

# Croatian People's Ombudsman

Activity report for 2010

Report on occurrence of discrimination



REPUBLIC OF CROATIA  
OMBUDSMAN





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Report on occurrence of discrimination

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## Impressum

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# Introduction









## Ombudsman

# Jurica Malčić

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

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

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

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

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

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

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



## Deputy Ombudsman



Dejan Palić, lawyer

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



Željko Thür, lawyer

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



Branko Tinodi, lawyer

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



## Ombudsman's foreword

The amendments to the Constitution of the Republic of Croatia in May 2010 also affected the constitutional provision on the People's Ombudsman. The new provision emphasizes a proactive role in promotion of human rights, and at the same time, his scope of work was broadened and capacities in the protection of human rights and freedoms of citizens were strengthened in concrete, individual cases of violations.

In accordance with the constitutional amendments, powers and tasks of the People's Ombudsman shall be more closely established and defined only after the People's Ombudsman Act had been adopted, which should happen soon. Therefore, the Activity Report for 2010 (summary report in the first part of publication) was prepared using the same methodology in accordance with the People's Ombudsman Act as of 1992, which is still in force and refers to classical ombudsman functions.

The publication in front of you consists of two summary annual reports that the institution of People's Ombudsman had submitted to the Croatian Parliament: the Activity Report for 2010 and the Report on occurrence of discrimination in 2010, in accordance with the Anti-Discrimination Act, pursuant to which this institution became a central equality body in 2009. (Full reports are available on webpage of the institution, [www.ombudsman.hr](http://www.ombudsman.hr)).

Given that they are intended for the general public at national and international level, the summary reports do not contain detailed descriptions of current situation, concrete examples of human rights violations and activities and recommendations that the People's Ombudsman addressed to the relevant institutions. Therefore, the summary Activity Report for 2010 contains only comparative statistical data and trends in the last five-year period, and a brief evaluation according to particular administrative areas in which most of the problems were identified.

In 2010, the People's Ombudsman acted in 2260 cases, out of which 1823 complaints were received in 2010, which is about 15 percent more than a total number of complaints received in previous year, but also in comparison to the 2006 – 2009 period average.

**Administration and citizens:** Even though a share of complaints in the administrative areas, in which most of cases appeared as the consequence of war and dissolution of the former state, significantly decreased in previous years, they still make approximately 20 percent of a total number of complaints. The most common complaints derive from the area of right to restitution, housing care, pension insurance rights and status rights.

Given the time that has elapsed since the end of the war as well as establishment of legal order of the Republic of Croatia across the whole territory, there is still a significant number of ongoing cases which pose a serious problem that, apart from violating citizen rights (mostly the rights of national minorities, returnees and refugees), also impedes the progress of the Republic of Croatia in the European Union accession negotiations. In previous reports, we have also provided arguments to support the fact that, apart from objective material and financial problems of the country, there are many omissions in the work of competent administrative bodies, and that there was a serious discrepancy between regulations and proclaimed policy and its application in practice.



It should also be said that, in spite of all our proposals and recommendations, we did not notice any progress in scope and quality of control over administrative ruling and respect of deadlines, or efficiency of procedures in case of “silence of administration”. Likewise, we did not note a serious progress in organisation of administrative bodies which resolve the complaints, in order to avoid unjustified (and often repeated) annulments of decisions and sending the case back for retrial. Regrettably, an efficient protection of citizen rights in case that their rights are violated by administrative bodies cannot be provided by the Administrative Court before which the procedures still last unacceptably long.

One of the key requirements and goals of the administrative reform, depoliticization and professionalization of managerial civil servants, recruitment and career advancement of civil servants according to objective criteria of expertise and ability, was only partially reached. The Civil Servants Act 2005 significantly decreased a number of state officials’ posts for managerial positions in the administration by stipulating that, after the first upcoming elections, top positions shall become posts for civil servants who will be selected by public vacancy competition, i.e. in the same way and according to the same criteria applicable to all civil servants. However, after the elections, Government decree and amendments to Civil Servants Act in 2008 stipulated that managerial civil servants shall be appointed by the Government, and the said decree stipulated a special (more favourable) public vacancy competition for managerial civil servants. This procedure (implemented after last elections) is not in line with principles and goals of the Civil Servants Act 2005, as it enables appointment based on political criteria of political suitability and loyalty instead of professional criteria.

**Complaints about the courts:** 2010 saw growth in complaints about the work of courts, and their share increased to more than 20 percent of a total number of cases received by the People’s Ombudsman.

Despite the fact that the amendments to Constitutional provisions in 2010 opened the way for the People’s Ombudsman to examine citizen complaints about the work of court administration and to address the courts directly, this possibility is rarely used, as the new People’s Ombudsman Act, harmonized with the Constitutional amendments, which should determine the way and limits of the People’s Ombudsman competence in relation to courts, still has not been passed.

When it comes to complaints of excessive duration of court proceedings, the People’s Ombudsman has, as a rule, indirectly acted only in relation to the Administrative Court, in cases when the length of administrative dispute (including previous administrative procedure) was obviously unreasonably excessive. Just as in previous reports, we warn that the most common cause of human rights violation is still a failure to resolve court procedures within a reasonable time, and that the greatest problem is the excessive length of civil matter procedures, including enforcement procedures and resolution of administrative disputes.

The court administration at the Supreme Court should have a stronger role in managing the system and controlling the courts, as well as in participation in the procedure of proposing measures and policies within this field. Unfortunately, instead of further strengthening of the role of the President of the Supreme Court as the highest authority in the judicial administration in the Republic of Croatia, his role in the appointment of the presidents of court has been diminished by the new Act on the State Judiciary Council.

The role of the court administration should also be strengthened in procedures in which a request for a trial within a reasonable time was filed. Current effects of requests for trials within a reasonable time are extremely disputable. Such a request is considered as founded only post festum, after the right had



already been violated, when the state already has to provide compensation for violation of rights. The obligation to preliminary address the court administration would allow timely reaction of the court administration and would result in reduction in number of court cases which nowadays pose additional burden on courts.

**Social and legal security:** Unemployed persons, employed persons whose employers violate law and fail to grant them labour rights (and salaries!) and often go unpunished, and pensioners on low incomes are in the most difficult position.

A long-lasting economic crisis has spread to the increasing number of citizens and low-income families who cannot cope with the growing costs of living, which is why for many of them there is a threat of court procedures or writ of execution. All this leads to the brink of social sustainability and dissatisfaction with objectively difficult situation which is worsened by the feeling of injustice and helplessness. They consider that the state, first through unjust and even illegal privatization, and later through high-level corruption and gains acquired that way, allowed the unjust division of national wealth for the benefit of a selected few, thus preventing equal opportunities for all.

At the same time, state administrative and judicial bodies, instead of protecting the citizens and common good, supported private interests but also lawlessness and plundering through their actions, or the complete lack thereof. A number of recently disclosed affairs, investigations and court procedures only witness that structural sin does not only belong to the privatisation past, and that the structures of sin are still entrenched in a part of politics at state and local level as well as in some administrative and judicial bodies. The fact that such structures could influence decision-making and even adoption of laws whose goal was not the common good but rather private or group interests, tells us about the situation in which even the notion of state capture can be seen in the distance.

Dissatisfaction also exists because of the belief that all people are not equal before the law, and that slowness and mess in bringing administrative and court decisions without sufficient control allow arbitrariness and give rise to bias – in those circumstances, those who have the influence and money can achieve their interests much faster and easier, often at the expense of weaker and poorer, and even to the detriment of public interest. It is therefore justified to point to the fact that a poor system of free/sponsored legal aid will make such aid inaccessible to many people who need it the most. The weaknesses of the Free Legal Aid Act are detected in too strict criteria and complicated procedure to obtain legal aid, but also in the fact that it does not include, to a sufficient extent, civil society organizations and judicial bodies before which the procedures are conducted.









# Statistical data for 2010





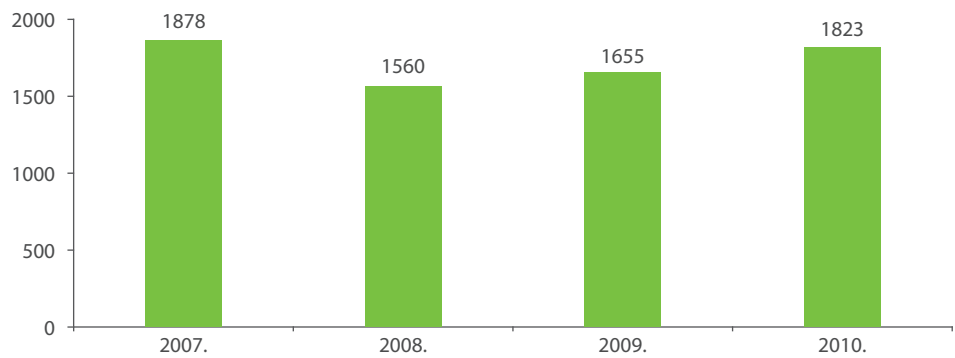


# Statistical data for 2010

The Ombudsman’s reports are in significant part based on citizen complaints. Even though those reports cannot be regarded as an overall evaluation of the human rights situation, their purpose is to warn about the critical points in system (mal) functions with a view to its further strengthening. As shown below, citizen complaints were primarily based on the excessive length of procedures before competent bodies.

In 2010, the Office of the People’s Ombudsman received 1823 written complaints, which is 168 complaints more than in 2009 (1655). 567 citizens addressed the Office of the People’s Ombudsman in person, which is about 150 persons more than last year; however, these data are not included in the statistical overview of activities based on complaints, presented in continuation of the text.

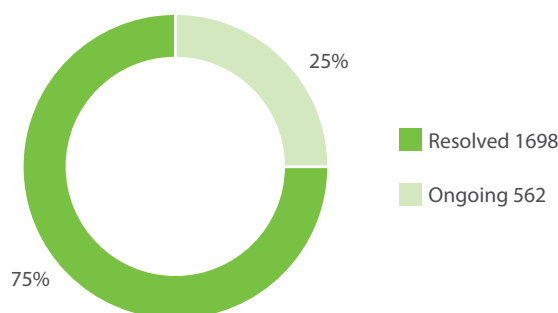
**Figure 1** Number of (written) complaints in the period between 2007 and 2010



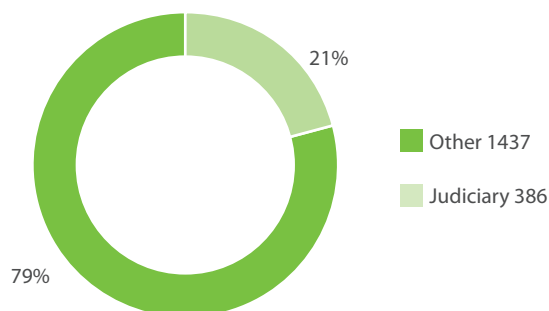
In the course of 2010, the Office of the People’s Ombudsman worked on 2260 cases, out of which 1823 were newly received complaints.

Out of 2260 cases that were handled in 2010 (including cases initiated in previous years), 1698 cases were resolved (378 from previous years and 1320 cases received in 2010), while 562 cases are ongoing.



**Figure 2** Ratio between resolved cases and ongoing cases

Duration of investigative procedures in the Office of the People's Ombudsman largely depends on duration of procedures before the competent bodies, and in some cases procedures last over 10 years. Additional difficulty lies in the fact that the competent bodies fail to respond promptly to Ombudsman's requests for information. In 2010, it was noted that in some cases the requested information was not delivered after a few months' time (despite the legal term of 30 days), so in 275 cases it was necessary to send from one to five rush notes, after which the requested information was delivered. In 62 cases, the Ombudsman still has not received the requested information.

**Figure 3** Share of complaints pertaining to the judiciary

It is not easy to identify the causes for this situation, but it leads to the inescapable conclusion that the situation is rather worse than in previous years, and that it was influenced by the fact that the Croatian Parliament, for the third year in row, only "took note" of the Ombudsman's annual report without adopting it. Besides, it leads to negative image of the state apparatus because, if the People's Ombudsman as a commissioner of the Croatian Parliament cannot obtain the requested information, it is clear that it is even more difficult for the citizens to communicate with competent authorities while attempting to solve their problems.

The bodies which do not respond promptly to inquiries are in the first place: Central Office for State Property Management, the Ministry of Environmental Protection, Physical Planning and Construction, the Ministry of Justice – Directorate of Civil Law, the Ministry of Health and Social Welfare – Directorate of Medical Affairs, the Ministry of Agriculture, Fisheries and Rural Development – Directorate of Agricultural



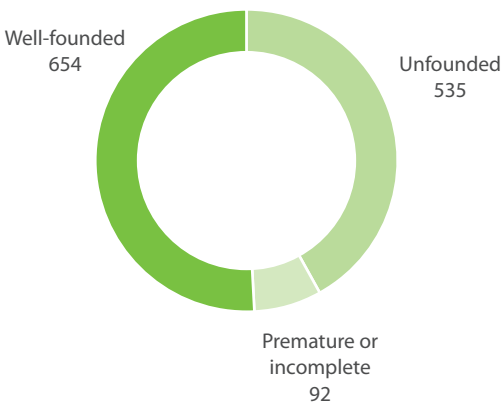
Land, the Ministry of Regional Development, Forestry and Water Management, the Ministry of Public Administration and units of local and regional self-government.

Just like in previous years, a large share of 1823 new complaints refers to judiciary (386).

Out of a total of 1698 resolved cases in 2010 (received in 2010 and in previous years), 1281 complaints fell within the competence of the Office, and 417 complaints fell outside the Ombudsman's competence (in the area of judiciary etc.).

Figure 4 shows the ratio between founded, unfounded and premature or incomplete complaints, referring to areas within the competence of the People's Ombudsman, within the group of resolved cases (1281):

**Figure 4** Ratio between well-founded, unfounded and premature/incomplete complaints



**Figure 5** Undertaken measures (recommendations and warnings) and advice to the citizens

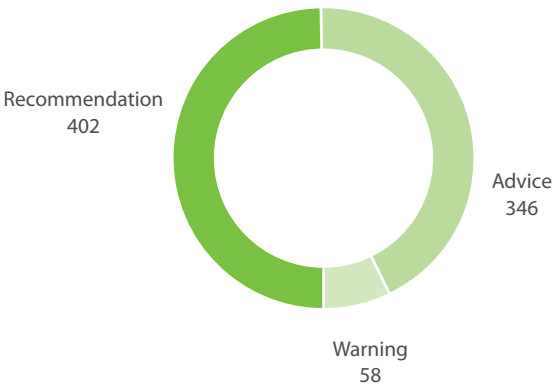
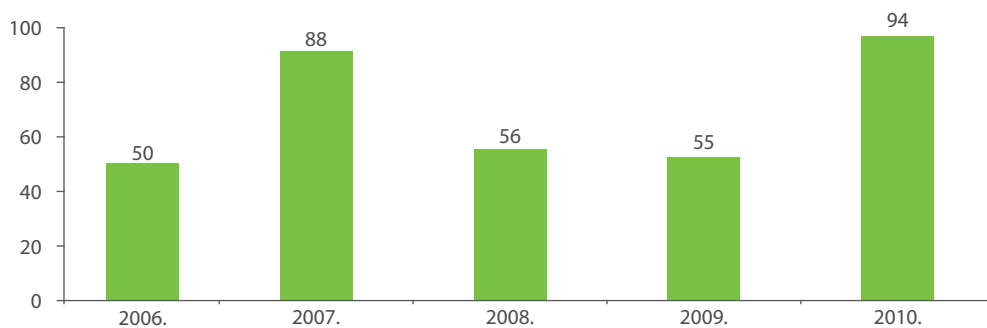
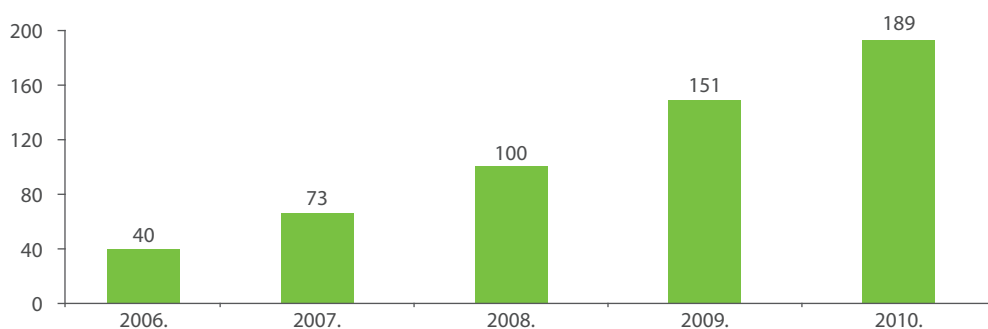
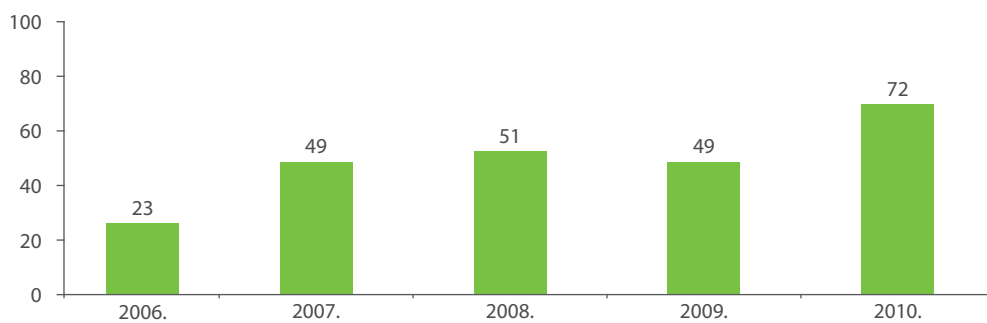


Figure 6 shows the data on fluctuation of number of complaints in the area of status rights. The cause for an increase in number of cases should be linked to the project implemented with the objective of providing assistance in resolving status issues of Roma, described below in more detail, in the chapter on status issues of citizens.



**Figure 6** Number of complaints in the area of status rights (2006-2010)**Figure 7** Number of complaints in the area of labour and civil servants relations (2006-2010)**Figure 8** Complaints in the area of health care (health care and health insurance)



**Figure 9** Comparative overview of complaints per administrative area (2006-2010)

Area:	2006	2007	2008	2009	2010
Judiciary	266	276	299	334	386
Pension insurance	343	258	153	123	127
Right to reconstruction	207	208	116	84	94
Persons deprived of liberty	152	131	177	213	217
Construction/physical planning	73	129	81	79	63
Housing care	63	117	56	28	50
Status rights (citizenship, residence, alien rights, identity card and passport)	50	88	56	55	94
Denationalisation	29	39	32	24	17
Temporarily taken over property	45	40	15	7	9
Housing relations	44	41	33	28	21
Other property-right relations	19	88	114	45	33
Labour and civil servants relations	40	73	100	151	189
Social welfare	40	70	46	59	76
Conduct of police officers	28	52	45	41	47
Health care	23	49	51	49	72
Family rights – Guardianship	/	/	23	49	46
War veteran rights and rights of their families	20	44	37	39	27
Preschool education, education, high education and science	/	/	/	/	32
Finance	/	/	/	/	31
Utility services	/	/	/	13	20
Access to information	/	/	/	10	3
Economy and crafts	/	/	/	/	40
Refugees, displaced persons and returnees	43	7	4	4	1
Non-jurisdiction/incomplete complaints	65	61	48	65	91
Other	150	147	74	155	37
<b>TOTAL</b>	<b>1655</b>	<b>1878</b>	<b>1560</b>	<b>1655</b>	<b>1823</b>







## Analysis of work according to various administrative areas

### Reconstruction – Housing Care - Restitution of temporarily taken over property

Complaints in the areas of reconstruction of houses destroyed in the war, housing care and restitution of temporarily taken over property refer to the work of the Ministry of Regional Development, Forestry and Water Management – Directorate for the Areas of Special State Concern and Directorate for Reconstruction. In 2010, 153 cases were handled, out of which 94 cases refer to reconstruction, 50 cases to housing care and 9 cases to the restitution of temporarily taken over property. The analysis of work of the competent bodies is provided below.

#### **Directorate for the Areas of Special State Concern**

Complaints against the work of the Directorate received in 2010 mostly referred to the unduly long procedures in cases regarding housing care issues, disrespect and non-transparency of the housing priority list and messy and inappropriate apartments intended for housing care (a flat without a heating system was offered to an unemployed single person who could not afford to solve this problem at his expense). Complainants often believe that the reasons for such conduct may be attributed to corruption, but also to discrimination on grounds of nationality, and the Croatian Parliament was informed thereof in previous reports of the People's Ombudsman.

Besides, the problem mentioned in the last year report persists – the former holders of occupancy rights in the area of Vukovar-Srijem County are advised by the competent Directorate to submit a housing application, despite the fact that those persons had previously acquired the status of tenants upon entry into force of the Act on Apartment Lease.

By overtaking the obligations in the EU accession negotiations of the Republic of Croatia, aiming to fulfil the benchmarks for opening the Chapter 23: Judiciary and Fundamental Rights of the *acquis communautaire*, the Government of the Republic of Croatia adopted the "Action Plan for the Accelerated Implementation of the Housing Care Programme for Refugees - Former Tenancy Right Holders who want to return to the Republic of Croatia", on June 25, 2008 which should accelerate their housing care. As economic recession slowed down the pace of construction works and significant part of obligations was consequently not fulfilled, the Plan was revised in June 2010. According to data presented in the revised Plan, by June 15, 2010, former tenancy right holders submitted a total of 13817 housing request forms in and outside the areas of special state concern; out of which 10494 was resolved (7456 of them was adopted). As the deadline for submitting requests in the areas of special state concern is still open, it can be expected that former tenancy right holders will submit more requests.



## Directorate for Reconstruction

Complaints in this area are still being received by the Ombudsman (a total of 94 cases worked on in 2010).

The Directorate for Reconstruction acts upon receipt of appeals against first- instance decisions of the state administration offices at regional level regarding the right for reconstruction of family houses and apartments, while the most common reason for filing complaints to the Ombudsman is inordinate length of procedures (which last up to 10 years). According to received data, as of January 1, 2011 there were 4300 pending cases in the Directorate (in comparison to 7200 pending cases in previous year). Despite some improvement, this shows that many citizens are still impeded from exercising their fundamental rights, while the date of resolving their cases remains uncertain.

The General Administrative Procedure Act stipulates the deadline for response delivery, or protection of rights in case of silence of administration. However, legal remedies against silence of administration in the administrative bodies and the Administrative Court of the Republic of Croatia proved to be insufficient for accelerating and completion of procedures. Given that they were rated inefficient by the Constitutional Court of the Republic of Croatia in its decision number U-III-A-4885/2005 as of June 20, 2007, in concrete cases the People's Ombudsman intervenes by sending rush notes after which the most of administrative acts are obtained within a reasonable time.

Citizens complained about the quality and scope of the completed works (poor external carpentry, plumbing installations etc.), but also about the lack of promptness in the work of Commissions for listing and assessment of damage. According to instructions of the competent ministry, the appeals are handled after another assessment of damage, and after the party had a chance to have their say. This would sometimes last for months.

As far as the reconstruction is concerned, in 2010 the People's Ombudsman dealt with several cases of completion of reconstruction works, or reconstruction of infrastructure in war-stricken rural areas. Stagnation in re-electrification is caused by partially impassable mined lands with a small number of reconstructed, mostly uninhabited houses, but also by financial constraints. It is understandable that current economic situation has an impact on the dynamics of works, but it must not be an excuse for allowing that, 15 years after the war, mostly elderly people living on low income live in conditions below the human dignity.

## Pension insurance

### Problems in reforming the system

In his Annual Report for 2008, the People's Ombudsman pointed to the problems of first group of retired persons who received low pensions from the pension pillar I and very low pensions from pension pillar II. The situation is now even more difficult for them as they are not entitled to pension supplement to which the retired persons, who retired from January 1, 1999 onwards and who receive pension from the generation solidarity pension pillar I, are normally entitled.



Given that in 2009 nothing was done in order to solve the above mentioned problems and new differences and inequalities in exercising the right to pension and pension supplement emerged, the Ombudsman addressed the Labour and Social Partnership Committee of the Croatian Parliament and Ms. Jadranka Kosor, Prime Minister of the Republic of Croatia, in order for his proposals and recommendations to be taken into consideration during preparation for the introduction of changes in the pension insurance system, specified in the Economic Recovery Programme of the Government of the Republic of Croatia as of April 2010.

The People's Ombudsman warned about several illogicalities of the reformed system, which were partially and periodically rectified for the benefit of particular groups of retired persons.

The People's Ombudsman believes that the pension system, as introduced in 1999 and 2002, has been significantly eroded as the range of interventions into pension pillar I changed the financial situation of the system, and inequalities among new retirees have become even more visible after introduction of contributions to pensions for the beneficiaries of pillar I. Besides, as initially planned increase of contribution rate for Pillar II from 5 to 10 percent has not been implemented, and a new, more favourable calculation method for basic pension has not been introduced, pension inequalities became even more prominent.

## Complaints handling

In 2010, the Ombudsman worked on 127 new cases. In comparison with 2009, 2010 as the current reporting period saw insignificant increase in complaints about the work of competent bodies of the Croatian Pension Insurance Institute (hereinafter: HZMO). Out of a total number of received complaints, 4 of them were premature, and in eight cases, the party's rush note was sent to the Administrative Court of the Republic of Croatia.

In order to improve the work of the HZMO competent bodies, and all parties in the procedure in case when international social security agreements apply, it is necessary to warn that some difficulties are still encountered in solving complaints filed by complainants who reside on the territory of the Republic of Serbia and the Federation of Bosnia and Herzegovina.

Namely, the notification sent by the HZMO clearly points to inordinate length of procedure, and it is in most cases caused by untimely and disorderly delivery of stipulated documents, or data related to the request. Therefore, it was again recommended to the HZMO that they should warn foreign insurance holders about their duties based on signed and ratified agreements, or social security agreements, in order for the above mentioned agreements and protection of rights and interests of the parties to be implemented and decision brought within appropriate time.

## Rights of the Croatian Homeland War Veterans

### Pensions

In his previous reports, Ombudsman emphasized that the new organization of the Ministry of the Family, Veterans' Affairs and Intergenerational Solidarity and its way of working significantly contributed to



a decrease in complaints about the work of competent bodies in exercising and protection of Croatian Homeland War veterans' rights and the rights of their families.

In 2010, a total of 4 complaints were received (in comparison to 7 complaints received in 2009).

Complaints referred to the procedure of issuing the certificates for confirming their Homeland War Veterans status, the way of keeping records on Croatian Privatization Fund shares, the work of Office for Detainees and Missing Persons, and payment of unpaid pensions to the members of Croatian Defence Council for the period from July 12, 2006 to December 31, 2007.

## Housing Care

In 2010, the right of Croatian Disabled Homeland War Veterans to housing care was reviewed in the framework of complaints filed about the work of the units of local self-government for violations of rights stipulated in Article 40 of the Act on the Rights of Croatian Homeland War Veterans and their Family Members, or violation of rights to furnish their home.

## Persons deprived of liberty

In 2010, the persons deprived of liberty filed 217 complaints to the People's Ombudsman. When the complaints filed in previous years are added up to this number, a total number of cases involving persons deprived of liberty on which the Ombudsman worked in 2010 amounts to 249 cases. However, it must be emphasized that provided data show a number of complainants who addressed the Ombudsman, and not a number of complaints. Namely, it happens quite often that a single complainant complains on several grounds in a single complaint, or that the same complainant addresses the Ombudsman by filing different complaints in the same calendar year, which normally does not require opening a new case. Given the circumstances mentioned above, the analysis of the complaints filed in 2010 by persons deprived of liberty was conducted.

In the course of 2010, the Ombudsman examined prisons in Sisak, Rijeka, Pula and Karlovac and penitentiaries in Glina and Lepoglava, and those examinations confirmed that over-crowdedness, which is the underlying generator of restrictions and violations of rights of persons deprived of liberty, is still on the rise. According to the official data of the Central Office of the Directorate for Penitentiary System, there were 5212 persons in the penitentiary system on December 31, 2010. Taking into consideration the fact that prison system accommodation capacity is 3351 persons, it is easy to conclude that total crowdedness of the prison system amounts to over 155 percent. Given the aforementioned issues, the main observations listed in last year report still apply.

However, in order to get a real picture of over-crowdedness, it is necessary to bear in mind that 4235 persons (or 81 percent of all persons within the prison system) live in closed conditions, while a total accommodation capacity is 2495 (closed conditions crowdedness amounts to 170 percent). 718 persons live in semi-open conditions (14 percent of all persons within the prison system), whereas the accommodation capacity is 625 (crowdedness of semi-open conditions amounts to 114 percent). 259 persons (5 percent of all persons within the prison system) live in open conditions, while the legal capacity is 231 (crowdedness of open conditions is 112 percent).



The analysis has shown that the majority of complaints (57 percent) were filed by persons living in prisons (prisoners, inmates, detainees pending investigation, convicts), 37 percent of complaints were lodged by the penitentiary, 1 percent of complaints were filed by correctional institutions and 5 percent of complaints were lodged by persons outside the prison system. These data are expected, after the information obtained after the analysis of prison capacities and prison over crowdedness was taken into consideration. Namely, there are 3078 prisoners in prisons; while the accommodation capacity is 1647 (prison crowdedness amounts to as much as 187 percent).

Most complaints referred to accommodation conditions (18 percent) and health protection (18 percent). In 12 percent of complaints, the Ombudsman's intervention was required because of transfer to another institution within the prison system. 8,5 percent of complaints were filed because of actions undertaken by security department staff, 7 percent because of advantages, and 5 percent of complaints were filed against actions undertaken by the treatment department. Even though the complaints were mostly delivered on the basis of an oral statement due to organizational constraints during the visits to penal institutions, in 2010 the violation of this right was reported in only 4 percent of complaints.

The analysis of complaints according to prisons and penitentiaries was conducted; and legal capacities in closed conditions as well as a total number of persons living in closed conditions were taken into consideration. It was established that most complaints were filed in Bjelovar Prison, Sisak Prison and Lepoglava Penitentiary.

After examination of accommodation conditions in penitentiaries and prisons, the People's Ombudsman established that the whole prison system was not adequately equipped for disabled wheelchair users. On the basis of international obligations ratified by the Republic of Croatia, Article 14 of the Convention on the Rights of Persons with Disabilities, it is necessary to ensure a reasonable adaptation of conditions for accommodation of persons with disabilities. In case these conditions are not fulfilled, detention of persons with this type of disability might represent a violation of Article 3 of the European Convention on Human Rights and Fundamental Freedoms. In this context, the decision U-III/64744/2009 of the Constitutional Court must be borne in mind as it orders the government of the Republic of Croatia to allow personal mobility of inmates with special needs in Prison Hospital in Zagreb within a period that will not be longer than three years.

The quality of health care in prison system is, besides the accommodation conditions, the most common ground for complaints filed by persons deprived of liberty. In February and April 2010, a health care inspection was conducted in 4 penal institutions (out of a total of 23 institutions). Taking into consideration the facts established by examination of prisons and penitentiaries and a large number of complaints, the People's Ombudsman believes it is necessary to conduct a health care inspection in all prisons, penitentiaries and correctional institutions. In this context, the decision of the Constitutional Court in the case U-III/64744/2009 must be borne in mind as it orders the government of the Republic of Croatia to establish and to efficiently control the quality of health care in the whole prison system.

Detainee complaints have shown that the issue of education of foreign, non-EU national prisoners remained unsolved.



## Persons with mental disabilities

In 2010, the Ombudsman continued to receive complaints referring to forced or involuntary hospitalization (complainants were persons with mental disabilities).

In accordance with his obligation to examine the institutions where freedom of movement is restricted at least once in two years, the People's Ombudsman visited Psychiatry Clinic of KBC Rijeka, Rijeka Rehabilitation Centre, Rab Psychiatric Hospital and Rehabilitation Centre Stančić in Dugo Selo.

During his visit to psychiatric hospitals, the Ombudsman interviewed the Head of Clinic and the Hospital Director, the medical staff and some of the patients admitted to the examined units. All examined units were tidy and clean, and the efforts of staff to create a comfortable and positive therapeutic environment in the hospital were evident. None of the patients complained about the problems in relation to other patients, and there were no complaints about doctors.

In Psychiatry Clinic, one room is used for isolation purposes (and is therefore specifically equipped). A person can spend at most several hours in the isolation area, with careful monitoring by medical staff.

During his visits to the psychiatric institutions, the Ombudsman observed a lack of appropriate services for protection of mental health at the local level, which could, through their activities, reduce institutionalisation of mentally disabled persons and make it easier for them to remain with their own families. In November 2009, the Ombudsman requested information from the Ministry of Health and Social Welfare on the activities undertaken in that respect. Despite the fact that three rush notes were sent in 2010, the Ministry has not yet provided any requested information.

During his visit and examinations of the psychiatric institutions, the People's Ombudsman did not see any net/cage beds nor has any knowledge on the use of such beds in the health and welfare systems. Furthermore, the Ombudsman observed the use of physical force and restraining means in protection of rights of mentally disabled persons with special attention.

The Ombudsman examined Lopača Psychiatric Hospital. During the examination, he established that the Hospital concluded an agreement with the Ministry of Health and Social Welfare for provision of out-of-home care services for 20 persons, in accordance with the law. As the examination confirmed that the services provided to beneficiaries of social care service do not differ from services provided to the patients, impression was made that, upon a decision issued by Social Care Centre, 20 beneficiaries who should be provided with out-of-home care services were accommodated in a hospital in which they had been hospitalized for years (for instance, over 8 years in some cases), which the People's Ombudsman found unacceptable. In 2010, several replies were requested from the Ministry of Health and Social Welfare, but as we have not received all answers, the Ombudsman will pay special attention to this problem in 2011.

## Conduct of police officers

In 2010, the People's Ombudsman initiated 47 investigative procedures based upon citizen complaints and media reports related to conduct of police officers in using their police powers, which represents a minor growth in comparison to 2009, when 41 investigative procedures were initiated. Complaints



mostly refer to the conduct of police officers while enforcing their police powers, contrary to Article 14, paragraph 2 of the Law on police duties and powers (obligation to respect the dignity of reputation and honour of every person, and other fundamental human rights and freedoms). In comparison to previous years, there were fewer complaints against the excessive use of coercive measures. Just as in previous years, the replies submitted to the Ombudsman during investigative procedures are often formal and reflect a general attitude on legality of actions. It is not clear from those replies what was done about the examination of citizen complaints and what are the criteria according to which it is decided whether particular complaints are founded or not. Formal replies of this kind cast doubt not only on objectivity of the procedure but also on independence of the Internal Control Department. The cases in which the Internal Control Department does not act in line with the instructions of the People's Ombudsman, but rather forwards the case to the General Police Directorate for further processing, only confirm this suspicion.

Bearing in mind the above mentioned shortcomings, the People's Ombudsman was, in his annual reports to the Croatian Parliament over the last five years, repeatedly pointing to the need to adopt a regulation which would standardize the procedure of examining complaints filed pursuant to Article 6 of the former Police Act, as well as the necessity of the citizen participation in these procedures. Likewise, the Ombudsman emphasized the need for establishing a civil control mechanism which would monitor the work of the police, and insisted on strengthening the Department of Internal Control. In all previous communications between the People's Ombudsman and the Ministry of the Interior, inadequacy of the current Police Act was said to be the main reason for which it was not possible to correct reported deficiencies. This is why the People's Ombudsman submitted his comments on the draft proposal of the Act to the Ministry of the Interior and General Police Directorate upon publication of the draft proposal of Police Act, in which those deficiencies were not corrected. Furthermore, the People's Ombudsman believes that the regulation on working methods and actions upon receipt of citizen petitions and complaints (from Article 5, paragraph 6 of the Police Act) should be adopted as soon as possible, as it would ensure the standardisation and objectivity of the procedure.

Likewise, it is necessary to adopt the regulation on internal control and control of work of officers and organizational units (from Article 7, paragraph 2 of the Police Act). Insistence on urgent adoption of the regulation derives from the fact that, according to Article 129 of the former Police Act, the Minister was obliged to pass the regulation on internal controls and other control activities within six months after the date of entry into force of this Act. However, during 10 year period in which the Act was valid, the above mentioned regulation was not adopted. The People's Ombudsman believes it is necessary to emphasize that the role, competence and independence of work of the Department of Internal Control, which does not only control the work of the police officers but also the work of all employees of the Ministry of the Interior, should be stipulated by law.

The People's Ombudsman supports any effort towards further depoliticisation of the police, but also believes that depoliticisation of the police will not be achieved only through legal prohibition of political party membership. In this respect, this Act should have further emphasized the independence and separation of professional police service and General Police Directorate from political part of the Ministry.

In 2010, the Ombudsman paid an unannounced visit to police custody areas of Primorje-Gorski Kotar County Police Administration (Police Station Rab, Police Station Delnice, Police Station Vrbovsko and Border Police Station Rupa), and Police Station Ozalj. During the inspection, it was established that the premises of certain police stations did not comply with the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.



## Physical planning and construction

In 2010, 6 complaints in the area of physical planning were received. In the same period, 53 complaints in the area of construction were received, out of which 20 referred to the procedure of issuing the construction permit, and 33 referred to the work of the construction inspection, mostly because of their failure to enforce the inspection decision. Besides complaints received in 2010, within the competence of construction inspection, 20 cases of illegal constructions that were reported to the Ombudsman in previous years were examined, however, construction inspection procedure in those cases is still ongoing.

### Building inspection

The Ombudsman is asked to protect the rights of citizens dissatisfied with the way in which the building inspection works in respect to non-enforcement of forceful demolitions. The complainant is usually a neighbour or other interested citizen who believes that illegal construction violated their rights. Despite the fact that illegal construction violates the rights of others, the owner of the real property next to the real property on which illegal construction works are executed as a rule remains entirely unprotected as their status of a party to building inspection procedure is not recognized. Besides protection of the Ombudsman, the interested parties do not dispose of legal or other regular remedy to protect their violated rights in a quick and successful way. The procedures of forceful demolitions of illegally constructed buildings last up to several years.

The Ministry of Environmental Protection, Physical Planning and Construction fails to conduct the procedures within deadlines which they had set themselves according to the priority criteria. When asked to provide an explanation for the excessive length of procedures, the Ministry either fails to respond within set deadlines, which in some cases requires sending of several rush notes, or provides specific explanations for non-enforcement of forceful demolitions.

According to the General Administrative Procedure Act, every natural and legal person is entitled to participate in administrative procedure in order to protect their rights and legal interests. Depending on the particular circumstances of each case, an interested party must be allowed to protect their rights also through inspection procedure, at least in a way that a person, having a legal interest in that, is allowed to submit an application for execution of inspection measure.

## Housing relations

The complaints are usually filed by the citizens who still have not exercised their rights to an apartment on the basis of the acquired tenancy right. In his previous reports, the People's Ombudsman emphasized the problem of rights of the protected tenants in private apartments and rights of the rightful owners to such apartments.

The Act on Apartment Lease has, through the institute of protected lease, provided special protection to the category of rightful owners to private apartments, as they did not have a possibility to purchase the apartment under the conditions stipulated by the Law on Sale of Apartments with Tenancy Rights.

Given that the Act on Apartment Lease imposed an exaggerated burden to the rightful owner as it stipu-



lated that he could cancel the lease agreement to the protected tenant only if he had previously secured another habitable apartment under conditions which would not be more unfavourable for the tenant, the Constitutional Court repealed the provision of Article 21, paragraph 2, and Article 40, paragraph 2 of the Act on Apartment Lease on March 31, 1998, and left the regulation of this issue to the discretion of the Croatian Parliament through amendments to the Act. Despite the fact that more than 12 years elapsed, the Act has not been amended.

In his 2007 report, the Constitutional Court estimated that the existing normative framework was unacceptable from the constitutional point of view. The People's Ombudsman again points to the fact that the Croatian Parliament should regulate this issue in accordance with the standpoint of the Constitutional Court.

## Health care

As far as the right of the citizens to the health care and protection of this right is concerned, we believe it is necessary to emphasize that the Constitutional Court of the Republic of Croatia repealed the provision of Article 35 of the Act on the Protection of Patients' Rights, which was a basic provision on legal means available to the patient for protection of his rights, in March 2008. Even though the provision ceased to be valid as of December 31, 2008, the Croatian Parliament still has not amended the Act with a new provision.

A legal instrument for protection of rights stipulated in the Act on the Protection of Patients' Rights, according to the repealed provision, was filing an oral or written complaint to the responsible person of the medical institution. The responsible person was obliged to inform the patient within eight days on undertaken measures, so that the patient could, in case he was not satisfied with the answer, file another complaint to the Commission for Protection of Patient Rights within the next fifteen days.

The responsible person and the competent Commission would then decide on patient's complaint outside of statutory rules. The undefined discretionary powers of the responsible person in informing the patient on what had been done about his complaint opened the way for arbitrariness in response, which might have led to unjustified privilege for some patients and discrimination of the others.

The Ombudsman recommends an urgent amendment to the Act of the Protection of Patients' Rights through a provision on efficient legal instrument for protection of rights stipulated by this Act.

## Health insurance

Out of a total of 23 received complaints in 2010 in the area of health insurance, 9 complaints (about 40 percent of complaints) pertained to the problems regarding health insurance of aliens, or inability to pay contributions for mandatory health insurance of foreigners (mostly citizens of Bosnia and Herzegovina and Republika Srpska) who were granted a temporary stay in the Republic of Croatia.

Remaining complaints referred to possible shortcomings in the work of the Croatian Health Insurance Institute (HZZO) and irregular application of regulations, due to which the complainants – Croatian citizens – could not exercise the right to supplemental health insurance.



## Status rights

There was a significant increase in number of complaints regarding permanent and temporary residence of citizens, while the vast majority of received complaints refer to acquiring Croatian citizenship and rights of aliens regarding approval of permanent and temporary residence in the Republic of Croatia. In 2010, a total of 92 new complaints regarding status rights were received, which represents a 67 percent increase in comparison to previous year. Field work of the mobile team of the Office of the People's Ombudsman, created within the scope of the project "Social Inclusion: Support to the Marginalized Groups" contributed to a significant increase of complaints in comparison to last year report.

### Permanent and temporary residence of citizens

Complaints regarding permanent and temporary residence of citizens pointed to unequal application of regulations in some police directorates.

In the statement of the Minister of the Interior to the People's Ombudsman, it was stated that any person for whom it was established that they had moved away from the territory of the Republic of Croatia without giving notice of leaving the place of residence shall be removed ex officio from the records by the Ministry of the Interior, and the same applies to persons for whom it was established that they had never moved into the area and address in which they registered their residence (fictitious registration of residence). Also, according to the statement, the Ministry of the Interior shall remove ex officio the address of the registered permanent residence of a person who had left this area and address and permanently moved to another location and address in the Republic of Croatia. According to the instruction of the People's Ombudsman, a person should have a chance to be heard in all procedures in accordance with the provisions of the Act on the Administrative Procedure, which would allow the person to provide any information relevant for reaching a decision, and in cases when a party does not respond to a formal invitation, it is necessary to establish the current residence of that person or his or her work address in order to get into contact with them. The instruction says that, during deletion from temporary residence records, the rights to which persons are entitled on the basis of other regulations and governmental programmes as well as the fact of staying in the Republic of Croatia, shall be taken into consideration.

Citizens also complained about being prevented from claiming their residence after change of address. The complainants say that, while claiming the change of address or residence, they were asked to provide a proof of real estate ownership, or a lease agreement certified by a notary public, or a real estate sales contract etc. Failure to attach the requested documents (which results in refusal of residence claim) was the main reason for addressing the Ombudsman by citizens who wanted to fulfil their legal obligations. According to the statement of the Ministry of the Interior, the person is obliged to provide evidence in order to substantiate all relevant facts on which they base their claim (in accordance with the General Administrative Procedure Act), and as those facts are not widely known, the person is obliged to prove their statement. We believe that this interpretation of law is wrong, and it is also proved by the complaints. Namely, the provision in Article 1, and particularly provision in Article 3 of the Law on Residence both clearly point to the obligation of the Ministry of the Interior to find a way to establish the residence of Croatian citizens on the territory of the Republic of Croatia without imposing any additional requirements.



The People's Ombudsman addressed the competent administrative body with the relevant provisions of the Law on Residence, particularly to the provision of Article 3 of the Law, which stipulates the way to establish the residence. According to the subsequently received information, cases were resolved favourably for the complainants.

## Citizenship

In the last year report, we reported of the issue of persons who were denied temporary stay in the decisions issued by the Ministry of the Interior, while the reasons for which it was considered that the person failed to respect the legal order, or that he or she poses threat to national security were not clearly indicated in the rationale. The persons are put into a situation in which they initiate an administrative dispute before the Administrative Court of the Republic of Croatia without knowing "what they are charged with".

In the reporting period, identical problem occurred in the cases in which the request for Croatian citizenship was rejected to the parties, while the rationale did not contain the reasons for which it was considered that the person did not respect the legal order, which is contrary to the existing regulations and to the views of Administrative and Constitutional Court of the Republic of Croatia.

In several cases, the Administrative Court of the Republic of Croatia annulled such decisions issued by the Ministry of the Interior, stating that the Ministry of the Interior must provide an explanation of denial of citizenship status in a repeated procedure. In repeated procedures, the Ministry of the Interior would issue identical decisions, referring to the fact that they did not obtain the relevant data from the competent Security Intelligence Agency (SOA), as this information was classified and could not therefore be quoted in a decision.

Thus the Administrative Court of the Republic of Croatia sends cases back to the Ministry of the Interior for the first instance procedure, the parties cannot complete the procedure and exercise their rights guaranteed by the Constitution, and all those procedures put the burden on state budget.

This issue is particularly evident in cases in which the parties addressed the Ombudsman for assistance as they were either included in the restitution and housing care programmes, or they have lived in Croatia for several decades. In some cases, those citizens complain about discrimination on the ground of national minority affiliation.

During the reporting period, the People's Ombudsman received several complaints from persons who, upon filing a request for issuing some of the personal documents/certificates from the records of the personal status of citizens, were informed by the competent Registrar's Office that they were not Croatian citizens despite the fact that they had been registered for years in the Register of Croatian Citizens of the particular area. The complainants who found themselves in such a situation complained that, until the moment of addressing the Registrar's Office, they had never been informed that "there was a correction to a mistaken entry" or that there was an administrative procedure conducted regarding their case.

During the reporting period, as in previous years, the Office of the People's Ombudsman received complaints regarding the process of obtaining Croatian citizenship by privileged naturalisation, pursuant to the provision of Article 16, Paragraph 1 of the Croatian Citizenship Act.

The problem lies in the fact that the Ministry of the Interior requires the parties to prove their affiliation



to the Croatian nation through written documentation, instead of establishing the facts as required by the Law: that members of the Croatian nation respect legal order and customs of the Republic of Croatia and that they accept Croatian culture. In this context, we should emphasize that, in one of the cases regarding acquiring Croatian citizenship which was dealt with by the Office of the People's Ombudsman, the Constitutional Court of the Republic of Croatia by its decision No U-III/2820/2010 as of December 9, 2010 adopted the constitutional complaint, annulled the ruling of the Administrative Court of the Republic of Croatia and the decision of the Ministry of the Interior and sent the case back to the competent body for a repeated procedure. The Constitutional Court found that the actions undertaken by competent bodies constitute unfounded limiting of evidence to written documentation only, which limited the possibilities of establishing relevant facts on the basis of the principle of material truth, which leads to a conclusion about possible arbitrariness.

## Residence of aliens

The majority of complaints filed by persons who addressed the Ombudsman with complaints regarding regulation of their status in the Republic of Croatia referred to denial of temporary stay with a purpose of family reunification. Namely, Article 52 of the Aliens Act stipulates that an alien shall be granted temporary stay if: he has means of supporting himself, he has a place to live, he has health insurance, if there are no security obstacles and if he has justified the purpose of temporary stay. The Ordinance on calculation and amount of the means of subsistence for aliens in the Republic of Croatia stipulates the means that the alien must obligatorily have in order to regulate his stay in the Republic of Croatia. Furthermore, ways to provide evidence of sufficient means of subsistence are also stipulated. However, in current economic circumstances it has become increasingly apparent that persons who submit the request for extension of temporary stay with a purpose of family reunification can hardly meet the material criteria set forth by the above mentioned ordinance. Likewise, health insurance-based tax debt that the complainants could not pay off for themselves and for their family due to their financial situation during a certain period was also regarded as obstacle to regulation of their stay. All those circumstances resulted in a probability that the complainants would not be granted temporary stay, and, in cases when those persons had already started a family in the Republic of Croatia with Croatian citizens and are parents to children who are Croatian citizens, this would mean family separation. This is why, in several cases, the People's Ombudsman addressed the Tax Administration regarding tax debt amnesty or tax debt payment in several monthly instalments.

## “Social inclusion: Support to Marginalized Communities”

The Project is realized with the support of UNHCR. The team, consisting of the coordinator and two associate experts: a lawyer and a Roma representative, was created within the Office of the People's Ombudsman. The work was primarily conducted through field work visits to locations populated by Roma on the whole territory of the Republic of Croatia. Contacts were established with the representatives of the Roma community and meetings were held with the participation of beneficiaries of the project, preliminary information on project implementation was provided, information was gathered on the status issues of Roma in their residence, concrete instructions regarding possibilities to resolve the concrete cases were given, and assistance was provided in obtaining relevant documents from other countries



necessary in regulation of procedure of stay or obtaining Croatian citizenship. During the implementation of the project, 56 field visits were conducted in 9 counties and City of Zagreb, 14 towns or municipalities were visited, out of which 10 locations in Zagreb.

A total of 269 stateless persons were registered, out of which 179 persons were included in field work, whereas 68 persons addressed the Office of the People's Ombudsman, and in 22 cases persons were assisted in obtaining relevant documents from other countries.

## Civil service and employment relations

Complaints regarding possible violations of employment relation rights in civil service (institutions of preschool, primary and secondary education, health institutions) referred to recruitment irregularities, wrongful termination of contract, payment irregularities related to recognition of seniority and workplace bullying (mobbing).

As the Croatian legislation system still has not regulated the institute of mobbing, and the long-announced act on prevention of workplace bullying still has not been passed, the Ombudsman advised the complainants to refer to the provisions on protection of "personality rights" of Civil Obligations Act (OG 35/05 and 41/08) in order to protect their rights (obtain compensation) in case of workplace bullying.

### Employment relations at state and local level

2010 saw an increase in number of complaints filed by local employees of administrative bodies in units of local and regional self-government; violations of rights in those complaints refer to an increasing incidence of illegal changes in the structure of employees, particularly after local elections or changes of government, or different political views or political party affiliation of incumbent employees.

Decisions on organizational changes of administrative bodies within the existing organisational scope of units of local and regional self-government do not contain provisions on legal succession of former and new organisation in accordance with provisions 103 to 108 of the Act on Civil Servants and Employees in Local and Regional Self-Government, and it does not derive from those changes.

For the above mentioned reasons, through organizational changes of administrative bodies within the same organisational scope, the transfer of incumbent employees depends on the decision of the chief executive, and not on legal succession of organizational changes and tasks they were previously entrusted with.

Even though some administrative bodies are not abolished after the organizational changes, vacancies are announced for new heads of administrative bodies, while chief executives dismiss incumbent heads only because the new decision and regulation had been issued. Other employees get temporarily appointed as heads, and former heads of administrative bodies and other incumbent employees whose tasks are still performed in the same or another administrative body are put at disposal for a limited period of time; upon expiry of this period, their service will be terminated despite the fact that the conditions for such an action stipulated by law have not been fulfilled.



## **Rights of civil servants**

Public competition procedure for admission to the civil service, according to the provision of Article 46 of the Civil Servants Act, still causes inequality between candidates from the ranks of civil servants and the actual accessibility of vacant posts under the same conditions.

Furthermore, despite abolishing key officials' posts and appointment of managerial (top) civil servants, depoliticisation still has not been fully achieved. The competition procedure for appointment of managerial civil servants to the posts which were transformed from the key officials' posts into civil servants' posts is not the same as the procedure for other civil servants. Managerial civil servants are still, as well as the officials, appointed by the Government upon the Minister's proposal, and the recruitment and selection test consists of an interview with the chief official of the central governmental administrative body. Other civil servants are invited for a test on general and specific regulations, practical work and an interview before a multi-member committee.

## **Rights of local civil servants and employees in local and regional self-government**

In the procedure of appointment and dismissal of heads of administrative bodies that still have civil service status and not the status of officials, appeal is not allowed, but they can instigate administrative procedure before the Administrative Court of the Republic of Croatia.

In this respect, heads of administrative bodies were put in an unequal position compared to other local employees in administrative bodies, and particularly in comparison to civil servants. As a rule, protection of their rights in procedures before the Administrative Court of the Republic of Croatia is a long-lasting and hardly achievable protection mechanism.

According to the complaints filed in 2010, after the election of new chief executives of different political affiliation in the units of local and regional self-government, heads of the administrative bodies, but also an increasing number of other employees, are dismissed or put at disposal, which results in service termination.

This is how new decisions and ordinances on the internal structure influence the organisational changes of employees according to the decision of the chief executive and not according to the tasks they had previously performed, in accordance with legal succession of organisational changes and in line with the tasks that are still performed in the same or another administrative body.

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## **34** Local and regional self-government

Most complaints in this area refer to violation of rights in the area of municipality utilities services (drinking water supply, water management supply, utility fees, noise in the inhabited area and use of a burial place).

The citizens complained about violations of rights caused by utility fees, particularly after double pricing of drinking water for particular groups had been introduced, which created inequalities between them.

Given that the price formation of utility services and price control is not oriented towards price forma-



tion between two or more suppliers of the same utility service, as the service is provided by a single supplier, the Ombudsman requested Croatian State Inspectorate and Croatian Competition Agency to get involved.

The actions undertaken on a regular basis by the People's Ombudsman regarding complaints about noise in the inhabited area have not achieved any results. In this reporting period, upon receipt of this kind of complaints, state and local bodies were asked to undertake the stipulated measures, including sanitary inspection and police intervention. Even though the Ombudsman cannot influence the decisions on opening hours of hospitality facilities in the inhabited area, he still reminds the units of local and regional self-government to reconsider their decisions.

A part of complaints refers to violation of rights related to power and manner of decision-making of representative and executive bodies of units of local and regional self-government regarding issuing of general acts, and particularly for unauthorized imposing of obligations to the citizens. Regular control over general acts, upon receipt of citizen complaints, and investigation procedure conducted by the People's Ombudsman has not proved to be efficient enough, as the decisions characterized as general acts are not subject to such a control, and they are issued by mayors and heads of municipalities as executive bodies.

## Social welfare, family-legal rights and guardianship

### Social welfare

In the area of social welfare, complainants often express their dissatisfaction with low amount of social assistance as this amount cannot cover their basic expenses. In such cases, the Ombudsman recommends the approval of exceptional needs payment, which is, as a rule, approved by Social Welfare Centre, and final approval and amount of this payment depends on ensured budget funds.

In Croatia, poverty has become increasingly widespread, and families with children and persons deprived of legal and business capacity, without income and without family solidarity based financial assistance are particularly affected by it, as social assistance cannot cover their basic expenses.

The People's Ombudsman warned of the problem of homeless people as they, as the most vulnerable citizens without a regular dwelling, most often without income, with weakened health, cannot obtain social security due to their unregulated residence. Therefore, they are mostly referred to stay or to live in shelters organized by the unit of local or regional self-government or humanitarian or charity organization, and they are entitled to free meals in soup kitchens. It was therefore proposed to regulate their status and rights by the new Social Welfare Act.

### Family-legal rights and guardianship

The People's Ombudsman was increasingly contacted by persons under guardianship of social welfare centres who filed complaints or inquired about instigating the procedure of deprivation of legal capacity.

In the last year report, we pointed to a need for harmonization of the Family Law (Title – Guardianship)



and other regulations with the Convention on the Rights of Persons with Disabilities, and particularly with Article 12 of the Convention. However, amendments to the Family Law have not been implemented.

According to official data from the Ministry of Health and Social Welfare, there were 19255 persons under guardianship in the Republic of Croatia on December 31, 2009, 17944 of them being adult persons, with 16011 persons who are fully, and 1931 persons partially deprived of legal capacity.

It follows that 89 percent of a total number of those persons are fully deprived of legal capacity. The question arises whether such a high percentage of persons fully deprived of legal capacity could be attributed to proposals made by social welfare centres, or it is rather due to the fact that the court cannot undoubtedly establish, based on the expert findings, which measures, activities and tasks can be performed independently by those persons.

Standards set by the above mentioned UN Convention, European Convention for the Protection of Human Rights and Fundamental Freedoms and Council of Europe Recommendation No. R(99)4 require that the procedure of deprivation of legal capacity is clear and defined by the rules, including a detailed medical expert evidence delivered by an expert witness on the influence that a diagnosed medical condition or mental disability of a person has on their functions. Application of the institute of full deprivation of legal capacity ought to be limited to rare and justified cases. Furthermore, the principle of occasional variability of one's legal incapacity ought to be applied. Appropriate protection measures should secure respect for human rights of persons subject to the procedure of deprivation of legal capacity.

In the Republic of Croatia, there is a negligible improvement in deinstitutionalization of mentally disabled persons. Namely, according to the data from the Ministry of Health and Social Welfare, by December 31, 2009 there were 3860 mentally disabled persons in state and private institutions, and only 44 of them live in organized housing within the social welfare system. It is therefore indispensable to deinstitutionalize the provision of care for mentally disabled persons by securing network services and local community support.

The complaints clearly indicate that after the power was transferred from social welfare centres to Regional HZMO Offices regarding the right to leave of absence or shortened work hours for childcare for a disabled child, some problems arose, particularly in expert evaluation of children during the procedure. The complaints also referred to preventing parents from using a leave of absence for childcare for a disabled child, according to the parents' choice, until the expiry of full parental leave. Because of such an attitude, and the implementation of Law, the parent was prevented from exercising a more beneficial right.

Concerning the application of the Child Support Act, it was noted that an alien - parent granted temporary residence permit on the territory of the Republic of Croatia was not entitled to child support after death of a Croatian citizen parent, despite the fact that the children are Croatian citizens and live on the territory of the Republic of Croatia. As the Ombudsman's recommendation to prescribe child support as the right of a child rather than the right of a parent, which would eliminate unequal treatment of all children Croatian citizens regardless of their origin and status of their parents, was not accepted, the Ombudsman submitted a recommendation on amendments to the abovementioned Act to the Croatian Parliament.



## School education and science

In their complaints about preschool education, most of the citizens addressed the Ombudsman in order to ask for assistance in enrolment of their children to preschool programmes because of difficult social circumstances in the family. However, most complaints and questions in this area referred to secondary education, or the state graduation exam. The citizens addressed the Ombudsman in order to inquire about enrolment in higher education institutions of candidates who finished their secondary education before 2010, about enrolment of candidates who finished their secondary education abroad (Bosnia and Herzegovina, Serbia), and who traditionally study at universities in the Republic of Croatia, as well as about the obligation to cover state graduation exam fee etc.

We also received several complaints from the citizens who completed their university education before 2003, when the Act on Scientific Activity and Higher Education was passed, about violation of their rights to use a corresponding academic or professional title and academic degree as established by the Act on Academic and Professional Titles and Academic Degree.

## Expropriation

The most common complaints in this administrative area refer to non-payment for expropriated land used for construction of infrastructure, health care, educational and cultural facilities, industrial, energy and other facilities, which was considered to be in the interest of the Republic of Croatia. Namely, such procedures take a long time, and if the compensation issue is not resolved in the same year during which it should be solved, it often happens that the funds are not planned for the following year and that the owner of the land cannot receive his money earlier than in the following year, or until the funds for those purposes, including existing rather than resolved cases, have not been planned. The owners must often “remind” competent administrative bodies to plan the budget in a timely manner.

## Property confiscated during the Yugoslav communist rule

Most complaints in this administrative area refer to resolving cases within a reasonable time. Normally, return procedure and establishing compensation for property confiscated during the Yugoslav communist rule is rather complex and requires extensive checking of various documentation throughout the evidence hearing procedure. It often happens that procedures last up to 11 years in first instance, and as the applicants, or persons entitled to compensation, are as a rule elderly people, they do not live long enough to see a decision with final force and effect. The general impression is that there is a lack of will and legal interest for resolving appeals about the return of property or returning the confiscated property.

The People's Ombudsman emphasizes the case of the rejection at first instance of applications for return of confiscated agricultural land to persons entitled to compensation. Administrative body competent



for management of state-owned agricultural land through the management programme of agricultural property does not ensure sufficient land area for return, but rather plans more land for long-term lease and sale, given that a part of funds belongs to the budget of municipalities and towns. Likewise, it happens that large areas are returned to former agricultural-industrial complexes, and eventually there is practically no land left to be returned to natural persons. They are however forced into accepting compensation in money or bonds, much to their dissatisfaction as the compensation is much lower than the market value, particularly when paid by bonds in 20 years' period.

In this report, we find it necessary to point out the complaint against the administrative procedure of surrender of possession and establishing compensation to the heir who was first in the line of inheritance, in which it is wrongly interpreted that the act of surrender of possession means seizure of property, which is wrong. The property is seized by the act of nationalisation, and the possession of land is taken by the act of surrender of possession. In this respect, in 2008 the People's Ombudsman filed a lawsuit before the Administrative Court against the decision of the Government of the Republic of Croatia, which adopted the legal standpoint that the act of surrender of possession was equal to the act of seizure of property. The Administrative Court recognized the lawsuit filed by the Ombudsman through the decision number Us-11339/2008-7 as of June 2, 2010, and annulled the decision of the Government of the Republic of Croatia as surrender of possession does not affect the ownership of property.

## Judicial complaints

In 2010, 416 complaints were handled, out of which 386 complaints were newly received, and the number of such complaints increased in comparison to previous year, when 334 complaints were received.

Most of complaints handled in 2010 pertained to complainants' dissatisfaction with the outcomes of their case, which the citizens interpret in a subjective way and feel it as a consequence of corruption in judiciary, which was why, in some complaints, the Ombudsman was asked to intervene in order to change the court rulings.

A decrease in complaints about excessive duration of the procedure is attributed to enjoying the right to fair trial within a reasonable time before the courts.

The Ombudsman forwarded the citizen complaints about excessive duration of the procedure, about conduct of judges or other court employees towards a party in the course of the procedure or during other official activities (with all necessary information) to the Ministry of Justice, competent for judicial administration affairs, for further examination.



## International cooperation

The accreditation of the institution of the Ombudsman as the national human rights institution for protection and promotion of human rights with status A by the International Co-ordinating Committee of National Institutions implies reporting and participation at the highest UN forums for human rights. Besides the obligation to submit reports to the bodies of particular conventions, the most important role of the national human rights institutions in the international arena refers to their active participation in the process of the so called Universal Period Review (UPR) of implementation of the fundamental human rights, with all UN member countries under review once in four year's time. Upon invitation of the United Nations High Commissioner for Human Rights, the Ombudsman submitted an independent report in a timely and stipulated manner (in collaboration with specialized ombudswomen) on April 19, 2010, which was immediately made public through the Ombudsman's web page. Representative of the People's Ombudsman's Office participated in a discussion on Croatia with the UN Human Rights Council working group, held on November 8, 2010 in Geneva.

The People's Ombudsman participated in the 4th meeting of the Association of Mediterranean Ombudsmen (AOM), held on June 14 and 15, 2010 in Madrid. The main topic of the meeting was "Immigration and human rights: a challenge for Ombudsman institutions?" At the general assembly, Jurica Malčić, People's Ombudsman, was again appointed into the governing board of this association for a two-year term.

The People's Ombudsman participated in the European Conference of the International Ombudsman Institute, held in Barcelona from 3 to 6 October 2010. Besides the protection of immigrants' rights, the role of ombudsman institutions in the implementation of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment was in the limelight.

The United Nations Development Programme (UNDP), in cooperation with the Croatian Office of the Ombudsman, organized two international meetings of representatives of national institutions for protection of human rights and ombudsmen in Crikvenica from 20 to 22 October 2010.

The focus was put on the functioning of independent national mechanisms for the prevention of torture, which all signatory states of the Optional Protocol to the Convention against Torture are obliged to establish within a year from its entry into force, ratification or accession. On the last day of the meeting, ombudsmen from the region had a joint meeting, which was also their fourth meeting in 2010.

Mr. Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, and his delegation visited the Office of the People's Ombudsman on April 7, 2010 as a part of his regular visits to member states for the purpose of reporting on the human rights situation.

The Ombudsman received the members of EU Delegation in charge of judiciary reform and fundamental rights on May 21, 2010. It was the third visit of the EU Delegation since the beginning of the year, during which the delegation wanted to learn more about the experiences in work of the Ombudsman institution regarding the Chapter 23, such as the rule of law, equality before the law for all citizens, fighting against discrimination, protection of rights of national minorities and the status of People's Ombudsman as the independent human rights institution.

Head of the Delegation of the European Union to Croatia, Ambassador Paul Vandoren and his delegation visited the Croatian Ombudsman's Office on several occasions during 2010. Given that strengthening capacities of the institution of ombudsman is one of the benchmarks for closing the Chapter 23, the Ambassador was particularly interested in the prospects for meeting this benchmark.















## Report on occurrence of discrimination

Upon the entry into force of the Anti-Discrimination Act on January 1, 2009 (OG 85/08), the People's Ombudsman became a central equality body for suppression of discrimination, and one of his obligations foreseen by the law is to submit an annual report on occurrence of discrimination.

After two years of its implementation, people are raising their expectations regarding results of anti-discrimination activities within the framework set by the Anti-Discrimination Act (hereinafter: ADA). However, it will take some more time to establish an efficient system of protection against discrimination.

An efficient system encompasses launching of campaigns on the Act and basic terms in the area of protection against discrimination, so that the citizens can recognize discrimination and know whom to turn to for protection. At the same time, such campaigns encourage a preventive action through informing different stakeholders on provisions of the ADA.

Furthermore, it is necessary to undertake a range of measures: establish a system of data collection from state administration bodies and courts, establish cooperation with the media, conduct continuous training activities for staff working on complaints against discrimination and establish cooperation with the civil society organizations. The People's Ombudsman conducted all those activities during the two year period of implementation of the Act.

The reported discrimination cases described in the Report on occurrence of discrimination in 2010 are based on complaints and other sources of information. Namely, the content of cases opened upon filling of complaints does not provide a comprehensive picture of the background of this social phenomenon. Due to such a short implementation period of the Anti-Discrimination Act, it is not possible to evaluate the current situation and causes of discrimination and discriminatory tendencies. The reason for using other sources of information lies in the role of the People's Ombudsman as central equality body, which submits a report to the Croatian Parliament on discrimination cases, and whose role is much wider than mere reporting on complaints about discrimination. Even when there is a year-long continuity in working on discrimination complaints and collection and analysis of statistical data on discrimination complaints on specific grounds or areas of life in which discrimination occur, or information on denounced bodies, they provide only a partial insight into occurrences of discrimination, as they depend on citizen awareness of the possibilities of filing a discrimination complaint and on their willingness to file complaints of this kind.

This summary report contains statistical data on discrimination complaints filed to the Ombudsman. The overview of discrimination occurrences on some grounds and areas defined by the ADA, reports on the occurrences of discrimination within competence of special ombudspersons and recommendations of the People's Ombudsman are available in full Report on occurrence of discrimination in 2010, published on the Ombudsman's webpage [www.ombudsman.hr](http://www.ombudsman.hr). Views and evaluations presented in summary Report are only partially based on data regarding the work of the People's Ombudsman after receiving complaints (in 2010). They are also built upon the experience and data deriving from year-long work in accordance with the People's Ombudsman Act and other sources of information such as reports, research papers, statistics, analysis papers drafted by state bodies, but also civil society organisations and international bodies, institutions and human rights organisations.



## Data on discrimination complaints addressed to the People's Ombudsman

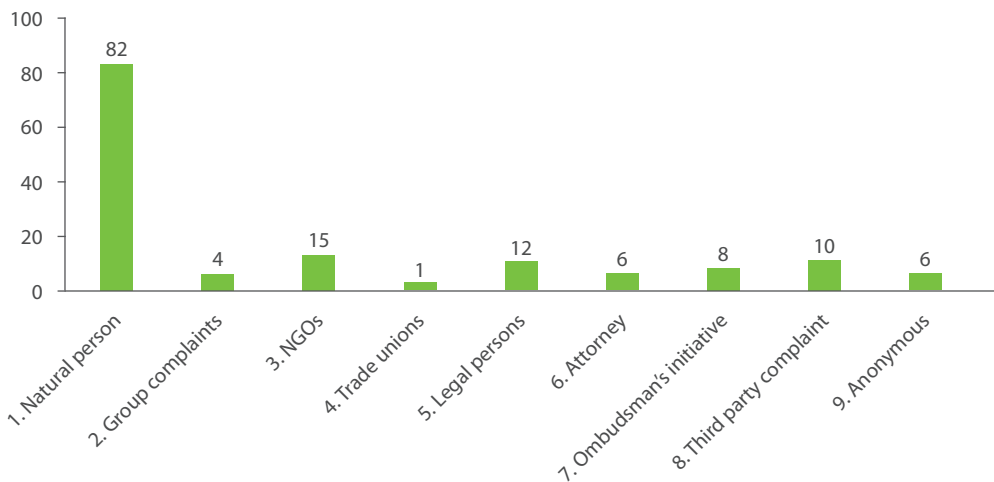
In 2010, the Office of the People's Ombudsman worked on a total of 2260 cases, out of which 1823 complaints were newly received. A part of those complaints related to discrimination; according to ADA, those complaints shall be sent to the People's Ombudsman as the central equality body responsible for the suppression of discrimination, which is primarily competent for taking actions in case of complaints on 12 out of a total of 17 grounds of discrimination for which discrimination was prohibited by the Anti-Discrimination Act.

Therefore, in relation to the competence of the People's Ombudsman for taking actions in case of complaints of discrimination, in 2010 the Ombudsman Office worked on 186 discrimination cases, out of which 144 complaints were received in 2010, and 129 cases were completed.

The following data (on complainants and their gender, discrimination grounds, denounced bodies, areas of discrimination, counties from which the complaints were received) refer only to complaints received in 2010 (given that the data for 2009 were shown in the last year Report).

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

**Chart 1** Complainant data



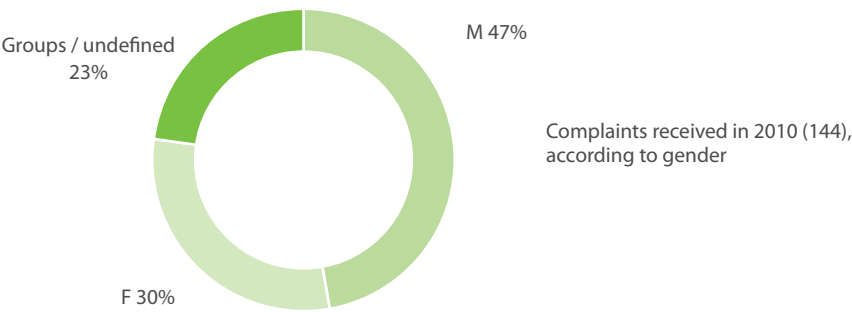


The grounds of discrimination in cases investigated by the Ombudsman's office in 2009 were:

Just like in 2009, most complaints to the People's Ombudsman in 2010 on the ground of discrimination were submitted by natural persons. This is the case in 82 (56,94 percent) out of a total of 144 received complaints. They are followed by NGOs with a total of 15 complaints, and by legal persons with a total of 12 complaints. There were some cases in which a third party filed a complaint of discrimination in the name of, or instead of potential discrimination victim (10 complaints). It is important to emphasize that, in such cases, the consent of the potential discrimination victim is needed. Out of a total number of opened cases, eight cases were initiated by the People's Ombudsman.

When received complaints are analysed according to gender of potential discrimination victims, just as last year, men reported discrimination more than women in 2010. Namely, 47 percent of complaints refer to discrimination against men, while discrimination against women was reported in 30 percent of complaints, as shown in the following chart.

**Chart 2** Potential discrimination victims according to gender



When we discuss frequency of some grounds of discrimination that the citizens complained against in 2010, it is evident that racial or ethnic affiliation, colour of skin and national origin are the most common grounds, mentioned in as much as 41,66 percent of complaints. Complaints based on those grounds largely outnumber other complaints, given that any other ground for complaints does not exceed ten percentage points. In 11,80 percent of complaints complainants did not provide ground of discrimination, and discrimination could not be determined on the basis of the content of the complaint.

The following table provides an overview of complaints received in 2010 (144) according to grounds of discrimination as in the Article 1 of the Anti-Discrimination Act.

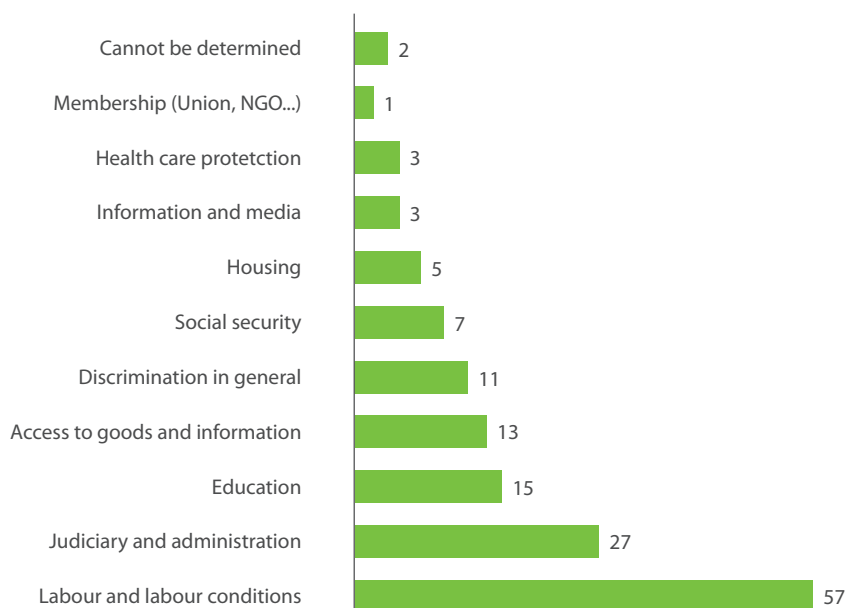


**Table 1** Grounds of discrimination

Grounds of discrimination	Number	Percentage
Marital or family status	7	4,86
Trade union membership	7	4,86
Age	10	6,94
Social status	6	4,16
Property	2	1,38
Disability	9	6,25
No ground	17	11,80
Education	5	3,47
Race/ ethnic affiliation/ colour of skin/ national origin	60	41,66
Gender identity and expression	1	0,69
Social origin	1	0,69
Gender	6	4,16
Sexual orientation	5	3,47
Religion	4	2,77
Health condition	4	2,77
<b>TOTAL:</b>	<b>144</b>	<b>100,00</b>

Complaints sorted according to areas as defined by the ADA show that discrimination in the area of labour and labour conditions is the most common ground in 2010 as well. Out of a total of 144 received complaints, 57 complaints refer to this area, which is why work and recruitment related discrimination is presented as a particularly problematic area in a special part of the full Report. After labour and labour conditions, a large number of complaints referred to discrimination in judiciary and administration (27 complaints), followed by education (15 complaints) and access to goods and services (13 complaints). Data in the category of discrimination in general (11 complaints) refer to complaints in which the area of complaint was not clearly stated, or complaints in which the area of complaint could not be concluded from the content.



**Chart 3** Discrimination fields

Out of a total of 144 received complaints, 39 were received from the City of Zagreb area, which outnumbers complaints from other counties. This does not come as a surprise as the City of Zagreb is the most populated county.

The following table shows complaints received in 2010 (144) according to the counties.

**Table 2** Complaints sorted according to counties

COUNTY	NUMBER	%
Bjelovar-Bilogora County	2	1,38
Slavonski Brod-Posavina County	4	2,77
City of Zagreb	39	27,08
Istria County	9	6,25
Karlovac County		2,77
Koprivnica-Križevci County	1	0,69
Lika-Senj County	4	2,77
Međimurje County	3	2,08
Osijek-Baranja County	9	6,25



COUNTY	NUMBER	%
Požega-Slavonia County	4	2,77
Primorje-Gorski Kotar County	11	7,63
Sisak-Moslavina County	5	3,47
Split-Dalmatia County	12	8,33
Šibenik – Knin County	1	0,69
Varaždin County	3	2,08
Vukovar-Srijem County	6	4,16
Zadar County	2	1,38
Zagreb County	10	6,94
Information unavailable	15	10,41
<b>TOTAL</b>	<b>144</b>	<b>100,00</b>

**Table 3** Bodies denounced in discrimination complaints addressed to the Ombudsman

DENOUNCED BODIES	NUMBER
Natural persons	12
NGOs	3
Legal persons	33
Legal persons vested with public authorities	31
Judicial bodies	10
State administration bodies	37
State administration bodies, natural persons	1
State administration bodies, legal persons vested with public authorities	2
State administration bodies, judicial bodies	1
State administration bodies, local and regional self-government unit bodies	1
Local and regional self-government unit bodies	10
Local and regional self-government unit bodies, natural persons	1
Other	2

Out of a total number of complaints received in 2010 by the Ombudsman (144), and the number of complaints received in 2009 which were resolved (concluded) in 2010, a total of 129 complaints of discrimination were resolved in 2010. Some complaints received in 2010 were not resolved in the same year as the Ombudsman did not receive a reply from relevant bodies by the end of the year.



**Table 4** Way of solving 129 cases (concluded)

WAY OF SOLVING CASES	NUMBER
Doubt of discrimination was not determined	32
The party was informed on rights, obligations and possibilities of court and other protection	14
The party received the reply to his/her initial inquiry	6
Pressing criminal charges	1
Proposal for offence or disciplinary proceedings	1
Recommendation or warning was sent	5
Case processed as regular cases falling within the Ombudsman's jurisdiction	5
Free assessment	5
The party dismissed the request	18
Court proceedings underway	5
Sent to special ombudspersons	27
Prohibition against retroactive application of the law	10

In cases sorted according to discrimination complaints (but also the cases opened on the basis of other source of information), the People's Ombudsman acts according to the Anti-Discrimination Act and the People's Ombudsman Act. After the investigation procedure, it was established that there was no suspicion of discrimination in 32 cases. In 14 cases, the party was informed on their rights, obligations and possibilities of court and other protection, and in six cases parties were provided with a reply to their inquiry, related to the possible application of the Anti-Discrimination Act provisions.

According to his competence, and due to a founded suspicion of unfavourable action caused by some legal grounds, there was a case in which the People's Ombudsman pressed criminal charges for suspicion of criminal offence as defined in Article 174, paragraph 3 of the Criminal Code, and one proposal for offence proceedings on suspicion of the offence of harassment, defined in Article 25 of the Anti-Discrimination Act. In five cases, the Ombudsman sent the recommendation and warning to bodies in question because of suspicion of discrimination.

In 59 cases that were resolved as described above, the People's Ombudsman acted according to the Anti-Discrimination Act. Those cases are presented according to areas, grounds, denounced bodies, gender of the complainant and forms of discrimination in joint tables, with included data submitted by the competent Ombudswomen.

Table 4 refers to undertaking other action upon receipt of complaints. Namely, last year the People's Ombudsman received a relatively large number of incomplete and unclear complaints. In order to be able to conduct investigation procedure, the People's Ombudsman invited parties to clarify their claims and/or submit supporting documentation. In 18 cases, we noted withdrawal of complaint or dismissal of request, so the proceedings were terminated. In five cases, it was determined that the doubt of discrimination did not exist, however, violation of some other fundamental human rights was established and such cases were processed



according to the People's Ombudsman Act. Furthermore, the People's Ombudsman Act contains a provision on free assessment (Article 12), which defines that there is a free assessment of whether the complaint shall be taken into consideration and to what extent. The right to take no action was used in five cases.

Due to the share of competence, the People's Ombudsman did not act upon receiving complaints in 27 cases, in which the competence of other Ombudsman institutions was established, but he rather forwarded those cases to competent Ombudswomen. In 10 cases it was not possible to act due to prohibition against retro-active application of the law, and in five cases it was not possible to act as court proceedings were underway before addressing the People's Ombudsman.

## Under-reporting of discrimination

Under-reporting of discrimination is one of the problems in the system of protection against discrimination. According to data provided by the European Union Agency for Fundamental Rights, as much as 82 percent of persons who consider that they had been discriminated do not report such occurrences to competent bodies. The number of complaints against discrimination received by the People's Ombudsman, specialized Ombudswomen (but also the number of court procedures for discrimination complaints) point to the trend of hiding, silencing and under-reporting of discrimination in the Republic of Croatia.

In respect with what was said above, the question arises why citizens do not report discrimination.

Some of the reasons why citizens do not report discrimination are:

- victims' lack of awareness on their rights and prohibition of discrimination;
- unfamiliarity with anti-discrimination system and available protection mechanisms;
- lack of trust in the protection mechanisms – citizens are convinced that nothing will change after they report discrimination;
- people accept circumstances as they are – discriminatory actions are perceived as normal and they therefore should not be reported
- fear of negative consequences, secondary victimisation and fear that this might provoke inconvenient situations.

The problem of under-reported discrimination is particularly widespread among vulnerable minority groups (national, gender and sexual etc.). One of the reasons for such behaviour is a conviction that reporting discriminatory behaviour would not result in any reaction. Lack of trust in the system often contributes to non-reporting discrimination crimes or hate speech, as they are defined in criminal law.

In respect with what was said above, it is necessary to invest additional efforts, both professional and financial, into activities focused on encouraging the discriminated persons to report any form of discrimination, and strengthening various stakeholders to provide support to the victims of discrimination – civil society organizations, government sector and judicial system. Strengthened professional training in detection, suppression and sanctioning of discriminatory actions are also a kind of support for victims of discrimination. Potential victims of discrimination, particularly the most vulnerable groups, must be familiar with available protection mechanisms, and protection system must be efficient, without detrimental effects on the victim. Namely, many victims of discrimination fear for their economic and sometimes even physical existen-



ce, which results in accepting the situation and failure to report the behaviour which is normally forbidden by law. Furthermore, feeling of dependency or subordination contributes to a passive attitude. Apathy and acceptance of injustice are particularly widespread among the most vulnerable victims of discrimination.

On a personal level, presented problems pose major obstacles to enjoying human and citizen rights guaranteed by the Constitution and laws. On the other hand, failure to report discrimination causes insufficient knowledge on discrimination in society, which again results in insufficient systematic response to discrimination.

## Free legal aid

Availability of free legal aid is a part of a fair trial from Article 6 (1) of the European Convention on Human Rights and Fundamental Freedoms. All citizens, regardless of their financial situation, must have an efficient access to courts.

In his last year report, the People's Ombudsman also pointed to the problems in the implementation of the Free Legal Aid Act (OG 62/08, hereinafter FLAA), both regarding procedures in which it is possible to exercise this right (Article 5 of FLAA) and regarding definition of potential beneficiaries of right to free legal aid (Article 8 of FLAA).

According to the legal formulation in Article 5 of FLAA, legal aid may be approved under specific criteria in court and administrative proceedings if the proceedings are related to the beneficiary's existential issues. Here we must note that FLAA, before listing existential issues, states that these are "especially... status matters, rights relevant for the social welfare system etc." However, we noticed that state administration offices, while evaluating whether a concrete case constitutes an existential issue, usually consider the said legal list of procedures as closed (rather than considering them as priority procedures).

The problem was noticed in the criteria of asset (Article 8 of FLAA) pursuant to which the right to free legal aid shall not be granted to applicants if they - specifically the adult members of the household - own a property which is considered adequate living accommodation under Article 3 of the said Act (a flat or house of up to 35 m<sup>2</sup> of usable space for one person, increased by 10 m<sup>2</sup> for each subsequent person, plus or minus 10 m<sup>2</sup>). If the criteria regarding real estate were strictly implemented, all people living on the brink of poverty in their own house, which often happens in rural areas of special state concern, but also on islands and even in the cities, would not be entitled to free legal aid.

Despite the fact that in 2010, the Ministry of Justice tried to relax the said criteria through submitting an instruction/opinion to state administration offices in order for them to adopt a more flexible interpretation of economic criteria related to satisfactory living conditions, the extent to which this action allowed an easier access to judiciary for poor citizens is uncertain.

For the above mentioned reasons, we expect new legal solutions which would allow solving all identified shortcomings in the existing free legal aid model.

## Cooperation with civil society organisations

In accordance with the obligation of the provision of Article 15 of the Anti-Discrimination Act, the People's Ombudsman invited civil society organisations to take part in drafting the Report on Occurrence of Discrimination. Invitation letter for submission of observations and experiences, discrimination complaints, priorities and other anti-discrimination activities was sent to about hundred addresses, as



follows: civil society organisations, human rights coordination groups at regional level, religious communities, trade unions and the employers association.

Responses submitted by civil rights organisations are closely related to the objectives and scope of activities of each organisation. The responses mostly referred to the grounds of discrimination in line with the focus of interest of a particular organisation. The analysis of received responses has shown that civil society organisations dealing with women rights and gender equality or rights of disabled persons expressed the greatest interest in discrimination issues.

Many activities were organized by civil society organisations for the purpose of promotion and awareness-raising, as well as human rights education for specific target groups. Furthermore, received reports reflect certain “systemic problems” which are being dealt with by particular civil society organisations, and which might be linked to discrimination. A growing interest of civil society in discrimination issues is evident, and some NGOs included them in their activity plans for 2011.

Besides through preparation of the report on occurrence of discrimination, the active participation of the People's Ombudsman also contributed to anti-discrimination activities organized by civil society organisations in 2010.

## International cooperation

The People's Ombudsman continued to implement the anti-discrimination activities in 2010 at the international level as well.

As one of the members of the European Network of Equality Bodies for combating discrimination (EQUINET), the People's Ombudsman participated in research, promotional and educational activities of the network, and those activities were then further elaborated through the work of EQUINET working groups.

In the framework of IPA 2009 Programme, the implementation of the project “Establishing a comprehensive system for anti-discrimination protection” was approved to the People's Ombudsman, as the main beneficiary of the project. The project is implemented in collaboration with the Office for Human Rights of the Government of the Republic of Croatia. The main purpose of this project is to strengthen the capacity of the Office of the People's Ombudsman as the central body responsible for combating discrimination, to develop an efficient system for statistical monitoring of the cases of discrimination and any relevant data, as well as to elaborate a comprehensive system of assistance to the victims of discriminatory practices.

## Concluding observations

Despite obvious improvements, discrimination still occurs in the Republic of Croatia. In this respect, the problem of discrimination against national minorities, women, sexual and gender minorities, disabled persons, elderly persons and people with lower income should be particularly emphasized.

Prevention of discrimination is an issue of utmost importance, in which the education system, media, and good personal examples of tolerance set by the top officials at state and local level should play a crucial role. Raising awareness of the phenomenon of discrimination will make it possible for potential victims to find a way to defend their right to dignity and equal opportunities, which was guaranteed to them by a range of regulations. Unfortunately, prevention does not seem to be efficient in all cases, so ombudspersons and judicial system will have an important role in fighting against this social evil.



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