

REPUBLIC OF CROATIA

OMBUDSMAN

SUMMARY

ACTIVITY REPORT FOR 2012

Zagreb, March 2013

PART ONE

INTRODUCTION

The Summary of the Annual Activity Report for 2012 presents the work of the Office of the Ombudsman and the overview of statistical data on the state of citizens' constitutional and legal rights.

The Report contains statistical data on cases that were handled, significant points from the analyses of particular important administrative areas, activities within international cooperation, as well as conclusive notes.

During 2012, the Office of the Ombudsman received 1849 complaints, which falls within the average from last several years, while 516 citizens addressed the Office in person. There were far more inquiries received daily by e-mail, fax or telephone.

In choosing the subjects which receive special attention in the Report, two criteria were mainly used: the frequency of detected irregularities in the work of relevant institutions and the severity of human rights violations. Among other subjects, this Report covers issues from the areas of social welfare, statutory rights, solution to the complex issue of owner/tenant relations in apartments, status/salary of civil servants and government employees, housing care issues, and unsolved problems of the owners whose property was temporarily taken over.

With the amendments to the Constitution of the Republic of Croatia made in 2010 and the introduction of the new Ombudsman Act in 2012, the role of the Ombudsman has been made significantly stronger. The most important changes include wider authority in relation to action towards all government bodies, increased independence, autonomy and the Ombudsman's role in the promotion of human rights, as well as the introduction of the authority and obligation to monitor the harmonization of laws and other regulations with the provisions of the Constitution of the Republic of Croatia and relevant international laws. Merging the former Center for Human Rights with the Office of the Ombudsman will strongly increase its role in the promotion of human rights.

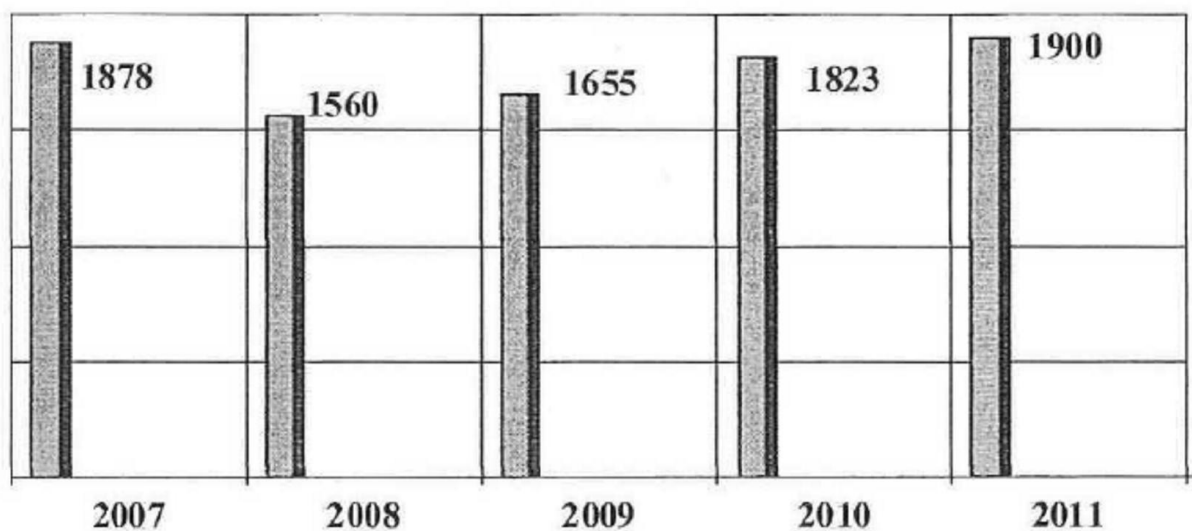
The existing normative framework, which empowers the Ombudsman as the central national institution for protection and promotion of human rights, protection from discrimination and implementation of the National Preventive Mechanism, together with the new possibilities for activities in promotion and raising public awareness, lay the foundation and set preconditions for stronger human rights protection in the Republic of Croatia.

PART TWO

STATISTICAL DATA FOR 2012

During 2012, the Office of the Ombudsman received 1849 written complaints, and 515 citizens addressed the Office in person. Furthermore, a lot of inquiries were received by telephone, fax or e-mail daily.

Picture 1: Number of (written) complaints in the period between 2008 and 2012:



From the total number of 1849 cases opened in 2012, 1321 cases were closed (71%).

Some competent bodies fail to respond to the Ombudsman's requests for information promptly, which hinders the Office's work and prolongs inquiry procedures. Among the bodies which do not respond to the inquiries promptly, the most prominent ones are: the Ministry of Regional Development and EU Funds, the Ministry of Construction and Physical Planning, the Ministry of Justice, the Ministry of Social Policy and Youth, the Ministry of Science, Education and Sports, and Tax Administration of the Ministry of Finance.

The following picture shows the comparative overview of the number of complaints by different areas in the last four years.

Picture 2: Complaints by areas (2009 - 2012)

| Area: | 2009 | 2010 | 2011 | 2012 |
|---|------|------|------|------|
| Judiciary | 334 | 386 | 397 | 416 |
| Pension insurance | 123 | 127 | 117 | 77 |
| Right to reconstruction | 84 | 94 | 50 | 25 |
| Persons deprived of liberty | 213 | 217 | 212 | 219 |
| Construction / physical planning / noise / environment | 79 | 63 | 67 | 62 |
| Housing care | 28 | 50 | 37 | 40 |
| Statutory rights (citizenship, residence, alien rights, identity card and passport) | 55 | 94 | 58 | 63 |
| Denationalization | 24 | 17 | 14 | 12 |
| Housing relations | 28 | 21 | 22 | 18 |
| Other property-rights relations | 45 | 33 | 44 | 25 |
| Labor and civil service relations | 151 | 189 | 182 | 164 |
| Social welfare | 59 | 76 | 68 | 69 |
| Conduct of police officers | 41 | 47 | 45 | 53 |
| Health care | 49 | 72 | 67 | 64 |
| Family rights - guardianship | 49 | 46 | 50 | 44 |
| War veteran rights and rights of their families | 39 | 27 | 40 | 27 |
| Preschool education, education, higher education and science | / | 32 | 31 | 28 |

| | | | | |
|-------------------------|------|------|------|------|
| Finance | / | 31 | 48 | 43 |
| Public utility services | 13 | 20 | 18 | 30 |
| Other | 155 | 37 | 186 | 370 |
| TOTAL | 1655 | 1823 | 1900 | 1849 |

PART THREE

ANALYSIS BY ADMINISTRATIVE AREAS

HOUSING CARE - RECONSTRUCTION - RESTITUTION OF TEMPORARILY TAKEN OVER PROPERTY

The number of complaints from these areas is decreasing year by year, but the problem of time-consuming procedures handled by the relevant Ministry of Regional Development and EU Funds (hereinafter: MRDEUF) still remains. The comprehensive European Commission's Progress Report on Croatia's readiness for the EU membership, from October 2012, states that the circumstances related to the return of refugees are better, but there is still the need for further improvements of the conditions for sustainable return.

Housing care

For years we have been reporting about the problems regarding the number, type, quality, availability and frequency of the amendments to the regulations governing housing care in and outside the areas of special state concern. Apart from unduly long procedures caused by the lack of available housing units, citizens also complain about the (in)appropriateness of housing units and unsettled requests for the right to pecuniary compensation according the Conclusion of the Government of the Republic of Croatia from July 17, 2008.

Regulations governing this area are divided into two parts: the first ones refer to the areas of special state concern, the second ones to the areas not belonging to special state concern. For reasons of legal security, we consider it necessary to settle this issue with consistent implementation of the Code of Practice on Consultation with the interested public in procedures of adopting laws, other regulations and acts.

Reconstruction of Homes Destroyed and Damaged in War

According to data received from the Directorate for Regional Development - Sector for Implementation of Housing Programs, as of January 1, 2013 there were 368 pending second instance cases of appeals against decisions on reconstruction. In previous year there were 1054 pending cases.

Complaints filed to the Ombudsman were still referring to unduly long procedures, the quality of reconstruction works and the problems with reconnection of reconstructed family houses to electricity and water grid.

Restitution of Temporarily Taken Over Property

The problem of fifteen owners whose real properties were taken over by the Republic of Croatia and given to temporary users is still not resolved. Since the war ended eighteen years ago, these citizens can be considered victims of grave human rights violations, first of all of their right to protection of property and right to respect for private and family life and home. Some of the owners cannot take possession of their property or it was devastated, and some are in an even worse situation: beside the devastated property, they have no accommodation, moreover, court judgments require they have to pay large sums of money to former temporary users for the investments made in the houses given to them.

Recommendations:

1. We recommend the Ministry of Regional Development and EU Funds to review the regulations governing housing care issues, in order to standardize the procedure for all applicants who seek to claim this right, no matter if they come from the areas of special state concern or not.
2. We recommend to consider the possibility of partially repealing Article 9 of the Act of Amendments to the Areas of Special State Concern Act (NN, 57/2011), in the part which puts the property owner in the position of debtor to the Republic of Croatia, taking into account the purpose of introducing the Act and practical consequences of implementing this provision.

3. When preparing draft legislation or legal provisions in the area of its competence, the Ministry of Regional Development and EU Funds should also act in accordance with the Code of Good Practice for Civil Participation in the Decision-Making Process.

PENSION INSURANCE

Croatian Pension Insurance Institute's lengthy procedures are again the most common reason for addressing the Ombudsman during 2012. Considering the fact that this issue involves an older, low-income social group, the Ombudsman intervened in particular cases, but also warned about the need to eliminate the cause of problems. Most often they are caused by administrative obstacles in obtaining documentation from the countries established after the breakup of Yugoslavia and inadequate communication between their competent bodies.

PERSONS DEPRIVED OF LIBERTY

The number and type of complaints from persons deprived of liberty are almost identical to the ones from 2011. Basically, they refer to accommodation conditions, health care, failure to exercise prisoner privileges, transfers and similar problems.

Within the existing possibilities, the Ombudsman conducted inspections and examination procedures upon the filed complaints in prisons in Bjelovar, Dubrovnik, Pula, Požega and Split, in penitentiaries in Lepoglava and Požega, and also visited Rab Psychiatric Hospital. Moreover, the Ombudsman examined several detention rooms and police custody units in PD Istarska, PD Dubrovačko-Neretvanska, PD Požeško-Slavonska, PD Brodsko-Posavska and PD Splitsko-Dalmatinska.

In July 2012, the Ombudsman started performing the duties of the National Preventive Mechanism for Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Acting pursuant to the National Preventive Mechanism for Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act, we visited prisons in Zagreb and Osijek, Detention and Apprehension Unit of PD Zagreb, Police Custody Unit of PD

Osječko-Baranjska, Home for adult persons with mental health problems Bidružica and Home for adult persons with mental health problems Zagreb, Subsidiary Mirkovec. By July 1, 2013, the Ombudsman will prepare and publish a report on the activities of NPM, which is to be delivered to the Croatian Parliament, pursuant to Article 9 of the National Preventive Mechanism for Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act.

Recommendations:

4. The Central Office of the Directorate for Penitentiary System of the Ministry of Justice needs to make more effort to reduce the negative effects of over-crowdedness, pursuant to the Council of Europe Recommendation R (99) 22;
5. The Ministry of Health needs to establish and promptly conduct health care inspection in all prisons, penitentiaries and correctional institutions;
6. The Central Office of the Directorate for Penitentiary System of the Ministry of Justice needs to provide health care workers on 24-hour shifts in all prisons and penitentiaries.
7. The Central Office of the Directorate for Penitentiary System of the Ministry of Justice needs to ensure privacy for prisoners during health examinations, i.e. examination without the presence of judicial police officer, in all prisons and penitentiaries, in cases when it poses no security risk.
8. The Ministry of the Interior needs to ensure accommodation conditions in accordance with the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in all police stations and police departments, in facilities where persons deprived of liberty are held (detention facilities and police custody units).

CONDUCT OF POLICE OFFICERS

Complaints filed to the Ombudsman referred to unprofessional and unethical conduct of police officers towards citizens, to uncalled-for or excessive use of coercive measures, and to negligence or biased conduct in the process of determining the elements of a criminal offence. At the Ombudsman's request, Internal Control Department delivered reports on conducted

investigations, but it is felt that these investigations are conducted formally, as the information on specific actions taken during the investigative procedures is missing. Replies of this kind cast doubt on the objectivity of procedures and unbiased work of the Internal Control Department. In certain cases, the Ombudsman detected gaps and lack of logic, so irregularities in the conduct of the official person were determined upon a requested examination.

We welcome the introduction of the Code of Conduct including work methods, handling complaints and submissions, keeping records, filing complaints and submissions, and the work of the Commission for Handling Complaints, issued by the Ministry of the Interior. The Ombudsman will monitor the work of the Commission to make sure that the quality of procedures for handling complaints filed by citizens meets the expected standards of human rights protection.

Construction

Complaints filed to the Ombudsman refer to the right to protection of property, obstruction of property, building maintenance, emergency actions for securing the building due to dilapidated condition, connection to utility infrastructure, and calculation of municipal fee and water charge. Complaints are dealt with not only within the framework of constitutional and legal rights, but also within the rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedom and Protocol No. 1 pursuant to the Convention: the right to peaceful enjoyment of property, respect for private and family life and home, and the right to effective legal remedy.

In cases when construction inspection performs their official duty in accordance with the Physical Planning and Construction Act, citizens whose status as party is not recognized by the Act file their complaints to the People's Ombudswoman.

Investigation procedures following the complaints related to construction works show that the investor's legal security is jeopardized. Although investors, after obtaining a legally valid construction permit, expect to start and finish the construction within set deadlines, it can happen that construction works, initiated upon a valid construction permit, are stopped by inspection

from public institutions that determined special conditions of construction, yet not on the grounds appearing subsequently in a construction phase, but due to issues which had to be discussed and resolved in the procedure prior to issuing the construction permit.

Recommendation:

9. The Ministry of Construction and Physical Planning is advised to issue a mandatory directive, instructing the bodies responsible for issuing decisions on the as-built state pursuant to the Act on Dealing with Illegally Constructed Buildings, in cases of illegal construction found too close to the neighboring building or adjoining it (semi-detached building), that during the procedure for issuing decision regarding the building which is being legalized, it should discuss its stability and impact on the existing building on the plot directly adjoining the plot for which the decision on the as-built state is being issued.

HOUSING

Complaints in the area of housing refer to the amount of protected rent, mandatory maintenance fee, conditions for changing co-ownership agreement, damage in the apartment caused by construction works, but also include the issues of the right to purchase apartment, the right to purchase state owned apartment in the area of special state concern, the lease of city owned apartments and the lease of social welfare apartments off the priority list.

Violation of the right to own a home is present in several forms, and in investigation procedures carried out upon complaints, the issues involved unauthorized entry, noise and odors (catering facilities) and similar. The Ombudsman's actions were generally aimed at inspections responsible for particular areas (sanitary, building, fire protection, labor etc.), and most often they included examining the legality of work of tradesmen and catering facility owners due to various immissions.

Termination of apartment lease contract

The Ombudsman once again warned the Ministry of Construction and Physical Planning about its obligation to make amendments to the Act on Apartment Lease. Apart from regulating the prerequisites for the termination of apartment lease contract with the protected tenant, the Act should also regulate the issue of protected rent. Moreover, it is important to provide mechanisms for achieving and maintaining a righteous balance between the interests of the owners, who are burdened with covering maintenance costs, and the interests of the tenants, who want to keep the existing housing costs.

Recommendation:

10. The Ministry of Construction and Physical Planning is advised to suggest solutions for regulating prerequisites for the termination of apartment lease contract with the protected tenant, and to determine the amount of protected rent in a way to create a righteous balance between the interests of the owners regarding the cover of losses resulting from apartment maintenance and the general interest of providing the apartment for protected tenants under the same conditions as when they used the apartment as the holders of tenancy rights.

HEALTH INSURANCE

Complaints in this administrative area refer to shortcomings in the work of the Croatian Health Insurance Fund (HZZO) and irregular application of regulations, which prevented the complainants from exercising the right to supplemental health insurance, or from claiming the right to prolonged sick leave after it was cancelled by authorized physician. Some complaints pointed to the impossibility of exercising the right to compensation during a long-term sick leave based on the same diagnosis (longer than three years), and the misuse of sick leave rights. Several complaints warned about the impossibility of claiming compulsory health care contribution for aliens, citizens of former Socialist Federal Republic of Yugoslavia.

In some cases the Ombudsman found that the collection of tax debt would compromise the basic needs of the complainants and their families, so the Tax Administration was advised to write off the tax debt.

Furthermore, the Ombudsman recommended the Ministry of Health to initiate amendments to the regulations pursuant to which insured persons lose the right to compensation after three years of uninterrupted sick leave (under the same diagnosis).

HEALTH CARE

Citizens asked for the Ombudsman's intervention in this area because they were dissatisfied with the quality, content and type of health services provided, or due to violations of the right to access medical records.

The Ombudsman warned the Croatian Parliament in the Reports for 2010 and 2011 that the Act on the Protection of Patients' Rights is still not amended with a provision on effective legal remedy. In 2008, the Constitutional Court of the Republic of Croatia repealed Article 35 of the Act on the Protection of Patients' Rights, in which it was determined that the legal remedy in protection of patients is a complaint to the authorized person within health institution, and then to the Commission for the Protection of Patients' Rights. The Constitutional Court argued that it was not an effective legal remedy, but up to this day the Act was not amended. We continue to remind that the right to an effective remedy is guaranteed in Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Exercising the right to access medical records poses a special problem. Back in 2004, it was planned to introduce a special law regulating which medical records would be handed to the patient when the medical examination or medical treatment is finished, and the method of keeping, storing and managing medical documentation, but it still has not been done.

During 2012, the Ombudsman was contacted by midwives who graduated before the Act on Scientific Activity and Higher Education came into effect, because they were not able to exercise the right to professional title pursuant to Article 120, Paragraph 1 of the aforementioned Act. In order to facilitate the recognition of acquired formal qualifications for midwives after Croatia

joined the European Union, it is necessary to set prerequisites for obtaining documents stating that previously acquired professional or academic title matches some of the professional or academic titles from the Act on Scientific Activity and Higher Education.

STATUTORY RIGHTS

During 2012, there was an insignificant increase of complaints in this area regarding the regulation of permanent or temporary residence. However, there is a considerable decrease of cases in which citizens complain about rejected applications for Croatian citizenship or resident alien status, based on the assessment that applicants disrespect the legal order (while complainants are not made aware what they are charged with).

Permanent and temporary residence of citizens

During 2012, complaints referred to procedures conducted in accordance with the Act on Permanent and Temporary Residence of Citizens valid at the time. Complainants were most often concerned about not being able to claim the address where they actually live as their residence. This was mostly problem for subtenants and lease holders who did not get the approval from the owner to report residence, so they reported an address where they do not live. Thus they committed offence for which they could pay a fine.

As it is important to resolve this issue, the Ombudsman sent a formal opinion to the Ministry of the Interior regarding the final draft of the Residence Act. We pointed out that it was necessary to do some more work on the text because of the danger that the procedure and requirements for regulating permanent and temporary residence could become too complicated, that the possibility to claim social welfare rights would come into question, and a large number of citizens would be responsible for offence, despite the fact that it was not their fault they could not register a permanent or temporary residence. Furthermore, we stated that the final draft of the Residence Act abandons everything that the previous notion of “residence” meant to citizens, and that the new Act reduces the existing level of confidence citizens feel when it comes to determining their place of residence. In other words, the provisions of the Residence Act fail to give answers to a

large number of everyday situations which the citizens could experience after the redefinition of the term “residence”. However, when the Residence Act was being passed, some recommendations from the Ombudsman were not accepted.

As it is already clear from some complaints that these recommendations were justified, the Ombudsman will continue trying to urge the competent Ministry to consider an analysis or potential amendments to the existing legislative options.

Citizenship

Just as in previous reports, in 2012 there were problems with the conduct of the Ministry of the Interior in cases of requests for Croatian citizenship, especially regarding the interpretation of the term “respect for legal order”. In several such cases, the Ombudsman sent an official letter to the Ministry, stating that previous decisions of the Constitutional Court show that the competent body cannot base its decision on the facts arising after filing the request, and that this legal standpoint is also valid in cases when the procedure is repeated following the decision of the Constitutional Court annulling previous decisions of the competent body.

Same as in previous years, during 2012 we received identical citizens’ complaints on the work of Register Offices in cases of the so-called “certificates of citizenship issued by mistake”, when citizens received a notice informing them that their certificate of citizenship was issued by an official’s mistake. Citizens continue to complain that Register Offices do not provide enough information and that they are treated as if mistakes made by officials were their fault. The Ombudsman alerted the Ministry of Public Administration that cases of certificates of citizenship issued by registrars’ mistakes raise the question how the citizens are protected from the registrar making a new mistake while correcting the previous one.

Residence of aliens

At the beginning of 2012, the new Aliens Act came into effect. It contains a provision (Article 5, Paragraph 2) stating that it is not necessary to further explain the decision when an alien’s

request is rejected, residence denied or they are being expelled from the country on grounds of national security. Seeing this provision as contrary to the provisions of Article 18, Article 19 and Article 26 of the Constitution of the Republic of Croatia, the Ombudsman lodged a constitutional complaint to the Constitutional Court in February 2012. The case is still pending.

Particularities about solving statutory issues of Roma

The Ombudsman's Office also issued its opinion and recommendations on the draft of the National Roma Inclusion Strategy to 2020, especially in relation to statutory rights, anti-discrimination and aid in claiming their rights. The recommendations in particular referred to the general aim of statutory solutions offered in the Strategy: a completely regulated status in accordance with the legal framework (citizenship or permanent residence) of the Roma who have strong connections with the Republic of Croatia (or former Yugoslavia) until 2020, with considerable support from the competent bodies. Strong connections include the territory of Croatia as the place of birth, close family relations, housing, interest in Croatia and similar.

Namely, complaints coming from (especially) members of the Roma community point to an increasing occurrence, more prominent in difficult economic and social times: persons who tried to regulate their status, on grounds of uniting the family, could not meet the criteria required by subordinate legislation.

LABOR AND CIVIL SERVICE RELATIONS

Labor relations in economy and crafts

Complaints regarding the violation of labor relation rights committed by employer from the sector of economy and crafts refer to: termination of employment, refusal to offer employment contract during probation period, non-prolongation of temporary contract, illegal overtime hours, non-payment of salaries, failure to obtain payslip for due but non-paid salary, non-payment of severance, non-payment of travel allowance, non-payment of compensation during temporary inability to work (sick leave), and mobbing (workplace bullying).

Employment relations in public service

Complaints about the violation of labor relation rights in civil service refer to recruitment irregularities (including appointing and dismissing directors of public institutions), non-prolongation of temporary contract, recruiting without vacancy announcement, illegal overtime hours, irregular termination of employment contract and mobbing.

Complaints pointing to potential recruitment irregularities were forwarded (depending on the provided information about the employer and the type of business) to school inspection or the State Inspectorate. That is to say, complainants were advised to address aforementioned competent inspectorates, and in cases which referred to potential irregularities in appointing and/or dismissing directors of public institutions, complainants were advised to claim their rights at court.

Rights during unemployment

During a two-year period, the Ombudsman warned about the need to amend regulations which jeopardize the position of unemployed older women, who lost the right to unemployment compensation prior to meeting the criteria for early retirement or old-age pension. Holding this decision inappropriate, the Ombudsman submitted a recommendation to the Ministry of the Economy, Labor and Entrepreneurship - an initiative to amend the regulations, pointing out the fact that it concerns one of the most vulnerable compensation beneficiary groups.

Finally, the Act on Employment Mediation and Unemployment Rights Amendments Act from 2012 resolved this issue pursuant to the Ombudsman's recommendation.

Employment relations in civil service

Complaints in this area refer to violation of rights during the procedure of recruiting civil servants at local and state level, placement and disposition of civil servants after the changes in the Ordinance on the Internal Order within some government administration central bodies and administrative bodies in local self-government, disciplinary and other procedures for non-

fulfillment of duty and transfers in civil service. Changes in the civil service legislation also had impact on violations of rights.

Admission to civil service without vacancy announcement

Carrying out the recruitment process for civil service without advertising the vacancy for positions in the Ministers' Cabinets and staff service in the highest government bodies, as prescribed by the provision in Article 74 of the Civil Servants Act (hereinafter: CSA), questions the availability of civil service to all citizens under the same conditions, and therefore also the constitutionality of this provision. Article 44 of the Constitution of the Republic of Croatia guarantees participation in civil service under the same conditions for every citizen, as well as the possibility to be recruited into civil service, and without a public announcement civil service is not available to all under the same conditions.

Vacancy announcement procedure and non-application of General Administrative Procedure Act

Complaints of candidates who applied for announced positions in civil service referred to the denial of the right to participate in the procedure, with no available protection of rights, i.e. way of proving that submitted applications are formally correct. Although the CSA serves as proscribed application of the General Administrative Procedure Act (hereinafter: GAPA), Regulation on Vacancy Announcement and Recruitment through Public Vacancy Advertisements and Internal Notices in the Civil Service (NN, No. 74/10, 142/11 and 53/12) illegally cancels the application of the CSA until a formal decision on the admission to service is made, and applicants are eliminated from the recruitment process, without any right to protection, regardless of the officials' potential mistakes or misuse of position.

The Ombudsman warned about these illegal normative solutions without any success, notified the Government and drew attention to the need to review and eliminate reported irregularities.

Deployment of civil servants

Due to the amended provision in Paragraph 1, Article 127 of the CSA, deployment of civil servants at disposal after the new Ordinance on the Internal Order was introduced is carried out in accordance with the new criteria, i.e. departmental needs and the existing servants' skills and competencies. However, as the existing definable standards for deployment were annulled, heads of competent bodies do not act upon the rules of discretionary decision making. Pursuant to Article 5, Paragraph 2 of the CSA, the decision is made based on free (discretionary) evaluation, within the limits of authority and in accordance with the purpose behind the given authority. Otherwise, if the explanation of decision does not contain the facts that the head of body followed in deployment of available civil servants, it becomes a case of violation of the principles of legality, i.e. overstepping one's authority and making illegal decision.

Following the amendments to the CSA in 2012 (Article 127, Paragraph 6), complaint about deployment decision can be filed only by the civil servant in question, so all other civil servants (with legal interest) are left without legal protection. We hold this decision contrary to the constitutional guarantee of legal protection in cases when complaint is excluded.

Furthermore, since Article 127 of the CSA annulled the postponement effect of complaint against the decision about deployment of available civil servants, delivery of the first-instance decision initiates the period of disposition or notice period for the civil servant put to disposition, regardless of the filed complaint, and his/her employment can be terminated even before the administrative procedure is completed. According to provisions in the GAPA, exceptional exclusion of complaint or its postponement effect is based on the need to take emergency measures in order to protect certain rights or prevent damage. Given reasons most certainly do not apply to aforementioned institutes of civil service legislation, which is why the aforementioned provisions in the CSA are contrary to provisions in the GAPA.

Recommendation:

11. The Ombudsman recommends a review of those provisions in the CSA that pose a threat to the right to legal remedy, i.e. the right to complaint and administrative dispute, stipulated by Paragraph 1 and 2, Article 12 of the GAPA, fundamental provisions and purpose of the GAPA, stipulated by Paragraph 1, Article 3 of the GAPA, and the constitutional guarantee of the right to

complaint (Article 18 of the Constitution of the Republic of Croatia), as the aforementioned provisions in the CSA also exclude the right to legal protection, along with the right to complaint.

12. The Ombudsman advises the competent Ministry to review the provision of Paragraph 2, Article 1 of the Regulation, due to illegal means of evaluating the correctness of applications, denying applicants the right to participate in recruiting procedure, as well as legal protection against the notification about formal incorrectness of submitted applications, both during and after the recruiting procedure.

Civil service legislation - state and local civil servants and the application of GAPA

The Ombudsman has already warned about frequent and inconsistent changes of legislation regulating civil service and two separate acts for state and local civil servants and employees, stipulating for no reason the rules for the same type of procedures in a different way. This can have effects on exercising the rights of civil servants and employees under different conditions and according to different procedure rules, but it can also cause wrongful application and violation of the rights of civil servants and employees.

Recommendation:

13. Provisions of civil service legislation, pointed out in this Report, require a thorough review, in order to eliminate reported irregularities and harmonize fundamental institutes and procedure rules in employment relations in civil service following professional standards, preferably with a unique act, stipulating all the necessary specifics. At the same time, we advise the Ministry of Public Administration to initiate harmonization of civil service acts and the Regulation on Vacancy Announcement and Recruitment through Public Vacancy Advertisements and Internal Notices in the Civil Service, in accordance with the Constitution and the GAPA.

APPLICATION OF GENERAL ADMINISTRATIVE PROCEDURE ACT

Annulment and repeal of illegal decisions pursuant to the GAPA

In accordance with Paragraph 3, Article 129 of the GAPA, an illegal decision can be annulled or repealed in case of obvious violation of substantive law and after the deadline for complaints, only if it grants a certain right to the party, but not in case when the decision prevents the party from exercising their right. Denying the right to this extraordinary legal remedy to parties which could not exercise their right due to obvious violation of substantive law represents serious disrespect of their rights, while protecting only public interest in the same legal situation puts the parties in unfair position in relation to public interest.

Unlike the existing version, the previous GAPA (Article 263) predicted the possibility of annulling the decision due to obvious violation of substantive law, no matter if the decision granted a certain right to the party or not.

Recommendation:

14. The Ombudsman, acting with the aim to protect both the rights of the parties and the public interest under the same conditions, advises the Ministry of Public Administration to review the provision of Paragraph 3, Article 129 of the GAPA and initiate the process of amending the GAPA, in order to ensure equal rights to the parties who claimed a specific right in the procedure, and those who failed to do so.

Personal delivery pursuant to the General Administrative Procedure Act

Shortening the actions in delivery of decisions and other acts from public administration bodies following an administrative procedure, pursuant to the provisions in Article 85 of the GAPA as compared to previous procedure stipulated in the former GAPA, as well as inconsistent implementation of the statutory procedure in practice, more and more often lead to violation of the parties' rights, i.e. it infringes on the right to file a complaint or use other legal remedies within required deadline.

Delivery to letterbox instigates legal effects of the decision, although the party has not received a notification about the attempted delivery containing information when the next delivery would take place and a notification would be dropped into the letterbox if the party is not found at the place of delivery. The date of delivery to the letterbox is considered as the date of delivery by hand, but without the written notification of delivery, the party has no proof of delivery and cannot be certain of the date of actual delivery - therefore the party cannot undertake timely and justified actions to protect their rights.

Postal or other kind of delivery service, without a signed form about the attempted delivery (and without a required delivery note and envelope), whose content is unquestionably the result of the provision in Article 85 of the GAPA, has no options to leave the parties a written note about the attempted delivery and carry out the delivery in a legal manner.

Recommendation:

15. Due to legislation gaps in the procedure of personal delivery, the Ombudswoman recommends the Ministry of Public Administration to prescribe a form based on the provision in Article 85 of the GAPA. In case of potential amendments to the GAPA, this should be entered into the provisions of the Act, while all legislation gaps discovered in practice and leading to violations the parties' rights in relation to the public interest should be eliminated.

SOCIAL WELFARE - FAMILY-LEGAL PROTECTION AND GUARDIANSHIP - MATERNITY AND PARENTAL ALLOWANCE

Social welfare

As in previous years, the Ombudsman warns about unacceptably low amounts of welfare benefits, especially the support allowance and allowance for care and assistance. For example, the amount of welfare benefit for a single person is not sufficient to cover the bare necessities for a decent living. Older and frail persons are in the worst position, so once again we need to emphasize the need to introduce state aid to older citizens, the so-called social pension. The

reform of social welfare system, ongoing from 2006, has not yielded any significant results, especially in terms of improving the quality of life of socially deprived persons, nor have the social policy measures considerably prevented poverty. The lack of positive effects of the reform, along with unfavorable economic conditions, has led to an even wider gap between the rich and the poor. It is necessary to speed up the development of palliative care services and increase the extra-institutional forms of care for older and frail people. It is necessary to improve the social status of homeless people, especially the old and sick, for whom the social welfare system should have provided appropriate care outside homeless shelters, and to help homeless that are capable for work to find employment.

The number of complaints in the area of social housing is increasing because local self-government units (LSU) do not provide the necessary (emergency) accommodation in so-called social apartments, and there is no appropriate system of social subsidies and support for housing costs. Local self-government units are not supervised in fulfilling their legal obligations. Therefore it is necessary to introduce a Social Housing Strategy (in development since 2008, measures determined in the Joint Memorandum on Social Inclusion), which would develop a social housing system, enable equal access to rights and minimize regional inequalities.

Furthermore, progress in the process of deinstitutionalization of social welfare is irrelevant, especially in relation to mentally impaired persons.

Unduly long periods for solving second instance cases are typical for this area, too, as the procedures can last over a year, while the legal deadline is 60 days. This violates human, legal and constitutional rights of citizens, and the gravity of this violation is even bigger since it involves the most vulnerable groups of citizens (poor, families with more than one child and people with disabilities).

Maternity and parental allowance and children allowance

It was discovered that reports and opinions of medical commissions within the healthcare system differ from expert evaluation bodies in the social welfare system, even though they refer to, for example, the same child with severe health impairments. Until a unique evaluation body which would perform evaluation following a social and not medical model is not formed, it would be

justified to evaluate children with severe health impairments within the social welfare system, in order to ensure parental allowance.

Moreover, it has been noticed that parents have problems with exercising the right to single-payment benefit for a new born child pursuant to decisions of local self-government units, because this right is not regulated by an administrative act, so they do not have the possibility of using legal remedies.

Recommendations:

16. The Ministry of Social Policy and Youth is advised to analyze the work of service responsible for inspectional and administrative supervision and take measures that would result in greater effectiveness, especially in conducting supervision of the work and general acts of local self-government units in the social welfare area. We also recommend the Ministry to provide personnel and other conditions which would enable resolving complaints within legal deadline.

17. The Government of the Republic of Croatia is advised to introduce a Social Housing Strategy and Social Housing Act in order to develop a social housing system and provide equal access to rights, i.e. to minimize regional inequalities.

18. The Ministry of Social Policy and Youth is advised to strongly encourage the activities of homeless shelters in big cities in order to provide better quality of temporary accommodation of the homeless people, and to set preconditions for quicker social inclusion of the homeless in their local community.

19. The Ministry of Social Policy and Youth is advised to set preconditions for introducing a new institute of “state aid to older citizens without pension”, the so-called state pension.

20. The Ministry of Social Policy and Youth is advised to speed up the process of deinstitutionalization, especially in relation to people with mental health problems, previously ensuring a quality network of services and support in local community, in order to enable them a life on equal basis in their community.

21. When preparing the Final Draft of the Act on Maternity and Parental Allowance Amendments Act,

The Ministry of Social Policy and Youth is advised to include the possibility of parents filing a complaint against the Croatian Health Insurance Fund and the postponement effect of complaint, as stipulated by the General Administrative Procedure Act.

22. When preparing the aforementioned draft, we advise multidisciplinary approach in the evaluation process aimed at granting the right to parental leave or the right to work reduced hours to care for child with severe developmental difficulties, or to pass the evaluation to an authorized evaluation body within the social welfare system until a unique evaluation body for all systems is established.

Family-legal rights and guardianship

Since 2008, the Ombudsman has been warning about the need to harmonize the Family Act, in the part relating to guardianship, with Article 12 of The Convention on the Rights of Persons with Disabilities. The amendments to the Family Act have not been made during 2012. Therefore, once again we have to stress the need to carry out the reform of the guardianship institute without further delay. The institute of depriving a person of legal capacity should be applied only in exceptional cases and the authority for depriving one of legal capacity should be transferred from social services agencies to courts of justice.

Recommendations:

23. The Ministry of Social Policy and Youth is advised to, without further delay, carry out the reform of the guardianship institute in accordance with the given recommendations and disburden social welfare centers by transferring their authority related to guardianship to courts.

24. In amendments to the Family Act, we advise regulation of provisions about evaluation costs in a non-contentious procedure of depriving one of legal capacity or granting legal capacity, so that the costs are covered from the court funds and not from funds of social welfare centers.

EDUCATION

Complaints received in 2012 in the area of primary and secondary education pertained to grading, pedagogical measures and to health education curriculum, while those from the area of high education pertained to the amount of tuition fees, protection of student rights, state scholarships and appointments to academic and teaching positions.

Parents were dissatisfied with the Decision on Funding the Long-Distance Public Traffic for Full-Time Secondary School Students in the period between September and December 2012, unfavorable to secondary school students who do not have organized public traffic to the place where they attend school. We believe it is necessary to organize a safe means of their transport and co-fund it from the Government budget, in order to prevent hitch-hiking and severe accidents.

PROPERTY-RIGHTS RELATIONS

Expropriation

Complaints in this area refer to the amount of recommended compensation in the administrative procedure which, pursuant to the Expropriation Act, represents the market value in terms of the price that can be reached for a certain real estate on the market and that is dependent on the supply and demand ratio at the time of evaluation. The other most common ground for filing complaints is the excessive length of procedures for resolving complaints, which the Ministry of Justice cannot handle within the legal deadline nor a reasonable period of time, not even after a few rush notes from the complainant. In such cases, upon receiving rush notes from the Ombudsman, the procedures were completed much sooner.

Property confiscated during the Yugoslav communist rule

During the period covered in the Report, 12 new complaints were received in relation to this area, regulated by the Act on Restitution/Compensation of Property Confiscated during the Yugoslav Communist Rule. The main ground for complaints is the excessive length of proceedings, and it was noted that at first instance some of them can last more than ten years.

Recommendation:

25. Due to complexity of these cases and their length, we repeat the last year's recommendation that it is necessary to reinforce the personnel of the Ministry of Justice and relevant state administration bodies in the counties and departments in Zagreb, Osijek, Rijeka and Split as soon as possible. Lawyers with appropriate experience should be engaged in solving these cases.

FINANCE, ECONOMY AND CRAFTS

When addressing the Ombudsman in this area, citizens mostly asked for opinions, interpretations, advice and explanations of certain regulations, as well as assistance with troubles that befell them due to unemployment and most often to unpaid public utility services (disconnection of electricity and water supply and similar).

The majority of submissions refer to distress procedures over financial means, salaries and pensions, while numerous distress procedures over the total amount of salary or pension pose a special problem, as the result of giving consent in the process of seizure of salary, certified by public notary pursuant to Article 178 of the former Enforcement Act (from 2005). This was possible until the Act on Financial Distress Procedure Amendments Act (from 2008) was put into effect, when this option was eliminated.

Financial distress is a growing problem for the citizens of Croatia. The media mentions the figure of 250,000 blocked private accounts, and whole families of citizens with blocked accounts feel the consequences of these actions.

With regards to the constitutional definition of the Republic of Croatia as social state, we believe it is necessary to make a serious analysis of the situation in Croatia, examine the models used in

other countries and consider the possibility of introducing the institute of personal bankruptcy into the national legislative system.

COMPLAINTS AGAINST THE WORK OF JUDICIARY

From the total number of complaints, a considerable part of them refer to the judiciary, and most often the citizens are dissatisfied with the outcome of court procedures. The number of complaints about the excessive length of court proceedings has been decreased, because many citizens received compensation for violation of the right to court procedure within a reasonable time.

After the Ombudsman Act came into effect (July 2012), the Ombudsman addressed court chairmen directly and asked for their response in regard to complaints about the prolongation of court procedures and misuse of authority.

Beside the aforementioned complaints, the Ombudsman received plenty inquiries and requests for legal advice and opinion, as well as for legal representation and the use of free legal aid, while a number of requests pertain to the problems of accounts blocked in distress procedures.

CENTER FOR HUMAN RIGHTS - INSTITUTIONAL MERGER AND ACTIVITIES

The Center for Human Rights was merged with the Office of the Ombudsman on July 9, 2012, when the new Ombudsman Act came into effect. The merger enabled new activities of this institution in the area of promotion and cooperation, in accordance with the recommendations from expert studies about the rationalization of human rights protection system and the projection on merging the Center for Human Rights with the Office of the Ombudsman dating from 2010.

A public debate was organized in November, marking the International Tolerance Day, and in December the first joint press conference of all Ombuds of the Republic of Croatia on the subject of “Social Rights and Poverty” took place, marking the International Human Rights Day. By merging with the former Center for Human Rights, the Office of Ombudsman became a

collaborator in projects of civil society organizations: “New Age of Human Rights and Democracy in Schools” / IPA 2009 (Croatian Youth Network in cooperation with GONG and the Center for Peace Studies), and “Initiative of Civil Society Organizations for Changes in Anti-discrimination Policy” / IPA 2008 (Center for Peace, Non-violence and Human Rights Osijek in cooperation with the Center for Peace, Legal Advice and Psychosocial Assistance from Vukovar and Serbian Democratic Forum).

INTERNATIONAL COOPERATION

In accordance with the rights and obligations of the accredited *national human rights institution for protection and promotion of human rights with status A*, during 2012 the Ombudsman resumed cooperation with the Office of the High Commissioner for Human Rights (OHCHR). At the request of the Human Rights Committee (the International Covenant on Civil and Political Rights), the Ombudsman submitted the list of priority issues which require attention during the upcoming periodic reporting on the Republic of Croatia.

At the beginning of July, the Ombudsman started undertaking activities of the National Preventive Mechanism for Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (NPM), pursuant to the UN’s Optional Protocol to the Convention against Torture. Cooperation with the UN’s Subcommittee on Prevention of Torture and the European Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) was established. Representatives of the Office of the Ombudsman met with members of the CPT, who were in Croatia in September for a regular periodic visit, and with members of the delegation of the European Commission’s Expert Mission for judiciary and internal affairs (Peer Based Mission).

Cooperation with the National Preventive Mechanism of Montenegro was established, which included study visits (September and October). At the end of November, members of the NPM and the Office of the Ombudsman went on a two-day visit to the National Preventive Mechanism of Slovenia (DPM), acting within the institution of the Protector of Human Rights.

Considering the importance and role of the institution of the Ombudsman, which can contribute to a stronger administration reform, the European Commission together with the Swedish

Ombudsman (within the TAIEX program), organized a conference in Stockholm in June, attended by the Ombudsman Jurica Malčić and his Deputy Dejan Palić.

Strengthening the role of the Ombudsman is needed more than ever in the time of long-lasting economic and financial crisis because of drastic limitations of the citizens' labor and material rights, concluded the representatives of 22 Ombudsman institutions at the Annual Association of Mediterranean Ombudsman (AOM) Conference, held in June in Paris.

The Ombudsman and his associates had several bilateral meetings with their colleagues from the region. A delegation from the Serbian Office of the Ombudsman came to a two-day study visit to the Ombudsman. The organizers of this study visit (UNDP) chose the institution of the Ombudsman as an example of good practice and the oldest institution for human rights protection in former Yugoslavia.

PART FOUR

CONCLUSION

Croatian Ombudsman's Activity Report for 2012 is the last one in Jurica Malčić's eight-year mandate.

All previous reports were based on the data that the Office acquired through examination procedures upon citizens' complaints and on their own initiative, by analyzing the legal framework that elaborates constitutional rights and rights guaranteed by international acts signed by the Republic of Croatia, and by following the occurrences of human rights violations reported by civil society organizations and various other organizations.

Comparing the level of respecting human rights in the Republic of Croatia with the situation in other European countries, a general opinion is that we are in the group of countries which respect the international standards of human rights protection. However, there are still numerous and difficult challenges which hinder or render it impossible for many citizens to fully exercise their rights guaranteed by the Constitution and other regulations.

By definition, institutions dealing with human rights protection critically approach and assess the detected phenomena, with the aim to encourage further development of mechanisms for the

protection of citizens' rights, primarily to remove the obstacles on the road to fulfilling all prerequisites for a dignified and safe life for everyone.

Therefore, this Report presents occurrences and sources of human rights violations, in so far as the available data and the capacities of this institution allow.

Opinions on the work of administrative bodies and bodies with public authority stated in the last year's Report are mostly relevant to this reporting period, too. This especially relates to the quality of work of administrative bodies, meeting deadlines for procedures and the work of supervision and inspection services.

The perceived problems, both in normative solutions and their implementation, point to the need to amend regulations (for example, in the area of civil service relations) and to a constant gap between the policy and practice. Control mechanisms do not produce desired results, and the inefficiency of the administrative sector leads to additional generating of court procedures. All together, it raises the costs of maintaining the government apparatus at the citizens' expense, especially the most vulnerable groups whose social rights need to be ensured, as proclaimed by the Constitution. Therefore, once again we have to stress the need to change the existing free legal aid system. There are numerous complaints from the academia and civil society organizations, but also evaluations from international organizations (European Commission, ECRI - European Commission against Racism and Intolerance), stating the need to seriously revise this system so the free legal aid would be more accessible to citizens, whereby special importance is given to non-governmental organizations for human rights protection.

The questionable quality of regulations and their harmonization, as shown in the Report, point to the need for a better assessment of the effects of regulations, but also the need for better public debates, instead of just a formal implementation of consultation with the interested public.

The last year's Report included detailed recommendations about the activities that need to raise the quality of public administration, but it was not realistic to expect they would be carried out in a short period. Above all, these concerns previously stated opinions about the need for depoliticization and professionalization of public administration. It is necessary to establish criteria for the selection and promotion in civil service, in a way to follow professional standards without any political influence, with appropriate mechanisms that would ensure the stability of the system.

Amended legal framework and new, increased authority of the Office of the Ombudsman, reflected both in the tasks of the National Preventive Mechanism and the possibility of stronger proactive and promotional activities in the protection of human rights, set clear preconditions for serving the purpose of this institution more effectively. Room for improvement is primarily evident in the stronger opening of the Office to the citizens, in dealing with specific complaints and anti-discrimination cases, as well as in promotional and educational activities, but most of all in the opening of branch offices in Osijek, Rijeka and Split. Further expansion of the Office's capacity will surely enable and accomplish better accessibility to the citizens, which also leads to greater efficiency in the protection and promotion of human rights in the Republic of Croatia.