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THE HUMAN RIGHTS OMBUDSMAN AND ADDRESSING COVID-19- RELATED ISSUES

8 May 2020

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INTRODUCTION

The Human Rights Ombudsman of the Republic of Slovenia (hereinafter: the Ombudsman) has been closely monitoring the SARS-CoV-2 or COVID-19 situation in the Republic of Slovenia and internationally and the measures adopted by state authorities to contain the epidemic and protect the most vulnerable groups of citizens. In these incredibly challenging times, decision-makers often have the difficult task of weighing between constitutional values and individual rights and freedoms, and we believe that they are doing their best during this public health emergency so that we can successfully overcome the epidemic together. It is important for all of us to do all that we can to ensure that no one is left behind in this situation and that we come out of it as soon as possible and as successfully as possible.

In order to prevent the spread of infections and to act responsibly, the institution of Ombudsman has suspended physical contact in its operations since the declaration of the coronavirus epidemic on 12 March 2020. That means that it has temporarily stopped receiving complainants and carrying out fieldwork and is instead available to people via email (info@varuh-rs.si) and regular mail (Dunajska cesta 56, 1109 Ljubljana), its free telephone number (+386 (0)80 15 30) and social media.

The Ombudsman has also created a special [subpage](#) where it publishes updates on the COVID-19 epidemic, devoting particular attention to the importance of showing sensitivity to vulnerable groups – the elderly, children, persons with disabilities, women, the unemployed, the socially disadvantaged and members of various (national) minorities. The webpage also includes an overview of measures in force in Slovenia and opinions of international organisations warning and encouraging countries to respect human rights and fundamental freedoms in dealing with the pandemic (epidemic), ensuring that any measures taken are proportionate, of limited duration, necessary, adopted in accordance with the envisaged procedure and widely available to the public.

We have also set up the [Covid-19 Measurements Info Point](#) to monitor the measures implemented in Slovenia, overseeing the decrees, ordinances and decisions adopted by various state bodies (e.g. the Government, the Minister of Health, the Minister of Education and the Bank of Slovenia). Its aim is to ensure the transparency of the adopted measures as, given the epidemic situation, these tend to be modified and amended quickly in response to the experts' requirements to contain the coronavirus. Most ordinances and decrees have been adopted, published and entered into force overnight, while the introduced regulations have also seen swift modifications, amendments and abrogations. This one-stop page thus also includes the most relevant legislation concerning the COVID-19 epidemic and the Ombudsman's views, press releases and other useful information and links, such as activities in support of children, parents and teachers – Working Together, and the views of the National Medical Ethics Committee on decision-making by doctors regarding the use of ventilators in the treatment of seriously ill patients suffering from COVID-19.

Through our Human Rights Centre, the Ombudsman works together with various international institutions and associations gathering data on national measures to contain the COVID-19 pandemic – the European Network of National Human Rights Institutions (ENNHRI), the Global Alliance for National Human Rights Institutions (GANRI), the United Nations Human Rights Office of the High Commissioner (OHCHR), the United Nations (the Committee on Economic, Social and Cultural Rights and special rapporteurs), the European Union Agency for Fundamental Rights (FRA), the Council of Europe, and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

We are also in close contact with state and local government representatives. Ombudsman Peter Svetina has therefore had many meetings and telephone conversations with the Minister of the Interior, the Minister of Labour, Family, Social Affairs and Equal Opportunities, the Minister of Public Administration, the Minister of Defence, the Minister of Agriculture, Forestry and Food, the Minister of Education, Science and Sport, and several mayors. They spoke mostly on the ongoing events in particular fields of protection of human rights and freedoms that the authorities have to abide by while adopting and implementing measures to contain the epidemic.

Ombudsman Svetina also held several telephone and video conversations with his fellow ombudsmen from Austria, Greece, Luxembourg, Croatia and Serbia, exchanging experiences and views in the context of the pandemic.

SHORT OVERVIEW OF ISSUES ADDRESSED

By the end of April 2020, the Ombudsman had considered 324 cases of COVID-19-related issues. In the same time period, 182 telephone conversations were held with people who called the Ombudsman's free telephone number with queries about the epidemic.

Most of the issues addressed and telephone calls were concerning social security (80 cases and 29 phone calls – 109 in total), equality before the law and protection against discrimination (64 cases and 23 phone calls – 87 in total), restrictions of personal liberty (19 cases and 35 phone calls – 54 in total), protection of children's rights (31 cases and 21 phone calls – 52 in total), and labour law (20 cases and 18 phone calls – 38 in total). COVID-19-related issues have been recorded in all of the Ombudsman's 21 areas of work (meaning that there was no area where such issues did not come under consideration).

Furthermore, it should be noted that the Ombudsman received several calls to institute proceedings before the Constitutional Court of the Republic of Slovenia to review the constitutionality of the regulations adopted in relation to the COVID-19 epidemic. So far, the Ombudsman has not made the decision to institute such proceedings and has first directed its criticism and recommendations towards the Government of the Republic of Slovenia itself. The state bodies proposing or adopting a particular regulation should first be provided the opportunity to take a position on any irregularities and, where possible, to remedy these themselves. If a person believes that any regulation in question directly interferes with their rights, legal interests or legal situation, they can, pursuant to Article 24 of the Constitutional Court Act (ZUstS), lodge a petition to initiate the procedure for the review of the constitutionality and legality of regulations or general acts (this option has actually been exercised – for instance, the Constitutional Court has decided to consider a petition to initiate the procedure for the review of the constitutionality and legality of regulations or general acts lodged by an individual on 16 April 2020). In the event of a material change of circumstances, the Ombudsman is prepared to re-evaluate the possibility of taking different action.

Following is an overview of the most relevant aspects of issues addressed thus far (i.e. as at the end of April 2020).¹ In addition to providing explanations to complainants as to which legal remedies they can seek to protect their rights, all (potential) affected individuals were invited to inform the Ombudsman of any specific procedures instituted. Pursuant to Article 25 of the Human Rights Ombudsman Act (ZVarCP), the Ombudsman may provide an opinion from the point of view of the protection of human rights and fundamental freedoms in a case the Ombudsman is investigating to any authority irrespective of the type or stage of the procedure being conducted by that authority. Pursuant to Article 52 of the Constitutional Court Act (ZUstS), the Ombudsman may lodge a constitutional complaint with the Constitutional Court of the Republic of Slovenia with the consent of the person whose human rights or fundamental freedoms he is protecting in the individual case.

¹ As the epidemic situation is changing rapidly, we allow for the possibility that particular aspects have already been subject to change not yet contained in this version of the communication.

OVERVIEW OF THE MOST RELEVANT ASPECTS OF THE ISSUES ADDRESSED

Discrimination, protection of dignity

A lot of people turned to the Ombudsman with their critical views on the Ordinance on the temporary prohibition of offering and sale of goods and services to consumers in the Republic of Slovenia (hereinafter: the Ordinance). Many perceived it as discriminatory in some way. Some believed that its provisions put them at a disadvantage compared to other residents who had much more time for shopping and that, as a result, there were too many people in the shops at certain times, which made it impossible to maintain the necessary social distancing. They saw the Ordinance as unrealistic and the age checks as an affront to their dignity. Some also noted that security guards were rude and that pensioners were subject to degrading treatment.

The Ombudsman received a complaint from a person with a chronic disease who believed she should be able to shop in the morning as going to the shop in the afternoon, after finishing work, could pose a significant risk to people with pulmonary conditions, with more people having been at that shop that day and the virus remaining on surfaces.

The abovementioned Ordinance has been amended several times²; the final version of the most controversial part read as follows: *"Purchases in grocery stores from 8:00 to 10:00 a.m. and in the last business hour can only be made by vulnerable groups (e.g. persons with disabilities, persons over 65 years of age and pregnant women). Persons over 65 years of age can only carry out purchases during this time. A consumer over 65 years of age provides proof of his/her age by presenting an official document that can be used for proving a person's identity."* The amendment that entered into force on 10 April 2020³ thus removed any doubts as to why the ban on accessing shops outside the dedicated shopping hours for vulnerable groups should only be imposed on persons with pensioner status and not for other older persons who had not (yet) acquired such a status. If the measure is aimed at preventing the spread of infection among groups with the highest risk of severe illness and death, there seems to be no reason for it to be tied to pensioner status acquired by an individual based on their previous employment.

The Ombudsman also received complaints from complainants who believed that the Ordinance on the temporary general prohibition of the movement and gathering of people in public places and areas in the Republic of Slovenia and the prohibition of movement outside the municipality of residence (hereinafter: the Ordinance) represents an excessive interference in their fundamental human rights and freedoms. This Ordinance also involved various real-life cases highlighted by the complainants, including issues such as contact between partners living at separate addresses and in different municipalities, recreational activities in municipalities with smaller and overcrowded green areas, and the limited availability of products in grocery shops in smaller municipalities. Some complainants also pointed out that, at the very least, the prohibitions laid down in the Ordinance should have been prescribed by law and not an implementing regulation; that the Ordinance did not represent the appropriate basis for granting powers to mayors to further limit or even prohibit access to certain public places and areas in the municipality by means of a decision; that the regulation was ambiguous; and that it should not be of an unlimited duration (the prohibition "shall apply until the grounds for such prohibition cease to apply, as established by the Government of the Republic of Slovenia by means of a decision"). The Ombudsman warned the Government that the prohibition of movement outside municipalities was prescribed by an implementing regulation, which could mean that, by restricting movement in the entire territory of Slovenia, it had overstepped the powers entrusted to the executive branch by the legislator in point 2 of paragraph one of Article 39 of the Communicable Diseases Act. For the same reason, the Ombudsman also considers the power to further restrict movement granted to mayors to be problematic. Another problematic aspect was the (substantive) proportionality of measures laid down in the Ordinance. The Ombudsman also called into question whether the duration of the measures was appropriately defined, and the Constitutional Court of the Republic of Slovenia reached a decision on this matter on 16 April 2020, ordering the Government, from that point on, to

² Official Gazette of the Republic of Slovenia [Uradni list RS], Nos 25/20, 29/20, 32/20, 37/20, 42/20, 44/20, 47/20 and 53/20.

³ Official Gazette of the Republic of Slovenia [Uradni list RS], No 47/2020.

reach a decision every seven days based on expert opinion whether to keep the measures in place or not.

As regards the restriction of movement to the municipality of residence, the complainants generally believed that the principle of equality was not respected. One complainant stated that all citizens should have equal opportunities to access green areas, because they had the right to care for their health, while the measure in question prevented a significant part of the population from accessing clean air and recreation areas. Another complainant believed it was highly discriminatory and unfair that those who had relatives in the same municipality could have contact with them while people whose parents lived in another municipality could not visit them. We explained that visiting and maintaining personal contact with relatives was prohibited unless they lived in the same household or did not have to use public areas to access them. In the Ombudsman's understanding, the prohibition in question thus applied both to people living in the same municipality and to those who were from different municipalities. One complainant wanted to know how it was possible that his wife, who lived in another municipality at weekends, could no longer come to see him, while five co-workers from different families could carpool to work. In our response, we stated that we believed that the exception pertaining to care for family members must be interpreted more broadly, allowing movement between municipalities when necessary to ensure the right to a family life. It is our opinion that the restriction of movement to the municipality of residence should not limit the family life of spouses living in different municipalities. We explained to the complainant that, if one of the spouses was fined for a minor offence under the Communicable Diseases Act in this case, they could resort to the applicable legal remedies. We gave a similar answer to a complainant who indicated that the regulation restricting movement to the municipality of permanent residence posed a number of problems for divorced parents who had joint custody of their children and lived in different municipalities and represented a violation of fundamental human rights, the rights of children, who were the most vulnerable group. We suggested that enabling contact between parents and children living in different municipalities did not go against the purpose of the restriction of movement to the municipality of residence, as the supposed aim of the measure was preventing the movement and gathering of people in public places and areas to prevent the spread of an infectious disease. If a parent merely left the apartment or house in which they lived to see their child in another private space in another municipality, avoiding close contact with people in public places, the purpose being pursued by the Ordinance through the restriction of movement was in fact not compromised.

Protection of personal data and other aspects of privacy

With regard to the abovementioned Ordinance on the temporary prohibition of offering and sale of goods and services to consumers in the Republic of Slovenia, another problematic aspect identified by the Ombudsman is the protection of personal data. The provision prescribing that elderly persons provide proof of their age by presenting an official document that can be used for proving a person's identity is supposed to provide the legal basis for processing personal data by examining the identity document or another official document demonstrating a person's age. The Ordinance was ambiguous on the legal basis for the processing of personal data required to establish whether a person belongs to other vulnerable groups that were also indicated merely as examples (persons with disabilities, pregnant women, etc.). As the legal basis for establishing the shopper's age was not provided by law, there were also questions as to its compliance with Article 38 of the Constitution of the Republic of Slovenia (URS), which provides that the collection, processing, designated use, supervision and protection of the confidentiality of personal data shall be provided by law.⁴

A few complainants turned to the Ombudsman wanting to know whether the Government's text message notification sent to citizens regarding the prohibition of public gathering was in accordance with personal data protection regulations. The Ombudsman has established that this practice is, in principle, not problematic if the operator communicates the Government's message to the telephone numbers of its users and does not share these numbers with the Government or another authority. Similar messages

⁴ One such legal basis is specified in Article 8 of the Restrictions on the Use of Alcohol Act (ZOPA), which provides that the seller or provider may request any person who he suspects does not fulfil the age requirement for the purchase of alcohol to prove his/her age with an official document with which the identity of persons is proven. If the person refuses to do so, the alcoholic beverage may not be sold or offered.

are also sent when the operator, in collaboration with the Ministry of Foreign Affairs, notifies the users using the services of the Slovenian operator abroad of the contact information of diplomatic missions and consulates of the Republic of Slovenia and other foreign points of contact for consular assistance.

Another of the received complaints pertained to interference with privacy when an employer requires the worker to use video-conferencing when working from home. The Ombudsman explained to the complainant that the employer may only interfere with the worker's privacy to the extent necessary for exercising the rights and obligations arising from the employment relationship. Organising video-conferences from the workers' home undoubtedly represents a serious interference with the worker's privacy or even their personal data when the same work or obligation can be performed via email or a conference call (without video); thus, in the Ombudsman's opinion, the employer has no legal basis to require the worker to participate in a video-conference.

Social dimension

Several petitioners who contacted the Ombudsman felt overlooked and discriminated against in relation to the allocation of the crisis allowance and to other intervention measures. Among them are several unemployed persons who are not recipients of social assistance, a mother of two temporarily laid off and a pensioner responsible for maintaining his wife. We mostly explained that further intervention measures are being prepared and suggested that they address their proposals to the Government. One petitioner, for example, asked whether the crisis allowance for pensioners would include persons with disabilities that are beneficiaries of allowances provided by the Ministry of Labour, Family, Social Affairs and Equal Opportunities and home care assistants. In this respect we sent an enquiry to the Government, in which we also pointed out that the measures adopted must not generate unduly unequal treatment or even exclusion of individuals or groups on the basis of their personal circumstances, such as disability or social status (in its explanatory note, the Ministry of Labour, Family and Social Affairs stated that substantive proposals for additional measures were being prepared and that these would address vulnerable groups that were left out from the current act, such as home care assistants as defined by the act governing social assistance and persons eligible to allowances referred to in Articles 5 and 8 of the Social Inclusion of Disabled Persons Act).

One of the associations expressed their concern that the temporary measures could result in withdrawing assistance from terminally ill persons or persons with significant disabilities, in particular from persons suffering from a rare disease. In such cases we consider that the issue at hand is not specifically the response to coronavirus-related disease but more generally emergency medical assistance necessary for rare diseases which emergency medical teams may not be trained to handle. A source of their concern were the guidelines adopted by certain countries whereby in the triage process some patients with a rare disease were allegedly refused access to a ventilator or were, because of the gravity of their illness, put at the end of the waiting list. They highlighted the right to receive equal medical treatment. The same concerns were expressed by an association of another type (associations providing assistance to persons with disabilities, patients with a chronic disease and elderly persons) – they also pointed to the situation in certain countries whereby the triage process prevents certain persons with disabilities access to ventilators or puts them at the bottom of the waiting list. They expect that a specific protocol for treating persons with disabilities be developed and put in place. The Ombudsman addressed to the Ministry of Health a letter in which it pointed out the fact that during the COVID-19 epidemic the guidelines for the priority care of critically ill patients in emergencies and intensive care units should not result in discrimination against patients on the basis of their disability, age or other personal circumstances.

The Ombudsman also received a large number of petitions that address the institutional care situation in homes for the elderly. The management of one such institution expressed concern and positions concerning the operation of homes for the elderly in the initial situation of attempting to control the epidemic; they argue that then the situation was neither fully recognised nor understood by the decision-makers and that the complete burden of caring for the sick and potentially sick elderly people in these homes had been transferred to the staff and management of these institutions. The Ombudsman's position is that all decisions and the measures adopted on the basis thereof shall be professional and well founded. To date the Ombudsman has not become aware of any case where elderly people living in institutions might have been, in relation to access to hospital treatment, evaluated by criteria other than those applicable to other elderly persons and persons living at home. The Ombudsman argues that all those in need of hospital treatment should be eligible for it on an equal footing with everybody else, given that the hospital has spare bed capacity. If hospitals are crowded to full capacity and the decision is taken to treat elderly patients in homes for the elderly, the Ombudsman argues that these institutions should be provided with appropriate medical equipment and medical staff so as to be able to provide medical treatment comparable to that provided in the "makeshift hospitals". The Ombudsman understands the concern regarding the strict measures applied to homes for the elderly, which are having, undoubtedly, a negative impact on the quality of life of their residents. Residential homes for the elderly differ greatly in terms of their architectural design; in some it is possible to set aside adequate spaces for isolation and quarantine, while in others this is not an option. In addition, these institutions have different capacities; this means that the number of potential contaminations with COVID-19 of either residents or staff may be low or high. It is therefore essential to adapt to the particular conditions and promptly react to the situation. The Ombudsman also finds reasonable the appeals of the

managements of homes for the elderly that, because of the overburdening of staff and staff absences, it is essential that additional staff be provided.

Health aspects

The Ombudsman received numerous petitions in relation to healthcare, which is, of course, not surprising.

Several petitions concerned the impossibility of visiting one's personal general doctor. The Ombudsman is aware of situations where patients are being treated in a manner different from that provided till now. On 9 March 2020 special health measures, including relating to personal doctors, were presented, which required that visits to one's personal doctor should be made by prior telephone appointment alone. Emergency conditions would be dealt with according to the established protocol. In this respect the Ombudsman pointed out that the current situation and the measures adopted to contain the coronavirus epidemic require adaptations by the citizens in more or less all walks of life. Many petitions pointed to limitations imposed on the health service because of the coronavirus (for instance the extreme difficulty of reaching one's primary health centre by phone, the difficulty of providing emergency health assistance, the suspension of diagnostic examinations, restricted access to a personal doctor and restrictions regarding the dispensing of prescription drugs (being limited to a 30-days supply)). Also raised was the issue of the right of an infected person to ambulance transfer.

The Ombudsman was also made aware of a petition concerning pregnant women which addresses the issue of the proportionality of the general interdiction of a companion being present during labour and childbirth during the coronavirus epidemic. The right to health covers aspects not only of physical but also of mental health, so the Ombudsman considers that it is the doctor who in the specific case should assess whether, in the current situation and in view of the psychophysical condition of the woman giving birth, it is necessary for the partner to be present during childbirth. The psychophysical condition of expectant mothers and their coping with upcoming childbirth and measures that adversely affect their quality of life should be taken into account to some extent when planning childbirth. In the opinion of the Ombudsman, the doctor should assess in the specific case the risk of the possible transmission of infection and the positive effects of the birth partner's presence during childbirth on the mother and child. The Ombudsman further believes that this also reduces the risk of pregnant women in distress opting for a home birth with the help of non-licensed persons simply because they are scared to give birth in a maternity hospital without the presence of their birth partner. During the COVID-19 epidemic, the Ombudsman has received one petition concerning the ban on planned home births. Here the Ombudsman believes that, in cases of adequate epidemiological assessing of the situation, the Communicable Diseases Act provides an adequate legal basis for the adoption of the implementing regulation defining such restriction.

The Ombudsman also considered a petition concerning the unfounded distinction between "proven" and "unproven" COVID-19 patients. A woman was infected with the coronavirus and in contact with her husband and fell ill. The husband was tested (the test was positive), while she was refused testing on the grounds that such testing was unnecessary. As a consequence, since it was not proven that she had COVID-19, she was not eligible to the same amount of salary compensation as her husband, as she was not included in the official coronavirus count. The Ombudsman addressed to the Ministry of Health its opinion that such distinction is unfounded; the Ministry agreed (this kind of situation had not been adequately considered) and contacted the Health Insurance Institute of Slovenia, which the very same day instructed all healthcare service providers on how to act in order to prevent such distinctions. Under the new arrangement, in order to "confirm" the COVID-19 disease in the absence of testing, two conditions had to be cumulatively met: 1) the insured person must have a respiratory disease; 2) the personal doctor must at the same time establish that the insured person has been in (more) intensive contact with a person suffering from COVID-19 (e.g. a family member). In such cases, the epidemiological profession proposes to impose on the insured person an isolation measure for a period of 14 days (which will end after that time or, in the case of further development of the disease and the confirmed virus, will continue until recovery).

The Ombudsman was particularly concerned by reports of the spread of infections among the elderly, especially in homes for the elderly. In relation to the ban on leaving homes for the elderly, the Ombudsman argued that social assistance service providers certainly share the responsibility and obligation to take appropriate action in these times of crisis. It also stressed that any restriction on a person's rights must be prescribed by law and implemented by taking into full account the principle of proportionality. The Ombudsman was informed of a case where a resident who left the home without

the staff's knowledge just to go to the nearby shop was refused entry to the home when she returned. After examining the legislation governing the measures for preventing the spread of infections (particularly the Communicable Diseases Act), the Ombudsman did not find any explicit legal basis for the described actions of homes for the elderly or for preventing healthy residents who had not been in contact with an infected person from leaving an ordinary, open (i.e. not secure) institution unit. Therefore the Ombudsman addressed the question to the Ministry of Labour, Family and Social Affairs whether preventing residents of care and other homes from leaving the premises was in line with the instructions and guidance prepared by the Ministry. He asked the Ministry to state their position on this issue and to explain what measures it intended to adopt to prevent cases of unlawful restrictions of personal freedoms (which could be regarded as a criminal offence) if it turns out that residents were being refused the right to leave homes for the elderly without a proper legal basis.

The ombudsman also received numerous petitions by family members and NGOs, including letters to the editor (various media) regarding the (total) ban of visits to homes for the elderly. In particular, these letters highlighted the issue of visits to residents with dementia in their rooms and to residents needing assistance in their daily tasks. It is the Ombudsman's opinion that bans on visits should not be decided in general by category (e.g. for persons with dementia) but evaluated case by case on the basis – as also pointed out by the Ministry – of the professional and ethical assessment of the decisions-makers in the home (as in cases of persons close to death). The Ombudsman particularly stressed the importance of being aware that the infection might rapidly spread among residents and that it may be fatal for those with a weakened immune system or co-morbidities, which would apply to most care home residents. The Ombudsman also expressed the belief that the homes for the elderly were acting in the best interests of their residents and had no intention of raising worries or anxieties among their residents' family members. It is imperative, though, that, in this situation of limited physical contact, residents are affected by the lack of physical contact as little as possible and that their family members are provided with all the information on their loved ones they may require. All individual treatments and activities provided for residents must also be provided within the framework permitted by the current situation.

In relation to the above cases, the Ombudsman, immediately following the declaration of the epidemic in Slovenia, expressly stated that in any individual case the assessment of whether the risk of contagion with SARS-CoV-2 or other viruses is such to require the total ban on visits shall be made by the professionals. The Ombudsman further pointed out that such action must be timely and adequate to achieve the goal and that the response must be proportionate to the effects. In its replies in relation to the evolving of the situation, the Ombudsman also stated that the current measures concerning the closure of schools, kindergartens, non-food stores and public transport may be considered necessary and justified in order to limit the spread of the new coronavirus.

One of the petitions also highlighted the issue of care for the elderly (including persons with dementia) who cannot be left on their own at home and who are cared for in adult day care centres. After the closure of adult day care centres, the elderly persons who normally attend them were left in the care of their families, who, for the most part, are unable to take care of them full-time as they have jobs to do. The Ombudsman contacted the Ministry of Labour, Family and Social Affairs in relation to this petition as it considered the problem to be extremely serious. In the Ombudsman's view, it would also be appropriate to develop systemic solutions for the category of workers who care for their severely ill relatives at home, if need be by way of an intervention law. We have thus proposed that the Ministry of Labour, Family and Social Affairs considers our proposal.

During the whole period, the Ombudsman was in telephone or video contact with representatives of the Association of Social Institutions of Slovenia and the directors of homes for the elderly and special and other social care institutions (occupational activities centres and centres for training, work and care).

Family aspects

The Ombudsman also received numerous questions and petitions concerning contacts between children and parents who do not live together. In particular we were contacted by those parents who were being prevented from seeing their children by the other parent with the excuse of the restriction of movement to the municipality of residence or, more commonly, avoiding exposure to infection. They wanted to know whether they could visit their child residing in another municipality and whether such visits would violate the ban of movement among municipalities. The Ombudsman also received

numerous phone calls from those parents with whom the child lives who were not sure if it was sensible to let the child stay with the other parent where, in their opinion, the child could be exposed to a greater danger of contamination. It is our opinion that the restriction of movement to the municipality of residence should not limit the family life of parents and children living in different municipalities. We reiterate the position of the Ministry of Justice that all citizens should do all that is necessary so that they are not exposed to the risk of coronavirus contamination and thus to a serious threat to the health of themselves and others. According to the Ministry, insisting on carrying out judicially determined contacts in the situation of the coronavirus epidemic at any price, regardless of the measures imposed or recommended, in particular when a child or a parent shows signs of contamination or there is the risk that a parent was exposed to it, would be irresponsible and not be in the best interest of the child. The Ombudsman further stressed that in such situations agreement and interaction between parents about carrying out contacts in the best interest of the child is of utmost importance and also that the current situation must not serve as a pretext for finding unsubstantiated reasons for not carrying out contacts. Where the parents are unable to come to an agreement on contacts during the coronavirus pandemic, the Ombudsman proposes that they seek professional advice from the competent social work centre or, if need be, turn to the courts.

One parent also inquired whether there were any provisions regarding payment of maintenance for those parents who, in the current situation, had lost their jobs or were being temporarily laid off. This parent considered that, as maintenance is meant to cover costs of school and kindergarten, which are currently closed, payment of maintenance could also be suspended for a month or two. The Ombudsman replied that conditions of payment of maintenance may only be changed by the court and that legal remedies are available.

A large number of cases have concerned children with special needs. The Ombudsman has already been contacted by the mother of an immobile blind girl who is normally cared for in a day care centre. In the current situation the girl is at home, where both parents, in addition to taking care of their daughter, also work. They are consequently exhausted both physically and mentally. They wanted to know what would happen with their daughter in the event that they were taken to hospital (and in the event that they became infected), how protective equipment for families with children with special needs may be obtained, and whether families with children with special needs would be eligible for the crisis allowance. The Ombudsman sent an inquiry with these questions to the Government (no reply has as yet been received).

The Ombudsman was also contacted by a society caring for children with development disorders – these children are now without the urgently needed treatments that help them cope with everyday life and are essential for stimulating their development and advancement. They pointed out that more and more parents were reporting on regression of or extreme worsening of the psychophysical health of their children. In addition, outpatient monitoring check-ups were not being carried out. Recommendations for extremely vulnerable persons during the spread of COVID-19 require that such persons stay at home and avoid any close contact with other persons. The petitioners understand the necessity of the virus containment measures but point out that they will have heavy consequences for these persons, which are already beginning to show. They asked the Ombudsman to find, together with the Government, a solution for this population of children and adults and to optimise and adapt the current guidelines so that they are practical for the population with special needs and realistic to follow.

Education

One of the complainants was worried that her children might become infected since the Ministry of Education insists on holding the *matura* (final secondary exam). She inquired about her right to claim that her child stay healthy and asked who would be held accountable if her child became infected. We replied to the complainant that we expect the *matura* to be conducted in a manner that is safe for students, but that we would closely monitor activities related to the *matura* and, if necessary, intervene with the competent ministry.

One of the complainants pointed out that parents of primary school children attending a private school under a state-approved education programme have to pay tuition fees even when classes are not held at school premises, i.e. despite the fact that the children are receiving education at home with parental

assistance. He wondered how long they would be treated as second-class citizens due to the non-implementation of the constitutional decision on the financing of private schools. The Ombudsman has been calling for implementation of this decision for years. In the Ombudsman's annual reports and in direct contacts with the competent authorities, we have called on the Government to prepare as soon as possible and the National Assembly to adopt appropriate legislative amendments to provide for an equal position of all education providers. We replied to the complainant that the schooling process is still ongoing, with teachers still preparing teaching materials, which are passed on to pupils in various ways, including the use of audio and video technologies. If he considered that he should not be obliged to pay tuition fees due to the method of education during the epidemic, we suggested that he address his proposal first to the school and then, if he was not successful, to the competent ministry.

Restrictions on personal liberty

Shortly after the declaration of the epidemic in Slovenia, the Ombudsman received an anonymous complaint in which the complainant alleged inadequate placement of prisoners and inability to disinfect persons and premises, especially telephones, made other complaints, including regarding the ban on visits, and demanded clarifications regarding implementation of measures already taken during the declared epidemic of coronavirus disease in prisons. The Ombudsman informed the Administration of the Republic of Slovenia for the Enforcement of Criminal Sanctions (URSIKS; hereinafter: the Prison Administration) of the allegations in the complaint. He noted that both the Prison Administration and the prison, working with the National Institute of Public Health, within the limits of their capacity, were striving to prevent the risk of infection with COVID-19 virus in prisons, whereby in cases of a detected infection, a relevant procedure has been prepared for the purpose of preventing its spread, which may further be updated. The Ombudsman expressed his hope that the Prison Administration, in cooperation with the competent institutions, would continue to adopt and implement appropriate measures to prevent the entry of the new disease into prisons and, if necessary, to prevent its spread.

The Ombudsman also received several complaints from convicted persons regarding the situation in prisons in connection with the measures regarding COVID-19. During the epidemic, the Ombudsman pays special attention to all persons held in closed institutions, including prisons. On 3 April 2020, the general public was informed about the Prison Administration's response and the taken measures through information published on the Ombudsman's website. The article shows, among other things, the approach of the institutions with respect to restricting contacts of prisoners with the outside world, sharing of food rations and ensuring proper hygiene (which the complainant had highlighted) and other preventive measures to control the spread of the coronavirus. In connection with the specific complaint, the Ombudsman also expressed his expectation that, also during the emergency situation due to the coronavirus epidemic, prison institutions should provide for adequate living conditions for physically handicapped persons and other vulnerable groups of imprisoned persons. One of the complaints highlighted non-compliance with the security measures committed by prison personnel.

In March and April, the Ombudsman received a number of complaints from persons serving prison sentences or their relatives concerning the suspension of imprisonment under Article 12 of the Act on Provisional Measures for Judicial, Administrative and Other Public Matters to Cope with the Spread of Infectious Disease SARS-CoV-2 (COVID-19) (ZZUSUDJZ, hereinafter: Act on Provisional Measures to Cope with COVID-19), which entered into force on 29 March 2020. The complainants highlighted the situation in prisons, which represent a major risk of coronavirus infection, including unjustifiably rejected applications. The Ombudsman considers that, even though the Act on Provisional Measures Act to Cope with COVID-19 does not explicitly stipulate that the procedure to suspend a prison sentence may be initiated upon request by the convicted person, that person at least has the opportunity to state the reasons for this measure to be used in their case. These may be taken into account in deciding on the suspension of sentence *ex officio* under this Act aimed at preventing the spread of the epidemic. However, the Ombudsman stressed that the suspension of imprisonment under Article 12 of the Act on Provisional Measures to Cope with COVID-19 is not a convict's right, but one of the remedies by which directors of prison institutions are to have further impact on the spread of SARS-CoV-2 infection within institutions. Although the existence of a threat to an individual's health is not explicitly stated among the grounds on which suspension of prison sentence may be allowed under Article 12 of the Act on Provisional Measures to Cope with COVID-19, the Ombudsman considers that such decisions (while taking into account security concerns) require special attention to be paid to those categories of

convicted persons who, given the data known on the disease so far, may be expected to experience a more severe course of the disease if infected (e.g. elderly persons with chronic diseases). In our opinion, the aim of preventing the spread of the SARS-CoV-2 epidemic referred to in Article 12 is not only to prevent any spread of this disease but also to ensure the maximum effective protection of groups of vulnerable persons (which may also imply the removal of such persons from the prison environment). The decision on suspending a sentence under the Act on Provisional Measures to Cope with COVID-19 is in the hands of prison directors. Persons serving prison sentences may also apply for the suspension of imprisonment under Article 82 of the Enforcement of Criminal Sanctions Act, provided that they meet certain conditions for suspension under this Article.

As early as 12 March 2020, due to measures taken with respect to visits to prisons, their dislocated departments and the Radeče Correctional Home, the Ombudsman, in the capacity of the National Preventive Mechanism (hereinafter: the NPM), contacted the Prison Administration and welcomed their rapid response to the emergence of the novel coronavirus. While understanding the need to restrict visits to imprisoned persons, the Ombudsman stressed that restricting the contact of imprisoned persons with the outside world also calls for alleviation of distress that may result from such restrictions. On several occasions, the Ombudsman had contacts with representatives of the Prison Administration and institutions. It forwarded to the Prison Administration the Declaration of Principles of the Committee of the Council of Europe for the Prevention of Torture (the CPT), which the latter had translated into Slovenian, and informed all personnel that in times of virus spread, any form of ill-treatment in prisons and in the aforementioned re-education home was to be prevented. The Ombudsman also asked the Ministry of the Interior – the Police regarding, in particular, how and in what manner employees (in addition to the media) were informed about the new coronavirus, or whether the police additionally took note of the self-protection measures, and what protective equipment was (or would) be provided to them for their successful work.

Although at present the Ombudsman is not carrying out visits to closed institutions in the role of the NPM (taking into consideration respect of the principle of "do no harm" and adoption of all the necessary preventive measures), it continues to devote all its attention and special care (also) to all persons who in these times of crisis find themselves in closed institutions, as they are especially vulnerable and helpless. These institutions include homes for the elderly and other (specialised) social protection and other institutions, such as prisons. The Ombudsman has also publicly pointed out that the approach to the prevention of the spread of the epidemic should be made with due respect for human rights and freedoms.

At the end of March, the Ombudsman forwarded its opinion to the Ministry of Health regarding the holding of hearings in urgent cases during the COVID-19 epidemic under the Mental Health Act. Information about the issue was passed through a letter from one of the homes for the elderly. The Ombudsman considers that reserved cases under the Mental Health Act, following the President of the Supreme Court's order on special measures, due to the emergence of conditions referred to in paragraph one of Article 83a of the Courts Act (also with regard to their content and purpose), are urgent cases and should be dealt with at the time of the declared coronavirus epidemic. The Ombudsman pointed out that in court proceedings conducted on the basis of the Mental Health Act, the courts decide on the restriction of an individual's right to personal liberty, whereby as a rule decisions are taken on individuals belonging to one of the most vulnerable groups of people (persons with mental health problems). Pursuant to paragraph two of Article 46 of the Mental Health Act, the court reaches decisions in such proceedings on the basis of direct contact with the person concerned by actually seeing that person and holding a conversation with them before issuing a decision if the person's health condition allows. This concerns one of the fundamental procedural guarantees meant to ensure effective protection of the constitutional right to personal liberty. Before reaching a decision, the judge must create his or her own immediate opinion on the person's (mental) state. Failing to do so constitutes unlawful conduct by preventing individuals from participating in the decision-making process and placing them in the completely unlawful position of mere object of judicial decisions, since they are not given the opportunity to defend their rights and interests in proceedings before the court. It is therefore inappropriate for the judge deciding on deprivation of liberty not to have direct contact with the person in question, but, for example, only via an expert.

Prior to the declaration of the epidemic, one of the social welfare institutions asked the Ombudsman for an opinion on the envisaged stricter measures to prevent the spread of the coronavirus. The

Ombudsman stressed that, in devising such measures, it should be taken into account that deprivation of liberty or restriction of freedom of movement is possible only under the conditions laid down by law, whereby certain restrictive measures to prevent infectious diseases are provided for by the Infectious Diseases Act. It proposed that the relevant institution consult with the National Institute of Public Health and the line ministry on potential measures to this end and particularly that it pay close attention to the measures adopted. Furthermore, it drew attention to the fact that limiting contacts for persons (whose liberty has been deprived or whose movement has been restricted in any way) with the outside world necessarily calls for alleviation of the distress that can result from such limitations.

The Ombudsman was also informed of a case where a home for the elderly could not admit a person to a protected ward despite a court decision due to the emergency situation in the country, the declared coronavirus epidemic and the general institution's self-isolation measure. The Ombudsman agreed that it was important to respect the principle of protecting public health, but stressed that this issue should be addressed in a manner guaranteeing respect for human rights and fundamental freedoms. Pursuant to Article 2 of the Courts Act, a final judicial authority decision should be complied with by any natural or legal person in the Republic of Slovenia. The Ombudsman does not have knowledge of the legal basis for restricting this provision during the viral infection epidemic and spread of the coronavirus disease in the case of placement of persons into protected wards under court decisions issued on the basis of the Mental Health Act.

The Ombudsman was also confronted with the issue of treating children and adolescents in educational institutions. The institution considered that, in the given situation, it was necessary and urgent for a child/adolescent from the external environment to be tested for COVID-19 prior to returning to the institution's area should the test be negative. The Ombudsman made an inquiry with the Ministry of Education, Science and Sport (hereinafter: Ministry of Education) and stressed the need for concrete instructions on the implementation of the Ordinance on the temporary prohibition of gatherings of people in educational institutions and universities and independent higher education institutions and for assistance regarding procurement of protective equipment. The Ombudsman was also addressed by some concerned parents of children staying in educational institutions. They were concerned that children who stay in the institution might be infected by those who are allowed to leave it (e.g. those going home for weekends). The Ombudsman was interested in whether any special measures had been carried out (or were envisaged) in the field of the operations of educational institutions (in addition to generally known ones) aimed at preventing infections. The Ministry of Education assured the Ombudsman that, since the end of February 2020, educational institutions had been kept informed of all guidance prepared by the National Institute of Public Health regarding action during the spread of the virus, for which the directors of the institutions were responsible.

Religious freedom and functioning of religious communities

Following the declaration of the epidemic and adoption of measures to curb the spread of COVID-19, it was evident that this would have a limiting effect on the exercise of religious freedom or functioning of religious communities. Spiritual care undoubtedly plays a very important role in times of uncertainty and crisis periods. As a result, the Ombudsman, on his own initiative, in early April invited religious communities listed in the Register of Churches and Other Religious Communities to explain changes in their activities, especially with regard to liturgy and other religious rites for their members.

In their responses to the Ombudsman, religious communities were generally grateful for the concern. Many of them had opted for various self-restrictive measures (some preventive ones even prior to the government measures) with the aim of giving responsible collective support to the health care system and the government measures. They had informed their members through various recommendations and instructions to consistently respect and implement government measures.

The self-restrictive measures implemented by the religious communities consisted mainly of the closure of premises for the performance of religious rites, meetings and other activities; suspension of performing group religious rites, prayers and meditations and educational and other meetings; and other religious public events and activities involving participation of religious community members. Religious activity in individual communities was mostly limited to the individual level.

At this time, several religious communities moved their religious rites and other activities online (email, websites, Facebook, YouTube, other social networks and electronic communications) and to television and radio, through which they keep in touch with religious community members and look for new ways of exercising religious freedom. In addition, they were available by mail or phone and had set up SOS hotlines; in exceptional cases, they were still available for individual meetings in accordance with relevant protective measures.

Some religious communities, through preventive measures such as limiting the number of (healthy) persons in larger rooms, maintaining appropriate social distancing and disinfection, managed to keep their premises open for personal prayers. Some of them were also active locally, helping by making protective masks, shopping for the elderly and teaching about preventive measures. Particularly highlighted was the issue of access in the current situation for the elderly, who are generally less skilled in modern technologies (so the telephone is usually used for contacts). It was also pointed out that what they miss from the state authorities is more concrete information, preferably adapted to religious communities. In addition to those already mentioned, there also proved to be negative consequences of a financial nature. The decline in voluntary contributions, which they otherwise obtain through donations from their members, affects their financial situation, which may also result, for example, in a loss of premises they rent for the needs of their operations or even in final cessation of the operations of some religious communities.

Only few individual religious communities informed us that they did not have any difficulties or that they understood the measures as a ban on the part of the authorities. However, some did not respond at all.

General questions pertaining to the organisation of and the way in which regular individual and collective religious and spiritual care would be carried out in the Republic of Slovenia in the circumstances of the epidemic were addressed by the Ombudsman to the Ministry of Health, the Ministry of the Interior, the Ministry of Labour, Family, Social Affairs and Equal Opportunities, the Ministry of Defence, and the Administration of the Republic of Slovenia for the Enforcement of Criminal Sanctions.

To the Ombudsman's questions about how the organisation of religious spiritual care would be carried out and in what manner this right would be exercised for the members of the Slovenian Armed Forces in the current difficult circumstances related to the government measures to contain the spread of the COVID-19 epidemic, the Ministry of Defence explained that the Military Vicariate, in the current aggravated conditions, was complying with all the prescribed instructions and guidance regarding movement and self-protection measures in accordance with government measures and command and control documents of the Slovenian Armed Forces. The work was organised in such a way that no unnecessary physical contacts occurred; movement was restricted to work at most in one location per day or, if necessary, to work from home. Members of the Slovenian Armed Forces were informed about this mode of work via the intranet network, where various contacts of Military Vicariate members, whom they could contact at any time, were accessible. In the light of the situation, appropriate measures were taken to this end. The Ministry of Defence also explained that the Military Vicariate members had the task of regularly contacting, by telephone, the units and barracks for which they were responsible. They provided support through the Facebook page, where encouraging thoughts and other materials were available to the Slovenian Armed Forces members. Personal Facebook pages were also used by the Military Vicariate members for direct contact with the Slovenian Armed Forces members at home and on international missions.

To the questions about how the organisation of religious and spiritual care was carried out and in what manner this right was exercised for prisoners, the Administration of the Republic of Slovenia for the Enforcement of Criminal Sanctions explained the temporarily adopted measures that banned visits also applied to representatives of religious communities and were intended to curb the possibility of the infection being passed on to prisoners in prisons and persons in the re-education home. The measures included suspension of all types of religious care, such as group prayers, liturgy and holy masses, and were related to measures taken by the individual religious communities themselves. The Administration of the Republic of Slovenia for the Enforcement of Criminal Sanctions stated that the religious representatives had been informed about these measures and accepted them with understanding and reported that the prisoners contacted them by telephone during this period. All imprisoned persons who expressed a wish to eat according to their religious rules during this time were served with food as requested. The Administration of the Republic of Slovenia for the Enforcement of Criminal Sanctions is aware of the importance of providing spiritual care to prisoners, but during this time the activities and

measures were focused on prevention of the introduction of the COVID-19 virus into institutions; therefore the implementation of all forms of spiritual care that are practised in groups was suspended. During this time, special requests for individual spiritual care were not reported, since the prisoners adjusted to the measures with understanding, and, according to the Administration of the Republic of Slovenia for the Enforcement of Criminal Sanctions, any request would be treated individually and a possibility of its fulfilment would be sought.

Regarding the organisation of religious care and the way in which this right was exercised for police officers, the Ministry of the Interior explained that an officer of the general administration who organised or provided spiritual care in the police in accordance with the Rules on the organisation and performance of religious and spiritual care in the police, even in the current difficult circumstances, responded to all wishes, requests and suggestions submitted by police officers of different religions. Therefore no additional activities would be necessary.

We would like to point out that the Ombudsman addressed questions about perceived changes in the organisation of regular individual and collective religious and spiritual care during the epidemic and the manner in which this right was exercised for the residents in social welfare institutions, in accordance with Article 25 of the Religious Freedom Act, to the Association of Social Institutions of Slovenia. The Association of Social Institutions of Slovenia informed us that, in accordance with the instructions of the Ministry of Health (document No. 1612-4/2018/120 of 12 March 2020), which proposed a ban on visits with exceptions and in accordance with the instructions given by the Ministry of Labour, Family, Social Affairs and Equal Opportunities (document No. 0075-1/2020 of 18 March 2020), which proposed the implementation of the abovementioned exceptions to the smallest possible extent and indicated a strict implementation of other measures, homes for the elderly had closed their doors to external visitors. In accordance with measures for prevention and control of the coronavirus infection, priests did not enter homes for the elderly and did not perform religious ceremonies. The residents still enjoyed individual freedom of expression of religious belief despite the current weakened aspect of collective religious freedom. The sacral area or home chapel remained at the disposal of the residents, while visits to the chapel were subject to measures for prevention and control of COVID-19 infection. Mobility-impaired residents were assisted by the staff when visiting the chapel. The Association of Social Institutions of Slovenia further explained that residents were provided access to instructions and books with religious content, which, in compliance with the measures, they received following the expiry of 72 hours after delivery to the home for the elderly. It was also possible to watch religious ceremonies on television and listen to them on the radio in the rooms of the residents. According to the Association of Social Institutions of Slovenia, some elderly homes successfully arranged an outdoor holy mass, in which the priest performed the ritual in the area of the home for the elderly and the residents could join in with their presence in front of the home for the elderly or on its balconies if they so wished. The homes for the elderly also introduced celebration of Easter in order to achieve the highest possible normalisation of the home life. The Association of Social Institutions of Slovenia ensured that homes for the elderly were aware of the importance of spiritual care, all the more so in this difficult time, and therefore, along with complying with the measures for prevention and control of the infection, they were making every effort to bring the possibilities of religious participation closer to the level the residents would have had in their primary home.

National and ethnic communities

With the Commission for Relations with Slovenians Abroad and the Government Office for Slovenians Abroad, the Ombudsman, on his own initiative, checked how help for Slovenians abroad was being offered in the context of the COVID-19 pandemic. The abovementioned Commission replied that they were in regular contact with the Slovenian communities around the world and that they were providing them with an adequate flow of information.

The Pomurje Hungarian Self-Governing National Community, the Coastal Italian Self-Governing National Community and the Government Office for National Minorities of the Republic of Slovenia were asked how they assessed the provision of information on the epidemic in Hungarian and Italian and whether they were informed about any difficulties in ensuring comprehensive information to the members of the Hungarian and Italian ethnic communities about the coronavirus epidemic. The Pomurje Hungarian Self-Governing National Community reported no problems while the Coastal Italian Self-Governing National Community pointed out that there were difficulties in certain pharmacies and health

centres and in connection with the availability of information and forms in Italian linked to measures for entrepreneurs and sole proprietors.

During the coronavirus epidemic, we again contacted the Government regarding the urgent provision of access to drinking water, sanitation and electricity in the Roma village of Goriča vas in Ribnica. According to the information provided by the Ministry of the Environment, the inhabitants of this village were supplied with drinking water from a nearby farm or from public taps at the cemetery or paid firemen for delivery of drinking water, there being no municipal infrastructure for drinking water in the village. The Ombudsman pointed out that such a supply of drinking water could not satisfactorily follow hygiene recommendations during the coronavirus epidemic. One of the inhabitants of the village contacted us and reported that, because of the coronavirus, locals were no longer allowing them to draw water at the cemetery and therefore asked that someone bring them a water tank. That the situation in Roma settlements is especially critical now, in light of the epidemic, was brought to our attention by a representative of one of the Roma organisations, who called for greater engagement. The representative of the Roma Community Council of the Republic of Slovenia and the Roma Union of Slovenia informed us about their activities and observations during the epidemic.

The Ombudsman, on his own initiative, also asked municipalities with Roma settlements and the Government Office for National Minorities, how (if at all) members of the Roma community were informed about measures for prevention of the spread of infections and measures taken by the competent institution to curb the spread of the disease. The Ombudsman was interested in how the specific problems of the Roma (access to public media, absence of mailboxes, literacy, language skills) were taken into account and, in particular, how and how often information was provided to older Roma.

On his own initiative, the Ombudsman also made an inquiry in the primary schools concerned regarding the schooling of Roma children during the epidemic. The reason for the enquiry was that the situation of schooling from home brings new challenges to the education system and requires additional effort and new solutions and adjustments. At the same time, the measures envisaged to limit the spread of the COVID-19 could potentially affect vulnerable groups to a greater extent. The Ombudsman was concerned, since this also applies to schooling, as distance learning is largely based on access to information technology and anticipates an active participation of parents. Considering the different circumstances in which children live, their effective access to education and, last but not least, differences between educational performance, differences between children are probably also increasing. So far, the primary school response has been positive.

Aliens

In the context of the examination of one of the cases, the Ombudsman wondered whether it is admissible to regard the implementation of proceedings under the International Protection Act (ZMZ-1) as a non-emergency administrative matter and to suspend the execution of all procedural acts provided for by the International Protection Act (ZMZ-1) pursuant to Article 7 of the Act on Provisional Measures for Judicial, Administrative and Other Public Matters to Cope with the Spread of the Infectious Disease SARS-CoV-2 (COVID-19) (ZZUSUDJZ). The question arises above all in connection with provision of information and acceptance of an application for international protection, since it is the carrying out of this act that changes the status of an alien in a way that significantly affects his situation, which is one of the circumstances that define the matter as necessary by law. In this regard, the Ombudsman contacted the Ministry of the Interior for clarification as to whether (and if so why) the proceedings in accordance with the International Protection Act (ZMZ-1) are considered necessary by the Ministry of the Interior and how many persons were at that time housed in the reception rooms of the asylum home or other accommodation facilities of the state as persons declaring the intention to file an application for international protection and how long these persons were stationed there.

Freedom of expression

On 6 April 2020, the Ombudsman addressed a letter to the Prime Minister highlighting the importance of provision of information on the outbreak of the COVID-19 epidemic. According to the guidance

provided by the Office of the United Nations High Commissioner for Human Rights on COVID-19, adequate information on the COVID-19 pandemic and the response to it should reach all people without exception. The Ombudsman pointed out that it was therefore necessary to provide access to information in comprehensible forms and languages and to adapt information to persons with special needs, including those with visual and hearing impairment, and to reach those with limited or no literacy. Public information campaigns and information from national health authorities shall be made available to the public in a manner that is understandable and accessible to all persons within the territory of the Republic of Slovenia, including in sign language and in accessible means and formats, with the provision of accessibility through digital technology, written versions of spoken messages and the use of easily readable and plain language.

The Ombudsman believes that in order to contain and manage the COVID-19 epidemic, it is of utmost importance to inform persons within the territory of the Republic of Slovenia on the measures for prevention of the spread of infections (hand hygiene, hygiene of premises, cough hygiene, shopping hygiene, self-isolation, treatment of suspected infection, etc.) and measures taken by the competent institutions to contain the spread of the disease (restrictions of movement, mandatory use of masks and gloves, ban on gathering, time window for shopping, etc.). The Ombudsman addressed two specific questions to the Government, namely in what ways, in the current situation, the population is best informed about the regulations adopted and the measures taken on their basis and in what ways information is ensured to those who, because of their social situation, are not able to access the media.

Some complainants asked the Ombudsman about the ethics of public speech in connection with expressing different views on the part of a certain politician or a certain medium on the Government measures. The Ombudsman did not detect hate speech in the submitted initiatives and he informed one complainant of the various possibilities of complaint he had under the Mass Media Act and the Professional Standards and the Principles of Journalistic Ethics. He also highlighted the applicable constitutional framework and the case-law of the European Court of Human Rights. In its judgments, the European Court of Human Rights also emphasises that freedom of expression does not only refer to information or ideas that we accept favourably, those we perceive as harmless or do not even take a stand on, but also include those that hurt, shock or disturb either the country or any part of the population. This calls for pluralism, tolerance and broadness of spirit, without which there can be no democratic society. The Ombudsman holds a similar view on freedom of expression.

Other complaints

The Ombudsman has also received various complaints about the conduct of individuals against whom he does not have direct powers under the applicable law. Several complainants wrote to the Ombudsman that, in the current situation of the epidemic and related protection measures, they had suffered from the cancellation of hotel reservations, cancelled transport, non-delivery of ordered services and goods, and failure to fulfil other agreed obligations. First of all, the Ombudsman would like to explain to such complainants that, pursuant to Article 1 of the Human Rights Ombudsman Act (ZVarCP), it is within the competence of the Ombudsman to protect the human rights and fundamental freedoms of individuals in relation to state authorities, local self-government authorities and bearers of public authority. Private companies which are legal entities with no public authority do not belong among the above-mentioned and thus the Ombudsman cannot intervene in such cases. The Ombudsman therefore suggested that these complainants try to solve the issues directly with the company from which they expect fulfilment of obligations or that they contact the Market Inspectorate of the Republic of Slovenia, which is responsible, among other things, for monitoring the implementation of the Consumer Protection Act (ZVPot).

