations of the Prison Administration, the convict's complaint regarding the implementation of the inspection of his living quarters and his belongings is assessed as justified. Placing a convict's belongings on the floor cannot be considered a tactful application of the authorisations of judicial police officers, as it does not ensure respect for human personality and dignity which is guaranteed also during deprivation of liberty (Article 21 of the Constitution of the Republic of Slovenia). In this

regard (as mentioned above), we proposed that Dob pri Mirni Prison take all measures to ensure that judicial police officers carry out their authorisations professionally and decisively, but nevertheless tactfully without unnecessarily affecting the dignity of persons in the procedure. Therefore, we commended the message of the Prison Administration that all judicial police officers will be informed (also in the training process) about the required care when conducting an inspection of a convict's living quarters or handling their clothes.

According to the Ombudsman, an additional irregularity is the non-observance of the convict's request to notify the police, since the latter were notified only on the following day (as established above) when the convict threatened to hurt himself. This finding also requires the adoption of all measures necessary to prevent the occurrence of such incidents. Furthermore, we proposed that the Prison Administration study the need to record in the certificate the time when the certificate of temporary confiscation of belongings (especially when a delay occurs in its serving) is served on a convict.

Following the final letter from the Prison Administration, the matter in question was discussed at a meeting of commanders of judicial police officers as an example of bad or inappropriate practice, where it was specifically stated that, when inspecting living quarters and personal belongings of prisoners, judicial police officers must pay attention to placing clothes in clean places (bed, cardboard box, sheet, etc.) and should not put clean clothes together with clothes ready to be washed. It was also agreed that the procedure would be described in more detail upon the amendment to the textbook entitled 'Practical procedure – methods and techniques of exercising authorisations and duties of judicial police officers'. Commanders were also made responsible for ordering judicial police officers in prisons to consistently respect the dignity of prisoners in such procedures. According to the explanation of the Prison Administration, special attention is paid to the training of judicial police officers. The Prison Administration also agreed with the Ombudsman's proposal to record the time when the certificate is actually served on a convict in the certificate of temporary confiscation of belongings, especially when a delay occurs in serving the certificate. 2.2-95/2012

### 2.3.3 Persons with mental disorders and persons in social care institutions

#### General findings

Somewhat more complaints were discussed relating to the deprivation of liberty of movement as a result of mental disorder or illness. Some 33 cases related to the restriction of movement in psychiatric hospitals (20 in the previous year), while six complaints concerned persons in social care institutions (eight were discussed the year before). We continued to visit these institutions under the capacity of the National Preventive Mechanism (more is provided on this in a special NPM report).

The majority of complaints (including providers of psychiatric treatment and social services and programmes) were still related to the Mental Health Act (ZDZdr). **Unfortunately, we received no information from the Ministry of Health stating that the drafting of (at least few urgent) amendments to the ZDZdr was continuing.**

The complaints discussed the admission to treatment without consent or the admission and release of a person to/from a secure ward of a social care institution. Some complaints also referred to the living conditions, treatment, care and attitude of the health and other staff towards patients or people in care in these cases. We also discussed complaints submitted by relatives of people with mental disorders who were refusing psychiatric treatment because they believed that they did not need it, whereas the relatives thought that the treatment was necessary, since the persons involved were harming themselves with their behaviour or endangering their health, causing physical harm to themselves and others and endangering the lives of others. In these situations, the relatives resorted to their doctors, psychiatrists and social work centres and expected that the person may be 'forced' to undergo treatment, including hospitalisation against their will. Some were disappointed with the response of the institutions which stated that in certain cases no reason existed (yet) to refer the person to a psychiatric hospital without the person's consent or to submit a request for their admission to a department

under special supervision without consent on the basis of a court' decision, since the conditions for such admission as per the ZDZdr had not been met according to the institutions' expert evaluation.

**During the summer heat wave, the Ombudsman visited two homes for the elderly (Lambrehtov dom nursing home in Slovenjske Konjice and Rakičan nursing home) to verify temperature conditions in which people in care and other people in some institutions live.** The findings established during these visits were submitted to the management of the facilities, who were asked to take additional measures to eliminate the unacceptable living conditions of the people in care, patients and prisoners and also the working conditions for staff in these institutions.

Complainants' claims were further verified by submitting inquiries, and the complainants were then informed about the Ombudsman's findings and explanations regarding the procedures for admission to treatment. We also answered their questions. If necessary, the complainants received explanations of complaint procedures according to the ZPacP. In terms of content, the Ombudsman is not obliged to assess decisions made by doctors or courts about whether or not the conditions were met to detain a person within a department under special supervision (or a secure ward) in a particular case. However, the Ombudsman may consider the case when, for example, a person claims that she/he was detained in a psychiatric hospital on no legal grounds or that his/her rights were violated and that all (legal) remedies to eliminate irregularities had already been exhausted.

We also deepened and strengthened our cooperation with certain bodies (e.g. the Social Affairs Inspection Service when preparing the Guidelines for the harmonisation of practice in institutional care relating to the ZDZdr). **The Guidelines of the Ministry of Labour, Family and Social Affairs for work with people suffering from dementia in the field of institutional care of the elderly from 2011** were highlighted already in the 2012 Annual Report. The guidelines introduced an intermediate model, termed a high-level supervision ward, where legislative provisions relating to conditions for admission to a secure ward would not have to be observed. In our opinion, the definition of the high-level supervision ward is disputable in these guidelines, as it does not differ from the secure ward as defined by the Act relating to the protection of people in care. In Point 17 of Article 2 of the ZDZdr, a secure ward is defined as a ward in a social care institution where people receive constant protection and care due to their needs; they cannot leave the institution of their own accord. We notified the Ministry of the disputed arrangement. In its letter of 12 July 2012, the Ministry ensured the guidelines would be amended so as to exclude the high-level supervision ward. Furthermore, the concept of work with dementia patients outside secure wards will be presented in the guidelines in more detail, prohibiting any measure that would limit their freedom either by technical restraints or any other form of restraint. The Ministry later informed the nursing homes about the abolishment of such wards; the amendments to the guidelines or a new relevant document had not been adopted by the beginning of 2014.

## 2.3.4 Aliens and applicants for international protection

Irrespective of the forecast of the Government of the Republic of Slovenia in its response to our last report that the National Assembly of the Republic of Slovenia would discuss and decide on the amendments to the Aliens Act, whereby the Government wished to define the legal basis for a forced return monitoring system within Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008, **the amendments to the Aliens Act were not passed in 2013** (the amendments anticipate the conclusion of a special agreement with a selected non-governmental/international organisation as the monitoring provider).

In this field, we discussed only **one complaint received from several aliens at the Aliens Centre about the poor quality of food.** To this complaint, the Ministry of the Interior replied that food control is implemented in the Aliens Centre almost every day and always in cases of complaints by people staying at the Aliens Centre. This was also the case on 11 May 2013, when one of the aliens discovered that chicken meat had an unpleasant odour. The incident was reviewed by responsible bodies of the Aliens Centre also at the food supplier, whereby it was established that the meat was ordered, supplied and stored accordingly. During meat processing and also during transportation, no inappropriate organoleptic qualities of the food (changes in odour) had been detected. According to their findings, fodder or the specific smell of eggs could be possible reasons for the disturbing odour.

The Aliens Centre is aware that its residents have various eating habits, which it tries to consider and respect as much as possible, and adjust the composition and schedules of serving meals in extraordinary circumstances and in agreement with the client. This is regularly implemented upon the reception of groups of residents to the Aliens Centre who come from different environments and whose eating habits differ significantly from ours. Religious traditions and customs are observed consistently. In its reply, the Ministry of the Interior particularly stressed that in 2013 the Aliens Centre had not received any complaints about the food (apart from the relevant complaint). At this point, we would like to add that the Ombudsman conducted a supervisory visit to the Aliens Centre in its role of implementing authorisations and tasks under the National Preventive Mechanism at the end of January 2013. During the visit, it was established that the Aliens Centre had not received any complaints relating to the quality of food from October 2012 until the end of January 2013; furthermore, the residents did not express any complaints about the quality of food during the visit. The residents of the Aliens Centre may at any time express a wish, a need or a suggestion for different food, which is then adjusted accordingly.

On this basis, we assessed that this complaint (although justified) was a single incident of the unsuitability of food. We also established that the Aliens Centre responded accordingly immediately after receiving the notification about the unsuitability of food and took all necessary measures for the food to be replaced by the food supplier. Further action on our part was thus no longer needed. **We expect the Aliens Centre to further provide sufficient supervision of the quality of food, and if cases of unsuitable food recur, that it will take all necessary measures for meals to be replaced accordingly.**

Other findings relating to aliens' complaints (not relating to the residence of aliens with restricted movement at the Aliens Centre) are provided in the chapter on administrative matters relating to aliens; the visits of the National Preventive Mechanism are described in a special report.

## 2.3.5 Review of activities

The Human Rights Ombudsman also implements the tasks and powers of the National Preventive Mechanism (NPM), along with selected non-governmental organisations registered in Slovenia and organisations which have obtained the status of a humanitarian organisation in Slovenia and which deal with the protection of human rights or fundamental freedoms. In the course of implementing its tasks and powers, the NPM visits all locations where persons are deprived of their freedom and inspects how such persons are treated in order to strengthen their protection against torture and other cruel, inhuman or humiliating treatment or punishment. Most of the locations in the Republic of Slovenia where persons are deprived of their freedom are prisons, including all their units, as well as the Radeče Juvenile Correctional Facility, juvenile institutions, social care institutions and special social care institutions, psychiatric hospitals, detention rooms, the Aliens Centre and the Asylum Centre, detention rooms operated by the Slovenian Armed Forces and all other locations as per Article 4 of the Optional Protocol (for example, police intervention vehicles, etc.). The NPM prepares a report on its findings after each visit. It provides recommendations for eliminating the irregularities found and proposals for improving the situation to the institutions visited. The Ombudsman publishes extracts of individual reports and responses on its website. The NPM publishes written annual reports about its work on its website in Slovenian and English language.

In 2014, the Ombudsman also prepared a special Report of the Ombudsman about the implementation of the tasks and powers of the National Preventive Mechanism in 2013, which is the sixth report of its kind. It is available in printed form and on the website of the Ombudsman at [www.varuh-rs.si](http://www.varuh-rs.si). It reports in more detail on the findings, recommendations and activities of the Ombudsman in this field. In the role of the NPM, the Ombudsman made the following visits:

### - visits to prisons and the juvenile correctional facility

29 January	Visit to Ig Prison,
19 February	Visit to Dob pri Mirni Prison, Puščava Open Prison Section,
19 March	Visit to Maribor Prison, Rogoza Open Prison Section,
10 April	Visit to Maribor Prison, Murska Sobota Section,
8 May	Visit to Dob pri Mirni Prison, Slovenska vas Semi-open Prison Section,
17 June	Visit to Maribor Prison,
23 and 24 September	Visit to Dob pri Mirni Prison,
18 October	Visit to Ljubljana Prison, Novo mesto Section,

6 November	Visit to Koper prison;
16 December	Visit to Radeče Juvenile Correctional Facility;

#### - visits to educational institutions:

26 March	Visit to Malči Beličeve Youth Care Centre,
23 April	Visit to Planina Residential Treatment Institution,
21 May	Visit to Kranj Residential Treatment Institution,
24 September	Visit to Maribor Youth Centre,
16 October	Visit to Slivnica pri Mariboru Residential Treatment Institution,

#### - visits to social care institutions:

30 January	Visit to Trebnje Retirement Home,
18 February	Visit to Škofja Loka Centre for the Blind, Visually Impaired and Elderly,
9 April	Visit to Radlje ob Dravi Nursing Home – Hmelina Home,
22 April	Visit to Ptuj Retirement Home,
7 May	Visit to Danijel Halas Nursing Home,
17 July	Visit to Ptuj Retirement Home, Koper Unit,
26 September	Visit to Bor Retirement Home in Črni Vrh nad Idrijo,
6 November	Visit to Dr France Bergelj Retirement Home in Jesenice,
14 November	Control visit to Ptuj Retirement Home, Koper Unit,
19 November	Visit to Trnovo Retirement Home,
12 December	Control visit to Mengeš Retirement Home;

#### - visits to psychiatric hospitals:

18 September	Visit to Idrija Psychiatric Hospital,
24 October	Visit to UKC Maribor, Psychiatric Department;

#### - visits to police custody rooms or detention rooms at police stations:

21 January	Control visit to Šentjur pri Celju Police Station,
14 February	Visit to Laško and Celje police stations,
12 March	Visits to Ravne na Koroškem and Slovenj Gradec police stations,
19 April	Visit to Maribor police station for compensatory measures and Maribor II and Slovenske Konjice police stations,
22 May	Visit to Brežice and Šentjernej police stations,
5 June	Visit to Kranjska Gora, Radovljica and Tržič police stations,
11 September	Visit to Radlje ob Dravi and Dravograd police stations,
15 October	Visit to Maribor I and Slovenska Bistrica police stations,
7 November	Visit to Ljubljana Detention Centre at Ljubljana Moste Police Station,
12 December	Visit to Ljubljana Bežigrad and Ljubljana Centre police stations,

#### - visit to the Aliens Centre:

23 January	Control visit to Postojna Aliens Centre.
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#### NPM annual meeting

Members of the National Preventive Mechanism (DPM) met for their annual meeting at the premises of the Ombudsman on 8 January 2013. They prepared a programme of visits in 2013, carried out an analysis of past work and formed the vision of the NPM for the coming period. Representing the Ombudsman, the participants were Ivan Šelih, the Deputy Ombudsman, and Simona Šemen, Jure Markič, MSc, Miha Horvat, Robert Gačnik, Andreja Srebotnik, Dr Ingrid Russi-Zagožen and Petra Tovornik, advisers to the Ombudsman, and Leja Drobnak, an intern. The meeting was also attended by representatives of selected non-governmental organisations: Katarina Bervar Sternad (Legal Information Centre), Branka Pondelek, Katja

Sodja and Katja Piršič (Institute Primus), Stanka Radojičič and Ana Cajnko (Federation of Pensioners' Associations), Srečko Brumen, Slavica Smrtnik and Sonja Škrabec Štefančič (Novi paradoks).

### **Meeting with the Director-General of the Prison Administration of the Republic of Slovenia**

A meeting was held on 11 April 2013 at the premises of the Ombudsman with the Director-General of the Prison Administration, Dušan Valentinčič, his colleagues and a representative of the Ministry of Justice. The meeting was attended by Ivan Šelih, the Deputy Ombudsman, and other employees of the Ombudsman's office. The meeting discussed certain forms of penal servitude, the training of judicial police officers and cases of prisoner deaths.

### **Meeting with the Minister of Health, also about forensic psychiatry**

On 14 May 2013, Ombudsman Vlasta Nussdorfer and representatives of the Ombudsman's office met with the Minister of Health, Tomaž Gantar, and his colleagues about amending the Mental Health Act, implementing regulations on forensic psychiatry, the organisation of paedo-psychiatry and findings from visits by representatives of the NPM to retirement homes and other institutions.

### **Meeting with the Minister of the Interior and Public Administration**

On 15 May 2013, Ombudsman Vlasta Nussdorfer and her colleagues met with the Minister of the Interior and Public Administration, Dr Gregor Virant. The talks were dedicated, among other things, to complaint procedures against police officers, mass public gatherings, the extradition of foreigners, the work of the Inspection Council, declaration of residence, international protection procedures, election and referendum legislation and the issue of the erased.

### **Talk with minister about minors in institutions**

On 4 June 2013, Ombudsman Vlasta Nussdorfer and her colleagues met with the Minister of Education, Science and Sport, Jernej Pikalo. They discussed problems detected by the NPM when visiting juvenile detention centres.

### **Talk about problems of imprisoned persons**

On 11 June 2013, Ombudsman Vlasta Nussdorfer and her colleagues met with the Minister of Justice, Senko Pličanič, to discuss the problems of imprisoned persons, the restraining of persons brought to courts, forensic psychiatry, the conditions in Slovenian prisons and protection of crime victims.

### **Care for the sick and elderly in Slovenian prisons**

A working meeting was held at the premises of the Ombudsman on 15 November 2013 on the topic of care for the sick and elderly in prisons. The meeting was attended by representatives of the Prison Administration, the Pension and Disability Insurance Institute, the Ministry of Justice, health-care centres, patients' rights activists, and the Ombudsman's advisers (Robert Gačnik, Dr Ingrid Russi - Zagožen, Andreja Srebotnik, Simona Šemen, MSc, and Martina Ocepek). The meeting was chaired by Ivan Šelih, the Deputy Ombudsman. The meeting focused on the issue of assessing the inability to begin serving or serving a prison sentence on health grounds and the social welfare aspects of care for the elderly serving a prison sentence.

### **Talk with minister about persons imprisoned abroad**

Ombudsman Vlasta Nussdorfer and her colleagues met with the Minister of Foreign Affairs, Karl Erjavec, at the premises of the Ombudsman on 19 February 2013; among other things, the meeting concerned the issue of citizens of the Republic of Slovenia who are imprisoned abroad.



## 2.3.6 Review of Recommendations on Restriction of Personal Liberty

**20.** The Ombudsman once again encourages the Ministry of Justice to continue efforts to resolve the issue of overcrowding of prisons and the poor living conditions in prisons, and on the basis of the findings of the project group to take all necessary measures to execute criminal sanctions while consistently respecting the rules and standards in this field.

**21.** The Ombudsman points out that prisons must carry out all necessary procedures without delay or shortcomings in ensuring the rights of imprisoned persons also when accepting multiple prisoners simultaneously.

**22.** The Ombudsman proposes that adequate rooms be provided in prisons that are also suitable for visits by children, or that other adequate rooms in the area of all district courts which enable a video link be used for this purpose, and that until then, children's contact be restricted only in extraordinary cases (for example, if the child is a victim of a criminal act committed by the imprisoned or detained parent).

**23.** The Ombudsman emphasises that judicial police officers must implement their powers professionally and decisively, but also tactfully, so as not to infringe on the dignity of persons in custody. (page 75)

**24.** The Ombudsman proposes changing or supplementing the regulation of the (judicial) protection of the rights of imprisoned persons to ensure an effective legal remedy.

**25.** The Ombudsman highlights that actual supervision by the ministry responsible for education or the inspectorate responsible for education, as stipulated by the Enforcement of Criminal Sanctions Act (ZIKS-1), of the education of convicts in prisons and minors in correctional facilities should be ensured.

**26.** The Ombudsman notes that the escorting of imprisoned persons should be carried out in accordance with the Rules on the exercising of the powers and duties of judicial police officers, and proposes the harmonisation of the practice of informing responsible persons if the imprisoned person escorted is restrained also during visits to a doctor or a judge.

**27.** The Ombudsman encourages further cooperation between all departments responsible for the expert treatment of persons who have committed a criminal act

against the inviolability of sexual integrity, in particular the concrete participation of the Ministry of Health.

**28.** The Ombudsman encourages the efforts to mitigate or eliminate the negative consequences of high summer temperatures in prisons.

**29.** The Ombudsman notes that any convict who is able to work should be enabled to work for an adequate reward, while the Prison Administration must also involve other convicts in other forms of organised activity.

**30.** The Ombudsman proposes that the authorities consider the idea of introducing work for imprisoned persons to provide for the self-sufficient supply of the Prison Administration with agricultural and livestock products and the production of furniture and other equipment for the needs of the prison system or perhaps even wider.

**31.** The Ombudsman proposes that prisons ensure that potential news of the death of an imprisoned person be reported personally.

**32.** The Ombudsman encourages the Ministry of Justice and the Prison Administration to take all necessary measures to ensure adequate accommodation and care for imprisoned persons with health issues or movement impairment during imprisonment and that their fitness to serve a prison sentence be established in an appropriate manner.

**33.** The Ombudsman expects that the Ministry of Justice and the Prison Administration will ensure that possible shortcomings in the practice of prisons in the field of the disciplinary treatment of convicts and in the records of accompanying sessions are eliminated.

**34.** The Ombudsman also emphasises that, in the case of an alleged violation of the rules of residence or intended disciplinary treatment, the allegation must always be adequately presented and the convict be given the opportunity to express their opinion about the allegation and that they can ask for an assessment of the decision taken, while all this must be adequately recorded.

**35.** The Ombudsman emphasises that all rational measures should be taken to prevent any violence among imprisoned persons, in particular among minors serving disciplinary sentences.



**36.** The Ombudsman encourages all competent authorities to take all necessary measures to ensure undisturbed health treatment and protection of all forensic patients (in accordance with the law and implementing regulations), including with an adequate staff structure and constant expert training of employees and by providing an adequate space for the forensic unit.

**37.** The Ombudsman proposes that the work on preparing necessary amendments to the Mental Health Act which will eliminate the established shortcomings be continued.

**38.** The Ombudsman encourages the Ministry of Labour, Family and Social Affairs to adopt as soon as possible adequate amendments to the Guidelines for work with people suffering from dementia in the field of institutional care of the elderly in order to make the Guidelines compliant with the Mental Health Act.

**39.** The Ombudsman encourages the state authorities to adopt, if necessary, further measures to ensure the protection of the right to trial without undue delay, so that speedy and effective trials in all our courts are ensured for all cases.

**40.** The Ombudsman emphasises that the guarantees which in the case of detention or deprivation of freedom are determined by the Constitution of the Republic of Slovenia and the European Convention for the Protection of Human Rights and Fundamental Freedoms, should also be provided to a person detained in a department under special supervision of a psychiatric hospital or secure ward of a social care institution.

**41.** The Ombudsman expects that Vojnik Psychiatric Hospital will ensure that physical restraint as a protective

measure will be used in accordance with the law and that it will establish an adequate control mechanism to ensure that the irregularities found by the Ombudsman do not recur.

**42.** The Ombudsman emphasises that social care institutions, as well as the courts, must consistently respect the provisions of the Mental Health Act when admitting persons to secure wards.

**43.** The Ombudsman notes that the Mental Health Act should be consistently respected in deciding about the payment of costs of procedures for admission to a secure ward on the basis of a court decision.

**44.** The Ombudsman proposes that an act be passed to regulate the organisation, functioning and other features of residential treatment institutions and to regulate mandatory documentation for such institutions, to determine the framework for the creation of house rules and other rules for residence, define the treatment of violations of rules and ensure the uniform implementation of the rights of juveniles.

**45.** The Ombudsman calls on the competent authorities once again to take all necessary measures and make agreements for the implementation of all security measures concerning the sending of juveniles to special education institutes.

**46.** The Ombudsman repeats the recommendation that an effective forced return monitoring system for foreigners in accordance with Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in EU member states for returning illegally staying third-country nationals.





# 2.4

## JUDICIARY

Area of work	Cases considered			Resolved and founded		
	2012	2013	Indeks 13/12	No. of resolved	No. of founded	Percentage of founded among resolved
<b>4. Judicial proceedings</b>	<b>561</b>	<b>721</b>	<b>128,5</b>	<b>581</b>	<b>43</b>	<b>7,4</b>
4.1 Pre-litigation proceedings	23	32	139,1	26	1	3,8
4.2 Criminal proceedings	73	106	145,2	94	7	7,4
4.3 Civil proceedings and relations	267	324	121,3	245	17	6,9
4.4 Proceedings before lab. and soc. courts	17	29	170,6	27	4	14,8
4.5 Minor offence proceedings	94	113	120,2	97	6	6,2
4.6 Administrative judicial proceedings	9	5	55,6	5	0	0,0
4.7 Attorneys and notaries	17	26	152,9	22	1	4,5
4.8 Other	61	86	141,0	65	7	10,8

### General findings

In 2013, 577 cases were dealt with in the field of judicial proceedings (460 in the previous year). Of this number, there were 106 complaints relating to criminal proceedings (73 in 2012), 324 relating to civil proceedings and relations (267 in the previous year), 29 relating to proceedings before labour and social courts (17 in 2012), 113 to minor offences (94 in the previous year) and five relating to administrative judicial proceedings (nine in the previous year). Some 32 cases (23 in 2012) were dealt with in the sub-section of pre-litigation procedures, 26 cases in the sub-section of attorneys and notaries (17 in the previous year) and 86 other cases related to this field of work. **A rise in the number of cases considered (and complaints received) occurred in all sub-sections of this field (except in administrative judicial procedures).** The share of founded complaints is closely connected with our (limited) powers on the one hand, primarily in the relationship with the judicial branch of power, **and with established systemic deficiencies (such as the court backlog) on the other. Our work in this field is limited so as not to undermine the independence of judges in performing their judicial office.** When handling cases, the Ombudsman continued to turn to the presidents of courts and other competent bodies (for example, heads of prosecution offices) by way of enquiries and other interventions, and when necessary the Ministry of Justice when concerning an issue of a systemic nature or regarding the regulatory framework governing the work of the judiciary, and to the Ministry of the Interior (concerning procedures carried out by the police as a minor offence authority). For the most part, the Ombudsman was satisfied with the responses from the competent bodies. **We also met the President of the Supreme Court of the Republic of Slovenia, the ministers of health and the interior, the State Prosecutor General and the President of the Bar Association of Slovenia.**

**As in previous years, complaints in the field of judicial proceedings may be divided into two groups; the first refers to those complaints concerning lengthy judicial proceedings, while the second relates to the quality of**

**Judicial decision making.** The following rights were predominant in the complaints: the right to judicial protection, equal protection of rights, right to a legal remedy, legal guarantees in criminal proceedings and other rights. We are reporting our findings about complaints related to minor offence proceedings, prosecution, attorneys and notaries in separate chapters below.

## 2.4.1 Judicial proceedings

The legislative reform aimed at encouraging a more efficient work of courts was continued in 2013. According to reports from the Ministry of Justice, a great deal of necessary changes to the legislation and preparatory activities and analyses, which will enable a wide range of investments in the development of the Slovenian judiciary, were prepared (press release from the Ministry of Justice on 22 November 2013), which should be welcomed. Also expected to contribute to better supervision of the work of courts and judges and, consequently, to faster and more efficient decision making, are amendments to the Courts Act and the Judicial Service Act.

Amendments to the Criminal Procedure Act (Official Gazette of the Republic of Slovenia, no. 47/2013) also entered into force in 2013. We contributed our proposals and remarks concerning the expert harmonisation of the amendments to the act. The amendments (pending the drafting of a new act) do not significantly alter the existing systemic solutions, nor have they improved them, while changing, supplementing or redistributing individual legislative provisions from the aspect of increasing the efficiency of procedures, clearer definitions of the operation of criminal courts or clearer definitions of the rights of the accused to a limited extent and within the established framework.

### Lengthy duration of court proceedings

**Among the complaints being considered by the Ombudsman are still those that claim that court proceedings take too long, despite a reduction in the court backlog.** In one such complaint, for example, we observed that if four years pass between the filing of a lawsuit and an intermediate decision of the court (about the basis for responsibility for damage), such a long wait for a court decision could hardly be called trial within a reasonable time, as provided by the right in Article 23 of the Slovenian Constitution and Article 6 of the European Convention on Human Rights and Fundamental Freedoms.

Of course, turning to the Ombudsman is not the only way to speed up a lengthy trial and, consequently, eliminate possible violations of the right to a trial within a reasonable time. As a rule, the Ombudsman's intervention is an option only when a party has not been successful by using all means available to eliminate the violation. **Namely, a party to court proceedings has legal remedies at their disposal which apply to cases of lengthy trials regulated by the Protection of Right to Trial without Undue Delay Act (ZVPSBNO).** These remedies include appeal with a motion to expedite the hearing of the case (supervisory appeal) and a motion for a deadline. The decision on these remedies lies with the president of the court before which the individual proceeding is carried out, or the president of the higher court when it comes to deciding on a motion for a deadline. An intervention by the Ombudsman can thus be justified if the party uses such a (expediting) legal remedy, although a decision on it has not been made within the time limit determined by law. If a supervisory appeal or motion for a deadline is granted, this may be the basis to enforce the right to just satisfaction in the form of (nominal) compensation for damage incurred as a result of a the violation of the right to trial without undue delay. It is not possible to enforce the right to just satisfaction in a case in which only the Ombudsman intervenes. In the case of the Ombudsman's intervention, the president of the court is limited to measures available to him or her within the scope of implementing tasks of the judicial administration pursuant to the Courts Act, because a legal basis for the use of measures in accordance with the ZVPSBNO has not been provided.

**This year, in particular when dealing with complaints related to proceedings before labour and social courts, we learned that Ljubljana Labour and Social Court has a large backlog of labour and social disputes.** In two cases, highlighted here as examples, i.e. in a social dispute under reference number V Ps 1141/2011, which began in May 2011, two years passed between the filing of the lawsuit and the scheduling of the main hearing, while in a labour dispute under reference number I Pd 1378/2010, which began in July 2010, a year and a half passed between the filing of the lawsuit and the scheduling of the main hearing. Among the reasons for this situation, the court

emphasised the fact that judges are overburdened by pending cases due to incoming cases, the vacating of several judge's posts in recent years and the fact that cases are resolved in chronological order, except for cases which are treated as a priority, which did not include the cases in question. Since this situation does not allow for a trial within a reasonable time, the Ombudsman pointed out the unacceptability of the backlog at Ljubljana Labour and Social Court at a meeting with the President of the Supreme Court of the Republic of Slovenia. He told us that certain measures had already been taken regarding this problem, the purpose of which is to reduce the backlog and ensure trials within a reasonable time also at Ljubljana Labour and Social Court.

**The National Assembly of the Republic of Slovenia adopted the recommendation of the Ombudsman (made in the 2012 Annual Report) and the recommendations to the Government of the Republic of Slovenia (Government) to take necessary measures to eliminate all cases of excessive waiting times for court proceedings to commence or lengthy court proceedings, while the Government concluded a Commitment with the Supreme Court of the Republic of Slovenia on 4 June 2013 to improve the situation in the judiciary (Commitment).** The Minister of Justice symbolically handed over the Commitment to the Human Rights Ombudsman on 11 June 2013. According to the Commitment, the average time required to resolve a case before all courts by June 2014 should be less than one year. In some procedures and before some courts, it should take only three months. The objectives have been set for each type of court and case and measured objectively. In order to attain this objective and regain public confidence, the judiciary and the Government made a commitment to take concrete measures related to rationalising trials, legislative changes and securing personnel, spatial and other material conditions for the work of the courts.

Firstly, at Ljubljana Labour and Social Court, and later at all labour courts in the country, one measure that the Commitment envisages is the introduction of the Triaža project, which is intended to optimise the court procedures. As of 1 June 2014, the target for the average time required to resolve a case is nine months in social disputes, while for all cases of individual labour disputes about the existence or termination of an employment relationship the first settlement hearing, or if there is no settlement hearing, the first main hearing session is called no later than two months after the court receives the statement of defence, or after the deadline for the statement of defence has expired.

**The Ombudsman approves the efforts of the competent authorities which are intended to ensure trials within a reasonable time and to eliminate the court backlog. It remains to be seen whether the measures taken for this purpose with the aforementioned Commitment will be implemented in practice within the deadline. After the deadline, it will be possible to take additional measures to ensure trials within a reasonable time, as it is necessary to regain people's confidence in the rule of law. This is particularly true of proceedings related to labour and social disputes involving individuals who are often also economically disadvantaged, which is often a result of the long duration of these proceedings.**

The Supreme Court of the Republic of Slovenia is still coping with the backlog. **For example, at the beginning of 2013, the civil department of the Supreme Court of the Republic of Slovenia was dealing with non-priority cases which had been filed with the court in the last quarter of 2009.**

### Quality of court decisions

The second group of complaints in this field relate to the quality of judicial decision making, which significantly contributes to the swift and efficient nature of judicial decision making. Complaints on this issue point to the need for just and fair judicial proceedings, and careful and critical supervision of certain decisions of other bodies (for example, minor offence authorities) and institutions such as admission of guilt. This is also the commitment of every judge, because in judicial decision making, they have to ensure the parties a fair hearing and that evidence is taken fairly. As emphasised several times already, only in high-quality and fair court proceedings can a party expect a fair decision.

Unfortunately, we still had to explain to some of the complainants that the Ombudsman is not a court instance and that it has no powers to assess the correctness and legality of specific court decisions or the weighing of evidence by individual courts, and therefore we had to advise them to use legal means with which they can challenge a decision with which they perhaps disagree.

We also received some **complaints to introduce official supervision of judges' work**. The main conclusion is that the implications of these complaints were particularly focused on the assessment of evidence, therefore on the actual state of facts established in an individual case. This and pointing to a certain error or disagreeing with an individual decision of a court in an individual court proceedings or claiming that a certain decision of a court is unlawful or that an act of a certain judge is unlawful alone are not in themselves sufficient bases for introducing official supervision. The purpose of official supervising is not to examine the correctness of decision in court proceedings, because the ordinary and extraordinary legal means envisaged in procedural acts are intended for this purpose.

Some of the cases considered also show that, in addition to objective reasons for the **lengthy duration of individual court proceedings, there could also be subjective reasons, i.e. reasons relating to judges (such as, for example, inefficient process management)**.

## Example

### Undue delay in criminal proceedings

A social work centre informed the Human Rights Ombudsman that criminal proceedings at Celje District Court under reference number IK 44755/2010 related to sexual violence against a minor had already been pending for three years, which is certainly not to the benefit of the aggrieved party. The Ombudsman immediately started establishing the circumstances which, according to the social work centre, caused the delay in the consideration of the case.

The court stated that the indictment had been filed on 20 May 2010 after the investigation had been finalised. An appeal by the legal representative (by authorisation) against the indictment was filed (only) on 12 December 2011. The fact that another appeal by the legal representative (this time *ex officio*) against the indictment was filed almost ten months later, on 10 September 2012, is also interesting. The case was then referred to a pre-trial chamber on 12 October 2012, which did not take a decision before the court prepared its first reply to the Ombudsman about the filed appeals. The court noted on that occasion that, in accordance with the Criminal Procedure Act, the case is not a priority. The answer is not clear as to why the indictment was obviously later handed to another representative of the accused, which is why we requested additional explanations from the court. The court replied that the indictment was handed to the first representative on 1 December 2011; this representative had been assigned to the accused upon the order for detention, which was later suspended, while the representative was dismissed by the court. A representative was then assigned *ex officio* to the accused, and the indictment was handed to the representative on 13 September 2012. The court reported that the decision on the appeals against the indictment had been delayed only because the legal secretary was overburdened with urgent matters. At the same time, the court president said that, because of the age of the case, he had taken all the necessary measures within his power in accordance with Article 71c of the Courts Act, adding that a decision on the appeals was already made at a session on 14 January 2013.

With this, the Ombudsman's intervention to facilitate the proceedings in question ended; nevertheless, we could not overlook the fact that the indictment was delivered on two occasions separated by an unreasonably long period (two and a half years between the filing of the indictment in such a sensitive case to the decision on the appeals against it!). This is why we also requested that the court explain these circumstances. The court president explained that the first representative had been assigned to the accused when the latter was taken in custody. Since the custody was later suspended, the investigating judge dismissed the *ex officio* representative with a decision on 19 October 2009. Due to the seriousness of the suspected offence, an *ex officio* representative had to be assigned to the accused, because he had failed to appoint a representative on his own. After reviewing the criminal file in detail, the court president established that the judge in the case had made a hand-written order on the indictment on 10 June 2010 stating that the indictment should be handed to the accused and the representative. Below the mentioned order there is a note by the court typist stating that she received the file on 24 November 2011, i.e. almost a year and a half later. Obviously the file was not sent to the court typist through the criminal office, but directly, which is a departure from the prescribed procedure for the electronic K-register, according to the court president. The court president further established that the judge ordered the handing of the indictment to the representative, although the accused did not have a representative at the time when the order was written, because the representative had already been dismissed by the investigating judge on 19 October 2009. During the entire period between 17 May 2010 and 1 December 2011, the file was referred to

the judge, who, according to the court president, should have been more active in carrying out her order, and should have ensured that an *ex officio* representative was assigned upon the filing of the indictment due to the seriousness of the suspected offence. The court president further stated that he had inserted his findings in the personal file of the judge because he assessed that this information was important for an evaluation of her work. At the same time, on the basis of his powers in accordance with Article 71c of the Courts Act, the court president ensured that the criminal proceedings related to the case finally opened and that a preliminary hearing was called.

The Ombudsman's conclusion that the complaint in the case in question was justified is self-evident. The intervention was successful, and moreover, shortcomings in the consideration of this case were established on its basis. The Ombudsman has assessed the action of the court president, who used his statutory powers to ensure that the criminal proceedings continued, as appropriate. 6.3-45/2012

### **Enforcement procedures**

The Ombudsman received complaints relating to enforcement procedures both from creditors (for example, because of ineffective enforcement) and from debtors (for example, because of disagreements with claims, inability to repay debt, conduct of enforcement officers and similar). Creditors complaints particularly emphasised the lengthy duration of enforcement procedures. In such cases that were assessed as appropriate, the Ombudsman intervened at the competent local courts. In one reply, Ljubljana Local Court explained in relation to the duration of a procedure that the work on all registers in the enforcement department (including on the In-register) is organised in such a way that judges receive files periodically (considering the duration of the calendar, i.e. time within which a file is submitted to a judge after the procedural act is finalised). Taking into consideration the number of cases per judge and the workload on the staff dealing with In-registers, the average duration of the calendar is three months according to the explanations.

### **Enforcement officers**

The Enforcement and Securing of Civil Claims Act (ZIZ) also regulates the work of enforcement officers. Enforcement officers carry out direct acts of enforcement, which are all the acts specified by the relevant act with which they implement enforcement or securing of a creditor's claim and acts which are necessary for preparation and enforcement. In particular, they must, as is also stipulated by Article 39 of the Rules on the performance of bailiff services, implement enforcement with due skill, care and diligence and in a way which ensures the repayment of creditor or enforcement or securing of the debtor's liability in the shortest time possible and most effectively, while respecting the dignity of the debtor, members of their household and other persons and not causing any unnecessary damage or costs.

In regard to the disciplinary accountability of enforcement officers, the ZIZ stipulates in the first paragraph of Article 298 that an enforcement officer is liable to disciplinary action if he or she, in performing their duties, violates the provision of that act or other regulations, or if he or she undermines the reputation of their profession with their actions. Furthermore, Article 52 of the ZIZ enables a party in the proceedings who believes that there are certain irregularities in the performance of an enforcement officer or other person who participates in the proceedings can request that the court eliminate the irregularities. The court decides on such a request with a decision only if the applicant so requests. The court is obliged to inform the minister responsible for the judiciary and the Chamber of Enforcement Officers about irregularities done by an enforcement officer during enforcement. According to the Ministry of Justice, systemic supervision of the work of enforcement officers was continued in 2013. Until September, the Minister of Justice thus examined 38 complaints against the work of enforcement officers, carried out 16 oral proceedings and ordered five disciplinary actions. The Ministry of Justice also announced that it would carry out four direct inspections over the work of enforcement officers by the end of the year, according to the work programme.

## Court-appointed experts

In this year also, we received a number of complaints related to the work of court-appointed experts. The complaints related to dissatisfaction with the experts' opinions, charges for their work, the lengthy duration of their work, their independence and other issues.

## Free legal aid

When in contact with complainants (written complaints, telephone and personal interviews), the Ombudsman frequently notes the distress of people seeking free legal aid who are not entitled to it because they fail to meet the conditions set by the Free Legal Aid Act (ZBPP) or are not granted free legal aid for various other reasons. Certain non-governmental organisations, associations and individuals which, by rendering consultancy services, provide various forms of legal aid and help people to enforce their rights, and particularly contribute to greater awareness, can greatly assist individuals in these cases. Their activity is encouraged by some local communities, and this has to be particularly commended.

In order to have a more detailed picture of the situation in this field, **the Ombudsman prepared in 2012 a questionnaire about possible forms of free legal aid and legal counselling which might be offered as aid in the implementation of the rights of individuals by municipalities in the Republic of Slovenia** (details of an analysis of the answers received are available on our website).

**Like certain municipalities and non-governmental organisations, the Ombudsman also established that there is a need to expand the possibilities for legal aid, which is formally ensured by the ZBPP.** The cases considered by the Ombudsman suggest that numerous individuals are still not able to find timely and quality legal aid, while the access to free legal aid is too narrow in certain cases (these could be persons who have a regular income, but are burdened by debt or even enforcements, or persons who own real estate which do not earn enough income to pay legal service, or narrowly exceed the census).

## Minor offence proceedings

A somewhat higher number of cases (113) than in 2012 (94) was considered in this sub-section. No significant changes were made regarding this issue. The highest number of complaints related to dissatisfaction with fines or decisions taken in minor offence proceedings. Complaints relating to participation in road traffic and the police as a minor offence authority were still predominant.

In this field, we dealt with the question of whether, when taking a decision, a court can use and take into consideration an ordinance which is not compliant with the Constitution of the Republic of Slovenia or the relevant act. A complainant approached us about offences alleged against him due to a violation of the provisions of the Roads Act and the Act of Rules in Road Transport, which was allegedly committed by performing on a public road certain works and activities which could damage the road or be dangerous, interfere with, or impede the safety of, traffic on the road. In addition, the complainant was alleged to have ignored orders from an authorised official regarding the removal of the obstacle. He also acquainted the Ombudsman with requests for judicial protection against the decision of Dolenjske Toplice Police Station, no. 555006886137-7 of 9 August 2013 and no. 555006884789 of 9 August 2013, in which he notes among other things that the municipal decree regulating the route of the public road across the land plot in his ownership is unlawful and unconstitutional. He also appealed to the Constitutional Court of the Republic of Slovenia, where his application is entered in the Up-register under reference number Up-714/13. The complainant subsequently supplemented his application to the Constitutional Court of the Republic of Slovenia with a petition to initiate a review of the constitutionality and lawfulness of the municipal decree. Novo mesto Local Court rejected his requests for judicial protection as unfounded. In the explanatory note in (one of) the relevant rulings of Novo mesto Local Court, reference number ZSV-63/2013 of 9 May 2013, the court even reproves the complainant for failing to state anything about his possible efforts aimed at resolving the dispute with the municipality before and after the decree entered into force. In this case, the court ended the proceedings with the conclusion that the request for judicial protection filed by the accused was not convincing, that the state of facts regarding the violation had not been fully and correctly established and that



in a fast-track procedure, violations of the material provisions of the Minor Offences Act (ZP-1) or regulations which define the violation had been reported, which is why the challenged decision on the minor offence was confirmed, because the court found no irregularities to which it must attend under the compulsory powers in accordance with Article 62.a of the ZP-1.

The Ombudsman established that part of the categorised public road runs across a private plot of land owned by the complainant. This is legally inadmissible, because the municipality obviously did not conclude a legal transaction with the complainant before the categorisation of the public road in order to acquire the land plot in his ownership through which the public road runs, and did not carry out an expropriation procedure. If a plot of land on which a public road runs is planned to be categorised and the land is privately owned, the obligation of the municipality is to obtain the land by means of a legal transaction or through an expropriation procedure before the categorisation. **For this reason, the Constitutional Court of the Republic of Slovenia in numerous cases in which municipal decrees on the categorisation of public roads were challenged has handed down substantively equal decisions and reiterated the view that such regulations do not comply with the Constitution of the Republic of Slovenia if the municipality does not conclude a legal transaction with the owner in order to acquire the land or expropriate the land owner** (for example, decision no. U-I-289/12 of 24 January 2013, Official Gazette of the Republic of Slovenia, no. 16/13). The Constitutional Court has pointed out that the Constitution of the Republic of Slovenia stipulates in Article 69 that expropriation (revoking or limiting an ownership right in public interest) is possible only with the provision of compensation in kind or monetary compensation under conditions established by law. With this Article, the Constitution of the Republic of Slovenia allows the revocation or limitation of an ownership right to real estate in the public interest in spite of the constitutional protection of the right ensured by Article 33 of the Constitution of the Republic of Slovenia. In Article 69, the Constitution of the Republic of Slovenia requires the law to regulate the conditions for expropriation. Expropriation can be carried out in a procedure in which it is established in a concrete example whether the legal requirements for expropriation have been fulfilled, and in which judicial protection and compensation in kind or monetary compensation is ensured. The concept and status of public roads is regulated by Article 3 of the Roads Act (ZCes-1). In accordance with the ZCes-1, public roads are transport surfaces of general importance for transport and can be used freely by anyone in the manner and under the conditions determined by the regulations on roads and rules on road traffic. The first paragraph of Article 39 of the ZCes-1 states that public roads are state roads and municipal roads. In accordance with the second paragraph of Article 39 of the ZCes-1, state roads are owned by the Republic of Slovenia, while municipal roads are owned by municipalities. The Public Roads Act contained the same provisions. A municipality thus categorises a certain road if a public interest has been demonstrated for such categorisation and if the road fits the criteria for the categorisation of public roads. If a plot of land on which the road planned to be categorised by a municipality runs is privately owned, the obligation of the municipality is to obtain the land by means of a legal transaction or through an expropriation procedure before the categorisation.

We also note here the decision of the Constitutional Court of the Republic of Slovenia, no. U-I-289/12 of 24 January 2013, in which the Constitutional Court of the Republic of Slovenia reasonably explains why, in 2011, because of the failure of municipalities to abolish the unconstitutional regulations on categorisation of public roads on their own, despite the clear constitutional views, the Court had to change the method of decision making related to declaratory decisions and determining the method of execution through repeals with a deferment period of one year, and then six months, into repeals without a deferment period.

Considering the aforementioned, it is our opinion that the decree is unconstitutional because it categorises a public road on land owned by the complainant, thereby inadmissibly encroaching upon his ownership right. In the case in question, we recommended to the Municipality of Straža that it immediately establish a lawful and constitutional situation, eliminate the consequences of, and compensate the complainant for all the damage he incurred due to the unconstitutional action.

In Article 24, the Human Rights Ombudsman Act stipulates that the Ombudsman shall not intervene in cases in which a court or some other legal proceedings are being conducted, except in cases of undue delay in the proceedings or evident abuse of authority. An intervention by the Ombudsman is possible only in the role of *amicus curiae*, in accordance with Article 25 of the same Act, whereby the Ombudsman may communicate to each body an opinion from the aspect of human rights protection and fundamental freedoms about the case under investigation, irrespective of the type or stage of proceedings being conducted by the respective body.

The Constitutional Court of the Republic of Slovenia points out that it is not the only institution that calls for the protection of the Constitution and the human rights and fundamental freedoms secured by it. In accordance with Article 125 of the Constitution of the Republic of Slovenia, judges are independent in discharging their judicial duties, but are bound by the Constitution and laws. When considering decisions, they must be aware of the provisions on human rights and fundamental freedoms at all times, because in accordance with Article 15 of the Constitution of the Republic of Slovenia these must be exercised directly on the basis of the Constitution. Therefore, the Constitutional Court of the Republic of Slovenia is the last instance in the country for interpreting the content of individual provisions of the Constitution. Its decisions are mandatory (third paragraph of Article 1 of the Constitutional Court Act – ZustS). In concrete procedures of legal interpretation on the basis of which they make decisions, courts must always take into account the opinions in the decisions of the Constitutional Court of the Republic of Slovenia, especially those related to human rights and fundamental freedoms (for example, Constitutional Court decision UP-965/11-11).

This is why, in the role of *amicus curiae*, we warned Novo mesto Local Court, which is competent to decide on requests for judicial protection, that in our opinion the statements of the complainant about the non-compliance of the decree with the Constitution must not be ignored in the decision making, taking into account that decision making is bound only to the Constitution and law (Article 125 of the Constitution of the Republic of Slovenia and Article 3 of the Courts Act) or the possibility of using *exceptio illegalis*. In our opinion, with due consideration of Article 22 of the Constitutional Court of the Republic of Slovenia, which demands a reasoned court decision, the court is, in the case of requests for protection of legality submitted by the complainant, bound to carefully examine the statements by the complainant about the unconstitutionality of the decree and establish whether the road on which the complainant allegedly committed a violation can be considered a public road at all, or whether the court can use and take into account a decree that does not comply with the Constitution and law. We recommended to Novo mesto Local Court that it take into account this opinion of the Ombudsman in its future decisions in this case, in particular to ensure respect for the opinions of the Constitutional Court of the Republic of Slovenia handed down on this issue.

In a response to our intervention, the **president of the court said that she had informed the head of the department for criminal acts and minor offences about our findings, viewpoints and recommendations. At a department meeting, the head of the department acquainted with the content of our recommendation all the judges in the department who in accordance with their annual schedule of work deal with minor offence cases. On her own proposal, the head of the department also forwarded the information to other judges of the Novo mesto district who deal with cases of the same kind, with a recommendation that the information be taken into account in their work.** The complainant later informed the Ombudsman that he had been successful in his request for judicial protection in one of the cases in which he is alleged to have committed a criminal offence. The court established that the road which is considered by the decree to be a public road cannot be considered a surface to which the rules determined by the Public Roads Act apply, but that it is a surface which exclusively in private ownership and the disposal of this surface is solely in the hands of the registered owner, who could not have committed the alleged offence by stopping a loaded cargo vehicle which was driving across his land and refusing to make way on the order from the police, because he was standing on his own land, which is his property, the disposal of which, and permission to cross, is exclusively in his hands as the registered owner (decision of Novo mesto Local Court, reference number ZSV 169/2013 of 29 October 2013).

**Due to differing legal viewpoints on the issue in question and in order to ensure uniform case-law, the Office of the State Prosecutor General of the Republic of Slovenia submitted a request for protection of legality related to the case, which is why the (final) decision of the Supreme Court of the Republic of Slovenia is still being awaited.**

Example

#### **Fine for driving with a driving licence issued in Germany**

The complainant stated that he has a valid European driving licence issued in Germany. When he returned to Slovenia following retirement, he asked at Hrastnik Administrative Unit whether he needed to replace his licence. A clerk explained to him that he could do this, but that this it was not mandatory because driving in Slovenia with a driver's licence issued in Germany is permitted. On 3 April 2010, he was fined EUR 500 by a traffic police officer, who said that his driver's licence was not valid in Slovenia. He filed a request for judicial protection against the payment

order, which was unsuccessful. He also received confirmation from the Ministry of Transport that his diver's licence is valid. He informed police officers at Hrastnik Police Station about this, only to be told by the deputy commander that the statement from the Transport Directorate was irrelevant. When he asked the deputy commander whether something similar could happen in the future, the deputy commander said: "I'm afraid so." He pointed out that he has had a driving licence since 1975 and that he had covered numerous countries and thousands of kilometres with it without anything like this happening to him. His case was also covered in the media.

We established that Trbovlje Local Court rejected his request for judicial protection as unfounded on 21 March 2011 in the ruling reference number ZSV 103/2010. The court rejected his statement that he had not known since when a European driving licence had become invalid in Slovenia, with the conclusion that there is no provision in the Road Traffic Safety Act (ZVCP-1) to justify his driving a motor vehicle at the time when the fine was imposed. The Office of the State Prosecutor General of the Republic of Slovenia also rejected his initiative to file a request for protection of legality. After reviewing the case and the file of the minor offence authority, the Office ruled that the alleged violations had not been stated, and that no lawful reason for filing a request for protection of legality was stated either.

In the payment order issued by Hrastnik Police Station, the complainant was alleged (among other things) to have committed a violation of the provision of Article 138 of the ZVCP-1, as he allegedly acted in violation of the condition that he needed to have a valid licence in order to operate a vehicle. Since he claimed himself that he has a valid driving licence, issued in Germany, the Ministry of the Interior was asked to explain the actual and legal bases for the alleged offence. The operation of motor vehicles with a valid licence issued by a competent body of another EU member state was regulated at the time of the alleged offence by the fifth paragraph of Article 152 of the ZVCP-1. This is why we also asked for an explanation of the application of this provision of the ZVCP-1 in this case, as well as for a justification for the explanations from the deputy commander of the police station provided to the complainant.

The Ministry of the Interior stated that, in examining the professionalism of the conduct of Hrastnik Police Station regarding the alleged violation of the provision of the eighth paragraph of Article 138 of the ZVCP-1, or driving without a valid driving licence, the police established a departure from the provisions of the ZVCP-1 or incorrect conduct by both the police officers and the authorised official of the minor offence authority which examined the complainant's request for judicial protection. It noted that Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 stipulates that driving licences issued by EU member states are mutually recognised, and established that the provisions of the Directive have been transposed into Slovenian legislation. When the alleged offence took place, this was regulated by Articles 152 and 154 of the ZVCP-1. In the concrete procedure, the minor offence authority overlooked this fact and assessed the request for judicial protection as unfounded, referring it to Trbovlje Local Court, which rejected it. The police later assessed that in the case in question (on the basis of Point 3 of the first paragraph of Article 171.a of the Minor Offences Act - ZP-1) there are reasons for withdrawing or changing the final decision of the minor offence authority (payment order) for the offence under the eighth paragraph of Article 138 of the ZVCP-1, because in its opinion, the decision was made to the detriment of the complainant and the provision of the act which defines the offence was violated. In order to remedy the situation, the police proposed that the minor offence authority – Hrastnik Police Station – propose to Trbovlje Local Court on the basis of the first paragraph of Article 171.b of the ZP-1 the payment order be amended in the section which relates to the violation of the eighth paragraph of Article 138 of the ZVCP-1.

The minor offence authority took the proposal into account, and on 21 November 2012 sent a proposal to amend the decision of the minor offence authority to Trbovlje Local Court. With decision ZSV 172/2012 of 8 January 2013, Trbovlje Local Court decided to grant the proposal and changed the payment order under statutory powers by suspending the minor offence procedure under the eighth paragraph of Article 138 of the ZVCP-1 on the basis of Point 5 of the first paragraph of Article 136 of the ZP-1. In order to prevent such departures from law in the future, the police acquainted all minor offence authorities in the police with the findings in the case in question by the end of January 2013, according to a press release from the Ministry of the Interior.

The complaint was considered justified. As also established by the court in the decision to propose the amendment to the decision of the minor offence authority, the police wrongly interpreted the provisions of the ZVCP-1, because the mandatory replacement of a driving licence does not apply to holders of driving licences

of other EU member states, including Germany, and that the fifth paragraph of Article 153 (the correct article is 152) of the ZVCP-1 should be considered, which stipulates that all persons possessing a valid driving licence issued by a competent authority of another EU member state are permitted to drive in the Republic of Slovenia those types of vehicles which they are qualified to drive by the valid driving licence issued in the other EU member state. Unfortunately, this mistake was not noticed when the court was deciding on the complainant's request for judicial protection (despite explicit warnings by the complainant), which suggests that the court failed to take a decision with due care. In our judgement, the violation of the law should also have been noticed by the Office of the State Prosecutor General of the Republic of Slovenia, which decided on the initiative to file a request for the protection of legality. 6.6-65/2012

## 2.4.2 Prosecution service

In the sub-section of pre-trial proceedings, where most of the complaints relate to the work of state prosecutors, 32 cases were dealt with (23 in 2012). When this was necessary, the claims of complainants were checked at the heads of state prosecution offices, who regularly responded to our inquiries. The Ombudsman and other representatives of the Ombudsman's office also met the State Prosecutor General and agreed on further cooperation and acquainted him with the findings on complaints considered in this field.

The content of complaints this year also related primarily to the dissatisfaction of complainants with individual decisions of prosecutors or the processing of their criminal complaints. Despite the staff shortage in state prosecution offices, the cases considered by the Ombudsman did not indicate any major delays in the work of state prosecutors. **We would like to note at this point that, in addition to the relevant legislation, otherwise speedy and efficient prosecution, which is the main task of the prosecution service, also depends on adequate material and staffing conditions for the work of the prosecution service.**

## 2.4.3 Attorneys

A total of 26 cases was considered in this field (17 cases in 2012). In 2013, complaints in this field also primarily related to allegations of negligent performance of services by attorneys or dissatisfaction with their work (including legal representation covered by free legal aid), incorrect calculation of expenses, inappropriate attitude and failure to return documentation, and other irregularities.

In dealing with individual cases, the Ombudsman primarily addressed **the Bar Association of Slovenia (OZS). Cooperation with the association was also good in 2013. The Ombudsman met the president of the OZS to discuss numerous issues, including those related to the regulation of free legal aid.** The Ombudsman has assessed that the state provides free legal aid, as per the Free Legal Aid Act, while attorneys also decided to open their doors for one day in the year to provide advice pro bono. Since the Ombudsman has noted that people frequently do not have free legal aid because they do not meet the criteria by having an income that exceeds the threshold by a few euros, and which is frequently also burdened by various loans, or because they own real estate which generates no income, and instead even burdens them financially, or because they are in a dispute over real estate (for example, division of assets after a divorce), we are seeking new ways to help people in distress. This is why we are happy that the executive board of the OZS endorsed our proposal for cooperation on the pro bono work of attorneys. In cooperation with the OZS, we also prepared a successful training workshop for attorneys who represent children in judicial proceedings.

### Handling of alleged irregularities in the performance of attorney services

With respect to the conditions and limitations determined by law, the Ombudsman may intervene only in relation to national authorities, local self-government bodies and holders of public authority. Attorneys are not included in the designated bodies, which is why, in relation to attorneys, the Ombudsman has no basis to intervene directly or assess their conduct. **Therefore, the Ombudsman's oversight of the work of attorneys**

is still indirect. It is conducted primarily through oversight of the work of the OZS regarding the chamber holding public authority. This means that the Ombudsman primarily intervenes in cases of undue duration in the decision making by the OZS about the fate of reports against the conduct of individual attorneys. In particularly justified cases, the Ombudsman can also propose that a disciplinary procedure be initiated.

#### **Lengthy duration of processing disciplinary violations of attorneys**

**Again, complaints regarding the lengthy duration of disciplinary proceedings against attorneys were also among the complaints considered in this field.** One complainant had already sent several letters in 2009 to the OZS in which he pointed to a conflict of interest related to an attorney who had first represented him and then also the counter party in the same case. In the course of three years, no decision was made about the disciplinary accountability of the attorney, while a subsequent request to open disciplinary proceedings against the attorney was even rejected due to the statute of limitations, despite the fact that, considering the reply the complainant had received from the OZS, the case had already been referred to a disciplinary prosecutor.

## **2.4.4 Notaries**

Only two complaints were dealt with in relation to the work of notaries. The Ombudsman also noted warnings from the Chamber of Notaries of Slovenia that the profession of notary is at risk due to constant amendments to the relevant legislation, which demands special attention, in particular in order to maintain the high level of professionalism and quality of notary services.

## **2.4.5 Review of activities**

### **Supreme State Prosecutor/Human Rights Ombudsman about law and justice**

The newly-appointed Human Rights Ombudsman, Vlasta Nussdorfer (former Supreme State Prosecutor and former president of the Beli obroč society for helping crime victims) talked in her lecture on 6 March 2013 at the Faculty of Law of the University of Maribor about law and justice, about which she has gained extensive knowledge during her professional career. The Ombudsman also discussed with students the policy of scholarships, unequal opportunities for studying abroad, ways to take a bar exam, employment prospects and other topics.

### **Ombudsman attends Law Faculty Day ceremony**

Human Rights Ombudsman Vlasta Nussdorfer and the Secretary General of the Ombudsman's office, Bojana Kvas, attended a ceremony marking the day of Ljubljana Faculty of Law. On the occasion, students at the Faculty of Law received their diplomas and other certificates and awards.

### **11<sup>th</sup> Nomotechnical Days**

Deputy Ombudsman Jernej Rovšek attended an expert meeting entitled 'The 11th Nomotechnical Days', which was held on 22 May 2013 at the Faculty of Law in Ljubljana. The meeting was organised by the Institute for Comparative Law at the Faculty of Law. It was emphasised at the meeting that experts who draft acts are constantly under great pressure from politicians, which is why the Nomotechnical Days were also dedicated to strengthening experts' autonomy and cooperation between jurists who are active in this field.

### **Round table panel on free legal aid**

On 28 May 2013, Deputy Ombudsman Ivan Šelih, was a participant in a round table panel held as part of a presentation of a free legal aid project by the Association of Friends of Youth Ljubljana Moste – Polje entitled 'What Is Right?'. The project was created in cooperation with lawyer Nina Zidar-Klemenčič to help provide economically disadvantaged people with free legal aid. Deputy Šelih said on the occasion that an increasing number of people are contacting the Ombudsman about the unavailability of free legal aid and that the Ombudsman has also noted the issue in every annual report.

### **On the work of attorneys with the president of the Bar Association**

Human Rights Ombudsman Vlasta Nussdorfer, Deputy Ombudsman Ivan Šelih and the Ombudsman's adviser, Jure Markič, met with the President of the Bar Association of Slovenia, Roman Završek, on 6 June 2013. The meeting discussed initiatives related to the work of attorneys, the necessary specialisation and training of attorneys, their pro bono work, the transparency of the regulation of payment of attorney services and other issues in the field. The participants agreed to organise training for attorneys who offer their assistance as representatives of juvenile offenders or representatives of juvenile crime victims.

### **On free legal aid**

Human Rights Ombudsman Vlasta Nussdorfer, Deputy Ombudsman Ivan Šelih and the Ombudsman's adviser, Miha Horvat, met Katarina Bervar Sternad, the Director of the NGO Legal Information Centre – PIC, on 6 June 2013. They discussed an initiative to amend the Free Legal Aid Act and the introduction of various new forms of free legal aid.

### **On the work of the judicial branch of power and issues in prisons with Minister Pličanič**

On 11 June 2013, Human Rights Ombudsman Vlasta Nussdorfer, Deputy Ombudsman Ivan Šelih and their colleagues met the Minister of Justice, Dr Senko Pličanič and his colleagues. They discussed the functioning of the judicial branch of power and issues related to the serving of prison sentences. The Ombudsman pointed to the need to take further measures to reduce the duration of judicial proceedings and eliminate the court backlog, improve the decision-making process in courts and restore the good reputation of the judiciary. The Minister told the Ombudsman that the Government of the Republic of Slovenia and the judicial branch of power have committed to reducing the duration of judicial proceedings and eliminating the backlog by 2014.

### **Measures are needed to expand the availability of legal aid**

One of the successful interventions by Ombudsman Vlasta Nussdorfer related to legal aid to people in distress was her securing of (pro bono) aid from attorneys for two workers who started protesting in August 2013 in front of the National Assembly in order to secure their rights from an employment relationship (right to compensation during sick leave and other income from employment). Legal experts Dr Klemen Jaklič and Klemen Babnik provided free assistance to the protesting workers during the entire proceedings. With the help of the Ombudsman and the attorneys, the workers received compensations for sick leave and ended the protest after six days.

### **State Prosecutor General visits Ombudsman**

On 2 October 2013, Ombudsman Vlasta Nussdorfer and Deputy Ombudsman Ivan Šelih received State Prosecutor General Dr Zvonko Fišer and his colleagues (Hinko Jenull, Aleš Butala, Nastja Franko and Boštjan Škrlec). The meeting was dedicated to the cooperation of the two institutions, the question of effective legal means available to aggrieved parties in cases of disagreement with a decision of a state prosecutor, the situation of aggrieved parties in criminal proceedings and the question of the criminal prosecution of applicants under the Police Act.

### **Ombudsman with Supreme Court President Masleša**

On 17 October 2013, Human Rights Ombudsman Vlasta Nussdorfer, Deputy Ombudsman Ivan Šelih and the Ombudsman's adviser, Andreja Srebotnik, met Supreme Court President Branko Masleša and Janko Marinko, the Secretary General of the Supreme Court. They discussed ways of cooperating and possibilities of strengthening cooperation. Since the Ombudsman deals with numerous complaints which point to the long duration of judicial proceedings, and relate to the quality of legal decisions, the Ombudsman was interested particularly in the measures taken in this field.

### **Specialisation for work with minors is necessary – educational seminar for attorneys**

On 14 November 2013, Human Rights Ombudsman Vlasta Nussdorfer held a one-day seminar for attorneys, members of the Bar Association of Slovenia who want to specialise in work with minors, and for advocates of children in various proceedings. The seminar was held at the Faculty of Law in Ljubljana. In her lecture, the Ombudsman emphasised that minors who are brought to court as victims or offenders need specially trained prosecutors, attorneys and judges, because this is a population which is entering adulthood burdened by various court proceedings, and it does matter who helps them. The seminar was attended by more than hundred attorneys and advocates, which shows that there is a need for such training. Lili Jazbec, the head of the project 'Advocate – A Child's Voice', and Deputy Ombudsman Ivan Šelih also gave lectures.

## Ombudsman submits request for a constitutional review of the Act amending the Banking Act

On the basis of Article 23.a of the Constitutional Court Act, the Human Rights Ombudsman of the Republic of Slovenia submitted a request to the Constitutional Court of the Republic of Slovenia on 18 December 2013 for a constitutional review of Articles 15, 32 and 37 of the Act amending the Banking Act and a request for the temporary suspension of the implementation of the listed articles. The Ombudsman proposed that the request be treated as priority, holding that the challenged provisions of the Act do not comply with the Constitution of the Republic of Slovenia.

### 2.4.6 Review of Recommendations on The Judiciary

- 47.** The Ombudsman encourages the state authorities to adopt, if necessary, further measures to ensure the protection of the right to trial without undue delay, so that speedy and effective trials in all our courts are ensured for all cases.
- 48.** When ensuring trials without undue delay, the Ombudsman stresses the importance of carefully conducted court proceedings, which should conclude with the issuing of sound court decisions.
- 49.** The Ombudsman recommends that courts consistently respect the deadlines for examining the implementation of the preventive measures imposed regarding mandatory psychiatric treatment and protection.
- 50.** The Ombudsman encourages the Ministry of Justice to continue efforts to enable access to all buildings of judicial bodies for persons with disabilities.
- 51.** The Ombudsman proposes that additional measures be taken to improve the efficiency of enforcement proceedings in a way which does not undermine the rights of debtors that are guaranteed by the Constitution.
- 52.** The Ombudsman recommends that supervision of the lawfulness and correctness of the work of enforcement officers be implemented consistently and proposes that all necessary measures be taken, including legislative changes aimed at preventing proceedings related to such violations from falling under the statute of limitations.
- 53.** The Ombudsman recommends that the Ministry of Justice and the Ministry of the Interior examine possibilities for providing additional assistance to municipalities as an incentive to establishing or maintaining the various forms of legal aid which certain municipality (already) provide to their residents.
- 54.** The Ombudsman proposes that all necessary measures be taken to ensure that applications for free legal aid are processed within the time limits determined by law.
- 55.** The Ombudsman encourages the prosecution service to continue to provide for the speedy and effective implementation of criminal prosecutions of perpetrators of criminal offences and for an adequate elaboration of reasons for decisions for the potential rejection of indictments or suspension of prosecutions.
- 56.** The Ombudsman recommends that attorneys, upon assuming representation of an individual party, dedicate appropriate time to explaining to the party what kind of services they can expect on the basis of the given authorisation, including an explanation about whether the attorney will represent the party only in one proceeding, and whether other proceedings will require a new authorisation for the attorney.
- 57.** The Ombudsman recommends that the Bar Association of Slovenia take, if necessary, additional measures to improve the effectiveness of its disciplinary bodies and ensure speedy, effective and objective decisions about reports submitted against attorneys.
- 58.** The Ombudsman encourages the Bar Association of Slovenia in its efforts to take measures which would improve the transparency of the work of their disciplinary bodies, including by publishing a list (on its website) of disciplinary measures taken against attorneys.
- 59.** The Ombudsman encourages the adoption of a clear and transparent attorney fee system as soon as possible.
- 60.** The Ombudsman proposes that the Ministry of Justice examine as soon as possible whether there is a need to amend the legislative regulation of the disciplinary accountability of notaries serving in the capacity of an attorney.





# 2.5

## POLICE PROCEDURES

Area of work	Cases considered			Resolved and founded		
	2012	2013	Index 13/12	No. of resolved	No. of founded	Percentage of founded among resolved
5. Police procedures	106	112	105,7	97	11	11,3

### General findings

In 2013, 112 complaints relating to police procedures were considered (106 in the previous year). We continued to encourage complainants to use the means of appeal against the work of police officers in accordance with the Police Act (ZPol) or the Police Tasks and Powers Act (ZNPPol), because it is appropriate for the aggrieved party to first address an appeal body (on his or her own) with an appeal within the system in which the alleged violation took place. In some individual cases, the Ombudsman initiated a procedure if the above-mentioned possibility of appeal failed to meet a complainant's expectations or in other justified cases; the number of justified complaints corresponds to this.

Most of the complaints that were considered related to the principles of good administration, the protection of a person's personality and dignity, legal guarantees in minor offence proceedings, the rights of a detained person, the right to equal protection of rights and other. By way of inquiries, the Ombudsman contacted, as a rule, the Ministry of the Interior (MNZ), which directs and supervises the implementation of police duties. We met with the Minister of the Interior, representatives of the Police and Security Directorate, the Police Director General, directors of police administrations and the State Prosecutor General and pointed to the issues noted by the Ombudsman in this field. We also presented our work at the Police Academy. We are happy to say that this year again the cooperation with the MNZ (and the Police) was very good, and only rarely did the Ombudsman have to request additional information or definitions or repeatedly request answers. The Ombudsman wishes such cooperation to continue in the future. Police stations (20 of them) were also visited under the capacity of the National Preventive Mechanism (more is provided on this in a special report).

### 2.5.1 Findings from complaints considered

The highest number of cases in 2013 also related to the work of the Police as a minor offence authority regarding management and decisions in minor offence proceedings, such as for example, the handling of traffic accidents and establishing who caused accidents, interviewing witnesses and collecting evidence on offences, establishing responsibility for offence, issuing payment orders and other decisions on minor offences. In addition to this, some of the complaints also related to **various aspects of police work or the implementation of police powers** (for example, their measures in the event of mass protests, confiscation of items, reporting or handling of a criminal act, house searches, use of coercive measures, detention and other).

## Example

### After a police procedure a disabled person had to walk home

A complainant stated that he was in a police procedure because of a road-traffic offence. When the procedure was completed, he had to leave his vehicle on the spot and continue home on foot, despite having informed the police officers that he was unable to walk (he has no toes on one foot). He needed three hours to reach home (which was less two kilometres away).

Following our inquiry, the MNZ established that the procedure involving the complainant was conducted by police officers of Novo mesto Police Station. The complainant had committed several road traffic offences. Since the vehicle was not technically flawless, and was fitted with registration plates from another vehicle, the complainant's vehicle was removed from traffic and he was prohibited from driving it. On the basis of the Minor Offences Act, he was fined and a payment order was issued for the established offences.

The MNZ also established that at the time of the procedure, the complainant had a bandaged right foot, and had no footwear on it, and that the complainant had told the police officers that he was ill and returning from a visit to doctor. According to the police officers, he did not ask the officers to drive him home or to organise a transport home because he was unable to walk. The procedure was carried out approximately 1.8 kilometres from his home, and there are no public transport routes on this road.

Considering the aforementioned, the Ombudsman could only concur with the conclusion of the MNZ that it would have been appropriate (regardless of the complainant causing the situation himself, and that he had a mobile phone) for the police officers to offer him help obtain transportation home because of his physical condition. The Ministry assured the Ombudsman that it would inform all police officers of these findings in order to ensure humane treatment of persons involved in police procedures. The Ombudsman considered the complaint as justified. 6.1-70/2012

Some of the complaints pointed to **delayed and inadequate implementations of police tasks** (e.g. delayed and inadequate drafting of criminal complaints and their referral to the prosecution).

A good number of complaints again highlighted the dissatisfaction of complainants because, in their assessment, police officers had failed to act appropriately in response to requests for their intervention, or the intervention by the police was not such as expected (for example, because of threats when reporting a violation of public peace and order in a multi-apartment house, in disputes with neighbours, disturbances of sleep with loud music, disputes in the family environment and similar matters).

One of the basic tasks of the police is to protect the life, personal safety and property of citizens. In its action, the police must therefore always ensure care for people's safety and property, prevent deviant behaviour and provide a sense of security. They are obliged to intervene in case of a suspected offence or criminal act which is prosecuted *ex officio*. **The Ombudsman established that, in practice, individuals who turn to the police for help in cases of extortion, threats (including serious threats) and other forms of intimidation, are frequently dissatisfied with the police response when it is established that the case does not concern a criminal act which is prosecuted *ex officio*, but is a case for a private lawsuit.** An individual who is, for example, a victim of threats by e-mail faces the question of how to identify the perpetrator at all, and if they decide to prosecute, have to file a private lawsuit against the perpetrator, which is usually incomplete, because there is no possibility of acquiring all the necessary personal information about the person being sued. The Ombudsman already warned (in part) about this issue in the 2012 Annual Report.

## 2.5.2 Processing of complaints about the work of police officers

In accordance with the Police Tasks and Powers Act (ZNPPol), disagreement with an action or failure to act by a police officer in the implementation of police tasks, which could be a violation of human rights or fundamental

freedoms, can be exercised in an complaint procedure. The circumstances of the implementation of a police procedure and the use of police powers are thus established in that procedure. Complaints are still (with certain changes in comparison to the previous regulation) processed in a conciliation procedure or before a senate. The MNZ is now fully empowered to monitor and supervise the processing of complaints. **The MNZ expects that the changes to the appeal procedure will make it even clearer, simpler, more transparent, professional and independent.** One should not disregard the role in the supervision of police officers of the Department for Investigation and Prosecution of Official Persons with Special Authorisations at the Specialised State Prosecutor's Office, which is authorised to deal with criminal acts committed by persons with special police authorisations, officials of the Intelligence and Security Service of the Ministry of Defence and officials of the Intelligence and Security Agency in office or outside working time.

On the basis of the ZNPPol, **the Minister of Interior issued Pravidnik o reševanju pritožb zoper delo policistov (Rules on the processing of complaints against the work of police officers; Official Gazette of the Republic of Slovenia, no. 54/2013).** In the course of inter-ministerial coordination, **the Ombudsman provided certain comments and proposals on the draft document. We established that the comments and proposals were thoroughly examined and some were taken into account,** while the MNZ provided additional explanations regarding other comments and proposals. The Rules define in more detail the manner and procedure for processing complaints about the work of police officers in the implementation of police tasks at the ministry responsible for interior affairs, and in the police, the form of service ID cards of persons authorised by the Minister, procedures for issuing them and the amount, types and method of reimbursement of the costs of participation at senate sessions.

In some cases considered, the claims of complainants and conclusions of the appeal procedure differed regarding the decisive facts. In a few instances, the Ombudsman assessed that is not possible that further inquiries and investigation would contribute to a clarification of the actual facts.

In accordance with the ZNPPol, in order for an application to be treated as a complaint, it must be comprehensible and express the intention of the appellant to complain about the work of a police officer, and must also contain elements determined by the ZNPPol. Appeals or request for judicial protection in minor offence proceedings or various submissions or other complaints cannot be the subject of an appeal procedure, especially when they relate to a disagreement with the prescribed methods and the manner of police work or when they entail a complaint about the procedures or actions of police officers which were not committed during the implementation of police tasks. It is also not established in an appeal procedure whether the person filing the complaint has committed a criminal act or an offence. The Ombudsman thus agreed with the explanations of the Sector for complaints against the police (SPZP) of the Police and Security Directorate at the MNZ given to police units that requests for judicial protection and other submissions should be evaluated according to their content. **If the content of the complaint suggests a disagreement of the author with an act or failure to act by a police officer in the implementation of police tasks which could be a violation of human rights or fundamental freedoms, and if the author expresses the wish that the allegations also be treated as a complaint in accordance with the ZNPPol, police units must refer such complaints to the SPZP.** Furthermore, in such cases, the heads of the police units in their supervisory function must thoroughly examine the claims of the author in accordance with their powers when the submission is not treated as a complaint.

**In the Ombudsman's opinion, every justified complaint demands that the right balance be stricken between established violation and the established incorrect conduct of the police officer.** In this regard, we present the following example.

#### Example

##### **Irregularities in a police procedure**

In an complaint to the Ombudsman, a complainant pointed to irregularities in the conduct of police officers at Rogaška Slatina Police Station in a procedure involving the complainant carried out on 19 May 2011, in which he was also injured (his vehicle was also damaged). Police officers were alleged to have implemented an unauthorised deprivation of liberty, falsely reported the offences and damaged the vehicle. The complainant filed a complaint about the police procedure in accordance with (the then valid) Police Act, which was assessed

by the senate as justified. He asked the Ombudsman for help in resolving the case, as two years had passed since the incident without the case being closed.

The Ombudsman understood from the answer from the MNZ's Senate for complaints against the police that none of the police officers involved wanted to give a statement or explanations regarding the complaint procedure in relation to this case, while the police officers who had directly conducted the procedure with the complainant did not even attend the session of the senate. On the basis of the available documentation, i.e. the report on the work conducted, the official note about the use of coercive measures, accusation petition and detention warrant, the senate established that it was not possible to affirm the statements of the police officers. The senate found no evidence supporting the allegation that the complainant had violated the Protection of Public Order Act (ZJRM-1) by acting in a provocative, indecent and insulting way and thus offending the police officers. It also established that there were no legal grounds for the identification of the complainant by the police officers. In the senate's opinion, the police officers also used unwarranted coercive measures against the complainant, which is why it did not affirm the conclusions of the police officers that the complainant was under the influence of alcohol. In the senate's opinion, not even a single condition for the detention of the complainant had been fulfilled.

In order to have a comprehensive insight into the complainant's complaint, the Ombudsman turned to the MNZ and requested the entire complaint documentation related to the case. The Ombudsman also requested a report about the measures taken on the basis of the justified complaint and whether the complainant had been sent a written apology on the basis of the findings from the complaint procedure. The Ombudsman was also interested in whether the court that had conducted the minor offence proceedings against the complainant had been informed about the findings from the complaint procedure. Considering the weight of the alleged violations by the police officers and the fact that the police officers involved did not participate in the complaint procedure, the Ombudsman explicitly emphasised in its inquiry at the MNZ that it would be appropriate for the police officers to actively participate in the processing of the complaint and attend the session of the senate.

After our inquiry, the MNZ said that Celje Police Administration had proposed to Rogaška Slatina Police Station that, considering that the complaint was justified, discussions about the professional aspects of the implemented procedure be conducted with the police officers involved; Rogaška Slatina Police Station implemented the proposal. On that occasion, police officers were particularly warned about the legal requirements for identification and detention. They were also warned about the consistent production of reports. The MNZ also stated that the complainant's complaint case had also been discussed at a working meeting of Rogaška Slatina Police Station, but no written apology had been sent to the complainant. It added that police officers usually actively participate in the processing of a complaint and that they attend sessions of the senate quite regularly. The concrete example was the only example of the non-participation of police officers in the processing of a complaint and non-attendance at the senate session. The (then valid) Rules on resolving of appeals stipulated in Article 30 that upon an invitation to a session of the senate, police officers and the complainant are informed that the senate will decide on the filed complaint even if they fail to attend the session, which means that their attendance at the session is not required.

Naturally, the Ombudsman assessed the complaint related to irregularities in conduct of the police officers was justified. The Ombudsman established that the minor offence procedure continued to be carried out and that the police provided the competent court with adequate information about the event at the court's request, and that court proceedings were also carried out to determine the payment for damage to the vehicle, which according to the complainant had been caused during the intervention of the police officers. In this respect, there was no basis for an intervention by the Ombudsman to accelerate the proceedings. Despite the doubts about whether all measures, considering that the complaint in this case was justified, had been taken to prevent such cases from repeating, the Ombudsman was not able to intervene further because of the distance in time of the event. The MNZ stated that all police officers of Rogaška Slatina Police Station had been warned about the established irregularities and that the complainant's case had also been discussed at a working meeting. 6.1-6/2013

No disciplinary or any other procedure was conducted against any of the police officers involved, although the Department for Investigation and Prosecution of Official Persons with Special Authorisations at the Specialised State Prosecutor's Office filed an indictment proposal against two police officers for the criminal act of violation of human dignity through abuse of office or official duties under Article 266 of the Criminal Code with a punitive order. According to the prosecution, the court imposed a suspended sentences (the prosecution had no information about whether the ruling was final). The Ombudsman also considered as a shortcoming the fact that the police had failed to apologise to the complainant for the irregularities established in this case, because the Ombudsman believes that an apology is appropriate in cases of irregularities in the conduct of a state authority in relation to an aggrieved party. It should also not be overlooked that the complainant, despite the appeals senate having established that the statements of the police officers regarding the alleged offences were doubtful, had to take action alone against the alleged irregularities committed by the police officers in the minor offence procedure against him. According to the explanations of the MNZ, a complaint in accordance with Article 28 of the ZPol is an alternative method of settling disputes (a complaint procedure is an informal procedure) between an individual and the police and the MNZ. The Ombudsman can accept this explanation, **but emphasises that, as a rule, every justified complaint should be a warning that a police procedure has not been conducted correctly. Every measure necessary to re-examine procedures conducted by police officers, particularly their findings and measures against aggrieved individuals, should therefore be taken on this basis, including an apology. If necessary, considering all the circumstances of an individual case, irregularities in a police procedure also demand the elimination or changing of police measures against an aggrieved individual (in accordance with the ZP-1, it is possible, for example, to withdraw an accusation petition by the minor offence authority until a ruling on the offence is issued).** The Ombudsman encourages the police and other relevant services of the Ministry to act accordingly in the future.

### Police taking action during protests at the end of 2012

We already presented our findings from a visit to Maribor I Police Station after the street protests on 3 December 2012 and the mass detention of protesters in the 2012 Annual Report. Regarding our findings and proposals, the MNZ explained that the detention of the protesters had been carried out in the garage of Maribor I Police Station because the protest was an extraordinary event, and that, considering the circumstances, it was possible at that moment to organise and secure the detention only in these premises.

While in this case minors and women were not separated from other detained persons, the detained persons were under direct physical supervision by the police. **The MNZ assured the Ombudsman that, in accordance with our recommendation that police officers would ensure in possible similar cases in the future that detained persons would be separated by gender and age (minors) and that they would be provided with the best possible accommodation conditions.**

According to the MNZ, official notes about the detention were also taken as soon as possible, and all particularities had been recorded chronologically. The Ministry noted that vulnerable groups were treated as priority considering the circumstances. Informing of the legal representatives of juvenile offenders, treatment and their handing over to their legal representatives in all cases was carried out in the shortest time possible and all persons who were obviously injured were provided with immediate medical assistance. Medical assistance was also provided to other persons who requested it.

**What is also encouraging is that the MNZ stated that it is aware that in all cases police officers must consistently observe all regulations and guidelines in this field in order to ensure lawful and professional detention and the humane treatment of detained persons, also in the case of the detention of higher numbers of persons, and that police officers must be constantly reminded of this by their superiors.** Due to special circumstances in such cases, events can take place that require special organisation, but they in no case must encroach upon (and according to the MNZ in the described case did not) any of the rights to which detained persons are entitled.

The Ombudsman also considered complaints from three persons detained during that event. We requested explanations from the MNZ regarding their claims. Among other things, the Ombudsman remarked that the statements of the detained persons that they did not know what documents they were signing, or that there

was no possibility to read them before signing, or that they had received incorrect information from police officers about what they were actually signing, were worrying. Police officers allegedly pretended not to hear them asking for water. We also wanted to know which of the police officers at Maribor I Police Station were responsible for providing information about the detained individuals, whose relatives (some of them on their own initiative) went to Maribor I Police Station, because we noticed many people there during our visit, some of whom were complaining that they were not being provided with the desired information and that they had been waiting for information there for quite some time.

The MNZ stated that it had reviewed our report on the three complaints together with the police, and informed us of its views and findings regarding the detention in question, and about measures that will be taken to eliminate the shortcomings. After receiving the answer from the MNZ, we carefully examined the claims from the complainants and compared them to the explanations. We concluded on this basis that the claims of the complainants on one hand and police officials on the other differ over certain decisive facts. It was therefore impossible to establish the correct and complete state of facts. In our answers to the complainants, we emphasised that the police are obliged to ensure that all rights are respected, which they perhaps were enforcing (e.g. informing relatives), when putting people in detention. We also welcomed the information from the MNZ that the leadership of the Maribor Police Administration had already warned all commanders and police officers, while also carrying out certain activities aimed at improving the work of police officers in such cases in the future. We certainly encourage this.

### **Showing the detention of handcuffed persons in the media**

We received a number of complaints from individuals who pointed to the showing of the detention of handcuffed persons in the media. In the belief of some complainants, such treatment presents these persons as flight risks, suspicious, or criminals, although they have not been convicted yet. A complainant pointed to a case in which police officers brought a handcuffed suspect through the main entrance to the court, despite the suspect having a non-violent history and an explicit request from his representative that he be brought through the back door. Precisely at that moment, a number of journalists 'happened' to be there, and photographs of the handcuffed 'criminal' were published all over the Internet. Criminal proceedings against the arrested person were never initiated (a request to investigate this case was rejected with a final judgment and remand was lifted), while the photographs remained on the Internet. Photographs once remained only in archives, while today we all have a kind of involuntary CV consisting of web content (which can be checked by employers, friends, relatives and others). Cases in which the media accompany news about that person with such photographs are not rare. This is not right, because this person has no criminal record and no criminal proceedings are being conducted against this person. Even convictions with a final judgment are deleted from records after a specific period, while content published on the web remains publicly available forever.

**Respect for the personality and dignity must also be ensured in criminal and all other legal proceedings, including during detention.** A person charged with an offence is considered innocent until proven guilty with a final judgement. The presumption of innocence applies even more to persons suspected of committing a criminal act, because there are only (justified) reasons for suspicion that such persons committed or participated in a criminal act. The media have an important role in ensuring freedom of expression and the right to be informed, but in such cases the questions frequently arise as to how to restore rights and personal dignity to people who receive unwarranted or excessive media attention. The Ombudsman has noted this problem on several occasions, including in annual reports.

The Ombudsman has emphasised in the past **that excessive media exposure of suspects who are deprived of their freedom could constitute an encroachment upon the right to the presumption of innocence and personal dignity guaranteed by the Constitution.** This particularly holds for suspects during pre-trial investigations. Even if the circumstance of a case provide a legal basis for the use of police authorisations and use of coercive measures, this does not warrant unnecessary and humiliating exposure of suspects to such media attention. This is why the Ombudsman believes that the police also have to ensure that in such cases such persons are not exposed to the media spotlight. In our judgment, in order to ensure the respect of the right to personal dignity, the escort of a handcuffed persons should be carried out in such cases (especially, when individuals explicitly request this) in a way that does not expose the person to the media (for example,

through the back entrance of the court, by using a cover or other means to prevent their identification, or in another appropriate way).

We submitted our opinion to the MNZ and proposed that it examine it and provide its own opinion and propose possible measures for a uniform regulation (which would prevent arbitrary decisions) or at least guidelines on how to act when escorting or taking a (handcuffed) person to court without exposing them to the media (if there is no objective and reasonable justification for this).

The MNZ explained that the legal requirements for the use of restraints do not apply to the status of a person in proceedings, the presumption of innocence or conviction by a final judgement, but only to the circumstances, which may imply that there is a danger that the person might resist, harm themselves, attack others or escape, or if this is necessary in order to carry out an arrest or detention safely. Considering the aforesaid, the basic guideline on the use of this means of restraint for persons brought to court is to ensure safety of such persons and of police officers. At the same time, the police consistently respect the protection of personal information of suspects and do not inform the press about when an individual will be brought to court.

The police are authorised to implement measures to ensure that persons are brought to the premises of a competent authority in the safest way possible (both for the detained persons and others). The manner in which detained persons are brought cannot be a result of their wishes, but depends on the assessment of the security situation (possible risks to the detained person or police officers at the main entrance to the building of the competent authority, possibility of attack on the detained person or police officers, possibility of potential rescue or flight of the detained person, etc.). The MNZ added that, in accordance with the eighth paragraph of Article 57 of the ZNPPol, which entered into force on 4 May 2013, police officers may put a special protective cover on detained persons to prevent their identification. This measure is permitted to protect life or evidence. Under the new regulation, the special protective cover can be put on a detained person at their request.

The Ministry is aware that the implementation of police powers and measures means an encroachment upon the human rights and freedoms of individuals, which is why it will carefully monitor the implementation of the new regulatory provisions in practice. If it recognises that the practices of police officers differ (with the same objective and subjective circumstances), the Ministry will prepare detailed guidelines for the work of police officers regarding the issue in question.

These assurances from the Ministry are certainly encouraging, and we believe that they represent progress in providing the right to personal dignity in police procedures. The Ombudsman will nevertheless continue to monitor this issue closely and take additional measures if necessary.

### 2.5.3 Private security service

**Measures taken by private security personnel can seriously encroach upon human rights and freedoms, which is why the field of private security services, i.e. security not provided by the state, is a subject of the Ombudsman's interest.** In certain cases, security guards face problems related to the performance of their service, mainly the low payment for their work. However, the Ombudsman did not deal with any complaint related to the conduct of security staff this year that demanded our intervention. The responses that the Ombudsman provided to complainants in this field mainly related to the duties and measures of a security guard and complaints procedures. The Ombudsman actively participated during the Private Security Day in Slovenia (Ljubljana, 11 November 2013) with a presentation of the Ombudsman's views on private security services. Representatives of the Ombudsman's office had a meeting with the Internal Affairs Inspectorate of the Republic of Slovenia.

## 2.5.4 Review of activities

### Cooperation with the Police Academy in Tacen

On 7 March 2013, Human Rights Ombudsman Vlasta Nussdorfer addressed the participants in a ceremony held at the Police Academy in Tacen and the opening of an exhibition marking 40 years of women's employment in the police. At the ceremony, Police Director General Stanislav Veniger emphasised the role and importance of women in the police. The Ombudsman said that the current position of women in the police was a positive sign in the efforts to ensure equal opportunities for both genders. A total of 2,041 women currently work in the Slovenian police, which is 24.26 per cent of all employees. On 8 November 2013, Deputy Ombudsman Ivan Šelih and the Ombudsman's adviser, Robert Gačnik, presented the work of the Ombudsman, work of the National Preventive Mechanism against torture, and particularly the main findings from the Ombudsman's visits to police stations. On 20 November 2013, Deputy Ombudsman Kornelija Marzel, MSc, attended the diploma ceremony for the 12th generation of students of the Police Academy in Tacen.

### National criminology conference

Deputy Ombudsman Ivan Šelih and the Ombudsman's adviser, Andreja Srebotnik, attended a conference discussing the issues of crime, disorderly conduct, social control during economic crisis and other criminological issues on 14 April 2013. The conference was organised by the Faculty of Criminal Justice and Security in Ljubljana.

### Meeting with the Minister of the Interior and Public Administration

On 15 May 2013, Human Rights Ombudsman Vlasta Nussdorfer and her colleagues met the Minister of the Interior and Public Administration, Dr Gregor Virant and his colleagues. They discussed complaint procedures against police officers, mass public gatherings, the extradition of foreigners, the Inspection Council, declarations of residence, international protection procedures, the confidentiality of procedures at the Ombudsman, election and referendum legislation, the erased and measures in the field of pay policy.

### Protocol signed between the Chamber and the Police

On 20 May 2013, the Ombudsman attended a ceremony in the Mercurius Congress Hall in Ljubljana marking the 20th anniversary of the Slovenian Chamber for Private Security, with the Chamber and the Police signing a protocol on the occasion.

### Meeting with the leadership of the Slovenian Police

On 31 May 2013, the Ombudsman met Police Director General Stanislav Veniger and the directors of police administrations at the headquarters of the General Police Administration.

### The young are inclined to deviant behaviour as they are left to their own devices

On 26 September 2013, Human Rights Ombudsman Vlasta Nussdorfer attended a panel discussion entitled 'Youth and Crime', which was organised for the 11th consecutive year by the Criminal Police Sector of Maribor Police Administration and the Safety Panel of Municipality of Maribor. On the sidelines of the meeting, the Ombudsman told the press that the young are frequently left to their own devices, which makes them more inclined to deviant behaviour which can quickly turn into violence. According to the police, the number of cases of juvenile delinquency is actually in decline. In 2012, minors were suspected of a total of 1,827 criminal acts, which is nine per cent less than in 2011. The Ombudsman noted that the statistics show only known cases, while it is not known how many concealed, and undetected cases there were.

### Private Security Day in Slovenia

As part of Private Security Day in Slovenia on 11 November 2013, the Slovenian Chamber for Private Security organised a conference which was attended by Ombudsman Vlasta Nussdorfer, Deputy Ombudsman Ivan Šelih and the Ombudsman's adviser, Robert Gačnik. The Ombudsman gave the opening speech, while Deputy Šelih presented an article entitled 'Private Security from the View of the Human Rights Ombudsman'. He emphasised the importance of the field of private



security being regulated and supervised by the state, as private security frequently encroaches upon people's privacy, and consequently, their human rights.

### Human Rights Ombudsman visits the Internal Affairs Inspectorate of the Republic of Slovenia

On 3 December 2013, Human Rights Ombudsman Vlasta Nussdorfer visited the Internal Affairs Inspectorate of the Republic of Slovenia together with Deputy Ombudsman Ivan Šelih and adviser, Robert Gačnik, upon an invitation from Chief Interior Affairs Inspector, Mitja Perko. The Chief Inspector first presented the inspectors who carry out inspections in the field of interior affairs. He noted that the majority of inspections (about two thirds) are carried out in the field of private security; between 70 and 80 complaints from citizens are dealt with annually.

### Cooperation with the Faculty of Criminal Justice and Security in Maribor

On 17 January 2013, Deputy Ombudsman Ivan Šelih presented the work of the Ombudsman, particularly in the field of restrictions on personal liberty, court and police procedures and the National Preventive Mechanism at the Faculty of Criminal Justice and Security in Ljubljana. Ombudsman Vlasta Nussdorfer gave lectures on 11 April and 22 May 2013 at the Faculty of Criminal Justice and Security in Maribor about human rights, the protection of victims of crime and other topics in the field of human rights protection. On 21 June 2013, she was a guest of honour at the diploma ceremony for graduates of the Faculty of Criminal Justice and Security, and on 24 September 2013, she attended a ceremony at Hotel Union in Ljubljana marking the 40th anniversary of the criminal justice and security study programme and the 10th anniversary of the Faculty of Criminal Justice and Security.

## 2.5.5 Review of Recommendations on Police Procedures

- 61.** The Ombudsman recommends that police officers take more care to ensure correct and complete examining of facts related to alleged offences and eliminate the repetition of shortcomings in examining facts and collecting evidence.
- 62.** The Ombudsman emphasises that, when implementing police tasks, police officers must respect the personality and dignity of persons and especially carefully treat persons who require additional attention. In the relationship with a person in a procedure (also verbally), they must be fair, and their procedures professional and lawful.
- 63.** The Ombudsman recommends that all procedures conducted by police officers related to the reading and (non-)implementation of rights of a detained person be carefully recorded.
- 64.** The Ombudsman encourages the police to inform all its units about irregularities established in the work of police officers in order to prevent a similar or the same mistake from being repeated.
- 65.** The Ombudsman recommends that the competent authorities reconsider the adequacy of the current regulation on the prosecution of the criminal act of threatening.
- 66.** The Ombudsman encourages the police to continue efforts to eliminate administrative obstacles in order to enable faster, more effective and better action by police officers.
- 67.** The Ombudsman recommends that complaints by individuals containing claims that their rights or freedoms have been violated with an act or failure to act by a police officer be processed carefully. The Ombudsman recommends that every applicant receive at least a first answer to every submission.
- 68.** The Ombudsman recommends that, in cases of a justified complaint, the police and the Ministry of the Interior take all necessary measures to ensure that a similar case does not occur in the future. We also emphasise that in cases when irregularities in the actions of a state authority towards an individual are established, at least an apology should be made to the aggrieved individual.
- 69.** The Ombudsman points out that police officers must consistently observe all regulations and guidelines in this field, also in the case of the detention of larger numbers of persons, in order to provide for the lawful and professional implementation of the detention and humane treatment of detained persons.

**70.** In order to ensure the right to personal dignity to persons in police procedures, the Ombudsman recommends that the police take all measures to prevent a (handcuffed) person who is escorted or moved from being exposed to the media (if there is no objective and reasonable basis for this).

**71.** The Ombudsman encourages the MNZ and the police to take all necessary measures to improve the adverse working conditions of police officers as a consequence of high ambient air temperatures.



# 2.6

## ADMINISTRATIVE MATTERS

Area of work	Cases considered			Resolved and founded		
	2012	2013	Index 13/12	No. of resolved	No. of founded	Percentage of founded among resolved
<b>6. Administrative matters</b>	<b>358</b>	<b>409</b>	<b>114,2</b>	<b>342</b>	<b>49</b>	<b>14,3</b>
6.1 Citizenship	12	15	125,0	15	2	13,3
6.2 Aliens	63	67	106,3	55	10	18,2
6.3 Denationalisation	9	12	133,3	8	0	0,0
6.4 Property law	41	39	95,1	28	4	14,3
6.5 Taxes	36	78	216,7	64	7	10,9
6.6 Customs	2	1	50,0	1	0	0,0
6.7 Administrative procedures	112	98	87,5	82	13	15,9
6.8 Social activities	63	68	107,9	64	10	15,6
6.9 Other	20	31	155,0	25	3	12,0

In the field of administrative matters, we dealt with 14.2 per cent more cases in 2013 than in 2012. The number of complaints about taxes rose by 116.7 per cent, which was a result of the introduction of a real property tax.

### 2.6.1 Issues concerning foreign citizens

**In the field of citizenship**, we dealt with 15 cases in 2013, three more than in 2012; most concerned how to acquire Slovenian citizenship, what the conditions are, which bodies are authorised to decide on citizenship and other. The Ombudsman gave advice and referred people to the competent authorities. It is a positive fact that no complaints related to prolonged procedures for the acquisition of citizenships were received in 2013.

Described below is an example of the speedy and efficient work of public servants at an administrative unit and the Ministry of the Interior (MNZ). They did not abide by the instructional deadlines, but primarily took into consideration the benefits of a child. The Ombudsman commends the public servants in question.

We also talked with the Minister of the Interior and experts from the Ministry at a meeting at the Ombudsman's office about issues related to foreigners, and about the erased.

## Example

### **Speedy and efficient deciding in a procedure to acquire citizenship for a newborn**

At the beginning of August 2013, the Human Rights Ombudsman received a letter from a worried father stating that the deadline for arranging health insurance for his newborn son was in mid-September, while it would probably take much longer before the procedure related to his application for Slovenian citizenship was finalised. Apparently, the procedure for the acquisition of citizenship for the child was being reviewed by the MNZ, while the deadline for the review in accordance with Article 27.c of the Citizenship of the Republic of Slovenia Act (ZDRS) is two months.

The Ombudsman explained that, as a rule, she deals with issues regarding individuals whose rights have already been violated by state authorities, and the administrative unit or the Ministry of the Interior (MNZ) could not be reproached for a delay or any other violation. Due to the sensitivity of the case, the Ombudsman could have addressed to the MNZ only a proposal that the circumstances be taken into account when processing the case.

The Ombudsman was happy to hear that a kind clerk at the administrative unit had presented the problem to the MNZ, which promised that the application would be processed in ten days, and kept its promise. In addition to a residence permit (for a foreigner whose citizenship is unknown), the newborn thus also acquired Slovenian citizenship and full health insurance. We want to highlight the conduct of both bodies as an example of speedy and efficient processing of cases which is necessary in order to protect the rights of the individual. 5.1-10/2013

**The number of complaints filed by foreigners who wanted to regulate their status in Slovenia** increased from 63 in 2012 to 67 in 2013. In many cases people asked how to acquire a residence permit in Slovenia. As critical, we single out the lengthy decision procedures for the acquisition of a permanent residence permit on the basis of the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia and lengthy decision procedures regarding appeals for the acquisition of a long-term visa.

We further point to the issue of basic care in accordance with Article 51 of the Aliens Act (Ztuj-2). This article stipulates that a foreigner, who has obtained a temporary residence permit in the Republic of Slovenia and who has no means of subsistence, has the right to health care and basic care in the same way as foreigners who are allowed a temporary stay in the Republic of Slovenia. In accordance with Article 75 of the Ztuj-2, the right to basic care means the right to receive financial social assistance in accordance with the act regulating social care allowances, while funds for financial social assistance are provided by the Aliens Centre. In the Ombudsman's opinion, the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ) should have decided about this right in the case in question; however, the MDDSZ disagreed stating that Article 51 of the Ztuj-2 does not substantively regulate the question of who is responsible for making decisions under this Article and who provides funds for this purpose.

The MNZ agreed with our opinion and confirmed that Article 51 of the Ztuj-2 determines only the range of the right to basic care. Subject to Article 75 of the Ztuj-2, the MNZ is also of the opinion that it is the responsibility of the MDDSZ to decide on the right in question.

We thus considered as justified a complaint from a woman who had a temporary residence permit in the Republic of Slovenia on the basis of the second paragraph of Article 51 of the Ztuj-2, i.e. on the basis of a permit for a 24-month stay, and who had submitted an application for financial social assistance to Maribor Social Work Centre, which was rejected. The complainant filed a complaint against the rejection decision, which was rejected by the MDDSZ more than a year later. In our opinion, **the complainant's right to social protection was violated**. The right to basic care has proven to be only a right on paper from the aspect of deciding, eligibility and provision.

In 2013, we also point to the lengthy duration of procedures related to international protection, which we also noted last year.

## The erased

The deadline for submitting applications to obtain a permanent residence permit on the basis of the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia was 24 July 2013. In 2013, we received many questions about the conditions for obtaining the status in accordance with this Act, how to acquire all the supporting documents and where to seek help. The Ombudsman provided adequate explanations and referred inquiries to the Peace Institute.

We reiterate our opinion that the deadline set by the state is preclusive. **If they miss the deadline, individuals lose the right to a permanent residence permit under the quoted Act.** They have a limited amount of time to remedy the injustices committed by the state.

Our opinion about the adoption of the Act Regulating Compensation for Damage to Persons Erased from the Permanent Population Register is that it is a step forward in remedying the injustices done to several thousand aggrieved individuals and their families. On the occasion, the Human Rights Ombudsman invited all those responsible for the violation to apologise.

## 2.6.2 Denationalisation

A total of 12 cases were dealt with in 2013, while nine cases were dealt with in 2012. **More than 20 years have passed since the adoption of the Denationalisation Act, and it is completely unacceptable and inexcusable that denationalisation has not yet been finalised.**

## 2.6.3 Taxes

In the field of taxes, 78 cases were dealt with in 2013, and 36 in 2012; 10.9 per cent were considered justified.

We dedicated particular attention to the payment of social contributions, especially in connection with determining which bodies have the jurisdiction to take measures in case of the non-payment of contributions. More about this can be found in section on employment relations.

The Tax Administration of the Republic of Slovenia (DURS) has the jurisdiction to take measures in cases of non-payment of social contributions only when an employer submits an REK form (tax return) and fails to pay the reported contributions. In such a case, the competent tax office initiates an enforcement procedure *ex officio*. In other cases, if for example this form has not been submitted, while the salary has been paid, or has not been paid at all, this is a matter for an inspection procedure. An employee can actually demand repayment only in court proceedings.

**We also received a large number of cases related to the new Real Property Tax Act.** A majority of the complainants agreed that it is necessary to introduce such a tax, but that the regulation allows for abuses.

## 2.6.4 Property law matters

We dealt with 39 cases in this field in 2013, a reduction of 41 compared to 2012, while the main issues remained very similar in the annual comparison. We receive complaints from people who have disputes on land with municipalities. To no avail, we have pointed out for years that municipalities often take an authoritarian and superior approach in their relations with residents, and that they are not willing to conclude agreements or make concessions. In disputes, municipalities refer residents to the courts, which of course is a far simpler solution for municipalities than for residents. Municipalities cover court costs with taxpayers' money and have adequate professional services on their side, and residents rarely opt for lawsuits because of the lengthy and expensive proceedings. **The cases call for legislative changes because municipalities do not want to change the existing situation voluntarily, although this is the result of their unlawful conduct.**

## 2.6.5 Redress of injustices to war veterans, war disabled and victims of war

A total of 15 complaints were dealt with in 2013, while 29 were dealt with in 2012; half of them were justified. The cases related to restrictions of the rights of war veterans, war disabled and victims of war under the Finance Balance Act. Some related to missed deadlines for submitting requests in accordance with the War Disability Act.

While we have informed the MDDSZ several times about this issue, only to receive the reply that the MDDSZ is not considering a new deadline for submitting requests in accordance with the War Disability Act, the incoming complaints point to the need to change the relevant Act accordingly.

In 2013, we also dealt with the issue of regulating material war damage. The Ombudsman has been pointing to the lack of regulation of material war damage for several years, and explicit recommendations to the competent authorities can be found in the Ombudsman's annual reports for 2008, 2009 and 2010.

In this year, also we monitored **the issue of concealed war and post-war mass graves**. A meeting on this topic was held at the MDDSZ with the Minister of Labour, Family, Social Affairs and Equal Opportunities, members of the Government Commission on Concealed Mass Graves in Slovenia and the President of the Republic. It was agreed at the meeting that, regardless of the financial situation, the Commission would prepare a study on what steps should be taken to realistically improve the situation regarding concealed mass graves.

## 2.6.6 Other administrative matters

**We have been reporting about the issue of registration and deregistration of residence since 2008, and there have been no expected changes, although this issue was a topic in talks with ministers responsible for this field.**

We also pointed to this issue in 2013 at a meeting with the Minister of the Interior, Dr Gregor Virant. He promised that the Residence Registration Act would be changed soon.

## 2.6.7 Social activities

A total of 68 cases were dealt with in 2013, while 63 were dealt with in 2012.

The findings which were established **in the field of pre-school education** in previous years have to be repeated again this year. **Spatial capacities in kindergartens are insufficient**. Our recommendations from previous years (2008, 2009 and 2010) that programmes and measures should be adopted to secure a sufficient number of vacancies for children in kindergartens and, consequently, ensure that the use of public funds intended for pre-school education is equally available to all parents, remained unimplemented.

**In the field of primary schools**, we need to point again to the issue of changing of school districts. Complainants disagreed with the changing of school districts in the Municipality of Ljubljana, which was allegedly unprofessional, extortionate, inadmissible and implemented only because of insufficient enrolments of children in one school.

In 2013, also we received complaints related to the alleged inappropriate conduct of teachers in schools, with complainants pointing to conceited and contemptuous attitudes and dissatisfaction with the conduct of teachers in general. Complainants were advised to try to solve their disagreements by talking to form teachers. If this is unsuccessful, there is still the possibility of consulting headmasters. It is understood in general that individuals who believe that there is something wrong in a school can also turn to the Inspectorate for Education and Sport of the Republic of Slovenia (IRSŠŠ), as its primary role is to monitor the implementation

of regulations and respect for the rights of children. **One problem is that it takes too long for the IRSŠŠ to take a decision. The cases considered also related to this issue and further to the content of decisions (IRSŠŠ).**

In the **field of secondary schools**, we dealt with a case concerning the Rules on the Assessment of Knowledge in Secondary Schools. The Rules stipulate that grading is repeated if the number of fail grades is **larger than determined by the school rules**. It is also stipulated that both grades are to be entered in the mark book; however, schools appear to differ over this. We received an explanation from the Ministry of Education, Science and Sport (MIZŠ), which was not fully convincing, although we are aware that programmes of secondary schools differ significantly and it is probably hard to prescribe a precise percentage of fail grades for which the written test has to be repeated uniformly, such as in grammar schools and lower vocational schools. The MIZŠ is not considering changing the Rules in order to standardise the practice of secondary schools (grammar and vocational schools). A uniform regulation was once in force, but the MIZŠ decided to leave this to individual schools and school rules. The Ministry refers to the professional autonomy of individual schools and teachers.

Some cases related to the imposition of educational measures in secondary schools. Complainants pointed to the inappropriateness of the imposition of measures or incompletely and incorrectly established state of facts, and challenged the regulation which allows headmasters to impose an educational measure in the first instance, and that a commission appointed by the headmaster decides on complaints in the second instance. The Ombudsman supports the complainants: the procedure of imposing educational measures as envisaged by the Rules on the School Order in Secondary Schools should be supplemented in order to make it clear that the procedure is being conducted under the rules of the General Administrative Procedure Act, and that the rights of all parties in the procedure are adequately protected.

#### Example

##### **Bureaucratic rigidity did not allow a talent test to be taken in two secondary schools**

The Human Rights Ombudsman handled a complaint in relation to a talent test taken as an entrance examination for a secondary school. We received a letter from the mother of a pupil who wanted to enrol at the Music and Ballet Conservatory in Ljubljana or Maribor, as she wanted to continue her education on the ballet course. She was supposed to take a talent test, but was not able to attend tests on the same day in Ljubljana and Maribor due to scheduling. The test in Ljubljana was at 9.30 a.m., and in Maribor at 11 a.m. The girl and her parents wrote requests to the schools asking her to be assigned to another group, but these were rejected by both schools.

We asked both schools for an explanation because we thought that it was possible to grant the request – with reference to Point 5 of Article 14 of the Rules on secondary school enrolment (Official Gazette of the Republic of Slovenia, nos. 12/06, 12/08 and 107/12), which stipulates that an alternative date should be determined for a candidate who has a justified reason to be excused.

The Ljubljana Conservatory replied that the Rules do not envisage schools coordinating test dates among themselves, as a large number of candidates have to be tested in two days (every year about 200 candidates). The headmaster nevertheless promised that the conservatory would pay attention to such cases in future and try to coordinate the dates for entry examinations with Maribor Conservatory. The headmaster of Maribor Conservatory meanwhile said that, in her opinion, taking a talent test in two schools is not a justified reason for rescheduling.

We considered the complaint as justified because we are convinced that the coordination of test dates between schools and appropriate scheduling for candidates who live far from both schools should not be a big problem. This solution would also be good for pupils who want to study in art grammar schools. 5.8-16/2013

**In the field of higher education and university institutions**, we point to the already mentioned issues regarding habilitation procedures. Below, we point to issues which lead to a number of students turning to the Ombudsman every year, who allege malfeasant, vengeful and irresponsible conduct by professors. Students are usually powerless, and do not dare to expose themselves or report such cases to the relevant institutions.

## 2.6.8 Review of activities

### Ombudsman critical of lengthy decision making for scholarship applications

On 8 January 2013, the Ombudsman publicly reacted to students' complaints about their lodging allowance not being recognised or their applications not being processed despite the expiry of the deadline. The Ombudsman emphasised that all ambiguities regarding granting scholarships, which may be the main source of subsistence for secondary school pupils and higher education students, were completely inadmissible and unacceptable.

### Erasure: between law and politics

The Deputy Ombudsman, Kornelija Marzel, attended a forum of the Peace Institute entitled 'Erasure: between law and politics' in Cankarjev dom in Ljubljana on 25 February 2013. 2013 saw the 21st anniversary of the erasure from the Permanent Population Register, during which the authorities illegally deprived over 25,000 people of their right to permanent residence in Slovenia in 1992.

On 19 April 2013, the Ombudsman, Vlasta Nussdorfer, her Deputy, Kornelija Marzel, MSc, and the Ombudsman's adviser, Martina Ocepek, met representatives of the Chamber of Slovenian Tax Advisers at the Ombudsman's office.

### With Minister Virant for a friendlier public administration

On 15 May 2013, the Ombudsman, Vlasta Nussdorfer, her deputies, Jernej Rovšek, Ivan Šelih and Kornelija Marzel, MSc, the General Secretary, Bojana Kvas, and the Ombudsman's adviser, Liana Kalčina, met the Minister of the Interior, Dr Gregor Virant and his colleagues. At the meeting, they discussed the operations of the inspection services and shortage of inspectors, the erased and their related compensation scheme, as well as complaint procedures against police officers. Issues regarding international protection and required legislation amendments in this field, electoral and referendum legislation, and proposed measures in the field of pay policy and free legal aid were also discussed.

### For more efficient inspection services

On 13 June 2013, the Deputy Ombudsman, Kornelija Marzel, MSc, and the Ombudsman's adviser, Martina Ocepek, met the President of the Inspection Council, Andrejka Grlič, at a working meeting. They presented the Ombudsman's findings and proposals in the field of inspection services' operations, with a focus on the manner of determining priority tasks, openness and transparency in the work of inspection services. They pointed out the problem of observing instruction periods in inspection procedures and certain issues regarding the powers of individual inspectorates. On 9 October 2013, the Ombudsman, Vlasta Nussdorfer, joined another meeting with the Chief Market Inspector and President of the Inspection Council, Andrejka Grlič. They discussed the operations of the Inspection Council, and mentioned specific complaints encountered by the Ombudsman. Another working meeting was held at the Ombudsman's premises on 16 December 2013.

### Ombudsman joins miners from Trbovlje

On 27 August 2013, the Ombudsman, Vlasta Nussdorfer, visited the Municipality of Trbovlje and attended the 44th seminar for teaching staff in foreign halls of residence in Trieste, Klagenfurt and Gorizia. In the evening, she also attended a round table panel on human rights, which was part of the seminar. The Ombudsman was received by the Director of the Trbovlje-Hrastnik Mine, Aleš Berger, who informed her of the problem of the dismissal of workers in the Trbovlje mine. The Ombudsman also met the Mayor of Trbovlje, Vili Treven, who presented the town's development guidelines, and pointed to the social distress and poverty of people in Trbovlje with above-average unemployment (18.2 per cent) and the highest number of pensioners.

### Integration package for unemployed migrants, refugees and asylum seekers

On 7 November 2013, the concluding national conference within the project 'Integration package for unemployed migrants, refugees and asylum seekers' took place at the City Museum of Ljubljana. It was attended by the Ombudsman's adviser, Mojca Valjavec. The conference dealt with issues of advocacy for unemployed migrants, refugees and asylum seekers, tasks, powers, efficiency and barriers in the operations of state institutions, and to the inter-institutional cooperation at national and international levels.



### Round table panel on statelessness, the research by PI and UNHCR guidelines

On 12 November 2013, the Ombudsman's advisers, Barbara Kranjc and Mojca Valjavec, attended a round table panel on statelessness, i.e. the position of persons without citizenship, organised by the United Nations High Commissioner for Refugees (UNHCR) in cooperation with the Peace Institute (PI) at the Lev Hotel. On this occasion, representatives of the Peace Institute presented their research on this issue in Slovenia, while representatives of the UNHCR presented guidelines on this problem.

### Ombudsman's ten-year cooperation on implementing the Legal Clinic for Refugees and Foreigners

In the 2012/2013 academic year, the Ombudsman carried out activities within the Legal Clinic for Refugees and Foreigners. The Ombudsman has been involved in this project since the 2002/2003 academic year. The clinic operates with the support of external mentors and the United Nations High Commissioner for Refugees (UNHCR). Its purpose is to raise the expert public's awareness of the existence of the refugee issue and law on aliens, and speed up the education of law students and their interest in these fields of law.

### Upon the passage of the Act Regulating Compensation for Damage to Persons Erased from the Permanent Population Register

Upon the passage of the Act Regulating Compensation for Damage to Persons Erased from the Permanent Population Register (21 November 2013), the Ombudsman, Vlasta Nussdorfer, publicly welcomed this step towards solving human rights violations for the thousands of people affected and their families. She expressed her understanding of the financial difficulty of the state due to poor management and other reasons. Nevertheless, she pointed out that, pursuant to Article 26 of the Constitution of the Republic of Slovenia, the right to compensation for damage caused through unlawful actions by the bearers of public authority cannot be ignored. Therefore, the Ombudsman invited all those responsible for the violation to apologise to the persons affected. She expressed her expectation that the state would take full responsibility for the erasure and prevent similar violations of human rights in the future.

### Addressing the Ombudsman's opinion on the Act Amending the International Protection Act

On 4 December 2013, the Deputy Ombudsman, Kornelija Marzel, MSc, and the Ombudsman's adviser, Mojca Valjavec, attended the 17th session of the Committee on Internal Affairs, Public Administration and Local Self-Government, where the anticipated amendments to the International Protection Act and the consequences of enforcing the Real Property Tax Act in the field of local self-government were addressed. The Ombudsman submitted her opinion on the proposed act.

## 2.6.9 Review of Recommendations on Administrative Matters

- 72.** The Ombudsman proposes that the Ministry of the Interior ensure the observation of statutory time limits for decision making at both first and second instances.
- 73.** The Ombudsman proposes that the Government adopt suitable implementing regulations as soon as possible to regulate the field of cash social assistance received by foreigners and prevent further violations of human rights and freedoms.
- 74.** The Ombudsman requires (a similar proposal was provided in the Ombudsman's Annual Report for 2008) the Government to take all measures which contribute to the completion of denationalisation.
- 75.** The Ombudsman proposes that the Government prepare amendments to the Local Self-Government Act and, if necessary, to other regulations, which will
- establish efficient mechanisms for supervision and actions regarding the work of local self-government and mayors.
- 76.** The Ombudsman proposes that the Government promptly take note of the issue of the admissibility of entering illegal constructions in the land register and prepare legislative amendments to prevent this as soon as possible. The state must assume responsibility for illegal constructions and prosecute all builders of illegal constructions.
- 77.** The Ombudsman requires the earliest possible regulation of the issue of compensation for material war damage suffered by exiles, parties that suffered material damage, prisoners of war and persons conscripted into the German army during World War II.

**78.** The Ombudsman requires the Government to provide suitable funds for locating hidden war and post-war graves and, where graves are discovered, to ensure a symbolic burial of victims, memorial plaques and access to the burial site for relatives of the dead.

**79.** The Ombudsman proposes that the Ministry of the Interior prepare amendments to the Residence Registration Act, so that the registration of a permanent residence will also be possible for individuals temporarily accommodated in prisons, correctional facilities and elsewhere, and in facilities for homeless people.

**80.** The Ombudsman proposes that a deadline be determined in the Residence Registration Act within which the *ex officio* procedure of establishing permanent residence must be concluded.

**81.** The Ombudsman proposes amendments to regulations which will enable all parents to freely select a public kindergarten for their child.

**82.** The Ombudsman proposes taking additional measures which will provide all parents with equal opportunities when including their children in the public network of organised pre-school education and care.

**83.** The Ombudsman proposes that the Ministry of Education, Science and Sport clearly define those procedures in kindergartens, primary and secondary schools which should be managed pursuant to the General Administrative Procedure Act and those which should not (e.g. grading, which is a professional task).

**84.** The Ombudsman recommends a more suitable arrangement of habilitation procedures for elections to academic titles for higher education lecturers and academic staff; procedures should be accelerated and facilitate an efficient legal remedy to protect individuals' rights when their application for a title is rejected.

**85.** The Ombudsman proposes to the Ministry of Education, Science and Sport to systemically regulate studies for students with special needs and their accommodation in halls of residence.

**86.** The Ombudsman proposes adopting a systemic solution for the issue of minor sportspersons' transfers between sports clubs and eliminating the payment of high compensations which must be paid by the parents of minor sportspersons who decide to transfer.



# 2.7

## ENVIRONMENT AND SPATIAL PLANNING

Area of work	Cases considered			Resolved and founded		
	2012	2013	Index 13/12	No. of resolved	No. of founded	Percentage of founded among resolved
<b>7. Environment and spatial planning</b>	<b>120</b>	<b>127</b>	<b>105,8</b>	<b>110</b>	<b>27</b>	<b>24,5</b>
7.1 Interventions in the environment	39	46	117,9	41	6	14,6
7.2 Spatial planning	26	30	115,4	25	3	12,0
7.3 Other	55	51	92,7	44	18	40,9

The statistics on cases considered in the field of environment and spatial planning have been approximately the same for a few years. The Human Rights Ombudsman annually considers 120 cases on average. Also, the content of the cases has not significantly changed. Complainants had many comments regarding spatial acts, especially municipal, the manner of their adoption and inability of the public to participate in these procedures. Due to the lack of information provided in advance, individuals frequently opposed the potential siting of a facility or intervention in the environment. We have frequently speculated at regular monthly meetings of the Ombudsman and non-governmental organisations (NGOs) how the public could participate in spatial and environmental decision-making.

The problem of pollution with solid particles (PM10) was also dealt with in 2013. **We should especially emphasise the severely polluted areas of Koroška, the Celjska region and Zasavje, where a violation of the right to a healthy living environment as referred to in Article 72 of the Constitution was established.** Complainants wrote to us about this and pointed out other forms of pollution, i.e. light pollution, overhead power lines, mobile telephony base stations, geo-engineering, sprays and others.

The problem of noxious odours from various sources (biogas plants, wastewater treatment plants, fast-food restaurants, fertilisation with liquid manure and other) has been a recurring issue in our reports for some years. The severity of the problem has also been highlighted by numerous complainants and non-governmental organisations. We also discussed this matter at the meeting with the Minister of Agriculture and the Environment.

Below is a summary of other violations established in this field: exceeding the statutory and all reasonable time limits for decision making frequently leads to violations of the right to legal protection referred to in Article 25 of the Constitution.

On the National Council's premises, we organised the panel discussion 'The Environment and Human Rights III: The State's Responsibility to Remedy Polluted Areas'. **The panel discussion was prepared for representatives of state authorities, local communities, the expert public, civil society and the Ombudsman to present their current experience and problems with the remediation of certain polluted areas in Slovenia, and to establish possible solutions.**

## 2.7.1 Problems connected with land with water use and the issue of permits for the use of water

We have been writing about this for some years. Unfortunately, no progress has been made, despite several warnings about the terribly lengthy time limits for decision making and violations of the right to private property. In our 2012 report, we noted that 384 cases were still unresolved. **On 31 December 2013, the Slovenian Environment Agency was handling (unresolved) approximately 690 applications regarding land transactions, 126 regular cases and 164 cases of so-called fast capture regarding private water supply, 103 cases and 6 cases of so-called fast capture regarding private drinking water supply which is implemented as a public utility service, and 427 cases regarding electricity generation by small hydroelectric power plants. Thus, 1,516 cases were still unresolved.**

**The Ombudsman and her colleagues discussed the problem of waters and environmental pollution with the European Commissioner for the Environment, Dr Janez Potočnik, at the Ombudsman's office.** More on this is available at the Ombudsman's website.

## 2.7.2 Air pollution with substances from stationary sources

In the 2012 Annual Report, we wrote that Slovenia should have taken the first measures to improve air quality due to exceeded values of PM10 particles in 2006 and that Slovenia had not done so, and that the European Commission had already instituted proceedings against our country. Every day of inaction is punishable by a fine of EUR 10,000. Therefore, we also dealt with this problem – which affects not only in Ljubljana, but all major Slovenian towns – in 2013. We continued the consideration of pollution problems in the Meža Valley, Celje Basin and Zasavje. We advised the Government several times to take measures to improve air quality through ordinances, following the example of the Meža Valley, for other polluted areas, which was discussed with the Minister of Agriculture and the Environment at the Ombudsman's office.

In the field of measuring emissions into the air, we are repeating our recurrent finding, which is also the view of complainants and numerous NGOs. We have been addressing the recommendation on the urgency of the systemic regulation of authorisations to carry out permanent measurements of emissions to the Ministry of Agriculture and the Environment since 2008, but to no avail. **The arrangement that the operator of a facility and device which produces emissions orders, and pays for, the measurement of emissions (operational monitoring) is not appropriate, and justifiably raises doubts about the credibility of data on emissions.**

## 2.7.3 The Environment and Human Rights III:

### The State's Responsibility to Remedy Polluted Areas

In November 2013, the Ombudsman in cooperation with the National Council held a day-long panel discussion entitled **'The Environment and Human Rights III: the State's Responsibility to Remedy Polluted Areas'**. The panel discussion was prepared for representatives of state authorities, local communities, the expert public, civil society and the Ombudsman to present their current experience and problems with the remediation of certain polluted areas in Slovenia in one place, and establish possible resolutions. The topic of the panel discussion was the right to a healthy life. Special emphasis was put on the examples of the Meža Valley, Celje Basin and Zasavje.

## 2.7.4 Inspection procedures

### Cooperation with the Transport, Energy and Spatial Planning Inspectorate

In 2013, we dealt a great deal with determining priority tasks in the work of the inspection services. We did not succeed with our proposal for the Transport, Energy and Spatial Planning Inspectorate to determine the priority tasks of inspection supervision in a regulation. The Transport, Energy and Spatial Planning Inspectorate published the criteria for determining these priorities on its website. We are still not fully satisfied with the response of the inspection services to applicants. We understand that an inspector must inform an applicant who is not a party to the proceedings on the measures imposed only at the applicant's express request, which is stipulated by Article 24 of the Inspection Act. However, it cannot be ignored that Article 18 of the Decree on administrative operations stipulates that all public administration bodies must reply to letters received. This obligation is in compliance with the principle of good administration and is by no means equivalent to a notification on inspection measures taken. The obligation to reply to each letter in inspection procedures means meeting individuals' expectations in terms of confirming the receipt of a letter or application, and a statement regarding when the case is expected to be handled by the inspector.

Backlogs and lengthy decision-making time limits in both inspection and complaint procedures against inspection decisions, and other violations of instruction periods are especially pressing. We have also frequently established a failure to comply with the provision of the Inspection Act that an complaint against an inspection decision does not delay its execution. Example

#### **It took eight years for the building inspection authorities to handle a complaint**

A complainant contacted the Human Rights Ombudsman due to a building inspection procedure regarding a constructed facility and a fence. The complainant lodged a complaint about the alleged illegal construction in 2004, when we considered the case and assisted the complainant with the acquisition of a notification on the measures of the Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning (IRSOP). We also accelerated the procedure at the Ministry of the Environment and Spatial Planning (MOP) regarding the resolution of an appeal against the IRSOP conclusion, which dismissed the complainant's complaint due to the administrative silence of the body of first instance. The complainant contacted the Ombudsman again in 2011, since the competent inspector had not taken any action.

We put several inquiries to the IRSOP, which explained that the facility that is the subject of the concrete inspection procedure is not among the priority tasks of the building inspection authorities, and for this reason the inspection procedure had not been concluded. We explained to the complainant that, regarding the operations of the IRSOP and especially of the building inspection authorities, we had stated our opinion several times that citizens' complaints should be handled as quickly as possible following their receipt. We have warned of the problem of lengthy inspection procedures and their inefficient management for some time when addressing individual complaints and in our annual reports.

In July 2011, we conducted an additional inquiry with the IRSOP on the continuation of the procedure, and received a reply stating that the inspection procedure was still in progress. We wished to draw attention to this case at a meeting with representatives of the IRSOP, but the meeting did not take place. Therefore, in August 2012, we put yet another inquiry to the current Transport, Energy and Spatial Planning Inspectorate (IRSPEP). They replied that the case had been assigned to another inspector in September 2012 due to the extended absence of the inspector who had been handling this case. In November 2012, we received further explanations from the IRSPEP which showed that an on-site inspection had been carried out at the end of September 2012, which established the dimensions and other characteristics of the facility. An inspection of the land register was carried out later, and the building inspector acquired information on potential administrative authorisations issued for activities at the plots in question. Following the fact-finding procedure, the building inspector issued an inspection decision in October 2012, pursuant to Article 152 of the Construction Act.

It is our conclusion that our intervention contributed to the case being assigned to another inspector and to the inspection decision finally being issued. **Nevertheless, we are not satisfied with the procedure, since almost eight years passed from the complainant's complaint to the issue of the inspection decision.** The complaint was founded. 7.2-15/2011

Example

### **On a complaint against a building inspection decision after more than six years**

A complainant contacted the Human Rights Ombudsman with claims that she had been unsuccessfully contacting the building inspection authorities regarding her neighbour's alleged illegal construction. She stated that the investor had additionally built two concrete slabs and two floors on an almost 80-year old building with a wooden structure, which, in her opinion, presents a great danger to her family, who live on the ground floor.

We contacted the Transport, Energy and Spatial Planning Inspectorate (IRSPEP) for explanations regarding this complaint. The IRSPEP's reply showed that an inspection decision on the termination of the construction and removal of the facilities had been issued in 2004 in an inspection procedure conducted due to the additions to the aforementioned facility. In January 2005, the file was sent to a body of second instance, i.e. the Ministry of the Environment and Spatial Planning (MOP), due to a complaint from the person subject to inspection. The IRSPEP did not receive the ministry's decision until April 2011, but the decision did not include the original file of the case. No procedural steps were taken in the interim period or in the period after the IRSPEP had received the decision on the complaint.

In the light of the aforementioned explanations from the IRSPEP, the Ombudsman inspected the file at the current Ministry of Infrastructure and Spatial Planning (MZIP) regarding the progress of the decision-making process on the complaint of the person subject to inspection. It was established that the person subject to inspection had sent the complaint against the inspection decision directly to the MOP (body of second instance), which received it in November 2004. This body did not request the file from the body of first instance (IRSPEP). Nevertheless, the body of second instance received the file from the body of first instance in January 2005, since the person subject to inspection had also sent the complaint to the body of first instance. After this, the file was supposedly lost by the MOP. A decision by the body of second instance was issued only in March 2011, when the body received a request from the building inspection authorities to return the file. This means that it took more than six years for the body of second instance to render a decision on the complaint by the person subject to inspection. Thus the time limit for rendering a decision on a complaint which is stipulated by Article 256 of the General Administrative Procedure Act (ZUP) was significantly exceeded. The aforementioned article stipulates that a decision on a complaint must be issued and served on the client as soon as possible, but no later than two months from the date when the body received the complete complaint. Several other irregularities in the actions of the body of second instance, especially in office operations, were established. But the loss of the file, which has never been found, is particularly unacceptable.

In view of the aforementioned, we alerted the MZIP to the irregularities established and proposed that the Ministry take into account the Ombudsman's warnings in this case and in similar cases, and act in accordance with the principle of good administration and strictly comply with the General Administrative Procedure Act.

The IRSPEP was alerted to Article 30 of the Inspection Act (ZIN), which stipulates that a complaint against an inspector's decision does not delay its execution. After studying the documentation in the case, we also alerted the MZIP to the fact that this was a lengthy procedure, since no procedural steps were taken between 2004 and 2011. Even following the issue of the decision by the body of second instance in 2011 which did not set aside the decision of the body of first instance, the inspection procedure was slow, as another on-site inspection was not carried out until October 2012. Regarding the additions to the facility, it was established that the inspection decision on the termination of the construction and removal of the facilities in 2004 had not been executed. It was similarly established that the subject of the second inspection procedure, i.e. expanded concrete slab and stairs, had not yet been removed.

We established that this was an extremely lengthy procedure at the bodies of first and second instance. During the procedure, the principle of good administration and rules of office operations were not observed, and the provisions of the ZUP and ZIN were violated. The complaint was founded for the reasons stated. 5.7-51/2012

## 2.7.5 Review of activities

### **The Ombudsmen with the chief inspector of the Transport, Energy and Spatial Planning Inspectorate on the work of the Inspectorate**

On 20 February 2013, the Human Rights Ombudsman, Dr Zdenka Čebašek-Travnik and her colleagues met representatives of the Transport, Energy and Spatial Planning Inspectorate at the Ombudsman's office. They discussed the manner of handling complaints, priority tasks and enforcements. On 19 July 2013, the Ombudsman, Vlasta Nussdorfer, and her Deputy, Kornelija Marzel, MSc, and the Ombudsman's adviser, Martina Ocepek, met the chief inspector at the Transport, Energy and Spatial Planning Inspectorate, Sandra Petan Miklavčič, and her colleagues. Their discussion primarily concerned priority tasks of the building inspection authorities. The Ombudsman emphasised that priority tasks and decision-making criteria cannot constitute rules for internal operations, as the former have a powerful effect on the rights and obligations of clients. Therefore, they should be determined in a regulation and published.

### **Ombudsman to continue her efforts for a healthy living environment**

On 28 March 2013, the Ombudsman, Vlasta Nussdorfer, and her Deputy, Kornelija Marzel, MSc, and colleagues met representatives of civil society who deal with the realisation of the right to a healthy living environment. Twenty-five representatives of various societies, institutes and non-governmental organisations in Slovenia which strive to ensure a healthy living environment and care for space and animals responded to the Ombudsman's invitation and gathered in the Ombudsman's conference room for the 26th time, and for the first time with the new Ombudsman. The representatives presented their activities and pointed out the main problems they encounter. They also agreed on forms and manners of future cooperation, including regular field meetings.

### **The Ombudsman is included in the Environmental Protection Clinic**

Following a series of Legal Clinics for Refugees and Foreigners, which was established in the 2002 academic year, the Human Rights Ombudsman was included in the pilot project Environmental Protection Clinic, which was created through cooperation between the Legal Information Centre of NGOs (PIC), the Chair of International Law and the Institute for Public Administration at the Faculty of Law of the University of Ljubljana.

### **At a meeting with the Ombudsman on the Logatec wastewater treatment plant**

On 9 April 2013, the Ombudsman's Deputy, Kornelija Marzel, MSc, and adviser, Martina Ocepek, met representatives of the Ministry of Agriculture, the Slovenian Environment Agency, the IRSPEP and the Environment and Nature Inspection Service at the Ombudsman's office.

### **We have borrowed the Earth from children**

On 22 April 2013, Earth Day, the Ombudsman, Vlasta Nussdorfer, attended an award ceremony for the best in the pan-Slovenian competition entitled 'Planet Earth-Friendly School/Kindergarten' organised by the Planet Earth Society. The project We Borrowed the Earth from Children was also carried out within the scope of the competition, and the Ombudsman participated in the award ceremony for the most successful primary and secondary school pupils.

### **Third meeting with civil society on the prosecution of criminal offences against the environment, spatial planning and natural assets**

On 25 April 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, her Deputy, Kornelija Marzel, MSc, and advisers, Martina Ocepek and Petra Tovornik, again met representatives of civil society from the field of the environment and spatial planning. The topic of the third regular meeting in 2013 was the prosecution of criminal offenders against the environment, spatial planning and natural assets. The topic was presented by the Ombudsman, Vlasta Nussdorfer, and the senior district state prosecutor from the Ljubljana District State Prosecutor's Office, Helena Zobec Dolanc.

### Meeting with civil society on the rehabilitation of the Celje Basin

On 12 June 2013, the Human Rights Ombudsman organised the fourth regular meeting in 2013 with representatives of civil society from the field of the environment and spatial planning. Thus far, such meetings have been held at the Ombudsman's office, while this time, the Ombudsman, Vlasta Nussdorfer, her Deputy, Kornelija Marzel, MSc, and adviser, Martina Ocepek, met the representatives in Celje. The participants at the meeting held at the Celje Institute of Public Health discussed the pollution of the Celje Basin and solutions.

### Meeting with representative of the Surveying and Mapping Authority

On 17 June 2013, the Ombudsman, Vlasta Nussdorfer, her Deputy, Kornelija Marzel, MSc, and advisers, Martina Ocepek, Dr Ingrid Russi Zagožen and Zlata Debevec, met the Director-General of the Surveying and Mapping Authority, Aleš Seliškar, at the Ombudsman's office.

### Ombudsman's meeting with Minister Židan

On 4 July 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, her Deputy, Kornelija Marzel, MSc, and advisers, Martina Ocepek and Zlata Debevec, met the Minister of Agriculture and the Environment, Dejan Židan, MSc, and his colleagues. They discussed the problem of resolving brownfield and excessively polluted areas (the Celje Basin, the Meža Valley, Zasavje, tyre landfill on the Drava Plain), pollution with PM10 particles, the cooperation of the public in adopting regulations related to the environment, issuing permits for the use of water (Slovenian Environment Agency), the problem of odours in the environment, the systemic regulation of financing monitoring, geocosmic pollution, a proposed plan for calculating cadastral income and the implementation of chimney sweeping services.

### On free legal aid for civil society in the field of the environment

On 3 October 2013, the fifth regular monthly meeting took place at the Ombudsman's office, attended by guest Teja Baloh from the Legal Information Centre of NGOs (PIC). Ms Baloh gave a presentation to representatives of civil society on types of aid, including free legal aid, which may be acquired by non-governmental organisations working on environmental protection and spatial planning.

### Ombudsman and Minister Omerzel on current issues

On 16 October 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, and her colleagues met the Minister of Infrastructure and Spatial Planning, Samo Omerzel, and his colleagues at the Ombudsman's office. They discussed problems regarding the work of the Transport, Energy and Spatial Planning Inspectorate, where the Ombudsman has noted positive changes and responsiveness. Attention was paid to the supervisory function of the Ministry regarding the realisation of the tasks of local communities arising from the Housing Act, and to the procedure or adopting the National Housing Programme for the 2013–2022 period. The Ombudsman especially pointed out that the state must protect individuals from a non-functional system in the case of illegal constructions, when a person with full trust in the system buys a building entered in the land register, which it transpires was illegally constructed.

On 7 November 2013, the Deputy Ombudsman, Kornelija Marzel, MSc, attended the first national conference entitled 'Promoting Green Jobs' at the Lev Hotel, at which representatives of all sectors established the situation and opportunities regarding green jobs in Slovenia.

### On anticipated amendments to the Environmental Protection Act with representatives of civil society

The Human Rights Ombudsman, Vlasta Nussdorfer, her Deputy, Kornelija Marzel, MSc, and advisers, Martina Ocepek and Petra Tovornik, met representatives of civil society from the field of the environment and spatial planning for the sixth time this year. The guest at the meeting, Dušan Pichler, head of the Legislative Drafting Division at the Ministry of Agriculture and the Environment, presented amendments to the Environmental Protection Act.

### Consultation 'The State's Responsibility to Remedy Polluted Areas'

The Human Rights Ombudsman of the Republic of Slovenia and the National Council of the Republic of Slovenia organised a consultation entitled 'The Environment and Human Rights III: the State's Responsibility to Remedy Polluted Areas'. The



consultation, with over 100 participants, took place on 27 November 2013 at the National Council's hall. At the end of the consultation, the participants drew conclusions and emphasised that the state should actively begin drafting an umbrella act for all polluted areas, and invited the ministries responsible to begin solving the problem of excessively polluted areas immediately and prepare all suitable legal bases and activities for drawing EU cohesion funds. They especially highlighted the urgency of the rehabilitation of the Meža Valley and the need for an active approach to the rehabilitation of the Celje Basin and Zasavje.

### Cooperation with the Faculty of Criminal Justice and Security in Maribor

On 19 November 2013, the Deputy Ombudsman, Kornelija Marzel, MSc, and the Ombudsman's adviser, Martina Ocepek, met students of the Faculty of Criminal Justice and Security at the Ombudsman's office in Ljubljana regarding the subject of environmental crime. They were accompanied by assistant professor Dr Katja Eman. Special attention was paid to the right to a healthy living environment and current cases handled by the Ombudsman.

### Ombudsman and Commissioner Potočnik on environmental protection

On 25 November 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, met the European Commissioner for the Environment, Janez Potočnik, and his colleagues at the Ombudsman's office. They discussed the issue of waters and environmental pollution. The Ombudsman's representatives highlighted their doubts regarding the suitability of the system for measuring emissions, since measurements are ordered, and paid for, by the polluters. Commissioner Potočnik said that he had been following the Ombudsman's endeavours to improve the situation in the field of the environment and that he appreciated her work.

### Conference of the Slovene Association of Administrative Staff

The Deputy Ombudsman, Kornelija Marzel, MSc, and the Ombudsman's adviser, Martina Ocepek, attended a conference of the Slovene Association of Administrative Staff on the environment and spatial planning, and internal administrative affairs, which was held in Bled on 6 December 2013.

## 2.7.6 Review of Recommendations on Environment and Spatial Planning

**87.** The Ombudsman requires the Government to promptly take all suitable measures to eliminate backlogs in decision making regarding water right and ownership relations on land with access to water.

**88.** The Ombudsman recommends that the Ministry of Agriculture and the Environment monthly monitor the dynamics of the resolution of cases in the field of water rights and ownership relations on land with access to water, and report the results to the Government.

**89.** The Ombudsman requires the Government to take all measures to improve the quality of the living environment and health of people affected in excessively polluted and brownfield areas, also by taking suitable public health measures.

**90.** The Ministry of Agriculture and the Environment should prepare a systemic solution for the acquisition of authorisations for measuring emissions into the air, and ensure the independent supervision and financing of measurements.

**91.** The Government should prepare a uniform regulation for the rehabilitation of all polluted and brownfield areas in the country.

**92.** The Ombudsman requires the Government to provide the Transport, Energy and Spatial Planning Inspectorate with conditions for efficient inspection task management.

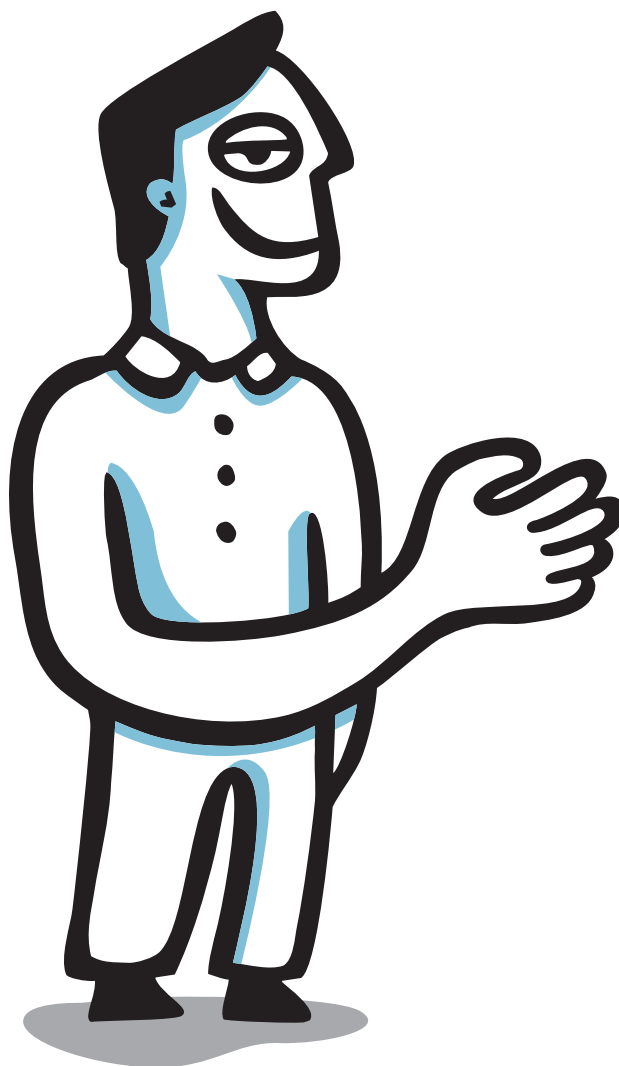
**93.** The Ombudsman recommends that the Government determine priority tasks of inspection services in a regulation, as this is the only way to ensure transparency and the impartiality of inspectors.

**94.** The Ombudsman recommends that all inspection services inform complainants on the receipt of complaints and the anticipated time limit for their processing.

**95.** The Ombudsman proposes that the Ministry of Infrastructure and Spatial Planning prepare an amendment to Point 7.4 of Article 2 of the Construction Act, and define the meaning of 'reinstatement', i.e. the removal of facilities and related material.

96. The Ombudsman recommends that the Ministry of Agriculture and the Environment submit an opinion on the competences of the Inspectorate of the Republic of Slovenia for Agriculture and the Environment in

cases of illegal construction and, if necessary, prepare amendments to regulations that will enable the Inspectorate to order the implementation of operational monitoring for illegal constructions.



# 2.8

## PUBLIC UTILITY SERVICES

Area of work	Cases considered			Resolved and founded		
	2012	2013	Index 13/12	No. of resolved	No. of founded	Percentage of founded among resolved
<b>8. Public utility services</b>	<b>65</b>	<b>92</b>	<b>141,5</b>	<b>87</b>	<b>6</b>	<b>6,9</b>
8.1 Public utility sector	21	37	176,2	34	3	8,8
8.2 Communication	11	9	81,8	9	0	0,0
8.3 Energy	8	19	237,5	19	0	0,0
8.4 Transport	18	16	88,9	16	3	18,8
8.5 Concessions	6	9	150,0	7	0	0,0
8.6 Other	1	2	200,0	2	0	0,0

### 2.8.1 Review of activities

#### Access to water is a human right

On World Water Day, the Human Rights Ombudsman, Vlasta Nussdorfer, pointed out that access to water is a human right. This was confirmed by the United Nations General Assembly in 2010 with a resolution which declared access to clean water and sanitation a human right.

### 2.8.2 Review of Recommendations on Public Utility Service

**97.** The Ombudsman recommends that the competent ministry and the Government prepare a plan of activities to arrange the ownership of local roads where they still run on private land, including time limits for the implementation of individual activities in municipalities.

**98.** The Ombudsman recommends that the Government study the possibility of unifying and reducing the prices of procedures for arranging the ownership of land where local roads run.

**99.** The Ombudsman recommends that the responsible ministry promptly prepare amendments to regulations regulating the field of chimney sweeping services in order to facilitate greater competition and improve the quality of chimney sweeping services.

**100.** The Ombudsman recommends that the Government enhance inspection supervision of the operators of chimney sweeping services.

**101.** The Ombudsman recommends that the Government prepare and propose a new act on cemetery and burial activities which is adjusted to the currently accepted consensus regarding attitudes to the deceased, and to regulate in a more suitable manner a non-uniform practice in relation to the right to the (continuation) of the lease of graves.

**102.** The Ombudsman recommends again that the right to water be included in the legal system of the Republic of Slovenia as a fundamental human right.



# 2.9

## HOUSING MATTERS

Area of work	Cases considered			Resolved and founded		
	2012	2013	Index 13/12	No. of resolved	No. of founded	Percentage of founded among resolved
<b>8. Housing matters</b>	<b>56</b>	<b>124</b>	<b>221,4</b>	<b>117</b>	<b>7</b>	<b>6,0</b>
9.1 Housing relations	23	59	256,5	57	4	7,0
9.2 Housing services	31	59	190,3	55	3	5,5
9.3 Other	2	6	300	5	0	0,0

### General

The statistical data on the cases considered by the Human Rights Ombudsman in 2013 prove that the field of housing matters is a field of marginal importance to the authorities and that it has been totally neglected for several years. The number of cases increased by 121 per cent compared to 2012. People's poor financial situation, the social situation of individuals, an undefined Government strategy and inadequate legislation on housing are the main reasons for many people living in completely inappropriate housing units or even in the streets. They are humiliated, offended and their dignity abused. Their health is endangered and entire families are affected. They are deeply disillusioned and their trust in social state is impaired.

**All our recommendations from recent years and earlier have remained a dead letter. Only the manner of transferring rent subsidies to owners of dwellings has been modified, which indirectly realised our recommendation to exempt rent subsidies from enforcement.**

### 2.9.1 National Housing Programme

No progress has been seen in the adoption of the National Housing Programme (NHP), and there is also no programme with a clear vision or housing management strategy. Government priorities do not include housing policy, which was already established last year. Young people are in a bad position, and left to their own ingenuity, help from relatives and friends, and especially to the uncontrolled operation of the market. Housing legislation should be thoroughly revised and updated. However, it has remained unchanged for years and contains no suitable initiatives to resolve individuals' housing problems.

Regarding the draft National Housing Programme 2013–2022 published on the website of the Ministry of Infrastructure and Spatial Planning, we received a letter from an outraged complainant who is a former holder of an occupancy right in a denationalised dwelling, but who no longer resides in the dwelling as she was forced to move out. The complainant believes that people like her are in a worse position than tenants who live in denationalised dwellings, and that the state, through the NHP, should also provide for those former tenants who had to move out of their dwellings against their will. The urgency of need to pass the NHP is illustrated by the following two examples.

## Example

### **The points system to qualify for housing**

A complainant sent a complaint about the unfair points system of the Public Housing Fund of the Municipality of Ljubljana via e-mail to several addressees, including the Human Rights Ombudsman. The complainant mentioned the disputable system with the example of persons who do not have a dwelling and therefore do not receive any extra points pertaining to the quality of life, while a person who has a dwelling in a poor condition receives such points. He also mentioned the observation of the applicant's health. For example, asthma is taken into account, but depressive disorders are not. Thirdly, the complainant pointed out the 'disputable' extra points for more years of service.

Subsequently, we received courtesy copies of replies from two addressees. The Public Housing Fund of the Municipality of Ljubljana (PHFML) sent a substantive reply to the complainant and explained the points system, while the Housing Fund of the Republic of Slovenia sent a courtesy copy of the complaint to the Ministry of Infrastructure and Spatial Planning as the competent ministry. The addressees were beyond reproach in this specific case.

The complainant's complaint did not meet the conditions for our mediation. Therefore, we merely told him that we agreed with him. Single persons are in an unenviable and difficult position, and when combined with unemployment and homelessness, their problems and distress multiply. The Ombudsman is well aware of this and has also pointed out the current points system for qualifying for accommodation for these categories of applicants to the competent authorities (municipalities, Ministry of Labour, Family, Social Affairs and Equal Opportunities). For some years, the Ombudsman has addressed appeals for the adoption of a National Housing Programme and urgent amendments to housing legislation which take into account the current situation, conditions and circumstances of life in our society to the competent ministry, i.e. the Ministry of Infrastructure and Spatial Planning. The Ombudsman will further pursue these activities and discuss problems similar to the complainant's at the first meeting with the Minister of Infrastructure and Spatial Planning. 9.2-24/2013

## 2.9.2 Shortage of housing units

Several complainants who were in a very difficult situation wrote to us; some feared eviction, others resided in intolerable housing conditions. They all sought help from municipalities, but received replies and explanations stating that they had to apply for the allocation of non-profit dwellings, that municipalities lacked housing or residential units, and that they should find a suitable dwelling for themselves in the market, and then request a rent subsidy.

## Example

### **Tenant in a municipal dwelling without hot water from two months**

A complainant contacted the Ombudsman regarding her problems with hot water, since the Municipality of Izola, as the owner of the dwelling in which the complainant resides as a tenant, had not replaced or repaired the gas water heater. The complainant had presumably addressed her problems to the Municipality of Izola several times. At the beginning of July 2013, a representative of the municipality explained to the complainant that she had to arrange the repair herself. Therefore, the complainant had a suitable technician check the state of the heater. He established that repairing the heater would not be sensible and informed the municipality which, however, did not respond. We asked the municipality for further explanations. They explained that a new gas heater would be installed in the case in question. We subsequently verified this in a phone conversation with the complainant, who confirmed the installation of a new gas heater, but who had no hot water for over two months due to complications. The complaint was founded. 9.1-31/2013

## 2.9.3 Still current problems with caretakers' dwellings

A complainant contacted the Ombudsman on behalf of a caretakers' committee regarding a problem we pointed out in our report for 2012. He proposed reintroducing Article 175.a of the 2011 Housing Act (SZ-1) which equalised the rights based on former caretakers' dwellings for holders of an occupancy right and temporary right to use caretakers' dwellings, while the Fiscal Balance Act determined that only former holders of an occupancy right in caretakers' dwellings had the same rights as tenants in denationalised dwellings.

## 2.9.4 Other

Several individuals contacted the Ombudsman regarding the payment of costs for dwellings, which were supposedly too high and the invoices vague. Many directed their remarks against the work of managers of multi-dwelling buildings and problems with their replacing managers.

We repeat our finding in the 2011 Annual Report that the Housing Inspection Service should have full power to supervise the implementation of regulations in the field of housing relations, regardless of the ownership of a multi-dwelling building.

## 2.9.5 Review of Activities

### **Ombudsman and her Deputy at a conference entitled 'The path to permanent and safe accommodation for people with housing difficulties'**

On 30 May 2013, a conference entitled 'The path to a permanent and safe accommodation for people with housing difficulties' was held at the City Hall in Ljubljana. The results of the eponymous project carried out by the Kings of the Street Society in cooperation with the Public Housing Fund of the Municipality of Ljubljana and the Stiftung Domicil non-governmental organisation from Zürich in 2012 and 2013 were presented at the conference. The participants were addressed by the Human Rights Ombudsman, Vlasta Nussdorfer, and Mayor, Zoran Jankovič.

### **Implementation of housing legislation and supply of housing in Slovenian municipalities**

On 24 October 2013, the Ombudsman published the results of a survey on housing policy carried out in Slovenian municipalities in 2013. The right to decent housing is a constitutional right. Article 78 of the Constitution stipulates that the state must create opportunities for citizens to obtain decent housing. The Ombudsman expressed her dissatisfaction with the failure to take and realise measures to resolve housing problems. Some of the Ombudsman's recommendations remain unrealised for years. Therefore, she emphasised the urgent need to adopt a new National Housing Programme.

### **Tenants of denationalised dwellings additionally affected**

On 28 November 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, and her Deputy, Kornelija Marzel, MSc, met Tanja Šarec and Joža Aljančič from the Association of Tenants of Slovenia. They discussed housing legislation, especially the National Housing Programme, tenants' rights in denationalised dwellings, and the Real Property Tax Act, and the unsuitable transfer of tax burden on tenants.

## 2.9.6 Review of Recommendations on Housing Matters

**104.** The Ministry of Infrastructure and Spatial Planning should promptly prepare amendments to the Rules on renting non-profit apartments and ensure a fairer system for assessing housing and social conditions, and priority categories of applicants (young people, young families –

determining age, taking into account applicants' health and other problems, assessing the quality of life of the homeless, and other).

**105.** The Ministry of Infrastructure and Spatial Planning should promptly prepare amendments to the Housing Act which clearly define the obligation of municipalities to ensure a certain number of residential units (taking into account the number of residents) with a suitable living standard, and publish tenders for allocating non-profit dwellings for rent at certain intervals (e.g. annually).

**106.** The Housing Act should be amended so that applicants who meet the means test for subsidised market rent are granted subsidy even if they did not

apply for a municipality's current call for applications for allocating non-profit dwellings for rent.

**107.** The Ombudsman again recommends uniform rules for all users of caretakers' dwellings.

**108.** The Ombudsman requires the Government and the National Assembly to cease violating the rights of tenants in denationalised dwellings, and to take prompt measures to eliminate violations as per the conclusions of the European Committee of Social Rights of the Council of Europe.





# 2.10

## EMPLOYMENT RELATIONS

Area of work	Cases considered			Resolved and founded		
	2012	2013	Index 13/12	No. of resolved	No. of founded	Percentage of founded among resolved
<b>10. Labour law matters</b>	<b>176</b>	<b>332</b>	<b>188,6</b>	<b>296</b>	<b>70</b>	<b>23,6</b>
10.1 Employment relationship	90	153	170,0	144	23	16,0
10.2 Workers in state authorities	61	108	177,0	88	18	20,5
10.3 Scholarships	20	57	285,0	53	28	52,8
10.4 Other	5	14	280,0	11	1	9,1

**The number of complaints handled in 2013 increased significantly compared to 2012, i.e. by 88.6 per cent. The increase was noted in all fields, especially scholarships (by 185 per cent), where most complaints were founded due to the lengthy periods required to process decisions on complaints and the inappropriate actions of the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ).**

The most important issues that we dealt with were non-payment of salaries and contributions; workplace mobbing; compelling people to work as sole traders; problems with inspection procedures; problems of students when claiming an accommodation allowance; the lengthy complaint procedures of the MDDSZ regarding scholarships and unemployment, and systemic problems regarding initiatives for the unemployed when seeking work.

**Most of the recommendations we made in the previous year have not been accepted, with the only exception being the Scholarship Act (ZŠtip-1), which introduces novelties regarding grants of Zois scholarships to young parents. This Act entered into force on 1 January 2014.**

Cooperation with the competent authorities was good.

### 2.10.1 Payment for work performed

According to the Slovenian Constitution, as well as other international documents stated in the introduction, the payment for work performed should facilitate a decent life for individuals and their families. Unfortunately, we have learned of many cases when employees are not paid, when it is subsequently established that employers have not been paying social security contributions for their employees, and when salaries are paid in cash without being officially recorded. It is no longer possible to write off, partially write off, defer or pay social security contributions in instalments. Furthermore, we still encounter cases when contributions are not paid, despite various forms of supervision (example: pursuant to the Employment Relationship Act, an employee must receive a payslip for the previous year from the employer no later than 31 January. The payslip must show the calculation and payment of contributions and taxes. Electronic access to verify the payment of contributions is also possible at the e-davki portal, and written evidence of the payment of taxes and social security contributions may be requested from the Tax Administration of the Republic of Slovenia (DURS)).

We discussed this problem at a meeting with representatives of the Tax Administration and the Labour Inspectorate of the Republic of Slovenia (IRSD). We established that the calculation and payment of social security contributions are not regulated by one regulation, but several. The Tax Administration is deemed to supervise the payment of contributions when it receives a written calculation of contributions (a form) from an employer. If the employer does not submit the form, despite having employees, the Tax Administration verifies whether the salary has been paid (from which the obligation to pay a social security contribution arises). If the Tax Administration establishes that the employer has not paid the salary, this finding is submitted to the Labour Inspectorate, which continues the procedure.

**Efficient prosecutions of criminal offenders against employment relationships and social security must be established for special and general prevention.**

## 2.10.2 Procedures of supervisory institutions

We met representatives of the Labour Inspectorate several times to discuss current problems, especially the non-payment of salaries and competences of the Labour Inspectorate. The Labour Inspectorate believes that their power is limited to supervising the payment of the net minimum wage; otherwise, regarding any other matters, people may only resort to the judicial system. Thus our positions are still very different, since we believe that, pursuant to the applicable labour legislation, the entire contractually agreed gross salary of an individual should be protected, and regarding this issue, the competence of the Labour Inspectorate to act in such cases are clear.

Example:

### **Lengthy decision making in a labour dispute**

The Human Rights Ombudsman received for consideration a complaint from a person stating an unjustified delay of labour court proceedings, which began at the beginning of June 2011. Two and a half months later, it was clear that mediation in these proceedings was not possible. No action has been taken since then.

We drew the attention of the president of this court to the case. The explanation we received shows that the case is not deemed a priority in terms of its substance. However, the case will be treated as an absolute priority given that two years have passed since it was filed. Immediately after our mediation, the court fixed the main hearing.

The complaint was assessed as founded. The court's response was appropriate; therefore, the complaint was not considered further. 4.3-22/2013

Example:

### **Warning – unsuitable measure of a labour inspector**

The complainant had already complained to the Labour Inspectorate due to an allegedly wrongful termination of an employment contract. On 20 November 2012, the complainant lodged another complaint with the Labour Inspectorate, in which he reproached his employer for violating labour legislation. Despite a slightly harsher intervention on 16 January 2013, he had not received a response from the Labour Inspectorate. Therefore, he lodged a complaint with the Human Rights Ombudsman.

We conducted an inquiry at the Labour Inspectorate, which resulted in the Labour Inspectorate responding to the complainant on 29 March 2013 by letter in which the competent inspector issued a warning to the complainant pursuant to Article 53 of the Minor Offences Act for violating Article 39 of the Inspection Act regarding the lodged false complaint. The inspector reprimanded the complainant for repeating the complaint, and stated that the statements were false and offensive. It could also be understood that she attributed to the complainant certain anonymous complaints which had been received by the Labour Inspectorate against the same employer.

We wrote again to the Labour Inspectorate, stating that we were aware that the inspector's workload was heavy and that she was offended by the complainant's suggestion of possible corruption. If the inspector believed that the complainant's statements were offensive, she did not have to respond to them. She also had the opportunity to fine the complainant for filing a false complaint if she believed that this was the case. If the complainant had contacted the Labour Inspectorate with precisely the same matter, we would have understood the inspector's warning. However, we believe that the case of the complainant's complaint of 20 November 2012 was not repeated complaint. The complaint refers to completely new facts and new violations of labour legislation. The inspector explained that she had verified the statements and found no violations; if this indicated that a false complaint had been made, each unfounded complaint could be deemed false. We deemed it inappropriate that the inspector had attributed anonymous complaints to the complainant. We also believe that the inspector should have informed the complainant that, if he was accusing her of corruption, he had the opportunity to instigate suitable proceedings. **The explanations regarding the competences of the inspectorate were difficult to comprehend for a layperson; therefore, it was inappropriate to accuse the complainant of falsely interpreting the law and not understanding statutory powers. It is also not clear from the warning in which part of it the accusation was stated.**

In its response, the Labour Inspectorate explained that certain regulations defined sanctioning procedures for false complaints and insulting an authority or an official; these are instigated if statutory assumptions (false complaints, offending an authority or an official are defined by the Inspection Act and the General Administrative Procedure Act) have been met. Inspectors are competent to make suitable decisions within their competences based on their findings. If a client believes that they have not committed the alleged act (e.g. false complaint or insulting an authority), the client, in accordance with the law, has recourse to a legal remedy to contest the measure imposed by an authorised official, and in the most severe cases of abuse of power, also the possibility of criminal prosecution. The Labour Inspectorate further explained that inspectors are obliged to provide complainants with expert assistance concerning procedures and legislation regulating the work of the authority, and provide assistance regarding the procedure to clients with no experience in law. In accordance with the aforementioned, the competent inspector provided thorough explanations of the measures imposed in this case, and her expert assistance regarding the enforcement of claims before the competent court and exercising the right to free legal aid.

We informed the Labour Inspectorate that we were not convinced by their explanations. We believe that this particular case was not a case of repeated complaint. Furthermore, no legal remedy is possible against a warning issued by an inspector. A legal remedy is possible only when a fine is imposed but this has not happened yet. Therefore, the complaint was considered founded. 4.1-24/2013

### 2.10.3 Wage compensation due to disease or injury

In our report for 2012, we mentioned that several complainants had informed us that their employers had not been paying them wage compensation for sick leave. Pursuant to Article 137 of the Employment Relationship Act applicable at that time, the payment for sick leave up to 30 days was covered by employers from their own funds, while after 30 days, the payment was covered by health insurance. A problem arose when employers were unable to pay for liquidity reasons, regardless of the fact that the Health Insurance Institute of the Republic of Slovenia (ZZZS) would have refunded them that amount. We believed that the right to compensation was a right arising from the health insurance for which employees pay contributions, and informed the ZZZS about it. Therefore, we believe it would be possible to acquire wage compensation directly from the ZZZS, even if the Employment Relationship Act did not expressly determine so.

### 2.10.4. Workers in the public sector

The problem of workplace mobbing was frequently dealt with in 2013. We especially received many letters regarding mobbing from workers in the public sector, most of which were not signed. **We point out an alleged case of sexual harassment in the Slovenian Armed Forces.**

In 2013, we again addressed the situation in the Slovenian prison system, to which our attention was especially drawn by a **conference by the Union of the Prison Administration**. The union pointed out the severe lack of personnel, reduced security plans, and questionable safety in prisons. The staff have been working overtime for ten years and do not have suitable clothes; their equipment (bulletproof vests) is no longer suitable due to its age; there are no funds for training. The problem of public utility institutions, especially regarding unpaid salaries for staff and convicts in Pohorje Mirna Public Utility Institute, was highlighted.

**At the end of 2013, the Act Amending the Labour Market Regulation Act (ZUTD-C) was passed on agency work, regarding which we highlighted many violations and irregularities in our report for 2012. The Act entered into force on 1 March 2014. We hope that the new provisions of the Act will prevent the unacceptable abuse of agency workers' rights.**

## 2.10.5 Scholarships

In 2013, 57 complaints about scholarships were handled, which is 258 per cent more than in 2012. The number of warranted complaints was very high, i.e. almost 53 per cent. A high share of these was due to the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ) exceeding the statutory time limits for decision making in complaint procedures.

The new Scholarship Act (ZŠtip-1) was passed in June 2013 and has been implemented since 1 January 2014. The act restored state scholarships to minor pupils, and introduced new scholarships for shortage occupations, and the option to combine various scholarships. Foreign students may acquire certain types of scholarship (state scholarships are limited to Slovenian citizens) under certain (very strict) conditions. In her reports for 2011 and 2012, the Ombudsman recommended that the MDDSZ find suitable solutions regarding granting state scholarships to foreign students.

The issue of scholarships was discussed at a meeting of the Ombudsman with the Minister of Labour, Family, Social Affairs and Equal Opportunities.

### **Lengthy decision making in complaint procedures**

The Ombudsman dealt with several complaints in 2013 which referred to lengthy decision making in complaint procedures. We alerted the MDDSZ several times about the need to take measures to eliminate backlogs and ensure decision making within the statutory time limits. The current situation is a violation of the right to efficient legal protection. Lack of personnel must not be an excuse for massive backlogs in decision making. We expect the MDDSZ to employ additional staff, which was also the forecast of the Minister of Labour, Family, Social Affairs and Equal Opportunities at the meeting with the Ombudsman.

### **Problem of employing students who receive scholarships to study abroad**

In the Ombudsman's report for 2010, we mentioned the problem regarding agreements concluded by the Slovene Human Resources Development and Scholarship Fund for studies abroad. We highlighted a case in which a scholarship agreement was virtually unrealisable in terms of the obligation to employ after the scholarship period had expired. The agreement stated that the scholarship recipient had to find a job in Slovenia following his studies or repay the scholarship. This problem was even more pressing in 2013, since jobs in Slovenia were extremely hard to find. Article 58 of the ZŠtip-1 stipulates that within three months of completing the studies for which scholarship was received a student must conclude an employment relationship with an employer with a head office in the Republic of Slovenia or register as unemployed pursuant to the act regulating the labour market if a public tender so determines.

## Example

### **Non-employment of students who receive scholarships for studying abroad**

In 2013, the Ombudsman received complaints regarding the problem of employing scholarship recipients who, after completing an academic study programme, continued their studies abroad. This was enabled by the Slovene Human Resources Development and Scholarship Fund (JSRKŠ) by granting rather high amounts for scholarships. Each applicant signed a scholarship agreement with the JSRKŠ and the Government Office for Development and European Affairs (SVREZ), with which they incurred, in addition to receiving certain rights, the obligations referred to in Article 4 of the aforementioned agreement. However, pursuant to the aforementioned article, the SVREZ also has an obligation to scholarship recipients, as it has to determine within three months of the receipt of a certificate of successfully completed education a state authority which must employ the scholarship recipient. If the SVREZ does not provide scholarship recipients with a job within the time limit set, they must find a job by themselves, since they have to be either employed or self-employed in Slovenia for three years.

The complaints received by the Ombudsman show that the SVREZ had not determined a state authority to employ scholarship recipients even in one case. Thus former scholarship recipients strive to find a job in Slovenia after finishing their studies, but they rarely succeed. If they do not find a job in Slovenia, they must repay the scholarship.

When considering the complaints, we raised several questions to which we wished the JSRKŠ to provide additional explanations and their opinion.

1. We were interested in whether the content of the JSRKŠ public tenders and individual agreements with applicants after 2004 was compliant with the Treaty on European Union at all. When reviewing the content of public tenders, we established that granting scholarships was still conditioned with subsequent return to, and employment in, Slovenia. It is questionable whether seeking a job in Slovenia after completing the studies is actually possible in all cases and whether it can be successful in the current situation.

2. We believed that the text of Article 4 of the agreement was ambiguous and contradictory. The first part of the aforementioned article stipulates that 'the scholarship recipient undertakes to conclude an employment relationship for a fixed period of at least three years with a state authority in the Republic of Slovenia determined by the SVREZ after completing their studies'. The second part of the aforementioned article stipulates that 'if the SVREZ does not provide a job within the time limit referred to in the previous indent, the scholarship recipient must be employed for a minimum of three years by an employer with a head office in the Republic of Slovenia which was selected by the recipient, or become self-employed for the same period'. In our opinion, the aforementioned means that the SVREZ determines a state authority which must employ a scholarship recipient, i.e. the SVREZ has (or had when it still existed) the obligation to provide for scholarship recipients within three months of completing the studies by making them useful to the country, which would be sensible considering the funding invested in them. If the SVREZ (exceptionally) does not do so, scholarship recipients must find jobs by themselves. However, the time limit for finding a job and the type of job they must find for a period of three years – or even a job which does not fit their type and level of education – are not stipulated. Therefore, we believe that the text of Article 4 is vague, and not in accordance with fairness and the principle of good administration.

In the cases of our complainants, the SVREZ merely submitted their CVs to certain state authorities, but did not help them find a job, which was clear from the purpose of the scholarship agreement and particularly from Article 4 thereof.

We proposed that the JSRKŠ modify the content of future public tenders for Slovenian citizens studying abroad by clearly and precisely stating the obligations of the state as the scholarship provider and scholarship recipients. We believed that scholarship recipients should have the opportunity to find a job abroad under certain conditions, particularly in view of the current economic situation in Slovenia. We proposed that the tender or agreement between the JSRKŠ and a scholarship recipient should include documents or certificates which should be submitted as proof of active job seeking in Slovenia (including the number of documents – applications sent and replies – and a time limit for the scholarship recipient to actively seek a job before repaying the scholarship).

Regarding those scholarship recipient faced with the possibility of having to repay their scholarships, we proposed that all the competent authorities review all the ways in which to set aside the students' obligations or find solutions which would be acceptable to all three signatories of scholarship agreements. After all, the content of the disputable Article 4 of the agreement is not practicable or is extremely difficult to meet, even if scholarship recipients wanted to do so. We decided that this obligation of scholarship recipients is disproportionate and unfair in the current situation in comparison with the obligation and duty of the state as the scholarship provider.

We received a reply within the time limit set, in which the competent authorities rejected all our complaints and proposals, and fully insisted on their decision. In our opinion, the complaints were founded and require prompt changes. 4.4-13/2013 and 4.4-11/2013

## 2.10.6 Review of activities

### Ombudsman's appeal concerning strikes announced

In January 2013, when strikes were announced, the Human Rights Ombudsman, Dr Zdenka Čebašek-Travnik, pointed out that workers have a constitutional right to strike which may be restricted only in the public interest. In the 22 years since gaining independence, Slovenia still has not completely regulated the right to strike as a workers' fundamental right. Instead, an act passed in 1991 in the former Yugoslavia applies. Therefore, the Ombudsman called on the Government to rectify this. She publicly appealed to all unions organising and leading strikes to ensure their activities affected the rights of their service users as little as possible, and to promptly and fully inform the public and service users on how the strike would be implemented.

### Ombudsman emphasises the significance of diversity in employment

On 29 January 2013, the Human Rights Ombudsman, Dr Zdenka Čebašek-Travnik, and her Deputy, Kornelija Marzel, MSc, attended a conference entitled 'Employment Diversity in the Public and Private Sectors' organised by the Institute for African Studies at the end of the one-year project 'Empower – diversity pays off'. The promotion of active labour market policy in terms of diversity, the employment of the disabled, religious discrimination in employment, and discrimination of immigrant workers were among the topics discussed at the conference.

### Inspectors' conference

On 18 March 2013, the Ombudsman's adviser, Neva Šturm, attended the 11th conference of the Labour Inspectorate of the Republic of Slovenia entitled 'Workplace Health Promotion' in Brdo pri Kranju.

### Chief Labour Inspector submits annual report to the Ombudsman

On 16 May 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, and her Deputy, Kornelija Marzel, MSc, received the Chief Labour Inspector, Franc Rančigaj, and his colleagues. The Chief Labour Inspector submitted the Inspectorate's annual report to the Ombudsman.

### Ombudsman and Minister Kopač Mrak call on employers to respect workers' rights

On 4 June 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, and the Minister of Labour, Family, Social Affairs and Equal Opportunities, Dr Anja Kopač Mrak, were informed at a meeting of procedures that both institutions had instigated in order to resolve the problem of two workers who had called attention to their distress by protesting outside the National Assembly building. They were appalled at the actions of their employer and several other employers who unscrupulously violate workers' rights. Therefore, they called on employers to respect workers' rights and abide by business ethics, and on the legal authorities to respond consistently and swiftly.

### **Ombudsman's meetings with the Director-General of the ZZZS**

Workers absent from work due to illness for over 31 days whose employers did not pay wage compensation contacted the Ombudsman. The Health Insurance Institute of the Republic of Slovenia (ZZZS) rejected their claims for the payment of wage compensation directly by the ZZZS, since there was allegedly no legal basis for the ZZZS to do so. On 6 June 2013, the Ombudsman and her team met legal representatives of the two workers on strike and Director-General of the ZZZS, Samo Fakin, and his team. They discussed the possibilities of direct payment of wage compensation due to absence from work on the basis of a decision of the Constitutional Court. The Ombudsman also met the Director-General on 21 November 2013. Most attention was paid to the problem of the payment of wage compensation for sick leave pursuant to Article 137 of the Employment Relationship Act, and to certain issues regarding the implementation of the EU Directive on cross-border health care.

### **Responsibility of the state for (non-)payment of social security contributions**

On 3 July 2013, the Deputy Human Rights Ombudsman, Kornelija Marzel, MSc, invited Acting Director-General of the General Tax Office, Jana Ahčin, and Acting Chief Inspector at the Labour Inspectorate of the Republic of Slovenia, Nataša Trček, to a meeting. They were seeking solutions to improve the situation regarding the (non-)payment of social security contributions.

### **Case of workers protesting outside the Parliament successfully concluded**

On 4 July 2013, upon submitting the Ombudsman's Annual Report for 2012, the Human Rights Ombudsman, Vlasta Nussdorfer, presented to the presidents of the Republic of Slovenia and the National Assembly, Borut Pahor and Janko Veber, the successful epilogue to the case of two workers protesting outside the Parliament.

Both presidents welcomed the information. President Pahor even visited both workers together with the Ombudsman. The Ombudsman informed the workers that their requests had been granted, and that the Health Insurance Institute of the Republic of Slovenia would transfer sickness benefits to their accounts to cover the duration of their sick leaves on 5 July 2013.

### **Cooperation with unions**

On 23 October 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, and her colleagues met the President of the Association of Free Trade Unions of Slovenia, Dušan Semolič, MSc, and the Association's Executive Secretary, Goran Lukić, at the Ombudsman's office. They emphasised the significance of cooperation between institutions which both note numerous violations of the rights of workers, the unemployed, the elderly, immigrants, the disabled and other groups, and agreed that there were too many obstacles to exercising workers' rights and that they would strive to eliminate these obstacles with mutual cooperation.

### **Empowerment of workers is the first step towards exercising their rights**

On 28 November 2013, the Deputy Human Rights Ombudsman, Kornelija Marzel, MSc, attended a round table panel on the topic 'Workers' Rights – Third-Rate Topic'. The participants discussed the most common violations of the rights of employees and why certain violations have been repeated for years without a suitable response from the competent authorities. Workers are frequently helpless, desperate and their dignity is abused, since they are too afraid to report violations. The round table panel was organised by the Association of Free Trade Unions of Slovenia on the 71st anniversary of the newspaper *Delavska enotnost* (Workers' Unity) at the premises of the Cultural Centre of the Public Fund for Cultural Activities of the Republic of Slovenia.

### **Polygraph testing for employment relationships is unacceptable**

On 4 December 2013, the Ombudsman published her opinion regarding the issue of screening employees in state-owned enterprises with a polygraph. The Ombudsman expressed her opinion that the use of polygraph tests was an excessive and disproportionate invasion of privacy, personal rights and dignity of workers; therefore, it should not be used in the field of employment relationships without an explicit legal basis, especially not in the public sector.

## Contested articles of the austerity act do not comply with the Constitution

On 12 June 2012, the Ombudsman filed a request for a constitutional review of Articles 188 and 246 of the Fiscal Balance Act (ZUJF). On 17 December 2013, the Constitutional Court publicly announced their decision on the aforementioned provisions, which refer to the termination of employment contracts of public servants who meet the conditions for old-age retirement. The Court decided that those provisions which refer to female public servants do not comply with the Constitution.

### 2.10.7 Review of Recommendations on Employment Relations

**109.** The Ombudsman requires the Government to take measures to ensure a transparent, efficient and fast supervision system for the payment of salaries, i.e. for net amounts and all deductions.

**110.** The Ombudsman proposes that the Ministry of Justice prepare such amendments to the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act that also consider non-payments for work which an individual must perform prior to submitting an extraordinary termination of employment relationship priority claim.

**111.** The Ombudsman proposes again that the Ministry of Justice amend the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act and transfer to the state the liability for severance payment in cases of companies in partial state ownership.

**112.** The Ombudsman proposes again that the Government ensure that procedures in all supervisory institutions (inspectorates, courts and others) are carried out within reasonable time limits. We propose strengthening human resources where necessary by reassigning public servants.

**113.** The Ombudsman proposes that the National Assembly adopt a reliable explanation of Article 137 of the Employment Relationship Act.

**114.** The Ombudsman proposes that the Ministry of the Interior prepare amendments to the ZUJF and, as an exception to the limitations regarding annual leave,

acknowledge the criteria for protecting and caring for, physically, and moderately, severely or profoundly intellectually disabled persons.

**115.** The Ombudsman proposes that the Ministry of Labour, Family, Social Affairs and Equal Opportunities, the Ministry of Education, Science and Sport, and the Government prepare and adopt a suitable strategy for granting scholarships for studies abroad, i.e. relating to occupations for which there is a shortage of personnel who can be employed in Slovenia.

**116.** When preparing public tenders for granting scholarships for studies abroad, the Slovene Human Resources Development and Scholarship Fund should consider realistic employment options in Slovenia when determining the obligation of scholarship recipients to find a job in Slovenia after completing their studies.

**117.** The Ombudsman proposes that the Ministry of Labour, Family, Social Affairs and Equal Opportunities, and the Ministry of Education, Science and Sport consider amending the regulations so that, if a student 'skips' a year, grades from the certificate for the year when the grades are higher are considered when calculating the average.

**118.** The Ombudsman proposes amending the regulation to enable secondary school pupils to be paid their scholarship in a single amount at the end of an academic year during which the pupil fulfils the obligations for two years, and not only after the education has been completed.





# 2.11

## PENSION AND DISABILITY INSURANCE

Area of work	Cases considered			Resolved and founded		
	2012	2013	Index 13/12	No. of resolved	No. of founded	Percentage of founded among resolved
<b>11. Pension and disability insurance</b>	<b>350</b>	<b>490</b>	<b>140,0</b>	<b>468</b>	<b>265</b>	<b>56,6</b>
11.1 Pension insurance	292	435	149,0	418	259	62,0
11.2 Disability insurance	58	55	94,8	50	6	12,0

In 2013, in the field of pension and disability insurance, we particularly dealt with the consequences that complainants faced when the reform of the pension and disability insurance system was introduced. This year was also marked by activities to eliminate the violation of the right to equality by the Fiscal Balance Act (ZUJF), which was established by the Constitutional Court of the Republic of Slovenia. In the 2012 Annual Report, we reported extensively on the questionable content of the Act and the decision of the Constitutional Court. However, the Government was still preparing a special act to eliminate the discrimination against certain categories of pensioners when we were writing the report. More details on the elimination of the consequences of the Constitutional Court's decision are given below.

The number of complaints about pension insurance fell by approximately a third, primarily on account of complaints received in the previous year regarding the ZUJF, and while complaints regarding disability insurance remained at the same level as in previous years, which may suggest that there are no significant problems in this field, except those mentioned below.

The Pension and Disability Insurance Act (ZPIZ-2) determined various time frames for those responsible for drafting implementing regulations, within which the latter must adopt implementing acts and thus provide opportunities for the comprehensive implementation of pension and disability legislation. **We established that the Ombudsman's recommendation from the previous year is still relevant i.e. that the competent executive bodies should prepare and issue all implementing regulations anticipated by the ZPIZ-2 as soon as possible. The minister responsible for health should have issued a regulation on occupational diseases and works where these diseases occur, the conditions for a disease to be deemed occupational disease and the procedure of establishing, verifying and reporting occupational diseases by the end of 2013.** To the best of our knowledge, such a regulation has not been adopted yet. Therefore, the field of occupational diseases remains unregulated and the provision of Article 424 of the ZPIZ-2 unrealised.

**The implementing regulations anticipated by the Equalisation of Opportunities for Persons with Disabilities Act have also not been adopted.** However, what is of greater concern is that **the Council for the Disabled has not met as an expert and advisory body of the Government since mid-2012** (according to the information on the website of the Ministry of Labour, Family and Social Affairs).

**The Personal Assistance Act and the Long-Term Care Act** are still sitting on the desks of the competent ministries. In accordance with the legislative programme, the latter was expected to be prepared by the Government by mid-2014.

In 2012, we established excellent cooperation with the management of the Pension and Disability Insurance Institute of the Republic of Slovenia (ZPIZ), with which we meet annually to study issues brought to our attention by complainants. The ZPIZ always observes the deadlines and sends us replies to our inquiries before they expire.

### 2.11.1 Fiscal Balance Act (ZUJF)

In 2012, when the reaction of those people who were affected was at its height, the Ombudsman worked a great deal on the problem of reduced pensions for certain categories of pensioners pursuant to the Fiscal Balance Act (ZUJF). The Act affected approximately 26,000 pensioners, with some pensions being reduced by up to 24 per cent.

**Based on our request, the Constitutional Court established that this measure was unconstitutional and that Article 14 of the Constitution had been violated (Decision no. U-I-186/12-34 of 14 March 2013). The Constitutional Court did not determine how to eliminate all the consequences of repealing the unconstitutional provisions of the ZUJF. It merely determined the obligation of the ZPIZ to issue a new decision to all those affected.**

We proposed that the ministry prepare expert groundwork which would facilitate the introduction of a suitable legal basis to eliminate all the unconstitutional consequences of the ZUJF which were not fully eliminated by the decision of the Constitutional Court.

Considering the various information circulating in the public, the Ombudsman stated in a letter to the ministry that **information** regarding the intended solution to the aforementioned problem for all those affected **published by the ministry** would reduce the dissatisfaction of a certain number of pensioners who will have problems understanding that the requirements of the rule of law (observance of the legal regulation) actually prevent them from realising the requirements of the same rule of law (observance of the principle of equality). The Ombudsman also proposed that the ZPIZ publish on its website any information that would help beneficiaries in potential further procedures to avoid misunderstandings and questions from individuals seeking information from the Ombudsman.

The Ombudsman's website at [www.varuh-rs.si](http://www.varuh-rs.si) also **includes a special section 'ZUJF'** which contains information regarding our work in this field.

#### Repayment of pensions without interest

In May 2013, the National Assembly adopted the Act on Remedying Consequences of Repeal of Paragraphs 2, 3 and 4 of Article 143 of the Fiscal Balance Act, which divided the repayment of pensions that had been reduced into two instalments by referring to the state's financial problems, but did not anticipate the payment of interest.

Many complainants pointed out to us the new discrimination and the injustice of the legal regulation, and accused the ZPIZ of negligent work and disrespect for the decision of the Constitutional Court. Individual complainants highlighted the different treatment of individual groups of people, and compared their position with the position of public servants: the state reduced the latter's salaries, and later (also on the basis of the decision of the Constitutional Court) had to fully repay them, with those affected being entitled to interest for the duration of the unconstitutional reduction of salaries. The different treatment of similar relationships which is the result of the different social power of groups of people (pensioners were not represented by powerful unions during the negotiations regarding the elimination of violations) may be defined as a violation of Articles 14 (Equality before the Law) and 26 (Right to Compensation) of the Constitution.

The Ombudsman agrees with the assessment of the injustice of the adopted legal regulation, as the state is only repaying part of the damage incurred in this case of a unilateral infringement of individuals' rights. When considering a complaint which inter alia accused the ZPIZ of not paying interest, we assessed that the ZPIZ

should render a decision regarding all claims pursuant to the General Administrative Procedure Act: if a claim required the payment of interest in addition to the difference in the pension, the ZPIZ should render a decision on this, and either dismiss or reject the claim. If a claim was not so definite and interest was only mentioned in the justification of the claim, the ZPIZ should respond to that at least in the explanation of their decision. We pointed out this shortcoming at a meeting with representatives of the ZPIZ.

## 2.11.2 Pension and Disability Insurance Act

At the beginning of 2013, we received an unusually high number of complaints concerning pension and disability insurance, which is the consequence of the new Pension and Disability Insurance Act (ZPIZ-2). Due to bad experience with the consequences of the Fiscal Balance Act (ZUFJ), the predicted pension reform caused unrest and uncertainty among pensioners. A public discussion of the proposed reform was limited to amendments regarding the age conditions for retirement and the length of insurance period, while the transitional provisions of the Act were more or less ignored, despite being essential for certain categories of insured persons. The transitional provisions of an act usually facilitate a gradual transition to the new arrangement, as they distribute the burden of reduced or restricted rights on individuals more evenly (unfortunately, each reform tightens certain conditions and restricts rights).

The coordination among social partners was intensive and extensively covered by the media, and the proposed act was the subject of public discussion. Nevertheless, the Ombudsman cannot avoid noting that the ministry responsible for drafting the Act, i.e. the Ministry of Labour, Family, Social Affairs and Equal Opportunities, and the legislators paid insufficient attention to informing the public on all the anticipated consequences of the reform, especially those insured persons whose interests had clearly not been represented to the same extent as the interests of employees, i.e. long-term unemployed insured persons and those insured persons who had expected to exercise their rights promptly pursuant to the applicable legislation, but for whom the reform postponed the exercising of their rights for shorter or longer periods or considerably modified the conditions for exercising their rights. This opinion is confirmed by the numerous complaints received which showed that the retirement of certain individuals had been extended for five or more years. Therefore, it is not surprising that the legislators had to amend the ZPIZ-2 (ZPIZ-2A, Official Gazette of the Republic of Slovenia, no. 39/13) a few months after its introduction and alleviate the exercising of rights for a certain group of unemployed. This is an illustration of how the pension (or any other) reform should not be prepared.

## 2.11.3 Disability insurance

The number of complaints received in this field is the same as in the previous year. The complainants especially expressed their disagreement with expert opinions of disability committees, and consequently, with the decisions of the Pension and Disability Insurance Institute of the Republic of Slovenia (ZPIZ). Due to unsuccessful negotiations regarding the exercise of (new) rights arising from disability insurance (change in the category of disability), complainants most frequently expected the Ombudsman to assess the accuracy of decisions made by the expert bodies of the ZPIZ, since, in their opinion, the complainants were not able to perform their work due to health problems.

The Ombudsman cannot assess the accuracy of the expert opinions which form the basis for decisions on the rights exercised by individuals, and has no power to influence in any way the substantive decisions of authorities responsible in this decision-making procedure. An assessment of the accuracy and legality of an individual decision rendered in a certain procedure is also excluded. Therefore, we could only advise complainants to promote their potential disagreement with an individual decision within a certain procedure with the legal remedies available.

We received four complaints regarding the right to disability allowance for physical impairment. Since the Pension and Disability Insurance Act (Official Gazette of the Republic of Slovenia, no. 96/2012; ZPIZ-2) was passed on 1 January 2013, this right is no longer a right stipulated by this Act. Its regulation is transferred to regulations regarding the protection of the disabled, which will regulate procedures for establishing the type and level of physical impairment. Until these regulations are introduced, insured persons may still acquire

the right to disability allowance, but only for physical impairments which occurred due to an injury at work or occupational disease. Pursuant to Article 403 of the ZPIZ-2, legislation on protection of the disabled to regulate procedures for establishing the type and level of physical impairment must be adopted within two years of its enforcement. The Ombudsman noted the problem of physical impairments in the 2001 Annual Report, as well as in the annual reports for 2008 and 2010. We expect the minister responsible for health and the minister responsible for the protection of the disabled to respect the statutory time limit, and that legislation regulating issues related to physical impairment will be passed promptly. This would actually be appropriate, since it would also realise the recommendation approved by the National Assembly of the Republic of Slovenia when discussing the Ombudsman's report for 2001 in which the Ombudsman invited the Government (point 15) to prepare a new, updated list of physical impairments, as the current list does not facilitate their accurate and equal treatment.

If suitable legislation is not passed, insured persons will only be able to exercise their right to disability allowance to a limited extent, i.e. only for physical impairments which occurred due to an injury at work or occupational disease, for which regulations applicable until 31 December 2012 are taken into account.

### Procedures of the ZPIZ

Complaints in the field of pension and disability insurance included few complaints regarding the duration of procedures for the exercising of rights arising from the aforementioned insurance. Based on complaints received, we did not establish any delays in decision making in first instance procedures. Unfortunately, this does not apply to complaint procedures.

According to our information, the ZPIZ's caseload of complaints has increased since the introduction of the Fiscal Balance Act (since 31 May 2012) regarding both the Fiscal Balance Act and the exercising of rights pursuant to the Pension and Disability Insurance Act. Therefore, the period for resolving complaints is longer than the statutory two months for rendering a decision on a complaint (the period starts on the day when the authority receives a complete complaint). In the Ombudsman's opinion, this is not acceptable. Nevertheless, it must be taken into account that the time limit for issuing a decision is not binding on the ZPIZ and that the ZPIZ has personnel problems due to the increased caseload of complaints.

In view of the financial and economic situation in Slovenia, it is our assessment that one cannot realistically expect the ZPIZ to ensure decisions about complaints to be rendered within the statutory time limits even with additional personnel. Nevertheless, we pointed out the problem of lengthy periods for resolving complaints at a meeting with representatives of the ZPIZ on 28 November 2013. We expect delays in rendering decision on complaints by the ZPIZ not to exceed reasonable time limits. Exceeding the time limit for issuing a decision generally does not constitute a significant violation of the rules of procedure. However, to considerably exceed time limit in light of the circumstances of an individual case may lead to a violation of equal protection of rights.

## 2.11.4 Review of activities

### A small step for the Ombudsman, a giant leap for the rule of law

On 19 March 2013, the Ombudsman responded publicly to the judgement of the Constitutional Court, which concurred with the Ombudsman's arguments that certain provisions of Article 143 of the Fiscal Balance Act (ZUJF) contravened the Constitution of the Republic of Slovenia. The Ombudsman filed a request for a constitutional review of Article 143 of the ZUJF immediately after the introduction of the Act (19 July 2012) on the basis of complaints from several pensioners' associations and societies, and over 250 outraged individuals whose pensions had been reduced by up to 24 per cent pursuant to this Act. All reduced pensions will be reinstated to the amount pertaining to the person eligible prior to the introduction of the ZUJF through decisions of the Pension and Disability Insurance Institute of the Republic of Slovenia. The Ombudsman pointed out to the competent authorities that hasty amendments to regulations also have financial consequences in addition to violations of human rights.

### Ombudsman's representatives with the Director-General of the ZPIZ

On 28 November 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, her Deputy, Tone Dolčič, and advisers, Nataša Bratož and Barbara Kranjc, attended a working meeting with the Director-General of the Pension and Disability Insurance Institute of the Republic of Slovenia (ZPIZ), Marjan Papež, and the Director of Insurance Division, Boris Gačnik. They discussed the consequences of implementing the ZUJF, which placed a great burden on the ZPIZ because of complaint procedures and damage estimated at approximately EUR 1 million.

## 2.11.5 Review of Recommendations on Pension and Disability Insurance

**119.** The Government should ensure that the competent state authorities prepare and adopt implementing regulations promptly and within statutory time limits to facilitate the implementation of individual acts, and adopt those regulations for which the time limit has already expired as soon as possible.

**120.** The Ombudsman recommends that the competent bodies of the ZPIZ consistently decide on all complaints from insured persons pursuant to the General Administrative Procedure Act, and fully explain the reasons in the explanation as to why individual claims were dismissed or rejected.

**121.** The Ombudsman recommends that the Government and all state authorities preparing regulations pay special attention to financial consequences of new solutions in all fields, not only regarding the state budget. All insufficiently deliberated solutions lead to high direct and indirect costs, while all the consequences of citizen's distress can never be objectively established. Therefore,

state authorities should pay more attention to suitable training for all those participating in the procedure for preparing regulations which have measurable financial consequences.

**122.** The Ombudsman proposes that the Ministry of Labour, Family, Social Affairs and Equal Opportunities prepare an analysis of the realisation and effects of the Pension and Disability Insurance Act (ZPIZ-2) by the end of 2014, and organise a public discussion on the findings and assessments, as well as prepare potential amendments to the pension and disability insurance system.

**123.** The Ombudsman recommends that the Pension and Disability Insurance Institute of the Republic of Slovenia ensure everything needed to render decisions within the statutory time limits, and in cooperation with the Ministry of Foreign Affairs establish a way to simplify and shorten procedures which include the participation of foreign policyholders.





# 2.12

## HEALTH CARE AND HEALTH INSURANCE

Area of work	Cases considered			Resolved and founded		
	2012	2013	Index 13/12	No. of resolved	No. of founded	Percentage of founded among resolved
<b>12. Health care and health insurance</b>	<b>117</b>	<b>140</b>	<b>119,7</b>	<b>120</b>	<b>25</b>	<b>20,8</b>
12.1 Health insurance	51	58	113,7	53	6	11,3
12.2 Health care	66	82	124,2	67	19	28,4

The number of complaints in the field of health care did not significantly increase compared to 2012, which is probably due to better public awareness that, when dealing with the inappropriate behaviour of health care workers or inappropriate health care, patients' rights representatives can be of more assistance than the Ombudsman, who cannot represent them in specific procedures. Annual reports submitted to the Ombudsman by patients' rights representatives show that more and more of the misunderstandings arising between patients and health care workers are resolved within the health care institutions where they arose. This confirms that one of the objectives of the Patient Rights Act has been realised.

**In our 2012 Annual Report, we proposed that the Ministry of Health promptly prepare a proposal for urgent amendments to health care legislation or proposals for new acts, and include in the procedures for preparation and public discussion the interested expert public and users of health care services. Unfortunately, the Ministry only partially followed this recommendation: they drafted amendments to certain acts, and enabled the public to submit their comments and proposals. However, the draft has not been submitted to the Government for discussion or to the legislative process for (to the Ombudsman) unknown reasons. Such an attitude to the participating public is actually offensive, and as a result, individuals will no longer wish to participate in public discussions which turn out to be futile.**

The silence of the Ministry of Health regarding the comments and proposals for draft acts received also violates the principle of responsiveness defined by item VI(2a) of the 2009 Resolution of the National Assembly on Legislative Regulation.

Health care institutions and other providers of health care services replied to individual inquiries promptly or within the time limits, while the Ministry of Health had to be invited several times to provide their replies. Failure to observe the time limits reflects an inappropriate attitude to the Ombudsman. However, the possibility that complaints and other letters of individuals are treated in the same way is even more worrisome. **The Ombudsman frequently points out to state authorities and holders of power that a prompt and suitable reply may prevent lengthy and expensive legal proceedings, even if it does not meet the expectations of the person affected.**

## 2.12.1 Health Services Act

In this year's report, we cannot avoid alerting to the fact that **supervision in health care is inadequate and insufficient**. Expert supervision and advice should be performed and provided by chambers or associations of health service providers based on public authority. If the providers do not have the authority or if it is revoked, these tasks are carried out by the ministry. It transpired at an expert consultation organised when this report was being written that the norms and standards, and protocols of conduct in certain fields had not been determined, and thus a question arose as to how supervisors could do their work and what could be advised as good practice. It is true that errors established during expert supervision are not automatically sanctioned. However, basic guidelines and rules of conducts should be initially established in order to create good practice.

In its report as the response to the Ombudsman's report for 2012, the Ministry of Health undertook to regulate expert supervision in the new Health Services Act differently.

### Example

#### Using cannabis for medical purposes

In 2013, the Human Rights Ombudsman again received a complaint regarding the use of cannabis for treatment. The complainant stated that cannabis helped him deal with a chronic disease. The complainant believed that he had the right to a treatment he selected, which is the most helpful and without the side effects produced by prescription medication, and without fear of the police.

We could only help the complainant through advice. It is not (yet) possible to legally grow cannabis for medical purposes in the Republic of Slovenia. The Ombudsman cannot convey an opinion regarding the admissibility of using cannabis for medical purposes, since this is an expert medical issue to be clarified by the profession. Nevertheless, we do believe that the issue should be explored and an opinion should be conveyed. Therefore, we contacted the Ministry of Health regarding this issue. In 2012, we were informed that the Commission of the Republic of Slovenia for Drugs had decided to address aspects of using cannabis for medical purposes in more detail. Following the receipt of the complaint, we made an inquiry at the Ministry of Health. We requested to be informed of further activities, especially whether the Commission had addressed the aforementioned issue and what decisions have been taken.

The Ministry of Health informed us that the Commission discussed the issue in June 2013. The Commission was informed that, in accordance with the UN conventions and the applicable legislation in the Republic of Slovenia, cannabis and THC were classified in the first group of the Decree on the scheduling of illicit drugs, which includes substances that may be used only for scientific, research, and leaning purposes. Psychotropic substances classified in the second or third group based on expert evidence may be used in medicine. The Commission was also informed that prohibited substances from the first group (e.g. cannabis or THC) may be transferred into the second or third group if suitable expert evidence is acquired.

In accordance with the Commission decision, the Ministry of Health invited six expanded professional boards, i.e. the expanded professional boards of anaesthesiology, oncology, psychiatry, neurology, ophthalmology and clinical psychology, to provide their expert opinions regarding the use of cannabis for medical purposes. By the time a response to the Ombudsman had been prepared in December 2013, only the Expanded Professional Board of Psychiatry had delivered an opinion, which stated that the active substance in cannabinoids had not proven to be therapeutically efficient in medicine. At the same time, it pointed out well-known serious mental health complications that may arise from the use of cannabis. The Expanded Professional Board of Psychiatry saw no need to use cannabis for medical purposes.

The Ministry of Health emphasised that the position of countries regarding the use of cannabinoids or cannabis for medical purposes differ. In certain countries (e.g. Austria), cannabinoids are used in medicine as medications, while in other countries (e.g. Sweden) are more reserved and defend the position that the same medical effects may be ensured with other medications which are not classified as illicit drugs. Where cannabinoids are used as medications, they are subject to registration procedures like any other medication. In Austria, Dronabinol is used in medicine, which is a cannabinoid with psychotropic effects. The medication



is used, for example, to stimulate appetite in AIDS patients, and against nausea, especially in cancer patients who are treated with chemotherapy and do not respond to any other therapy for nausea prevention. Due to its psychotropic effects, the use of the medication is not advised for children and people with past drug addiction problems. Due to its side effects, including the possibility of epileptic seizure, the medication may be consumed under strict medical supervision.

In Slovenia, medications may be launched on the market after the procedure for acquiring a marketing authorisation (registration), which has been prescribed by EU legislation and transferred to Slovenia legislation, has been completed. The Agency of the Republic of Slovenia for Medicines and Medical Devices has the authority to issue marketing authorisations in Slovenia. A decision to instigate the procedure for acquiring a marketing authorisation is a business decision of the manufacturer of a medication, while the Agency of the Republic of Slovenia for Medicines and Medical Devices has received no such initiative.

The Ministry of Health decided that it could justifiably propose that cannabis and THC be transferred from the first group to the second or third group in the Decree on the scheduling of illicit drugs and thus facilitate their use in medicine if manufacturers express an interest and if, during the registration procedure, a medication is proven effective and is approved by the profession.

As mentioned above, the Ombudsman cannot convey an opinion regarding the admissibility of using cannabis for medical purposes, since this is an expert issue to be clarified by the profession. We expect the Ministry of Health will further pursue activities to study the issue thoroughly. Most of the aforementioned open questions will certainly be answered or at least additionally clarified in the legislative procedure on the proposed act put forward by citizens at the end of 2013. 3.4-48/2012

## 2.12.2 Patient Rights Act

The Ministry of Health followed the Ombudsman's recommendation from 2011 that the use of special protective measures (SPM) should be regulated in the act regulating patients' rights (such measures are currently regulated by the Mental Health Act). Therefore, the Ombudsman sent the Ministry her proposals and comments regarding the legislative amendments prepared, among which we highlight the request to determine and delimit the tasks and competences of attending doctors and doctors on duty in more detail, as their actions may interfere with patients' freedom of movement. The legal regulation must ensure suitable protection for patients and also for health care workers who implement such coercive measures.

**We especially argued in favour of a more detailed legal definition of the right to a second opinion, as we believe that acquiring a second opinion is part of treatment and hence should be covered by compulsory health insurance.**

In our opinion, the material prepared has also not considered the requirements of the EU Directive on cross-border health care, which would require the adjustment of the regulation to foreigners and patients who do not communicate in Slovenian.

As mentioned above, the ministry has not responded to our proposals, and we do not know when the amended Patient Rights Act will be prepared for the legislative procedure.

During the summer heat wave in 2013, we alerted to the excessively high temperatures in hospitals which make patients' treatment and working conditions for health care staff more difficult. We are well aware that funds for investments in health care institutions are limited and that the problem arises only with extremely high outside temperatures. However, we believe that all public institutions and the Ministry of Health should together prepare multi-annual programmes for the air-conditioning of their premises and thus provide patients with suitable living conditions.

## Example

### Problems with providing an interpreter in health care

The Ombudsman was contacted by a doctor who described her problems with providing an interpreter for a patient from Yemen who had the status of an internationally protected person. The patient's knowledge of Slovenian was very poor. The complainant found herself in doubt regarding her understanding of the patient when she spoke about her health problems, and the patient's understanding of issues relevant for the establishment of a diagnosis and further treatment. The patient's knowledge of Slovenian and English was poor, and the complainant was aware that she had the right to communicate in Slovenian. Nevertheless, she tried to understand the patient using a manner familiar to the patient (e.g. they used an online translation tool in the patient's language), despite this requiring significantly more time from the doctor at the expense of other patients. The complainant contacted the Ombudsman to help her secure an interpreter.

To solve the problem and help the patient, the complainant sought assistance from the Ministry of the Interior and Public Administration, which explained to the complainant that it was not competent to provide interpreters and translators for the implementation of the health care for internationally protected persons. Pursuant to Article 10 of the International protection Act (ZMZ), the right to an interpreter is provided only to applicants for international protection if they do not understand the language, but not to persons whose international protection has already been recognised. The Ministry told the complainant to treat the patient as an insured person when exercising the right to health care and not as an applicant for international protection whose health care is limited to the right to urgent treatment. Pursuant to Article 90 of the ZMZ, the Ministry provides persons with recognised international protection in Slovenian and in the language they understand only such information as is necessary to facilitate their integration in the environment, primarily information related to accommodation, the exercising of rights to financial support, social assistance and health care, education, employment and free legal aid. In practice, the Ministry ensures this right by providing an information brochure translated into languages which internationally protected persons can understand and by personal counselling. The ministry's assistance regarding health care is limited to information on accessing health care services and assistance with enforcing health insurance. The Ministry concluded their letter with the information that the patient had been included in a 300-hour course in Slovenian language, which she had terminated of her own free will in order to be included in a literacy programme in a primary school for adults.

We referred the complainant to non-governmental organisations which implement the programme of assisting persons who are applicants for international protection and persons with recognised international protection. The complaint was assessed as unfounded. Nevertheless, the complainant's problem aroused our interest in that doctors may encounter cases during their work when their knowledge of the medical profession is insufficient. Although we cannot accuse the competent institutions of inadequate conduct, the problem has not been not solved. It remained on the doctor's shoulders, and we can only compliment her on her efforts to provider her patient with suitable, safe and high-quality health care despite communication problems. 3.4-28/2013

**The Ombudsman has been establishing and emphasising that communication between health care workers and patients is of key importance, since many complications may be avoided with proper communication. We wrote about this issue in our annual reports for 2009 and 2010. We are aware of the problems that remain in this field, but also notice that all those responsible are aware of this and that the ZZS has been paying more attention to proper communication in recent years.**

### 2.12.3 Removal and Transplantation of Human Body Parts for the Purposes of Medical Treatment Act

In mid-2012, we received the text of the new Removal and Transplantation of Human Body Parts for the Purposes of Medical Treatment Act for consideration. We pointed out to the proposer that the Act must clearly define and delimit individual's rights and the rights of their relatives to reject or approve the use of their

organs following a person's death. As the entire regulation of organ donation is based on voluntary actions, all substantive legal assumptions regarding the consent of the deceased are legally questionable and should be avoided by the Act.

## 2.12.4 Complementary and Alternative Medicine Act

We stress again that the Complementary and Alternative Medicine Act passed in 2007 has not yet been realised. The greatest obstacle to establishing a network of providers of complementary treatment methods which have already been recognised in other countries is the unreasonable requirement, in comparison with foreign arrangements, of the Medical Practitioners Act that doctors must not perform homeopathic activity or risk losing their licence. Patients who would opt for homeopathic treatment cannot even acquire a prescription for homeopathic medications, despite there being no legal limitations on their issue.

In its response to the Ombudsman's report for 2012, the Ministry of Health stated that they would prepare a new Complementary and Alternative Medicine Act which would partially transfer complementary and alternative medicine to the field of the economy as a usual service activity. The new Act is expected to be adopted in 2014.

## 2.12.5 Health Care and Health Insurance Act

In almost all annual reports, the Ombudsman invited the Health Insurance Institute of the Republic of Slovenia (ZZZS) to substantively enhance decision making on individual rights arising from compulsory health insurance, as particularly second instance decisions had not been adequately justified and had not conveyed their opinion regarding all the reasons for a complaint. We proposed that the ZZZS inform doctors to observe the provisions of the General Administrative Procedure Act which refer to the elements of a decision and decision making regarding a complaint.

In the Ombudsman's opinion, most reviewed decisions of the ZZZS did not include the elements of explanation as stipulated by the General Administrative Procedure Act (ZUP).

If a complaint does not delay the execution of a decision, the explanatory note should refer to the regulation stipulating this. The explanatory note of the decision should also include an explanation of those decisions that cannot be appealed.

When reviewing the decisions considered, we established that they did not comprise any of the elements that an explanatory note should include. The majority of both explanatory notes stated regulations, which, however, carries no weight, since the explanatory notes showed neither the actual situation nor the reasons for such a decision.

**We pointed out the aforementioned shortcomings to the management of the ZZZS at two meetings. The ZZZS followed the Ombudsman's proposal and we can happily confirm that the quality of decisions in 2013 significantly improved. This probably also resulted in the small number of founded complaints considered by the Ombudsman.**

Example

### **Right to wage compensation for the duration of a hospital stay with a child**

In her complaint, the complainant stated that she had stayed in a hospital with her daughter when the latter was hospitalised. It was not until the check-up by a paediatrician that she realised that she was not entitled to a compensated absence from work for the duration of her hospital stay with her daughter. Fortunately, the complainant managed to agree with her employer on annual leave on the disputable days. However, she emphasised that she could have lost her job if her employer had not been so understanding.

The Health Care and Health Insurance Act (ZZVZZ) stipulates the right to wage compensation for the duration of the hospital stay of a parent with their child in cases of serious diseases. At the proposal of the Professional Board of the University Medical Centre Ljubljana – Division of Paediatrics, the appointed doctor extends the duration of the right to wage compensation for child care (the Act stipulates between seven days and six months as the duration of this right) in cases when this is necessary due to a severe brain injury, cancer or other especially serious deterioration in the patient's condition. At the proposal of the aforementioned Professional Board, the appointed doctor may also approve the right to wage compensation to a parent when such a child is hospitalised. This right may be exercised by only one of the parents until the child is 18 years of age or for the duration of the parental right. The duration of absence from work depends on the disease and is assessed individually in the light of the dynamics of its progress. Pursuant to the sixth paragraph of Article 138 of the Rules on compulsory health insurance, the right to wage compensation is also granted to one of the parents in the cases referred to in the second and third paragraphs of Article 40 of the Rules (for children with profound brain or spinal cord damage or injury, and for children with chronic diseases or conditions for which parents must be trained in order to implement rehabilitation at home), and in the second paragraph of Article 135 of the Rules (if a child is referred for treatment abroad, the child is entitled to be accompanied during both the journey and treatment).

Based on the aforementioned, we establish that the assessment of whether a parent is entitled to wage compensation for the duration of their hospital stay with a child is not a matter for either the Health Insurance Institute of the Republic of Slovenia (ZZZS) or an individual hospital to decide. We believe that parents should be promptly informed about whether they are entitled to wage compensation for the duration of their hospital stay with a child. We agree with the complainant that it was inappropriate for her to learn of this only during a check-up with a paediatrician. We also agree that one of the parents should have the right to stay with their child in hospital without having subsequent problems at work or, in extreme cases, even losing their job. The complaint was assessed as founded. 3.3-43/2013

## Example

### **Discriminatory regulation regarding reimbursement for blood donors**

A complainant informed us of his dissatisfaction with the Health Insurance Institute of the Republic of Slovenia (ZZZS), as they do not recognise the right to wage compensation for the self-employed for the day of blood donation.

Pursuant to the Supply of Blood Act (ZPKrv), blood donation is a humanitarian activity pursued in accordance with the principles of voluntarism, free service and anonymity. The principles of voluntary and free-of-charge blood donation also apply.

Article 167 of the Employment Relationship Act (ZDR-1) regulates the right of workers to absence from work for health reasons. Pursuant to the first paragraph of the ZDR-1, workers are entitled to absence from work if they are temporarily unable to perform work due to a disease or injury, and in other cases in accordance with the regulations on health insurance. Pursuant to the second paragraph of Article 167, workers also have the right to absence from work on the day of the voluntary blood donation. In this case, employers pay wage compensation to workers, which is covered by health insurance. We deduce from this regulation that the legislator's purpose was primarily to prevent employers from disabling or limiting workers' opportunity to exercise the right to absence from work due to blood donation for economic reasons. Since the self-employed and farmers do not have an employer, the possibility of the latter limiting the right to absence from work is pointless.

The Ombudsman established that the legislators had used the aforementioned provision to regulate the content disputable from the aspect of the legal system, since no right arising from compulsory health insurance has been determined outside the Health Care and Health Insurance Act. In formal and legal terms, the requirement that rights be stipulated by an act was fulfilled. However, it is unusual to provide rights only to certain insured persons.

The Ombudsman has been justly considering what the effect of this regulation has on blood donors. We cannot ignore the fact that the latter are well aware of the economic aspect of their decision to donate blood. Reservations regarding different treatment are thus very sensible, as we cannot ignore the fact that employees who decide to donate blood receive wage compensation for that day (which is covered by the ZZZS), while the self-employed in the same circumstances do not. This means that the dilemma concerning the economic rationality of blood donation in the case of the latter still exists, as they are actually their own employers, even if they do not receive any salary. If they do not work on the day of the blood donation, they are in an unfavourable position. We establish that the legislators did not expressly regulate the issue of compensation covered by health insurance for those insured persons whose income arises from self-employment and farmers.

The Ombudsman doubts that the legislators wished to expressly determine various scopes of a right arising from compulsory health insurance – the right to compensation during absence from work due to blood donation. The reason for the discrepancies in the enjoyment of rights must always be reasonable and factually justified, which must be taken into account when preparing and explaining legislation. The Ombudsman believes that the discrepancies in enjoying rights arising from health insurance must not depend on the legal basis for health insurance, i.e. on the (non-)existence of an employment relationship. There is no sensible reason based on the nature of the issue for this. The Ombudsman also believes that all blood donors insured with the ZZZS are in the same objective position, regardless of whether they are employed, self-employed or farmers, as they all make their living through income arising from their work and pay health insurance contributions. The legal basis for health insurance in this context is only an insignificant personal circumstance. Therefore, we believe that legislators overlooked the special legal position of self-employed workers and farmers, and that there is merely a legal gap in this part of legislation. Discriminatory treatment is thus not especially enjoined. The Ombudsman emphasises that the legal position of the aforementioned blood donors is protected by the equality principle referred to in the first paragraph of Article 14 of the Constitution in relation to the right to health care referred to in Article 51 of the Constitution. After legislators recognised the right to compensation during temporary absence from work due to blood donation pursuant to Article 51 of the Constitution, this legally protected right is subject to constitutional protection.

In view of the aforementioned, it is the opinion of the ZZZS that the self-employed do not have the right to wage compensation for the day of blood donation, as this right is regulated by the ZDR-1, which is applicable only to persons who are in an employment relationship and have concluded an employment contract.

The ZZZS also highlights that the described regulation pursuant to the ZDR-1 is a non-systemic interference with the rights covered by compulsory health insurance, as it should be stipulated by the ZZVZZ and not by other regulations. Therefore, it is the opinion of the ZZZS that the payment of wage compensation for blood donors on the day of the donation should be systemically transferred to the state budget. The fact that the financing of such compensation is not the task of the ZZZS also arises from the proposed amendments to the ZZVZZ, which was published on the website of the Ministry of Health and which states inter alia that the coverage of compensation for blood donors by health insurance on the day of the donation is not in compliance with EU directives, and Article 3 of the Supply of Blood Act (Official Gazette of the Republic of Slovenia, nos. 52/00, 2/04-ZZdrl-A and 104/06-ZPKrv-1) which stipulates that blood donation is humanitarian blood donation in accordance with the principles of voluntarism, free service and anonymity, which means that the payment for the day of temporary absence from work due to blood donation from the public purse is in contravention of the principles of voluntarism and free service, and is not in compliance with the basic definition of blood donation as defined in Directive 2002/98/EC of the European Parliament and of the Council of 27 January 2003 setting standards of quality and safety for the collection, testing, processing, storage and distribution of human blood and blood components. According to the ZZZS, it is sensible, in accordance with the guidelines of health policy and promoting blood donation, for the financing to be transferred to the budget of the Republic of Slovenia, and they see no reason for the different treatment of blood donors.

The ZZZS believe that it would be most suitable to provide wage compensation for the day of the donation to all insured persons from the state budget regardless of their status.

## 2.12.6 Review of activities

### On complementary medicine

On 22 January 2013, the Ombudsman, Dr Zdenka Čebašek-Travnik, attended a meeting on issues of complementary medicine at the Medical Chamber of Slovenia. The issues of the status (and licence) regulation of doctors who practice complementary treatment methods in addition to academic medicine were discussed.

### Cancer patients must be paid special attention

On 6 March 2013, the Ombudsman, Vlasta Nussdorfer, addressed participants of a formal session of the Association of Slovenian Cancer Societies. She emphasised that cancer patients are not always able to fight for their rights due to their condition; therefore, they need help from relatives, hospital staff and wider society, and especially the state, which must attend to their rights.

### Proposals for amendments to the Patient Rights Act submitted to the Ministry of Health

The Ombudsman joined the public discussion on amendments to the Patient Rights Act. On 12 March 2013, the Deputy Ombudsman, Tone Dolčič, and the Ombudsman's advisers, Neva Šturm and Simona Šemen, attended a consultation on amendments to the Patient Rights Act at the National Council. They pointed out that the amendment overlooked the coming directive on cross-border health care. On 15 March 2013, the Ombudsman submitted to the Ministry of Health some of her proposals to assist in the formation of the draft act.

### At the consultation 'Medicine and law on the right to die with dignity'

At the traditional 22nd consultation entitled 'Medicine and Law' on 22 March 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, presented her views on the decision to continue or discontinue treatment. The topic of the consultation, which was organised at the University of Maribor by the Maribor Medical Association and the Maribor Bar Association in cooperation with the Faculty of Law and the Faculty of Medicine of the University of Maribor, was the right to live and die with dignity.

### Ombudsman's efforts for people with Down syndrome

On 21 March 2013, the Ombudsman accepted the invitation of the President of the Republic of Slovenia, Borut Pahor, and attended a discussion about the position of children with Down syndrome which was held on World Down Syndrome Day. On 22 March 2013, the Ombudsman attended a charity concert entitled 'As Colourful as a Butterfly'. The concert was organised by the Krško Centre of the Slovenian Down Syndrome Association on World Down Syndrome Day. On this occasion, the Ombudsman addressed the audience and supported with her presence the efforts of all those striving to realise the rights of persons with Down syndrome.

### Ombudsman supports efforts of the Hospice Association

On 8 April 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, visited a hospice which has been operating in Ljubljana since 2010. It is intended for terminally ill adults in the last stage. The hospice is their home, where they are provided with round-the-clock palliative and hospice care. The Vice-President of the Hospice Association, Petra Kersnič, and other members, professionals and volunteers informed the Ombudsman of the operations and efforts for the programmes to be fully financed by the state after 18 years of the operation of the Hospice Association and three years of the operation of the hospice, so they would not depend on donations and tenders.

### Ombudsman and Minister Gantar on current issues

On 14 May 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, her Deputy, Tone Dolčič, and the Ombudsman's advisers met the Minister of Health, Tomaž Gantar, and his colleagues. They discussed the package of new health legislation, the establishment of a regulative framework for the operation of the forensic psychiatry department, urgent paedo-psychiatric treatment for children, recommendations of the Ombudsman as the National Preventive Mechanism for visits to psychiatric hospitals, vaccination of children, alternative treatment methods, the regulation of the position of the hospice and other topics.

## Present and future of health sciences

On 17 September 2013, the Deputy Ombudsman, Kornelija Marzel, MSc, welcomed participants to the 3rd scientific conference from the field of health sciences with international participation, entitled 'The Present and Future of Health Science in Times of Global Change'. The event was sponsored by the Human Rights Ombudsman, Vlasta Nussdorfer.

## Ombudsman's opinion on imprisonment for negligent treatment

On 1 October 2013, the Ombudsman published her opinion that, in accordance with the rule of law principle, she could not comment or oppose a final judgement whereby a doctor was convicted of negligent treatment. All judicial decisions can be contested with ordinary and extraordinary legal remedies. However, once final, they must be unconditionally respected. The Ombudsman highlighted open questions regarding the organisation of emergency health services which require individual providers to suspend their regular work with patients in their clinic during a critical event and offer emergency assistance to patients outside the clinic for an indefinite period.

## European Organ Donation Day

On 12 October 2013, the Deputy Ombudsman, Tone Dolčič, appeared at the 6th European Organ Donation Day organised by Murska Sobota General Hospital and the Institute for Transplantation of Organs and Tissues, Slovenia Transplant. The Deputy Ombudsman presented Ombudsman's comments and proposed legislative amendments in this field.

## The same rules should apply to the treatment of children abroad and at home

A non-governmental organisation drew the Ombudsman's attention to the provisions of the intervention Health Act which was sent by the Government of the Republic of Slovenia for urgent legislative procedure. On 23 October 2013, the Ombudsman publicly pointed out that the act unjustifiably stipulates the rights of children and their parents in a different manner solely on the basis of where health-care services are provided. The Ombudsman emphasised that the same rules should apply to the treatment of children abroad and at home, since a child's needs do not change when the child crosses a state border. The proposed act actually limits the right to health-care services abroad and therefore contravenes the relevant EU directive.

## 2.12.7 Review of Recommendations on Health Care and Health Insurance

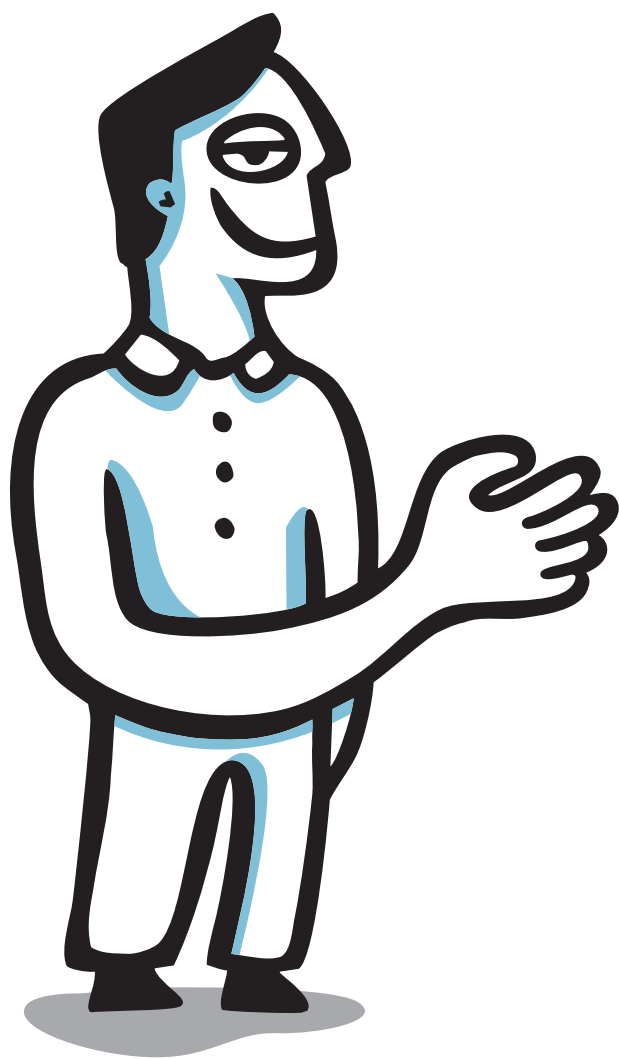
**124.** The Ombudsman proposed that the Ministry of Health promptly prepare positions on health-care and health insurance reform, and organise a wide public discussion of all interested publics. The public discussion should include several alternative solutions supported by all relevant information, particularly on the financial consequences for patients.

**125.** We recommend that the Ministry of Health promptly establish organisational reasons for violating individual patients' rights, especially the right to respect for patients' time, and obliges the managements of health-care institutions to prepare a plan for their elimination. During plan preparation, they should cooperate with interested organisations of patients and their relatives.

**126.** The Ministry of Health should study the regulatory framework of complementary and alternative medicine and individual treatment methods, and on this basis prepare suitable legislation amendments to ensure providers free financial choice and provide users with the right to select their treatments.

**127.** The Ministry of Health should include in new health legislation the obligation of health care institutions to promptly inform parents about whether they will be entitled to wage compensation during a hospital stay with a child.

**128.** Reimbursement for blood donors should be regulated systematically, and different, i.e. discriminatory, treatment should be eliminated.





# 2.13

## SOCIAL MATTERS

Area of work	Cases considered			Resolved and founded		
	2012	2013	Index 13/12	No. of resolved	No. of founded	Percentage of founded among resolved
<b>13. Social security</b>	<b>253</b>	<b>285</b>	<b>112,6</b>	<b>256</b>	<b>46</b>	<b>18,0</b>
13.1 Social benefits and assistance	114	109	95,6	101	25	24,8
13.2 Social services	15	23	153,3	21	0	0,0
13.3 Institutional care	31	46	148,4	39	7	17,9
13.4 Poverty – general	27	33	122,2	32	1	3,1
13.5 Violence – anywhere	6	17	283,3	14	1	7,1
13.6 Other	60	57	95,0	49	12	24,5

The number of complaints regarding social security has significantly increased compared to previous years, which may be attributed to the deterioration in living conditions due to the country's general crisis. More and more complainants seek financial assistance from the Ombudsman, since their social benefits are insufficient for them to live a decent life. The Ombudsman does not have funds to allocate to the socially most disadvantaged people. Therefore, we attempt to explain to them where and what kind of assistance they could apply for.

It has been established that individuals in social distress are frequently unaware that they may also receive help from the municipality where they permanently reside. Therefore, when meeting mayors and the management of the municipality visited outside the office, we especially emphasise that those affected should be provided with all necessary information. The socially disadvantaged cannot be expected to have any information and communication technology to enable them to find all the necessary information on line.

At the end of 2013, the Exercise of Rights to Public Funds Act was amended so that it took into account certain of the Ombudsman's proposals and recommendations. Unfortunately, key amendments to the applicable regulation will enter into force only on 1 September 2014 (e.g. including income and benefits in individuals' income, which triggered many problems and misunderstanding in the past).

**In last year's report, we pointed out the inefficient handling of complaints against first instance decisions on exercising rights to public funds (we stated 10,133 unresolved complaints). The National Assembly supported our recommendation that the Ministry of Labour, Family, Social Affairs and Equal Opportunities 'should use its organisational, human resources and financial measures to ensure issuing first and second instance decisions with statutory time limits'. The Ministry did not realise the recommendation. Moreover, the situation described below even deteriorated in 2013.**

## 2.13.1 Violation of the right to an efficient legal remedy

In our 2012 Annual Report, we noted the massive and unacceptable backlogs in handling second instance complaints. **We proposed that the Ministry of Labour, Family, Social Affairs and Equal Opportunities (the proposal was approved by the National Assembly after discussing the Annual Report) 'should use its organisational, human resources and financial measures to ensure issuing first and second instance decisions with statutory time limits'. Unfortunately, the Ministry did not realise the recommendation.**

We believe that the rule of law is being severely violated, as complainants who generally live in very difficult conditions have to wait for a decision on their complaint for unreasonably long periods. The legal notice frequently offered to complainants that they may initiate judicial proceedings due to the administrative silence of the body pursuant to the second paragraph of Article 28 of the Administrative Dispute Act is poor proof that the rule of law is functioning: complainants have neither the funds to assist in the preparation of their complaints nor the legal knowledge to successfully enforce them. If most complainants utilised this legal option, the problem of the inefficient rule of law would only be transferred from the public administration to the judiciary; the state should provide even more funds for such proceedings, and only lawyers would benefit from this, since they usually charge their clients regardless of the clients' social situation.

During the year, we drew the ministry's attention several times to the inadmissibility of lengthy complaint procedures, as this constitutes a violation of the right to an efficient legal remedy. The Ombudsman frequently requested explanations from the Ministry regarding this issue.

Representatives of the Ministry ensured us that they would attempt to resolve some of the unsolved complaints with additional personnel, and they were also preparing the reorganisation of social work centres, which would facilitate more efficient work by centres and speedier handling of complaints at both instances.

In 2013, amendments to the Financial Social Assistance Act and the Exercise of Rights to Public Funds Act entered into force, which had taken into account several recommendations made by the Ombudsman in recent years. Regardless of this fact, practice still reveals certain questions, as highlighted below.

The Ministry has constantly referred to the shortage of personnel, who supposedly perform other legal and professional legislation-related work in addition to handling complaints. The Ministry ensured that they would strive to resolve complaints as soon as possible.

During the year, the Ombudsman noted that backlogs in handling complaints were not being reduced; on the contrary, they were increasing. Therefore, in April 2013, we again alerted representatives of the Ministry at a working meeting to the inadmissibility of lengthy complaint procedures and called on them to solve the problem. Representatives of the Ministry referred to the growing number of complaints, and ensured the Ombudsman that there were no backlogs in handling the complaints regarding entitlements to cash social assistance, as the latter were treated as a priority.

We also proposed that the Ministry promptly take certain measures to reduce or eliminate backlogs, and provide decisions on complaints within statutory time limits, as well as publish information on their website as to when complainants may expect to receive a decision on their complaints and regularly update it. The Ministry agreed with the Ombudsman's finding regarding the increase in backlogs, and stated as the reason the reduced number of personnel handling complaints, and additional tasks carried out by personnel. At the same time, the Ministry informed the Ombudsman about the Government's decision to provide funds for the payment of work performance due to the increased scope of work on eliminating backlogs in 2013 and 2014, and about a personnel plan in the state administration with which the Ministry would acquire ten employees. In its reply in August 2013, the Ministry also stated that they accepted the Ombudsman's initiative regarding the publishing of information on the status of complaints.

The information regarding the month from which complaints were handled as a priority was only submitted by the Ministry following an additional request from the Ombudsman. **In September 2013, the Ministry explained that they were handling complaints lodged in June 2012.** The Ministry added that complaints against decisions

on cash social assistance were handled as a priority on the basis of a preliminary assessment as to whether they would be granted. In the reply, the Ministry again referred to personnel shortages and the high number of complaints lodged.

The Ministry observed the Ombudsman's recommendation and published the information on the status of complaints on their website. Since this information was not placed on the website in a user-friendly manner and was difficult to access without guidance, we proposed that the Ministry publish the information on the status of complaints in a more visible and more easily accessible spot, and furnish it with the date. **The Ministry followed the aforementioned recommendation.**

At a meeting with the Minister in January 2014, we learned that 10,400 complaints had been unresolved. According to the Ministry, social work centres, pursuant to the first paragraph of Article 242 of the General Administrative Procedure Act, assess half of the complaints as justified and amend them. Nevertheless, the Ministry's backlogs increased and complainants have to wait 14 months or more for a decision.

## 2.13.2 Violence against the elderly

An insecure social situation, unemployment and poverty are frequently reasons for negative phenomena in society, one of which is violence, which may frequently be seen in families. Violence which is also related to material deprivation is frequently directed against the elderly. Such violence, whether material, physical or psychological, is difficult to establish, as the elderly conceal it and do not wish to publicly acknowledge it, let alone report the perpetrator.

We considered several complaints which clearly showed that children opposed the commitment of their parents to institutional care as they would be liable for payment, while in certain cases, children opposed the return of their parents from institutional care to the parent's home environment, as this would impose a great burden on the children. We are also familiar with cases when children move their parents from institutional care into their homes for financial reasons, but fail to care for the parents properly. All the aforementioned cases may constitute a form of violence against parents. We establish that threats to the elderly, abusive language, extortion, neglect, humiliation and intrusions of privacy are more and more frequent. We are also worried about cases of violence in which relatives prevent the elderly from contacting other relatives and friends, and thus attempt to resolve other problematic issues.

A special form of violence against the elderly is the consequences of the social legislation adopted in 2012 which infringed on social security of the elderly, especially their feeling of security and confidence in the social state.

We believe that state authorities and non-governmental organisations should **adopt a strategy for raising the awareness of society** at all levels regarding the unacceptability of violence against the elderly, and provide the elderly with possibilities to act through systems of notification and education. An advocate in whom the elderly could confide in cases of violence or who could inform the elderly on their possibilities of action would be of great assistance. Despite the wishes of the elderly and their organisations (especially the Slovenian Federation of Pensioners' Organisations), the Ombudsman's recommendations and the general support by the Ministry of Labour, Family, Social Affairs and Equal Opportunities, this institute has yet to be regulated.

We establish that exclusion from the social developments is one of the worst forms of violence and discrimination which frequently affects the elderly. In contemporary ever changing society of IT, without security, and where all individuals are responsible for themselves, we must do more for the elderly who are ill, unaware, underprivileged, excluded from society, and poor, and thus even more in need of help and measures to protect their rights.

Early inclusion in cases of violence is very important, wherein indispensable roles are played by social work centres, community nursing services and personal physicians, as well as the coordinated operations of the aforementioned. We need more regulated, systematic and monitored care for the elderly who live alone. We believe we should make contact and preserve some type of communication with them in order to promptly

organise efficient support and care if necessary. The activity of non-governmental organisations in this issue is especially important, as we are aware of the limited capacities of social work centres.

The prosecution of criminal offenders must be uncompromising and more effective. The Ombudsman highlights the urgency of consistent specialisation in the treatment of family violence by law enforcement authorities, and specialisation in the judiciary, the satisfactory extent of which is not evident in this field.

The possibilities for persons affected by family violence to promptly acquire the assistance they need and to provide therapeutic treatment for entire families must be improved. Assistance for criminal offenders is also required.

### 2.13.3 Pension support as a social benefit

Several complainants called on the Ombudsman to lodge a request for a constitutional review of the Financial Social Assistance Act, which defines pension support as a social benefit, which means that the state may secure the funds paid by registering a notice against the recipients' real estate.

The Ombudsman assessed that the mere transfer of the right from the pension security system to social care which was the consequence of the introduction of the Financial Social Assistance Act was not unconstitutional. The Minimum Pension Support Act (Official Gazette of the Republic of Slovenia, no. 10/08) defined pension support as a corrective measure for the lowest pensions, which means that its function was merely social. Pension support was paid by the Pension and Disability Insurance Institute of the Republic of Slovenia, but the funds for the payment were provided by the state budget. As pension support was not a right arising from pension insurance, legislators decided to legally define it as a right which provides social security for the most vulnerable persons, and therefore, it was transferred to the Financial Social Assistance Act, which also stipulates the conditions for eligibility to the right. In accordance with the principles of social state, eligibility to the right is related to the income and property of the beneficiary. Only the property condition which had not been regulated in the previous act has frequently been mentioned as questionable.

Considering the aforementioned, the Ombudsman assessed that the consequence of the transfer of the right to pension support from the pension to social security system did not constitute unequal treatment of pensioners, but in a way, ensured greater fairness in allocating public funds. We informed complainants of our opinion and emphasised their option to lodge a request for a constitutional review in which they will have to demonstrate a legal interest, otherwise the Constitutional Court will dismiss their complaints.

### 2.13.4 Prohibition of alienating and encumbering the real estate of beneficiaries of institutional care

Pursuant to Article 100.b of the Social Security Act, if a beneficiary of the service of exercising the right to exemption from payment of institutional care is an owner of real estate, they are forbidden with the decision on exemption from payment from alienating or encumbering the real estate in their ownership in favour of the municipality financing institutional care for them.

In a case still being dealt with by the Ombudsman during the writing of this report, the municipality is co-financing a beneficiary's institutional care. The beneficiary contributes to the payment of the service in compliance with her financial ability. After the payment, she has only minimum funds, i.e. an allowance, for her personal needs. The beneficiary is a co-owner of several properties. In view of her assets, the social work centre requested that the municipality issue a consent to eliminate the prohibition on alienating and encumbering her co-ownership share on one of the properties. The centre explained that the real estate would be sold, and the beneficiary would use the money from the sale to repay the debt to the municipality for co-financing the institutional care. These assets would also provide the beneficiary with additional means of subsistence, and funds for living in a living community and for personal needs. If she again required co-financing for her institutional care in future, an notice of the prohibition of alienating and encumbering would be registered for her real estate in light of the fact that she still has other real estate. Since the beneficiary's

legal capacity was fully revoked, the municipality would thus have the assurance that the guardian would not have the power of disposal of other real estate without consent from the social work centre.

The municipality did not agree with the proposal of the social work centre. They replied that the act does not stipulate another manner of payment or security of claims, since the entry in the land register is carried out in order to secure the monetary claim of the municipality against the owner of real estate for whose institutional care the municipality is paying and will continue to pay.

The Ombudsman believes that beneficiaries of institutional care should have the opportunity to pay for claims against the municipality which is or was co-financing the service. If beneficiaries decide to pay for the service themselves in the future, they should have the right to freely dispose of their assets, regardless of whether they will re-exercise the right to the exemption from payment of the service. We also believe that in cases when a beneficiary owns multiple high value real estate, it is disproportionate to register a notice of the prohibition of alienating and encumbering of all real estate and thus disable the disposal of all real estate, and put them in a position (if they have no savings) whereby, despite owning high value real estate, they have only an allowance for their personal needs.

### 2.13.5 Non-consideration of the actual income of beneficiaries of public funds

In the 2012 Annual Report, we pointed out the problems of persons who exercised the right to public funds and whose income was deemed the family's income in two consecutive years. A person may receive one type of income in one year, but not in the following year. Since there was no income in the second year, it was deemed that no data were available on the income, and the last known data were taken into account. Something similar befell persons receiving income for one year who were issued a decision on personal income tax, but in the following year, their income was so low that a decision on personal income tax was not issued. Also in this case, a person's last income known from the decision on personal income tax was taken into account, although persons proved even with certificates from the Tax Administration of the Republic of Slovenia that they had been receiving a much lower income in the following year.

We pointed out the problem to the Ministry of Labour, Family, Social Affairs and Equal Opportunities, but their opinion was that this was in compliance with the second paragraph of Article 15 of the Exercise of Rights to Public Funds Act (ZUPJS) and they could see no problem, even if our assessment was that their explanation was an unjustified interference in an individual's rights. Since the MDDSZ ignored our opinion, we could only inform complainants of the legal means in the administrative procedure and subsequent judicial proceedings.

We are pleased that the Higher Labour and Social Court confirmed our opinion in several cases, since it ruled that the second paragraph of Article 15 could be understood to mean that the data from the Tax Administration's official records should be taken into account, although this is not a decision on personal income tax. Therefore, the court set the contested decisions of social work centres and the MDDSZ aside, and returned these cases for rehearing. In view of the court's judgements and considering the fact that after 1 September 2014 the amended Article 15 of the ZUPJS will enter into force, we no longer expect such problems to occur.

### 2.13.6 Institutional care

Most problems in institutional care facilities are monitored within the role of the National Preventive Mechanism. Therefore, our findings established during visits to such facilities are published in the chapter reporting on such work. We received an interesting proposal for the Ombudsman to speed up decision making regarding the granting of a concession to a private retirement home. A call for applications for concessions had already been cancelled twice (the complainant stated 'political reasons'). The main reason for our mediation was that the elderly already residing at the retirement home were allegedly overpaying for the costs of accommodation and care, which constituted discrimination.

We rejected the proposal for mediation, as the Ombudsman cannot establish the reasons for cancelling the two calls for the applications for concessions. However, this decision could have been contested by all bidders (who had incurred costs in this regard).

In respect of the statement regarding the high costs of caring for recipients, all interested parties should have been informed in advance that the retirement home had not yet received a concession and, therefore, the costs of accommodation and care were significantly higher. We expressed our fear that care residents had been misled when they entered the home, believing that the concession would soon be granted and costs significantly lower. The results of a call for applications for granting a concession are uncertain until the competent authority issues a final decision, and therefore, it cannot be claimed that residents of the home were discriminated against in comparison with others. If the residents had decided to reside at the aforementioned retirement home and accepted certain terms and conditions of their own accord, different prices do not constitute discrimination on the basis of personal circumstances.

We must also emphasise the issue of unduly high internal temperatures in certain retirement homes in which care recipients are exposed to dangerous conditions when the outside temperature is extremely high. We propose that all institutions in cooperation with the Ministry of Labour, Family, Social Affairs and Equal Opportunities prepare programmes to restore thermal insulation and air conditioning in their premises.

### **Problem of young disabled people accommodated in retirement homes**

As every year, we considered several complaints this year regarding inappropriate care of care recipients in retirement homes. We especially highlight the problem of young disabled people in institutions intended for the elderly. During the writing of this report, we checked the conditions in an institution in Ljubljana, and established that the needs of young disabled people differ significantly from the needs of the elderly. The applicable personnel standards do not take these differences into account, and therefore do not ensure suitable care, which encroaches on the right of the affected people to dignity. It is high time for the Ministry or the Government to prepare new legislation, especially the Personal Assistance Act and the Long-Term Care Act, which will ensure legal bases for more accurate and suitable regulations in this field.

## **2.13.7 Review of activities**

### **Deputy Ombudsman at a consultation of the National Council on improving new social legislation**

On 13 May 2013, the Deputy Ombudsman, Tone Dolčič, and the Ombudsman's adviser, Dr Ingrid Russi Zagožen, attended a consultation organised by the National Assembly of the Republic of Slovenia entitled 'How to improve the system in the field of new social legislation?'. The National Assembly wished to use the consultation to begin a wide professional discussion on the required and possible amendments to the new social legislation, and co-create proposals to improve it.

### **Ombudsman and Minister Kopač Mrak on numerous common subjects**

On 9 April 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, her deputies, Tone Dolčič and Kornelija Marzel, MSc, met the Minister of Labour, Family, Social Affairs and Equal Opportunities, Dr Anja Kopač Mrak, and her colleagues at the Ministry's head office at the Minister's invitation. The discussions concerned issues of protecting human rights in the social field.

### **On problems of the elderly with pensioners' representatives**

On 17 May 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, and her Deputy, Tone Dolčič, received the President of the Slovenian Federation of Pensioners' Organisations, Dr Mateja Kožuh Novak, and her colleagues. They commended the decision of the Constitutional Court, which agreed with the Ombudsman regarding Article 143 of the Fiscal Balance Act (ZUJF). They also discussed the repayment of the parts of pensions that had been deducted and the issue of liability for costs incurred through ill-conceived measures and the hasty adoption of legislation.

### **Ombudsman visits CIRIUS Kamnik**

On 5 June 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, visited the Centre for Education and Rehabilitation of Physically Handicapped Children and Adolescents (CIRIUS), also to meet two girls with Down syndrome – Karin and Urša – and personally invite them to carry out their summer job at the Ombudsman's office and at the office of MEP, Tanja Fajon. During the discussion with teachers, the topics of integrating students with physical disability in practical training by working in companies during their secondary education, and resolving special individual cases of education at all levels were highlighted.

### **On the operation of social work centres**

In Brdo pri Kranju on 28 May 2013, the Ombudsman attended an academic forum of the Graduate School of Government and European Studies on the operations of social work centres and children's rights.

### **On the operation of social institutions**

On 20 June 2013, the Deputy Ombudsman, Tone Dolčič, and the Ombudsman's adviser, Dr Ingrid Russi Zagožen, met representatives of the Association of Social institutions of Slovenia at the Ombudsman head office.

### **On Elder Abuse Awareness Day**

On Elder Abuse Awareness Day, the Ombudsman publicly announced her findings and recommendations, and emphasised that violence was frequently connected with the material deprivation of the elderly. We considered complaints which clearly showed that children opposed the placing of their parents in institutional care because they would be liable for payment, and complaints which showed that children opposed the return of their parents from institutional care to the parents' home environment, as this would impose a great burden on the children. Both cases may constitute a form of violence against parents. The Ombudsman established that the state's ill-conceived measures, which reduce the means of subsistence of the elderly could also be defined as a form of violence. An advocate could be of great assistance to the elderly, who could confide in them in cases of violence, or who could inform the elderly of the possibilities of action. Despite the wishes of the elderly and their organisations (especially the Slovenian Federation of Pensioners' Organisations), the Ombudsman's recommendations and the general support of the Ministry of Labour, Family, Social Affairs and Equal Opportunities, this institution has yet to be regulated.

### **Directors of Idrija Psychiatric Hospital on problems with the application of the Mental Health Act (ZDZdr)**

On 26 August 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, her Deputy, Ivan Šelih, and her advisers, Dr Ingrid Russi Zagožen and Simona Šemen, met the Director of Idrija Psychiatric Hospital, Bogdan Tušar, and long-term Director of the hospital, Viktorija Gorjup, MSc, at the Ombudsman's office. Both directors informed the Ombudsman and her colleagues of problems encountered by Idrija Psychiatric Hospital with the application of the Mental Health Act (ZDZdr).

### **On the possibilities for a more efficient system for determining child support**

On 10 September 2013, the Ombudsman's adviser, Lan Vošnjak, attended a working meeting on determining and recovering child support at the Ministry of Labour, Family, Social Affairs and Equal Opportunities. It was decided that the Ministry would study the possibilities for a simpler and more efficient system for determining child support when preparing new family legislation. The participants agreed that the non-payment of child support constitutes economic abuse, and that all institutions should do everything in their power to ensure that beneficiaries receive child support as soon as possible.

### **On civil rights and social work**

On 19 September 2013, the Ombudsman's adviser, Lan Vošnjak, attended a professional consultation at Murska Sobota Social Work Centre on the topic of civil rights and social work. Special attention was paid to human rights, especially of the vulnerable groups, including children.

### **Ombudsman honours the holiday of the deaf and hearing impaired**

On 23 September 2013, International Day of the Deaf and Hearing Impaired, the Human Rights Ombudsman, Vlasta Nussdorfer, attended a ceremony in Nova Gorica which also celebrated the 60th anniversary of the Association of the Deaf and Hearing Impaired of Northern Primorska. The Association also operates at the national level and is a representative of organisations of persons with disabilities for people with hearing disabilities. The Association includes the deaf, the hearing impaired, the deafblind, and people with cochlear implants.

### **Social club calls for to indispensable changes in social security**

On 24 September 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, appealed for certain urgent changes in social security and the need for prompt action at a social club entitled 'Social Security Problems' organised by the Social Chamber of Slovenia and the National Council of the Republic of Slovenia. She emphasised that we cannot allow social rights to be reduced at this time, especially not for the socially weakest people.

### **Ombudsman and Minister Kopač Mrak call for cooperation and activity**

On 1 October 2013, International Day of Older Persons, the Human Rights Ombudsman, Vlasta Nussdorfer, and the Minister of Labour, Family, Social Affairs and Equal Opportunities, Dr Anja Kopač Mrak, received representatives of organisations and associations of the elderly, and of non-governmental organisations within the Festival of the Third Age. They emphasised the significance of mutual cooperation and cooperation between individual institutions. The Ombudsman highlighted that only a high-quality life can ensure happiness, and that we have to strive to achieve that. She invited the participants to draw attention to the injustices done to them and to the inefficient protection of the elderly by state authorities.

### **A round table panel on trafficking in human beings**

On 1 October 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, attended a round table panel in Koper on the issue of trafficking in human beings and noted the difficulty of proving such offences. On the round table panel, Sandi Čurin, the national coordinator for the fight against trafficking in human beings, emphasised that three main categories of victims have been noted in Slovenia as a destination of trafficking in human beings: female citizens from third countries who are legally employed in night clubs and then forced into prostitution; female EU citizens without arranged status who are forced into prostitution in a more secretive manner; and Roma people forced into begging. The Ombudsman emphasised the difficulty of proving trafficking in human beings or forced labour. Prostitution victims frequently appear to have freedom of movement, but in reality, but their pimps carefully monitor them.

### **Fight against trafficking in human beings**

On 15 October 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, addressed the participants at a consultation entitled 'The Fight against Trafficking in Human Beings' held in Ljubljana. She twice met Sandi Čurin, MSc, the national coordinator for the fight against trafficking in human beings (13 May 2013 and 28 October 2013).

### **Economic crisis affects mental health; special attention should be paid to children**

On 8 October 2013, before World Mental Health Day, the Human Rights Ombudsman, Vlasta Nussdorfer, and experts on mental health participated at a press conference on the topic of the mental health of children and adolescents in Slovenia organised by the Planina Educational Institution and the Medical Chamber of Slovenia. She highlighted the problem of the shortage of paedo-psychiatrists, who are completely absent from certain regions, and to the fact that Slovenia has no paedo-psychiatric department and children are accommodated with adults in relevant institutions, which is not appropriate.

### **Care for vulnerable groups emphasised on World Mental Health Day**

On 10 October 2013, World Mental Health Day, the Šent Association organised an open day in their day-care centre in Ljubljana. The participants were addressed by the Human Rights Ombudsman, Vlasta Nussdorfer, and the Mayor of Ljubljana, Zoran Jankovič. They both emphasised the need for society to provide extra care for vulnerable groups of people.



### **Ombudsman meets representatives of the Association of the Deafblind of Slovenia 'Dlan'**

On 15 October 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, attended an open day of the Association of the Deafblind of Slovenia 'Dlan'. She promised that she would strive to hear these persons through sign language and interpreters, and that she would carefully monitor the work of state authorities which regulate the realisation of the rights of the deafblind in order for Slovenia to consistently respect their rights. On 22 November 2013, the Ombudsman and her colleagues met representatives of this association at the Ombudsman's office. They presented the communication problems of deafblind persons and problems that the Association faces in its work. They especially emphasised the deep feeling of loneliness and lack of understanding as the result of communication barriers and lack of information available on this especially vulnerable group of people. They see personal assistance and suitable statutory regulation as a way to improve their position.

### **Ombudsman pays attention to gerontology**

On 11 November 2013, the Ombudsman, Vlasta Nussdorfer, presented the significance and role of the Human Rights Ombudsman of the Republic of Slovenia to members of the Association of Societies for Social Gerontology of Slovenia. On 25 October 2013, she gave a welcome address at the first meeting of doctoral students and teachers of gerontology.

### **Ombudsman and the elderly at the university of the third age**

On 18 October 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, held a lecture for members of the University of the Third Age in Slovenj Gradec. She spoke about the pressing problems of the elderly in our society, their frequent marginal position, intergenerational cooperation, usually hidden violence against the elderly, problems of low pensions, pension support, mental health and health insurance.

### **Non-violence team**

On 25 November (the UN has declared the day International Day for the Elimination of Violence against Women), the Women's Counselling Service organises a promotional action against violence entitled 'Non-violence Team'. The Human Rights Ombudsman is a partner in the project. Vlasta Nussdorfer was also a member of a symbolic team which helps women and children who are victims of violence in their distress. On 30 November 2013, she attended an event in City Park in Ljubljana.

### **Recognising violence against the elderly**

On 15 November 2013, the Ombudsman's adviser, Liljana Jazbec, lectured on recognising violence against the elderly at a seminar entitled 'Something for Me' in Debeli Rtič.

### **Druga violina with induction loop**

On 28 November 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, attended a presentation of a portable induction loop at the Druga violina restaurant. This restaurant, which trains persons with special needs as waiters, is one of the first restaurants adapted to the deaf and hearing impaired.

### **Ombudsman's adviser lectures on family violence**

On 2 December 2013, the Ombudsman's advisers, Lan Vošnjak and Petra Tovornik, attended a consultation entitled 'Family Violence – Systemic Reactions to It' at the National Council. The National Council used the consultation to mark the 5th anniversary of the passage of the Family Violence Prevention Act, and an important milestone in the fight against family violence from over a decade ago: the introduction of a restraining order concerning certain places or people by the police.

### **Transition of young people with special needs from school to the labour market**

On 3 December 2013, the Ombudsman, Vlasta Nussdorfer, and, the Ombudsman's adviser, Brigita Urh, attended a consultation entitled 'Transition of Young People with Special Needs from School to the Labour Market' at the National Council. The consultation was intended to raise awareness and promote the rights of the disabled, and improve their possibilities of social inclusion.

## The disabled must be assisted with their transition to the labour market

On 3 December 2013, International Day of Persons with Disabilities, the Ombudsman, Vlasta Nussdorfer, attended a reception hosted by the President of the Republic of Slovenia, Borut Pahor, and also a working consultation on the transition of young people with special needs from school to the labour market. The Ombudsman stated that equal opportunities must be created for all, especially the most vulnerable. She presented the traineeship of a girl with Down syndrome at the Ombudsman's office as an example of best practice, which should be a role model for other institutions.

### 2.13.8 Review of Recommendations on Social Matters

**129.** The Ministry of Labour, Family, Social Affairs and Equal Opportunities should ensure in 2014 that all complaints regarding exercising the right to public funds will be decided within the statutory time limits.

**130.** The Government should prepare a comprehensive strategy for the protection of the elderly against violence and all forms of abuse.

**131.** The Exercise of Rights to Public Funds Act should be amended so that child support is not deemed family income up to a certain amount, and that it is intended solely for the needs of a child. A higher amount would be

included in family income and would mean that a child contributes to the subsistence of the entire family.

**132.** The Government should prepare suitable amendments to the Social Security Act which will not put excessive burden on people when disposing of their own assets, and will ensure the right of municipalities to suitably protect their claims for the co-financing of social services.

**133.** The Government should promptly prepare suitable amendment to the Exercise of Rights to Public Funds Act to eliminate unconstitutional fictive incomes.



# 2.14

## UNEMPLOYMENT

Area of work	Cases considered			Resolved and founded		
	2012	2013	Index 13/12	No. of resolved	No. of founded	Percentage of founded among resolved
14. Unemployment	29	46	158,6	38	6	15,8

In 2013, we handled 46 complaints in the field of unemployment, which was 58.6 per cent more than in 2012 (29 complaints). 15.8 per cent of complaints were founded. However, the actual number of complaints considered in which complainants also stated problems with unemployment is higher. Several complaints in the field of unemployment are classified in other substantive sets due to the system of recording cases at the Human Rights Ombudsman and prevailing problems (social distress, employment relationships, housing problems).

We are not satisfied with the implementation of our recommendations from the previous year. The time limits for decision making in complaint procedures are too long, and we are not familiar with a potential analysis of the efficiency of the services of the Employment Service of Slovenia (ZRSZ), and with the adoption of organisational, staffing and other measures which would contribute to a faster response to the needs of the unemployed. The complaints received also reflect serious disappointment with the work of employees at the ZRSZ. Several complainants wrote about lengthy decision making by the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ) in complaint procedures.

### 2.14.1 Public works

In our 2012 Annual Report, we pointed out the problem regarding public works. The lack of advertised public works and of transparency in engaging individuals in public works and positive discrimination of Roma who may be included in public works regardless of the duration of their unemployment were the main concerns of complainants.

Also in 2013, several complaints referred to the implementation of public works. Complainants stated discrimination and unequal treatment in inclusion in public works. Despite a complainant with a status of a disabled person meeting all the conditions to be included in public works, and even being a person with priority for inclusion in active labour market policy (ALMP) measures pursuant to Article 35 of the Labour Market Regulation Act (ZUTD), the ZRSZ rejected her application to be included in public works. Her complaint was also rejected. The complainant was told that internal rules were being followed and that persons who had never been included in public work programmes were referred to public works. She was also told that too much money from the ALMP programmes had already been spent on her. After the complainant threatened to write to the Ombudsman about this, she was included in the desired public works.

Complainants reported on the non-implementation of public works in smaller municipalities. They did not deem it fair that, despite meeting the conditions to be included in public works, they could neither be included in the public work programme since their municipality did not implement one, or in the public work

programme of a neighbouring, larger municipality, since they were not residents there. In such cases, we advised complainants that, pursuant to the new Labour Market Regulation Act, their municipalities may adopt a public work programme to activate their unemployed residents if the municipalities ensure the availability of all funds to implement the programme and acquire consent from the ZRSZ prior to adopting the programme. When adopting a public work programme, a municipality pursues the public interest of the local community, and considers whether the programme is suitable for employing relevant target groups of unemployed persons. Therefore, the adoption or non-adoption of a public work programme depends entirely on a municipality.

### **Subsidies for employers for employing persons under 30**

The Human Rights Ombudsman received several complaints from unemployed persons who were somewhat older than 30 (approximately 34). Complainants believe that when seeking employment, their position is worse in comparison with unemployed persons under 30, for the employment of whom the Employment Service of Slovenia (ZRSZ) enables employers to receive subsidies.

In their reply, the MDDSZ explained that when determining the target group of young people within active labour market policy measures, they acted in accordance with the legal bases in the Republic of Slovenia, and internationally recognised methodology and practice of other EU member states, and that they also took into account the situation in the labour market in Slovenia.

We also discussed the issue at the Ombudsman's meeting with the Director-General of the ZRSZ. We emphasised that the vulnerable group included not only people under 30, since persons a little older than 30 are also among the unemployed, but were not included in the active labour market policy measures. Representatives of the ZRSZ explained that, according to the data of the ZRSZ, people aged between 30 and 50 are the quickest to find a job. In this relation, the ZRSZ sees a solution in amendments to the catalogue of active labour market policy measures so that individual measures are intended not only for individual target groups. They propose that a 100 per cent subsidy be given to employers who employ a person under 30, and 10 or 20 per cent subsidy for employing a person from a non-target group. We agreed with the proposal; the MDDSZ explanations were assessed as correct and justified. However, we still believe that the vulnerable category of people includes persons somewhat older than 30. Therefore, we addressed another letter to the MDDSZ, in which we made known our support for the proposal made by the ZRSZ.

## **2.14.2 Unemployment benefit**

Many complaints referred to issues regarding unemployment benefits. Complainants wanted answers to questions such as: when am I entitled to the benefit; how long am I entitled to the benefit; what is the amount of benefit; what happens if I find a job when receiving benefit; etc. We sent complainants our explanations. We also considered whether the unemployed had sufficient high-quality information and how the competent authorities (MDDSZ, ZRSZ and others) were carrying out their duty to inform and explain.

### **Example**

#### **Acquiring benefit in the case of an absent employer**

A complainant was employed at a hotel which was sold to another owner during her maternity leave. The new owner did not conclude an employment contract with her, and the previous owner (private limited company) sold his company to a Croatian citizen who permanently resides in Croatia. The latter did not claim registered mail. The complainant learned this after her maternity leave. When she wished to return to work, she had nowhere to return to; the employer could not be reached and his location was unknown. Therefore, she submitted an extraordinary termination of the employment contract with the assistance of a labour inspector. The issue became complicated during the deregistration of social insurance and claiming of unemployment benefit at the Employment Service of Slovenia (ZRSZ). None of the authorities had encountered such an issue before, and thus she was sent from door to door. Therefore, she contacted the Ombudsman.

This was also our first encounter with such a problem. Therefore, we made a few phone inquiries regarding the complaint at the Health Insurance Institute of Slovenia (ZZZS), the Pension and Disability Insurance Institute of the Republic of Slovenia (ZPIZ) and the Labour Inspectorate of the Republic of Slovenia (IRSD). The procedure in cases similar to the complainant's is as follows: a worker takes a certificate of the termination of the employment contract (termination and a certificate of the submission of the termination) to the relevant unit of the ZZZS or ZPIZ, where they submit an application to be deregistered from compulsory insurance. However, pursuant to the applicable regulations, workers may not deregister from insurance by themselves. Only the employer may deregister them or authority *ex officio*. Therefore, when a worker submits an application for deregistration, the authority initiates a fact-finding procedure and requests the employer to submit the deregistration. If the employer does not respond, the authority issues a decision *ex officio*, based on which the worker is deregistered. This is a lengthy procedure, as the provisions of the General Administrative Procedure Act regarding the serving of decisions must be observed, and may take at least two to three months. The ZZZS informed us that when a worker submits an application to be deregistered from insurance at the ZZZS or ZPIZ, they carry out their obligation to the former employer, who, however, is in violation as they did not deregister the worker themselves. The worker has no more obligations to the employer and may be entered in the register of unemployed persons or find a job in a new company.

At this point, the issue grew complicated again in the case of the complainant. She registered in the register of unemployed persons at the ZRSZ, which, however, did not receive her application for the exercise of the right to unemployment benefit. When a worker who has submitted extraordinary termination comes to the ZRSZ when the employer has not deregistered the worker from insurance, the ZRSZ initiates the procedure for entering the employee in the register of unemployed persons and refers them to the ZZZS to initiate the procedure for deregistration from insurance. Only when this procedure is completed does the ZRSZ accept an application for benefit. We explained to the complainant that the ZRSZ must not refuse the application, and then we referred her to the ZZZS. Following an intervention by an employee at the ZZZS, the ZRSZ accepted the complainant's application to exercise the right to unemployment benefit. However, they explained to the complainant that they would only decide on the application when she was deregistered from social insurance on the basis of a final decision of the ZPIZ. The problem was supposedly the establishment of the date of termination of the employment contract. The ZZZS did not agree with this. They believed that the ZRSZ did not have to wait, since they can establish the date of termination of employment contracts.

In the meantime, the complainant had no income or unemployment benefit. At first, she had to wait for two months to submit the extraordinary termination pursuant to Article 111 of the Employment Relationship Act, and then for the duration of the fact-finding procedure of the ZPIZ, which takes at least two to three months. Fortunately, she was able to find a new job prior to the completion of this procedure. The new employer had no problems registering her for compulsory insurance.

The complaint was assessed as founded. According to the Ombudsman, the procedure in cases similar to the complainant's is too bureaucratic and lengthy. We believe that the ZRSZ could enter such a person in the register of unemployed persons immediately and decide on the application for acknowledging the right to unemployment benefit, without waiting for the procedure to be completed by the ZPIZ or ZZZS, since this procedure is lengthy and the person has no income. The matter was discussed by the Director of the ZRSZ and Deputy Ombudsman at a meeting. Representatives of the ZRSZ stated that they must act in compliance with Article 8 of the Labour Market Regulation Act and the Rules on registration and deregistration from records. They allowed the possibility that the case could have been resolved by implementing regulations which would have been used to decide that the ZRSZ could decide early on the application for acknowledging the right to unemployment benefit. The case has not been concluded yet. 4.1-103/2013

### **Work of employees at the ZRSZ**

We received complaints regarding the work of advisers at the ZRSZ. A complainant was removed from the register of active job seekers, as he had not attended a meeting with his counsellor at Ptuj employment service office on a certain day. The complainant claimed that he had had two engagements at the same time. On that day, he was arranging his benefit and had a meeting with his counsellor regarding job seeking. The person who

was arranging his benefit allegedly promised him that they would justify his absence at the meeting with a colleague at another department. It later turned out that she had not done so, since the complainant received a notice that he had been removed from the register of active job seekers. He appealed the decision, but the MDDSZ did not decide on his appeal within the statutory time limit, i.e. within two months.

Several complainants described the actions of employees at the ZRSZ or individual regional offices as unprofessional. They claimed that employees are not aware of the possibilities available for the unemployed pursuant to legislation and the catalogue of active labour market policy measures; they do not know how to advise and help; instead, they perform their work in a rigid and bureaucratic manner. The unemployed have been reporting that employees at individual regional offices of the ZRSZ rob a person of human dignity.

## Other

We handled a case in which a complainant exposed a problem with the reimbursement of travel expenses for lectures under the ZRSZ which had taken place 40 kilometres from her place of residence. These expenses were a great challenge for the complainant, who was reimbursed only at the end of the month.

In our 2010 Annual Report, we alerted to the problem of payment for work performed to unemployed persons included in public work programmes. We established that the complainant had received payment for the work performed only 30 days after the work had been performed. In view of the information technology available for collecting and reviewing data, the aforementioned deadline seemed much too long. We proposed a 15-day payment deadline to mitigate the social distress of the unemployed.

## 2.14.3 Review of Recommendations on Unemployment

**134.** The Ombudsman proposed that the Ministry of Labour, Family, Social Affairs and Equal Opportunities prepare amendments to Article 50 of the Labour Market Regulation Act which will facilitate, exceptionally due to the nature of an individual type of work (e.g. personal assistance) and by taking into account extreme circumstances (e.g. illness of the unemployed person), the performance of public work by the same unemployed person at the same public work provider for a period longer than the statutory 24-month limitation.

**135.** The Ombudsman proposes that the Ministry of Labour, Family, Social Affairs and Equal Opportunities amend the Labour Market Regulation Act and the Rules on registration and deregistration from records so that the Employment Service of Slovenia may decide on unemployment benefits immediately after receiving a notice that a worker has submitted an application for deregistration from insurance to the Health Insurance

Institute of Slovenia or the Pension and Disability Insurance Institute of the Republic of Slovenia.

**136.** The Ombudsman recommends that the Government analyse the efficiency of services of the Employment Service of Slovenia and, considering the findings made, adopt organisational, staffing and other measures which will contribute to a faster response to the needs of the unemployed.

**137.** The Ombudsman proposes that the Ministry of Labour, Family, Social Affairs and Equal Opportunities ensure that all financial obligations to the unemployed be settled promptly and without delays which impose additional social distress on them (e.g. travel expenses for referral to a lecture, postage and other administrative costs at a flat rate determined in advance immediately after the performance of public works, etc.).

# 2.15

## CHILDREN'S RIGHTS

Area of work	Cases considered			Resolved and founded		
	2012	2013	Index 13/12	No. of resolved	No. of founded	Percentage of founded among resolved
<b>15 Children's rights</b>	<b>318</b>	<b>474</b>	<b>149,1</b>	<b>380</b>	<b>121</b>	<b>31,8</b>
15.1 Contacts with parents	28	45	160,7	38	2	5,3
15.2 Child support, child benefit, child property management	35	48	137,1	40	17	42,5
15.3 Foster care, guardianship, institutional care	11	25	227,3	12	1	8,3
15.4 Children with special needs	28	47	167,9	41	17	41,5
15.5 Children of minorities and vulnerable groups	0	0		0	0	0,0
15.6 Violence against children inside family	11	31	281,8	20	1	5,0
15.7 Violence against children outside family	11	22	200,0	20	4	20,0
15.8 Advocacy of children	72	81	112,5	67	48	71,6
15.9 Other	122	175	143,4	142	31	21,8

### General

We have established repeatedly that the referendum rejection of the Family Code did great harm in the field of children's rights protection, because the proposed solutions enabled a more appropriate distribution of competences among social work centres and courts, and the rejection once again deferred the introduction of the advocate institution and the prohibition of corporal punishment of children. A legal action against Slovenia was filed at the European Court of Human Rights in Strasbourg, since Slovenia has allegedly violated the provisions of the European Social Charter, because it has not prohibited the corporal punishment of children. In its reply to the legal action, the Government pointed out that the valid legislation enables appropriate protection for children, whereby it especially emphasised that the Family Violence Prevention Act enables the consideration and prosecution of any violence, also psychological. At the time when this report was being drafted, the Court had still not decided on the claim. The Ombudsman has emphasised several times that corporal punishment is a violation of children's rights, and many parents are not aware of this; therefore, such punishment should be completely prevented, and an unambiguous legislative regulation would contribute to this. Those in favour of corporal punishment warn about the harmful effects of so-called permissive education; the Ombudsman, however, emphasises that such education cannot simply be determined as the only alternative to corporal punishment. The Ombudsman believes that the discussion on this issue should include educational experts and the media, which should objectively report on all aspects of this issue.

In March 2013, we presented the special report entitled 'Advocate - A Child's Voice' to the National Assembly and the public, and we proposed appropriate institutional regulation of the current pilot project. The National

Assembly adopted the recommendation that the Government should prepare a special act to institutionalise child advocacy in the form of an independent and autonomous legal entity; until this new regulation enters into force, the current project managed by the Ombudsman should be extended.

Among the unrealised decisions or recommendations to the National Assembly, equal accessibility to education for children with special needs who come from various municipalities must be specially mentioned. This problem, which is still current, is described in the continuation.

When discussing the annual report for 2012, the National Assembly decided that competent ministries should establish actual and legal obstacles to the ratification of international agreements in the field of children's rights and that they should prepare everything necessary to ratify the contracts as soon as possible. We have established that the task has not been concluded, since the ratification of the Third Optional Protocol to the Convention on the Rights of the Child in the procedure of reporting violations is undergoing 'inter-ministerial coordination' for unknown reasons, although the Republic of Slovenia has been very active in the preparation of the mentioned protocol and inter-ministerial coordination had already been implemented at that time. The Republic of Slovenia was also among the first signatories to the Protocol on 28 February 2012. Similar activities of the state have been noted in other fields (e.g. in connection with the Convention of the Council of Europe on Preventing and Combating Violence against Women and Domestic Violence), whereby individual national authorities establish and provide their reservations regarding the ratification only in the last phase of adopting international legal acts, although they should be sent prior to the signing of such an act because signing such a document already represents a commitment on an international level.

In 2013, the Ombudsman actively cooperated with non-governmental organisations in the field of children's rights protection; meetings with representatives of the Centre for Advocacy and Information on the Rights of Children and Youth (ZIPOM), which combines 27 such organisations and where current issues are discussed, are conducted on a regular basis. Special attention was given to their proposal to establish a special children's rights ombudsman, which is also enabled by the Constitution. We have established that the current financial situation does not enable the foundation of a new national institution and that all tasks of the special ombudsman are being performed by the special department within the scope of the Ombudsman's office, and the premises that will be appropriately furnished for contact with children are being arranged at the time of drafting this report.

The representatives of the ZIPOM centre also suggested that the Ombudsman appoint a fifth deputy to be responsible only for children's rights; however, the act should be amended prior to realising this idea, since it stipulates and limits the number of deputies to four.

Within the scope of the ZIPOM centre, non-governmental organisations have organised several meetings or workshops where we actively participated (e.g. children in the media, the Third Optional Protocol problem etc.).

The Ombudsman also actively participated within the scope of both networks of representatives of children's rights ombudsmen (ENOC and CRONSEE), where the discussion on individual issues of enforcing children's rights is taking place on the Internet, and a conference is also organised on an annual basis. In Brussels, we discussed problems regarding unaccompanied minors, and in Zagreb we discussed the issue of immigrant children.

This general section must also include the active cooperation at children's parliamentary sessions organised by the Slovenian Association of Friends of Youth. Children's parliaments give children the opportunity to express their opinions and realise one of the important rights guaranteed by the Convention on the Rights of the Child, i.e. the right to cooperation.

## **Findings and recommendations of the UN Committee on the Rights of the Child**

The UN Committee on the Rights of the Child considered the third and fourth regular reports of the Republic of Slovenia on the situation in the field of children's rights and adopted more than 80 recommendations for improvement. Some recommendations also arise from the Ombudsman's findings and recommendations from previous years, and in some cases we have asked on whose or which data they are founded. The Ombudsman cooperated at a consultation at the National Council, where we critically assessed some recommendations;



it is expected that the state will reply to all recommendations and findings with argumentation, since the recommendations also include a proposal to supplement the Constitution and adopt a 'comprehensive children's law'. The deadline for the next state report is 24 June 2018.

## 2.15.1 The Advocate – A Child's Voice Project

In accordance with the recommendation of the National Assembly, we agreed to continue financing of the project started in 2007, together with the Ministry of Labour, Family, Social Affairs and Equal Opportunities. Since we prepared a special report, considered by the National Assembly in 2013 (accessible on our website), we provide only some of the data that were current at the time when this report was being drafted. In 2013, we considered 72 new complaints; 56 children were assigned an advocate. The average age of children was 10.9 years; the average number of meetings between advocates and children was 6.2 (maximum 41, minimum 2). There are 51 certified active advocates; 13 advocates are on 'hold' status, while 14 advocates are candidates for examinations.

## 2.15.2 Family relationships

The lack of solutions provided in the new Family Code, which is still (or again) being prepared by the Ministry, is quite evident in practice. The Code will be submitted for further legislative procedure in autumn 2014. The lack of valid regulation was especially shown in some cases where children were removed from their homes because they were endangered. Social work centres are usually more reserved when it comes to this measure, since it is an extreme intervention in a family. Further procedures are also questionable, since in our opinion it would be more appropriate for centres to implement only those tasks necessary to protect a child, and the court should decide on all other measures, i.e. in speedy and efficient procedures. In the ensuing procedures, parents would have equal process rights ('equality of arms') which would avoid the allegation of political and non-professional decision making of the ministry as the complaint authority in the current regulation.

### **The obligation to maintain a school pupil**

We were notified on the problems of a parent in relation to the obligation to maintain the daughter, older than 18 years. The daughter submitted confirmation of admission to the first year of study for the third consecutive year, although to a different study programme each year.

The current legislation stipulates that parents are obliged to maintain a child up to 26 years of age if they are attending school on a regular basis. Case law has clearly determined that confirmation of admission is not sufficient to establish regular schooling; the child must actually meet study obligations on a regular basis.

Currently, parents can use social work centres to acquire their child's confirmation of admission; however, this is not sufficient for an unambiguous finding that the child is actually attending school. Parents do not have the right to review the actual grades of, or examinations passed by, an adult child, so they cannot verify if the child is meeting study obligations if the child does not want to submit these data on a voluntary basis, which is not so rare in practice.

We notified the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZEM) of this problem, and the Ministry established that the appropriate regulation allows parents to acquire confirmation of a child's schooling at a social work centre. They explained at the same time that a legal action can be filed at the court in relation to the obligation to maintain a child.

We believe that such regulation is questionable, since the judicial route should be the last way to resolve a dispute after all other possibilities have been exhausted. In our opinion, a possible solution would be for the law to stipulate that the obligation to maintain ceases if the child does not want to submit to parents evidence of actual schooling (along with confirmation of admission, at least a confirmation of examinations passed) or that the parents would have the legal authority to acquire such information from the school where their children are attending a programme.

Example

### **Child support when the parental right is extended**

The complainant sent a complaint about a social work centre which did not issue notifications on child support reevaluation to the respondent. The obligation for child support was in force for the person, whose parental right had been extended. The obligation to pay child support was abolished on the basis of the Marriage and Family Relations Act; however, it was renewed by the decision of the Constitutional Court of the Republic of Slovenia, no. U-I-11/07-45 as of 13 December 2007.

The centre explained that they were not informed about the constitutional decision. After our intervention, the problem was solved.

We also notified the Ministry of Labour, Family, Social Affairs and Equal Opportunities of the Republic of Slovenia (MDDSZEM) on this matter, and they immediately prepared an appropriate instruction and sent it to all social work centres.

The MDDSZEM was also informed that the legislation has not been harmonised with the stated decision of the Constitutional Court. We also emphasised the problem of considering persons whose parental rights had been extended, i.e. in the legislation that regulates the exercising of rights to public funds. We believe that the obligation to maintain a child when the parental right has been extended should not be considered the same as the obligation to maintain a child to adulthood (or to 26 years of age of a child still attending school).

The MDDSZEM explained that the legal regulation of the situation of persons with an extended parental right is planned for the future; however, no concrete actions have been taken. The guarantee that the amendments to regulations on exercising rights to public funds for these persons will no longer consider the material situation of family members, meaning that persons with extended parental rights will be placed in a better position and will receive more funds from the state, is more important.

The complaint was assessed as founded. The response of both authorities to our intervention was appropriate. 11.2-23/2013

### **The registration of a new-born child in the civil register**

The complainants notified us about problems they had when entering their child in the civil register. The child was born at home without the presence of a doctor (only with the presence of a midwife). According to the fourth paragraph of Article 7 of the Register of Deaths, Births and Marriages Act (ZMatR), when a child is born outside a health-care facility, the doctor's confirmation on the birth must be submitted when registering the birth. The parents were not able to acquire the doctor's confirmation, since no doctor was present at the birth.

We provided our opinion to the parents that it is an interference in the rights of the child if s/he is not entered in the civil register for the reason mentioned above. The child did not receive a personal identification number, health insurance could not be arranged and this could also result in the fact that the child might not receive proper health care. We believe that the birth of a child is a fact that must be immediately appropriately considered. The ZMatR also regulates the case of found children of unknown parents, whose status can be resolved without delay; therefore, it is thus not understandable and unacceptable that there was a problem due to the fact that no doctor was present at the birth. The state can introduce the necessary procedures if there is a suspicion that someone is trying to register a foreign child as their own. The fourth paragraph of Article 7 of the ZMatR should be understood in such way that in no case does it present an obstacle to entering a child in the register.

We advised the complainants to return to the administrative unit with a written application and request the issue of a decision if the unit refused to register the child. The application should also contain the gynaecologist's confirmation that the child's mother was pregnant and that she is no longer pregnant, since she gave birth to the child. We offered our additional assistance to the complainants in the event of further problems.

They thanked us later on and explained that the registration had been done by considering our instructions. We assume that the parents also provided our opinion to the administrative authority.

The question of the suitability of the legal regulation arises from this case. We believe that such regulation is connected to the majority expert medical standpoint in Slovenia that it is best for a mother and child if labour is assisted by a doctor; however, this rule should not hinder a child when enforcing their rights. Such legislation is disputable only if in practice, it would be understood in such a way that any kind of medical confirmation would suffice, which was also perceived by the doctor, although s/he was not present at birth. In the opposite case this would be a violation of Article 7 of the UN Convention on the Rights of the Child.

### **Misuse of a child's bank account**

The court asked us to provide an opinion regarding the opening of a bank account on behalf of a minor. The parents do not live together. The child is in the custody of the mother; in order to avoid paying child support, the father opened two bank accounts on behalf of his child and used them for his own needs. In this way, he prevented the seizure of funds for paying the child support; at the same time such means were also considered as the child's income arising from the realisation of the right to public funds.

The court found that such opening of a bank account is contrary to Article 113 of the Marriage and Family Relations Act (ZZZDR). The court obtained the opinion of both banks, i.e. that everything was legal. The Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ) believed that in the non-contentious procedure, the closure of an account can be demanded only after it is opened.

Our opinion differs from that of the MDDSZ; therefore, we also submitted it to the court. In Articles 109 to 111, the ZZZDR regulates the management of child's assets; however, these articles do not provide answers to questions with regard to the child's assets if the parents do not raise or care for the child together. Considering the fact that parents do not live together in this case and that the child is not in the custody of both parents, the second paragraph of Article 113 of the ZZZDR must be considered, since it determines that the parent who has custody of the child decides on issues of the child's daily life, and that parents must seek consent on issues that have a major impact on the child's development.

The court may only assess issues which are important for the child's development and which should be decided by both parents. Case law has determined some circumstances that are considered as important for a child's development. As far as we know, case law has not produced any decision regarding the above-mentioned content. In our opinion, regarding the opening of the child's account, this is not an issue that would have a major impact on child's development. Therefore, we believe that by opening such an account, the bank did not interfere in the rights of the parents or child. We believe that one parent can open an account in the child's name for the purpose of ordering money to that account, and this does not encroach on the child's rights. Opening a bank account or ordering money to that account normally could not negatively impact the child or their development.

In our opinion, a child's rights are violated when the bank enables a parent who does not have custody to withdraw the other parent's assets from the account without the authorisation of that parent. Only an authorised person can dispose with the funds on the bank account of any individual. We believe that the legal authority of parents to manage a child's assets is provided in such a manner that the child's assets can be reduced only with the consent of both parents, unless they agree to any other arrangement. The only exception could be the disposal of minor amounts of money required to guarantee the daily needs of the child. In this case the authorised person was the parent with custody of the child. The first paragraph of Article 107 of the ZZZDR stipulates that minor children are represented by their parents (the plural form is used). Therefore, children's representatives are always both parents, unless explicitly determined otherwise. Such an exception is the serving of court writings according to the second and third paragraphs of Article 107 of the ZZZDR, making decisions on everyday life matters according to the second paragraph of Article 113 of the ZZZDR or other engagements of one of the parents under the fifth paragraph of Article 113 of the ZZZDR.

Therefore, we believe that it is not contradictory to the rights and benefits of the child if either parent individually opens a bank account in a child's name and makes cash deposits on this account. The authorisation to manage

this account can be submitted in the name of the child only by both parents together. Funds from the account can also be withdrawn only by both parents (if they did not authorise only one). We believe that in this case the bank enabled an unauthorised person to make withdrawals of money from another person's account and that this also means that the bank has damage liability, because due to its error, a child has been deprived of all the funds deposited on the child's account and the funds are not on the account anymore.

We also believe that the child's rights were violated if his/her name was used for financial transactions of which the child (or person having custody) was not informed and had no influence, and the funds were considered in establishing the property of the child in such a way that prevented the child from proving that they had been the potential victim of a crime (or probably even several crimes against the child and property). The child was actually unable to use these funds for living.

### 2.15.3 Rights of children in kindergartens and schools

The number of complaints in relation to the admission of children to kindergartens decreased in comparison with previous years, which is attributed to better knowledge and information of parents about available places, since the register is centralised. The level of information on the rules of admission and related rights is also better. Parents are obviously better informed on the competences of individual supervisory authorities and they also refer directly to them.

The rights of children in kindergartens and schools, for whom rights are exercised by parents in various administrative procedures, are also discussed in the chapter on social activities.

Complaints mostly referred to decisions on the payment amounts for pre-school education programmes and reducing pre-school education payments. There were some complaints regarding changes of pre-school teachers or assistants during the year, and some referred to obligatory vaccination of children in the pre-school period. Two complaints were connected with inappropriate handling of a pre-school child by a school teacher. We explained to complainants the possibilities for making complaints and referred them to other appropriate authorities.

There is a problem of ensuring the desired food in kindergartens and schools due to religious or other beliefs. Parents are obliged to submit an appropriate medical certificate to the kindergarten or school, i.e. that a child may only eat a certain type of food. Not all doctors are comfortable issuing such confirmations, since they believe that there are no reasons that a child should always eat lunches without pork or only vegetarian food. Understanding such wishes depends on the management of each individual institution.

The Ombudsman considered the complaint by parents of a primary school pupil whose lunch was cancelled because they owed money for past lunches. We made some inquiries at the school and provided the Ombudsman's opinion, i.e. that we oppose the measures of schools against pupils who are not responsible for settling the financial obligations of their parents. The financial aspect is exclusively a parental responsibility. The Ombudsman believes that the decision to prohibit lunch for an individual pupil is unacceptable and is a form of violence against a child. The same applies to prohibiting the participation of children at various activities and courses organised by the school if the reason for such prohibitions is parents' debt. Schools have other legal means for recovering debts from individuals. We asked the school to explain why the child in this case was not even able to buy daily coupons for food. After the Ombudsman's intervention, the problem was resolved in another way, i.e. in favour of the child who was then able to take all meals for which s/he was registered.

#### Example

##### **Checking the payments of school meals payments**

During the preparation of this report, the Ombudsman completed the consideration of a complaint in relation to the organisation of school lunches for pupils at one of the primary schools in Celje. We were informed about inappropriate supervision of children during lunch. Children had to use special keys to register themselves for lunch. If a pupil did not have all lunch costs settled, the device made a sound. Therefore, the information that the

lunch was not paid for became public and the child was exposed as well as humiliated. The system also failed and the device made a sound for children who already had school lunch costs settled.

The headmaster was immediately asked for an explanation, although we assumed that the school had taken this measure, because they wanted to have a quick insight into the financial situation in relation to food meals payments. Furthermore, schools are also having problems due to a lack of funds for material costs. This system could probably be effective; however, we wrote to the headmaster saying that it was not appropriate. The fact is that parents are responsible for paying school means, and children bear no responsibility for that (whether or not parents are able to pay for lunches). We proposed the headmaster to rearrange the system so that children are not publicly exposed and humiliated.

We received their reply within the deadline. The headmaster explained that the system had been introduced in 2007. It was presented to the parents, but they had no comments until this year. The system also enabled other kinds of supervision, such as who did not take a meal, who came to get lunch several times and similar. She ensured us that the sound signal for the purpose of controlling children's arrivals for lunch was turned off.

Subsequently, the problem was also criticised in the media, and the Ministry of Education, the Inspectorate for Education and Sport of the Republic of Slovenia and the Information Commissioner also responded. While the Inspectorate did not establish a violation of school rules, its supervision related only to the provision of school meals and keeping records of meals, the Ministry fully agreed with the Ombudsman's opinion. The processing and security of personal data are under the jurisdiction of the Information Commissioner, who ensured that the sound signal, which (among other things) warns about unpaid meals, as well providing a graphic presentation of the name, surname and class of the child in question are actual personal data acquired from the school's list, and managed on the basis of the School Meals Act. Protected personal data were therefore revealed in contradiction with the Act, i.e. to all the unauthorised persons present, thus violating the Personal Data Protection Act.

The complaint was justified and the Ombudsman's intervention was successful. 11.0-26/2014

### **Hazing of new pupils in secondary schools**

The Ombudsman considered some complaints in relation to events related to the so-called hazing of first year pupils in secondary schools. The complainants warned the Ombudsman about the increasingly bad, negative and unwanted events in society, including the hazing of pupils. They claimed that the ceremony is inappropriate and that the events accompanying such ceremonies are insulting, sometimes even horrifying, not only for participants but also for passers-by or random observers. They proposed planned awareness raising activities among the public on the harmful effects of such conduct.

Since 2007, when we first dealt with this problem, no person has complained about it. We receive questions every year from individual pupils saying that they do not want to participate at such events and want to avoid them. In some cases, pupils stated that hazing is organised during classes and that they are obliged to participate. If they do not participate (even if they bring a note of absence), they are subject to extra humiliation when coming to school (this also involves ill-treatment), especially by fourth-graders who do not permit anyone to miss such an important matter as hazing.

The Ombudsman gave an opinion regarding this matter in 2007. The Ministry of Education, Science and Sport (MIZŠ) was informed about this problem several times, and the persons competent for such matters at the MIZŠ claimed that they had warned the headmasters about unacceptable events by sending an appropriate circular.

The Ombudsman's opinion regarding this matter remains unchanged: such ceremonies are unnecessary and in no way contribute to the maturity of first year pupils. We believe that such events violate the rights of children: the right to dignity, and in cases of some schools even the right to safety and physical integrity. Some

older pupils take pleasure from torturing first graders; school administrations and teachers tolerate this, and therefore, we completely condemn these actions.

The ceremony makes no sense if pupils do not tolerate it and also experience it as violence. It is not part of the school's programme, so participation at such events cannot be obligatory. Any (educational) measures against pupils who do not participate at such events are therefore in contradiction with the regulations.

The hazing of new pupils can only be implemented in such a way that their rights and integrity are not violated; the ceremony may contain no elements of a criminal act, and violence against children is such an act. The responsible school staff should discuss with pupils from senior years a scenario whereby there is no intervention in the personal integrity of young people. No school event should be organised in a way where events can be disputable or adversely affect any of the participants, visitors and random observers.

The Ombudsman once again emphasises that headmasters should dedicate more attention to this event and ensure that it is implemented in a respectful way, where all the rights of participants are considered. A lot of attention should be dedicated to raising awareness among the young and adults.

The Ombudsman also sent this opinion to the Ministry of Education, Science and Sport, and requested for further explanations regarding appropriate measures. The Ministry agreed with our opinion and made commitments to inform all headmasters about this problem at the beginning of the new academic year.

## 2.15.4 Problems of children with special needs

In 2013, the number of complaints in this area increased by almost 100 per cent (from 22 in 2012 to 42 in 2013). All the complaints summarised in the continuation were considered as founded.

### Children with autism

The problem of autistic children was presented to the Ombudsman by one of the societies which includes the parents of children with this disability. Parents pointed out the problem of the non-implementation of the Placement of Children with Special Needs Act (ZUOPP-1), since its enforcement has been postponed several times. They are dissatisfied with the fact that more contemporary and concrete guidelines for the treatment of these children were omitted and that the enforced guidelines from 2010 are not being implemented. They noted the insufficient frequency of some special treatments, the lack of professional staff and insufficient training of experts. They are convinced that the children do not have the opportunity for education with approaches and strategies which enable them to progress in accordance with their abilities.

### Assistance to the physically disabled

Several complaints referred to assistance to physically disabled children, since many parents want severely physically disabled children to have their own assistant, not only at school but also at home. They are unhappy with the fact that when a child is admitted to an appropriate training facility, the number of assistants is determined on the basis of departments and in accordance with the Rules on the Norms and Standards for Performing the Educational Programmes for Children with Special Needs in Elementary Schools with Adapted Programme and Institutions for Education of Children with Special Needs. This means that several children have only one assistant, which is quite a problem for children with severe motor problems. We also considered complaints which show that this work was performed by unemployed people within the scope of public works. Since the employment of the same candidate within the scope of public works is for only one year, parents were not satisfied with changes. Each new assistant requires additional training and some time to qualify for the provision of the appropriate assistance which the child needs.

## **Children with Down syndrome**

Parents once again informed the Ombudsman that children with Down syndrome and other children with mental development problems still cannot attend normal schools. These schools do not have the appropriate conditions for the execution of the programme with a lower educational standard. Therefore, the education of children with this disability together with their schoolmates is more an exception than a rule. Parents were also dissatisfied with the new Placement of Children with Special Needs Act, which reduces the scope of additional professional assistance. However, the Ombudsman believes that there is some reduction due to the fact that additional professional assistance can be implemented as assistance for overcoming deficits, obstacles or disabilities as an advisory service or study assistance.

Formally, the education of children with mental development disabilities together with schoolmates in ordinary schools is possible only if these children are able to acquire at least the minimum standards of knowledge. In our opinion, the major problem with children who were successful in adapted programmes with lower educational standards in a class in ordinary school is the number of pupils and the number of teachers in such classes. Only one teacher in a class with pupils with various intellectual potential cannot perform two programmes simultaneously i.e. ordinary (performance-oriented) and adapted programmes with a lower educational standard, without depriving any of the children for required knowledge. In our opinion, and if the state were in a better financial situation, both problems could be solved simply and quite quickly. However, the question of accepting difference and tolerance of those who are different still remains. Until there are positive changes in understanding difference, no school will make special efforts to include pupils with mental disabilities, although it could ensure appropriate conditions for the education of all children and also ensure all parents that no pupil is deprived of anything on account of joint education; indeed quite the opposite: all pupils would gain a lot in all areas.

No major changes would be required to realise the idea of including children with special needs in ordinary primary schools (if the social climate and financial situation of the state were better), i.e. like changes in staff norms per department and norms regarding the number of pupils in classes.

## **Education of secondary school pupils in hospitals**

We received several complaints in which professionals in various fields wanted the Ombudsman to publicly support the concept of working with pupils in hospitals. In their opinion, this concept should be supported because individual assistance in hospitals is offered only for general education subjects. Ill adolescents who have been hospitalised for a lengthy period can not otherwise overcome the gap in their knowledge caused by their absence. Therefore, it is reasonable that education should continue also in hospital as soon as possible. The Ministry of Education, Science and Sport has not consented to this concept, explaining that the subjects at secondary schools are implemented on various levels of difficulty (lower vocational, vocational, grammar) and demand various numbers of contact hours. The most demanding programmes are in grammar schools; the least demanding are lower vocational education programmes. We have asked the Ministry to re-examine its decision. We proposed to verify the possibilities of supplementing the concept so that the solutions satisfy legal requirements.

## **Children with emotional and behavioural problems in primary schools**

In 2013, we received several complaints where the affected parents warned the Ombudsman about some issues. The Ombudsman was contacted by the parents of children with emotional and behavioural problems who attend schools on the basis of decisions on guided learning; however, the children feel unwanted at school, and we also received complaints from parents of their peers, who often have difficulties while being in contact with children with problems primarily due to their frequent aggression. The behaviour of some children exceeds the capacity to ensure the rights of peers and employees, since these children are often unpredictable and aggressive towards their classmates. Unfortunately, the Ombudsman cannot intervene in such cases, and can only ask the competent authorities and institutions to engage in greater activity, cooperation and the consistent resolution of problems.

## **Inclusion of adolescents with emotional and behavioural problems in juvenile institutions**

Based on the initiative of the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ), the Ombudsman considered the problem of including children and adolescents with emotional and behavioural problems in juvenile institutions. The Ministry proposed that the Ombudsman encourage inter-ministerial cooperation between the ministries responsible for making decisions in relation to including adolescents in facilities. The Ombudsman also regularly visits these institutions due to the tasks and authorisations of the National Preventive Mechanism under the Optional Protocol to the Convention to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. This matter is further described in the chapter on persons with mental disorders and persons in social care institutions.

The Ombudsman believes that it would be inappropriate and incompatible with the Ombudsman's tasks to assume the responsibility for the inter-ministerial harmonisation of questions that refer to the working area of several national authorities. Such questions should be resolved by the Government within the scope of its responsibilities if they cannot be resolved by individual ministries. The Ombudsman establishes that the limitation to the working areas of operations of the public administration is a general problem which is actually stipulated in the legislation, and in practice, is a handy excuse for avoiding responsibility.

## **Psychiatric treatment of children still remains problematic**

We have often stressed the inappropriate placement of children in closed wards of psychiatric hospitals, and neither the profession nor politicians have opposed the proposition that Ljubljana University Psychiatric Hospital should have a special department for treating children; however, the situation has not improved. In 2013, we visited the paediatric and psychiatric hospitals in Ljubljana and tried to establish what is preventing the urgent organisation of a special ward to enable the treatment of children separately from adults.

## **2.15.5 Children in court proceedings**

We also established in 2013 that court proceedings in which children are involved are too slow and too dependent on the interests of individual parties to the proceedings. A judge should handle the proceedings without unnecessary delays, and each proposition of all parties should be assessed from the aspect of the child's interests, since the interests of parents in civil proceedings on the custodianship of children are often in contrary to children's interests. Some courts already include advocates in proceedings who are assigned to children within the scope of the project 'Advocate – A Child's Voice', because they can establish the child's needs without the long and expensive procedures for acquiring expert opinions.

Several complainants warned us about the discrimination of fathers in court proceedings, i.e. that courts in the same circumstances regularly hand custodianship to mothers, thus privileging them. In 2014, we will try to acquire a service provider to analyse some court files, and based on this analysis, establish the foundation of allegations on the partiality of courts (especially female judges).

## **Appointment of children's rights experts *ex officio***

In 2011, we pointed out problems where the courts appoint someone to professionally assess some issues in relation to establishing the child's best interests. The courts decide that parents must pay an advance amount for the costs of this expert, including a warning that the evidence acquired is not provided by the expert if the advance amount is not paid by the deadline.

Complainants reported similar problems in 2013, so we emphasise that a professional opinion which includes the consideration of an under-age child must be given when this is necessary and for the child's benefit. We believe that it is not permissible for a child to be exposed to the process of preparing an expert opinion if this only benefits a third party. When it is necessary and for the child's benefit, the Ombudsman believes that it is not permissible for such evidence to be provided because one (or both) parties fail to pay the advance for the



expert's work, especially because one party can impact the execution of evidence proposed by the other party, whereas it is not necessary for the conduct of the first party to be in child's interest. Therefore, we believe that in procedures of showing evidence that supports the court in establishing the child's best interest, the court should not apply the general rule on proving and covering the costs of expert opinion under the third paragraph of Article 153 of the ZPP. The failure to provide such evidence due to non-payment of the advance would in fact not be in the child's best interests. It is also not in the child's interests to wait for both parents to pay the advance amount, since this could cause unnecessary delay in a procedure that refers to the child's interests and rights. In such proceedings, the speed of judicial decision making is even more significant for the provision of the child's interests.

With regard to an answer received from one of the courts, we would like to emphasise that we do not believe that the court should automatically appoint experts *ex officio* to provide their opinions in all proceedings involving relations between parents and children. Usually, the expert should be appointed when no party would make such a proposal, but evidence should be established as to whether such an opinion is necessary for establishing the child's interests. In our opinion, this also applies when the parties propose the expert and do not pay the advance amount; if the court assesses that the evidence is required, this should be performed *ex officio*. At the same time, we would like to point out that if such evidence is not necessary, the court should not demand it, even if the costs are covered by the child's parents because the process would unnecessarily burden the child and interfere with the child's rights.

#### Example

##### **Children working in dangerous situations**

In the 2012 annual report, we noted the problem of child labour. In 2013, we received a letter with photographs of two children who had done work at a neighbour's sawmill without appropriate protective equipment. Due to the suspicion that the children's health was endangered, we informed the Labour Inspectorate of the Republic of Slovenia, which responded appropriately and examined all the circumstances and confirmed the complainant's statements. The Inspectorate took appropriate measures to prevent such work by children in the future.

The Labour Inspectorate of the Republic of Slovenia will further monitor the matter and, if necessary, take appropriate measures. The complainant was asked to inform us of any potential violations of children's rights; however, we did not hear from them again, and therefore conclude that the measures of the Inspectorate were effective. 11.0-73/2013

## 2.15.6 Right to cooperation

The Convention on the Rights of the Child gives children the right to give their opinion on all matters in connection with them and the right to have their opinion considered. Children's parliaments organised by the Slovenian Association of Friends of Youth actually enforce this right, since every year primary school children can discuss their problems, thoughts, opinions and issues at municipal, regional and national parliamentary sessions. To the greatest extent possible, the Ombudsman tries to respond to invitations received for each parliament, since this is a way of learning about the current problems of children, their teachers and parents directly from children. On 8 April 2013, we attended the 23rd National Children's Parliament which was held at the National Assembly; its topic was growing up.

In 2014, we will try, in cooperation with non-governmental organisations, to establish more permanent cooperation with individual schools which are interested in such cooperation with the Ombudsman.

## Being a child is becoming more difficult in today's society

In 2013, the Slovenian Association of Friends of Youth dedicated Children's Week to the issue of being a child in today's society. Within this framework, we participated in a round table in October 2013 that discussed the child's situation in today's society. The round table was organised by the Ljubljana branch of the Slovenian Association of Friends of Youth (ZPM).

Primary and secondary school pupils discussed their views of childhood and the current situation in society. They said that they are feeling the effects of the crisis and other current events, and emphasised that they want to be heard. Pupils from various Ljubljana primary and secondary schools also said that they miss socialising with their friends and family members. They said that parents explained to them that they spent more time with their parents and friends when they were young, and those that came from farms also used to work more. Some pupils acknowledged that in the past, children respected their parents more.

They also said that parents and other adults at school do not often ask them for their opinion or do not consider their opinions as often as they should. Some are bothered that adults act towards them as if they were small children, although they have good ideas. Some emphasise that young people should do more to be heard and state their opinion openly, since they often talk about their problems only with each other.

The crisis with which parents are dealing also affects children's lives; some are deprived of their leisure activities or trips, and children also notice the worries of their parents because their relationship with the children can often change due to their problems. Children think that parents should not hide their financial problems from them; they should talk about their problems and help children learn how to manage their finances.

The participants also discussed the issue of active participation in decision making in society and highlighted that there is not enough civic education and education in schools about the political system.

## 2.15.7 Children in the media

In September 2013, the Ombudsman in cooperation with the ZIPOM centre organised a consultation on children's right to privacy in the media, where we came to the following findings and recommendations:

1. We established that the media courageously disclose the collapse of the social state, the increase in social differences and hopelessness, as well as the inability of some of the population to satisfy their basic needs, including children as the most vulnerable members of society.
2. We also established that some media market only goods which sell better with stories where the misery, distress and hopelessness of families, especially children and adolescents, are revealed, mostly by disrespecting fundamental children's rights, even the right to privacy and family life.
3. Therefore, we call upon the Slovenian public, parents or caretakers, the media and those responsible for children's welfare to respect the right of children to privacy and protect them against unjustified disclosure in public and in all cases when such disclosures are contrary to the long-term interests of children. Children and adolescents who suffer accidents or family tragedies, children with mental disorders and other groups of children with special needs, adolescents in court, administrative or any other procedures are especially vulnerable.
4. We recommend that all who report stories which directly or indirectly involve children avoid sensational reporting and not use children as a means for better newspaper marketing or better audience rating, especially not by violating fundamental ethical norms and human rights. At the same time, the protection of child's rights cannot be an obstacle to reporting on irregularities in society.
5. We recommend that those who report to the public on data on children adopt their own guidelines and rules of conduct in cases when parents or legal representatives who live with their children in severe social, health or other distress permit the disclosure of the identity of their children and act contrary to a child's long-term interests and their right to privacy.
6. Before parents or custodians decide to disclose the privacy of children and before the media decide to publish a story or results of journalistic research and when this is in the public interest, the child's consent must be acquired if this is deemed possible and appropriate by considering the best interests of the child in

each case. Children should acquire all relevant information on the purpose of the public discussion of the problem which they or their family have. The importance and possible consequences of being in the media should be presented to the child.

7. Although parents (also in the name of their children and in their alleged interest) approve publications, this does not unburden journalists and editors from their legal and ethical responsibility to assess whether to publish the statements and personal data of children. In cases of suspicions of sexual abuse, violence, abduction of children or child and in other cases that require special protection of child's rights, journalists and editors must weigh all the circumstances and interests of all involved with maximum care. In all cases, journalists must give special attention to communicating with children.
8. We ask the responsible persons in the Slovenian media, editors and journalists to adhere to the highest level of ethics in preparing their papers and articles in which the privacy of children is breached, whereby all the rights of children guaranteed by domestic and international documents on the protection of human rights should be considered, as well as their own self-regulatory standards in the Code of Journalists of the Republic of Slovenia.
9. Journalists should carefully consider the consequences of the publication of data, information and materials, also visual, on children, and disclose the identity of children only in exceptional cases, when this is undoubtedly in the children's interest and in the public interest. Each case should be carefully considered in terms of how intensively and in what scope the child's right to privacy may be breached.
10. Journalists' associations and those responsible in the media are asked to organise additional training on preparing content that involves children.
11. We ask that the advocate of child's rights be regulated by law, since when parents choose to reveal their family life in the media, regardless of children's rights, the advocate could effectively represent the child's interests in legal proceedings and in communicating with the media.
12. We ask that all forms of using children for political propaganda, the promotion of politicians or political parties be prevented, since children are not able to assess the authenticity of statements in promotional materials or have a critical understanding of the ideas and programme contents of those mentioned. It would be better to include their concern for children's welfare in their programmes and later keep all their promises.
13. We ask the Government of the Republic of Slovenia to draft and the National Assembly to adopt amendments to legislation to ensure more effective protection of children's rights in the media. We expect the Media Act to be amended to regulate the protection of children's rights in the preparation and publication of content that reveals sensitive personal information about children, adolescents and their families.
14. We ask the Government of the Republic of Slovenia and other state authorities to consider the recommendations that the National Assembly adopted when considering the annual reports of the Human Rights Ombudsman, especially in the field of children's rights and the ethics of publications. The recommendations for enacting civil penalty due to unjustified interference in privacy based on a publication and the adoption of an ethical and professional code for the national radio and television which clearly determines the rights and conduct of programme creators remain unrealised.

## 2.15.8 Inappropriate content in study materials

In the past two years, the Ombudsman has considered the issue of the suitability of some literary works which contain elements of child pornography, animal torture and detailed descriptions of violent acts. Parents, teachers and other professionals warned us that literary works that are included in the obligatory curriculum or in the conditions for acquiring a reading award should also fulfil the demand not to harm the healthy development of children. The complainants expressed their opinion that systemic regulation of confirming the compulsory content of study programmes and compulsory literature is not appropriate if it enables adolescents to be informed (or even forced to be informed) about disputable content in literary works. The expert help of teachers and their relationship to such literature is of key importance. Complainants believe that the parents' opinion should be considered. We also received a specific complaint with regard to one author who had been convicted for a sexual offence.

We dealt with several issues when discussing these complaints. The first is whether it is permissible for compulsory literature for primary school children to include literary works that cannot be made available

for spontaneous reading due to the level of difficulty of their content, since they require the special help of qualified mentors who teach children and prepare them to read critically. Along with text analysis, this should also contain interpretation, assessment and comparison. We also dealt with the issue of by whom and how the suitability of such literary works should be assessed and how to limit access to such literature in libraries.

When dealing with the complaints, we also received a response from the National Education Institute of the Republic of Slovenia, which is competent for such issues. When preparing our final opinion, we wanted to acquire the opinions of experts in the field of developmental psychology and psychological ethics. We also sent these questions to the Faculty of Education of the University of Primorska, Faculty of Education of the University of Ljubljana, Faculty of Education of the University of Maribor, Psychology Department of the Faculty of Arts of the University of Maribor and the Department of Educational Sciences of the Faculty of Arts in Ljubljana. We also acquired an opinion of the National Medical Ethics Committee of the Republic of Slovenia.

All faculties believe that an author and his/her work cannot be considered equal, since the purpose of literary classes is to discuss the selected texts, not the biography of the author. The use of all literary works should be committed to equal formalities, frameworks and demands; literary works should preserve their value, regardless of the lives of their authors.

The National Medical Ethics Committee replied that in their opinion “prescribing literature by such authors for school purposes /.../ can be understood as a surprising message to children and adults that schools tolerate the sexual abuse of children, and that this is considered as part of normal life /.../”.

Based on all information and opinions, the Ombudsman establishes that **regulations** to determine the preparation of professional bases and the method of adopting decisions regarding obligatory and recommended literature within the primary school programme **do not have to be amended** by legislation. The regulations ensure or at least enable the cooperation of all experts who can significantly contribute to professionally founded and autonomous decisions. The Ombudsman also **emphasises** that a criminal conviction of a writer **cannot be a criterion** for assessing the literary value or suitability of all his/her work for children.

The Ombudsman proposed that the Ministry of Education, Science and Sport recommend to the competent authorities that they dedicate special attention when reviewing individual programme contents (planned and in preparation) to the content of literary works that could give children wrong messages about the acceptability of child pornography, paedophilia, animal torture, extolling violence and similar excesses or socially unacceptable conduct.

After several interventions, the Ministry of Education, Science and Sport gave an opinion on our proposal, which we already submitted in July 2013. The Ministry stated that they were preparing an amendment to the act on organising and financing education, which they intended to forward for further consideration in the spring of 2014. The Ministry confirmed our proposals and will appropriately include them in the amended act, which is now in its final stages. According to the ministry’s assurances, the draft will be subject to public discussion.

It was established that the complaint was justified and the Ombudsman’s intervention was successful. We will carefully monitor further drafts of the above-mentioned amendment and, if necessary, make comments and additional propositions.

## 2.15.9 Obligatory child vaccination

The Ombudsman already published an opinion on obligatory child vaccination in the annual reports for 2007 and 2011; occasionally, we receive forwarded complaints that are sent to the Ministry of Health, i.e. to change the Contagious Diseases Act so that vaccination is voluntary. In the middle of 2013, we spoke with the Minister, who said that this issue is not a priority task of the Ministry, and that the Health Inspectorate will not initiate prosecution procedures against parents who avoid child vaccination.

Currently, the Ombudsman does not have any reasons to change the mentioned opinion, which was also adopted by the Constitutional Court. We believe that the National Institute of Public Health could contribute

more to public information and respond to various information about the adverse affects of vaccines and vaccination that are circulating on the internet.

## 2.15.10 Home education – the right of children or parents

The Ombudsman was once again informed about home education (we wrote about this issue in the 2011 annual report) which aggravates the possibilities of a child's socialisation and limits the possibilities of supervising the success of children, since knowledge is verified only once a year. The Elementary School Act (ZOsn) enables children to meet all their obligations (nine years) at home, which in our opinion negatively affects the social skills of children, which they can only acquire in direct contact with peers.

The amended Elementary School Act from 2011 enforced a novelty, according to which parents should notify the school about home education by the beginning of an academic year at the latest; prior to this amendment, this right could be enforced at least three months before the start of an academic year. Tests are performed at the end of the academic year. Examination dates for pupils who are home-educated are specially determined in the Rules on the School Calendar for Elementary Schools (Official Gazette of the Republic of Slovenia, no. 50/12 and 56/12). The first examination period for these pupils is set for the month of May, immediately after the First of May holiday, and continues until the end of the second examination period; the second examination period is in August, i.e. ten working days prior to the start of the new academic year. Article 90 of the ZOsn determines for children with special needs who are educated according to adapted education programmes or special education programme that examinations are implemented in accordance with the rules on the elementary education of children with special needs. These rules provide for the possibility that the school stipulates the preliminary terms for verification and assessment besides the above-mentioned deadlines.

We asked the Ministry of Education, Science and Sport how many children were educated at home in the 2012/2013 academic year and about their recent experience in this area. We were interested in potential problems in the implementation and how such education affects children's socialisation. We also asked them about these pupils' success. If a pupil has a negative grade in any subject, s/he can repeat the examination in August. If the results are again negative, this pupil must be included in an appropriate class in a public or private school in the following academic year. Pupils educated at home, therefore, have only two opportunities for an examination. We were especially interested in the Ministry's opinion on whether adolescents educated at home are in a better position when applying for Zois scholarship than other pupils in primary schools, since they have fewer grades on their school certificates and therefore their averages can be better. A similar dilemma arises when applying for secondary school, where admission is limited, since the average of grades is an important criterion for admission.

The Ministry emphasised that 123 pupils are being home schooled and that they do not monitor this process separately and had not noticed any problems; therefore, they did not deal with the issue of child socialisation in particular. Considering the potential different situations of children, they explained that the situation of children who are home schooled is the same as the situation of children in private schools, since upon admission to secondary schools their points are levelled with a quotient that enables them equal treatment.

It is interesting that the Elementary School Act defines home schooling as a right of parents, not of children; since it does not determine any demands for those who teach children, we would expect the act to regulate only an exception that should continue for a limited period. However, home schooling is not limited by time; the only criterion for success is this one exam.

## 2.15.11 Review of activities

### **Ombudsman: the implementation of solutions for children with special needs is moving away**

On 21 March 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, responded to the invitation of the President of the Republic of Slovenia, Borut Pahor, and attended the discussion on the problems of Down syndrome children in Slovenia at the occasion of World Down Syndrome Day.

## Children's parliaments

On 8 April 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, and Deputy Ombudsman, Tone Dolčič, attended the 23rd National Children's Parliament organised by the Slovenian Association of Friends of Youth at the National Assembly. Its main topic was growing up. The Ombudsman greeted all the young parliamentarians and also said that children have the right to dream, and adults must enable them to realise these dreams. Children also pointed out that society should consider children, their development and the problems they face more seriously and that it should consider their proposals when making decisions. Deputy Ombudsman, Tone Dolčič, attended some municipal and regional parliaments prior to the national parliament session.

## The Ombudsman discussed the impact of information regarding legal benefit on children in various proceedings

On 4 April 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, held a lecture on the protection of children in criminal proceedings at a consultation on children as victims and perpetrators, which was held in Brdo pri Kranju. She was also the initiator of this consultation as the chairwoman of the Association of State Prosecutors of Slovenia 12 years ago. She dedicated special attention to the question how to appropriately instruct children on legal benefits in criminal proceedings. These benefits enable them to decide whether to testify against a suspect or not.

## The Little Match Girl play for the Ombudsman

On 10 April 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, visited Tabor Elementary School in Logatec, where the pupils from the fifth to eight grades performed 'The Little Match Girl'. The show was based on the book of the same name and includes all the elements from the book *Naše deklice z vžigalicami* (Our Little Match Girls), which the Ombudsman wrote when she was a state prosecutor; the profits from the book were donated to victims of crime.

## The Slovenian National Assembly supports the Ombudsman's proposal on advocacy of children

On 6 March 2013, Deputy Ombudsman Tone Dolčič participated at a meeting of the Slovenian National Council's Commission for State Organisation, where they discussed the special report of the Human Rights Ombudsman entitled 'Advocate – A Child's Voice'. The Commission was informed about the report and supported the Ombudsman's proposal to institutionalise advocacy. On 8 May 2013, the special report was considered by the National Assembly's Commission for Petitions, Human Rights and Equal Opportunities, and on 23 May it was considered by the Slovenian National Assembly at its 14th regular session. The National Assembly adopted the recommendation for the Government to prepare a special act to institutionalise child advocacy in an independent and autonomous legal entity. This entity would ensure equal services to all children in Slovenia, regardless of their place of residence. The National Assembly recommended that the project 'Advocate – A Child's Voice' should be continued by the Ombudsman's office until the act is passed or this issue is regulated.

## The Ombudsman and ZIPOM centre on an independent child's rights ombudsman

On 16 July 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, Deputy Ombudsman, Tone Dolčič, and adviser, Lan Vošnjak, met with representatives of the Centre for Advocacy and Information on the Rights of Children and Youth (ZIPOM centre), which incorporates various non-governmental organisations in the field of protection of rights of children and youth. The main subject of the discussion was the proposal to establish an independent child's rights ombudsman.

## The Ombudsman greets children on their vacation

The Human Rights Ombudsman, Vlasta Nussdorfer, responded to the invitation of the Slovenian Association of Friends of Youth, and greeted children at the Vila holiday home in Kranjska Gora on 17 July 2013, who were staying there within the scope of the humanitarian initiative 'Pomežik soncu'.

## The Ombudsman continues efforts to constructing the Dr Ljudevit Pivko Primary School in Ptuj

On 27 March 2013, the Ombudsman visited the Dr Ljudevit Pivko Primary School in Ptuj and was informed about the serious conditions where children with special needs learn and acquire skills. The school is a regional centre attended by pupils from 17 municipalities, some of whom cannot contribute to the construction of the school or have decided not to contribute. She promised school staff and parents that she would do everything in her power to get the children and their

teachers a new school. On 26 August 2013, the Ombudsman met with the headmaster, Dragica Emeršič, representatives of the parents' council and the Slovenian Professional Fire-fighter Association, which is helping the school to collect funds for the construction. They were also joined by Mitja Valič, Acting Director General of the Directorate for Investments at the Ministry of Education, Science and Sport. He emphasised that the Ministry supports the project and will strive to execute it. On the first school day, 2 September 2013, the Ombudsman again met some stakeholders who are affected by the construction of the school or who are responsible for its construction. On 22 November 2013, Deputy Ombudsman, Tone Dolčič, attended a humanitarian auction entitled 'We are Also a Part of You', which was aimed at collecting funds for the school. The sponsor of the event was the Human Rights Ombudsman, Vlasta Nussdorfer.

### **With Minister Pikalo on different issues**

On 4 June 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, her Deputies Kornelija Marzel, MSc, and Tone Dolčič, and the Ombudsman's adviser, Brigita Urh, hosted a working visit of the Minister of Education, Science and Sport, Dr Jernej Pikalo and his colleagues. They discussed the reasons for delaying the enforcement of the Placement of Children with Special Needs Act; merging schools in larger school centres; the protection of the rights of pupils who need additional help; concern for the talented; differences among regions with regard to examination results and the issues of the suitability of some literary works in the school curriculum or the conditions for acquiring a reading award or the competition for the Cankar Award. They also dedicated some attention to home schooling issues. In the field of higher education and science, they discussed post-graduate studies abroad and the problems when such students cannot fulfil their contractual commitment on employment in Slovenia after finishing their studies abroad. In relation to sports, they discussed the proposal to amend the Sports Act with regard to compensations for children and juveniles transferring to other sports clubs. The Minister informed the Ombudsman on the methods of resolving the issue of the construction of the Dr Ljudevit Pivko Primary School in Ptuj.

### **The young are not a lost generation**

On 10 September 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, attended a round table panel entitled 'Together We Can Prevent the Emergence of a Lost Generation'. Prior to the round table, the novelties of the ne-odvisen.si programme were presented. Within the scope of this programme, young people and their parents are informed about the traps of various forms of addictions. The round table was also attended by Dr Miro Cerar, Dr Sandra Bašič Hrvatina, Miha Kramli and Nataša Pirc Musar.

### **Stop ceremonies that interfere with the dignity of children and violate their rights!**

On 10 September 2013 and at the beginning of the new academic year, the Ombudsman publicly expressed her concern about hazing rituals in secondary schools. The Ombudsman publicly warned that the hazing of first year pupils in secondary schools in some cases had turned into unique forms of serious assault on the personal integrity of pupils and are a violation of their rights to human integrity, and in some schools even the right to safety or physical integrity. The Ombudsman asked headmasters to dedicate special attention to this problem and consider the appropriateness of these rituals.

### **Consultation on the child's right to privacy in the media**

On 27 September 2013, the Centre for Advocacy and Information on the Rights of Children and Youth which operates within the scope of the Slovenian Association of Friends of Youth, and the Human Rights Ombudsman, organised a meeting to discuss the child's right to privacy in the media. The introductory speakers were Vlasta Nussdorfer, Human Rights Ombudsman, Darja Groznik, President of the Slovenian Association of Friends of Youth, Ranka Ivelja, President of the Ethics Committee of the Association of Journalists of Slovenia, Anton Toni Klančnik from Ljubljana General Police Directorate, and Darko Novak, Deputy Head of the Juvenile, Family and Sexual Crime Department at the District State Prosecutor's Office in Ljubljana. The Ombudsman emphasised that the Ombudsman has always pointed out the unacceptable practices of media abuses of children and juveniles and violations of their right to privacy in the media. In several cases, the Ombudsman proposed an assessment of the conduct of journalists and the media in accordance with the Code of Ethics of Slovenian Journalists, and proposed amendments to the legislation. All 43 participants (from eight media houses, nine non-governmental organisations, three ministries and five other state authorities) adopted recommendations that are published in the section on child's rights.

## Message accompanying the 2013 Children's Week: what is it like to be a child in today's society?

In 2013, Children's Week ran from 7 to 13 October and focused on the issue of what it is like to be a child in today's society. The Ombudsman, Vlasta Nussdorfer, and the President of the Slovenian Association of Friends of Youth, Darja Groznik, signed a joint message which they presented at a joint press conference on 4 October 2013 at the premises of the Association. They emphasised that children cannot and should not wait for their rights to be enforced when appropriate social and material conditions are realised. They asked all responsible persons to act in order to preserve a high level of quality in satisfying child's needs and interests, as well as to give children the opportunity to express their views, form their opinions and take decisions that concern their lives, and adults should listen. Our duty and responsibility are to consider their opinions when taking decisions that are in the best interests of the child.

## At a meeting on child's rights, calls for the state to act

On 7 October 2013, the Human Rights Ombudsman and the Centre for Advocacy of Children's Rights at the Slovenian Association of Friends of Youth in cooperation with the National Council held a discussion on current issues concerning the realisation of children's rights in Slovenia. The meeting took place at the premises of the National Council in Ljubljana. The participants also spoke about the realisation of recommendations of UN Committee for Children's Rights in the Republic of Slovenia. The state should perform its duty to protect children more efficiently. Introductory speeches were given by the Human Rights Ombudsman, Vlasta Nussdorfer, the President of the National Council, Mitja Bervar, the President of the Slovenian Association of Friends of Youth, Darja Groznik, the President of the Children's Parliament, Ana Vilhemina Verdnik, Mateja Končina Peternel from the Supreme Court, Katja Filipčič from the Faculty of Law in Ljubljana, and the Medical Director of the Paediatric Clinic of Ljubljana University Clinical Centre and the representative of the Sick Children Society, Rajko Kenda. The meeting was led by Deputy Ombudsman, Tone Dolčič.

## Being a child is becoming more difficult in today's society

Deputy Ombudsman, Tone Dolčič, participated in a round table panel on 8 October 2013 that discussed the situation of children in today's society. The event was organised by the Ljubljana branch of the Slovenian Association of Friends of Youth (ZPM). Pupils presented their views of childhood and current situation in the society at the meeting.

## The Ombudsman with secondary school pupils on the Ombudsman's role

On 9 October 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, participated an event entitled 'What Is It Like Being a Child in Today's Society?' held in the Vič hall of residence of secondary school pupils as part of Children's Week. The Ombudsman presented the role and meaning of her position in today's society. She warned about the traps in the lives of young people on a daily basis: drugs, alcohol, addiction to the Internet, violence, trafficking and other dangers.

## Pornography in textbooks

In the past two years, the Ombudsman has considered the issue of the suitability of some literary works which contain elements of child pornography, animal torture and detailed descriptions of violent acts. On 23 October 2013, the Human Rights Ombudsman published an opinion and also asked other appropriate institutions for their opinion. Based on all information and opinions, the Ombudsman established that regulations that determine the preparation of professional bases and the method of adopting decisions regarding compulsory and recommended literature in the primary school programme do not have to be amended through legislation. The Ombudsman also emphasised that the fact that an author has a criminal record cannot be a criterion for assessing the literary value and suitability of all his/her works for children.

## Concern for children in divorce proceedings

On 13 November 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, went to meet a demonstrator in front of Vič Social Work Centre. She promised to consider his case and also inform him of her findings. This specific case involved two minor children who had to be protected from the media, and work in their best interest.

## The Ombudsman's calls to the public at the occasion of Child Rights Day

On 20 November 2013, the Ombudsman, Vlasta Nussdorfer, publicly warned that the state must ensure appropriate and efficient mechanisms, especially an appropriate legislative framework, to realise children's rights in all areas. She asked the



responsible persons to prepare a new Family Code as the basis for resolving many issues concerning mutual relations between parents and children, which the Ombudsman has pointed out in all annual reports.

### Cooperation with UNICEF

Deputy Ombudsman, Tone Dolčič, attended a reception of UNICEF's young ambassadors at Universal Children's Day on 20 November 2013. They were hosted by the President of the Republic of Slovenia, Borut Pahor, in the presidential palace. The ambassadors gave the President a special message and emphasised the importance of protecting the rights of children.

### Hana's and My Christmas Wish for physically disabled

On 25 November 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, as honourable ambassador of the Hana's and My Christmas Wish campaign addressed all the participants in Murska Sobota. By selling the picture book with the same title, which was written for the purpose of this campaign, the Vista Institute aims to raise funds for a swing for physically disabled children and establish new values during holidays, i.e. tolerance of difference and compassion.

### The Ombudsman and Deputy Ombudsman with the Director of the Paediatric Clinic of Ljubljana University Medical Centre

On 4 December 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, and Deputy Ombudsman, Tone Dolčič, met the Medical Director, Dr Rajko Kenda, at the Paediatric Clinic. They discussed problems in hospitalising adolescents who are a danger to themselves or others due to a mental disorder or illness; the nature of their illness does not permit them to be treated at a clinic or open departments of health clinics.

### Presenting the work of the Ombudsman to primary and secondary school pupils

On 10 December 2015, the Ombudsman's adviser, Brigita Urh, presented the work of the Ombudsman within the Human Rights at School project to pupils at Secondary school for pharmaceuticals, cosmetics and health care in Ljubljana and to pupils at Ivan Cankar Primary School in Vrhnika and Glazija Primary School in Celje in April 2013. The Ombudsman visited Slovenska Bistrica Secondary School in September 2013, as well as Domžale Secondary School as part of a project to increase social and cultural capital.

## 2.15.12 Review of Recommendations on Children's Rights

**138.** The competent ministries should find actual and legal obstacles to the ratification of international agreements in the field of children's rights and prepare everything necessary to ratify the treaties as soon as possible.

**139.** The act should authorise social work centres only to take necessary measures to protection children; further procedures should be implemented by family courts or specialised family departments of the courts.

**140.** The Ministry of Labour, Family, Social Affairs and Equal Opportunities should clearly determine and delimit the rights and duties in the Family Code of both parents regarding their children.

**141.** The Ministry of the Interior should examine the Deaths, Births and Marriages Register Act and amend it so that the birth of a child outside a health-care institution can be proven not only by a birth certificate issued by a doctor present at labour, but also in other ways

**142.** Experts should study the suitability of guidelines on autistic children and propose urgent changes.

**143.** The Ministry of Education, Science and Sport should examine the possibility of amending the standards and norms that regulate the implementation of educational programmes for children with special needs so that the regulations consider the number of children who need additional help at individual schools.

**144.** The Government of the Republic of Slovenia should prepare systemic solutions to open issues concerning co-financing programmes and investments that are in the joint interests of people from several local communities, which, however, often reject such programmes due to various reasons.

**145.** The state should have the option to effectively intervene if the implementation of some public services within the jurisdiction of local communities is endangered:

so that the state could take over the implementation of such services or that local communities could be temporarily deprived of part of their funds and these funds would be invested in joint programmes.

**146.** The Ministry of Education, Science and Sport should re-examine the concept for working with secondary school pupils in hospitals.

**147.** The Government should determine that the coordination of work and responsibility for harmonising the opinions of ministries regarding joint open issues should be taken over by a responsible person from the Cabinet, who would be personally responsible for the proceedings, not for the result of inter-ministerial harmonisation.

**148.** The court should decide *ex officio* on the implementation of expert opinions in proceedings if the court expert is performing work, where the child is included. The enforcement of such evidence should not

be linked to the proposals or other activities of the parties. In such court proceedings, the court should or could take such evidence in accordance with the fourth paragraph of Article 153 of the Civil Procedure Act.

**149.** The Ministry of Education, Science and Sport should examine the suitability of the current legal regulation (Article 107.a of the Education Organisation and Financing Act) which prohibits the employment of certain persons but does not prohibit their other activities at schools. We suggest that it should be examined whether the persons defined by this legal provision should be prevented from having contact with children during classes and other school activities, or it should enable the implementation of such activities.

**150.** The Ministry of Education, Science and Sport should analyse the grades of children who are home schooled, and should examine necessary amendments to the regulations which would be in the best interests of children.



# 2.16

## IMPLEMENTATION OF DUTIES AND POWERS OF THE NATIONAL PREVENTIVE MECHANISM

Under the Act Ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Uradni list RS [Official Gazette of the Republic of Slovenia], No. 114/2006 – Mednarodne pogodbe (International Treaties), No. 20/06 – The Optional Protocol), the Human Rights Ombudsman of the Republic of Slovenia (hereinafter: the Ombudsman) also fulfils the mandate and exercises the powers of the National Preventive Mechanism (hereinafter: the NPM). In agreement with the Ombudsman, the same role is assumed by the selected non-governmental organisations (hereinafter: the NGOs) registered in the Republic of Slovenia and organisations that have obtained the status of humanitarian organisations in the Republic of Slovenia and are engaged in the protection of human rights or fundamental freedoms.

**Report of the Human Rights Ombudsman of the Republic of Slovenia on the Implementation of the tasks of the National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the year 2013 is available on the Ombudsman's website [www.varuh-rs.si](http://www.varuh-rs.si) and in a special publication in English.**

In fulfilling its mandate and exercising its powers, the NPM visits all places of detention in the Republic of Slovenia, thus checking the treatment of persons deprived of their liberty in order to enhance their protection against torture and other cruel, inhuman or degrading treatment or punishment. Having regard to the legal norms, the NPM makes recommendations to relevant bodies with the aim of improving the conditions and treatment of persons deprived of their liberty and preventing torture and other cruel, inhuman or degrading treatment or punishment. In this context, the NPM may also submit proposals and comments on the applicable or proposed laws.

**In the Republic of Slovenia, the regular places of the deprivation of liberty are particularly the following:**

- institutions for serving the sentence of imprisonment (hereinafter: the prisons) with all their units and Radeče Correctional Facility;
- juvenile institutions (JIs);
- certain social care institutions (SCIs) and special SCIs;
- psychiatric hospitals (PHs);
- police custody and/or detention rooms at police stations (PSs);
- the Aliens Centre and the Asylum Centre;
- detention rooms operated by the Slovenian Armed Forces, and
- all other places within the meaning of Article 4 of the Optional Protocol (e.g. police emergency vehicles and similar).

Pursuant to a public call for tender published in the Official Gazette of the Republic of Slovenia, No. 103/07 of 16 December 2011, the following organisations were selected for cooperation in 2012 and 2013 (with the option of a renewal of cooperation for another year): the Legal Information Centre of NGOs – PIC (hereinafter: PIC), the Slovenian Red Cross (RKS) and the Primus Institute (Primus) – all three were chosen again, while the Slovenian

Federation of Pensioners' Organisations (ZDUS) and Novi paradoks (NP) were newly chosen. Pursuant to a contract regulating mutual cooperation in detail, the NPM cooperated with these selected NGOs in 2013.

In 2013, 48 visits were undertaken (most of them were unannounced, as only 8 visits were announced in advance). Thus, the NPM fully realised (or even exceeded) the number of the visits planned in the programme which had been drafted in advance (in 2012, 46 visits were undertaken). In planning the number of visits, staff capacities and, in particular, financial resources available for the performance of these activities had to be, of course, taken into account.

The visits undertaken also included four control visits. A control visit is carried out when prior to a regular visit, it is reasonable to check the implementation of the NPM's recommendations aimed at eliminating irregularities and improving the conditions and treatment of persons. The implementation of the recommendations made in respect of previous visits is usually regularly checked by the NPM on follow-up visits to a particular institution.

Except for one, all visits undertaken by the NPM in 2013 were one-day visits. **The NPM thus visited 10 institutions where people serving prison sentences and detainees are accommodated (8 prisons and 1 correctional facility), as well as 20 police stations, the Aliens Centre in Postojna, 1 psychiatric institution, 11 residential homes for the elderly and 5 juvenile institutions.**

The Ombudsman appointed nine officials for the purpose of carrying out the functions of the NPM (including the Ombudsman's deputy who usually performs these functions). All these officials still continue to carry out other Ombudsman's functions (such as addressing initiatives). Although having some advantages (e.g. acquaintance with the issues related to dealing with specific complaints by the people affected), this circumstance has nevertheless also certain disadvantages, a fact which, in particular, has a direct bearing on individual officials who are overburdened with preventive visits while fulfilling the mandate and exercising powers of the NPM on one hand and dealing with several initiatives assigned to them for consideration on the other hand. **Therefore, the NPM is deliberating on fully dividing the two Ombudsman's functions, i.e. the preventive function involving the NPM's mandate and the reactive function relating to addressing the initiatives received.** Moreover, the necessity for such division is explicitly underlined in Paragraph 32 of the Guidelines on National Preventive Mechanisms of the Sub-committee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted at the Twelfth session in Geneva, 15-19 November 2010. This paragraph specifies that where the body designated as the NPM performs other functions in additions to those under the Optional Protocol, its NPM functions should be located within a separate unit or department, with its own staff and budget. It has been established that this will require a certain increase in the number of staff and additional financial resources, as already now, a certain proportion of financial burden related to the fulfilment of the mandate and the exercise of powers of the NPM is covered by the Ombudsman's resources.

**The visits undertaken by the NPM in 2013 included 12 Ombudsman's officials (the Ombudsman herself included) and 11 various representatives of the NGOs under the contract, thereof two NP representatives, two PIC representatives, four Primus representatives one RKS representative and two ZDUS representatives. Primus and its members took part in 27 visits, ZDUS in 6, PIC in 12, RKS in two and NP in 2 visits. In 2013, 6 out of 48 visits were undertaken without the representatives of the NGOs under contract.**

**Article 18 (2) of the Optional Protocol stipulates that the States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge.** Pursuant to this requirement, the NPM should ensure that its staff has the diversity of background, capabilities and professional knowledge necessary to enable it to properly fulfil its NPM mandate. This should include, inter alia, relevant legal and health-care expertise, as explicitly underlined by Paragraph 20 of the aforementioned Guidelines on national preventive mechanisms of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Moreover, the Association for the Prevention of Torture (APT) recommends that the NPM should include experts with various skills and capabilities (lawyers, doctors, psychologists and psychiatrists, people with professional background in the police, prison administration and psychiatric institutions, representatives of the civil society, i.e. NGOs, institutes, etc.), people with previous experience in undertaking visits to prisons and in working with vulnerable groups (migrants, women, minors, etc.), anthropologists and social workers.

In its NPM capacity, the Ombudsman therefore employs experts with the widest possible range of the recommended specialist skills. Some officials who had been working for the Ombudsman prior to the assumption of obligations under the NPM mandate were included by the Ombudsman in the NPM team, i.e. a psychologist, an expert in the field of police work, a few lawyers, a former judge and an anthropologist. Because the selected NGOs were not able to ensure services of some other suitable experts and the Ombudsman's expert team does, for example, not have a person with appropriate skills in the field of health-care, this lack of experts had to be made up for by the NPM itself. At the beginning of 2013, the NPM therefore published, on its website and in the bulletin of the Medical Chamber of Slovenia (ISIS), a public tender for the inclusion in the list of medical specialists who would professionally assist the Ombudsman in establishing, clarifying or assessing certain facts and/or during its visits to the places where persons are deprived of their liberty, support it with the necessary professional skills, which the Ombudsman lacks.

The NPM received two applications for cooperation, one from Associate Professor, Dr Peter Pregelj, M.D., specialist in psychiatry, and one from Assistant Professor, Dr Milan Popovič, M.D., specialist in general surgery. Because both applications were compliant with the tender requirements, the NPM included both applicants in the list of medical specialists and signed a cooperation contract with them. Any expert selected from the list by the Ombudsman with regard to the type and place of a particular visit performs his duties according to the Ombudsman's order and instructions and in cooperation with its professional associates. These duties include participation in the planned visit, and submission of written answers to the questions of the Ombudsman in its NPM capacity and findings, especially regarding the adequacy of the health care and treatment of persons deprived of their liberty.

**A medical specialist participated in 6 out of 48 visits undertaken in 2013.** For the following years, an increased inclusion of both specialists in visits is being envisaged, while taking into account the available financial resources. It should nevertheless be observed that the participation of a medical specialist in the NPM's visits is absolutely necessary, as in absence thereof, it is difficult to assess, from the medical aspect, the adequacy of the health care and treatment of persons deprived of their liberty.

The selected NGOs continued to fulfil the mandate and to exercise the powers of the NPM with their own personnel. They are trained to cover individual areas of supervision and are part of a team which, for each visit, is determined by the Ombudsman to undertake the visit at the place of the deprivation of liberty and to check the treatment of persons deprived of their liberty.

The time and place of the visit, and the number of members of the team involved in visiting a particular place of inspection are specified by the Ombudsman, taking into consideration the programme of the visits adopted for this purpose by the Ombudsman in cooperation with the selected organizations. If necessary, other circumstances that might require an immediate visit are also taken into account.

**An exhaustive (final) report on the findings of each NPM's visit to a particular institution was also prepared in 2013.** This report also includes proposals and recommendations for the elimination of the identified irregularities and the improvement of conditions, including measures to reduce the possibilities of improper treatment in the future. Moreover, in certain cases (especially in undertaking visits to residential homes for the elderly and mental hospitals), a preliminary report is drafted.

Both the Ombudsman's representatives and the representatives of the selected NGOs take part (some of them zealously, while cooperation of others is quite modest) in the preparation of the final report on the visits performed. Every person taking part in the visit, including NGO representatives, must prepare a brief report on his/her own findings about the visit, together with proposals which are part of the final report on the inspection performed.

The final report is submitted to the relevant authority (i.e. to the body in charge of the institution visited), together with the proposal for the authority to, within the specified time limit, take a stand on the statements and/or recommendations included in this report, and communicate them to the Ombudsman.

An Ombudsman's representative is generally responsible for the preparation of the final report, although a representative of the selected NGO may also be appointed for its production (in 2013, it was Primus that was

responsible for the production of two final reports on visits). On the basis of the final report, and the response of the competent body to this report and potential additional NPM's standpoints, an additional brief report on each visit is prepared and published on the official website.

The implementation of the NPM's recommendations is a commitment of the State Party to the Optional Protocol. Under Article 22 of the Optional Protocol, the competent authorities are obliged to examine NPM's recommendations and enter into a dialogue with it on possible implementation measures. The performance achieved in implementing the recommendations in connection with NPM's visits in 2013 is presented in the form of a synthesis of the NPM's findings and recommendations and responses by the competent authorities in a text about visits to individual institutions (this issue is partially also presented in the Ombudsman's 2013 regular annual report in the chapter on the restriction of personal liberty and police procedures).

**In 2013, the NPM was, in general, satisfied with the responses by the competent bodies (in particular by the institutions visited) to the findings and recommendations to improve conditions, as these bodies demonstrated willingness to cooperate. Moreover, it has in particular been established that the institutions visited seek, within their capabilities, to adopt all measures for the necessary improvements. In this context, the NPM strives for a deeper cooperation in terms of content with competent ministries (for example, with the Ministry of Labour, Family and Social Affairs, Ministry of Education, Science, Culture and Sport, Ministry of Justice and Ministry of Health), especially in cases where systemic changes are required (for example, modifications of and amendments to legislation).**

In 2013, the NPM members, in addition to visits, took part in other events, for example in several international events (Belgrade – Serbia, Skopje – Macedonia and Moscow – Russia) where they presented their activities and previous experience. They also attended the meeting organised by the Council of Europe in Strasbourg (France) that focused on standards for the detention of foreign nationals. Moreover, the NPM members organised and carried out visits of other NPMs (thus, they hosted the NPMs from Georgia, the Czech Republic and Azerbaijan). The NPM simultaneously organised discussions with representatives of individual State authorities (including ministries) and presented their activities in this area on various occasions (for example, at the Police Academy in Tacen, the Faculty of Criminal Justice and Security, press conferences, etc.). For all NPM members, including the participating NGOs, the NPM organised a training course on dementia, and working meetings focusing on the aspects of joint operation.

**Full text of the Report of the National Preventive Mechanism for the year 2013 is available on the Ombudsman's website [www.varuh-rs.si](http://www.varuh-rs.si) and in a special publication in English.**

# 2.17

## OTHER OMBUDSMAN'S ACTIVITIES

### **Discussion of the 17th Regular Ombudsman's Report at the meeting of the National Assembly of the Republic of Slovenia**

On 30 January 2013, a discussion of the 17th Human Rights Ombudsman's Report for 2011 was held at the National Assembly. It was attended by the Human Rights Ombudsman, Dr Zdenka Čebašek-Travnik, her Deputies Jernej Rovšek, Ivan Šelih, Tone Dolčič and Kornelija Marzel, MSc, and General Secretary, Bojana Kvas. In her introductory speech, the Human Rights Ombudsman presented the basic findings of the 2011 Annual Report; she emphasised some important matters from her term of office and concluded with the thought that the method of work of the Ombudsman goes beyond the boundaries of legal norms, permits personal contact with affected persons, and provides the opportunity to propose different solutions. A better and more just society can be achieved only through mutual respect and respect for the dignity of everyone, regardless of their status and circumstances. Human dignity is the essence and also the unlimited source of human rights.

### **World Ethos – Global and Local**

On 12 April 2013, the Ombudsman, Vlasta Nussdorfer, as a sponsor and lecturer attended the meeting entitled 'World Ethos – Global and Local'. The meeting took place at Cankar Hall in Ljubljana. The World Ethos Slovenia movement was inspired by the vision and work of a great man, Dr Hans Küng. When the movement was established, the manifesto read: "We call upon all people in Slovenia to jointly transform and increase personal and social ethical awareness, since this is the only way to contribute constructively to the humanisation of mankind on all levels of local and global life."

### **On the 20th anniversary of Slovenia's membership to the Council of Europe, on past and future challenges**

On 14 May 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, and Liana Kalčina, former Director of the Information and Documentation Centre of the Council of Europe, currently the Ombudsman's adviser, attended a celebration of the 20th anniversary of Slovenia's membership to the Council of Europe. The participants were addressed by the Minister of Foreign Affairs, Karl Erjavec, and (by video link) by Thorbjorn Jagland, the Secretary General of the Council of Europe. This was followed by a round table panel entitled 'The Council of Europe and Slovenia: Two Decades of Acquired Experience and New Challenges for the Future'. The work of the former Information and Documentation Centre of the Council of Europe in Ljubljana was also emphasised during the round table. Unfortunately, the Council of Europe decided to close such centres in EU member states, including Slovenia. The Human Rights Ombudsman of the Republic of Slovenia proposed that its work continue in the form of a Human Rights Centre under the auspices of the Ombudsman; however, due to the economic and financial situation in the country, the Government has not supported the proposal. Therefore, the Centre was closed and a huge gap emerged in Slovenian society, which the Ombudsman will try to fill by establishing the Human Rights Centre.

### **The Ombudsman was honourable sponsor of the Photography and Human Rights Festival**

The Human Rights Ombudsman, Vlasta Nussdorfer, was the honourable sponsor of the first Photography and Human Rights Festival, prepared by the Ekvilib Institute in cooperation with the SPP Institute for the Promotion of Photography and KUD France Prešeren. The festival took place from 29 May to 1 June 2013 in Ljubljana. On 1 June 2013, the Ombudsman greeted all the participants at the announcement of the winners of the Global WORLD competition by video link. The festival included exhibitions, multimedia projections, lectures and discussions, and focused on photography as a tool for promoting and protecting human rights and on expressing a critical view and stimulating discussion on current global and local social issues.

### **Presentation of the Ombudsman's role to law students during the Human Rights Summer School**

On 23 August 2013, the Deputy Ombudsman, Kornelija Marzel, MSc, and adviser, Martina Ocepek, presented the work of the Ombudsman to law students in Maribor, Ljubljana and Nova Gorica during the Human Rights Summer School. The summer school is organised by the Legal Information Centre for Non-Governmental Organisations - PIC in cooperation with various stakeholders.

### **On 23 June 2013, the Ombudsman attended the Slovenia – Peace – Future round table at the seat of the White Dove - Beli golob international music-peace foundation.**

### **The Ombudsman honoured the memory of the first congress of Slovenian Anti-Fascist Women's Association**

On 13 October 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, participated at the 70th commemoration of the congress in Dobrnič, where the congress was first organised in 1943.

### **First Evening with the Ombudsman in Ravne na Koroškem a success!**

On 14 October 2013, the first among ten events, entitled 'An Evening with the Ombudsman', was held in Ravne na Koroškem, hosted by the central Koroška Dr Franc Sušnik Library. The Human Rights Ombudsman, Vlasta Nussdorfer, emphasised the relevance of meeting people in local environments and thanked the researchers from the Faculty of Social Sciences for the opportunity to speak about the possibilities of resolving human rights violations.

### **At the Fourth Academy of Active Citizenship and Entrepreneurship about values, ethics and the future**

The Ombudsman, Vlasta Nussdorfer, attended the round table panel 'Values – Foundation for a Fair Society' on 18 October 2013 during the fourth Academy of Active Citizenship and Entrepreneurship. She was also joined by Dr Klemen Jaklič from Harvard University and the Franciscan, Bogdan Knavs; the round table was chaired by Jernej Buzeti, MSc, from the Network of Ideas, which organised the Academy.

### **Ombudsman: let's step outside the borders of our own rights**

On Sunday, 20 October 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, addressed participants at the international event 'Run over the Bridge of Harmony'. The event was held at the Gerlinzi-Pölsen border crossing. She emphasised that we remain behind the fences of our own rights too much, and that it is our duty to protect the rights of others, especially by nurturing tolerance of those who are different.

### **When will we get the Human Rights Centre?**

On 28 October 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, her Deputy, Jernej Rovšek, and General Secretary of the Ombudsman, Bojana Kvas, MSc, met with Eva Tomič, the President of the Inter-ministerial Commission on Human Rights that operates within the scope of the Ministry of Foreign Affairs, and they discussed the current issues of procedures of ratification of international conventions, the work of inter-ministerial commission and on the issue of establishing the Human Rights Centre.

### **The Ombudsman lectured to students of the Faculty of Education**

The Human Rights Ombudsman, Vlasta Nussdorfer, gave a lecture on 21 October 2013 to post-graduate students at the Faculty of Education in Ljubljana. One hundred and twenty students listened to the topic of protecting human rights of the youngest and primary school pupils who encounter poverty and various forms of violence in their domestic environment. School is their second home, and must play a special role in such cases, since it is sometimes the only institution that can recognise the consequences of violence and react according to the law, i.e. quickly and efficiently.



## The consideration of the 18th Ombudsman's Annual Report for 2012

On 4 July 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, submitted the 18th Annual Report of the Human Rights Ombudsman to the President of the National Assembly, Janko Veber, and also to the President of the Republic of Slovenia, Borut Pahor. On 19 July 2013, the report was also submitted to the Primer Minister, Alenka Bratušek.

On 4 September 2013, we attended the 17th session of the National Council's Commission for State Organisation, where we discussed the Ombudsman's Annual Report for 2012. The National Council supported the Ombudsman's efforts and her proposals and recommendations to the Government on 18 September 2013, and also suggested that the Council consider them to the greatest extent possible. On 3 October 2013, the Government submitted its response to the Ombudsman's Annual Report and information on the implementation of recommendations of the National Assembly when considering the 18th Annual Report.

Another detailed consideration of the report was conducted on 4 October 2013 at the Commission for Petitions, Human Rights and Equal Opportunities, led by Deputy, Eva Irgl. The Commission supported all the Ombudsman's recommendations. On 24 October 2013, the report was also considered by the National Assembly. At this meeting, the Ombudsman presented a summary of the report and her findings about the level of respect for human rights and fundamental freedoms, as well as legal safety of citizens in Slovenia. The 18th regular report for 2012 was adopted by consent in the evening of 24 October 2013. At the end, all the Ombudsman's recommendations to all state and local authorities were adopted.

On 21 October 2013, the Ombudsman participated in the opening of the Simbioza project, which is intended to accelerate inter-generational cooperation, expand the e-literacy of the elderly and open up possibilities for employment of young people. On the same day, she gave a lecture to students of the Faculty of Education as part of the interdisciplinary seminar entitled School and Violence.

## The Ombudsman on books, life and human rights

On 4 November 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, was a guest of Miran Jarc Novo mesto Library as part of the 'Rastoče knjige' project. At different meetings in libraries across Slovenia, she talked about her book *Živi in pusti živeti* (Live and Let Live), about her role as Ombudsman and her own efforts to respect human rights.

## MIRA Award

On 23 November 2013, the Human Rights Ombudsman attended the Mira Award ceremony. The award went to poet, translator and publicist Jolka Milič for exceptional achievements in literature, publishing and humanities. This was the first such event, which was organised by MIRA – the women's section of Slovenia's PEN at Cankar Hall.

## The Ombudsman meets the Mayor of Ljubljana

On 28 November 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, met with the Mayor of Ljubljana, Zoran Jankovič, and the Director of Public Housing Fund, Sašo Rink. They discussed access to non-profit accommodation; cases of forced eviction and how to resolve these problems; illegal building; resolving residential distress in the municipality; road categorisation; spatial planning in the municipality and the inclusion of citizens in the process; the adaptation of space to vulnerable groups (disabled, the elderly, parents with babies etc.) and the placement of children in kindergartens.

## The Human Rights Ombudsman once again among the 10 most influential lawyers in Slovenia

Based on votes at the main Slovenian legal portal IUS-INFO ([www.iusinfo.si](http://www.iusinfo.si)), the Human Rights Ombudsman, Vlasta Nussdorfer, was for the eighth time in a row voted one of the ten most influential lawyers. The IUS SOFTWARE company invited all ten selected lawyers to a solemn award ceremony and a round table, which traditionally closes the selection. The round table, which was held on Human Rights Day, 10 December 2013, at the Lev Hotel in Ljubljana, was coordinated by Vlasta Nussdorfer. On the same day, the Ombudsman participated as a panel member in a panel discussion titled 'Economic Crisis and Its Impact on Human Rights', organised by the Faculty of Law in Ljubljana and the Constitutional Law Association.

## Message of the Ombudsman on the occasion of Human Rights Day

On the 65th anniversary of the General Declaration of Human Rights, i.e. on 10 December 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, publicly spoke about the situation of human rights in Slovenia and emphasised that respecting rights is costly, but disrespecting them is even more so. She thanked non-governmental organisations and civil society in general for their great contribution to revealing violations of human rights and their creative contribution to their enforcement.

## 20th anniversary of the Human Rights Ombudsman Act characterised by conversation and publication

In 2013, twenty years had passed since the passage of the Human Rights Ombudsman Act (ZVarCP) in National Assembly of the Republic of Slovenia on 20 December 1993. The anniversary was an opportunity to think about how the constitutional idea of the human rights ombudsman was realised in Slovenia (Article 159 of the Slovenian Constitution). On this occasion, the Ombudsman held a discussion and presentation of the publication dedicated to the 20 years of the Human Rights Ombudsman Act, which was organised on 19 December 2013 at the Faculty of Law in Ljubljana. The publication presents a review of historical facts about when law was passed, a collection of views, expert opinions and other opinions of fourteen authors, as well as a review of the legal bases for Ombudsman's work.

## Reception on Human Rights Day

On 10 December 2013, the Human Rights Ombudsman hosted a traditional reception for the most esteemed representatives of state institutions, civil society and diplomacy, i.e. to celebrate Human Rights Day. Karin Grom from CIRIUS Centre, who has Down syndrome also spoke at the reception. She worked during the holidays in the Ombudsman's office. Secondary school pupil, Ana Karneža, known to the Slovenian audience from the TV show 'Slovenia's Got Talent', also sang at the reception and claimed that she had overcome the problems caused by her disability a long time ago.

## UNESCO ASP network of Slovenia

At Kolosej in Ljubljana, the Ombudsman attended the 15th meeting of UNESCO ASP Network of Slovenia, celebrating the 15th anniversary of the national project Human Rights Day. The meeting was organised by Jože Moškrič Primary School in Ljubljana and the UNESCO office in Slovenia.

## The outcome of a concert for persons with development disabilities

The Ombudsman attended the traditional Christmas and New Year concert performed by the Orchestra of the Slovenian Armed Forces, which was held at Cankar Hall. All the proceeds from tickets were dedicated to the Vesele nogice association, which supports people with development disabilities, since they want to help children and their parents on the difficult path to achieving maximum independence.

## Reception for representatives of humanitarian organisations

On 17 December 2013, the Human Rights Ombudsman attended a reception hosted by the President of the Republic of Slovenia, Borut Pahor, for representatives of humanitarian organisations.

## Festivities celebrating Constitutionality Day and Independence Day

On 19 December 2013, the Ombudsman, Vlasta Nussdorfer, attended a formal session celebrating Constitutionality Day, hosted by Miroslav Mozetič, MSc, the President of the Constitutional Court of the Republic of Slovenia. The following day, she attended a formal session of the National Assembly celebrating Independence and Unity Day, as well as a ceremony organised at Cankar Hall in Ljubljana.

## The Ombudsman and the Minister of Foreign Affairs on the establishment of the NHRI in Slovenia

On 19 December 2013, the Human Rights Ombudsman and her colleagues met with the Minister of Foreign Affairs, Karl Erjavec, and his colleagues. They discussed the establishment of a national human rights protection institution, concern for Slovenian citizens abroad, the realisation of international agreements and some cases considered by the Ombudsman. They also discussed the possibilities of cooperation when Slovenian citizens abroad are convicted or are in critical situations. The

Ombudsman expressed her hope that some conventions in connection with human rights could be ratified. The discussion partners also discussed the problem of minors being hospitalised with adults.

### **The Ombudsman meets children and adults as part of the Neodvisen.si project**

In 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, actively participated in the Slovenian social programme entitled NE-ODVISEN.SI, where young people of all age groups and adults (mostly parents) learn about various forms of addiction; the project also motivates healthy responses to complications during growing up. She also actively participated in several meetings: on 18 March 2013 in Cerklje na Gorenjskem, on 11 April in Radovljica, on 25 April in Šempeter pri Gorici, on 16 May at Dobrovo Primary School, on 14 May at Mons Hotel in Ljubljana, on 23 May in Deskle (Municipality of Kanal), on 30 May in Bilje, on 12 September in Lucija, on 29 September at Lava Primary School in Celje, on 10 October at Fran Roš Primary School in Celje, on 17 October at Novo mesto Primary School, on 24 October at Kočevje Primary School, on 7 November at Drago Kobal Primary School in Maribor, on 13 November at Valentin Vodnik Primary School in Ljubljana, on 14 November in Železniki, on 21 November in Preddvor, on 19 November in Nova Gorica, on 27 November in Predoslje and on 28 November in Jesenice.

### **Ombudsman Vlasta Nussdorfer hosted by many libraries**

The Ombudsman responded to most requests from Slovenian libraries to present her work or to host discussions with local people and readers about issues of human rights protection. She participated at the following libraries: on 23 April 2013 at Ravne na Koroškem library and also at Radlje ob Dravi library, on 24 April in the library in Slovenske Konjice, on 7 May in the library in Velenje, on 15 May in Trzin, on 25 September in Radovljica, on 15 October in the literary café at the library in Domžale, on 18 November at the library in Tržič, on 20 November, she participated in a round table on Public Libraries' Day in Rogaška Slatina.

### **Ombudsman Vlasta Nussdorfer hosted by other institutions**

On 29 March 2013, the Ombudsman was hosted at Maister's Evening organised by the General Maister Association of Spodnja Savinja Valley; on 10 May, she lectured in Nova Gorica at an expert conference entitled 'Women's Situation in Slovenian Society' which was held in the course of the national opening of Lifelong Learning Week; on 17 May, she lectured on children's rights protection at a training of vacation organisers organised by the Slovenian Association of Friends of Youth at the Pacug children's vacation centre; on 5 October, she addressed participants at the event 'Day for Change' and visited a nursing home in Idrija; on 8 October, she lectured at the University of the Third Age in Slovenj Gradec; on 8 October, she participated at a press conference on the subject 'Mental Health of Children and Adolescents in the Republic of Slovenia', prepared by the Planina Educational Institution and the Medical Chamber of Slovenia; on 18 October, she participated at a round table entitled 'Values - the Foundation of a Fair Society' in the Tartini Theatre in Piran; on 7 November, she lectured at Šentjur Adult Education Centre on the rights of the elderly. More about the event can be found [here](#).

### **Evenings with the Ombudsman - a new project in cooperation with the Faculty of Social Sciences**

The Human Rights Ombudsman of the Republic of Slovenia joined the project 'Evenings with the Ombudsman' in April 2013. We prepared ten evening events in cooperation with the Faculty of Social Sciences in Ljubljana; the main purpose of these events was to raise awareness and inform citizens of the European Union from the most remote and rural regions on fundamental rights as set out in the EU Charter of Fundamental Rights. The goal of the project was to enhance the feeling of joint European values among citizens and to encourage their active participation in raising awareness about the importance of democracy and the rule of law. The evenings were held in places where the Ombudsman had talked with the complainants within the framework of the Ombudsman's field trips. In 2013, the evenings were held in Ravne na Koroškem, Idrija and Kočevje; six evenings are planned for 2014. These events have a unique scenario, since an introductory theatre performance presents violations of labour law and environment, and the event continues with a discussion and possible ways to eliminate violations. Viewers had the opportunity to take a role in the play and actively change the flow of events and directly resolve the enacted situations with their experience and proposals. At the end, visitors to these evenings, which were usually organised in libraries, also spoke to the Ombudsman. The events will continue in 2014.

## Participation at charity concerts and aid campaigns

On 18 May 2013, the Ombudsman, Vlasta Nussdorfer, and her Deputy, Kornelija Marzel, MSc, attended the campaign 'Tečem, da pomagam' (I Run to Help) in Slovenj Gradec; on 25 March, the Ombudsman was the main guest at the Ljubljana charity event 'Ne skrivaj se pod odejice' (Don't Hide Under the Blankets); on 1 June, she attended the Moste pri Komendi charity event as honourable sponsor; on 22 December, she attended the charity campaign 'Naredi korak za dvojčka Anžeta in Eneja' (Take a Step for Twins Anže and Enej, 4-year-old twins with cerebral palsy) at Janez Levec Training Centre in Ljubljana, which is a primary school with a special syllabus. She also attended a charity concert, 'Down Is Up', for children with Down syndrome on 8 June in Cinema Šiška in Ljubljana, where musicians, sportsmen and other famous Slovenians took the initiative to actively include children with Down syndrome in society. The Ombudsman, Vlasta Nussdorfer, attended another charity concert entitled 'Stopimo skupaj za otroke z Downovim sindromom' in Koper which was held within the scope of World Down Syndrome Day. On 11 December, she attended the charity concert of Ana's Fund at the St. Stanislav Institution to celebrate the 15th anniversary of its activities.

## Participation at ceremonies

The Human Rights Ombudsman, Vlasta Nussdorfer, attended the Roža mogota award ceremony on 8 March 2013, where awards are given for the achievements of the year for equal opportunities of women and men; on 15 April, she and the General Secretary of the Ombudsman, Bojana Kvas, attended the ceremony celebrating the Faculty of Law Day in Ljubljana; on 23 May, the Ombudsman welcomed participants to a ceremony at the beginning of the 3rd youth literary festival 'Bralnice pod Slamnikom' 2013 in Radomlje and spoke to young poets and writers about the importance of reading and of the children's right to speak about their problems; on 20 April, the Ombudsman attended the awarding of diplomas of the Erudio Education Centre in Ljubljana; on 26 April, the Ombudsman attended a reception celebrating Labour Day, 1 May, at the ZSSS in Ljubljana; on 31 May, the Ombudsman attended a ceremony celebrating the 50th anniversary of the Sožitje – the Slovenia Association for Persons with Intellectual Disabilities, which was held at Cankar Hall; on 1 June, the Ombudsman addressed participants at a ceremony in Senožče commemorating the memory of people from Dolenja vas who were killed during the war; on 24 June, the Ombudsman also attended a reception for the families of deceased members of the Territorial Defence, which was held at the Presidential Palace; on 24 June, the Ombudsman attended the main ceremony on the occasion of Statehood Day in Congress Square in Ljubljana; on 26 August, the Ombudsman attended a ceremony celebrating the 100th birthday of Boris Pahor, which was held at SNG Opera and Ballet in Ljubljana; on 14 September, the Ombudsman attended the solemn laying of the foundation stone for the Islamic cultural centre in Ljubljana; on 21 October, Deputy Ombudsman, Kornelija Marzel, MSc, attended a ceremony celebrating the eco-rehabilitation of Velenje Adult Care Facility.



# 3

## INFORMATION ON THE OMBUDSMAN'S WORK

### Introduction

The Slovenian Constitution includes the Human Rights Ombudsman in the chapter on constitutionality and legality. Thus, it assigns a constitutional category to this institution and also great significance. The Ombudsman is not part of an authority body, s/he does not have direct authority to exercise power, but provides an informal form for the protection of rights of individuals in relation to the authorities. The Ombudsman protects human rights and fundamental freedoms and limits the independent decisions of authorities when they encroach on human rights and fundamental freedoms.

On 22 February 2013, the term of office of Human Rights Ombudsman, Dr Zdenka Čebašek-Travnik, ended. She performed this function from 22 February 2007 to 22 February 2013. At its 10th regular session on 1 February 2013, the National Assembly of the Republic of Slovenia by 82 votes out of 86 present, voted Vlasta Nussdorfer the new Ombudsman; she began her term of office on 23 February 2013. The election of the new Ombudsman is also shown in the Ombudsman's work in the year to which this report refers.

### 3.1 Legal basis for Ombudsman's work and working methods

The fundamental legal acts for the Ombudsman's operations are the **Constitution of the Republic of Slovenia and the Human Rights Ombudsman Act (ZVarCP)**. The Ombudsman is defined by Article 159 of the Constitution, which specifies that an ombudsman for citizens' rights shall be determined to protect human rights and fundamental freedoms in relation to state authorities, local self-government authorities and bearers of public authority. Special ombudsmen for citizens' rights for individual areas may be appointed by law.

At its session on 20 December 1993, the National Assembly adopted the ZVarCP. The act has been amended twice in the past 20 years. The first amendment refers to the adoption of the Public Sector Salary System Act in 2002, which provided the basis for reducing the salaries of Ombudsman's employees, which had until then been related to the salaries of employees of the Constitutional Court; when the act was passed, salaries were reduced significantly. The second amendment was adopted in 2012, when the National Assembly passed the Act amending the Human Rights Ombudsman Act (ZVarCP-A). This amendment regulated the rights of employees of the Ombudsman after the end of a term of office; the period for the receipt of compensation after the end of the term of office was shortened and the compensation lowered (Articles 1, 2 and 3 of the ZVarCP-A), and the possibility of sanctioning those who do not provide the Ombudsman with requested materials and those who do not respond to the Ombudsman was once again established (Articles 4 and 5 of the ZVarCP-A). Therefore, an offence by a responsible person of an authority that does not send requested materials and does not respond to the Ombudsman's invitation for discussion can be fined EUR 500. The Ombudsman therefore became an offence authority. In 2013, the Ombudsman did not initiate any offence proceedings.

In accordance with the **Act ratifying the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (MOPPM)**, which entered into force on 1 January 2007, the Human Rights Ombudsman also carries out tasks and powers of the National Prevention Mechanism (DPM)

against torture and other cruel, inhuman or degrading punishment or treatment. The Ombudsman performs these tasks in cooperation with non-governmental organisations selected on the basis of a tender. These tasks have been implemented since spring 2008. As part of the implementation of its tasks and powers, the NPM visits all locations where persons are deprived of their freedom, and inspects how such persons are treated in order to strengthen their protection against torture and other cruel, inhuman or humiliating treatment or punishment. By considering the legal norms, the NPM makes recommendations to appropriate authorities in order to improve the situation and treatment of persons, as well as prevent inappropriate conduct, i.e. in accordance with the role of the NPM. In connection with the implementation of tasks according to this Act, the Ombudsman issues special annual reports. The report for 2013 is the sixth report since the passage of the Act.

The legal framework for the Ombudsman's activities also includes some other acts. We should mention Articles 23a and 50 of the **Constitutional Court Act** that determine:

- **Article 23a:** The human rights ombudsman, if s/he deems that a regulation or general act issued for the exercise of public authority inadmissibly interferes with human rights or fundamental freedoms, can initiate a procedure for the review of the constitutionality or legality of regulations or general acts.

Based on this Article, the Ombudsman filed a request on 16 December 2013 with the Constitutional Court of the Republic of Slovenia for a constitutional review of Articles 15, 32 and 37 of the Act amending the Banking Act with amending Articles 261a, 261b, 261c, 261d, 261e, 347 and 350a of the Banking Act (ZBan-1) and the proposal for a temporary suspension of the execution of the act.

- **Second paragraph of Article 50:** The ombudsman for human rights may, under the conditions determined by this Act, lodge a constitutional complaint in connection with an individual case with which he or she is dealing. In 2013, the Ombudsman did not lodge any constitutional complaints.

### **The Ombudsman's work is determined by other acts**

These acts include the Integrity and Prevention of Corruption Act, Patients Right Act, Defence Act, Consumer Protection Act, Environment Protection Act, Personal Data Protection Act, Criminal Procedure Act, State Prosecutor Act, Courts Act, Judicial Service Act, Equal Opportunities for Men and Women Act, Act on Police Tasks and Authorities, Rules on Service in the Slovenian Armed Forces, Attorneys Act, Enforcement of Criminal Sanctions Act, Administrative Fees Act, Classified Information Act, Infertility Treatment and Procedures of Biomedically-Assisted Procreation Act, Civil Servants Act, Public Sector Salary System Act and Passports Act. Summaries of all the above acts are presented in a special publication issued by the Ombudsman in December 2013, on the 20th anniversary of the adoption of the Human Rights Ombudsman Act. The publication can be viewed on the Ombudsman's website: <http://www.varuh-rs.si/>.

### **Ombudsman's powers**

The first Article of the Human Rights Ombudsman Act (ZVarCP) stipulates that the human rights ombudsman's function is established for the protection of human rights and fundamental freedoms in relation to state bodies, local self-government bodies and bearers of public authority. The Ombudsman's powers and authorisations are also determined.

The Ombudsman does not have the authority to make rulings and cannot impose legally binding decisions sanctioned by means of legal force. Ombudsman's actions and acts are not authoritative and are not used for rulings. Individual acts are not issued in the form of a decision, judgement, decree or order, i.e. in forms that emphasise authority in the execution of powers. The ombudsman is an additional means for the extrajudicial protection of individuals' rights. The Ombudsman's work involves informal supervision of the legality and conformity of authorities' conduct in relation to individuals. His task is to establish and prevent violations of human rights and other irregularities.

The work and organisation of the Ombudsman is regulated by rules of procedure and other general acts in accordance with the second paragraph of Article 10 of the ZVarCP. The rules of procedure adopted by the Ombudsman upon the preliminary opinion of the competent working body of the National Assembly, i.e.

the Commission for Petitions, Human Rights and Equal Opportunities, determine the division of areas, work organisation and procedures for processing complaints.

The procedures carried out by the Ombudsman are confidential. The Ombudsman informs the public and the National Assembly of all findings and measures. The Ombudsman performs all tasks by resolving individual complaints sent by complainants in which they claim that their human rights have been violated. Anyone who believes that his/her human rights or fundamental freedoms have been violated by a decision or an act of a state body, local self-government body or holder of public office may contact the Ombudsman. The Ombudsman can initiate an investigation independently. An investigation is initiated in very important cases of violations of human rights or fundamental freedoms or other irregularities. If the procedure is started upon the Ombudsman's initiative, the consent of the affected party is required.

Article 9 of the ZVarCP is also important, since it enables the Ombudsman to consider other issues relevant to the protection of human rights and fundamental freedoms, and the legal safety of citizens. This provision enables the Ombudsman to open and consider systemic and current issues that may not be perceived by complainants. This enables the Ombudsman to implement preventive and promotional activities in the same way as it is done by national institutions for the protection of human rights, established on the basis of the Paris Principles adopted by the UN.

The proceedings of the Ombudsman are confidential, informal and free of charge to clients. The Ombudsman must conduct procedures impartially and obtain the points of view of all the affected parties in each case.

## 3.2 The forms of Ombudsman's work

### Accessibility of institutions

By resolving complaints, we help eliminate concrete violations and prevent potential future violations. These are both often interrelated; therefore, it is important that the Ombudsman be accessible to all. Various solutions regarding the method of the Ombudsman's work follow this principle. Therefore, a complaint can be submitted during working hours, or complainants can talk to an employee, who forwards information that refers to the Ombudsman's work. During working hours, this employee received 10,850 phone calls, most of which were inquiries about complaints received or issues connected with alleged violations of human rights and procedures for resolving complaints sent to the Ombudsman.

The Ombudsman, deputies and advisers hold discussions upon a preliminary determination of the time schedule. Also, during operations outside the head office (field trips), the Ombudsman talks to complainants and receives new complaints. Soon after the institution began to operate, we introduced a toll-free telephone number (080 15 30), where callers can receive explanations, advice and information on filed complaints. Complaints can also be filed by e-mail ([info@varuh-rs.si](mailto:info@varuh-rs.si)) or via the Ombudsman's website ([www.varuh-rs.si](http://www.varuh-rs.si)).

### Operations outside the head office

The Ombudsman is aware that many people from Slovenia have difficulties coming to Ljubljana to the head office to talk to the Ombudsman or her colleagues in person. Therefore, the Ombudsman continued to organise working hours outside the head office in 2013. She met various people with different stories and complaints about human rights violations in the field, i.e. at the local and central state level or in connection with holders of public authority. Operations outside the head office have been enabled (for free) by mayors, mostly at the seats of municipalities. In this way, they enable us to meet people in their own environment and enable them direct contact. Every field trip is carefully planned and takes place in three stages: first, a short discussion between the Ombudsman and the mayor takes place (together with colleagues from both institutions); the main part involves personal talks with complainants (each gets at least half an hour); the final part is a press conference for local media.

We do usually not resolve matters in these cases, but advise individuals about what to do in each case or what is required to initiate each procedure. If the documentation provided by the individual at a discussion, or the discussion itself, gives grounds to believe that any human right is being violated, we open a complaint.

In 2013, we held 13 meetings outside our head office: in Celje, Idrija, Jesenice, Kočevje, Koper, Maribor, Murska Sobota, Nova Gorica, Novo mesto, Postojna, Ptuj, Ravne na Koroškem and Velenje. We had a total of 272 discussions with complainants, and initiated 72 new complaints.

The problems which individuals stated in 2013 when talking to the Ombudsman and her colleagues vary widely. Many expressed their dissatisfaction with time-consuming court proceedings; they often mentioned social distress, low pensions, irregularities in relation to employers (non-payment of salaries, non-payment of social security contributions, overtime and other income, mobbing – they often stated that they fear talking about their problems because they are afraid they will lose their jobs, so they prefer to keep silent). Quite often, they stated problems about education (education in larger cities is also very costly); therefore, some cannot afford education. They sometimes expressed dissatisfaction with the work of the municipal administration. People also often complain about problems with neighbours.

When we have finished our discussions, we inform the media about the problems that individuals stated in them. These external meetings or field trips, which enable individuals to talk with the Ombudsman and access to the Ombudsman, are relevant due to the contacts with local authorities, especially mayors, since these contacts often enable problems to be resolved more quickly and efficiently.

### Consideration of complaints

All complaints addressed to the Ombudsman must be signed and marked with the complainant's personal data; they must contain circumstances, facts and evidence regarding the complaint in order to initiate the procedure. The complainant must also state whether and which legal means have been used in the matter. The complaint is filed in written form. Formality or an attorney's assistance are not needed to submit a complaint. Imprisoned persons have the right to send a complaint in a closed envelope. In urgent cases, we also accept complaints by telephone or during a personal interview. The Ombudsman's representatives accept some complaints when talking to prisoners or persons in detention, psychiatric hospitals, social care institutions and other institutions and with persons who are in some way deprived of their freedom of movement.

When the Ombudsman receives a complaint to initiate a procedure, all the necessary inquiries are made and it is decided whether the matter will be considered by means of a short procedure; the Ombudsman then starts the investigation, rejects the complaint or does not consider it because it is anonymous, too late, offensive and constitutes an abuse of the right to complain. If the Ombudsman rejects a complaint and does not consider it for aforementioned reasons, the complainant must be notified as quickly as possible and the reasons for rejection must be explained, and they must be informed of other ways of resolving the matter.

The Ombudsman decides on the matter by a short procedure (first item of the first paragraph of Article 28 of the ZVarCP), especially when the current situation and standpoints of the affected parties are evident from the documentation accompanying the complaint.

In 2013, we received 304, or 9.6 per cent more complaints than in 2012. From 1 January to 31 December 2013, 3,471 cases were received (3,167 in 2012). Most complaints were received directly from complainants in written form (3,001 or 86.5 per cent), 72 during meetings outside the head office, one by telephone and eight from official notes. The Ombudsman lodged 33 complaints on her own initiative; 24 complaints were considered as open issues (issues relevant for the protection of human rights and fundamental freedoms and for the legal protection of the wider population in the Republic of Slovenia). We received 257 complaints and 64 anonymous complaints for our consideration.



## Communication with state authorities and local authorities during consideration of complaints

With the purpose of explaining all circumstances in relation to a complaint, we usually acquire an opinion from the opposite party. Therefore, we perform an inquiry at the authority to which the complaint refers. The matters considered are very diverse, so the methods of performing inquiries are also very diverse. We usually write to the competent authority, i.e. a short summary of the claimed irregularity and a description of the problem and ask for detailed information. Sometimes, e.g. when it is claimed that a procedure is taking too long, we express our opinion by assuming that the complainant's statements are completely true. We also determine a deadline for a reply, which depends on the urgency and complexity of the matter; this deadline cannot be longer than 30 days and shorter than 8 days, in accordance with the ZVarCP. If an authority does not send the Ombudsman explanations or information in the requested deadline, the authority is warned and informed in accordance with the second paragraph of Article 33 of the ZVarCP that they are obliged to explain to the Ombudsman why the request was not met. The Ombudsman can notify the authority directly about a missed deadline. A refusal and disrespect for the Ombudsman's request is considered as an obstruction to the Ombudsman's work. In such cases, the Ombudsman may send a special report to the competent working body of the National Assembly, the National Assembly or notify the public.

When an authority avoids responding to questions, we review the entire file of the complaint. The Ombudsman has the right to review data and documents which are in the jurisdiction of other state authorities. The regulations on the confidentiality of data are binding on the Ombudsman, her deputies and advisers. The head or the representative of the authority are invited to discuss the matter if other issues have to be explained. When persons in detention or prisoners complain about inappropriate administrative procedures or inappropriate living conditions, we have a discussion with the management and visit the detainee or prisoner. We act in the same way when the Ombudsman is contacted by persons in other institutions with limited freedom of movement. When we have collected all the necessary information, we decide on further procedure. Sometimes, the authority's reply resolves the complainant's problem, e.g. data on when a procedure which the complainant believes that has been unreasonably delayed will continue and end. In such cases, the procedure is ended and the complainant is invited to contact us if the authority does not respect the guarantees with regard to the procedure in question. When a complaint is founded, we continue to work on disputable issues until they are resolved.

We are aware that it is most important for a complainant to obtain a solution to his/her problem. This is the starting point for our decision making regarding the use of the most appropriate measure from those we are authorised to use. When a procedure is taking too much time, we act to accelerate the matter if the rational or legally determined deadline for taking a decision has been exceeded and if this does not violate the order in which matters are considered.

We propose a solution to the problem in an amicable manner to any given authority if this is also agreed by the complainant. If irregularities cannot be eliminated, it is proposed to the authority that it apologise to the complainant. The Ombudsman sends the National Assembly and the Government initiatives to amend acts and other regulations under their jurisdiction. State authorities, institutions and organisations with public authorisations are sent proposals for the improvement of their operations and treatment of clients. The initiatives for amendments to regulations are usually proposed in recommendations in annual reports, which are assumed by the National Assembly after consideration.

Employees have regular daily meetings where we are informed about all events and complaints made by telephone and during personal interviews with complainants, and with other contents and events in relation to the Ombudsman's work. Professional dilemmas and other problems in relation to resolving complaints are considered at weekly meetings of the professional service. Regular meetings with employees enable all employees to be informed on the content and methods of work, as well as events at the institution.

### 3.3 Relations with the media and informing the public

At the start of her term of office on 23 February 2013, the Human Rights Ombudsman, Vlasta Nussdorfer, ensured representatives of the media cooperation during her term of office. She set three priority tasks: the publicity and transparency of Ombudsman's work and strengthened cooperation with the media, accessibility to people and analysis of the impact of the Ombudsman's initiatives and recommendations regarding human rights and freedoms.

People often turn to the media, so the Ombudsman regards information from the media as an indicator of possible violations. Such information is reviewed to see whether it presents a basis for initiating a complaint and conditions for us to take action.

As a channel between the public and the Ombudsman, the media enable the dissemination of knowledge about rights, work, best practices and the Ombudsman's findings, and put public pressure on those who do not respect the rights. The media enable the Ombudsman to realise the right of the public to information.

The Ombudsman protects individuals against inadmissible encroachments by authorities on their fundamental rights; however, the Ombudsman cannot act in cases when rights are violated by legal entities governed by private law, which also include some media. These can also violate human rights. More about this can be found in the section on ethics of public statements.

The Ombudsman takes care to ensure a qualitative and fair response to initiatives from the media and their questions. The Ombudsman responds publicly when she deems it necessary from the point of view of her role and powers. The Ombudsman responds to individual cases when all the relevant data from competent authorities have been collected and when an opinion is formed on the basis of the information. Due to the principle of confidentiality in the procedure, the Ombudsman always acquires the consent of complainants prior to disclosing any details about an individual case. Without such consent, only our general opinions are provided.

**In 2013, the Ombudsman received approximately 330 questions from journalists, approximately 90 more than in 2012 and 170 more than in 2011.**

We met with representatives of the media, especially the Ombudsman herself, on several occasions and were always available for their questions. The take-over of work between the former and current Ombudsman received a lot of attention from the media. This took place on 22 February 2013. The time for analysing past events and planning new priority tasks was immediately at the end of one and the beginning of the other term of office. The former Ombudsman, Dr Zdenka Čebašek-Travnik presented her six years of work at numerous discussions for various media outlets. We received many invitations for cooperation and discussion with the new Ombudsman, Vlasta Nussdorfer. The Ombudsman held approximately 40 interviews. It is difficult to provide an exact number, since the media used every opportunity to talk to her at various events. Such conversations were not recorded.

In 2013, we continued to **cooperate** regularly with the television channel for the deaf and hearing impaired, and we re-established cooperation with Radio Europa 05 and the children's info channel.

The Ombudsman and her colleagues gave 23 **press conferences** in 2013; the former Ombudsman, Dr Zdenka Čebašek-Travnik met four times with the press in 2013. Both participated at a joint press conference when the new Ombudsman took over. Altogether, 13 press conferences were held outside the head office; six at the Ombudsman's head office. We issued six statements to the media after meetings with the ministers, and one statement was made with the non-governmental organisation ZPMS on the occasion of Children's Week.

A lot of media attention was given to press conferences on the occasion of the first 100 days of the work of the new Ombudsman, when new plans were presented, and on the submission of the annual report, where the most severe violations of rights and the situation on the areas considered were presented.

We still recognise the great expectations which journalists have of the Ombudsman to make statements on various topics. We see that there are different issues: a poor understanding of the Ombudsman's competences, time pressure or just journalist's lack of experience in finding answers to questions.

We think carefully about when to dedicate our attention to questions on which we do not have an opinion and which are not connected with concrete complaints of individuals or groups in relation to the state.

### **What were the media interested in?**

At the beginning of 2013, the most current questions were connected with the conclusion of the term of office of Dr Zdenka Čebašek-Travnik and the work of the Human Rights Ombudsman. The public was interested in whether the previous Ombudsman would apply for the office again, and in the procedure for selecting the new Ombudsman and how the institution operates.

All the questions can be put into three groups, i.e. questions connected with social distress, questions about family relations and the rights of children, and questions about the ethics of public speech, with an emphasis on hate speech.

Besides these groups of questions, we should emphasise some content in connection with which the press sought the Ombudsman's comment, opinion or findings:

- interest in the case of a famous writer and also the issue of access to archives was quite strong at the end of 2012 and at the beginning of 2013;
- the question of whether the Roma will be moved from Dobruška vas was quite frequent throughout the year. In the public relations field in 2013, we noticed a decrease in matters connected with Roma-related issues;
- we provided our opinion with regard to passing the Act on the erased;
- the Ombudsman also considered the issue of Zois scholarships;
- the situation in prisons and summer temperatures in prisons, hospitals and elderly homes is also perennial;
- what is the Ombudsman's opinion on the fact that the disability commission at the Pension and Disability Insurance Institute is rejecting applications after the enforcement of the ZPIZ-2 on the basis of arguments that there are no executive acts. The Ombudsman was not informed on the problems of these people; however, based on a question from a journalist which showed that there are possible violations, she asked the Minister of Health, Tomaž Gantar, about the matter;
- we received many different questions in the field of health care; the media were interested in whether we had noticed any cases of economising in health care, i.e. the lack of health care, how we evaluate the work of home-care services for vulnerable groups and other;
- we noticed greater public interest in cases of institutional safety (violations of the rights of the elderly at Ptuj Retirement Home, Koper Unit (Olm), were presented at a press conference on 2 December 2013);
- questions about the professionalism of court experts were also quite frequent;
- in the field of legal services, issues regarding negligent work of attorneys or violations of legal protection and of the right to legal protection were also frequent; there were some new questions about the statute of limitations of issues considered by the Bar Association of Slovenia and investigations of legal firms. The Ombudsman and her colleagues met with the representatives of the Bar Association of Slovenia to discuss the problem;

- considerable attention was dedicated to the conviction of Nada Cesarec, MD, the press also set questions to the Ombudsman about amnesties;
- we received several initiatives to comment on the first-instance convictions of some famous and popular persons. The Ombudsman cannot comment on convictions that are not final, since this would influence proceedings that have not been concluded yet;
- representatives of the media were also interested in whether the current legislation allows the public disclosure of names and titles of state prosecutors who handle individual pre-criminal procedures, i.e. procedures in the initial phase of consideration. Does the Ombudsman think that from the aspect of the protection of procedural confidentiality, the protection of personal data of those involved in proceedings and the protection of other data, such disclosure of competent prosecutors is acceptable;
- another frequent issue is evident from the questions of journalists about police officers exceeding their powers.

### **The rights of workers and social distress**

The media were interested in how to protect the rights of workers and how to deal with poverty in Slovenia. They were interested to hear the Ombudsman's opinion about the violation of workers' rights at Žito in Maribor and the Papir servis company in Ljubljana, and about the situation in the Akron disability company and whether we had documented the violations of rights of pregnant women and young mothers with regard to employment. Is the list of tax debtors going to contribute to greater order in the state? What does the Ombudsman think about labour legislation which should enable quicker recovery of debts from employers if no social contributions are paid? What has been established in the field of forced evictions?

The media were also interested in the demonstration by two workers outside Parliament, who were also visited by the Ombudsman. This case showed the issue of greater accessibility to free legal aid.

A lot of attention was given to the request for a constitutional review of Articles 188 and 246 of the Fiscal Balance Act (ZUJF). The Ombudsman usually does not respond to requests to assess constitutionality, since the decision of the Constitutional Court must be respected.

There were more question about whether to accept and be satisfied with the humanitarianism of associations and ordinary citizens who take care of people in distress instead of the system. Based on journalists' questions, we also found that there is a wish to present to the public a uniform method for dealing with poverty - the Ombudsman cannot provide this.

Based on questions from the media, we also documented a greater wish of some employers for control of workers. We received a question on the admissibility of testing job seekers with alcohol tests and the issue of polygraph tests at workplaces. The Ombudsman expressed her opinion that the use of polygraph tests was excessive and a disproportionate invasion of the privacy, personal rights and dignity of workers; therefore, it should not be used in the field of employment relationships without an explicit legal basis, especially not in the public sector.

### **Questions about family relations and children's rights**

The next group of most frequently asked questions referred to family relations, contacts and the rights of children.

Greater sensitivity and the concern of the media can be noticed in this field each year. Journalists reported about the conduct in cases of children abuse in kindergartens; they were also interested in the Ombudsman's findings on child labour. In 2013, we also received a question about circumcision, which had upset the public a year before.

A lot of attention was devoted to the removal of seven children from their family and to the work of social work centres.

There are more and more questions about the extent of the rights in the education of children (baptism, religious principle, nutrition, vaccination, home schooling etc.) or the borders between the beliefs and principles of parents and their role in the care and healthy development of children. The Ombudsman's opinion is clear: parents are the first guardians of children's rights; therefore, it is unacceptable that parents violate the rights of their children. The reasons for such violations are irrelevant and inexcusable. If parents lack the knowledge to raise children, the authorities must intervene, since they are authorised to care for children and their rights.

The Ombudsman also responded to a child support question concerning long procedures with regard to the recovery of child support and the belief that stricter measures should be taken against those who do not pay child support because it is obvious that they are playing the system.

The interest of the public in the children of foreign citizens who come to Slovenia without health insurance is still somewhat marginal. The question of whether children whose parents are unemployed and without insurance, and whether these children have the right to health care without insurance, still remains quite interesting.

We also received a question on the Ombudsman's opinion regarding the Exercise of Rights to Public Funds Act, which disables the recalculation of the amount of child benefit and/or kindergarten subsidy of parents who lose their jobs (but receive unemployment allowance). Social distress is obviously present also in the field of child protection because we received a question on the problem of kindergarten care payments.

The media joined the Ombudsman's efforts in warning about the fact that we still do not have a secure ward for children with psychiatric problems and that several children are still hospitalised with adults.

The public was disturbed by a lecture by a famous psychotherapist, Dr Zoran Milivojevič, at a conference entitled 'The Child as a Victim and Perpetrator'. The Ombudsman frequently expressed her opinion on violence against children which has to be prohibited. Despite this, questions about her opinion on this topic emerged in the form of a public letter by an individual, to which we replied via several channels (newspapers, Facebook, websites etc.).

The indictment against a famous child and youth literature writer for paedophilia raised numerous questions about the regulation of this problem in our society. The issue of the register of paedophiles and castration was still quite current.

Some politicians were upset by an animated film about the Patria affair which was published on the children's Infokanal. The management of Radio and Television Slovenia ordered the removal of this cartoon; however, once again the question of realising the rights of children to information, the issue of media autonomy and others arose.

A lot of the Ombudsman's attention and media attention was dedicated to children with special needs in 2013. After visiting Dr Ljudevit Pivko Primary School in Ptuj, the Ombudsman decided to help, so that the school would finally be built. The Ombudsman is convinced that society should enable the maximum level of respect for the rights of people with special needs; therefore, she dedicated a lot of attention to them. The invisible must become the visible, as Ombudsman Vlasta Nussdorfer pointed out. She met with other groups of children and persons with special needs (autistic children, children with Down syndrome, the disabled etc.) many times and was also available to representatives of media houses.

She introduced a precedent when she invited Karin, a girl with Down syndrome, to perform a two-week working practice at the Ombudsman's office. The interest of the public and media was positive and some ministers also plan to follow this practice.

## Questions about the ethics of public statements with an emphasis on hate speech

The third major topic that was interesting to the media is the ethics of public statements and hate speech, which needs to be discussed by the public. Understanding of hate speech is quite diverse among professionals; therefore, journalists and their audiences make wrong interpretations. More on this can be found in the section on ethics of public statements.

Journalists were also interested in whether the case of dolls representing hanged municipal councillors in Maribor constituted hate speech. The Ombudsman does not evaluate the conduct of individuals who do not have public functions; those affected must seek legal remedies. The Ombudsman constantly argues for public communication that does not interfere excessively in the dignity of individuals and groups, regardless of their personal circumstances.

In February 2013, there were some calls to the public to physically harm Christians, which were exposed on a business building of one of retailers on Zaloška cesta Road in Ljubljana. The text 'Christians – we slaughtered you in 1945 – we will slaughter you in 2013' was strongly condemned by the Ombudsman, and she also condemned all types of hatred and intolerance. The Ombudsman, Dr Zdenka Čebašek-Travnik stated that the graffiti were unacceptable and an act of hatred. More about this can be found in the section on ethics of public statements.

In the same month, a woman on one of the local television channels related a prophecy from The Koran. The press were interested in the Ombudsman's opinion about this event; the Islamic community in Slovenia also responded to it quite harshly. The media were interested in whether such a prophecy is a violation of the rights of the Islamic community from the aspect of religious freedom or freedom of speech, and whether the Human Rights Ombudsman condemns such an act. This involved relations between individuals, so the Ombudsman warned again that the rights of one are limited by the rights of others; therefore, clear limits enable cohabitation founded on respect and respect for the dignity and rights of others. The Islamic community responded to this unacceptable event appropriately and set the boundaries for such conduct.

The public was also disturbed by a speech by the then Prime Minister at the convention of the **Assembly for the Republic**, so the media asked the Ombudsman for her opinion. The Ombudsman, Dr Zdenka Čebašek-Travnik also strongly condemned the speech in her video statement.

Due to an extreme increase in cases of offensive expression and statements that contain elements of hatred, the then Ombudsman, Dr Zdenka Čebašek-Travnik made a public statement. She expressed her concern about the repeated occurrences of hatred and intolerance, graffiti clearly expressing hostility against Christians, expressions of hatred and intolerance against members of the Hungarian community in Prekmurje and hostile graffiti against the former Prime Minister, Janez Janša.

Journalists were also interested in the Ombudsman's opinion about Mitja Klavora's speech on 24 December 2012 at Tisje. The Ombudsman noted elements of hostility, which was focused on the honour and good names of individuals; the affected persons can use the available legal methods to protect their rights. This case shows how urgent it is to make explicit and exact statements, since text with elements of hostility obscured the core message; therefore, any person who believes that their rights and good name have been violated can use the available legal methods.

In 2013, the Ombudsman issued an opinion on the hate speech of fans at sporting events.

The public is also interested in the protection of privacy, as can be seen from media questions. A journalist was interested in how many citizens have requested assistance in relation to the violation of the right to privacy in recent years, i.e. because they believe that a state authority or corporation is tapping their conversations illegally and hacking into electronic communications.

We received a question on tapping of people who are not accused of anything. We did not receive a complaint, but the question highlighted the dilemma of how to protect persons who are tapped, since this is a major breach of privacy.

## Informing the public

The Ombudsman's web site contains weekly publications of the Ombudsman's cases in order to inform the public about the Ombudsman's findings regarding alleged violations of human rights and raise public awareness of possible ways and solutions in cases that are potentially similar to theirs. The cases also receive more attention from the expert public. In 2013, 54 cases were published.

For several years, the Ombudsman has regularly published her thoughts on human rights in a widely-read fortnightly column on the website IUS INFO.

In 2013, the Ombudsman published 214 press releases. The public is also regularly informed on Facebook, as well as on the website [www.pravice-otrok.si](http://www.pravice-otrok.si) on issues concerning the rights of children.

On Facebook, we have 1,536 followers. Like all institutions of this kind (including abroad), the Ombudsman is also faced with the dilemma of how to be present on the web and at the same time maintain the confidentiality of proceedings, and achieve this with limited resources (human and financial). Therefore, the Facebook profile has not yet been widely promoted, but for years, we have been increasingly following blogs and sites relevant to the Ombudsman's work.

At the Ombudsman's web site, the public is especially interested in employment possibilities at the Ombudsman, but also in the Ombudsman's work, and in the e-news they receive and, consequently, in browsing the press releases.

The Ombudsman informs 235 individuals with a weekly e-newsletter. After a few years of slight decline, interest is once again increasing. Some 464 journalists are also informed about the Ombudsman's work through weekly e-news.

In 2013, we introduced regular weekly announcements of the activities of the Ombudsman's employees, and a section on the website which allow a concise overview of the activities.

We find that, given the increasing quantity and complexity of the communication interactions of the institution with the public, human resources in this field urgently need to be strengthened. For comparison, let us mention the European Ombudsman, who like us is aware of the importance of communication, especially when the exercise of existing rights is becoming increasingly more difficult, and has seven employees in public relations.

## 3.4 International cooperation

### Cooperation with the United Nations (UN)

**12 November 2013** Advisers to the Ombudsman, Barbara Kranjc and Mojca Valjavec, participated in a round table panel on non-citizenship or the status of persons without citizenship, prepared by the United Nations High Commissioner for Refugees (UNHCR) in collaboration with the Peace Institute in Ljubljana. The representatives of the Peace Institute took this opportunity to present their research on non-citizenship in Slovenia, and the representatives of the UNHCR presented guidelines on this issue.

### Cooperation with the Council of Europe

**20 February 2013** Adviser to the Ombudsman, Liana Kalčina, attended the inter-ministerial meeting regarding the participation of the Republic of Slovenia in the Council of Europe organised by the Ministry of Foreign Affairs. Ambassador Andrej Logar informed representatives of a variety of institutions of the latest developments in the Council of Europe, reforming the organisation, and the accession of the EU to the European Convention on Human Rights and Fundamental Freedoms. He also presented the concept of marking the 20th anniversary

of Slovenia's membership of the Council of Europe. In the discussion, attention was also given to issues of ratifying the conventions of the Council of Europe.

**14 May 2013** Human Rights Ombudsman, Vlasta Nussdorfer, and the former Director of the Information and Documentation Centre of the Council of Europe, and currently Adviser to the Ombudsman, Liana Kalčina, attended the formal celebration of the 20th anniversary of Slovenia's membership of the Council of Europe.

**30 to 31 May 2013** Deputy Ombudsman Jernej Rovšek attended a seminar of the European Commission against Racism and Intolerance in Strasbourg, which was entitled 'The Seminar of the Council of Europe's Anti-Racism Commission (ECRI)' for national independent authorities combating racism and intolerance. The participants discussed the challenges faced by special bodies at the national level to combat racism, xenophobia, anti-Semitism and intolerance. The bodies should have guaranteed structural, organisational and financial independence, and should act independently of governments, parliaments and NGOs. A solid legal basis for their functioning and independence in decision making are of great importance.

**21 and 22 November 2013** In Strasbourg (France), Deputy Ombudsman Ivan Šelih participated in the conference 'Immigration Detention in Europe: Establishing Common Concerns and Developing Minimum Standards'. The conference was organised by the Council of Europe.

### Cooperation with OSCE

**25 to 26 March 2013** Representatives of the national preventive mechanisms (NPM) from the countries of south-east Europe formed a regional network of national mechanisms to prevent torture in Belgrade. The network is intended to contribute to the establishment of better cooperation and exchange of experience in the more efficient execution of tasks and authorisations arising from the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. They adopted the Declaration on Cooperation. The first presidency of the network was entrusted to NPM of Slovenia. The meeting was organised by the Mission of the Organisation for Security and Cooperation (OSCE) in Serbia in cooperation with the Serbian Ombudsman (Zaštitnik građana).

**25 June 2013** The Ombudsman's deputies, Jernej Rovšek and Tone Dolčič, attended the Regional Conference on the Cooperation of Ombudsmen in Sarajevo. The conference was organised by the OSCE Mission in Sarajevo in cooperation with the ombudsmen of Bosnia and Herzegovina. At the conference, the representatives of all countries of the former Yugoslavia were present for the first time, and representatives of the ombudsmen of Serbia and Kosovo were also together for the first time. Based on the discussion, the OSCE will draft the conclusions of the conference and send the draft to all participants.

**23 to 24 October 2013** Deputy Ombudsman Ivan Šelih, the Ombudsman's adviser, Robert Gačnik, and physician expert of the Slovenian NPM, Dr Peter Pregelj, attended the first meeting of the Medical Group of the NPM network for South-East Europe (SEE NPM Network) held in Belgrade (Serbia). The Group was formed on the occasion of the formation of the network, which was established by a declaration in March 2013 in Belgrade. On this occasion, Ivan Šelih was elected president of the network for one year.

**21 November 2013** In the context of the NPM, the Ombudsman's advisers, Andreja Srebotnik, Robert Gačnik and Miha Horvat, welcomed police officers and lawyers from Azerbaijan on a working visit. The guests were presented with the functioning of the Slovenian NPM, the model and methods of work, and the Ombudsman's authority in the role of NPM. The participants discussed various experiences in the field of the operation of the NPM in both countries. The study visit was organised by the Office of the Organisation for Security and Cooperation (OSCE) in Baku.



## Cooperation with national ombudsmen, the European Ombudsman and FRA

**25 to 26 June 2013** At a workshop on the functioning of national preventive mechanisms (NPM) in Skopje (Macedonia), Deputy Ombudsman Ivan Šelih and the Ombudsman's adviser, Robert Gačnik, presented the work of the Slovenian Ombudsman as a national preventive mechanism. The meeting was organised by the European Commission. In a joint statement at the end of the meeting, the participants wrote: "With the disclosure of torture caused by employees of public/state institutions, we have raised the responsibility of society for the effective and permanent support of victims of torture, and taken measures to reduce torture in the future."

**15 to 17 September 2013** Ombudsman Vlasta Nussdorfer and her Deputy, Jernej Rovšek, attended the 9th National Seminar of the European Network of Ombudsmen in Dublin (Ireland). The central theme of the seminar was devoted to issues of improving the quality of work of ombudsmen, including innovative approaches to their work, especially in times of reduced financial resources for public administration, including the work of ombudsmen.

**8 October 2013** Deputy Ombudsman Jernej Rovšek attended a conference in Vienna entitled 'Strengthening Fundamental Rights Protection Together in a Changing Human Rights Landscape' organised by the European Union Agency for Fundamental Rights (FRA), the Council of Europe, the European Network of Equality Bodies (Equinet) and the European Network of National Human Rights Institutions.

**21 to 24 October 2013** The Ombudsman, together with her Deputy Ivan Šelih and colleagues of Slovenian NPM, received representatives of the NPM of Georgia at the Ombudsman's office. They presented the operation of the Slovenian NPM, and together with the guests visited a prison in Mirna in Dolenjska, a psychiatric hospital and its forensic unit in Maribor, and a special social care institution.

**5 November 2013** Deputy Ombudsman Tone Dolčič attended a thematic meeting of the CRONSEE network (Children's Rights Ombudspersons' Network in South and Eastern Europe), entitled Children on the Move in Zagreb. It was organised by the Croatian Ombudsman for Children's Rights (Pravobranitelj za djecu Republike Hrvatske), in cooperation with the international non-governmental organisation Save the Children.

**5 to 7 November 2013** Slovenian Ombudsman, functioning as a National Preventive Mechanism, hosted colleagues from the Czech Republic. The meeting formed part of the exchange of experiences and good practices in the field of exercising authorities in the role of the national preventive mechanism against torture. The guests from the Czech Republic were informed of how the authorisations according to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment were implemented by their Slovenian colleagues. The special feature of the Slovenian model has been cooperation with non-governmental organisations, and the practice is successfully expanding to other countries. Accompanied by Slovenian colleagues, the guests visited prisons in Koper and Ljubljana and Dr France Bergelj nursing home in Jesenice.

**11 November 2013** Adviser to the Ombudsman, Lili Jazbec, participated in Podgorica in Montenegro in a round table panel entitled 'Family Code and the Institute of Conflict Guardian and Temporary Representative of Children'. Former Adviser to the Ombudsman, Martina Jenkole, also participated in education for Montenegrin colleagues. Until her retirement, she led the project 'Advocate – A Child's Voice'. Jazbec spoke about the problems and challenges of project implementation in Slovenia, while stressing that on 22 May 2013, the National Assembly openly adopted the Ombudsman's special report on the issue of advocacy. It also adopted a proposal of the recommendation to the Commission for Petitions, Human Rights and Equal Opportunities for the Government to prepare a special act to institutionalise the advocacy of children in a separate and independent legal entity, which will advocate equal services for all children in Slovenia, irrespective of their place of residence. Due to lack of funding, the independent advocacy institution will not be implemented for the time being; the project will continue to be coordinated by the Ombudsman.

## Cooperation with IOI, EOI, AOM, ENOC, CRONSEE

**22 to 24 April 2013** Deputy Ombudsman Tone Dolčič and the Ombudsman's adviser, Lan Vošnjak, participated in a conference of the CRONSEE network (Children's Rights Ombudspersons' Network in South and Eastern Europe) in Novi Sad (Serbia) entitled 'Prevention of the Exploitation of Children in South-Eastern Europe'. The main topic of discussion was the danger that the Internet poses for children. Participants were also familiarised with good practices of communication of ombudsman institutions with children and young people.

**13 June 2013** Deputy Ombudsman Tone Dolčič met representatives of the Association of Mediterranean Ombudsmen (AOM) in Amman (Jordan). The meeting was organised by the Jordanian Ombudsman and was entitled 'For Better Processing of Complaints about Poor Administration'. In addition to the representatives of the 20 member states of the network, the meeting was also attended by representatives of the European Ombudsman and the Venice Commission. The discussions focused on forms and methods of the institutions' work, mediation, the preparation of annual reports, the availability of institutions for those who need their help, the authorisation and powers of individual institutions, financial operations and other topics related to the efficiency of the participants' work.

**25 to 27 September 2013** Adviser to the Ombudsman, Lan Vošnjak, attended the 17th annual meeting of the European Network of Ombudspersons for Children (ENOC) in Brussels entitled 'Children on the Move: Children First! Attention was given to the children of migrants, unaccompanied minors (methods of determining the children's age, their placement, treatment of these children, ensuring the right to education and health care, and the return of children to their homeland). The international community was called for urgent aid to Syrian children in refugee camps.

## Cooperation with other international, inter-governmental and non-governmental organisations and universities

**18 July 2013** Deputy Ombudsman Jernej Rovšek and Adviser for Public Relations, Nataša Kuzmič, welcomed for a consultative meeting representatives of the organisation European Movement in Serbia (Evropski pokret u Srbiji) and the Central European Initiative (CEI), as well as representatives of some NGOs in Slovenia participating in the project Improving Cooperation in South-East Europe by Actions for Strengthening the Regional Cooperation Council (RCC). The aim of the project is to strengthen the relationship between ombudsmen and civil society organisations in the region with a view to protecting human rights and making the countries of the region conform more closely with European Union regulations.

**9 to 10 May 2013** Deputy Ombudsman Ivan Šelih participated in a round table panel entitled 'Participation of Non-Governmental Organisations and External Experts in the Execution of the Tasks of the National Preventive Mechanisms (NPM)', which was prepared by the NPM Serbia in Belgrade. The discussion was also attended by representatives of NGOs participating in the Slovenian NPM. They presented the experience of cooperation of NGOs in the exercise of the supervisory tasks of the NPM in Slovenia.

**26 November 2013** Adviser to the Ombudsman, Robert Gačnik, attended the round table panel 'Five Reports' of the Centre for Human Rights Niš and the Coalition for the Reform of the Prison System in Belgrade (Serbia). Both organisations prepared and led a discussion on reform of the prison system under the auspices of the EU Delegation in Serbia.

**4 December 2013** Deputy Ombudsman Ivan Šelih attended the international conference entitled 'The Public Monitoring of Places of Detention: Russian and International Experiences', which was held in Moscow (Russia) and organised by the Moscow Regional Social Partnership Foundation, Moscow Helsinki Group in collaboration with the Council of Europe and the Ombudsman of the Russian Federation (Human Rights Commissioner of the Russian Federation).

## Cooperation with embassies of other countries in the Republic of Slovenia and Slovenian representative bodies

**26 February 2013** Deputy Ombudsman Jernej Rovšek met Laszlo Mathe, the Deputy Ambassador of the Republic of Hungary in Ljubljana. The meeting was held at the request of the embassy following a publication of messages expressing hatred towards the Hungarian community in Slovenia. In addition to this topic, the discussion also addressed the issue of dealing with hate speech in general and the system for the constitutional protection of minorities in both countries (strengths and weaknesses).

**15 April 2013** Ombudsman Vlasta Nussdorfer and Deputy Tone Dolčič met the French Ambassador, Pierre-François Mourier, at the Ombudsman's office.

**14 May 2013** Human Rights Ombudsman Vlasta Nussdorfer met the Austrian Ambassador, Dr Clemens Kojan and his deputy, Günther Salzmann, MSc. They particularly discussed the rights of the Slovenian minority in Austria and the German minority in Slovenia.

**16 May 2013** Human Rights Ombudsman Vlasta Nussdorfer welcomed the Ambassador of Belgium, Paul Jansen, for an acquaintance meeting.

**5 November 2013** Human Rights Ombudsman Vlasta Nussdorfer and Deputy Jernej Rovšek met the American Ambassador Joseph A. Mussomeli. The Ambassador was primarily interested in the Ombudsman's findings on the situation of human rights, especially findings related to the Roma population and the erased. The Ombudsman and the Deputy presented the contents of the Special Report on the Living Conditions of the Roma in South-East Slovenia prepared in 2012. The Ombudsman was critical because the Parliament had not included all of the Ombudsman's recommendations mentioned at the discussion in the report. The Ambassador presented his efforts and proposals for reconciliation in Slovenia.

**5 December 2013** Deputy Ombudsman Jernej Rovšek attended the discussion with the American Ambassador to Slovenia, Joseph A. Mussomeli; the discussion was organised by the Study Centre for National Reconciliation on the occasion of the Human Rights Day. The Ambassador presented his views on the issue of reconciliation, arising mainly from the historical experience after the Civil War in the United States, which still resonates today.

## 3.5 Access to information of a public character at the Ombudsman

The first paragraph of Article 1 of the Access to Public Information Act (ZDIJZ) defines the procedure which enables anyone free access and re-use of information of a public character held by state authorities, bodies of local authorities, public agencies, public funds and other public legal entities, holders of public authority, and entities implementing public services (bodies). The purpose of this Act is to ensure public and transparent functioning of the bodies and enable the exercise of the rights of natural and legal persons to obtain public information. In order to achieve the purpose of this Act, the authorities should strive to ensure that the public is informed of their activities to the greatest possible extent. In accordance with Article 9 of the ZDIJZ, the Ombudsman has appointed two employees as officials responsible for providing information of a public character.

In 2013, we received five requests for information according to the ZDIJZ.

## 3.6 Ombudsman's publishing activity

**The eighteenth regular annual report of the Human Rights Ombudsman of the Republic of Slovenia for 2012** was issued in June 2013. On 4 July 2013, Ombudsman Vlasta Nussdorfer delivered the 18th Annual Report of the Human Rights Ombudsman for 2012 to the President of the National Assembly, Janko Veber, at the premises of the National Assembly. The detailed discussion on the Ombudsman's report was held on 4 October 2013 at a meeting of the Commission for Petitions, Human Rights and Equal Opportunities. The Commission supported all the Ombudsman's recommendations, with no votes against. On 24 October 2013, the report was also discussed in the National Assembly. The Report was also forwarded to the President of the Republic of Slovenia, Prime Minister, deputies of the National Assembly, ministers, central state institutions, local authorities in the country and all public libraries in Slovenia. Many institutions were only informed that the Report is available in electronic form on the website [www.varuh-rs.si](http://www.varuh-rs.si).

**The shorter version of the 2012 Annual Report (in English)** was issued in 300 copies and forwarded to the state authorities, all representative bodies of the Republic of Slovenia abroad, permanent representative bodies of the Republic of Slovenia in international organisations, embassies of foreign countries in Slovenia, all ombudsmen in Europe, and selected addressees around the world.

**The fifth report of the Ombudsman on the implementation of the tasks of the National Preventive Mechanism (NPM)** under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has been prepared in Slovenian and English. In the publication, we published the report in two languages, a tabular overview of the activities of NPM, the Convention and the act on the ratification of the Protocol (the legal basis for the functioning of the NPM) and other documents of the United Nations. The Provisional statement on the role of judicial review and due process in the prevention of torture in prisons prepared in 2012 by the UN Sub-Committee on the Prevention of Torture, is particularly interesting.

**The collection 'Twenty Years of the Human Rights Ombudsman Act 1993-2013'** was issued in December 2013; it comprises 104 pages. In addition to the introduction by Ombudsman Vlasta Nussdorfer, the collection contains views of the institution's work contributed by former ombudsmen and prominent academics. The legal bases of the Ombudsman's work were clearly presented (the act and rules of procedure pertaining to the Ombudsman, the most important articles of the Constitution and 24 other acts that define the Ombudsman's role and tasks).

In February 2013, the Ombudsman published **A special report on the project 'Advocate – A Child's Voice'**, and also published it on its website [www.varuh-rs.si](http://www.varuh-rs.si). In a printed form, the report was submitted to the National Assembly of the Republic of Slovenia, which discussed it and adopted the recommendations on the further development of the project on 22 and 23 May (at its May session).

**All the above publications are available on the Ombudsman's website ([www.varuh-rs.si](http://www.varuh-rs.si)), and are also available for free download and printing.**

## 3.7 Statistical review of the Ombudsman's work

This section presents statistical data on the processing of cases at the Human Rights Ombudsman of the Republic of Slovenia from 1 January to 31 December 2013.

**1. Received cases in 2013:** Received cases are complaints sent to the Ombudsman's address.

**2. Cases being processed in 2013:** In addition to cases received in 2013, this section also includes the following:

- cases brought forward - unresolved cases from 2012 that were processed in 2013,
- reopened cases - cases which were considered resolved as at 31 December 2012, but were further processed in 2013 due to new substantive facts and circumstances. Since these were new procedures in the same cases, we did not open new files for them; therefore, reopened cases are not included under cases received in 2012, but only under cases being processed in 2013.

**3. Resolved cases:** Includes all cases being processed in 2013 which were resolved by 31 December 2013.

### Cases received

In 2013, we received 304 or 9.6 per cent more cases than in the previous year. **From 1 January to 31 December 2013, 3,471 cases were received** (3,167 in 2012). The majority were received directly from the complainants, mostly in writing (3,007 or 86.6 per cent), 72 were received during field trips, one by phone and eight cases through official notices. The Ombudsman opened 58 cases as broader issues or on her own initiative (these are issues that are important for the protection of human rights and fundamental freedoms and legal protection of the broader population in the Republic of Slovenia). For information purposes, we received 252 cases, 62 anonymous cases and 11 ceded applications.

**Table 3.71:** The number of cases received by the Human Rights Ombudsman of the Republic of Slovenia for the period 2010-2013 by individual areas of work

Area of work	Cases received								Index (13/12)
	2010		2011		2012		2013		
	Number	Share	Number	Share	Number	Share	Number	Share	
1. Constitutional rights	150	5,7 %	165	6,6 %	482	15,2 %	249	7,2 %	51,7
2. Restriction of personal liberty	137	5,2 %	144	5,7 %	153	4,8 %	131	3,8 %	85,6
3. Social matters	409	15,6 %	352	14,0 %	669	21,1 %	618	17,8 %	92,4
4. Employment relations	191	7,3 %	187	7,4 %	175	5,5 %	329	9,5 %	188,0
5. Administrative matters	309	11,8 %	292	11,6 %	258	8,1 %	342	9,9 %	132,6
6. Court and police procedures	638	24,4 %	544	21,7 %	523	16,5 %	700	20,2 %	133,8
7. Environment and spatial planning	113	4,3 %	99	3,9 %	80	2,5 %	103	3,0 %	128,8
8. Public utility service	66	2,5 %	52	2,1 %	51	1,6 %	80	2,3 %	156,9
9. Housing matters	74	2,8 %	93	3,7 %	44	1,4 %	109	3,1 %	247,7
10. Discrimination	54	2,1 %	49	2,0 %	65	2,1 %	59	1,7 %	90,8
11. Children's rights	293	11,2 %	261	10,4 %	272	8,6 %	394	11,4 %	144,9
12. Other	186	7,1 %	274	10,9 %	395	12,5 %	357	10,3 %	90,4
<b>TOTAL</b>	<b>2.620</b>	<b>100,0 %</b>	<b>2.512</b>	<b>100,0 %</b>	<b>3.167</b>	<b>100,0 %</b>	<b>3.471</b>	<b>100,0 %</b>	<b>109,6</b>

In 2013, most cases concerned court and police procedures. 700 cases were received, or 20.2 per cent of all cases in 2013. This was followed by social security (618 cases or 17.8 per cent) and children's rights (394 cases or 11.4 per cent of all cases received).

**Figure 3.71:** Comparisons between the number of cases received by individual areas of work of the Human Rights Ombudsman of the Republic of Slovenia in the period 2010-2013

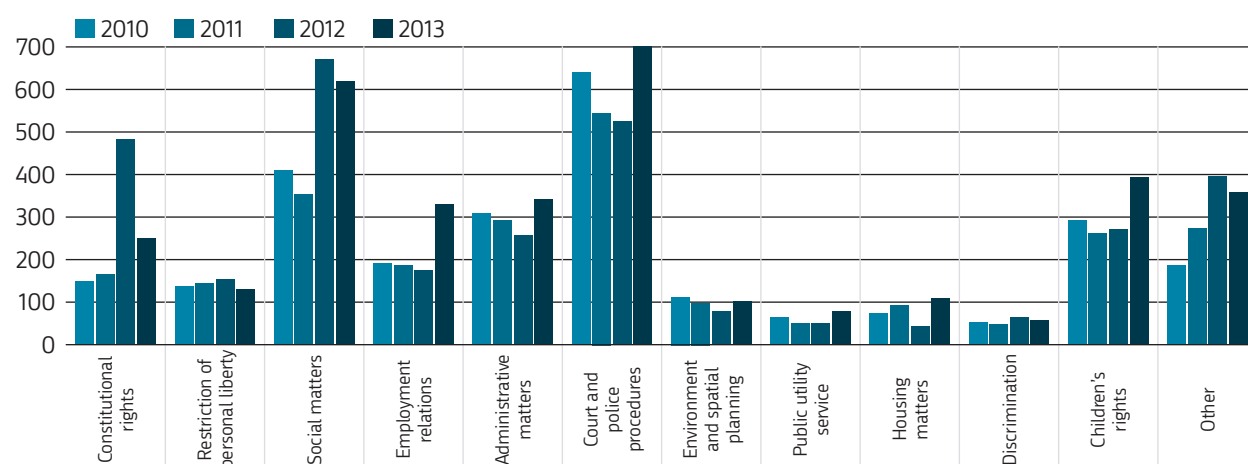


Table 3.71 and Figure 3.71 show that the number of cases received in 2013 in comparison to 2012 **increased** in the areas of housing matters (from 40 to 109 or by 247.7 per cent) and employment relations (from 175 to 329 or by 188 per cent). Children's rights also have to be mentioned, since the number of cases increased from 272 in 2012 to 394 cases in 2014. The largest reduction in cases received in 2013 compared to 2012 was in the fields of constitutional rights (by 48.3 per cent). A more detailed explanation of the reasons for the changes in the number of cases in all areas is given in the content part of the report, i.e. in the second chapter.

## Cases being processed

**Table 3.72:** The number of cases being processed by the Human Rights Ombudsman of the Republic of Slovenia in 2013

Area of work	Number of cases being processed				Proportion by area of work
	Cases received in 2013	Cases brought forward from 2012	Re-opened cases in 2013	Total cases being processed	
1. Constitutional rights	249	12	2	263	6,15 %
2. Restriction of personal liberty	131	35	5	171	4,00 %
3. Social matters	618	287	10	915	21,38 %
4. Employment relations	329	42	7	378	8,83 %
5. Administrative matters	342	57	10	409	9,56 %
6. Court and police procedures	700	115	18	833	19,47 %
7. Environment and spatial planning	103	20	4	127	2,97 %
8. Public utility service	80	4	8	92	2,15 %
9. Housing matters	109	6	9	124	2,90 %
10. Discrimination	59	20	1	80	1,87 %
11. Children's rights	394	70	10	474	11,08 %
12. Other	357	50	6	413	9,65 %
<b>TOTAL</b>	<b>3.471</b>	<b>718</b>	<b>90</b>	<b>4.279</b>	<b>100,00 %</b>

Table 3.7.2 clearly shows that **4,279 cases were being processed** in 2013, of which 3,471 cases were received in 2013 (81.1 per cent), 718 cases were brought forward from 2012 (16.8 per cent), and 90 cases were re-opened in 2013 (2.1 per cent). Table 3.7.3 shows that **15 per cent more cases were being processed** in 2013 if compared to 2012.

In 2013, most of the cases dealt with were from the areas of social security (915 cases or 21.4 per cent), court and police procedures (833 cases or 19.5 per cent) and children's rights (474 cases or 11.1 per cent). Compared to 2012, the greatest increase in the number of cases being processed were in housing matters (from 56 to 124 cases or an increase of 121.4 per cent), employment relations (from 205 to 378 or an increase of 84.4 per cent) and children's rights (from 318 to 474 or an increase of 49.1 per cent), while the largest decline was in the area of constitutional rights (from 594 to 263 or a decline of 47.8 per cent).

**Table 3.7.3:** Comparison between the number of cases being processed by the Human Rights Ombudsman of the Republic of Slovenia by individual areas in the period 2010-2013

Area of work	Cases being processed								Index 2013/2012
	2010		2011		2012		2013		
	Numb.	Share	Numb.	Share	Numb.	Share	Numb.	Share	
1. Constitutional rights	173	5,6 %	183	5,9 %	504	13,5 %	263	6,1 %	52,2
2. Restriction of personal liberty	163	5,3 %	187	6,1 %	201	5,4 %	171	4,0 %	85,1
3. Social security	449	14,6 %	418	13,6 %	720	19,3 %	915	21,4 %	127,1
4. Employment relations	225	7,3 %	238	7,7 %	205	5,5 %	378	8,8 %	184,4
5. Administrative matters	385	12,5 %	379	12,3 %	358	9,6 %	409	9,6 %	114,2
6. Court and police procedures	758	24,6 %	701	22,8 %	667	17,9 %	833	19,5 %	124,9
7. Environment and spatial planning	146	4,7 %	132	4,3 %	120	3,2 %	127	3,0 %	105,8
8. Public utility service	80	2,6 %	60	1,9 %	65	1,7 %	92	2,2 %	141,5
9. Housing matters	85	2,8 %	109	3,5 %	56	1,5 %	124	2,9 %	221,4
10. Discrimination	67	2,2 %	61	2,0 %	74	2,0 %	80	1,9 %	108,1
11. Children's rights	337	10,9 %	314	10,2 %	318	8,5 %	474	11,1 %	149,1
12. Other	214	6,9 %	295	9,6 %	434	11,7 %	413	9,7 %	95,2
<b>TOTAL</b>	<b>3.082</b>	<b>100,0 %</b>	<b>3.077</b>	<b>100,0 %</b>	<b>3.722</b>	<b>100,0 %</b>	<b>4.279</b>	<b>100,0 %</b>	<b>115,0</b>

### Cases by stage of processing

- 1. Resolved cases:** Cases the processing of which was completed by 31 December 2013.
- 2. Cases being processed:** Cases that were being processed as at 31 December 2013.

In 2013, 4,279 cases were being processed, of which **3,737 cases had been resolved** as at 31 December 2013 or **87.3 per cent** of the total number of cases being processed in 2013. 542 cases (12.7 per cent) remained to be resolved.

**Table 3.7.4:** Comparison of the number of cases being processed by the Human Rights Ombudsman of the Republic of Slovenia according to the processing stage from 2010 to 2013 (at the end of the calendar year)

Stage of processing of cases	Leto 2010 (stanje 31. 12. 2010)		Leto 2011 (stanje 31. 12. 2011)		Leto 2012 (stanje 31. 12. 2012)		Leto 2013 (stanje 31. 12. 2013)		Index 2013/2012
	No.	Share	No.	Share	No.	Share	No.	Share	
Resolved	2.590	84,0 %	2.592	84,2 %	3.004	80,7 %	3.737	87,3 %	124,4
Being processed	492	16,0 %	485	15,8 %	718	19,3 %	542	12,7 %	75,5
<b>TOTAL</b>	<b>3.082</b>	<b>100,0 %</b>	<b>3.077</b>	<b>100,0 %</b>	<b>3.722</b>	<b>100,0 %</b>	<b>4.279</b>	<b>100,0 %</b>	<b>115,0</b>

**Table 3.7.5:** Overview of cases being processed by the Human Rights Ombudsman of the Republic of Slovenia in 2013 according to areas of work

Area/SubArea of the Ombudsman's work	Cases considered in 2012	Cases considered in 2013	Index (13/12)
<b>1 Constitutional rights</b>	<b>504</b>	<b>263</b>	<b>52,2</b>
1.1 Freedom of conscience	64	2	3,1
1.2 Public speech ethics	372	183	49,2
1.3 Assembly and association	5	5	100,0
1.4 Security services	1	1	100,0
1.5 Voting rights	10	9	90,0
1.6 Protection of personal data	49	49	100,0
1.7 Access to public information	1	5	500,0
1.8 Other	2	9	450,0
<b>2 Restrictions of personal liberty</b>	<b>201</b>	<b>171</b>	<b>85,1</b>
2.1 Detainees	25	26	104,0
2.2 Prisoners	134	93	69,4
2.3 Psychiatric patients	20	33	165,0
2.4 Persons in social care institutions	8	6	75,0
2.5 Juvenile homes	1	1	100,0
2.6 Illegal aliens and asylum seekers	4	1	25,0
2.7 Persons in police detention	0	1	-
2.8 Forensic Psychiatry	0	7	-
2.9 Other	9	3	33,3
<b>3 Social security</b>	<b>720</b>	<b>915</b>	<b>127,1</b>
3.1 Pension insurance	292	435	149,0
3.2 Disability insurance	58	55	94,8
3.3 Health insurance	51	58	113,7
3.4 Health care	66	82	124,2
3.5 Social benefits and reliefs	114	109	95,6
3.6 Social services	15	23	153,3
3.7 Institutional care	31	46	148,4
3.8 Poverty – general	27	33	122,2
3.9 Violence – anywhere	6	17	283,3
3.10 Other	60	57	95,0
<b>4 Labour law</b>	<b>205</b>	<b>378</b>	<b>184,4</b>
4.1 Employment relations	90	153	170,0
4.2 Unemployment	29	46	158,6
4.3 Workers in state authorities	61	108	177,0
4.4 Scholarships	20	57	285,0
4.5 Other	5	14	280,0
<b>5 Administrative matters</b>	<b>358</b>	<b>409</b>	<b>114,2</b>
5.1 Citizenship	12	15	125,0
5.2 Aliens	63	67	106,3
5.3 Denationalisation	9	12	133,3



Area/SubArea of the Ombudsman's work	Cases considered in 2012	Cases considered in 2013	Index (13/12)
5.4 Property law	41	39	95,1
5.5 Taxes	36	78	216,7
5.6 Customs	2	1	50,0
5.7 Administrative procedures	112	98	87,5
5.8 Social activities	63	68	107,9
5.9 Other	20	31	155,0
<b>6 Judicial and police procedures</b>	<b>667</b>	<b>833</b>	<b>124,9</b>
6.1 Police procedures	106	112	105,7
6.2 Pre-litigation procedures	23	32	139,1
6.3 Criminal procedures	73	106	145,2
6.4 Civil procedures and relations	267	324	121,3
6.5 Proc. before labour and social courts	17	29	170,6
6.6 Misdemeanour procedures	94	113	120,2
6.7 Administrative judicial procedures	9	5	55,6
6.8 Attorneyship and notariat	17	26	152,9
6.9 Other	61	86	141,0
<b>7 Environment and spatial planning</b>	<b>120</b>	<b>127</b>	<b>105,8</b>
7.1 Interventions in the environment	39	46	117,9
7.2 Spatial planning	26	30	115,4
7.3 Other	55	51	92,7
<b>8 Commercial public services</b>	<b>65</b>	<b>92</b>	<b>141,5</b>
8.1 Public utility sector	21	37	176,2
8.2 Communication	11	9	81,8
8.3 Energy	8	19	237,5
8.4 Traffic	18	16	88,9
8.5 Concessions	6	9	150,0
8.6 Other	1	2	200,0

Area/SubArea of the Ombudsman's work	Cases considered in 2012	Cases considered in 2013	Index (13/12)
<b>9 Housing matters</b>	<b>56</b>	<b>124</b>	<b>221,4</b>
9.1 Housing relations	23	59	256,5
9.2 Housing services	31	59	190,3
9.3 Other	2	6	300,0
<b>10 Discrimination</b>	<b>74</b>	<b>80</b>	<b>108,1</b>
10.1 National and ethnic minorities	20	33	165,0
10.2 Equal opportunities by gender	1	0	0,0
10.3 Equal opportunities in employment	4	2	50,0
10.4 Other	0	3	-
10.5 Equal opportunities relating to physical or mental disability (invalidity)	0	16	-
10.6 Other	49	26	53,1
<b>11 Children's rights</b>	<b>318</b>	<b>474</b>	<b>149,1</b>
11.1 Contacts with parents	28	45	160,7
11.2 Child support, child allowances, child's property management	35	48	137,1
11.3 Foster care, guardianship, institutional care	11	25	227,3
11.4 Children with special needs	28	47	167,9
11.5 Children of minorities and threatened groups	0	0	-
11.6 Family violence against children	11	31	281,8
11.7 Violence against children outside the family	11	22	200,0
11.8 Child advocacy	72	81	112,5
11.9 Other	122	175	143,4

Area/SubArea of the Ombudsman's work	Cases considered in 2012	Cases considered in 2013	Index (13/12)
<b>12 Other</b>	<b>434</b>	<b>413</b>	<b>95,2</b>
12.1 Legislative initiatives	39	26	66,7
12.2 Remedy of injustice	29	15	51,7
12.3 Personal problems	25	37	148,0
12.4 Explanations	274	275	100,4

Area/SubArea of the Ombudsman's work	Cases considered in 2012	Cases considered in 2013	Index (13/12)
12.5 For information	33	43	130,3
12.6 Anonymous applications	34	17	50,0
12.7 Ombudsman	0	0	-
<b>TOTAL</b>	<b>3.722</b>	<b>4.279</b>	<b>115,0</b>

A detailed review of the processing of cases by area of work is shown in Table 3.7.5.

In field **1 Constitutional rights**, 263 cases were being processed in 2013 (47.8 percent less than in 2012). The reduction in the number of cases in this area is due to the smaller number of cases dealt with in the sub-sections of ethics of public speech, where the number of cases in 2012 (372 cases) dropped to 183 in 2013, and freedom of conscience, with an even more pronounced drop from 64 to 2.

The number of cases being processed in field **2 Restriction of personal liberty** decreased by 14.9 per cent in 2013 compared to 2012 (from 201 to 171). While the number of prisoner cases being dealt with was reduced (from 134 to 93), the number of cases of psychiatric patients being dealt with increased (from 20 to 33).

Also in 2013, most of the cases were from field **3 Social matters**. In this area, the number of cases being processed in 2013 if compared to 2012 increased by 27.1 per cent (from 720 cases to 915). The largest share of these (435 cases discussed) comprise cases related to pension insurance (47.5 per cent) and social benefits and assistance (109 cases or 11.9 per cent). No significant reduction in the number of cases is observed in any sub-sections within the framework of social security.

In field **4 Employment relations**, the number of cases being processed in 2013 (378) in comparison to 2012 (205) increased significantly, by 84.4 per cent. The increase is noticeable in all sub-sections. Scholarships stand out, since 180 per cent more cases were being processed (previously 20 and then 57 in 2013). It is also necessary to emphasise the area of employees in state bodies (increase in the number of cases by 77 per cent) and employment relations (increase in the number of cases by 70 per cent).

Also in field **5 Administrative matters**, the number of cases being processed in 2013 (409 cases) increased in comparison to 2012 (358 cases). The largest increase in the number of cases being processed can be noticed in Taxes (from 36 to 78), and a decline in Administrative procedures from 112 to 98.

Also in 2013, the second largest field comprised cases in field **6 Court and police procedures**. In 2013, the Ombudsman dealt with 833 cases in this field or 24.9 per cent more than in 2012 (667). This area consists of matters related to police, pre-litigation, criminal and civil procedures, procedures in labour and social disputes, minor offences proceedings, administrative court proceedings, in relation to services of attorneys and notaries, and others. With the exception of the sub-section of administrative court proceedings, all other sub-sections noticeably increased. The sub-sections of Procedures before labour and social courts (index 170.6), Services of attorneys and notaries (index 152.9) and Criminal procedures (index 145.2) stand out the most. In absolute terms, the greatest increase in the number of cases being processed was in Civil procedures and relations (from 267 in 2012 to 324 in 2013).

In field **7 Environment and spatial planning**, the number of cases being processed increased by 5.8 per cent (from 120 in 2012 to 127 in 2013) in comparison to 2012. In both sub-sections, the number of cases discussed increased: in interventions in the environment from 39 to 46, and in spatial planning from 26 to 30.

The number of cases being processed in the field **8 Public utility service** increased by 41.5 per cent (from 60 to 92) in 2013 if compared to 2012. While it is possible to observe an increase in the communal economy (from 21 to 37) and energetics (from 8 to 19), the number of cases discussed in other sub-sections did not change significantly.

The greatest increase in the number of cases in relation to the previous period can be observed in the field **9 Housing matters**. The number of cases being processed in 2013 compared to 2012 increased by 121.4 per cent (from 56 cases to 124). The increase in the number of cases is noticeable in both housing relations (from 23 to 59) and housing economy (from 31 to 59).

The number of cases being processed in the field **10 Discrimination** increased by 8.1 per cent in 2013 in comparison to 2012 (from 74 to 80). We note a greater increase in the sub-section of national and ethnic minorities (20 in 2012 and 33 in 2013), while other sub-sections declined.

Field **11 Children's rights** was marked by a significant increase in the number of cases, from 318 in 2012 to 474 in 2013. This field also includes the sub-section of children's advocacy, where we observed weak growth in the cases discussed (72 to 81). The number of cases being processed in sub-sections of Violence against children in the family (from 11 to 31) and Violence against children outside the family (from 11 to 22) increased. The number of cases in all other sub-sections of this field also increased.

Field **12 Other** comprises cases which can not be classified in any of the fields listed above. In 2013, we dealt with 413 such cases, which is 4.8 per cent less than a year earlier or 9.7 per cent of all the cases discussed.

## Resolved cases

In 2013, **3,737 cases were resolved**, which is an increase of **24.4 per cent in the number of cases resolved** in comparison to 2012. **Comparing the number of these cases (3,737) with the number of cases received in 2013 (3,471), we find** that 7.7 per cent more cases were resolved than received in 2013.

### Resolved cases by being founded/unfounded

**Founded case:** Cases with a violation of rights or other irregularities in all statements of the complaint.

**Partly founded case:** Violations and irregularities are found in some elements of the procedure, which may or may not be stated in the complaint, and in other complaints not.

**Unfounded case:** We find no violations or irregularities regarding any statements from the complaint.

**No conditions for processing the case:** There is an ongoing legal process with no noticeable delays or greater irregularities in the case. We provide the complainant with information, explanations and guidelines for the exercise of rights in an open procedure. This group also includes complaints that are rejected (too late, anonymous, offensive), and procedures that are stopped due to the non-cooperation of the complainant or the withdrawal of the complaint.

**Ombudsman has no authority in the case:** The subject of the complaint does not fall within the authorisation of the institution. Complainants are presented with other options for exercising rights.

**Table 3.7.6:** Classification of cases resolved according to whether cases were founded/unfounded

CASES FOUNDED/UNFOUNDED	RESOLVED CASES				Index (13/12)
	2012		2013		
	Number	Share	Number	Share	
1. Founded cases	408	13,6 %	695	18,6 %	170,3
2. Partly founded	200	6,7 %	198	5,3 %	99,0
3. Unfounded cases	333	11,1 %	598	16,0 %	179,6
4. No conditions for processing of cases	1413	47,0 %	1614	43,2 %	114,2
5. Lack of authorisation of the Ombudsman	650	21,6 %	632	16,9 %	97,2
<b>SKUPAJ</b>	<b>3004</b>	<b>100,0 %</b>	<b>3737</b>	<b>100,0 %</b>	<b>124,4</b>

The share of founded and partially founded cases in 2013 (23.9 per cent) slightly increased compared to 2012 (20.3 per cent).

**Table 3.7.7:** Analysis of resolved cases by being founded/unfounded for 2013

FIELD OF ACTION OF STATE BODIES	RESOLVED CASES	NUMBER OF FOUNDED CASES	NUMBER OF FOUNDED CASES AMONG RESOLVED CASES
1. Labour, family and social affairs	1.407	527	37,5 %
2. Finance	77	12	15,6 %
3. Economy	30	0	0,0 %
4. Public administration	23	1	4,3 %
5. Agriculture, forestry and food	6	0	0,0 %
6. Culture	17	5	29,4 %
7. Internal affairs	245	38	15,5 %
8. Defence	2	0	0,0 %
9. Environment and spatial planning	366	67	18,3 %
10. Judiciary	784	83	10,6 %
11. Transport	16	3	18,8 %
12. Education and sports	133	50	37,6 %
13. Higher educ., science and technology	22	7	31,8 %
14. Health care	156	39	25,0 %
15. Foreign affairs	5	1	20,0 %
16. Government offices	3	2	66,7 %
17. Local self-government	31	15	48,4 %
18. Other	414	43	10,4 %
<b>TOTAL</b>	<b>3.737</b>	<b>893</b>	<b>23,9 %</b>

Table 3.7.7 provides an overview of founded and partially founded cases by individual fields of activity of state bodies. Based on these data, we can ascertain in which areas most violations were found in 2013.

Focusing only on areas with 100 or more cases, it is evident that the greatest share of founded cases was in the field of labour, family and social affairs (37.5 per cent) and education (37.6 per cent), followed by health care (25 per cent), environment and spatial planning (18.3 per cent) and internal affairs (15.5 per cent). More about violations in specific fields is described in the content part of the Report.

## 3.8 Employees

In February 2013, the six-year term of Human Rights Ombudsman Dr Zdenka Čebašek-Travnik expired. On 1 February 2013, at its 10th regular session, the National Assembly of the Republic of Slovenia elected Vlasta Nussdorfer as the new Human Rights Ombudsman by 82 votes out of 86 present. She took up her post on 23 February 2013. As at 31 December 2013, a total of 41 people were employed at the Human Rights Ombudsman. They comprised six officials (Ombudsman, four deputies and a general secretary), 23 clerks, eight professional and technical employees, two public servants employed for a fixed period who were replacing public servants on maternity leave and leave to care for a child, and two trainees employed for the period of their internships. Thirty employees have a university education (including one doctor's and four master's degrees); eight have a high professional education (two are specialists), one staff member has higher education and two have a secondary education. Taking into account the number of hours worked, there was an average of 37 employees at the Ombudsman during 2013 (considering public servants and officials).

In December 2013, a pupil in a short-cycle vocational secondary education programme implemented by the Centre for Education and Rehabilitation of Physically Handicapped Children and Adolescents in Kamnik conducted 10 days of practical training (totalling 76 hours) undertaking simple administrative tasks in the Ombudsman's main office on the basis of a training contract; this was the first time that such training had taken place at the Ombudsman's office. The pupil was a special-needs pupil (with Down syndrome), which is why the mentor supervising her work had to be chosen very carefully. We wish to emphasise that the experience was extremely positive and certainly useful. The possibility of inclusion in the work process is an extremely important and valuable experience for persons with special needs, which is also relevant to everyone else. It is on the basis of this experience that we believe that at least within the public sector, practical on-the-job training for students with special needs should be enabled where possible (whether it is possible to provide adequate mentoring needs to be considered).

## 3.9 Finance

Article 55 of the Human Rights Ombudsman Act (ZVarCP) stipulates that the funds for the Ombudsman's work are to be provided from the budget of the Republic of Slovenia. The amount of funds is determined by the National Assembly on the proposal of the Ombudsman (second paragraph of Article 5 of the Human Rights Ombudsman Act). At the Ombudsman's proposal, the National Assembly set funds for the work of the institution for 2013 at EUR 1,932,951 from the state budget. These funds were reduced during the year, as the Ombudsman returned EUR 74,929 to cover the urgent legal obligations of the state budget (funds were returned from the budget item of salaries).

**Table 1:** Ombudsman's financial resources in 2013

	Allocated funds (AB) (in EUR)	Current budget (CB) (in EUR)	Funds spent (in EUR)	Remaining funds according to CB (in EUR)
<b>Human Rights Ombudsman of the Republic of Slovenia</b>	<b>1.932.951</b>	<b>1.890.979</b>	<b>1.835.086</b>	<b>55.893</b>
<b>SUB-PROGRAMMES</b>				
<b>Protection of Human Rights and Fundamental Freedoms</b>	<b>1.751.234</b>	<b>1.694.192</b>	<b>1.658.600</b>	<b>33.554</b>
Salaries	1.338.216	1.281.174	1.281.014	161
Material costs	392.018	392.018	360.059	31.959
Investments	21.000	21.000	17.528	1.434
<b>Implementation of the tasks and authorisations of the NPM</b>	<b>123.867</b>	<b>124.983</b>	<b>120.306</b>	<b>4.677</b>
Salaries	106.590	107.706	107.706	0
Material costs	9.212	9.212	6.969	2.243
Cooperation with NGOs	8.065	8.065	5.631	2.434
<b>Project 'Advocate - A Child's Voice'</b>	<b>57.850</b>	<b>57.847</b>	<b>56.180</b>	<b>1.667</b>
Increased extent of work and contributions	7.201	1.824	1.824	0
Material costs	50.649	56.024	54.356	1.667
<b>Earmarked funds</b>	<b>0</b>	<b>13.957</b>	<b>0</b>	<b>13.957</b>
Compensation funds	0	9.322	0	9.322
Funds from the sale of state assets	0	4.635	0	4.635

# 4

## REVIEW OF ALL RECOMMENDATIONS

**1.** The Ombudsman recommends that all who participate in public discussions, particularly politicians in their statements and writing, avoid the incitement of hatred or intolerance on the basis of any personal circumstance, and in cases of their occurrence, respond and condemn them immediately. *(page 30)*

**2.** The Ombudsman repeats her recommendation that the Government examine the possibility of introducing a civil penalty for unjustified encroachment upon integrity, reputation and privacy by way of publication. *(page 30)*

**3.** The Ombudsman recommends that RTV Slovenia introduce a more transparent system of responses to complaints, proposals and criticisms from listeners and viewers. *(page 30)*

**4.** The Ombudsman recommends that the management of RTV Slovenia ensure that all complainants receive written replies to their written complaints. She also proposes that a record of complaints and replies be kept from which data on the complaints and functioning of the Ombudsman of Rights of Viewers and Listeners can be obtained. *(page 30)*

**5.** The Ombudsman recommends that the legislators evaluate whether the field of children's protection from inappropriate content should be regulated in the Republic of Slovenia by indicating suitable ages for viewing films in cinemas, audio-visual media and computer games. *(page 30)*

**6.** The Ombudsman recommends that the Government of the Republic of Slovenia examine the efficiency of procedures concerning the approval of alternate members of municipal councils, in particular the judicial protection of candidates for alternate members in the cases of mayor's or other municipal bodies' inactivity or obstruction. *(page 30)*

**7.** The Ombudsman recommends that the Archives of the Republic of Slovenia, the responsible inspector of

the Culture and Media Inspectorate of the Republic of Slovenia and the Ministry of Culture, provide consistent implementation of the third paragraph of Article 65 of the Protection of Documents and Archives and Archival Institutions Act. *(page 30)*

**8.** The Ombudsman recommends that the Government conduct a detailed weighing of interference with privacy and personal data of participants in criminal proceedings when drafting future amendments to the Criminal Procedure Act. *(page 30)*

**9.** The Ombudsman recommends that a solution in the Public Information Access Act be adopted to enable the realisation of the principle of privacy of procedures conducted by the Ombudsman in relation to matters handled by the Ombudsman pursuant to the Human Rights Ombudsman Act. *(page 30)*

**10.** The Ombudsman again recommends that statutory solutions be adopted which, in accordance with the Community acquis, ensure the impartial, independent and efficient handling of cases concerning violations of the prohibition of discrimination on any grounds and in all fields. For this purpose, an independent advocate has to be established which will have powers to investigate cases of violation of discrimination, including an efficient mechanism of measures to deter violators of the prohibition of discrimination in the public and private sectors. *(page 41)*

**11.** The Ombudsman points out that Slovenia still does not have a national institution for human rights with full authorisation which would function on the basis of the universally adopted Paris Principles. Such an institution should monitor the situation in the field of human rights also from the viewpoint of the internationally accepted obligations of the state and stimulate and implement promotional and educational activities. The Ombudsman expects the state's support in the reorganisation of the Ombudsman's office into an institution which meets all

conditions for functioning in accordance with the Paris Principles. (page 41)

**12.** The Ombudsman proposes that the Government prepare amendments to the Roma Community Act to abolish the shortcomings identified in the Act, particularly relating to the unsuitable composition of the Roma Community Council of the Republic of Slovenia. (page 41)

**13.** By way of its proposals and initiatives, the Roma Community Council of the Republic of Slovenia should become more actively engaged in procedures regarding the regulation and organisation of Roma settlements in municipalities within its powers, and should also become involved as a mediator between the Roma and local communities in the areas concerned. (page 45) (page 41)

**14.** Municipalities without spatial acts or other measures to legally regulate and provide municipal utility arrangements in Roma settlements within their boundaries have to adopt these acts and measures as soon as possible. (page 41)

**15.** Pursuant to the third paragraph of Article 5 of the ZRomS-1, the Government should take the necessary measures to arrange conditions in municipalities where people's health is severely endangered in Roma settlements, and where public order and peace have been disrupted for extensive periods, or where the environment is permanently threatened. (page 41)

**16.** The municipalities have to provide their residents with suitable access to drinking water without differentiation, particularly in Roma settlements and irrespective of the legal status of the land in Roma settlements. Relating to the implementation of the right to drinking water as an internationally recognised human right, the Government should propose, and the National Assembly should adopt, suitable statutory solutions. (page 41)

**17.** The Government should take concrete action when realising the National Programme of Measures for the Roma for the 2010-2015 Period and pay more attention to the legal and municipal arrangements of Roma settlements, particularly in the broader area of the Dolenjska region. Within this framework, it should clearly define the procedure concerning legal and municipal arrangements in settlements according to individual phases. A timetable should be envisaged for the implementation of each individual phase of the procedure concerning the arrangement of settlements, and a supervisory body should be appointed to monitor the implementation of individual phases of the procedure regarding the arrangement and organisation of settlements and to envisage sanctions for municipalities

which fail to implement measures within prescribed time limits and to remedy their (in)actions. (page 42)

**18.** For the implementation of the Convention on the Rights of Persons with Disabilities and the Equalisation of Opportunities for Persons with Disabilities Act, the Ombudsman recommends the prompt adoption of implementing regulations and measures to actually equalise opportunities for persons with disabilities. (page 42)

**19.** The competent ministries should immediately prepare amendments to regulations to eliminate discrimination in the subsidisation of transport for disabled students. (page 42)

**20.** The Ombudsman once again encourages the Ministry of Justice to continue efforts to resolve the issue of overcrowding of prisons and the poor living conditions in prisons, and on the basis of the findings of the project group to take all necessary measures to execute criminal sanctions while consistently respecting the rules and standards in this field. (page 54)

**21.** The Ombudsman points out that prisons must carry out all necessary procedures without delay or shortcomings in ensuring the rights of imprisoned persons also when accepting multiple prisoners simultaneously. (page 54)

**22.** The Ombudsman proposes that adequate rooms be provided in prisons that are also suitable for visits by children, or that other adequate rooms in the area of all district courts which enable a video link be used for this purpose, and that until then, children's contact be restricted only in extraordinary cases (for example, if the child is a victim of a criminal act committed by the imprisoned or detained parent). (page 54)

**23.** The Ombudsman emphasises that judicial police officers must implement their powers professionally and decisively, but also tactfully, so as not to infringe on the dignity of persons in custody. (page 75) (page 54)

**24.** The Ombudsman proposes changing or supplementing the regulation of the (judicial) protection of the rights of imprisoned persons to ensure an effective legal remedy. (page 54)

**25.** The Ombudsman highlights that actual supervision by the ministry responsible for education or the inspectorate responsible for education, as stipulated by the Enforcement of Criminal Sanctions Act (ZIKS-1), of the education of convicts in prisons and minors in correctional facilities should be ensured. (page 54)



- 26.** The Ombudsman notes that the escorting of imprisoned persons should be carried out in accordance with the Rules on the exercising of the powers and duties of judicial police officers, and proposes the harmonisation of the practice of informing responsible persons if the imprisoned person escorted is restrained also during visits to a doctor or a judge. *(page 54)*
- 27.** The Ombudsman encourages further cooperation between all departments responsible for the expert treatment of persons who have committed a criminal act against the inviolability of sexual integrity, in particular the concrete participation of the Ministry of Health. *(page 54)*
- 28.** The Ombudsman encourages the efforts to mitigate or eliminate the negative consequences of high summer temperatures in prisons. *(page 54)*
- 29.** The Ombudsman notes that any convict who is able to work should be enabled to work for an adequate reward, while the Prison Administration must also involve other convicts in other forms of organised activity. *(page 54)*
- 30.** The Ombudsman proposes that the authorities consider the idea of introducing work for imprisoned persons to provide for the self-sufficient supply of the Prison Administration with agricultural and livestock products and the production of furniture and other equipment for the needs of the prison system or perhaps even wider. *(page 54)*
- 31.** The Ombudsman proposes that prisons ensure that potential news of the death of an imprisoned person be reported personally. *(page 54)*
- 32.** The Ombudsman encourages the Ministry of Justice and the Prison Administration to take all necessary measures to ensure adequate accommodation and care for imprisoned persons with health issues or movement impairment during imprisonment and that their fitness to serve a prison sentence be established in an appropriate manner. *(page 54)*
- 33.** The Ombudsman expects that the Ministry of Justice and the Prison Administration will ensure that possible shortcomings in the practice of prisons in the field of the disciplinary treatment of convicts and in the records of accompanying sessions are eliminated. *(page 54)*
- 34.** The Ombudsman also emphasises that, in the case of an alleged violation of the rules of residence or intended disciplinary treatment, the allegation must always be adequately presented and the convict be given the opportunity to express their opinion about the allegation and that they can ask for an assessment of the decision taken, while all this must be adequately recorded. *(page 54)*
- 35.** The Ombudsman emphasises that all rational measures should be taken to prevent any violence among imprisoned persons, in particular among minors serving disciplinary sentences. *(page 54)*
- 36.** The Ombudsman encourages all competent authorities to take all necessary measures to ensure undisturbed health treatment and protection of all forensic patients (in accordance with the law and implementing regulations), including with an adequate staff structure and constant expert training of employees and by providing an adequate space for the forensic unit. *(page 55)*
- 37.** The Ombudsman proposes that the work on preparing necessary amendments to the Mental Health Act which will eliminate the established shortcomings be continued. *(page 55)*
- 38.** The Ombudsman encourages the Ministry of Labour, Family and Social Affairs to adopt as soon as possible adequate amendments to the Guidelines for work with people suffering from dementia in the field of institutional care of the elderly in order to make the Guidelines compliant with the Mental Health Act. *(page 55)*
- 39.** The Ombudsman encourages the state authorities to adopt, if necessary, further measures to ensure the protection of the right to trial without undue delay, so that speedy and effective trials in all our courts are ensured for all cases. *(page 55)*
- 40.** The Ombudsman emphasises that the guarantees which in the case of detention or deprivation of freedom are determined by the Constitution of the Republic of Slovenia and the European Convention for the Protection of Human Rights and Fundamental Freedoms, should also be provided to a person detained in a department under special supervision of a psychiatric hospital or secure ward of a social care institution. *(page 55)*
- 41.** The Ombudsman expects that Vojnik Psychiatric Hospital will ensure that physical restraint as a protective measure will be used in accordance with the law and that it will establish an adequate control mechanism to ensure that the irregularities found by the Ombudsman do not recur. *(page 55)*
- 42.** The Ombudsman emphasises that social care institutions, as well as the courts, must consistently respect the provisions of the Mental Health Act when admitting persons to secure wards. *(page 55)*

**43.** The Ombudsman notes that the Mental Health Act should be consistently respected in deciding about the payment of costs of procedures for admission to a secure ward on the basis of a court decision. *(page 55)*

**44.** The Ombudsman proposes that an act be passed to regulate the organisation, functioning and other features of residential treatment institutions and to regulate mandatory documentation for such institutions, to determine the framework for the creation of house rules and other rules for residence, define the treatment of violations of rules and ensure the uniform implementation of the rights of juveniles. *(page 55)*

**45.** The Ombudsman calls on the competent authorities once again to take all necessary measures and make agreements for the implementation of all security measures concerning the sending of juveniles to special education institutes. *(page 55)*

**46.** The Ombudsman repeats the recommendation that an effective forced return monitoring system for foreigners in accordance with Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in EU member states for returning illegally staying third-country nationals. *(page 55)*

**47.** The Ombudsman encourages the state authorities to adopt, if necessary, further measures to ensure the protection of the right to trial without undue delay, so that speedy and effective trials in all our courts are ensured for all cases. *(page 69)*

**48.** When ensuring trials without undue delay, the Ombudsman stresses the importance of carefully conducted court proceedings, which should conclude with the issuing of sound court decisions. *(page 69)*

**49.** The Ombudsman recommends that courts consistently respect the deadlines for examining the implementation of the preventive measures imposed regarding mandatory psychiatric treatment and protection. *(page 69)*

**50.** The Ombudsman encourages the Ministry of Justice to continue efforts to enable access to all buildings of judicial bodies for persons with disabilities. *(page 69)*

**51.** The Ombudsman proposes that additional measures be taken to improve the efficiency of enforcement proceedings in a way which does not undermine the rights of debtors that are guaranteed by the Constitution. *(page 69)*

**52.** The Ombudsman recommends that supervision of the lawfulness and correctness of the work of enforcement

officers be implemented consistently and proposes that all necessary measures be taken, including legislative changes aimed at preventing proceedings related to such violations from falling under the statute of limitations. *(page 69)*

**53.** The Ombudsman recommends that the Ministry of Justice and the Ministry of the Interior examine possibilities for providing additional assistance to municipalities as an incentive to establishing or maintaining the various forms of legal aid which certain municipality (already) provide to their residents. *(page 69)*

**54.** The Ombudsman proposes that all necessary measures be taken to ensure that applications for free legal aid are processed within the time limits determined by law. *(page 69)*

**55.** The Ombudsman encourages the prosecution service to continue to provide for the speedy and effective implementation of criminal prosecutions of perpetrators of criminal offences and for an adequate elaboration of reasons for decisions for the potential rejection of indictments or suspension of prosecutions. *(page 69)*

**56.** The Ombudsman recommends that attorneys, upon assuming representation of an individual party, dedicate appropriate time to explaining to the party what kind of services they can expect on the basis of the given authorisation, including an explanation about whether the attorney will represent the party only in one proceeding, and whether other proceedings will require a new authorisation for the attorney. *(page 69)*

**57.** The Ombudsman recommends that the Bar Association of Slovenia take, if necessary, additional measures to improve the effectiveness of its disciplinary bodies and ensure speedy, effective and objective decisions about reports submitted against attorneys. *(page 69)*

**58.** The Ombudsman encourages the Bar Association of Slovenia in its efforts to take measures which would improve the transparency of the work of their disciplinary bodies, including by publishing a list (on its website) of disciplinary measures taken against attorneys. *(page 69)*

**59.** The Ombudsman encourages the adoption of a clear and transparent attorney fee system as soon as possible. *(page 69)*

**60.** The Ombudsman proposes that the Ministry of Justice examine as soon as possible whether there is a need to amend the legislative regulation of the disciplinary accountability of notaries serving in the capacity of an attorney. *(page 69)*

- 61.** The Ombudsman recommends that police officers take more care to ensure correct and complete examining of facts related to alleged offences and eliminate the repetition of shortcomings in examining facts and collecting evidence. *(page 79)*
- 62.** The Ombudsman emphasises that, when implementing police tasks, police officers must respect the personality and dignity of persons and especially carefully treat persons who require additional attention. In the relationship with a person in a procedure (also verbally), they must be fair, and their procedures professional and lawful. *(page 79)*
- 63.** The Ombudsman recommends that all procedures conducted by police officers related to the reading and (non-)implementation of rights of a detained person be carefully recorded. *(page 79)*
- 64.** The Ombudsman encourages the police to inform all its units about irregularities established in the work of police officers in order to prevent a similar or the same mistake from being repeated. *(page 79)*
- 65.** The Ombudsman recommends that the competent authorities reconsider the adequacy of the current regulation on the prosecution of the criminal act of threatening. *(page 79)*
- 66.** The Ombudsman encourages the police to continue efforts to eliminate administrative obstacles in order to enable faster, more effective and better action by police officers. *(page 79)*
- 67.** The Ombudsman recommends that complaints by individuals containing claims that their rights or freedoms have been violated with an act or failure to act by a police officer be processed carefully. The Ombudsman recommends that every applicant receive at least a first answer to every submission. *(page 79)*
- 68.** The Ombudsman recommends that, in cases of a justified complaint, the police and the Ministry of the Interior take all necessary measures to ensure that a similar case does not occur in the future. We also emphasise that in cases when irregularities in the actions of a state authority towards an individual are established, at least an apology should be made to the aggrieved individual. *(page 79)*
- 69.** The Ombudsman points out that police officers must consistently observe all regulations and guidelines in this field, also in the case of the detention of larger numbers of persons, in order to provide for the lawful and professional implementation of the detention and humane treatment of detained persons. *(page 79)*
- 70.** In order to ensure the right to personal dignity to persons in police procedures, the Ombudsman recommends that the police take all measures to prevent a (handcuffed) person who is escorted or moved from being exposed to the media (if there is no objective and reasonable basis for this). *(page 80)*
- 71.** The Ombudsman encourages the MNZ and the police to take all necessary measures to improve the adverse working conditions of police officers as a consequence of high ambient air temperatures. *(page 80)*
- 72.** The Ombudsman proposes that the Ministry of the Interior ensure the observation of statutory time limits for decision making at both first and second instances. *(page 87)*
- 73.** The Ombudsman proposes that the Government adopt suitable implementing regulations as soon as possible to regulate the field of cash social assistance received by foreigners and prevent further violations of human rights and freedoms. *(page 87)*
- 74.** The Ombudsman requires (a similar proposal was provided in the Ombudsman's Annual Report for 2008) the Government to take all measures which contribute to the completion of denationalisation. *(page 87)*
- 75.** The Ombudsman proposes that the Government prepare amendments to the Local Self-Government Act and, if necessary, to other regulations, which will establish efficient mechanisms for supervision and actions regarding the work of local self-government and mayors. *(page 87)*
- 76.** The Ombudsman proposes that the Government promptly take note of the issue of the admissibility of entering illegal constructions in the land register and prepare legislative amendments to prevent this as soon as possible. The state must assume responsibility for illegal constructions and prosecute all builders of illegal constructions. *(page 87)*
- 77.** The Ombudsman requires the earliest possible regulation of the issue of compensation for material war damage suffered by exiles, parties that suffered material damage, prisoners of war and persons conscripted into the German army during World War II. *(page 87)*
- 78.** The Ombudsman requires the Government to provide suitable funds for locating hidden war and post-war graves and, where graves are discovered, to ensure a symbolic burial of victims, memorial plaques and access to the burial site for relatives of the dead. *(page 88)*

- 79.** The Ombudsman proposes that the Ministry of the Interior prepare amendments to the Residence Registration Act, so that the registration of a permanent residence will also be possible for individuals temporarily accommodated in prisons, correctional facilities and elsewhere, and in facilities for homeless people. *(page 88)*
- 80.** The Ombudsman proposes that a deadline be determined in the Residence Registration Act within which the *ex officio* procedure of establishing permanent residence must be concluded. *(page 88)*
- 81.** The Ombudsman proposes amendments to regulations which will enable all parents to freely select a public kindergarten for their child. *(page 88)*
- 82.** The Ombudsman proposes taking additional measures which will provide all parents with equal opportunities when including their children in the public network of organised pre-school education and care. *(page 88)*
- 83.** The Ombudsman proposes that the Ministry of Education, Science and Sport clearly define those procedures in kindergartens, primary and secondary schools which should be managed pursuant to the General Administrative Procedure Act and those which should not (e.g. grading, which is a professional task). *(page 88)*
- 84.** The Ombudsman recommends a more suitable arrangement of habilitation procedures for elections to academic titles for higher education lecturers and academic staff; procedures should be accelerated and facilitate an efficient legal remedy to protect individuals' rights when their application for a title is rejected. *(page 88)*
- 85.** The Ombudsman proposes to the Ministry of Education, Science and Sport to systemically regulate studies for students with special needs and their accommodation in halls of residence. *(page 88)*
- 86.** The Ombudsman proposes adopting a systemic solution for the issue of minor sportspersons' transfers between sports clubs and eliminating the payment of high compensations which must be paid by the parents of minor sportspersons who decide to transfer. *(page 88)*
- 87.** The Ombudsman requires the Government to promptly take all suitable measures to eliminate backlogs in decision making regarding water right and ownership relations on land with access to water. *(page 95)*
- 88.** The Ombudsman recommends that the Ministry of Agriculture and the Environment monthly monitor the dynamics of the resolution of cases in the field of water rights and ownership relations on land with access to water, and report the results to the Government. *(page 95)*
- 89.** The Ombudsman requires the Government to take all measures to improve the quality of the living environment and health of people affected in excessively polluted and brownfield areas, also by taking suitable public health measures. *(page 95)*
- 90.** The Ministry of Agriculture and the Environment should prepare a systemic solution for the acquisition of authorisations for measuring emissions into the air, and ensure the independent supervision and financing of measurements. *(page 95)*
- 91.** The Government should prepare a uniform regulation for the rehabilitation of all polluted and brownfield areas in the country. *(page 95)*
- 92.** The Ombudsman requires the Government to provide the Transport, Energy and Spatial Planning Inspectorate with conditions for efficient inspection task management. *(page 95)*
- 93.** The Ombudsman recommends that the Government determine priority tasks of inspection services in a regulation, as this is the only way to ensure transparency and the impartiality of inspectors. *(page 95)*
- 94.** The Ombudsman recommends that all inspection services inform complainants on the receipt of complaints and the anticipated time limit for their processing. *(page 95)*
- 95.** The Ombudsman proposes that the Ministry of Infrastructure and Spatial Planning prepare an amendment to Point 7.4 of Article 2 of the Construction Act, and define the meaning of 'reinstatement', i.e. the removal of facilities and related material. *(page 95)*
- 96.** The Ombudsman recommends that the Ministry of Agriculture and the Environment submit an opinion on the competences of the Inspectorate of the Republic of Slovenia for Agriculture and the Environment in cases of illegal construction and, if necessary, prepare amendments to regulations that will enable the Inspectorate to order the implementation of operational monitoring for illegal constructions. *(page 96)*
- 97.** The Ombudsman recommends that the competent ministry and the Government prepare a plan of activities to arrange the ownership of local roads where they still run on private land, including time limits for the implementation of individual activities in municipalities. *(page 97)*

- 98.** The Ombudsman recommends that the Government study the possibility of unifying and reducing the prices of procedures for arranging the ownership of land where local roads run. *(page 97)*
- 99.** The Ombudsman recommends that the responsible ministry promptly prepare amendments to regulations regulating the field of chimney sweeping services in order to facilitate greater competition and improve the quality of chimney sweeping services. *(page 97)*
- 100.** The Ombudsman recommends that the Government enhance inspection supervision of the operators of chimney sweeping services. *(page 97)*
- 101.** The Ombudsman recommends that the Government prepare and propose a new act on cemetery and burial activities which is adjusted to the currently accepted consensus regarding attitudes to the deceased, and to regulate in a more suitable manner a non-uniform practice in relation to the right to the (continuation) of the lease of graves. *(page 97)*
- 102.** The Ombudsman recommends again that the right to water be included in the legal system of the Republic of Slovenia as a fundamental human right. *(page 97)*
- 104.** The Ministry of Infrastructure and Spatial Planning should promptly prepare amendments to the Rules on renting non-profit apartments and ensure a fairer system for assessing housing and social conditions, and priority categories of applicants (young people, young families – determining age, taking into account applicants' health and other problems, assessing the quality of life of the homeless, and other). *(page 101)*
- 105.** The Ministry of Infrastructure and Spatial Planning should promptly prepare amendments to the Housing Act which clearly define the obligation of municipalities to ensure a certain number of residential units (taking into account the number of residents) with a suitable living standard, and publish tenders for allocating non-profit dwellings for rent at certain intervals (e.g. annually). *(page 102)*
- 106.** The Housing Act should be amended so that applicants who meet the means test for subsidised market rent are granted subsidy even if they did not apply for a municipality's current call for applications for allocating non-profit dwellings for rent. *(page 102)*
- 107.** The Ombudsman again recommends uniform rules for all users of caretakers' dwellings. *(page 102)*
- 108.** The Ombudsman requires the Government and the National Assembly to cease violating the rights of tenants in denationalised dwellings, and to take prompt measures to eliminate violations as per the conclusions of the European Committee of Social Rights of the Council of Europe. *(page 102)*
- 109.** The Ombudsman requires the Government to take measures to ensure a transparent, efficient and fast supervision system for the payment of salaries, i.e. for net amounts and all deductions. *(page 110)*
- 110.** The Ombudsman proposes that the Ministry of Justice prepare such amendments to the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act that also consider non-payments for work which an individual must perform prior to submitting an extraordinary termination of employment relationship priority claim. *(page 110)*
- 111.** The Ombudsman proposes again that the Ministry of Justice amend the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act and transfer to the state the liability for severance payment in cases of companies in partial state ownership. *(page 110)*
- 112.** The Ombudsman proposes again that the Government ensure that procedures in all supervisory institutions (inspectorates, courts and others) are carried out within reasonable time limits. We propose strengthening human resources where necessary by reassigning public servants. *(page 110)*
- 113.** The Ombudsman proposes that the National Assembly adopt a reliable explanation of Article 137 of the Employment Relationship Act. *(page 110)*
- 114.** The Ombudsman proposes that the Ministry of the Interior prepare amendments to the ZUJF and, as an exception to the limitations regarding annual leave, acknowledge the criteria for protecting and caring for, physically, and moderately, severely or profoundly intellectually disabled persons. *(page 110)*
- 115.** The Ombudsman proposes that the Ministry of Labour, Family, Social Affairs and Equal Opportunities, the Ministry of Education, Science and Sport, and the Government prepare and adopt a suitable strategy for granting scholarships for studies abroad, i.e. relating to occupations for which there is a shortage of personnel who can be employed in Slovenia. *(page 110)*
- 116.** When preparing public tenders for granting scholarships for studies abroad, the Slovene Human Resources Development and Scholarship Fund should consider realistic employment options in Slovenia when determining the obligation of scholarship recipients

to find a job in Slovenia after completing their studies. (page 110)

**117.** The Ombudsman proposes that the Ministry of Labour, Family, Social Affairs and Equal Opportunities, and the Ministry of Education, Science and Sport consider amending the regulations so that, if a student 'skips' a year, grades from the certificate for the year when the grades are higher are considered when calculating the average. (page 110)

**118.** The Ombudsman proposes amending the regulation to enable secondary school pupils to be paid their scholarship in a single amount at the end of an academic year during which the pupil fulfils the obligations for two years, and not only after the education has been completed. (page 110)

**119.** The Government should ensure that the competent state authorities prepare and adopt implementing regulations promptly and within statutory time limits to facilitate the implementation of individual acts, and adopt those regulations for which the time limit has already expired as soon as possible. (page 115)

**120.** The Ombudsman recommends that the competent bodies of the ZPIZ consistently decide on all complaints from insured persons pursuant to the General Administrative Procedure Act, and fully explain the reasons in the explanation as to why individual claims were dismissed or rejected. (page 115)

**121.** The Ombudsman recommends that the Government and all state authorities preparing regulations pay special attention to financial consequences of new solutions in all fields, not only regarding the state budget. All insufficiently deliberated solutions lead to high direct and indirect costs, while all the consequences of citizen's distress can never be objectively established. Therefore, state authorities should pay more attention to suitable training for all those participating in the procedure for preparing regulations which have measurable financial consequences. (page 115)

**122.** The Ombudsman proposes that the Ministry of Labour, Family, Social Affairs and Equal Opportunities prepare an analysis of the realisation and effects of the Pension and Disability Insurance Act (ZPIZ-2) by the end of 2014, and organise a public discussion on the findings and assessments, as well as prepare potential amendments to the pension and disability insurance system. (page 115)

**123.** The Ombudsman recommends that the Pension and Disability Insurance Institute of the Republic of Slovenia ensure everything needed to render decisions within the

statutory time limits, and in cooperation with the Ministry of Foreign Affairs establish a way to simplify and shorten procedures which include the participation of foreign policyholders. (page 115)

**124.** The Ombudsman proposed that the Ministry of Health promptly prepare positions on health-care and health insurance reform, and organise a wide public discussion of all interested publics. The public discussion should include several alternative solutions supported by all relevant information, particularly on the financial consequences for patients. (page 125)

**125.** We recommend that the Ministry of Health promptly establish organisational reasons for violating individual patients' rights, especially the right to respect for patients' time, and obliges the managements of health-care institutions to prepare a plan for their elimination. During plan preparation, they should cooperate with interested organisations of patients and their relatives. (page 125)

**126.** The Ministry of Health should study the regulatory framework of complementary and alternative medicine and individual treatment methods, and on this basis prepare suitable legislation amendments to ensure providers free financial choice and provide users with the right to select their treatments. (page 125)

**127.** The Ministry of Health should include in new health legislation the obligation of health care institutions to promptly inform parents about whether they will be entitled to wage compensation during a hospital stay with a child. (page 125)

**128.** Reimbursement for blood donors should be regulated systematically, and different, i.e. discriminatory, treatment should be eliminated. (page 125)

**129.** The Ministry of Labour, Family, Social Affairs and Equal Opportunities should ensure in 2014 that all complaints regarding exercising the right to public funds will be decided within the statutory time limits. (page 136)

**130.** The Government should prepare a comprehensive strategy for the protection of the elderly against violence and all forms of abuse. (page 136)

**131.** The Exercise of Rights to Public Funds Act should be amended so that child support is not deemed family income up to a certain amount, and that it is intended solely for the needs of a child. A higher amount would be included in family income and would mean that a child contributes to the subsistence of the entire family. (page 136)

- 132.** The Government should prepare suitable amendments to the Social Security Act which will not put excessive burden on people when disposing of their own assets, and will ensure the right of municipalities to suitably protect their claims for the co-financing of social services. *(page 136)*
- 133.** The Government should promptly prepare suitable amendment to the Exercise of Rights to Public Funds Act to eliminate unconstitutional fictive incomes. *(page 136)*
- 134.** The Ombudsman proposed that the Ministry of Labour, Family, Social Affairs and Equal Opportunities prepare amendments to Article 50 of the Labour Market Regulation Act which will facilitate, exceptionally due to the nature of an individual type of work (e.g. personal assistance) and by taking into account extreme circumstances (e.g. illness of the unemployed person), the performance of public work by the same unemployed person at the same public work provider for a period longer than the statutory 24-month limitation. *(page 140)*
- 135.** The Ombudsman proposes that the Ministry of Labour, Family, Social Affairs and Equal Opportunities amend the Labour Market Regulation Act and the Rules on registration and deregistration from records so that the Employment Service of Slovenia may decide on unemployment benefits immediately after receiving a notice that a worker has submitted an application for deregistration from insurance to the Health Insurance Institute of Slovenia or the Pension and Disability Insurance Institute of the Republic of Slovenia. *(page 140)*
- 136.** The Ombudsman recommends that the Government analyse the efficiency of services of the Employment Service of Slovenia and, considering the findings made, adopt organisational, staffing and other measures which will contribute to a faster response to the needs of the unemployed. *(page 140)*
- 137.** The Ombudsman proposes that the Ministry of Labour, Family, Social Affairs and Equal Opportunities ensure that all financial obligations to the unemployed be settled promptly and without delays which impose additional social distress on them (e.g. travel expenses for referral to a lecture, postage and other administrative costs at a flat rate determined in advance immediately after the performance of public works, etc.). *(page 140)*
- 138.** The competent ministries should find actual and legal obstacles to the ratification of international agreements in the field of children's rights and prepare everything necessary to ratify the treaties as soon as possible. *(page 159)*
- 139.** The act should authorise social work centres only to take necessary measures to protect children; further procedures should be implemented by family courts or specialised family departments of the courts. *(page 159)*
- 140.** The Ministry of Labour, Family, Social Affairs and Equal Opportunities should clearly determine and delimit the rights and duties in the Family Code of both parents regarding their children. *(page 159)*
- 141.** The Ministry of the Interior should examine the Deaths, Births and Marriages Register Act and amend it so that the birth of a child outside a health-care institution can be proven not only by a birth certificate issued by a doctor present at labour, but also in other ways. *(page 159)*
- 142.** Experts should study the suitability of guidelines on autistic children and propose urgent changes. *(page 159)*
- 143.** The Ministry of Education, Science and Sport should examine the possibility of amending the standards and norms that regulate the implementation of educational programmes for children with special needs so that the regulations consider the number of children who need additional help at individual schools. *(page 159)*
- 144.** The Government of the Republic of Slovenia should prepare systemic solutions to open issues concerning co-financing programmes and investments that are in the joint interests of people from several local communities, which, however, often reject such programmes due to various reasons. *(page 159)*
- 145.** The state should have the option to effectively intervene if the implementation of some public services within the jurisdiction of local communities is endangered: so that the state could take over the implementation of such services or that local communities could be temporarily deprived of part of their funds and these funds would be invested in joint programmes. *(page 159)*
- 146.** The Ministry of Education, Science and Sport should re-examine the concept for working with secondary school pupils in hospitals. *(page 160)*
- 147.** The Government should determine that the coordination of work and responsibility for harmonising the opinions of ministries regarding joint open issues should be taken over by a responsible person from the Cabinet, who would be personally responsible for the proceedings, not for the result of inter-ministerial harmonisation. *(page 160)*

**148.** The court should decide *ex officio* on the implementation of expert opinions in proceedings if the court expert is performing work, where the child is included. The enforcement of such evidence should not be linked to the proposals or other activities of the parties. In such court proceedings, the court should or could take such evidence in accordance with the fourth paragraph of Article 153 of the Civil Procedure Act. (page 160)

**149.** The Ministry of Education, Science and Sport should examine the suitability of the current legal regulation (Article 107.a of the Education Organisation and Financing Act) which prohibits the employment of certain

persons but does not prohibit their other activities at schools. We suggest that it should be examined whether the persons defined by this legal provision should be prevented from having contact with children during classes and other school activities, or it should enable the implementation of such activities. (page 160)

**150.** The Ministry of Education, Science and Sport should analyse the grades of children who are home schooled, and should examine necessary amendments to the regulations which would be in the best interests of children. (page 160)





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**Published by:** The Human Rights Ombudsman of the Republic of Slovenia

**The Annual Report was prepared by:**

**Vlasta Nussdorfer**, Human Rights Ombudsman

**Tone Dolčič**, Deputy Ombudsman

**Kornelija Marzel**, MSc, Deputy Ombudsman

**Jernej Rovšek**, Deputy Ombudsman

**Ivan Šelih**, Deputy Ombudsman

**Bojana Kvas**, MSc, Secretary-General of the Ombudsman

**Martina Ocepek**, Director of Expert Service

**and co-workers:**

Gašper Adamič, Polona Bobič, Bojan Brank, Nataša Bratož, Zlata Debevec, Borut Goli, Miha Horvat, Robert Gačnik, Mojca Hribar, Lidija Hvastja Rupnik, Tanja Kadunc, Liana Kalčina, Petra Komel, Renata Kotar, Barbara Kranjc, Nataša Kuzmič, Kristijan Lovrak, Branka Markelj, Jure Markič, MSc, Jožica Matjašič, Nataša Mazovec, Andreja Novak, Matevž Pavčnik, Živan Rejc, dr. Ingrid Russi - Zagožen, Andreja Srebotnik, Simona Šemen, MSc, Neva Šturm, Petra Tovornik, Jasna Vunduk, Brigita Urh, Mojca Valjavec, Lan Vošnjak.

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**Human Rights Ombudsman of the Republic of Slovenia**

Dunajska cesta 56, 1109 Ljubljana

ISSN 1318-9255

Telephone: +386 1 475 00 50

Fax: + 386 1 475 00 40

E-mail: [info@varuh-rs.si](mailto:info@varuh-rs.si)

[www.varuh-rs.si](http://www.varuh-rs.si)