

# SEIMAS OMBUDSMEN OF THE REPUBLIC OF LITHUANIA ANNUAL REPORT OF 2006

Summary



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 ${}^{\odot}$  Seimas Ombudsmen's Office of the Republic of Lithuania, 2007  ${}^{\odot}$  Leidybos įmonė "Kriventa", 2007

# INTRODUCTION

In 2006, the Seimas Ombudsmen's Office of the Republic of Lithuania investigated a total of 1,466 complaints and made 2,858 decisions in relation to these complaints. The number of complaints handled and decisions made differs considerably because the complainants often raise not one, but several problems. After installation and activation of a computer document management system in 2006, it became possible to distinguish several separate problems in a single complaint submitted by a complainant and record separate solutions to these problems.

In 2006, 28% of complaints in which the investigation identified cases of abuse of office, bureaucracy of officers, and inappropriate public administration were recognised to be justified, and 46% of complaints were considered unjustified because the circumstances of inappropriate public administration specified in the complaints were not confirmed. In the case of 26% of the complaints, the investigation was terminated because of the elimination of the circumstances of the complaint or withdrawal of the complaint by the complainant or because the complaint was to be investigated in court. Investigation of a complaint is also terminated if, under the mediation of the Seimas Ombudsmen, the problems raised in the complaint are resolved in good will. In 2006, there were 76 such cases.

Complaints received	1,659
Complaints rejected	353
Complaints investigated	1,466
Decisions made	2,858
Justified complaints	786
Complaints dismissed	1,326
Investigation terminated	746
Investigations carried on own initiative	11
Decisions made	16
Justified complaints	7
Dismissed	2
Investigation terminated	7
Replies to citizens' requests	246
Complaints by members of the Seimas	210

The trend observed over the past three years – a decrease in the number of justified complaints – should be noted. We should be happy that the quality of the work of officials is improving, but at the same time we should be aware that not every citizen who comes across violations of human rights and freedoms in the area of public administration will be likely to report it and defend his rights.

There is still a gap between complaints made with respect to the work of civil servants in state institutions and those working in county or local government institutions: the number of justified complaints is far larger with respect to civil servants working at county and municipal institutions.

#### WITH RESPECT TO ACTIONS OF CIVIL SERVANTS IN MUNICIPAL AND COUNTY GOVERNOR ADMINISTRATIONS



# WITH RESPECT TO ACTIONS OF CIVIL SERVANTS IN STATE INSTITUTIONS



Because they fell outside the investigative jurisdiction of the Seimas Ombudsmen, 353 complaints were returned to the complainants. The complainants were informed which institution or body to approach regarding the questions mentioned in their complaints. These were complaints regarding the legitimacy or validity of legal proceedings during the pre-trial investigation of officers, complaints resolved or pending in courts, complaints arising from labour legal relations, complaints about issues already investigated by the Seimas Ombudsmen, etc. It should be noted that the number of such complaints dropped in comparison to the preceding year. In 2005, 25% of complaints were returned to the complainants, in 2006 this figure amounted to 21%. It is believed that complainants are more aware of the activity and jurisdiction of the Seimas Ombudsmen. Article 2 of the Law on the Seimas Ombudsmen provides a description of a complainant who could be a natural person or a legal entity lodging a complaint to the Seimas Ombudsmen's Office about the abuse of office or bureaucracy of officers. Even though the majority of applicants are still natural persons, there is an obvious increase in the number of legal entities lodging complaints to the Office, e. g. in 2005 these were just a few, whereas in 2006, 38 complaints lodged by legal entities were investigated.

The Seimas Ombudsmen carried out 11 investigations in which they opened investigation into the matter on

# Following the investigation of complaints submitted to the Seimas Ombudsmen in 2006, 707 recommendations were made:

Recommendation	Number of recommendations
Bring to the officials' attention the facts of negligence in office, non-compliance with laws or other legal acts, violation of professional ethics, abuse of office, and bureaucracy and violations of human rights and freedoms and suggest that the officials take measures in order to eliminate violations of laws and legal acts and the causes and conditions of these violations.	409
To propose to a collegial institution or an official to repeal, suspend or amend, according to the procedure prescribed by the law, those decisions that contradict the laws and other legal acts and propose to adopt decisions the adoption whereof has been precluded by abuse of office or bureaucracy.	120
To propose to the collegial body, head of the agency, or a superior institution or agency to impose disciplinary penalties on the officials at fault.	52
Without a detailed investigation of a complaint falling outside the jurisdiction of the Seimas Ombudsman, to give proposals or offer commentaries to appropriate institutions and agencies on the improvement of public administration in order to prevent violations of human rights and freedoms.	34
To make proposals to the Seimas, the Government, and other state or municipal institutions and bodies to change laws and other statutory acts that restrict human rights and freedoms.	32
To inform the Seimas, the Government, and other state institutions and bodies or the appropriate municipal council about gross violations of laws or deficiencies, contradictions of or gaps in laws or other legal acts.	23
Enlist the services of officials of the Government institutions as well as those of ministry, county and municipality officials as well as officials and experts of county governors' administrations and municipal institutions and bodies.	12
To recommend to the prosecutor to apply to the court according to the procedure prescribed by law for the protection of public interest.	8
To propose that material and non-material damage sustained by a person due to the violations committed by the official be compensated by the manner prescribed by law.	5
To apply to the administrative court with a request to investigate conformity of an administrative regulatory enactment (or its part thereof) with the law or Government resolution.	3
To notify the Seimas, the President of the Republic of Lithuania or the Prime Minister of violations committed by the ministers or other officials accountable to the Seimas, the President of the Republic of Lithuania or the Government.	2
To recommend to the Chief Official Ethics Commission to evaluate whether or not the official has violated the Law on Adjustment of Public and Private Interests in the Public Service.	2

their own initiative on the basis of facts published in the press or announced in other sources of information; seven of these were declared justified. These include complaints concerning the actions of the officers of the Government of the Republic of Lithuania in solving questions regarding the control of the sale of alcohol, and the bureaucratic actions of the officials of the Lithuanian Army who for six years delayed the payment of repatriation expenses to Lithuanian soldiers returning from the first international mission in Kosovo. The key investigations are described in detail in the reports of each ombudsman.

The decision of the Seimas of the Republic of Lithuania "On the Annual Activity Report of Seimas Ombudsmen 2005" drew the attention of the leaders of the state, municipal institutions, and other bodies of public administration to the timely implementation of recommendations made by the Seimas Ombudsmen, elimination of violations of human rights detected in the area of public administration, and removal of the causes and conditions of these violations. The decision also enumerates the requirement of the Government of the Republic of Lithuania to ensure the regulation of the implementation of the recommendations made by the Seimas Ombudsmen and submitted to state and municipal institutions. The decision suggests that the Seimas Ombudsmen Office inform the Government of the Republic of Lithuania about the recommendations submitted to state institutions, whereas representatives of the Government will be informed about the recommendations submitted to the municipal institutions.

Such emphasis on the part of the Seimas of the Republic of Lithuania and the Seimas Ombudsmen's Office on the implementation of recommendations, closer cooperation with the Human Rights Committee of the Republic of Lithuania, and meetings with officials at state and municipal institutions ensured a clear improvement in the implementation of the Seimas Ombudsmen's recommendations compared to previous years. Execution of recommendations made by the Seimas Ombudsmen was averaging 67%, but in 2006 this figure went up to 86%. Recommendations that have not been executed and those with the expired term of implementation amount to 14%. The term for implementation of one-fifth of recommendations has not yet expired.

It should be noted that the recommendations of the Seimas Ombudsmen cannot always be executed immediately. Sometimes the process of preparing or amending legal acts or making decisions about questions related to restitution of property rights to real estate take a long time and the Seimas Ombudsmen are informed about the execution of their recommendations in a year or so.

### COMPLAINTS CONCERNING COUNTIES AND MUNICIPALITIES

In 2006, the Seimas Ombudsmen made 614 decisions regarding complaints about the actions of municipal officials.

#### BREAKDOWN OF THE COMPLAINTS INVESTIGATED CONCERNING THE ACTIONS OF MUNICIPAL OFFICIALS – ACCORDING TO TOPIC



Violations of ownership rights are mostly related to the issues of restoration of ownership to real estate: land, forests and buildings. Quite a large proportion of complaints were related to the management, use and administration of state (municipal) property.

Complaints regarding violation of the right to good public administration include complaints with respect to violations of the order, terms and procedures for investigating applications received from the citizens, violations of the right to information, violation of professional ethics, etc. The number of such complaints is increasing and in most cases they are justified.

Complaints regarding the right to a safe and clean environment include complaints about violations of territorial planning, state supervision of construction, cutting of trees, or destruction of green areas. An increase in the number of such complaints has also been observed – people are becoming concerned not only about their personal, but also public interests.

Complaints regarding housing rights include complaints concerning state support for the acquisition of housing, rental of social housing, privatisation of municipal (state) residential premises on preferential terms, etc. Complaints regarding violation of consumer rights include complaints concerning the provision of low quality services (gas, heating and electricity supply) and restrictions of municipalities in choosing alternative heating systems in apartment buildings.

The right to social security means social support for families and children and provision of social services. The number of complaints in this area has decreased.

In 2006, the Seimas Ombudsmen executed 915 decisions with regard to complaints concerning the actions of officers of county governors' administrations.

#### BREAKDOWN OF THE COMPLAINTS INVESTIGATED CONCERNING THE ACTIONS OF COUNTY GOVERNORS' ADMINISTRATION OFFICIALS – ACCORDING TO TOPIC



It is obvious that people mostly complain about the actions of county governors' administration officials, who for the past 16 years have been one of the key participants of the on-going land reform, primarily because of the continuing process of restoration of ownership rights to land and forests.

As in the case of complaints lodged against the actions of municipal officials, the number of complaints concerning violations of the right to good public administration and the right to a safe and clean environment has increased.

### COMPLAINTS CONCERNING STATE INSTITUTIONS

In 2006, the Seimas Ombudsmen made 1,558 decisions regarding complaints about the actions of officials of state institutions.

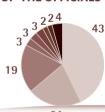
Of all the state institutions, the majority of decisions were made regarding actions of officers of the Police Department – 523 decisions (30%) out of this number were recognised as justified. It is notable that the number of justified complaints in this category has increased. As a rule the second major group of complaints are, as if according to rule, regarding the actions of employees of the Prison Department and correction institutions subordinate to it. In this case, 352 decisions were made, but only 11% of complaints were recognised as justified.

The third major group of complaints according to the number of decisions made (129) are those concerning

the actions of employees of the Prosecution Service or subordinate Prosecution Offices. It can be observed that people are using the new amendment to the Law on the Seimas Ombudsmen, which provides the Ombudsmen with the right to investigate complaints about the actions of prosecutors and pretrial investigation officials violating human rights and freedoms. The number of such complaints recognised as justified complaints in this group is small, however.

Among the ministries, the largest number of justified complaints was lodged against the Ministry of the Environment. In 2006, many justified complaints were lodged against the actions of the officials of the Ministry of Health and Social Security and Labour. The table provides a list of those state institutions against the officials of which the largest number of justified complaints was received.

# BREAKDOWN OF THE COMPLAINTS INVESTIGATED CONCERNING THE ACTIONS OF THE OFFICIALS OF STATE INSTITUTIONS – ACCORDING TO TOPIC



Rights of citizens whose freedom was restricted **43%** Right to good public administration **21%** Right to the security of the person and society and assurance of public order **19%** Right to a fair trial **3%**  Right to social security **3%** Right of ownership **3%** Right to a safe and clean environment **2%** Right to healthcare **2%** Other rights **4%** 

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#### **Reception of Citizens in the Office**

The protection of human rights at the Seimas Ombudsmen's Office starts at reception. The activities of reception are therefore of great importance. The way this part of the office responds to citizens' problems, how efficiently people are dealt with, and what directions they are given to solve their problems influence protection of human rights.

One of the key issues in this area is providing assistance to citizens so that their applications are dealt with efficiently and professionally. It is necessary to explain concisely and comprehensively whether the issues raised by a citizen are within the jurisdiction of Seimas Ombudsmen, what institution a citizen should apply to, explain what documents should be submitted, etc.

The most frequent enquiry both at reception and by telephone is about violations regarding restoration

of ownership right. The most urgent problems are restoration of ownership right to remaining real estate, identification of the boundaries of land plots and other land use issues.

In 2006, quite a few citizens approached the office regarding the right to good public administration. Violation of the right to information, inadequate application of a legal act, and failure to implement legal acts are the issues raised.

Many enquiries were made about violations of consumer rights, mainly the right to good quality service and violations of the right to social security. Complaints were made about violation of the right to the security of a person and society and to assurance of public order. Half of these complaints were about the actions of pre-trial officials. Among other complaints were those concerning violations of the right to a fair trial, a safe and clean environment, etc.

### INTERNATIONAL COOPERATION

# Cooperation with human rights defenders of the Republic of Latvia

In 2006, the Seimas Ombudsmen's Office cooperated quite actively with human rights defenders of the Republic of Latvia.

On 27-28 April, Seimas Ombudsman Albina Radzevičiūtė and her advisor Dalia Žukauskienė participated in the conference in Riga (Republic of Latvia) "Independent Detention Monitoring of Closed Institutions in the Baltic States". The conference organised by the Latvian Centre of Human Rights and the Association for the Prevention of Torture was aimed at assessing the work of independent bodies monitoring closed institutions in the three Baltic States, highlighting examples of good practise in other countries (Northern Ireland, Holland) and discussing the ratification of the Optional Protocol to the UN Convention against Torture (OPCAT), which envisages establishment of an independent monitoring system of closed institutions on the national and international level. Obstacles in ratifying OPCAT in Lithuania. Latvia and Estonia and appointment or establishment of one or several national monitoring institutions were discussed. The advisor Dalia Žukauskienė made a presentation entitled "Prevention of torture and ill treatment through monitoring places of detention: practical experience" at the conference.

On 10–12 May the Head of Criminal Law Department of the Latvian National Human Rights Office, Ineta PiJāne, and a lawyer from the same department, Annija Dāce, visited the Seimas Ombudsmen's Office. The visitors were received by Romas Valentukevičius, the head of the Office, and Ombudsman Albina Radzevičiūtė. During the visit Ineta PiJāne and Annija Dāce also discussed urgent issues with Ombudsman Albina Radzevičiūte and her advisors, met the director of the Prison Department and the heads of services (healthcare, social rehabilitation, security and supervision, etc.), and visited Lukiškės Remand Establishment -Prison.

On 4–5 December a conference was organised in Riga (Republic of Latvia) by the Latvian National Human Rights Office on the role of the ombudsman institution in the modern world. The Seimas Ombudsmen's Office was represented by Seimas Ombudsmen Augustinas Normantas, Virginija Pilipavičienė, and other employees of the Office. The aim of this conference was to discuss the establishment of the institution of ombudsmen and share the best practices with similar institutions in neighbouring countries. The decision to organise the conference was made after the Latvian Parliament on 6 April 2006 passed an Ombudsman Law. The law provided that the first ombudsman institution would be established on the basis of the Latvian National Human Rights Office and commence work on 1 January 2007.

#### Meetings with other foreign visitors

On 28 February a delegation from the Constitutional Committee of the Swedish Parliament (Riksdagen) led by Deputy Chairman Goran Magnusson paid a visit to the Seimas Ombudsmen's Office. The delegation was accompanied by Malin Karre, the ambassador of the Kingdom of Sweden to the Republic of Lithuania.

Lithuania has chosen a Swedish model for establishment of the Seimas Ombudsmen Office. The guests were interested in violations of the human rights of prisoners and national minorities in Lithuania, the communication of the Seimas Ombudsmen with the Seimas committees, and the accountability of the Seimas Ombudsmen to the Parliament.

On 31 May Sirpa Rautio and Irene Kitsou-Milonas, representatives from the Human Rights Office of the Council of Europe visited the Seimas Ombudsmen Office. The officials were interested in the implementation of recommendations for Lithuania enumerated in a report by the EC Commissioner for Human Rights.

The visitors were received by Romas Valentukevičius, the head of the Office, and Ombudsman Albina Radzevičiūtė. During the discussion, problems raised in complaints about violations of human rights in the area of public administration and ways of solving them were in focus. The key statements and recommendations from the annual report of 2005 by the Seimas Ombudsmen's Office were presented. On 13 June Romas Valentukevičius, the head of the Seimas Ombudsmen's Office, met the delegation of the Petition Committee of the German Bundestag during their visit to Vilnius. The members of the delegation and Bundestag, P. Lehrieder, K. Schiewerling, J. Ackermann, M. Lazar, and the head of the secretariat of the Petition Committee, E. Zimmermann, were accompanied by J. Schemel, the deputy ambassador of Germany to the Republic of Lithuania.

No equivalent to an ombudsman's office exists in Germany. Instead, complaints received from citizens are investigated by the Petition Committee of the Bundestag. The Bundestag members wanted to know the practise of investigating complaints in Lithuania and the possibilities of parliamentary control.

Seimas Ombudsman Romas Valentukevičius told about the key problems of human rights violations in Lithuania and introduced the practices of the Office when investigating complaints regarding public administration.

On 22–27 October the Seimas Ombudsmen's Office was visited by Armen Harutyunyan, the ombudsman of the Republic of Armenia, within the framework of a training programme financed by the Organization for Security and Cooperation in Europe (OSCE) and the Office for Democratic Institutions and Human Rights.

The programme envisaged meetings with the Seimas Ombudsmen and their advisors, sharing of experience of complaint investigation on a variety of topics, acquaintance with the organisation of work at the Office, selection of personnel, professional training, provision of information, maintenance of the document management system, archives of the Office, and the consultations of citizens at the reception. During the training visit the guest met Česlovas Juršėnas, the Deputy Chairman of the Seimas of the Republic of Lithuania, members of the Seimas Human Rights Committee, and the Minister of Justice Petras Baguška.

#### On 24 October a delegation of high-ranking law enforcement officials from the People's Republic of China paid a visit to the Seimas Ombudsmen's Office.

The aim of the visit was to introduce the representatives from China to the Lithuanian experience in fighting violations of human rights of detainees in law enforcement institutions and preventing torture of prisoners.

At the meeting, the role of the police, prosecutors and judges in the prevention of torture and violations of human rights of detainees in law enforcement institutions, the procedure for registering and investigating complaints, and the role of independent observers and NGOs in assuring good pre-trial investigations and proper execution of sentences were discussed.

On 14 November **a delegation from Moldova** visited the Office. The goal of the visit was to gain experience from Lithuania's practice in order to implement the National Human Rights Support and Protection Action Plan in Moldova.

Members of the delegation were interested in the history of the Seimas Ombudsmen's Office, its structure, the rights and powers of ombudsmen, the nature of complaints, solutions to human rights problems, and the situation in prisons and detention centres. Romas Valentukevičius, the head of the Seimas Ombudsmen's Office, and Ombudsmen Zita Zamžickienė and Augustinas Normantas told about the work of the ombudsmen and answered the questions of the guests.

# FROM THE ACTIVITIES OF SEIMAS OMBUDSMAN'S OFFICE OF THE REPUBLIC OF LITHUANIA

#### Personnel working in the Office

On 31 December 2006, 44 employees worked for the Seimas Ombudsmen's Office: 5 ombudsmen (state officials), 28 career civil servants, and 11 employees working on the basis of employment contracts.

All civil servants and state officials are university graduates.

The average public service work experience of the civil servants working in the Office is nine years and five months and the average age of the employees is 46. There are 34 women and 10 men in the Office.

The employees of the Office have a possibility to improve their qualifications. In 2006, they had 2,287 hours of lectures. The ombudsmen improved their communication with the media and public speaking skills and participated in the training of organisation leaders.

#### Conferences and seminars in Lithuania

In 2006, Ombudsmen Virginija Pilipavičienė, Albina Radzevičiūtė and Romas Valentukevičius participated in the international conference "Partners in Development: UNDP and Lithuania" held in Vilnius.

Ombudsmen Albina Radzevičiūtė and Augustinas Normantas participated in the conference "Defenders of Human Rights in the World and in Lithuania" organised at the Seimas of the Republic of Lithuania.

Ombudsman Virginija Pilipavičienė took part in the discussion "Discrimination in Lithuania. Assessment by International Organisations" held by the Human Rights Monitoring Institute and the Institute for Social Research of the Centre for Ethnic Studies.

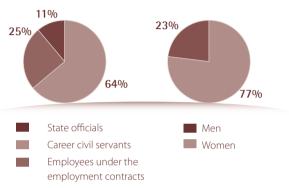
Ombudsman Albina Radzevičiūtė made a presentation entitled "Management of Addictions in Places of Imprisonment. Analysis of Complaints of the Convicts and Pre-Trial Prisoners" at a seminar called "Problems in the Prevention of Drug Abuse and Ways to Solve Them" organised by the Prison Department.

#### **Communication of the Institution**

#### Provision of information to the Public

Acknowledgement of the activities of the Seimas Ombudsmen by the society potentially increases

#### THE DIAGRAMS BELOW SHOW THE STRUCTURE OF THE PERSONNEL WORKING IN THE OFFICE AS OF 31 DECEMBER 2006



efficiency of the Office. The more society knows about the achieved results of the defenders of human rights, the more they trust the Office and approach ombudsmen with complaints concerning violations of their rights.

The key to the efficiency of the ombudsmen's activities is the openness and accessibility to all. Contacts with the general public are maintained directly during the meetings at the reception area of the Office, information is placed on the website of the Office, enquiries can be made on a toll-free telephone line, and the Office is actively communicating with the mass media in order to inform people of their rights.

#### The website of the Seimas Ombudsmen's Office.

All information about the activities of the Office is provided on its website. In 2006, the website was visited by 400,000 visitors. They are mostly interested in the issues investigated by the ombudsmen as well as who can submit a complaint and how it should be done, and what the ombudsmen's rights are. There has been active interest in the annual reports of the Office in both Lithuanian and English and the information brochures issued by the Office.

Eighty-four percent of visitors of the website were from Lithuania. Others were mostly from the U.S.A., Portugal, Latvia, Germany, Italy, Holland, and Estonia.

A toll-free telephone line operates in reception. This enables people who experience social exclusion, i.e. those in imprisonment institutions, care institutions, and retirement homes, military conscripts and all more vulnerable members of the society to access the Seimas ombudsmen more easily.

#### Communication with the mass media

The Seimas Ombudsmen seek open communication with the mass media. There are no restrictions in the Office for representatives of the media, who can obtain information directly from an Ombudsman.

Ombudsmen's press releases are announced on the website of the Office, distributed to the information agencies operating in Lithuania, and sent directly to the mass media that may find the information to be published interesting. Ombudsmen are able to express their opinion about various societal issues in the press, TV, radio, and the internet press. In 2006, the mass media showed interest in the opinion of the Seimas Ombudsmen about the violence of police officials, problems of land restitution, conditions in imprisonment centres, and the activities of notaries and bailiffs.

Since autumn 2006, the Seimas Ombudsmen Office, in cooperation with Žinių radijas (News Radio), has prepared 16 broadcasts. Each Thursday the Seimas Ombudsmen could talk to the listeners live for an hour, on the basis of investigated complaints present issues important to the society, and listen to the explanations of the state officials on each particular issue. Since the programme was popular and had high ratings, it was decided to continue cooperation in 2007.

The Seimas Ombudsmen's Office provides information and writes reports about the decisions of the Seimas Ombudsmen to the "European Ombudsmen – Newsletter" published in the English language by the European Region of the International Ombudsman Institute. The Office also provides information to the quarterly newsletters of the International Ombudsman Institute.

The Seimas Ombudsmen's Office annually publishes two newsletters that contain analysis of the problems regarding human rights protection in a variety of areas based on the investigation of citizens' complaints. Newsletters are distributed to state and municipal institutions and libraries and placed on the website of the Office.

In 2006, Ombudsmen Albina Radzevičiūtė and Romas Valentukevičius discussed violations of the right to good public administration in the activities of state officials. In the newsletter "Human rights protection: violations of the right to good public administration in the work of the county governor's administration and municipalities" Ombudsmen Augustinas Normantas, Virginija Pilipavičienė and Zita Zamžickienė presented the most frequently raised issues in the complaints of citizens.

### ACTIVITY REPORT OF SEIMAS OMBUDSMAN ROMAS VALENTUKEVIČIUS

In the reporting period (1 January 2006 – 31 December 2006), 431 complaints were received concerning the area of activity of Ombudsman **Romas Valentukevičius** and six investigations started at his own initiative. On 1 January 2006, 118 complaints lodged in 2005 remained uninvestigated. In the reporting period, 397 complaints were thoroughly investigated, 81 complaints rejected and 72 complaints remained to be investigated.

In 2006, the number of thorough and complete investigations of complaints did not differ to a great extent from the number of complaints investigated in the preceding year. It is observed that the number of justified complaints is going down every year, whereas the number of complaints with terminated investigation is similar to that of the previous years. The steady decline in the number of justified complaints leads to a thought that the number of cases of abuse of office, bureaucracy, or violations of human rights and freedoms in public administration is decreasing.

#### DISTRIBUTION OF COMPLAINTS INVESTIGATED THOROUGHLY AND COMPLETELY (01.01.2006-31.12.2006)



On the basis of Article 17 of the Law on the Seimas Ombudsmen, the Office rejected 81 complaints in the reporting period, but in each case the applicants were provided with detailed explanations about remedies for the alleged violations of their rights. Such complaints account for 19% of all complaints and it is a far smaller figure than it was in previous years: 27% in 2005, 32% in 2004, and 40% in 2003. Decrease in the number of uninvestigated complaints is a sign that legal awareness is increasing in our society. People know more about the most effective ways to protect their rights that have been violated and have a clearer understanding about the authority and jurisdiction of the Seimas Ombudsmen.

Complaints were rejected mainly because they fell outside the jurisdiction if the Seimas Ombudsmen or an Ombudsman concluded that the investigation would be more viable in another institution.

The following recommendations were adopted during the reporting period:

• To make officials aware of violations so they would undertake measures to eliminate them: a total of 103 recommendations; 27 monitored, 21 of them implemented, 5 in progress, and 1 not implemented;

• To impose disciplinary penalties: seven recommendations submitted; all of them monitored and implemented;

• To forward amendments of legal acts to proper institutions: a total of eight recommendations; three of them monitored, out of which two implemented and one in the process of implementation;

• To inform proper institutions about legal violations and deficiencies and contradictions in legal acts: a total of seven recommendations; one of them is being monitored and is in the process of being implemented;

• To propose that certain institutions repeal, suspend or amend illegal decisions or adopt decisions: a total of three recommendations; two of them monitored and both implemented.

One complaint in the reporting period was resolved through the mediation of Seimas Ombudsman Romas Valentukevičius on the basis of Article 22 Part 3 of the Law on the Seimas Ombudsmen.

The analysis of recommendations demonstrates that Seimas Ombudsman Romas Valentukevičius brings the problems identified during the investigation of a complaint to the attention of relevant institutions and officials and proposes to take measures in order to eliminate these problems. The main duty of the ombudsman is not only to solve the problem, but to identify it and try to prevent institutions from repeating it. In other words, the aim of ombudsmen is to raise awareness of the violations made, but the elimination of violations is the task of an administrative body.

#### ANALYSIS OF COMPLAINTS INVESTIGATED

In the reporting period, Seimas Ombudsman Romas Valentukevičius made a total of 917 decisions; 562 of them were decisions concerning the actions of the officers of the Ministry of the Interior and institutions subordinate to this ministry. And in 523 out of 562 cases decisions were made concerning the actions of officials of the Police Department under the Ministry of the Interior of the Republic of Lithuania and the police commissariats subordinate to the department. Decisions regarding actions of the officials of the Ministry of the Interior and institutions subordinate to this ministry comprise 60% of all the decisions. One hundred twenty-nine decisions were made regarding the actions of officials of the Prosecution Service or subordinate local prosecution offices. As in previous years, the Ministry of Environment and institutions subordinate to that ministry are in the "leading" position according to the number of decisions made – a total of 81 decisions. Thirty-one decisions were made with respect to the Ministry of Health and institutions subordinate to the ministry, 25 concerned the Ministry of Finance, and 20 concerned the Ministry of Defence. Sixty-six decisions were made regarding other institutions and organisations subordinate to them that are in the area of supervision of Seimas Ombudsman Romas Valentukevičius.

Decisions with respect to the Police Department under the Ministry of the Interior of the Republic of Lithuania and the police commissariats subordinate to the department constitute the major part – 93% – of all decisions made with respect to the Ministry of Interior and institutions subordinate to this ministry.

It is noteworthy that the analysis of complaints against state institutions and bodies subordinate to them shows a large number of complaints against actions of officials in prosecution offices. Article 12 Part 3 of the Law on the Seimas Ombudsmen stipulates that ombudsmen shall investigate complaints regarding actions of prosecutors and pre-trial investigation officials who violate human rights and freedoms. But it is often the case that the investigation of possible violations of human rights and freedoms by prosecutors and pre-trial investigation officials leads to a situation where an ombudsman has to assess the legality and validity of officials' procedural decisions, which is outside the investigative jurisdiction of the Seimas Ombudsman. As a result, it becomes more difficult for the Seimas Ombudsmen to investigate possible violations of human rights and freedoms committed by such officials.

In 2006, Seimas Ombudsman Romas Valentukevičius made 20 decisions about the Ministry of Defence and institutions subordinate to that ministry. Such large number of complaints may be explained by the fact that it is a statutory organisation in which most problems are solved by way of subordination. On the one hand, this is an advantage, but on the other hand this way of solving problems may prevent making them public.

As in previous years, the largest number of complaints in 2006 came from detainees regarding problems and restrictions of human rights in detention establishments.

#### CONDITIONS IN THE DETENTION ESTABLISHMENTS OF POLICE COMMISSARIATES

The number of complaints from the citizens regarding conditions in detention establishments of police commissariats countrywide in 2006 went up considerably; there were twice as many of them as there were in the preceding year. Thirty complaints were received concerning conditions at the detention establishment of the Chief Police Commissariat in Klaipėda, and problems raised in different complaints were very similar. In view of such circumstances, it is possible to say that the number of complaints regarding conditions at the detention establishments of police commissariats countrywide was the same as in previous years. In conclusion, changes in this area are not as big as expected.

One of the sore points in the police system for a number of years has been the poor condition of detention establishments of police commissariats. Countrywide, there are a total of 46 detention establishments in police commissariats. Of these only 10 establishments are in good condition. The remaining detention establishments do not meet the requirements of legal acts: the sanitary conditions of cells are poor, the norm of 5 square metres per person is violated, the procedure for the distribution of people to cells is not observed, individuals' right to a walk and use of a shower is violated and the sufficient healthcare of people kept in detention establishments and their provision with recreational and hygienic items are not ensured. In most detention establishments of police commissariats, there are no yards where a detainee could go for a walk, there are no interrogation or meeting

premises or medical stations. Work conditions for the police officers working in detention establishments are also unenviable and do not meet the set standards. A portion of detention establishments of police commissariats should not be used since the detention conditions in these establishments could be identified as inhuman and degrading the human dignity. There are many detainees placed in detention centres of police commissariats and quite a number of police officers are working there. This problem may therefore cause violations of human rights of many people. Thus, the situation demands particular attention.

#### INVESTIGATION OF DETENTION CONDITIONS AT THE DETENTION ESTABLISHMENT OF THE CHIEF POLICE COMMISSARIAT IN KLAIPĖDA

The Seimas Ombudsmen's Office of the Republic of Lithuania received complaints from 30 detainees regarding detention conditions at the detention establishment of the Chief Police Commissariat in Klaipėda.

The Seimas Ombudsmen of the Republic of Lithuania together with specialists of the Police Department under the Ministry of the Interior of the Republic of Lithuania and the Centre of Extreme Health Situations of the Ministry of Health on 6 April 2006 organised an inspection of the detention establishment of the Chief Police Commissariat in Klaipėda without any prior notice.

During the inspection, a search was carried out in the detention cells specified by Ombudsman Romas Valentukevičius. One SIEMENS A-35 mobile telephone was detected and taken away. No more forbidden things were detected. The investigation of complaints did not lead to any objective evidence of special cells with preferential conditions in the detention establishment of the Chief Police Commissariat in Klaipėda for detainees cooperating with policemen. Detection of a single mobile telephone during the search does not provide sufficient evidence of the existence of such cells and preferential conditions for detainees placed in them, including possession of forbidden objects.

During the inspection, it was established that the hygienic conditions in the new part of the detention establishment were good, but reconstruction and renovation of sanitary equipment was required in the old cells. Mattresses, pillows, duvets, and bed linen were clean, tidy and sufficient. The shower had hot water, but in one unit the drain was blocked and not all showers had shower heads. Two detainees had complaints regarding the time arrangement for the shower. Detainees got three meals a day, but the food, except for lunch, did not comply with the nutrition standard set by the police commissioner general because on the day of the inspection a roll and tea were served for breakfast and bread and tea for supper. It was suggested that the management of the Klaipėda Chief Police Commissariat fix water drains and install shower heads by 10 April 2006 and approve a new menu that would comply with nutrition standards by 16 April 2006.

On 20 April 2006, the head of Klaipėda Chief Police Commissariat reported that all violations detected during the inspection were eliminated: water drains were repaired, new shower heads were ordered, and a new menu was made.

#### INVESTIGATION STARTED ON THE INITIATIVE OF SEIMAS OMBUDSMAN ROMAS VALENTUKEVIČIUS REGARDING UNJUSTIFIED DETENTION OF A PERSON IN A DETENTION ESTABLISMENT

Seimas Ombudsman Romas Valentukevičius started an investigation on his own initiative on the basis of the TV programme reporting about the actions of the officials of Vilnius District Police Commissariat during the detention of a citizen and his placement in the detention centre of Vilnius Chief Police Commissariat. The citizen, accompanied by his family, was driving his car when he was stopped by police officers suspecting that his driving licence was forged. He was detained and placed in the detention establishment of Vilnius Chief Police Commissariat on 19 March 2006, a pre-trial investigation regarding possible forgery and use of a forged document started. Officials at Vilnius District Police Commissariat failed to take notice of both the citizen's explanation that the driving licence was officially issued in Panevėžys and confirmation made by an authorised official of Panevėžys Chief Police Commissariat who came to work on the weekend to check if the licence was indeed issued and not forged. Despite this confirmation made by the police official by phone, the citizen was detained for six hours in the detention establishment of Vilnius Chief Police Commissariat until a letter confirming the validity of the driving licence was received by fax from Panevėžys Chief Police Commissariat.

The Seimas Ombudsman asked Vilnius County Prosecutor's Office to start a pre-trial investigation into possible abuse of office by officials of Vilnius District Police Commissariat. Charges of suspicion of committing a criminal act were brought against the investigator of the Criminal Investigation Unit of the Criminal Police of Vilnius District Police Commissariat. During preparation of this report, the Ombudsman received a message from Vilnius 1<sup>st</sup> District Court about the charge and the penalty.

#### COMPLAINTS REGARDING ACTIONS OF PRE-TRIAL OFFICIALS AND PROSECUTORS

Statutory provisions of the Law on the Seimas Ombudsmen do not authorise an ombudsman to assess the legitimacy or validity of decisions made by the pre-trial official or prosecutor, but they do establish a duty to investigate possible violations of human rights and freedoms during the pre-trial investigation.

A citizen applied to the Ombudsman Romas Valentukevičius about the actions of an official of the 6<sup>th</sup> Police Commissariat in Vilnius. The application specified that four months after the start of the pre-trial investigation, the citizen requested information about the investigation procedure from the pre-trial officials but was denied access to such information.

Statements specified in the complaint were proved. Officials of the Vilnius Area Prosecution Office efficiently responded to the request of the Ombudsman and in accordance with the procedure established in the Code of Criminal Procedure gave instructions to the pre-trial official. A disciplinary lawsuit was brought against the pre-trial official for official negligence and inappropriate pre-trial investigative procedures.

Investigation of complaints about violations of human rights and freedoms during pre-trial investigation made Seimas Ombudsman Valentukevičius conclude that there were cases when a person could not implement the right stipulated in Article 168 Part 4 of the Criminal Code of the Republic of Lithuania to lodge a complaint against the actions and decisions of a pre-trial official and prosecutor, because no procedural decision had been made with respect to circumstances specified in the complaint and no decision had been submitted to the person regarding refusal to start a pre-trial investigation. It was established that the officials insisted that the procedural decision had already been made with regard to similar circumstances investigated in another complaint and that there was no need to make the second procedural decision.

In the opinion of Seimas Ombudsman Romas Valentukevičius, in each case when a prosecutor

receives a complaint or notification about a criminal act, he has to assess whether there is any evidence of a criminal act. Should such evidence exist, a pre-trial investigation starts. This investigation can be carried out by the prosecutor himself, or he may delegate it to a pre-trial body. If the information about the criminal act is evidently incorrect, there is no evidence of the criminal act, or there are other circumstances that do not allow a pre-trial investigation, yet the person who has submitted the complaint or notification insists on starting a pre-trial investigation, the prosecutor has to decide to start a pre-trial investigation (Article 3 of the Code of Criminal Procedure) or refuse to start a pre-trial investigation (Article 168 of the Code of Criminal Procedure). If the document submitted by a person has no evidence of a criminal act and there is no demand to start a pre-trial investigation, the prosecutor may forward the document to the proper institution or provide an explanation to the applicant regarding issues raised in the document. When the prosecutor does not make a procedural decision, but explains to a person a procedure of submitting a complaint, the person may not implement the right stipulated in Article 168 Part 4 of the Code of Criminal Procedure to complain about the prosecutor's or the pre-trial official's refusal to initiate a pre-trial investigation.

Ombudsman Romas Valentukevičius approached the Prosecutor General about this flawed practice. The prosecutor agreed with the Ombudsman's opinion and reported that the Prosecutor's Office would seek to change the situation by explaining to citizens a procedure of lodging a complaint against actions and decisions of a prosecutor or a pre-trial official and would suggest making use of it in seeking legal aims and interests. Prosecutors would also be urged not to ignore a person's right to require criminal liability of officials if it is thought that they committed acts that contain evidence of a crime and to make procedural decision.

While investigating complaints about the activities of pre-trial officials and prosecutors, Romas Valentukevičius identified yet another problem: during a pre-trial investigation into alleged abuse of power, the person who made allegations about the possible criminal activity is questioned as a witness. With the status of a witness, the person who reported the alleged crime does not have the right to complain about contestable procedural actions as stipulated in the Code of Criminal Procedure. It should be noted that the status of the aggrieved party is gained by a natural entity on the basis of factual and legal evidence. The factual evidence is the physical damage caused to a person as a result of a criminal act. Legal evidence is the decision of the pre-trial official or the prosecutor, granting the status of the aggrieved party. This decision is made after a request or at the initiative of law enforcement officials when they identify the basis for acknowledging a person an aggrieved party.

In the opinion of Seimas Ombudsman Romas Valentukevičius, decisions of pre-trial officials and prosecutors to grant or decline to grant the status of aggrieved party should be made after collecting all the documents relevant to the case, and this should be done in a short period of time. An aggrieved party has more procedural rights and, thus, more procedural possibilities to defend them. The Seimas Ombudsman has approached the Prosecutor General with this problem and encouraged him to take measures against this flawed practice in Lithuania.

#### COMPLAINTS REGARDING ACTS OF OFFICERS OF THE MINISTRY OF HEALTH OF THE REPUBLIC OF LITHUANIA

It is noteworthy that citizens still lack information about human rights and possibilities to defend them. Several surveys state that the majority of citizens whose rights, in their opinion, have been violated did not submit a complaint, whereas others did not do anything about it, thinking that nobody would help them anyway. This situation points out society's lack of trust in state institutions. Assessment of the situation and the fact that the healthcare system in Lithuania is the poorest in the EU, directed Seimas Ombudsman Romas Valentukevičius' attention to the violations of citizen's rights in one of the most sensitive areas - the area of healthcare and the right to a healthy and safe environment. Apart from the investigation of complaints received by the Office, upon the initiative of the Ombudsman, three investigations were started during the reporting period on the basis of information provided in the mass media about possible violations of human rights in the area of healthcare.

Seimas Ombudsman Romas Valentukevičius initiated an investigation into the possibly inappropriate work of the officers of the Ministry of Health of the Republic of Lithuania. The problem investigated was that parents with handicapped children were prescribed nappies for the care of their children, but such means of care were in fact not available in pharmacies.

#### Officials at the Ministry of Health rather efficiently responded to the recommendations of the Ombudsman and started their implementation:

#### the basic pricelist of the Reimbursable Medicines was supplemented and the market was supplied with nappies made by various producers.

Another investigation started on Seimas Ombudsman Romas Valentukevičius' initiative was about possible violations of human rights in cases of the inconvenience caused to Lithuanian citizens who had to supply statements about payment of taxes and submit them to other institutions, i.e. when the owners of private companies and farmers who paid their own taxes had to get statements from the tax inspectorate every three months about taxes paid and submit the statements to a territorial patient fund. Only after following this procedure were they able to receive insurance and medical care.

The Minister of Health admitted that this practice prevents accessibility to healthcare services and causes dissatisfaction of citizens.

Seimas Ombudsman Romas Valentukevičius called the attention of the Minister of Health to the issue above and proposed that cooperation be initiated as soon as possible with the State Data Protection Inspectorate in order to establish a register of persons insured with compulsory health insurance. The director of the State Data Protection Inspectorate was approached with a request to provide the State Patient Fund with a special number that would give it an authority to manage personal data.

The recommendations of the Seimas Ombudsman were implemented: the Minister of Health reported that an agreement was signed with the State Tax Inspection under the Ministry of Finance regarding provision of data that would solve the problems raised in the notice filed by the Ombudsman and would allow data to be received about people performing individual activity and making compulsory health insurance payments.

Part 1 Clause 11 of the European Social Charter (Turin, 18 October 1961) stipulates that each person has a right to make use of all means that would enable him to enjoy the highest possible standard of health attainable. Such provisions were the basis for Ombudsman Romas Valentukevičius to investigate complaints concerning actions of the officials of the Ministry of Health and institutions subordinate to the ministry.

An applicant specified in a complaint that she had a letter from her doctor that enabled her to undergo a specialist breast test at a polyclinic. The complainant was informed by telephone that the test would cost 18 litas, but upon arrival it turned out that the letter was out of date and that she would have to pay more than 80 litas for the test.

It was established that there existed no legal time limitation for such letters, which in the opinion of the Ombudsman was not acceptable. Currently, oncological patients must wait three months for a doctor's consultation at the Oncological Institute.

Seimas Ombudsman Romas Valentukevičius noted that not a day should be wasted in treating oncological diseases due to their fast progression and after such a long period of waiting testing might be of no avail.

It should be pointed out that the Minister of Health responded quickly and sensitively to the recommendations of the Ombudsman and reported that in order to reduce waiting time at the oncological diagnostic polyclinic, quotas would be increased. With reference to the decision of the Ombudsman and different opinions of health care institutions, the Minister of Health formed a working group called "Preparation of projects for the validity of the letters for consultation with the specialist provided to the patients".

It should be noted that patients are filing more complaints about the negligent work of medical personnel. Patients start litigation in which they claim compensation for damages or seek the assistance of the Seimas Ombudsmen's Office after facing the indifference of doctors and administrators.

In order to ensure a higher quality of healthcare services, the problem mentioned by Seimas Ombudsman Romas Valentukevičius is the lack of publicity in discussing the failures or mistakes of doctors. It is often the case that even hospital staff avoids discussing painful incidents, and in the wider circle of specialists, failures and mistakes are not analysed systematically and taken as a lesson. On the contrary, they are not only repeated, but also become more frequent, and the financial and moral damage is becoming intolerable. Only a systematic approach to mistakes and undesirable incidents will enable identification of their causes and remedies. Yet on the national level there is no system for managing undesirable incidents in the healthcare field (registration, recording, analysis and prevention). Creation of such a system could reduce the number of mistakes and the grave incidents in the healthcare system and the damage caused to patients and would stop the growing hostility between society and the medical fraternity.

The European Convention for the Protection of Human Rights and Fundamental Freedoms establishes the right of each citizen to life protected by law. The Constitution of the Republic of Lithuania authorises the state to take care of the value inscribed in the Constitution – human health – and ensure medical aid and services in case of an illness. In January 2005, a new version of the Law of the Republic of Lithuania on the Rights of Patients and Compensation for the Damage to their Health came in to force. It regulates a provision of good quality healthcare services.

After research, the Ombudsman pointed out several times the issues to the Minister of Health and proposed that measures be taken to ensure that officials observe the requirements of legal acts. The chairman of the Health Affairs Committee of the Republic of Lithuania was asked to start a discussion about creation and implementation of a national mistake and undesirable incident prevention and management system.

It should be noted that the Committee of Health Affairs of the Republic of Lithuania responded efficiently to the proposal and Seimas Ombudsman Romas Valentukevičius was informed that according to his recommendations the State Medical Audit Inspectorate under the Ministry of Health would regulate the implementation of the Law of the Republic of Lithuania on the Rights of Patients and the Compensation for the Damage to their Health. The inspectorate will record, process and assess statistical data in this area. This also corresponds to a document, which was confirmed by the order of the Minister of Health and is about the procedure for monitoring the compulsory civil liability insurance of healthcare institutions for damages caused to patients. So far neither the Law on the Rights of Patients and Compensation for Damage to their Health nor other legal acts have identified any specific institution that controls appropriate implementation of this obligation.

#### COMPLAINTS REGARDING ACTS OF OFFICIALS OF THE MINISTRY OF ENVIRONMENT OF THE REPUBLIC OF LITHUANIA

The Constitution of the Republic of Lithuania establishes the principle of the rule of law, and among other requirements states that human rights and freedoms must be ensured and that all governing and other state institutions must abide by the rule of law. Since the Constitution of the Republic of Lithuania has supreme legal power, no legal act may contradict it.

Seimas Ombudsman Romas Valentukevičius investigated complaints submitted by the citizens of Palanga, who claimed that the newly designed scheme for forests of national importance prepared on the initiative of the Ministry of the Environment included land plots owned by these citizens into the plan scheduled as an area of purchase by the state. In the new scheme, these areas are marked as forest, thus violating both the right of ownership guaranteed by the Constitution and the principle of the rule of law. The complainants pointed out that upon confirmation of this scheme for the forests of national importance of Palanga, land owners and those who had the right to acquire vacant state plots in the specified forest would incur considerable losses.

#### Seimas Ombudsman Romas Valentukevičius concluded that the new Palanga scheme for the forests of national importance could not come into force backdated and include land plots that were intended for the purpose of restitution of property rights to land.

The Seimas Ombudsman discovered that some plot owners had already purchased the state land and registered it with the state land register whereas others were not allowed to purchase it because in the new scheme some part of the land was marked as state forestland.

Article 23 of the Constitution of the Republic of Lithuania stipulates that privately owned property is immune and may be acquired for the needs of society only in the manner prescribed by law and for fair compensation.

The Seimas Ombudsman concluded that the failure of the Government institutions to find a common language and act in unison created conflicting situations. It was therefore proposed to the Committee on Environment Protection at the Seimas of the Republic of Lithuania and the Minister of Justice of the Republic of Lithuania to address the problem raised and make a decision. The Committee on Environment Protection at the Seimas of the Republic of Lithuania supported recommendations of Seimas Ombudsman Romas Valentukevičius. A special working group established by the Government was delegated to investigate whether current legal acts provide legal ground for restitution of ownership rights in Palanga and other towns and cities. The working group concluded that there is no legal ground for restitution of ownership rights to land plots in towns and city areas if the land plots, according to provisions of the Forest Law, are recognised as forestland.

The Constitution upholds the principle of equality, one of the basic elements of a democratic state.

Seimas Ombudsman Romas Valentukevičius investigated a complaint of the Federation of the Communities of Apartment Building Owners regarding double restrictions for the amount of state support specified in the Rules for U-Value Efficiency Identification and provided as part of investment and state support projects for the modernisation of apartment buildings, i.e. the state support amount was set at 30% of the sum of the investment project, but the support in cases when investment was partially paid could not exceed 65 litas per one square metre of a liveable area of the building.

The Ombudsman detected that the Government of the Republic of Lithuania approved the Renovation Programme of Apartment Buildings, which is aimed at implementing the housing strategy–ensuring efficient use, maintenance, renovation, and modernisation of current dwelling place, as well as rational consumption of energy resources. Under the Programme approved by the Government the integrated modernisation of apartment buildings is encouraged. It would ensure efficient energy consumption and lead to lower expenses for heating. Moreover, less money from the state budget would have to be allocated for compensations.

Seimas Ombudsman Romas Valentukevičius pointed out that in order to implement the Government-approved programme, state support could not be different for large and small buildings, regions or major cities. This would be a violation of the principle of equality. Any additional restrictions did not encourage citizens to renovate their homes but were actually the cause of a deeper conflict. Citizens did not trust the state, the chairmen of the housing communities, or even the banks, because they were thought to be looking for benefit at the expense of citizens.

The Ombudsman concluded that there is need to find a compromise in order to prevent violation of the principle of equality prescribed by the Constitution of the Republic of Lithuania and to implement the apartment building modernisation programme approved by the Government.

Seimas Ombudsman Romas Valentukevičius concluded that the problem raised by the Federation of the Communities of Apartment Building Owners was justified and that it had to be solved by way of changing both the Rules for U-Value Efficiency Identification and the Government support provision for modernisation of apartment buildings, namely, by revoking the second restriction in the provision of state support. The recommendations of Seimas Ombudsman Romas Valentukevičius were implemented.

#### COMPLAINTS REGARDING THE MINISTRY OF DEFENCE OF THE REPUBLIC OF LITHUANIA

The Ministry of Defence should be mentioned as an example of good public administration and efficient response to the problems raised by the Seimas Ombudsman.

A complaint was lodged with the Seimas Ombudsmen's Office by a soldier regarding unpaid travel expenses to Lithuania when returning for a vacation from the peace support mission in Kosovo and travel expenses for aoina back to the mission after vacation. Seimas Ombudsman Romas Valentukevičius reminded the Minister of Defence of the Republic of Lithuania about Clause 7 of Decision No. 694 as of 30 June 1997 of the Government of the Republic of Lithuania "On the service conditions and officer's salaries for the soldiers of the Republic of Lithuania serving in units taking part in international operations" that establishes reimbursement for soldiers serving in the units taking part in international operations. The money covers travel to the place of service and back as well as accommodation and travel expenses while going to Lithuania for vacation and later returning back to the place of service.

The Minister of Defence of the Republic of Lithuania informed the Seimas Ombudsman that the Ministry of Defence investigated the issue and made orders for reimbursement of travel expenses (return tickets, route Sofia–Warsaw) by plane on the basis of the travel documents submitted by the soldiers.

Two months later; however, a newspaper announced that despite the orders of the Minister of Defence of the Republic of Lithuania, the Lithuanian Armed Forces failed to reimburse expenses incurred by the soldiers, who had served in the peace support mission in the province of Kosovo, and went to Lithuania for vacation and later back to the place of service. On the basis of this information, Ombudsman Valentukevičius started an investigation on his own initiative.

The Ombudsman detected that the financial document for the sum of USD 3,195 was submitted to the officers of the Lithuanian Armed Forces by the soldiers, but three months after the Minister's order the sum claimed had not been reimbursed.

The actions of the officials were identified as an attempt to follow irrelevant procedures and delay the decision and were deemed bureaucratic according to Article 2 Part 1 of the Law on the Seimas Ombudsmen. In the opinion of the Seimas Ombudsman, the sum supported by the financial documents could have been divided into equal parts and paid back to the soldiers who served in the peace mission in the province of Kosovo and went for a vacation to Lithuania. This would have proved the good will of the Lithuanian Armed Forces and the appropriate attitude to its soldiers who deserve exceptional respect for taking part in dangerous missions. It is expected that reimbursement of at least a part of incurred expenses would have solved the conflict without causing unnecessary tension between the soldiers and the officers of the Lithuanian Armed Forces. Besides, when the authorities have such an attitude, it causes society to have a negative image of the army.

Seimas Ombudsman Romas Valentukevičius proposed the Commander of the Lithuanian Armed Forces to approach the company, which had sold airline tickets to the soldiers, for confirmation and documentary evidence of the remaining expenses and after receiving a positive answer without further delay to solve the problem of reimbursement of the expenses backed up by financial documents.

The Seimas Ombudsman was informed that the sum backed up by financial documents would be paid to the soldiers immediately, and for the remaining part of the sum, an application would be submitted to the Directorate General of the Civil Aviation Administration of the Republic of Bulgaria with the mediation of the Ministry of Foreign Affairs of the Republic of Lithuania.

#### PLANNED PRIORITIES OF ACTIVITY

To sum up, it should be pointed out that demands to the public sector have increased over the past years. Problems of citizens should be solved as efficiently as possible. The role of the private sector and its influence to the economic development of the country is also growing. The development of IT encourages demand for the enhancement of state administration and the quality of public services. Rapid changes in society call for modernisation of the activities of state institutions and agencies and the processes of public administration, so that they are efficient, accessible, and responsive to the ever changing environment. The development of various public sectors and creation of public welfare to a large extent will therefore depend on abilities of public institutions to respond to these challenges.

In order to achieve such aims, the activity of Seimas Ombudsman Romas Valentukevičius will be oriented towards closer cooperation with the officials of institutions under his supervision in order to find optimal and efficient ways of solving problems, analysis of legal acts in order to identify their shortcomings and deficiencies, and the provision of consultations to citizens.

The key priority of activity should be regular inspection of closed institutions where people are kept for 24 hours, monitoring such institutions both on the basis of complaints received and on the initiative of the Seimas Ombudsman and keeping track of the funding for reconstruction and renovation of closed institutions in order to ensure that conditions in those institutions do not degrade human dignity. More attention will also be paid to education of citizens and officials.

# ACTIVITY REPORT OF SEIMAS OMBUDSMAN ALBINA RADZEVIČIŪTĖ

During the reporting period (1 January 2006 – 31 December 2006), 433 complaints were received by Seimas Ombudsman **Albina Radzevičiūtė.** 122 of them were rejected on the basis of Article 17 of the Law on the Seimas Ombudsmen and 322 complaints regarding possible abuse of office by officers, bureaucracy, and other violations of human rights and freedoms in the area of public administration were investigated.

#### VIOLATION OF THE RIGHTS OF CONVICTS AND PRE-TRIAL PRISONERS

During the reporting period 224 complaints investigated by Seimas Ombudsman Albina Radzevičiūtė were related to the activities of the Prison Department under the Ministry of Justice of the Republic of Lithuania (subsequently, the Prison Department) and bodies subordinate to that department. In respect to problems raised in the complaints, 323 decisions were made with 31 cases regarding abuse of office or bureaucracy recognised as justified, 188 cases dismissed, and 104 investigations terminated.

Investigating complaints and trying to get a better idea of the conditions of convicts and prisoners and how their rights and freedoms are ensured on the basis of the penal principles stipulated in the Code of Punishment Enforcement of the Republic of Lithuania, the European Prison Rules, the European Committee standards "For the prevention of torture and other cruel, inhuman or degrading treatment or punishment" and the traditions of good administration, Seimas Ombudsman Albina Radzevičiūtė visited Šiauliai Remand Establishment, Lukiškės Remand Establishment-Prison, the 2nd Vilnius Correction House and Marijampolė Correction House. During her visits, the Ombudsman met the administration of the establishments, staff, convicts, and prisoners and discussed the most recurrent and urgent problems.

During the visits and in the complaints investigated, the following were the main problems involved in ensuring the rights of the convicts and prisoners:

#### Insuring person's right to immunity of private life

The Seimas Ombudsman's Office received a complaint from a convict in the 3rd Pravieniškės Correction House

regarding his unjustified addition to a group of drug abusing convicts. During the investigation of the complaint, it was detected that the prisoners added to the register, which was initiated following the order of the director, were divided into two special groups and had to wear a blue identification strip on the right side of their chest. They also had to come and register at the checkpoint seven times a day and had no right to visit the living premises of all other convicts or common use areas. All other convicts had no right to visit the living premises or common use areas of the convicts whose names were on the list of drug abusers.

Seimas Ombudsman Albina Radzevičiūtė stated that the requirement to be part of the group of drug-abusing convicts, wear a special identification sign, and be divided into special groups violates the constitutional right of convicts to the immunity of private life. The Ombudsman proposed that the director of the 3<sup>rd</sup> Pravieniškės Correction House coordinate the provision of adding names to a register. with legal acts and ensure the right of convicts to the confidentiality of health-related information. The proposal was submitted to the Prison Department, which instructed heads of agencies under its supervision to change control (supervision) measures applied to the convicts who tend to use and distribute drugs and other psychotropic substances, alcoholic drinks, or surrogates, in order to avoid violations of person's right to the immunity of private life.

The proposal emphasises that it is essential to ensure the right of drug and alcohol abusers at correction establishments to the confidentiality of health-related information and take more active measures to apply specialised programs for treatment, rehabilitation and education of convicts abusing drugs. Administrations of penitentiaries should work more efficiently to prevent the delivery of drugs into such establishments. Social workers and specialists working in the healthcare service at the detention establishments should apply specialised treatment, rehabilitation and education programs more actively and not to limit their activities to isolation of convicts who are drug addicts and treat them as violators of discipline.

### • Ensuring non-smoking convicts' and prisoners' right to health protection

In 2006, the Seimas Ombudsman's Office received several complaints from convicts and prisoners who complained that they had to share cells with people who smoke.

During the investigation of a complaint from Lukiškės Remand Establishment-Prison, the administration of the establishment explained that under the Law on Pretrial Detention and internal rules of pre-trial detention establishments prisoners are not divided into smokers and non-smokers. Having the aforementioned in mind, there could have been people who smoke in the same cell with the one, who launched a complaint. The arguments provided by the administration, in the opinion of the Ombudsman, were not sufficient. First, Article 28 of the Constitution of the Republic of Lithuania stipulates that a person exercising his rights and using his freedoms must follow the Constitution and the laws and must not infringe rights and freedoms of other people. The same article of the Constitution establishes the limits of human behavior. This is one of the key principles stating that the legal behavior of a man is not unlimited or completely free.

It is also noteworthy that Article 53 of the Constitution of the Republic of Lithuania stipulates that the state takes care of people's health. This provision establishes the obligation of the state to provide conditions for each person to exercise the right to strengthen one's health. The state's guarantee established in the Constitution to protect people's health means that it has to ensure certain health protection and care standards for people and society.

Having assessed the practise of the European Court of Human Rights and the European Prison Rules with respect to the aforementioned, it was concluded that legal acts on penal practise and pre-trial detention did not prohibit convicts or prisoners in detention establishments from smoking or provide for the separation of smoking prisoners from non-smoking ones. It was thought that in order to ensure appropriate exercise of the main human rights and freedoms, legal regulation of this issue should be considered. As a result, Seimas Ombudsman Albina Radzevičiūtė contacted Director of the Prison Department Saulius Vitkūnas and the Minister of Justice of the Republic of Lithuania Petras Baguška and presented them a proposal to regulate the consumption of tobacco products in the detention establishments by legal acts.

#### The right of a convict to meet a cohabiter

Seimas Ombudsman Albina Radzevičiūtė investigated a complaint by a female convict from Panevėžys

Correction House regarding unjustified restriction to conjugal visits with her cohabiter as guaranteed by Article 94 of the Code of Punishment Enforcement.

During the investigation of the complaint an explanation was received from the administration of Panevėžys Correction House that according to Article 3.229 of the Civil Code of the Republic of Lithuania partners are a man and a woman who, after registering their partnership in the procedure laid down by the law, have cohabited for at least a year with the aim of creating family relations without having registered their union as a marriage. The director of the establishment emphasised that the provisions of Book Three, Chapter 15 of the Civil Code of the Republic of Lithuania regarding people living together but not legally married came into force at the moment the rules regulating registration of a partnership came into force. The director further explained that because of the fact that this law had not vet come into force, the complainant was not allowed to have a conjugal visit with her cohabiter

It should be pointed out that even though during the investigation of the complaint the Civil Code of the Republic of Lithuania was valid (coming into force on 1 January 2003), the law regulating the rules for registering partnerships was still absent. This means that the current legal acts do not make allowances for the concept of cohabiters. Despite this, the rules for meetings of prisoners with family members and other people are established by the Internal Rules of the Penitentiary Institutions, approved by Clause 102 of Order No. 194 of 2 July 2003 of the Minister of Justice of the Republic of Lithuania. The clause establishes that people who arrive to meet a convict must submit an identification document and a document confirming partnership, registered as prescribed by the law and identifying legal partnership with the convict.

It should be noted that Article 94 of the Code of Punishment Enforcement provides a possibility for the convict to meet a cohabiter, but not a person related through partnership relationships. According to the Seimas Ombudsman, the requirement stipulated in the Internal Rules of the Penitentiary Institutions to submit a document certifying that the partnership is registered as prescribed by the law is considered to be a case of an inappropriate legal regulation that denies a right guaranteed by the law.

Visits for convicts provide an essential possibility to maintain social relations with people outside the establishment. Correction establishments must provide conditions for convicts to reintegrate into society after serving a sentence. Another aim of a penal sentence is to reduce harmful influence that imprisonment brings to the individual and his social attitudes by increasing the convict's communication with the world outside the establishment.

Clause 24 of the European Prison Rules stipulates that convicts must be provided equal possibilities to communicate with their families and other people more often vialetters, by telephone, or during meetings. Such conditions for meetings must be provided so that convicts can maintain and develop family relations in a more traditional way. It is noteworthy that the analysis of this rule shows that the concept of the family must be interpreted more widely and should include communication with the person with whom the convict maintained a regular relationship before conviction even though the relationship has not been legally registered.

The European Court of Human Rights has also expressed support for spreading practise of European countries in provision of conjugal visits with convicts. The court has mentioned on several occasions that conviction and imprisonment of a person does not mean that he is deprived of the main rights and freedoms guaranteed by the convention. In addition, the court has repeatedly ruled that the concept of "family life" stipulated in Article 8 of the convention is not restricted to marital relationship, but may include other *de facto "family" relationships when the parties cohabit without official marriage registration.* 

Ombudsman Albina Radzevičiūtė contacted the Minister of Justice of the Republic of Lithuania Petras Baguška with a proposal to amend Clause 102 of the Internal Rules of the Penitentiary Institutions by eliminating the requirement to submit a document about a partnership registered as prescribed by the law and, instead, providing a legal regulation to ensure appropriate exercise of the right guaranteed by the law to a conjugal visit with a cohabiter.

It is worth noting that Order No. 1R-490 as of 29 December 2006 of the Minister of Justice "On the amendment of Order No. 194 of 2 July 2003 of the Minister of Justice 'On confirmation of the internal rules of penitentiaries" amended Clauses 102 and 114 regulating provision a conjugal visit with a cohabiter.

#### • The right to receive written information about one's rights and obligations in a language understood by an individual

A number of foreign nationals imprisoned in Lithuania is increasing. It is therefore important to ensure the right

to receive information about conditions of detention and about one's rights and obligations in a language understood by a foreign national. Article 13 Clause 1 (1) of the Law on Pre-trial Detention stipulates that those who have been detained (arrested) have the right to receive written information about rules and conditions at pre-trial detention establishments and about their rights and obligations. The equivalent provision is provided in Article 11 of the Code of Punishment Enforcement. Clause 3.1 of the European Prison Rules stipulates that upon imprisonment, if necessary, each prisoner must me informed verbally and in writing about detention conditions and rights and obligations in a language understood by a prisoner.

The aim of all these regulations is the provision of information to a convict or a prisoner in a language and a form that would enable him to understand the contents.

The investigation of a complaint regarding the violation of rights of a Belgium citizen detained at Šiauliai Remand Establishment revealed that the prisoner, on the day of his arrival to the establishment, did not receive any written or verbal information about his rights, obligations, or conditions of detention in a language he could understand. It was also established that some detention establishments tended to hand out a brochure in Lithuanian, whereas the information in a language the person understood was given verbally. Such practice is considered flawed. Cells and areas of common use in remand establishments have notice boards that contain information about detention conditions and rights and obligations of prisoners in the Lithuanian language. Ombudsman Albina Radzevičiūtė emphasised that people who did not understand messages in the Lithuanian language found it even more difficult to adapt at the detention establishments. Therefore, a brochure in the Lithuanian language and a single verbal explanation were not sufficient measures. Legal acts establish the right to receive written information a prisoner could study carefully and thus avoid violations of discipline and know his rights. For that reason, such information must be provided.

#### Overcrowding of remand establishments

The problem of overcrowding of remandestablishments in the reporting year remains as important as it was in the previous year and is the cause of many violations of prisoners' rights.

The Seimas Ombudsmen's Office received many complaints during the reporting period concerning bad conditions at the remand establishments. One case should be mentioned in which in the attempt to solve the problem of overcrowding a prisoner was transferred from Šiauliai Remand Establishment-Prison to Lukiškės Remand Establishment-Prison.

The complainant was transferred to Lukiškės Remand Establishment-Prison on the basis of a letter from the Prison Department, which proposed to solve the problem of overcrowding at Šiauliai Remand Establishment and ensure minimal detention conditions stipulated in legal acts for people in remand establishments by transferring a group of prisoners to Lukiškės Remand Establishment-Prison.

During the investigation of the complaint, the administration of Lukiškės Remand Establishment-Prison could not specify how many people were detained in the same cell as the complainant, yet from the complaint lodged it was clear that he was detained in cell No. 317, which had a total floor space of 7.45 square metres, together with four other prisoners. This means that at the time the space in the cell per person was 1.5 square i.e. 3.5 square metres less than it is set in the hygienic requirements and more than 2 square metres less than in Šiauliai Remand Establishment where the prisoner was detained before his transfer to Lukiškės Remand Establishment-Prison.

In the opinion of Ombudsman Albina Radzevičiūtė, the aim of ensuring minimal detention conditions stipulated in legal acts was not achieved neither in Šiauliai Remand Establishment nor Lukiškės Remand Establishment-Prison. Due to failure to consider the overcrowding of Lukiškės Remand Establishment-Prison, the complainant was not provided with minimal detention conditions. Furthermore, the conditions deteriorated considerably in comparison to those in Šiauliai Remand Establishment.

Seimas Ombudsman Albina Radzevičiūtė informed the director of the Prison Department that any attempt of the department to ensure proper conditions for prisoners should be balanced and should not result in the deterioration of the conditions for some prisoners.

#### ASSESSMENT OF THE WORK OF INSTITUTIONS IN RESPECT TO DEFENDING THE HUMAN RIGHT TO GOOD PUBLIC ADMINISTRATION

In 2006, Seimas Ombudsman Albina Radzevičiūtė made 161 decisions about the complaints concerning violation of the right to good public administration: 59 of the complaints were found justified, 67 were dismissed as unjustified, and in 35 cases investigation was terminated. During the reporting period, cases of inappropriate public administration were established in the Ministry of Social Security and Labour, the State Social Insurance Fund Board, the National Paying Agency under the Ministry of Agriculture, the Department of Cultural Heritage under the Ministry of Culture, the National Land Service under the Ministry of the Economy, the State Consumer Rights Protection Authority under the Ministry of Justice, the State Non Food Products Inspectorate under the Ministry of the Economy, the State Food and Veterinary Service, the Ministry of Justice, the Prison Department under the Ministry of Justice, and Šiauliai Remand Establishment.

It should be noted that the majority of complaints concerning violations of the Law on Public Administration were concerning failure of the state governing and executive bodies to reply or reply on time to complaints and requests. It is identified that such cases constitute major violations of provisions of Clauses 19 and 28 of the Law on Public Administration, which stipulate the obligation of each institution of public administration to accept requests from people and investigate them according to the jurisdiction of the institution. The law establishes that the investigation of a request shall not exceed 30 days, unless otherwise established by the laws. In reply to violations of public administration detected by the Seimas Ombudsman, rights of complainants were reinstituted by sending replies to their requests or imposing more strict control concerning compliance with provisions of this law.

Article 41 of the EU Charter of Fundamental Rights stipulates that the right to good administration includes the obligation of each institution of the European Union or administration of an agency to justify their decisions. This provision is specified in detail in Article 18 of the European Code of Good Administrative Behaviour approved by the European Parliament. It states that causes for each administrative decision that may have a negative impact on the rights and interests of a private individual must be explained and relevant facts and the legal basis for the decision must be included. Article 19 of the code establishes that if the decision that may have a negative impact on the rights and interests of a private individual is made by an institution, it should be informed about the possibilities to appeal against the decision, including the type of legal means and institutions that may be approached and possible terms of the appeal. The investigation of complaints showed that not all institutions comply with this requirement stipulated in the Law on Public Administration.

The investigation of complaints revealed frequent violations of administrative procedures. Part 1 of Article

16 of the Law on Public Administration establishes that the administrative procedure includes compulsory actions performed by administrative subjects when investigating a request (an application, information placed in the media or an application by a civil servant) and making a decision.

The investigation of complaints during the period of the report revealed frequent violations of the right to receive information from bodies of public administration. During the investigation of complaints regarding the violation of the right to receive information, it was noted that causes for the decisions of state and municipal officials had to be clear and transparent, and the information about the causes had to be accessible. According to Article 25, Part 2 of the Constitution, a man must not be prevented inter alia from seeking and getting information, and according to Part 3 of the same article the right to receive information cannot be limited in any other way than by the law if it is required for the protection of human health, honour and dignity, private life, morals, or the defence of the constitutional system.

#### ASSESSMENT OF THE WORK OF INSTITUTIONS OF SOCIAL PROTECTION AND PROTECTION OF SOCIAL RIGHTS

It is noteworthy that during the reporting period the complaints concerning the right to social protection stood at 6.9% of all complaints investigated by Seimas Ombudsman Albina Radzevičiūtė. The rather small number of such complaints is thought to be a reflection of the improvement in the attitude towards an area of human rights traditionally assessed negatively. This situation may be attributed to the general improvement in the socio-economic situation in Lithuania. An analysis of complaints uncovered many problems yet to be addressed in this area, however.

The investigation of complaints in 2006 regarding the actions of officials of the Ministry of Social Security and Labour enabled the ombudsman to make 18 decisions. Fifty-one decisions were made in respect to complaints lodged against the legality of actions of officials of the State Social Insurance Fund Board under the Ministry of Social Security and Labour and its local units. Most frequently the complaints concerned the accuracy of calculating state social insurance pensions such as retirement pensions, work disablement (disability) indemnities, widow's or orphan's pensions as well as casualty pensions. The Seimas Ombudsman was asked to recalculate a pension or a benefit and to instruct the

local unit of the State Social Insurance Fund Board to include the periods of employment over which a dispute occurred concerning the total length of the social insurance period or resolve the dispute regarding the amount of social insurance and the insured income or income equivalent to the insured income, etc.

It is noteworthy that the Seimas Ombudsman is not authorised to perform calculations (recalculations) of pensions or benefits or make decisions regarding awards or payment of such pensions or benefits. According to the provisions of Articles 29 and 31 of the Law on State Social Insurance of the Republic of Lithuania, state social insurance pensions and benefits are allocated, calculated and paid by local units of the State Social Insurance Fund Board and monitored by the State Social Insurance Fund Board. Appeals may be lodged against the decisions of the State Social Insurance Fund Board and its local units in court.

It should be noted that according to Article 37, Part 8 of the Law on State Social Insurance of the Republic of Lithuania, any disputes concerning the length of the period of social insurance or the amount of income insured or income equivalent to the insured income must be resolved by a court.

Having collected all the required evidence and identified the circumstances, the Seimas Ombudsman provides only a legal assessment of the official's activity, i.e. the ombudsman assesses whether the official whose actions are complained about (according to Article 2 of the Law on Seimas Ombudsmen) performs actions that contradict legal regulations and makes decisions within his jurisdiction. It falls outside the jurisdiction of the Seimas Ombudsman to investigate the circumstances specified in the complaint from medical, economic, engineering, financial, or other point of view that requires the expertise of a specialist.

With respect to the specified circumstances, the complainants are informed about the appeal procedure or procedure for resolving disputes.

It should be pointed out that according to Article 19, Part 1, Clause 21 of the Law on the Seimas Ombudsmen, an ombudsman does not investigate a complaint in detail that falls outside his jurisdiction, although he may submit proposals and comments to proper institutions and agencies regarding improvement of public administration to ensure that human rights and freedoms are not violated.

The investigation of the complaints concerning the actions of the aforementioned institutions showed that the most frequent violations of the requirements

occurred in cases of individual administrative decisions. The decisions made with respect to applications were not supported with either facts identified or regulations of legal acts, and usually are limited to merely specifying the legal acts. The decisions did not clearly state the rights and obligations available, and no explanations of the appeal procedure were included. The applicants therefore had a reason to think that their social rights had been violated.

In view of these considerations, Seimas Ombudsman Albina Radzevičiūtė made several recommendations (proposals) to the institutions that ensure social protection so that the interested parties would receive an appropriate decision, as well as detailed, qualified information and assistance.

It is noteworthy that the law as of 15 May 2001 passed by the Seimas of the Republic of Lithuania ratified the 1996 European Social Charter (revised) and declared that the Republic of Lithuania would follow regulations specified in articles and clauses of part two of the charter.

Article 13, Part 1, Clause 3 of the European Social Charter (revised) declares that in order to ensure the effective exercise of the right to social and medical assistance, the Parties undertake to ensure that everyone may receive by appropriate public or private services such advice and personal help as may be required, to prevent, to remove, or to alleviate personal or family needs.

As in previous year, investigation of complaints regarding possible violations of social rights was terminated by the Ombudsman if during the investigation or the problems addressed in the complaint were eliminated or resolved in good will through the mediation of the Seimas Ombudsman. i.e. after receiving a notification from the Ombudsman regarding possible violation of an applicant's rights, officials took immediate action in order to solve the problem. One complaint from Vilnius should be mentioned. Because of the fault of an official from the local unit of the State Social Insurance Fund Board (i.e. a mistake made in payment of the state social insurance orphan's pension) the complainant lost the right prescribed by law to a care allowance. The investigation of the complaint by Ombudsman Albina Radzevičiūtė and her subsequent appeal to the respective institution resulted in an acknowledgement of the mistake made by the official of the local unit of the State Social Insurance Fund Board and reimbursement for the material loss incurred due to the actions of the official.

### • Evidence of criminal acts and possible violation of public interest detected

It is worth noting that on the basis of Article 19, Part 1, Clauses 7, 12 and 16 of the Law on the Seimas Ombudsmen of the Republic of Lithuania, an ombudsman has the right to inform the Seimas of the Republic of Lithuania, the Government and other state institutions and agencies on the gross violations of law detected while carrying out his duties. And if evidence of a criminal act is detected, he also has the right to pass the information to pretrial investigation agencies or the prosecutor and suggest that the prosecutor take the case to court as prescribed by the laws regarding protection of the public interest.

Complaints were received by the Seimas Ombudsmen's Office regarding the legitimacy of actions of the officials of local units of the State Social Insurance Fund Board in refusing to pay the state casualty pensions for a period of 12 months. The applicants specified three people who were paid such benefit for a period of 12 months.

The investigation disclosed that Radviliškis, Vilnius and Trakai units of the State Social Insurance Fund Board applied incorrectly provisions of Article 41, Part 1 of the Law on Pensions and unjustifiably paid larger sums of state benefits to the persons specified over the period of 12 months, i.e. those benefits were awarded starting from an earlier date than the document giving entitlement to the benefit provided. It should be noted that the complainant submitted applications for the award of the benefits not with delay, but at the time when the right to such benefit was established.

The assessment of circumstances by Seimas Ombudsman Albina Radzevičiūtė made her conclude that there could have been more cases of unjustified payments of benefits at the local units of the State Social Insurance Fund Board than those disclosed during the investigation, which could have resulted in considerable losses for the state budget.

Having assessed the circumstances and suspecting possible wasting of state budget funds, the ombudsman decided to submit a notification about the investigation to the National Audit Office of the Republic of Lithuania and the Prosecution Service of the Republic of Lithuania.

#### **PROTECTING CONSUMER RIGHTS**

The protection of consumer rights is one of the key areas of the national socio-economic policy. Article 46, Part 5 of the Constitution of the Republic of Lithuania stipulates that the state defends consumer interests.

Article 3, Part 1 of the Law on Consumer Protection of the Republic of Lithuania (a new version of the law came into force on 1 March 2007) establishes that consumers have the right to acquire and use goods and services at their discretion, acquire quality and safe goods and services, and receive correct information about the goods and services and information about exercising and protecting their rights. It also establishes that consumers have the right to protect and recover losses when those rights have been violated, that they are entitled to state and municipal support when defending their rights, and that they have the right to join consumer organisations freely and to receive education in the area of consumption.

The national consumer rights protection policy is implemented by the National Consumer Rights Protection Board under the Ministry of Justice (subsequently the Consumer Rights Protection Board), which coordinates activities of other state institutions protecting consumer rights in Lithuania.

Seimas Ombudsman Albina Radzevičiūtė investigated complaints regarding possible abuse of office and bureaucracy of the officials of the institutions protecting consumer rights. The Ombudsman first of all tried to disclose whether the institution approached by an applicant performed all the actions in its power to ensure the applicant's right to receive correct and detailed information about the exercise and protection of his rights as a consumer and whether the rights that were violated were efficiently defended at pre-trial investigation institutions.

During the reporting period, complaints were investigated concerning the actions of the officials of the Consumer Rights Protection Board, the State Food and Veterinary Service under the Government of the Republic of Lithuania, the State Energy Inspectorate under the Ministry of Economy (subsequently the State Energy Inspectorate) and the State Non Food Products Inspectorate under the Ministry of the Economy (subsequently the State Non Food Products Inspectorate). Investigation of the complaints submitted in respect to actions of these institutions led Seimas Ombudsman Albina Radzevičiūtė make 21 decisions within the period of this report.

# MONITOR OF BAILIFF'S AND NOTARY'S ACTIONS

On the basis of provisions of the Law on the Seimas Ombudsmen, the ombudsmen are authorised to investigate the activities of civil servants.

During the reporting period, 34 decisions were made on the basis of complaints about the actions of bailiffs. Two groups of complaint causes for the complaints that make people contact the Seimas Ombudsmen's Office could be identified. These are complaints regarding insufficient information about the constituent parts of expenses incurred as a result of implementation of certain decisions and complaints regarding recovery of debts from sums that following the law should not be a subject for recovery.

Some complaints were about improper service or information provided by bailiffs and lack of explanations provided to the complainant, but investigation revealed that many complaints were related to bailiffs' procedural actions, the validity of which could be identified only by way of court procedure.

Some of the most frequent procedural actions of bailiffs complained about the recovery of funds. calculation of expenses for certain procedures, and recovery of such expenses. Seimas Ombudsman Albina Radzevičiūtė investigated a complaint regarding debt recovery carried out by a bailiff. The bailiff tried to recover the debt from complainant's social benefit. The Ombudsman investigated whether the Ministry of Justice of the Republic of Lithuania was effectively monitoring the work and financial activities of bailiffs and ensuring that these activities allow appropriate exercise of human rights and freedoms and protect legal interests. After the completion of the investigation, Ombudsman Albina Radzevičiūtė came to a conclusion that the practice of bailiffs to collect sums from sources of income that according to the law are not subject to debt collection and explain that action by stating that the debtor asked and agreed to it was not justified.

The investigation of a complaint about the failure to receive a reply to a request sent to a bailiff made the ombudsman conclude that the bailiff's writ and the procedure of accepting the writ stipulated in Article 613 of the Code of Civil Procedure of the Republic of Lithuania did not establish investigation of any questions arising in the process of carrying out the procedure or terms of accepting the writ. As a result it was concluded that the absence of a defined term for accepting the bailiff's writ in some cases might cause violation of the parties' interests. On the basis of the investigation of the complaint mentioned above, Seimas Ombudsman Albina Radzevičiūtė recommended that the Ministry of Justice of the Republic of Lithuania assess the regulations of the Code of Civil Procedure of the Republic of Lithuania and prepare a project to amend Clause 613 of the Code of Civil Procedure to establish the terms for accepting a bailiff's writ.

During the reporting period, Ombudsman Albina Radzevičiūtė made six decisions related to complaints about the activities of notaries. It should be noted that unlike the regulation of the activities of private bailiffs, who have carried out certain state functions only since 1 January 2003, the regulation of the activities of notaries, who also carry out certain state functions, is little, but clear, and the practice is quite common.

The complaints received by the ombudsman were mostly concerning the refusal of notaries to perform certain notarial acts, to provide documents in cases of inheritance, or to provide a written reply to the enquiry of an interested party.

#### COMPLAINTS REGARDING THE REAL PROPERTY REGISTER AND THE ADMINISTRATION OF THE REAL PROPERTY REGISTER

During the reporting period, Seimas Ombudsman Albina Radzevičiūtė made 24 decisions regarding actions of the officials of the State Enterprise Centre of Registers and its local units. Five complaints were found to be justified, seven were dismissed as unjustified, and in 12 cases the investigation was terminated.

The complaints are mostly about the employees of the Centre of Registers and its local units: their negligence, bad quality of service, incorrect calculation of the service fees and illegal (unjustified) or incorrect registration of real property data.

Article 3, Clause 3 of the Law on Real Property Cadastre stipulates that entering real property data into the real property cadastre is considered a registration of the real property in the Real Property Register. Article 4, Part 2 stipulates that the cadastre manager is responsible as prescribed by the law for the compliance of the registered data with the documents on the basis of which the entry was made in the register and for the security of the documents. After an investigation, the Seimas Ombudsman concluded that information

provided to the complainant by the Kaunas branch of the State Enterprise Centre of Registers about the premises owned by the complainant was misleading and that the data available at the Real Property Register was not backed by documents. The Ombudsman established violation of human rights and acknowledged that the actions of the employees of Kaunas branch of the State Enterprise Centre of Registers were bureaucratic.

The chief function of the public register is to publicise information about items, ownership of items and legal facts related to the items. Registration in the public register is an administrative procedure aimed at informing the participants in civil relationships about the most important objects of real property and their legal status, thus providing for stable civillegal relationships and their development. Proper functioning of the register is important in ensuring the civil rights and legal interests of people. Article 4 of the Law on the Real Property Register of the Republic of Lithuania establishes the presumption that all the data registered in the Real Property Register from the day of their entry into the register are considered true and full until they are contested as prescribed by the law.

General analysis of the complaints about the actions of the officials of the registers investigated by Seimas Ombudsman Albina Radzevičiūtė reveals that the complainants are not satisfied with the quality of services provided by the State Enterprise Centre of Registers. In the opinion of the Ombudsman, the manager of the registers must therefore improve administration.

#### PROBLEMS ARISING IN THE PROCESS OF PROVIDING SUPPORT TO FARMERS

The National Paying Agency under the Ministry of Agriculture is an object of public administration that administers state support to agriculture and rural development and European Union support funds for agriculture and rural development. The agency also arranges payment and control of the support.

During the reporting period, the major part of decisions made by Seimas Ombudsman Albina Radzevičiūtė concerning problems of complainants in the area of agriculture was related to the actions of the officials of the National Paying Agency under the Ministry of Agriculture. During the period of this report, this area became much more relevant to the complainants than it was in the previous reporting period. It is believed that increase in the number of complaints against the actions of the officials of the National Paying Agency under the Ministry of Agriculture was caused by real benefits received from support. It should be noted that the complaints concerned the validity of calculating direct payments by the National Paying Agency under the Ministry of Agriculture for agricultural holdings and crop areas, failure to pay, or refusal to pay. Some complainants pointed out that the National Paying Agency under the Ministry of Agriculture did not inform them about certain procedures performed and decisions made with respect to them.

The investigation of a complaint by a claimant about the decision by the National Paying Agency under the Ministry of Agriculture not to provide payment for agricultural holdings and crop areas, made the Ombudsman point out the right of the complainant to be asked about the disputed question before making a decision.

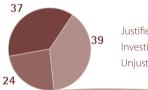
The Seimas Ombudsman emphasised that it was very important during an administrative procedure concerning the rights and interests of an individual to ensure the right of an individual to be heard and submit explanations at any stage of the decisionmaking process.

Even though the National Paying Agency under the Ministry of Agriculture is the only institution that has the right to administer and make decisions about making payments and performing the function of control, yet one of the complaints investigated by the Seimas Ombudsman showed that in the complex process of administering applications for direct payments for agricultural holdings and crop areas the rights of applicants might be violated, and support may not be provided due to the fault of other institutions, too.

### ACTIVITY REPORT OF SEIMAS OMBUDSMAN VIRGINIJA PILIPAVIČIENĖ

During the reporting period (1 January 2006 - 31 December 2006), Seimas Ombudsman Virginija Pilipavičienė received 283 complaints reaardina the actions of the officials that are monitored by this ombudsman. Seven investigations were started on the initiative of the Seimas Ombudsman following information provided in the mass media. The ombudsman investigated 299 complaints. Four hundred forty-seven decisions were made, 165 of which were considered justified, 173 were dismissed, and in case of 109 complaints the investigation was terminated. On the basis of the requirements of the Law on the Seimas Ombudsmen of the Republic of Lithuania, the Seimas Ombudsman rejected 56 complaints because investigation of the circumstances specified in the complaints fell outside the jurisdiction of the Seimas Ombudsman, the complaint about similar issue had been investigated or pending at court, a procedural decision was made to start a pre-trial investigation concerning the issue of the complaint, etc.

#### DISTRIBUTION OF THE COMPLAINTS INVESTI-GATED BY SEIMAS OMBUDSMAN VIRGINIJA PILIPAVIČIENĖ ACCORDING TO DECISIONS MADE



Justified complaints **37%** Investigation terminated **24%** Unjustified **39%** 

#### **ISSUES OF COMPLAINTS INVESTIGATED**

In 2006, complaints investigated in detail most frequently point to possible violations of the complainants' rights in the following areas of public administration: restoration of ownership rights to land, territorial planning, issue of construction permits, and state supervision of construction. Compared to the number of complaints investigated in the previous year, more complaints touched upon violations of administrative procedures and terms for the investigation of applications stipulated in the Law on Public Administration of the Republic of Lithuania and violations of the right to receive information from the state and municipal institutions.

#### **Ownership rights**

# Complaints regarding restoration of ownership rights to rural land

Restoration of ownership rights to land, which has been carried out since the restoration of Lithuanian independence, has not yet been completed. Resolution No. 767 as of 18 July 2006 passed by the Seimas of the Republic of Lithuania approved the programme of the Government of the Republic of Lithuania that foresees the completion of land reform by 31 December 2007 and restoration of the ownership rights of legal land owners. According to the data available at the administration of the Vilnius county governor, by 31 December 2006 ownership rights to the land in rural areas of Vilnius county have been restored to 84% (the country average is 95%) of the area specified in the applications.

Investigation of the complaints in 2006 showed that in the majority of Vilnius district cadastre areas, amendments to the land reform land survey plans have been published. Thus, the restoration of ownership rights was accelerated, but the complaints pointed out that as in previous years the problem was the delayed amendments to land reform land survey plans.

Reports made by the Seimas Ombudsmen have emphasised that the initial land reform land survey plans approved in 2000 were hastily made and of bad quality. Because of that, six-seven years after the approval of the projects, complaints are still lodged regarding unresolved issues or inappropriately resolved issues of restoration of land ownership. A large amount of such complaints were investigated in 2006. During the investigation of such complaints, it was identified that in the initial land survey plans despite sufficient state land being vacant and because of the inappropriate work of the people who prepared the project - the formed land plots were of lower value than required, therefore the ownership rights to the remaining value of the land would be restored at a later date. Preparation of bad quality projects is evident in cases when land plots were formed against the requirements prescribed by the law, on land subject to purchase by the state, yet later the land was

included in the fund of vacant land. Other equivalent plots during the preparation of the land reform land survey plans were formed in protected territories without any evidence in the file on the restoration of ownership rights that the candidate to the land lived in the area of the state park (protected territory) or that his or her spouse possessed a house (or part of it) in such a territory. Such illegal actions of officials gave citizens unfounded hopes to restore ownership rights to land in a certain area without any legal basis for such restoration. In order to fulfil his hope, the individual had to wait for another stage of the project. which took several years. The Seimas Ombudsman stated on several occasions that because of the poor quality work, interests and legal hopes of candidates to receive the land plot formed under the land reform land survey plans free of charge as prescribed in the law were violated. Several times the Ombudsman also drew the attention of the administration of Vilnius county governor to the existence of the problem and suggested that by amending the project or preparing a new project equivalent land plots could be formed for the citizens whose ownership rights during the preparation of the project were not restored due to the fault of officials, because resolving these issues and returning land to these citizens at later stages of the project reduces their possibilities to choose a land plot (there is less vacant land left or the land is forested, swampy, or covered with bushes). There have been cases in which the equivalent land plots were formed "in advance", i.e. without the decision regarding restoration of the ownership rights to the land, forest, or water body to the candidate, whereas another equivalent land plot was formed during the preparation of the project.

# Complaints regarding restoration of ownership rights to urban land

According to the data from the National Land Service under the Ministry of Agriculture, by 1 January 2007 the ownership rights to land in towns of Vilnius District were restored to 23% of the areas specified in applications (the country average is about 55%). As in previous years, the majority of the complaints received and investigated were about restoration of ownership rights to land in Vilnius. The citizens also complained about the process of restoration of ownership rights to land in towns of Grigiškės, Trakai and Lentvaris.

### Restoration of ownership rights to land in Vilnius city

An analysis of the investigation of complaints reveals that in the reporting period the most frequent violations were related to the establishment (mapping) of land plots to be returned in kind, the delay in making decisions about restoring ownership rights to land, and the unjustified allocation of land requested by the candidates to the category of state land for purchase.

During the investigation of the complaints, it was established that the employees of Vilnius Land Management Unit performed their functions prescribed by the laws inappropriately, i.e. they submitted the municipality of Vilnius insufficient and inaccurate information required to form land plots to be returned to the owners. It therefore took a long time to revise the information. After the required information was collected, the municipality would not perform its functions on time, and as a result, the mapping of land plots continued far too long. Because of this, Seimas Ombudsman Virginija Pilipavičienė several times identified cases in which officials were overly bureaucratic – delaying performance of tasks they were supposed to do and violating citizens' rights to good public administration in the process of restoration of ownership rights to land. After identification of the violations, the Ombudsman drew attention of the heads of the institutions to the problem and recommended ensuring that the functions prescribed to the institutions be carried out within the terms required by the law. It should be noted that because of the bureaucracy of the officials of the administration of Vilnius county governor and administration of Vilnius municipality, the failure to timely restore ownership rights to the land returned in kind and follow the proper procedure, many citizens suffered negative legal consequences. These citizens lost a possibility to restore ownership rights to the land in kind.

#### Restoration of ownership rights to land in Grigiškės town

During the investigation of the complaints, the Seimas Ombudsman was presented with a plan of Grigiškės (GIS data) that depicts vacant plots of land (with no buildings on them). These plots of land, according to Vilnius municipality, were attributed to general and recreational areas of the city and surrounding areas, yet the detailed plans for the plots were not prepared. Considering the provision about the allocation of property for public use (in this case allocating the land for purchase and not returning it in kind to the owners), a balance of the legal interests of society and its members should be sought. The absence of the detailed plan is not a sufficient basis to declare the land vacant (with no buildings on it) if society has a real interest in the land. As a result, Seimas Ombudsman Virginija Pilipavičienė recommended that the municipality administration should take immediate actions and solve the use of the vacant land (with no buildings on it) within the territory of Grigiškės where there are no detailed plans.

Regrettably, Vilnius municipal officials refused to resolve the question of restoring ownership rights to the candidates in Grigiškės due to municipality plans to confirm a general plan for Grigiškės by 2015 and only then resolve the question of restoring the land in kind.

### Restoration of ownership rights to land in Trakai town

According to information from the National Land Service under the Ministry of Agriculture, by 1 January 2007 Trakai was the only town in Vilnius district in which no candidate since the beginning of the land reform had his rights to the ownership of land restored by transferring another plot of land for the construction of a detached house.

During the reporting period, Seimas Ombudsman Virginija Pilipavičienė continued the research started by the former Ombudsman Rimantė Šalaševičiūtė about transfer of plots free of charge for the construction of detached houses, which took place in Trakai as a result of the restoration of ownership rights to land. It was detected during the investigation that Trakai District Council decision No. S1-81 as of 24 March 2005, "Regarding land plots for restoration of ownership rights of the citizens to the remaining real estate in the town of Trakai", decided to prepare a detailed plan of the land for restoration of ownership rights of the citizens to the remaining real estate in the town of Trakai. The plot of land was to be in the territory of the Royal Fields that belonged to the Karaite religious community. In order to prepare a detailed plan, partial amendment to the planning scheme of the Trakai Historical National Park was necessary.

The Directorate of the Trakai Historical National Park did not agree with the decision of the Trakai District government because the decision contradicted to a special country-wide plan – a park planning scheme approved by the resolution No. 912 as of 6 December 1993 of the Government of the Republic of Lithuania. In the opinion of the park directorate, the Trakai District Council unjustifiably planned to prepare a detailed plan of the territory that was a visual protection zone for cultural objects in the town. The aim of the zone is to protect historical open spaces of landscape from objects that could cause a negative visual impact. The directorate stated that the territory was very important in protecting former cultivated land called the Royal Fields and that new residential development in such a territory was both unforeseen and impossible.

The Directorate of the Trakai Historical National Park suggested that the Trakai District Council should form the land plots for restoration of ownership rights in the old town of Trakai, where according to the planning scheme of the Trakai Historical National Park approved by the resolution No. 912 as of 6 December 1993 of the Government of the Republic of Lithuania, "Regarding confirmation of planning scheme of the Trakai Historical National Park", the reconstruction of a developed area was planned. The Trakai District government; however, refused to form land plots in this territory, stating that this would eliminate green zones in town, squares, and land for general use.

In the opinion of Seimas Ombudsman Virginija Pilipavičienė, certain institutions (Trakai district municipality, the Ministry of Culture, and the Government) must seek ways and optimal solutions in order to solve the issue of the restoration of ownership rights to land in the town of Trakai.

It is good to hear that Trakai district municipality has prepared a detailed plan for the land plots allocated for restoration of ownership rights to land. The area, which is in Gediminas Street in Trakai, will contain 16 land plots. They will be transferred free of charge to candidates whose rights to the remaining real estate in the town of Trakai are to be restored. The detailed plan has currently been harmonized.

# THE RIGHT TO A SAFE AND CLEAN ENVIRONMENT

#### **Complaints regarding territorial planning**

According to the provisions of the Law on Local Self-Government of the Republic of Lithuania, territorial planning and implementation of a general plan and detailed plan of municipal territories are functions of local self-governments. During the reporting period, as in previous years, Seimas Ombudsman Virginija Pilipavičienė investigated quite a few complaints regarding the actions of Vilnius County local self-government officials who perform administrative functions in the territorial planning process.

In the report for 2005, the Seimas Ombudsman pointed out problems related to the right of landowners in Vilnius district to prepare detailed plans that involve changing the land use purpose from agricultural to some other. According to the provisions of the Law on Territorial Planning that came into force on 1 May 2004, such detailed plans can be prepared if the general plan and special plans of the area allow changing the use of the land. After these provisions of the law came into force, no private land detailed plans that relate to changing the land use purpose from agricultural to some other have been prepared by Vilnius district municipality. The main reason for this is that the general plan of Vilnius district has not been approved yet, even though preparation of the plan has been going on since 2001. If Vilnius general plan is approved by 31 December 2007, the procedure of changing the land use purpose will start only in 2008. This situation, in the opinion of Ombudsman Virginija Pilipavičienė, violates the rights of landowners and their justified expectations and does not encourage the social or economic development of Vilnius district.

During the reporting period, the Seimas Ombudsman investigated complaints regarding the actions of Vilnius municipal officials related to territorial detailed planning. Complaints revealed that the municipality of Vilnius issued conditions for preparation of construction projects and gave building permits without a detailed plan of the area where the construction (reconstruction) was to take place, stating that detailed plans of the areas approved in 1998 or even 1968 were sufficient. The Seimas Ombudsman recommended the municipal officials to ensure that in future the right of the municipality of Vilnius, established in the Law on Local Self-Government and other legal acts, to decide whether a detailed plan (or amendment to a plan) was needed in order to implement the intended activity programme should be based on ecological, cultural, geographical, and other peculiarities of a territory as well as the needs and interests of neighbouring inhabitants and real estate owners.

### Complaints regarding building permits and state supervision of construction

Complaints in this group show that Vilnius County and local self-government officials failed to comply with the Law on Construction of the Republic of Lithuania and bylaws that regulate construction process. The complaints are about failure of officials whose function was to perform state supervision to respond to reports about illegal construction, reconstruction, and renovation violating requirements specified in technical documentation of a building. Local government officials are blamed for approving construction projects with no grounds to do so and issuing building permits illegally. It should be noted that these complaints were received from individuals who were of the opinion that the construction of the building violated their interests as private individuals or violated the public interest. Investigation of such complaints enabled the Ombudsman to identify cases when local government officials refused to issue conditions for preparation of a construction project without justified reasons.

The complaint investigation practise shows that the problem of construction is more acute in the territories adjacent to bodies of water. Construction work carried out in such locations usually involves damage to the banks of the water bodies. In addition, trees are cut and top soil is destroyed, causing damage to nature. After investigation of one of such complaints Seimas Ombudsman Virginija Pilipavičienė drew the attention of Lithuanian Prime Minister Algirdas Brazauskas to the specified deficiencies of the regulation and the implementation of the regulation on construction work carried out in the protected zones of water bodies as specified in "Special conditions for land and forest use" approved by order No. 343 (and later revisions) as of 12 May 1992 of the Government of the Republic of Lithuania. Following the instruction of the Prime Minister, the Ministry of the Environment investigated the issue raised by the Seimas Ombudsman and informed her that the Ministry was planning to prepare and submit the Government of the Republic of Lithuania a proposal to amend Chapter 29, "Protection zones of water bodies" of the "Special conditions for land and forest use" approved by resolution No. 343 as of 12 May 1992 of the Government of the Republic of Lithuania.

The investigation of complaints revealed cases when the State Supervision Department of Territorial Planning and Construction of Vilnius County, as the institution responsible for state supervision of construction in the county, possessed information about possible construction violations, but did not record it, stop the construction process, or impose penalties on a builder. The inactivity of the officials was assessed as bureaucracy by the Seimas Ombudsman.

# THE RIGHT TO GOOD PUBLIC ADMINISTRATION

### Complaints regarding violation of the Law on Public Administration

The main legal act that regulates the procedure of handling peoples' applications is the Law on Public Administration of the Republic of Lithuania. According to the provisions of the law (the version valid till 01.01.2007) each institution of public administration has to accept an application of a person and handle it according to its jurisdiction. Since statutory rules establish a right of a complainant to fair and impartial investigation of applications, the institutions of public administration are obliged to investigate each request thoroughly and completely and reply to all issues raised in the application. The reply to the applicant must be backed by facts and statutory regulations, the decisions must clearly state rights and obligations and specify the procedure of appeal. This law also establishes that the investigation may not exceed 30 days. During the investigation, the Ombudsman identified many cases when institutions did not follow the requirements of this law. The applicants are given provisions of legal acts related to the facts identified, but they do not receive a reply to the guestions or not all the guestions are answered. In addition, replies are submitted with delay or not submitted at all, which makes the applicant approach the institution again or apply to a superior institution.

# Complaints regarding violations of the right to receive information and participate in approving the acts of administrative regulation

One more group of complaints investigated by Seimas Ombudsman Virginija Pilipavičienė during the reporting period includes complaints regarding the right to receive information from state and local selfgovernment institutions. It is regrettable when in the course of the work of the Seimas Ombudsman such cases are revealed in which institutions on no legal grounds refuse to submit information about their work or other information directly related to exercise of an individual's rights and interests; institutions do not observe the terms for submitting a reply or submit insufficient information; and institutions do not explain to an applicant where to find the information if such information is not available to the institutions. Such violations unjustifiably restrict the individual's right to receive information and exercise his rights and restrict the right to good public administration.

A few comments about the exercise of the right to participate when local self-governments make decisions on administrative regulation. Article 33 of the Constitution of the Republic of Lithuania declares that citizens have the right to participate in self-government of the country directly or via democratically elected representatives. This constitutional imperative ensures the right of citizens to be active participants in public decision making and prescribes the procedure for exercising this right. The laws specify the constitutional provisions by establishing ways for citizens to participate in handling public matters, including participating in the approval of administrative regulations and decision-making of local self-government institutions. Besides other rights, the Law on Self-Government establishes the right of direct participation in the process of making decisions. The Law on Public Administration stipulates that public institutions are obligated to discuss administrative regulations. The provisions of this law also establish that public institutions must seek counsel with organisations representing public interests in specific areas, and in cases established by the law, they must consult with citizens when making decisions about administrative regulations related to general legal public interests or decisions important to a large part of the community. Even though complaints about restrictions on the right to participate in making decisions about administrative regulations are not numerous, considering the role of the exercise of such a right in a democratic state and assessing it as a necessary pre-condition for the development of civil society, such a right is always in the focus of the Seimas Ombudsman. This situation is clearly revealed by one investigation performed at the initiative of this Ombudsman. It was announced in the mass media that the local self-government had prepared a method for calculating fees for the administration of apartment buildings but was hiding it from the public. When based on this announcement the Seimas Ombudsman started an investigation of the possible violation of the right of citizens to participate in the preparation of administrative regulations, the local self-government publicly acknowledged this project and asked the citizens to familiarise themselves with it and provide comments and suggestions. Thus, during the investigation the problem was resolved and the Ombudsman's investigation was terminated. The Ombudsman also wanted to ensure that the right of citizens to participate in approving administrative regulations related to general legal public interests or decisions important to a large part of the community would not be violated by the local self-government in future. Using her right to make proposals regarding amendments to statutory acts that restrict human rights and freedoms, in her report on the investigation of the complaint, the Seimas Ombudsman proposed establishing the regulation that dictates the way local self-government councils make decisions and approve documents a procedure for making administrative decisions or obligatory public announcement of the projects. The Seimas Ombudsman was informed by local self-government officials that the guestion of making amendments to the regulation of the local self-government council activities by establishing the procedure for public announcement of the projects of legal acts would be solved. It is noteworthy that after the investigation performed by the Ombudsman, amendments were made to the Law on Local Self-Government. These amendments instructed local selfgovernment councils to announce decision-making projects on the local government website.

#### THE RIGHT TO SHELTER

### Complaints regarding administration of jointly used parts of apartment buildings

The Seimas Ombudsman was approached by the owners of apartments in Vilnius regarding the actions of the companies administering jointly used parts of apartment buildings.

Administrators of apartment buildings act on the basis of the rules of local self-government executive institutions. The key aim of the administrator is to implement the obligatory requirements stipulated in the laws of the Republic of Lithuania and other legal acts concerning the use and maintenance of jointly used parts of apartment buildings.

An analysis of the complaints led the Ombudsman to the conclusion that the owners of apartments most often complain about the maintenance and renovation work performed by the administrator on jointly used parts of the building and the legitimacy of the prices charged for such work. They also commonly express doubts about the transparency of the purchase of services from administrators and feel anger about maintenance and renovation work performed without the consent of the owners of the apartments of the building. Some complainants state that building administrators do not perform the work required in order to comply with the obligatory requirements for the use and maintenance of the building (e.g. no elevator is installed, no roof repair is carried out, etc.) or the work performed is not of good quality.

During the reporting period Ombudsman Pilipavičienė investigated a complaint about absence of an elevator in a building in which the elevator was set on fire seven years ago. The complaint stated that many elderly and disabled people as well as families with small children, who lived in the building, needed an elevator. The Seimas Ombudsman investigated the complaint and stated that a situation in which a multi-storeyed apartment building did not have an elevator for seven years violated the rights and interests of the owners of the multi-storeyed apartment building, who agreed to cover expenses for reconstruction of the elevator,

and that such management of the building did not comply with the obligatory requirements for the use and maintenance of the building. The ombudsman recommended that the director of administration of the Vilnius municipality instruct the administrator of the building to solve the problem of the reconstruction of the elevator. During the investigation of this complaint, the Seimas Ombudsman also drew attention to the fact that according to Article 13 of the Law on the Support of the Republic of Lithuania to Acquire or Rent a House and to Modernize Apartment Buildings the state provides support for the modernization of apartment buildings. Decision No. 686 as of 21 June 2005 of the Government of the Republic of Lithuania approved a new version of the apartment building modernization programme that foresees state support for modernization projects (whereby the state covers part of the investment) and for lowincome families (also people living alone). According to this programme, among the items included in the programme, overhaul and replacement of elevators is supported and money is allocated in the state budget. Only those owners of apartments and other premises in the apartment buildings who establish a cooperative or conclude a joint activity agreement are entitled to support, however. Local selfgovernments, including the municipality of Vilnius, also support modernization projects for apartment buildings and provide financial support for such projects (the housing programme "Renovation of your house — renovation of the city"), but only for those projects implemented by cooperatives. Thus neither the state not the municipality provides any support for those apartment buildings administered by the administrators appointed by local self-governments. This is despite the fact that the technical condition of such buildings is usually not satisfactory and many people who have a low income and cannot cover renovation expenses of engineering equipment live in such old buildings. Seimas Ombudsman Pilipavičienė addressed then Prime Minister Algirdas Brazauskas about the problem identified in the report and recommended to discuss the possibility of preparing a legal act establishing state (local self-government) support for the renovation and modernization of apartment buildings with no cooperatives or joint activity agreements and a compensation system to cover these expenses for low-income families (also people living alone) in the building. Even though the Ombudsman's recommendation to improve legal acts was disregarded, the problem raised in the complaint was solved, i.e. the elevator was installed in the buildina.

#### Seimas Ombudsman's recommendations

Article 4 of the Law on the Seimas Ombudsmen of the Republic of Lithuania lists principles for the activity of ombudsmen and establishes that the Seimas ombudsmen follow the constitutional provision that government institutions serve people and seek to ensure the right of each individual to good administration. While seeking such an aim during the reporting period, Seimas Ombudsman Pilipavičienė investigated complaints and detected violations of the right to good public administration and consequently provided 200 recommendations. The implementation of 130 of them was monitored by the Ombudsman. If a case of improper public administration was detected, the Ombudsman called the attention of officials to that and made proposals for solutions that failed to be put into action because of bureaucracy, i.e. to restore the violated rights of the citizens and as a result to solve the problems that were raised (145 recommendations). While submitting recommendations, this Seimas Ombudsman aimed to ensure that the officials of state and local self-government institutions under the ombudsman's area of responsibility would respect people and laws, eliminate violations and their consequences, and prevent the future occurrence of the violations that were identified

It should be noted that during the investigation of citizens' complaints, Ombudsman Pilipavičienė also aimed to find causes that were behind the violation of rights. In the event any deficiencies, contradictions or gaps that restricted human rights and freedoms in the law or legal acts were detected, the Ombudsman submitted recommendations to eliminate the regulatory deficiencies (some of the Ombudsman's recommendations have been described in the sections above).

Using her right as a mediator between the institutions of public administration and citizens, Seimas Ombudsman Virginija Pilipavičienė applied other means prescribed by the law to restore the violated rights of the citizens – she proposed that material damages be compensated, proposed that the prosecutor apply to court as prescribed by the law to defend the public interest, recommended that the Chief Commission of Official Ethics assess whether officials violated the Law on Adjustment of Public and Private Interests in Public Service, informed higherranking institutions about violations made by officials of lower-ranking institutions, etc. Seeking to ensure the implementation of recommendations submitted to local self-governments, the Ombudsman collaborated with the Government representative to Vilnius County.

Two year practice investigating complaints shows that some officials are not willing to solve the issues of responsibility of employees under them. For instance, in 2006 the Ombudsman submitted 15 recommendations to solve the isues of the responsibility of officials or assess their actions (inaction) that violated legal acts. Six of 15 recommendations were not implemented. It should also be observed that no moral or material damage tends to be compensated without a court order (three recommendations). The key reasons for the refusal to impose administrative penalties on officials who were the cause of violations were the expiry of the term to impose the penalty or that the person was no longer a public servant. In some cases penalties were not imposed or there was a refusal to assess the actions of the officials, contrary to the recommendation of the Ombudsman. It was suggested that the question of compensation for damages be solved in court. Even though the number of recommendations that were not implemented is not high and amounts to only about 15%, in the Ombudsman's opinion, this demonstrates that in certain cases officials lack the will to eliminate violations of citizens' rights detected by the Seimas Ombudsman in the area of public administration.

Summarising the results of the implementation of the Ombudsman's recommendations during the period of this report, over 85% of all her proposals were implemented in full or partially. The percentage of the recommendations implemented is slightly higher than in 2005. It is thought to be a good indicator and confirmation that the heads of institutions have more responsible attitude towards cases of improper public administration and violations of human rights disclosed by the Seimas Ombudsman during the investigation of complaints.

### ACTIVITY REPORT OF SEIMAS OMBUDSMAN AUGUSTINAS NORMANTAS

During the reporting period Seimas Ombudsman **Augustinas Normantas** received 252 complaints regarding possible abuse of office by officials, bureaucracy, or other violations of human rights and freedoms in the area of public administration.

After investigating 202 complaints in detail, the Ombudsman made 112 decisions to acknowledge complaints justified, 151 decisions to dismiss the complaint, and 75 decisions to terminate the investigation.

#### DISTRIBUTION OF COMPLAINTS INVESTIGATED IN DETAIL (01.01.2006–31.12.2006)



As in previous years, the majority of complaints received and investigated concerned Kaunas county governor's administration and the Kaunas municipality.

The analysis of the complaints according to topic shows that the majority of decisions were about possible violations of ownership rights. Such decisions stand at 65% of all the decisions made. Thirteen percent of decisions concerned the right to good public administration and safe and clean environment (42 and 46 decisions respectively).

Attention should be paid to the very high percentage of justified complaints regarding the right to good public administration: 30 out of 42 complaints investigated were found justified (72%) and only six complaints were dismissed (14%). The investigation of six complaints was terminated (14%).

The analysis of complaints about ownership rights shows that there are four main areas with the highest number of complaints: restoring ownership rights to land (24% or 59 decisions), management, use, handling and privatisation of state or municipal property (24% or 35 decisions), restoring ownership rights to land in the city (23% or 57 decisions), and restoring ownership rights to residential buildings and apartments (12% or 30 decisions).

Therefore, the following are the three main areas in which the number of complaints investigated is the largest:

- 1. Right of ownership;
- 2. Right to safe and clean environment:
- 3. Right to good public administration.

The three areas are further described in detail.

#### I. RIGHT OF OWNERSHIP

### 1. Restoring ownership rights to land in rural areas

During the reporting period, 59 decisions were made regarding officials' decisions concerning various issues of restoring ownership rights to land in rural areas. A summary of the complaints led to the conclusion that problems of restoring ownership rights to land in rural areas remain the same as they were in the previous reporting period. As in the previous year, people most frequently complained about the prolonged process of restoring ownership rights to land. They were dissatisfied because, in their opinion, officials for no justifiable reason refused to return the land in kind (in the former locations) and because not all the land was returned or it was in another location. It should be noted that in addition to complaints directly related to restoring ownership rights to land in rural areas, complaints regarding other issues of land management (22 complaints) and complaints regarding the marking of the borders of land plots (six complaints) should not be forgotten.

The Seimas Ombudsman received complaints regarding the long process of restoring ownership rights to land directly caused by the continuing preparation and implementation of the land management projects under the land reform. The people preparing land management projects and county officials were to be blamed in most cases, since they did not ensure good supervision of land management work related to the land reform. Furthermore, legal acts do not set a deadline for land reform work, and as a result the term is set by administrations of county governors. Attention should be paid to the shortage of land-surveyors, which is among the major causes for the prolonged preparation of land management projects under the land reform.

#### 2. Restoring ownership rights to urban land

Restoring ownership rights to land in a city is most urgent problem in Kaunas. Thirty complaints about restoration of ownership rights to land in a city were investigated by Ombudsman Normantas and 20 of them were regarding restoration of ownership rights to land in Kaunas.

It is often the lack of communication between the county and municipal officials that leads to failure in restoration of ownership rights to city land. In addition, in nearly all cases plot mapping terms set in legal acts are violated. The Kaunas municipality administration acknowledged this in letters to the Seimas Ombudsman. Officials of Kaunas municipality administration are saying that there is lack of employees and time to prepare plans on time.

The Seimas Ombudsman often has doubts regarding land, which is attributed to the land subject to purchase by the State in the land plots being claimed. According to legal acts, urban land subject to purchase by the State is supposed to be such land that is included in detailed plans. In court practise this provision is explained as follows: prior to allocating the land subject to purchase by the State, a detailed plan of the territory must be prepared within a reasonable period of time. The investigation of complaints shows that when the municipality administration of Kaunas provides information about vacant land plots it often attributes the land subject to purchase by the State on the basis of the general city plan. In addition the prolonged preparation of a detailed plan precludes the process of restoration of ownership rights. Without such a plan the amount of vacant land in a certain location is not clear.

The shortage of vacant land should of course be mentioned. Kaunas county governor's administration officially places information about the number of the candidates for land in Kaunas, but the amount of vacant land remains unclear because the municipality of Kaunas has not yet provided full information.

### 3. Management, use, handling and privatisation of state and municipal property

During the reporting period, Seimas Ombudsman Normantas investigated 35 complaints related to the management, use, handling and privatisation of state and municipal property. The majority of these complaints (24 complaints) involved the sale and purchase of state land, and six complaints concerned the rental of state land.

A large number of complaints concerning the sale of state land are related to the sale of land adjacent to buildings. Sometimes preparation of land plot plans is delayed or there are disagreements about the borders of the plot that is established.

# II. THE RIGHT TO SECURE AND ECOLOGICAL ENVIRONMENT

Some of the complaints investigated by Seimas Ombudsman Normantas involve possible violations of the right to a safe and clean environment. During the reporting period, the Seimas Ombudsman investigated 46 such complaints: 25 complaints were related to construction and 20 were connected to territorial planning.

As far as complaints about construction are concerned, violations regarding the issue of building permits should be mentioned. The complainants state that the procedure for the issue of building permits is complicated and long, and in order to get such a permit, it is necessary to approach many state and municipal institutions and agencies. The issue of building permits by using a "single window" principle would facilitate this process and reduce chances of possible abuse of power and mistakes.

As far as complaints about territorial planning are concerned, it should be noted that people most frequently complain about the preparation of detailed plans. Complainants are usually not those for whom the plan is to be prepared but other interested parties, e.g. neighbours. In such complaints, people most frequently insist that the detailed plan is prepared illegally, that the surrounding residents were not informed about it, etc. Many complaints about the preparation of the detailed plan are lodged after the confirmation of the plan. In such cases, the Ombudsman suggests that the complainants take the matter to the court.

# III. THE RIGHT TO GOOD PUBLIC ADMINISTRATION

During the reporting period, the complaints investigated by the Ombudsman were predominantly concerning the provision of the Law on Public Administration stipulating that the investigation of applications must not exceed 30 days, unless the law states otherwise. Officials also did not observe the provision of the Law on the Right to Receive Information from State and Municipal Institutions, which stipulates that any state of municipal institution or agency must submit documents or information that it requested to an applicant no later than 20 days after an application is filed. There were even cases when applicants did not receive any replies.

People often complain that they were not provided a detailed answer or that certain questions were not answered. The conclusion may be made that institutions of public administration still in many cases prepare replies inattentively or even negligibly. This is also considered a violation of the right to good public administration.

State and municipal institutions are often accused of not solving problems thoroughly and just "writing back" to the applicant. This attitude towards institutions of public administration may be changed if institutions start working efficiently, trying to solve the problem in any way possible and as soon as possible. If the institution cannot solve the problem, it should clearly state what a person should do and where to apply next.

The Seimas Ombudsman often comes across the aforementioned violations of legal acts regulating public administration. For complaints to be examined precisely and thoroughly, he has to approach various institutions, and there are cases when institutions reply to the Ombudsman after a period of nearly two months or the reply is not detailed enough or not connected with the questions asked.

Thus, if even the Seimas Ombudsman sometimes has problems getting information on time, it is even more difficult for ordinary citizens to do so. This shows the disrespect of the officials of some institutions both for the applicant and the state.

#### IV. PROPOSALS (RECOMMENDATIONS) OF THE SEIMAS OMBUDSMAN

The provisions of the Law on the Seimas Ombudsmen of the Republic of Lithuania stipulate that the ombudsman performing an investigation makes a decision concerning the complaint investigated and provides proposals (recommendations) for institutions, agencies and officials.

During the reporting period, Seimas Ombudsman Augustinas Normantas submitted various proposals to institutions and officials. In most cases, the Ombudsman attempted to draw the attention of officials to negligence, violations of the law, violations of official ethics, abuse of office, bureaucracy, and violations of human rights and freedoms and proposed ways to eliminate legal violations and causes and conditions for these violations (79 proposals) or proposed that a collegial institution or official repeal, suspend or amend, according to the procedure prescribed by the law, those decisions that contradict the law and recommend the approval of decisions that have not been approved about abuse of office and bureaucracy (36 proposals). The Seimas Ombudsman also recommended that disciplinary penalties be imposed on the officials who committed violations (five proposals), that a prosecutor applied to the court in order to protect public interest (two proposals). and that legal acts be changed if they violated human rights and freedoms (five proposals).

It should be noted that Article 20, Part 3 of the Law on the Seimas Ombudsmen stipulates the obligation of institutions, agencies and officials that receive the Ombudsman's proposals to inform the Ombudsman about the results of the investigation of the recommendations. During the reporting period, institutions, agencies and officials in most cases did implement the Ombudsman's recommendations and by doing this solved the problems raised by the complainants.

Special notice should be taken of the Ombudsman's recommendations regarding preparation of land plot plans for the candidates to land and preparation of detailed plans for the restoration of ownership rights to land in the municipality of Kaunas. Even though the Seimas Ombudsman, after investigating a complaint, detected that the preparation of land plot plans violated the law, the preparation of the plans has not accelerated, and as a result the process of restoring ownership rights to land cannot progress more rapidly.

Summing up the report of 2006 submitted to the Seimas of the Republic of Lithuania, the Seimas Ombudsman would like to note that very often during meetings with complainants it becomes clear that the good will alone of an official is sufficient to eliminate the problem. It is often enough to talk to people and explain their rights and obligations. This could be done better if each official was aware that his obligation is to serve people, i.e. to consistently protect the public interest and make decisions that would satisfy the demands of the majority of the population or at least would not cause artificial or senseless difficulties for citizens.

Aware of his role in protecting human rights, this Seimas Ombudsman has been striving and will strive to ensure that as officials carry out their functions they do not forget that they serve each of us.

### ACTIVITY REPORT OF SEIMAS OMBUDSMAN ZITA ZAMŽICKIENĖ

The protection of human rights must be ensured by state and municipal institutions, but these institutions do not always use the authority provided to them to reach their goals and implement their objectives. Therefore, conflicts arise between the institutions of public administration (officials) and individuals seeking to exercise their rights.

In order to exercise the right of an individual to good public administration, Seimas Ombudsman Zita Zamžickienė arranged appointments for citizens to meet with county and municipal officials. Such meetings are beneficial because county and municipal administrations under the Seimas Ombudsman's supervision are further from the capital city and it is difficult for the citizens to come to the office and communicate with the Ombudsman directly. After such appointments, round table meetings are organised during which the Ombudsman discusses the problems with the employees of the administrations and they together seek ways of solving them. Officials also share their own problems. Cooperation between the Seimas Ombudsman and the institutions is thus encouraged, contradicting the opinion that the Seimas Ombudsman is biased against governmental institutions.

In 2006, Seimas Ombudsman Zita Zamžickienė investigated 246 complaints: 177 were found to be justified, 237 were dismissed, and in 169 cases the investigation was terminated.

According to Article 22, Part 1 of the Law on the Seimas Ombudsmen, having completed the investigation the Seimas Ombudsman has to make a decision to recognise the complaint as justified, dismiss the complaint, or terminate the investigation of the complaint, whereas according to Article 17, Part 1 of the Law on the Seimas Ombudsmen, the ombudsman has a right to reject a complaint.

It should be noted that the basis for the refusal to investigate a complaint and termination of the investigation is the same. **The ombudsman may refuse to investigate a complaint within 7 working days if one of the following is the case:** 

1) the ombudsman comes to the conclusion that the subject matter of the complaint is of little importance;

2) the complaint is submitted after the deadline set in Article 15 of the Law on the Seimas Ombudsmen;

3) the circumstances indicated in the complaint are outside the jurisdiction of the Seimas Ombudsman;

4) a complaint about the same issue has already been resolved or is pending in court;

5) a procedural decision has been taken to open pretrial investigation in respect to the subject matter of the complaint;

6) the Ombudsman comes to the conclusion on the expediency of investigating the complaint in another institution or agency.

**Termination of investigation of a complaint** takes place when the circumstances stipulated in Article 17, Part 1 of the Law on the Seimas Ombudsmen are identified. Also, if the circumstances that are the object of the complaint are eliminated or as a result of an ombudsman's mediation the problems raised in the complaint are resolved in good will (Article 22, Part 3 of the Law on the Seimas Ombudsmen).

During the period of this report, the termination of complaints most often took place when it was more viable to investigate the issues raised in the complaint in some other institution (31.5% of the complaints), for example, if during the investigation of a complaint concerning restoration of ownership right to land it is discovered that the land a citizen wishes to own belongs to another person, i.e. the land plot is registered in the Real Property Register. The solution to the problem raised in the complaint therefore has to be sought in court as prescribed by the Law on the Real Property Register of the Republic of Lithuania.

The Law on the Seimas Ombudsmen does not give an ombudsman the right to investigate complaints if a complaint about the same issue has already been resolved or is pending in court. There were cases when only during the investigation of a complaint it became clear that the court decisions regarding the same issue had already been passed or the case was pending in court. In view of these circumstances, the decision to terminate the investigation was made – 14.8% (of the total number of decisions to terminate the investigation). In 9.3% of the cases, the decision to terminate the investigation of a complaint was made when the Seimas Ombudsman mediated and the problems mentioned in the complaint were resolved in good will. It should be noted that the possibility to terminate a complaint after the problems are resolved with an ombudsman's mediation became possible when a revised version of the Law on the Seimas Ombudsmen was approved (25.11.2004). The provision in the Law enables a Seimas Ombudsman, as a mediator between administrative bodies and complainants, to solve problems more efficiently. Besides, it is also in the interests of the officials to solve the questions as soon as possible.

#### THE TOPICS OF THE COMPLAINTS

A comparison of the topics of complaints with respect to municipal and county governments and units subordinate to them over the past several years shows the urgency of the restoration of ownership right to land and land management to citizens. Many complaints were investigated concerning the right to good public administration, a safe and clean environment, and territorial planning.

It should be noted that 66% of the complaints investigated during the reporting period by Ombudsman Zita Zamžickienė involve restoration of ownership rights: 33% regarding restoration of ownership right to land in rural areas; 29% regarding restoration of ownership right to land in cities; and 8% regarding restoration of ownership right to forests. Considering that the majority of complaints investigated were about restoration of ownership right, a more detailed discussion of problems arising in the process of this right will follow.

A generalisation of the complaints about restoration of ownership right to land makes it clear that county governor's administrations and structural units subordinate to them face similar problems. The main problems are as follows: frequent change of legal acts regulating land reform, reform was started without thorough preparation, no supervision mechanism of the process was established, an insufficient number of people preparing land survey plans under the land reform and frequent changes in personnel, failure of the companies implementing land survey work under the land reform to carry out contractual obligations, and in the course of the final work stage many complex and conflicting cases remain that must be discussed with the candidates to the land and compromise sought, which requires a lot of time and even causes a wave

of complaints to the Seimas Ombudsman. A negative influence on land reform is exerted not only by the actions of officials (employees), but also by the fact that in rural areas people do not have documents of the legal registration of the buildings owned. Consequently, no purchase and sale or rental contracts can be concluded in respect to land plots for residential use. The citizens often change their minds as far as the choice of the type of restoration of ownership rights is concerned, or they do not agree with the borders of the plot established and refuse to accept the plot. Poor financing of land survey departments, the shortage of staff, and outdated material and technical equipment are among the problems arising in the process of restoring ownership rights.

However, there are cases when the solution to the problems is delayed because of the negligence of officials. For example, an investigation of a complaint revealed that a citizen had been corresponding with the proper institutions regarding restoration of ownership rights since 2003, but the decision was delayed. Only when the Ombudsman started an investigation did the officials start solving the problem raised by the complainant.

The following problems recur during the investigation of the complaints concerning actions of the officials regarding restoration of ownership rights: municipality administrations do not manage to perform their functions in a timely manner and perform them only partially because the candidates who want certain vacant land (with no buildings on it) to be returned do not always agree with the borders of the land plots established. As a consequence, all work has to be started all over again. The procedure of public purchasing is very complex, and the lack of financial resources causes the preparation of plans to last for more than half a year. Local governments exceeded deadlines due to objective reasons, i.e. poor participation of interested and invited parties or weather conditions. After all, in the opinion of the Ombudsman, municipal government administrations devote too little time and money to the preparation of detailed plans. The detailed plans are prepared with mistakes. There are cases of discrepancies between the detailed plans available at municipal governments and those of city or district land management departments, which is the cause for reasonable complaints and the discontent of citizens

One more reason is that there is too little vacant state land in cities to satisfy the requests of all the citizens. Another thing is that citizens are reluctant to select new land plots for the construction of private houses on the outskirts of cities. During the reporting period, there was much interest on the part of both the Seimas Ombudsman and citizens regarding restoration of ownership rights to forests. The Law on Forests of the Republic of Lithuania establishes that city and state forests within a 7 kilometre radius of the Baltic Sea and the Curonian Lagoon are nationally important and by way of exception are the property of the Republic of Lithuania. Article 13 of the Law on the Restoration of Ownership Rights to Citizens of the Republic of Lithuania to Remaining Real Estate stipulates that city and state forests within a 7 kilometre radius of the Baltic Sea and the Curonian Lagoon are to be purchased by the state and private ownership there cannot be restored.

There was a critical situation in the town of Palanga. when on the basis of the Law on Forests detailed plans for nationally important forests were prepared. According to the plans, the territories planned in detail (land plots selected by the citizens for the restoration of ownership rights) and land plots registered with the Real Estate Register (25 land plots) were included as part of the nationally important forest. The Seimas Ombudsman notes that before making such important decisions (preparation of detailed plans, plans of nationally important forests, etc.) governmental institutions must discuss these issues and probably invite representatives of communities to the discussions, because the situation in Palanga makes us think that all these institutions make their own separate decisions, i.e. their actions were not synchronised. In view of the situation, citizens have grounds for disappointment with the decisions made by state institutions. The state, which has undertaken to return property to its former owners or compensate them fairly for the property, is making decisions that are incomprehensible to citizens. In the opinion of the Seimas Ombudsman, establishing land plots in certain areas, parts of which have already been transferred to private ownership, and subsequently declaring them to be nationally important forests contradicts Article 23 of the Constitution, which stipulates the immunity of private property protected by the laws and fair compensation for property taken according to eminent domain.

# THE RIGHT TO GOOD PUBLIC ADMINISTRATION

At the beginning of the report by Seimas Ombudsman Zita Zamžickienė, it was mentioned that during the period of this report the Ombudsman paid a lot of attention to the improvement of public administration. It should be noted that complaints about the right to good public administration, those in which the complainants state that they were not provided with information, the information was not detailed enough, or not enough information was provided, are not numerous, but the investigation of complaints about other issues (construction, restoration of ownership rights to land) often show that officials of county governor's administrations, their structural units, and municipal administrations often violate provisions of the Law on the Right to Receive Information from State and Municipal Institutions of the Republic of Lithuania. In the event such provisions are not followed, the rights of individuals are violated. People protecting their rights report about such cases to the defenders of human rights - the Seimas Ombudsmen. These problems were therefore often discussed on the radio and at meetings with officials.

The following violations were identified during the investigation of complaints: violations of application investigation procedure (20% of all complaints concerning the right to good public administration), exceeding the deadline for investigation (12%), failure to follow a legal act (12%), and inappropriate investigation of a complaint or a request (8%).

The aim of the Law on Public Administration of the Republic of Lithuania that was valid till 1 January 2007 was to guarantee the right for citizens and other individuals to fair and unbiased investigation of complaints at institutions of public administration and justified solution of requests, as well as to ensure the right to appeal against the solution and receive compensation for damages incurred due to illegal administrative activity. The Law on Public Administration not only guaranteed the right for citizens and other individuals to the fair and unbiased investigation of complaints at institutions of public administration and the justified solution of requests, as well as the right to appeal against the solution and receive compensation for the damages incurred due to illegal administrative activity, but also established general administration principles for the subjects of public administration. Thus, the subjects of public administration must observe the principles of public administration both while investigating the requests of the citizens and other individuals and other activities of public administration. Practice shows that citizens defending their rights and solving questions of interest at various institutions do not yet fully use the possibilities envisaged by the Law on Public Administration because they are not aware of the administrative procedure. Discussions with the complainants make it clear that they usually verbally approach county governments, land management departments, or local self-governments regarding their problems and not having received any reply, seek help from an ombudsman. It is noteworthy that in such cases it is hardly possible to establish the truth.

Investigation of complaints sometimes reveals that when the officials fail to make decisions, they do not inform the applicants about the results of the investigation or they are informed verbally or by telephone, thus violating provisions of the Law on Public Administration, and the applicant loses his right to a fair and unbiased investigation of his application at the institution of public administration and a solution of the request guaranteed to him by the law.

Article 20 of the Law on Public Administration stipulates that each institution of public administration must organize its work in such a way that people who want or are required to submit an application personally can do so during the entire working day. For documents that, according to the law, must be submitted personally, the institution allocates at least four additional reception hours per week after working hours.

During the reporting period, Seimas Ombudsman Zita Zamžickienė investigated a complaint and identified that the head of a state institution issued an order stating that citizens can be received only once a week. It should be noted that this was a violation not only of the legal acts regulating public administration, but also of the provision established in the Constitution that "government institutions serve the people".

The investigation of complaints often discloses cases when officials do not provide replies or violate the Law on Public Administration and the terms stipulated in the Law on the Right to Receive Information from State and Municipal Institutions when providing replies to citizens. From the analysis of the complaints about the exceeded deadline for the investigation of applications, it is possible to draw a conclusion that the applicants in many cases were not informed that there was a commission formed for the investigation of their application and that the term for investigation of the application was extended.

The Seimas Ombudsman is sorry to acknowledge that there are still cases of failure to reply to the applicants' written requests. Furthermore, the Ombudsman herself receives from institutions of public administration information that contradicts reality, or she does not receive a reply by the time specified in the requests. As a result, the Seimas Ombudsman has to reapply for information and warn that administrative penaltes will be applied. This intereferes with the exercise of the rights provided to the Seimas Ombudsman.

However, the complaints received during the past year about the right to good public administration shows a trend that the number of justified complaints (requests) is going down. This circumstance demonstrates that institutions of public administration are improving their work, investigating the issues raised in the complaints correctly, providing replies to applicants within a term prescribed by the laws, and providing replies that are justified and reasonable.

After investigating complaints and identifying cases of bad administration at county governor's administrations and municipal institutions and agencies, the Ombudsmen reported about them and provided recommendations on how to avoid such cases, enhance administration in these institutions and agencies, and to improve public administration.

# THE RIGHT TO A SAFE AND CLEAN ENVIRONMENT

This category includes complaints about problems arising when dealing with issues of territorial planning, construction, monitoring protected territories, and similar questions. The majority of the complaints in this group are complaints regarding territorial planning documents and technical projects for construction. The complaints fall into two categories. One includes complaints about violations of the rights of third parties due to document preparation procedures or failure to observe procedures. The complainants accuse the officials of improper harmonization and approval of the aforementioned documents and the illegal issuance of building permits. The second category includes complaints regarding unfounded and illegal refusal to provide technical conditions for construction and building permits, delay to approve detailed plans, etc.

The majority of complaints of this group are about detailed planning and the issue digest of conditions for design.

Investigation of complaints often reveals that officials exceed the deadline prescribed by legal acts when setting conditions for design and planning. Not all the aforementioned violations are caused by the action (or inaction) of officials. They also occur because of large workloads and the shortage of staff. The applicants often complain that the detailed (special, general) plans do not justify their expectations and even violate their rights. During the investigation, it was identified that the citizens express their dissatisfaction and claims after the approval of the detailed plans. During the discussion of the detailed plan no comments or claims from people are received.

#### IMPLEMENTATION OF THE SEIMAS OMBUDSMAN'S RECOMMENDATIONS

After the new version of the Law on the Seimas Ombudsmen comes into force, even though the complaint may fall outside the ombudsman's jurisdiction, the ombudsman will have the right to submit proposals and comments to institutions and agencies about improvement of public administration, so that there will be no violations of human rights or freedoms.

During the reporting period, Ombudsman Zita Zamžickienė submitted 162 recommendations. Fightyfive times she called the attention of officials to certain problems. Twenty-two times she recommended that county governor's administrations or local municipality administrations repeal, suspend or amend, according to the procedure prescribed by the law, those decisions that contradict the law and she proposed that decisions about abuse of office and bureaucracy that had not been approved be adopted. Twenty times the Ombudsman recommended that a collegial institution, head of the institution, or the institution and a higher level body should impose disciplinary penalties to the officials who committed a violation, and 11 times she submitted recommendations without investigating the complaint in detail.

Twelve percent of all the recommendations submitted were implemented. The recommendations that most frequently failed to be implemented were those concerned with assessing the work of officials and imposing disciplinary penalties. The heads of institutions avoid imposing penalties on their employees, stating that the employees or officials were instructed to perform their duties more carefully. The other reason why there was no possibility to assess the work of officials was that they no longer work in such positions or the term for imposition of a penalty had expired. It is noteworthy that the actions of the directors of municipal governments, according to the Law on Self-Government, may be assessed by municipal councils, whereas the actions of the latter are not investigated by the Seimas Ombudsman. The third reason why officials were not assessed was that they eliminated the violations and the applicants refused to file any further claims.

In the opinion of the Seimas Ombudsman, the State Civil Service Law should allow a longer period than one month to impose an official penalty after an official violation becomes known. While investigating complaints, the Ombudsman often faced a situation in which the institution of public administration or agency was aware that a civil servant had performed his duties inappropriately but did not impose an official penalty. The Ombudsman's recommendation to assess the work of the officials and impose a penalty was not implemented because the month in which such penalties could be imposed had passed.

This Seimas Ombudsman would like to mention that the Supreme Administrative Court of Lithuania ruled out a decision stating that **the final acts of the investigation** of a Seimas Ombudsman, i.e. the Ombudsman's statements, were only recommendations and neither the complainants nor the administrative subject whose action or inaction was complained about to the Ombudsman directly created any rights or obligations. Therefore, these statements are to be treated as neither individual nor regulatory legal acts and thus cannot be appealed against to the administrative court.

This decision of the Supreme Administrative Court of Lithuania confirmed what the ombudsmen had been saying at meetings with the members of the Seimas and conferences and seminars. The Seimas Ombudsmen made a lot of proposals to the Seimas about the amendment of Article 16, Part 2 of the Law on Administrative Proceedings, where it should be stated that the statements of the Seimas Ombudsmen are not investigated under the jurisdiction of administrative courts.

So far no amendment to the law has been approved, which creates the possibility to appeal against the statement of the ombudsman. Courts must accept the applicants' complaints, appoint a court session, produce writs, and invite the parties to a court session in which the court rules that the case must be terminated because a Seimas ombudsman's statement is not a legal act and cannot be appealed against. This is inefficient use of state money and the time of state officials and judges. It also misleads people who having read the Law on Administrative Proceedings failed to find any provision that the statement of a Seimas Ombudsman is not subject to the jurisdiction of administrative courts, even though it is not indeed subject to investigation at such courts, because the statement is not a legal act.