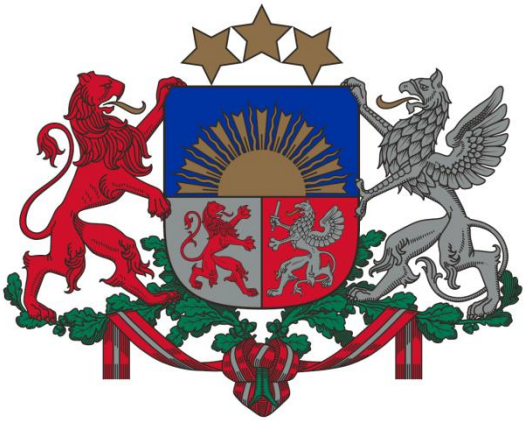


Ombudsman of the Republic of Latvia

Annual Report 2015

Riga, 2016

Contents

Abbreviations Used in the Text

UN - United Nations

CIS – Courts Information System

Constitution – Constitution of the Republic of Latvia

CPHRFF – European Convention for the Protection of Human Rights and Fundamental Freedoms

CPT –Council of Europe Anti-Torture Committee

DSI - Data State Inspectorate

ECHR – European Court of Human Rights

LAVC – Latvian Administrative Violations Code

OCMA – Office of Citizenship and Migration Affairs

PA – Prison Administration

PDPL – Personal Data Protection Law

SBG – State Border Guard

SDC – Short-term Detention Centre

SIPCR – State Inspectorate For Protection Of Children's Rights

SRS – State Revenue Service

SSCC – State social care centre

Introductory Words of the Ombudsman

Esteemed Reader,

In a way, human rights can be compared with health. When we have it, often we do not even value it, but as soon as our health deteriorates, right away we feel its loss. Similarly with the human rights; every day we enjoy the opportunities provided by human rights and take it for granted, even consider it as something abstract. In my opinion, mostly people acknowledge the importance of human rights at the time when someone else attempts to restrict or infringe upon them.

Year 2015 may be characterised by challenges to the essence of human rights, causing each of us to ask the following questions to ourselves time and again: are such values as freedom of speech; the right to life, freedom and inviolability of person; protection against discrimination; protection against interference in private and family life; freedom of religion; freedom to peaceful meetings and association; the right to social security; the right to live in society; and other rights still relevant; do each of us on an individual level accept that such rights apply not only to each of us, but also to the other fellow men and women?

I believe that both local and international events in coming years will be a source of uncomfortable questions to politicians, businessmen, scientists, and to every member of society, thus reflecting if human rights, legal equality and good governance are important not only in words, but also in deeds. Time will show the level of our readiness to sacrifice some of our comforts, wishes, interests, or prejudices in order for someone else to be able to enjoy the guaranteed human rights as well.

Looking from a standpoint of the Ombudsman, special importance must be given to ensure the above mentioned rights to those groups of society that are the least protected. Because the health condition of the human rights can be judged exactly by rights ensured to the least protected groups.

Thus my activity as Ombudsman is mostly focused on protecting the rights of the least protected persons. It is also greatly connected with the resources of the Ombudsman's Office. Thus I would like to express my gratitude to the lawmaking authority that considered it necessary and created an opportunity to strengthen the

institution of the Ombudsman, allowing for more effective further execution of the Ombudsman's tasks.

Along with the colleagues of the Ombudsman's Office, I have worked with integrity for the benefit of the Latvian population. I have a sense of a work well done, and I am satisfied that in these years since I have been the Ombudsman, it has been possible to accomplish much both on the local and international level. Institution of the Ombudsman is strong, recognised, and its opinion is taken into account and considered.

Raimonds Vējonis, the President of the Republic of Latvia, in his congratulatory speech to the participants of Ombudsman conference of 2015, stated that "without an effective institution of the Ombudsman the requirement for a democratic republic defined in Section 1 of the Constitution would not be fulfilled. Even though the Ombudsman is not mentioned in the text of the Constitution, there is no doubt that the spirit of Constitution requires an authoritative existence of the Ombudsman in the constitutional system of Latvia".

A testimony to the work and authority of the Ombudsman is brought by the fact that society recognises the institution of the Ombudsman and trusts in it. And that is the highest assessment.

Respectfully,

Juris Jansons, the Ombudsman

I. Area of the Rights of Children

1. Division of the Rights of Children: Developments

1.1. Statistics

As pointed out in the previous Ombudsman work overview reports, a separate position of the Ombudsman for children and institution for ensuring its work has not been formed in the Republic of Latvia. The Ombudsman of the Republic of Latvia at the same time takes on the function of the Ombudsman in the child rights issues and is a full member of European Network of Ombudspersons for Children (ENOC).[1] Division of the Rights of Children has been formed in the Ombudsman's Office, and its lawyers are responsible only for issues of children's rights.

In 2015, the Ombudsman's Office received a total of 890 submissions on children's rights issues, including submissions on possible violations. Of these submissions 204 were submitted in writing, including 10 from children; and 686 in oral and electronic form not signed by a secure electronic signature.

In 2014, the total number of received submissions was 672, of which 129 were in written form and 543 in oral and electronic form. Thus, in comparison with 2014, the number of submissions last year has increased by 24%.

In 2015, 18 verification procedures were initiated in order to examine the circumstances; two of these were initiated on initiative of the Ombudsman and 16 were initiated on the basis of submissions by private persons.

The largest number of submissions, 110, was received on issues regarding rights of orphans and children left without parental care. For instance, regarding placement in out-of-family care in another municipality far from the place of residence; placement in orphanage without seeking out the relatives; assistance after reaching the age of majority, etc. 108 submissions were received on the rights of a child to grow up in a family, namely, on rights not to be separated from the parents without a legitimate reason; renewal of guardianship rights, etc.; but in 82 cases persons had turned to the Ombudsman's Office regarding maintenance questions.

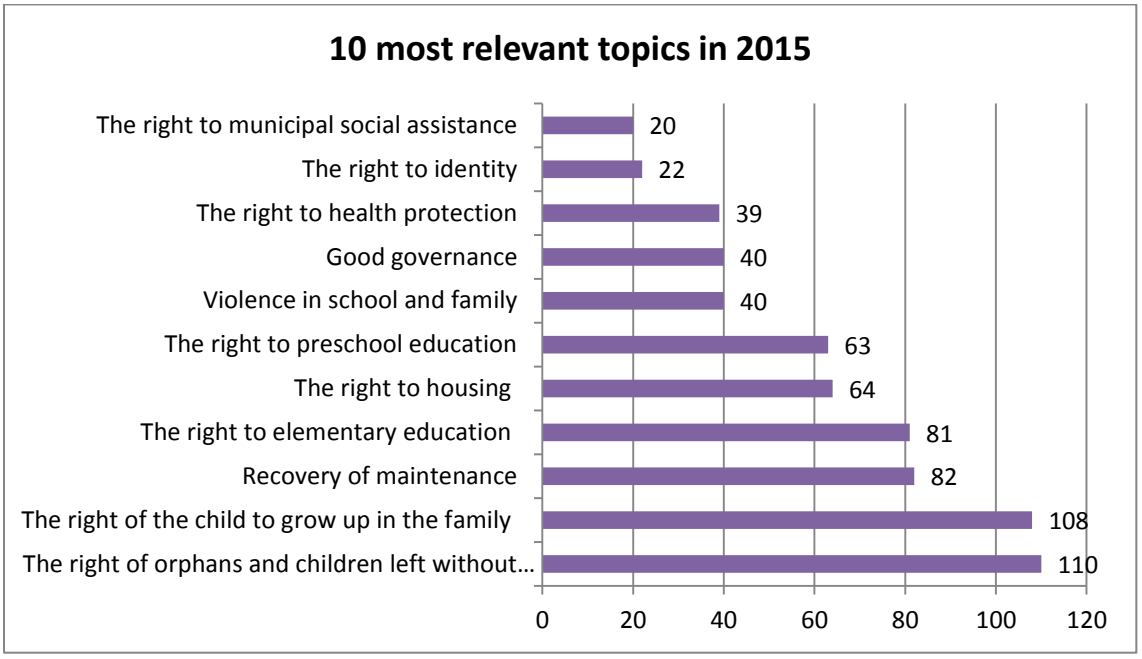
Comparing the statistics of submissions with the previous years, the rights of a child to grow up in a family is still a relevant topic: 163 submissions in 2013; 95 submissions in

[1] For more information see: http://enoc.eu/?page_id=210

2014; and 108 submissions in 2015. But number of submissions regarding the rights of orphans and children left without the parental care has increased more than twice, namely, 61 submissions in 2013; 44 submissions in 2014; 110 submissions in 2015. Yet the increase in number of submissions may be explained by activity of the Ombudsman in increasing the awareness of children's rights violations in institutional care.

Number of submissions regarding maintenance recovery has also increased: 55 submissions in 2013; 37 submissions in 2014; 82 submissions in 2015. This can be explained by ever increasing wish of parents to increase or reduce the amount of maintenance means for the child.

Number of submissions regarding compliance with the principle of good governance in municipality institutions has remained at the same level, that is, 40 submissions in 2014, and the same number in 2015 as well. It should be added, that regarding this aspect persons mostly complain on the lack of impartiality and violations of provisions defining material rights.



1.2. Recommendations of the Ombudsman

Upon detecting violation of children's rights or principle of good governance, institutions receive the recommendations of the Ombudsman. For example, education institutions received a recommendation to comply with the requirements of regulatory enactments when reviewing the submissions of private persons; to improve

communication with the parents of the learners by taking initiative in informing them of the completed work; by testing and improving the quality of provided service; ensure that information provided by parents on the health condition of their child that might be meaningful in the learning process would be used according to the purpose; ensure training materials necessary for implementation of the educational programme and inform the teachers that regarding these training materials they should address the management of education institution and not the parents of the learners.

Medical treatment institutions received recommendations to amend the internal procedures on the rights of parents to participate in the treatment process; on acquisition of special knowledge in the area of children's rights; on inviting foreign specialists in case of rare diseases, etc.

Orphan's Court received recommendations to improve the recordkeeping system in order to have the information on children of the same family at the same location; to abstain from statements that might injure the private person, etc. But orphanages received recommendations to turn to social service with a request to develop a behavioural social correction programme for children; and local governments were requested to comply with the principle of good governance, especially courtesy.

The same way on 16 March 2015, in the letter addressed to the Defence Minister of the Republic of Latvia and to the National Guard, the Ombudsman invited them to pay attention to the youth of social risk groups living in orphanages by involving them in informative and educational events in the area of state defence and in the Young Guards movement in order to promote their awareness of citizenship, patriotism, as well as beneficial use of leisure time.

A positive moment to mention is that recommendation of the Ombudsman was taken into consideration.

Another event is worth mentioning. Namely, in 2015, the Ombudsman received information on tradition implemented in several educational institutions, so called secondary school initiation or reception of Grade 10 pupils into secondary school. It is an event organised by the school, and pupils of Grade 10 have to endure various tests devised by the school mates of senior grades. Every so often these tests are connected with abuse bordering with torture, damaging of personal belongings; actions inconsistent with the norms of morality and ethics.

According with Section 72, Paragraph one of Law on Protection of the Rights of the Child, principals and staff of the educational institutions are responsible for protection of the child's health and life, for the child's safety; for provision of qualified services, and compliance with the rights of the child. Furthermore, Section 9 of the Law states that the child shall not be tortured or physically punished, and his or her dignity and honour shall not be violated.

According to Section 30, Paragraph one of Education Law, principal of the school is responsible for the operation of the education institution and results thereof, for compliance with this Law and other regulatory enactments that govern the operation of education institutions. Thus in the opinion of the Ombudsman, the above mentioned initiation of secondary school pupils may exist as one of the school traditions; however, the event shall never be focused on humiliation and torture of the children.

Taking into consideration that initiation of pupils of Grade 10 is organised before the autumn vacation, in September of 2015, the Ombudsman turned to all local governments requesting to inform the principals of secondary education institutions about the duty to ensure that the content of every event organised by the school would not endanger safety, health, morals, or other essential interests of the children.

1.3. Most Essential Opinions

In 2015, on the basis of submissions of asylum seekers the Ombudsman initiated a verification procedure No. 2015-37-8G on insufficient amount of costs for purchase of food, hygiene and basic goods; rights to information; efficiency of project implementation; lack of leisure activities for teenagers; failure to provide clothing and shoes; as well as unkind and deprecatory attitude of staff of accommodation centre for asylum seekers "Mucenieki" towards the inhabitants of the centre. In the course of the verification procedure, several deficiencies were detected in the work of the centre "Mucenieki" and the Office of Citizenship and Migration Affairs (hereinafter - OCMA), as well as deficiencies in the regulatory framework.

One of the main conclusions of the verification procedure regarding the amount for purchase of food, hygiene and basic goods, 2.15 Euros a day or 64.50 Euros per month, is not enough to provide a standard of living enabling the person to live in dignity and according to the condition of health, as well as staying in the centre, since it is lower than the actual minimum subsistence amount existing in the country.[2] More information is

[2] Full text of opinion is available on the website of the Ombudsman: www.tiesibsargs.lv

available in the section "Rights of Foreign Nationals, Status and Rights of Asylum Seekers and Internationally Protected Persons".

In 2015, on the basis of the submission by the private person, the Ombudsman initiated also a verification procedure No. 2015-8-20G on compliance of funding procedure of private educational institutions to the principle of equality in the context of the rights to primary education and secondary education.

In the course of the verification procedure it was concluded that the principle of "money following the pupil" regarding the state funding has been fully implemented and it works independently of the status of the founder of educational institution. Budgetary means and budgetary target subsidies are used to fund the remuneration for the work of the teachers[3] and purchase of specific teaching materials[4] both to private schools and educational institutions established by municipalities in equal amounts. Budgetary means for school meals are also assigned regardless of the founder status of the education institution in equal amounts both for the private schools and the education institutions established by the local government. Thus state funding is ensured by complying with the equality principle for learners who have chosen the municipality educational institution and learners who have chosen the private education institution.[5] But if the child does not attend the educational institution established by his or her municipality of residence, the local government funding shall "follow" the pupil only to the education institution established by another local government, but not to the private school. Thus the conclusion was made that in the legal system of Latvia the rights to obtain education in a private school or education institution established by another local government are acknowledged as the rights to choose, and that means that parents have a right to such legal and institutional system that would facilitate their opportunities to make this choice. Thus the State by promoting one choice and not the other implements an unequal treatment that cannot be acknowledged as being in compliance with the Section 91 of the Constitution of the Republic of Latvia (hereinafter - Constitution). The Ombudsman has invited the Ministry of Education and Science to eliminate these deficiencies.[6]

In 2015, on the basis of submission by a private person the Ombudsman also initiated the verification procedure No. 2015-25-5F on protection of the rights of the child

[3] Section 59, Paragraph two of Education Law
[4] Section 59, Paragraph 2, Clause 1 of Education Law
[5] Cabinet regulation No. 1206 of 28 December 2010 "Procedure for Estimating, Assigning and Use of State Budget Means to Local Governments for Meals of Pupils of Elementary Education Institutions"
[6] Full opinion available at: http://www.tiesibsargs.lv/files/content/atzinumi/Tiesibsarga%20atzinums%20lieta%20Nr.%202015-8-20G.pdf

in the event of unauthorised publishing of information. In the course of verification procedure the conclusion was made that for processing the personal data for the needs of journalism unrestricted freedom of action has not been provided. In every case prior to data processing, including that of disclosure, it should be evaluated if the data processing shall impact the rights and legal interests of the child now or in future.

Data State Inspectorate (hereinafter - DSI) is not eligible to apply the liability for personal data processing defined by Section 204.[7] of the Latvian Administrative Violations Code (hereinafter - LAVC) to mass media without a legitimate reason. However, in other cases when information about the child has been distributed without authorisation by a person that is not a journalist or mass media, DSI is eligible to apply the administrative liability.

Verification procedure was completed by detecting deficiencies in regulatory enactments regarding effective protection of the child's identity – there are no sanctions for journalists or mass media who publish unauthorised information about the child.

1.4. International Cooperation in the Area of the Rights of Children

Within the framework of international cooperation on March 30-31, 2015 the Ombudsman and specialists of the Division of the Rights of Children participated in the annual ombudsman meeting of Baltic States and Poland in Warsaw. There ombudspersons shared information on the news of their work and discussed such topics as the right of child to access their imprisoned parents; submission of alternative reports to United Nations (hereinafter - UN) Committee on the Rights of the Child; rights of unaccompanied minor foreign nationals, etc.

Within the framework of discussing the topic of the right of the child to access their imprisoned parents was invited an expert in this area from organisation *"Children of Prisoners Europe"*, Kate Philbrick. She shared her experience regarding the needs of the children of imprisoned persons and how imprisonment of the parents affects the life of the children. She also shared about the competence, tasks and accomplished work of the organisation in this area.

In the last session the participants of the meeting gave reports on various topics that were relevant in 2014. For instance, the representatives from Lithuania shared their experience on research done on participation of children in the research of bio medicine, but the representative of the Latvian Ombudsman's Office spoke on the topic of the right of the child to grow up in a family and the results of monitoring of municipality

orphanages. Representatives from Poland, in turn, analysed effect of migration of parents as workforce and its characteristic features, as well as introduced the research on teenagers and internet; and the representatives from Estonia spoke on the topic of secret of adoption.

On 22 May 2015, the representative of the Division of the Rights of Children participated in international conference *"Supporting Children with Imprisoned Parents and their Families: Rights, Opportunities and Responsibilities"* hosted by a non-governmental organisation *"Bufff"* in cooperation with the organisation *"Children of Prisoners Europe"*.

The conference was dedicated to the rights of the children whose parents are imprisoned and to opportunities of all involved parties in solving various problems. Representatives of the conference from various countries, including Malta, Croatia, Sweden, the Great Britain, and Finland, shared their experience of accomplished work in this area - their projects, tasks and future plans.

Representatives from the organisation of European countries *"Children of Prisoners Europe"* were satisfied about the research started by the Ombudsman regarding children whose parents are in imprisonment. The Ombudsman was invited to become a member of the organisation, as well as urged to prepare a publication on the results of the work. It should be added, that on 20 October 2015 it was accomplished by publishing the article *"Researching Children of Prisoners in Latvia: What Needs to Be Done?"*[7] discussing the research of the Ombudsman regarding the rights of children of imprisoned persons to contact with parents.

On September 21 - 25, 2015, the Ombudsman participated in the annual 19th conference of the European Network of Ombudspersons for Children and in General Assembly held in Amsterdam, Netherlands. The topics of the conference were "Violence against Children" and "Children in Motion".

In their joint statement "Violence against Children" the ombudspersons suggested to undertake measures in order to combat violence against children: to promote positive child-raising, train specialists and ensure better support to the victims. In the joint statement regarding the children in motion, an emphasis was made for the governments of the European states that it is necessary to undertake an urgent action to ensure respect of the rights of these vulnerable children.

[7] Available at:
http://childrenofprisoners.eu/2015/10/20/researching-children-of-prisoners-in-latvia-what-needs-to-be-done/

In this conference a special attention was given to activities of ombudspersons in 2015 regarding issues on violence against children, especially mobbing, poverty of children, migrant children, education, the right of the child to be heard, and the right to participation, children in the out-of-family care, etc.

In 2015, Ombudsman's Office received 16 international requests on issues of the rights of the children. Of these three were requests of ENOC to provide an opinion on violence against children in schools; on children who have suffered from the economy crisis; and on situation of unaccompanied minor foreign persons.

Four requests were received from the Ombudsperson institutions of European states regarding the rights of the child to participate in making a decision relating to medical treatment; infant mortality; equal opportunities to obtain education, and on missing children.

Nine requests and questionnaires were received from various institutions of European countries and international organisations regarding children with disabilities, children in places of imprisonment, rights of the child to obtain citizenship, unaccompanied minor foreign nationals, prevention and elimination of child suicide, involvement of the children in jihadist movement, strategy of European Council regarding the rights of the children, and state expenses for children.

On 15 December 2015, the Ombudsman submitted to UN Committee on the Rights of the Child an Alternative Report on the status of rights of the children in Latvia for the period from 1 January 2007 to 30 June 2012. By the report attention of UN Committee on the Rights of the Child was drawn to the problems in the following areas:

- obligation of the parents to respect the rights of the child,
- the right of the child to be protected from any kind of violence,
- compliance with the rights of the child in the psycho-neurological hospitals,
- the right of the child to grow up in the family,
- individual preventive work in municipalities,
- guarantees of the rights of the children and law enforcement institutions,
- the right of the children of imprisoned persons to contact with parents,
- availability of special education,
- rights of the minor ethnicities to obtain education,
- Roma segregation in educational institutions,
- compliance with the rights of the non-citizen children.

Annual consolidated (third, fourth, and fifth) report of the Republic of Latvia on execution of UN Convention on the Rights of the Child of 20 November 1989 and its two additional protocols in the Republic of Latvia for the period from 2004 to 30 June 2012 was reviewed on 12 and 13 January 2016 in Geneva, Switzerland, in Session 71 of the UN Committee on the Rights of the Child.

1.5. Research

On 14 September 2015, the Ombudsman started a comprehensive research on understanding and situation of violence against children in Latvia. The purpose of the research was to find out the opinion of pupils of grades 5 - 12, parents and teachers on what is violence against the child; how often and how children have suffered it; what has been the action of pupils, parents and teachers, if the child is suffering from violence.

Ombudsman implemented the research in cooperation with the research agency "TNS Latvia" and school management systems "E-klase" and "Mykoob". "TNS Latvia" helped to develop the questionnaires for pupils of grades 5 - 12, parents and teachers, and to summarise the received answers, but "E-klase" and "Mykoob" distributed information on research of the Ombudsman and sent the link of the questionnaire to all respondents. Thus anonymity of the questionnaire was ensured. The results of research were presented in the annual conference of the ombudspersons on 11 December 2015.

Main conclusions of the research "Prevalence of Violence against Children in Latvia"[8]

In situations of violence against children are involved both adults (parents/other members of the family, teachers/coaches/educators, etc) and peers, friends, classmates. Thus prevalence of violence against children should be reduced at home/in the family and in school. In order to implement it, education of all involved parties is necessary on the following issues:

- **What is violence, what are its types and forms?**

Special attention should be paid to those types and forms of violence of which these target groups have comparatively less understanding. For example, according to the Protection of the Rights of the Child Law smoking in the presence of a child is a physical violence against the child, yet this action as violence against the child is recognised only

[8] Research and materials of the conference are available on the Ombudsman's website:
http://www.tiesibsargs.lv/files/content/Petijumi/4239_TNS_Vardarbibas_pret_berniem_izplatiba_Latvija_2015.pdf
http://www.tiesibsargs.lv/sakumlapa/tiesibsarga-ikgadeja-konference-atskats-uz-paveikto-pedejos-piecos-gados-papildinata-ar-konferences-materialiem

by 55% of children, 66% of teachers, and 66% of parents. The same way also neglect or negligence of parents expressed as not taking care of their child is comparatively little identified by respondents as violence against the child.

"Child asks for advice or help, but is ignored, not cared for, intentionally not spoken with" and "child is threatened with physical pain, but it is not done" – children have not much understanding about these types of emotional violence, yet at the same time it is necessary to increase the understanding of parents and teachers as well.

In general emotional violence – action that causes emotional stress to the child by threatening or affecting age appropriate emotional development – is hardest to define and measure, therefore education is necessary in order for these offences to be recognised and prevented in a timely manner.

- **What consequences violence might have on the child.**

It would help the children to recognise violence aimed at themselves and/or other children; to analyse their own actions towards other peers; to improve their social skills. Parents and teachers will be able to identify and analyse their own actions and that of the other persons.

- **Education of all involved parties (children, parents, teachers, society) on what exact actions to undertake,** whom to inform on violence against the children is necessary.

- **To strengthen inter-institutional cooperation** (school-family-municipality); to pay special attention to dysfunctional families subject to special social risk by offering social and/or psychological help on issues of raising and disciplining the children.

In addition, to reduce the violence among peers at school, it is necessary to analyse the causes (biological, psychological and pedagogical) for mutual violence of children, to develop and implement preventive activities; for example, to formulate in a positive way the internal rules of the school; practically involve the children in implementation of positive behaviour at school; use extracurricular activities for creation of unity and sense of community.

In 2015, the Ombudsman's Office participated in implementation of European Commission's project of 2014 "Children's Rights Behind Bars. Human Rights of Children Deprived of Liberty: Improving Monitoring Mechanisms" (JUST/2013/JPEN/AG/4581). The purpose of the project was to gain information on various types of closed type institutions where children are held, as well as to gain information on how the compliance

with the rights of the children in these institutions is being monitored, and what mechanisms of complaint submission are in place if the child's rights have been breached.

The representatives of the Ombudsman's Office visited four institutions: VSIA Children's Psycho-neurological Hospital "Ainaži", social correction educational institution "Naukšēni", Iļģuciems prison and Cēsis education institution for juveniles. In the course of the visits, interviews with children and administration of the institutions were held. By evaluating the received information as well as regulatory framework of Latvia, the following conclusions can be made: main concern is that children do not understand their rights to submit a complaint, and in closed institutions these complaints might not be registered and reviewed. Practice shows that greatest part of oral complaints are not registered and prepared in writing as prescribed by the Administrative Procedure Law.

There is also concern if the children are ensured an opportunity to complain outside of institutions – in a supervising institution, the Ombudsman's Office or State Inspectorate for Protection of Children's Rights; if information is provided (address, telephone) of institution for submitting complaints; if there is a possibility to send a letter (that is, if postage stamp, envelope, paper, pen are available); if an opportunity to call to free children's hotline is provided. In this context, based both on number of complaints and submissions and what children said, they are not effectively provided with an opportunity to lodge a complaint outside their institution. Mostly it is connected with the lack of understanding of children regarding their rights to submit complaints, as well as insufficient provisions of the institution (telephone, postage stamp, envelope, no paper, lack of anonymous mail box, etc). Furthermore, the institutions still view complaining as a negative phenomenon to be prevented. Therefore they are not interested in providing the children with information on the mechanism of submitting complaints and making it transparent and easily understandable. Thus the institutions are invited to:

1) register the oral complaints as prescribed by the Administrative Procedure Law;

2) perform the necessary actions in order to effectively provide an opportunity to submit a complaint outside the institution, as well as to complain anonymously;

3) provide children with comprehensive information on mechanisms for submission of complaints in a language understandable to children.

Institutions should be aware that submission of complaints may help to improve the quality of their services.

At the same time, in order to improve the mechanism for submission of complaints, the legal framework should be improved. Currently a general framework is provided by

Administrative Procedure Law, Law on Submissions, Law on Notification, and specialised laws of the sectors. A special regulation regarding exactly the rights of the children to access state and municipal institutions has been defined in Section 70, Paragraph two of Protection of the Rights of the Child Law. However, it is not complete, since it provides the right of the child to submit a complaint only in case if his rights have been breached by a legal representative, employee of the child care or education institution. Thus it is necessary to amend Section 70 of the Protection of the Rights of the Child Law by providing the rights for a child to complain in any case when his or her rights have been violated. The law should also define the obligation of each institution for children to provide the procedure of complaint submission and review, and to make it available to the children, if the procedure has not been determined by the regulatory enactments.

The closing conference of the project shall take place in Brussels, Belgium on 15 February 2016. Report of Latvia on project "Children's Rights Behind Bars. Human Rights of Children Deprived of Liberty: Improving Monitoring Mechanisms" is available on the website of the Ombudsman.[9]

In 2015, within the framework of project by European Return Fund "Development of Mechanisms for Forced Return Monitoring", the Ombudsman performed a research on receipt and stay of unaccompanied minor foreign nationals in the Republic of Latvia, as well as their return to the country of origin. More information on conclusions is available in the section "Return of Unaccompanied Minor Foreign Nationals to their Country of Origin" in this report.

In 2015, the Ombudsman continued the research on the right of the children to contact with parents who are in imprisonment. The results of the research were presented in the annual conference of the ombudspersons on 11 December 2015[10]. See Chapter 8 "The Right of Children of Imprisoned Persons to Contact with Parents".

1.6. Educational Activities for Children and Subjects of Children's Rights

On 1 June 2015, in honour of International Children's Protection Day the Ombudsman hosted an event for children, the participants of Āgenskalns primary school summer camp. The purpose of the event was to introduce the children to their rights and duties. Within its framework in five sports relay races the teams had to obtain as many "rights, duties and prohibitions" as possible. At the end of the relay races "rights, duties

[9] Available at: http://www.tiesibsargs.lv/petijumi-un-publikacijas/petijumi
[10] Research and materials of the conference are available on the Ombudsman's website:: www.tiesibsargs.lv

and prohibitions" had to be grouped according to categories. The specialists of Division of the Rights of Children inspected the work performed by the teams and explained to the children their rights and duties.

At the conclusion of the event all teams received rewards, but the winning team received the certificate from the Ombudsman.

Just as it was done previously, in 2015, the Ombudsman actively promoted the awareness of society about the children's rights and protection mechanisms of these rights by giving special considerations to issues on safety of children in education institutions. For this purpose were organised seminars to educators and other subjects of children's rights protection, for example, on 10 February 2015 - to Stopiņi municipality subjects of children's rights protections; on 30 October 2015 was held a seminar on Ombudsman's Office and children's rights to employees of Jelgava municipality and Ozolnieki municipality education institutions and education administrations; but on 18 December 2015 was held a seminar "Topicality of Issues on Human Safety and Human Rights in the Process of Education" for the council and employees of Olaine 2 Secondary School. Moreover, the Ministry of Justice in cooperation with the Ombudsman's Office hosted a public expert discussion "A Child or a Law Breaker? To Punish or to Educate?". Children's rights, including the right not to suffer from violence, and the rights protection mechanism in case of violence were the topic of the third day of the Ombudsman's annual conference.

2. Promoting the Rights of the Children to Grow Up in the Family

2.1. Issues Regarding Guardians and Foster Families

On 26 January 2015 in the meeting of the Cabinet of Ministers was reviewed a concept "On Improvement of Adoption and Out-of-family Care Systems" developed by the Ministry of Welfare. Concept provides gradual implementation of changes in the system of adoption and out-of-family care in order to ensure appropriate funding and social guarantees to the persons who assume the care of children. Regarding guardianship the Ministry of Welfare offered both to increase the child maintenance benefit and to review the remuneration for fulfilling the obligations of the guardian.

Regarding the remuneration to guardians the Cabinet of Ministers supported the third version in the meeting of 26 January 2015, requiring from 2018 to stop the payment

of remuneration for fulfilment of obligations of the guardian, and one of the deficiencies of it was pointed out: "The number of children under guardianship may decrease".

The Ombudsman addressed the Prime Minister with an invitation to review the decision regarding remuneration for fulfilment of the guardian's obligations on the basis of the following arguments:

1) Section 110 of Declaration on Scheduled Activity of the Cabinet of Ministers Headed by Laimdota Straujuma, adopted in November 2014, had set one of the priorities of the government the task to strengthen the movement of guardians: "In order to ensure a possibility for every child to grow up in a family or a family-like environment, we shall strengthen the movement of alternative families (foster families, guardians). (...) We shall ensure payments to foster parents and guardians from the state budget for pension insurance."

2) The government action plan for implementation, Declaration on Scheduled Activity of the Cabinet of Ministers Headed by Laimdota Straujuma[11], included the measure of implementing measures scheduled for 2015-2018[12] proposed by the "Framework of Social Service Development for 2014 – 2020)[13]. This framework sets out a task to review remuneration for the guardian and foster family for fulfilment of obligations and conditions for receipt of such remuneration.

3) According to implementation of action plan "Framework for State Policy on Family for 2011 - 2017"[14], the Ministry of Welfare has a task to increase remuneration to guardians for fulfilment of obligations.

Solution included in the concept and supported by the Cabinet of Ministers to stop the payment of remuneration for fulfilment of obligations to all guardians is contradictory to the tasks set by the framework - to review and increase the amount of the remuneration. Thus it may be concluded that stoppage of payments to guardians for fulfilment of obligations is contradictory to the tasks set out in Declaration on Scheduled Activity of the Cabinet of Ministers Headed by Laimdota Straujuma (to strengthen the movement of guardians) and the measures of the government action plan.

One of the aims of "National Development Plan for 2014-2020" is to ensure that children live in a favourable family environment or environment closely resembling it by planning that the number of children living in guardianship and foster family (family

[11] Approved by the Cabinet order No. 78 of 16 February 2015
[12] Action plan measure No. 110.2.
[13] Approved by the Cabinet order No. 589 of 4 December 2013.
[14] Approved by the Cabinet order No. 584 of 7 December 2012.

environment) in relation to all children being in out-of-family care would gradually increase from 77.8% in 2011 to 85% in 2020.[15]

The chosen solution not to pay the guardians for fulfilling their obligations may decrease the number of children under guardianship because it would worsen the situation of the guardians and may have a negative effect on the motivation of persons to become guardians. Furthermore, it does not comply with the provisions of Section 307 of the Civil Law stating that guardian who is not directly related to their ward, shall receive a just remuneration.

The objection of the Ombudsman was not considered. On 9 March 2015, the Cabinet of Ministers supported the concept. Regarding the foster families it states that, beginning with 2018, the benefit for the child's food shall be increased to amount twice the amount of minimum maintenance funds. From 2019, the plans have been made to review the remuneration for the foster family for fulfilment of obligations and to determine it on the basis of minimum income level according to the concept "On Determination of Minimum Income Level".

Namely, if under care of the foster family are:

- one child – 214 Euros;
- two children – 302 Euros;
- three children – 390 Euros.

The plans have also been made to implement specialised foster families from 2017, so that already from the beginning when the child is removed from the family, while appropriate guardian or foster family is sought, the child would be ensured with care in a family environment as soon as possible, and not receive care in an out-of-family institution. Specialised foster families would have special requirements for education, experience, skills and competencies, and they would receive a larger remuneration.

Regarding guardianship, it is planned that from 2016 the benefit for child maintenance shall be determined for the amount of maintenance set by the state, but since 2018 the benefit shall be paid amounting to double amount of the minimum maintenance set by the state.

Provisions of the concept, except the cancellation of remuneration for fulfilment of guardian obligations, are in line with the recommendations of the Ombudsman to increase the support to the guardians and foster families.

[15] Available at: http://likumi.lv/doc.php?id=253919, [259] Goal 2; [260] Indicators of achieved goal.

2.2. Problems of Service Procurement and Settlement of Out-of-family Child Care

On 26 January 2015 the Ombudsman addressed a letter to State Inspectorate for Protection of Children's Rights (hereinafter - SIPCR) informing them on detected practice in service procurements of continuous social care and social rehabilitation for children organised by local governments when the service provider is chosen solely on the basis of the service price and economic profitability and not on children's rights and interests during the out-of-family care. As a result, children receive services far from the residence place of their parents, and a situation is allowed when in case of change of service provider the child is forced to change the care institution and place of residence several times.

The Ombudsman invited SIPCR to provide information on completed and planned measures to change such practice of local governments because it cannot be recognised as befitting the interests of the child. SIPCR asked the Procurement Monitoring Bureau to provide an opinion on opportunities for local governments to organise procurement of children's out-of-family care service that would set a requirement for the tenderer to ensure the respective service to the children in a time period longer than one or two years.

In the course of researching the situation in municipal orphanages, in 2014, a longstanding systemic problem was detected that for the care of a child in institutional care it was paid trice by covering the costs simultaneously in three institutions – child care institution (from the residence municipality budget), boarding school (from the budget of Ministry of Education and Science) and psycho-neurological hospital (from the budget of Ministry of Health); at the same time the used resources do not ensure the quality service appropriate to the child's rights and interests. The Ombudsman performed a research regarding the causes of the situation by asking the psycho-neurological hospitals to provide an opinion on frequency and reasons for admitting to the hospital the children living in orphanages, as well as boarding schools.

On 26 February 2015 a press conference was organised by the Ombudsman regarding the mentioned problems. Taking into consideration that the detected situation created doubt on profitable usage of state and municipality funds, on 2 March 2015, the Ombudsman addressed the State Audit Office with a request to begin inspection of legitimacy and efficiency of financial funds usage. On 3 March 2015, the Ombudsman in addition informed in writing the Saeima, Cabinet of Ministers and Ministry of Welfare about the detected problems in ensuring the rights of the children.

2.3. Recommendations of the Ombudsman to Local Governments

On 11 May 2015, the Ombudsman sent a letter to the Latvian local governments, Ministry of Environmental Protection and Regional Development, and Latvian Association of Local and Regional Governments with a request to promote prevention of deficiencies detected regarding ensuring of children's rights in municipal institutional care, as well as undertake measures to strengthen the movement of foster families and guardians. Local governments of Latvia were given the time period of half a year to improve the situation and provide the answer regarding execution of the Ombudsman's recommendations till 30 October 2015.

Answers from 53 local governments were received to the letter of the Ombudsman, but 66 local governments did not respond. By summarising the provided answers, it may be concluded:

1. Number of guardians and foster families in the country is critically insufficient. Most local governments have not indicated what has been done to promote the movement of guardians and foster families. Therefore, it may be concluded that nothing has been done.

2. Several local governments have thoroughly analysed the situation in their administrative territory, have made conclusions and made suggestions of what should be done at the state level, as well as have informed on specific measures undertaken to promote the movement of foster families and guardians. For example: articles have been published in the local newspaper as well as invitations to become a foster family; staff of Orphan's Court have participated in the meetings of parents in education institutions; brochures have been prepared, and information has been placed in the premises of the local governments; informative events have been organised in Christian churches; potential guardians and foster families have been approached personally; a conference has been hosted in the premises of the education institution; video material has been made with an invitation to become a foster family, and it has been demonstrated in population meetings; information on the topic of foster families has been given in the radio broadcast; training of guardians has been organised, etc. Such activities have been implemented in the municipalities of Alūksne, Jaunpils, Salacgrīva, Rēzekne, and Daugavpils, as well as in Rēzekne, Valmiera, and Riga.

3. Several local governments have given short answers; for example, the regional government of Viļaka municipality stated that it has taken into consideration the recommendations of the Ombudsman and is organising its implementation.

4. Some local governments on their own initiative pay the child maintenance benefit for a child in a foster family of a greater amount than the minimum 108 euros set by the government. For example, Ozolnieki municipality pay 350 Euros for this purpose; Valmiera, Jūrmala, and Riga - 270; Iecava municipality - 260; Tukums municipality - 175 - 280; Cēsis municipality - from 224 euros for a child up to three years of age to 256 euros for the children aged 15 - 18; Ķekava municipality - 250; Talsi municipality - 215; Konknese and Rūjiena municipalities - 200.

5. Some local governments on their own initiative pay the benefit to the foster family for fulfilment of obligations (in addition to state benefit), namely, a benefit paid in Jūrmala is from 114 to 683 Euros depending on the number of children under care; in Riga - 213.43; in Ozolnieki municipality - 50; in Jēkabpils municipality - 30 Euros.

6. Several local governments on their own initiative pay the benefit to the guardian (in addition to the state benefit). For instance, in Iecava municipality the amount is 60 Euros per month for the second and every successive child; in Ozolnieki and Koknese municipalities - 30 for each child. Bauska municipality pays the benefit for the maintenance of the child under guardianship - 50 Euros per month; in Tukums municipality and Jūrmala - 55; in Riga - 54.07 Euros per month for the second and each successive child; but in Nīca municipality the guardian is given an additional one-time benefit of 100 Euros for each child.

It is essential that several local governments, for example, of Koknese and Burtnieki, have indicated that positive initiatives have been implemented exactly as a response to the invitation of the Ombudsman.

7. There are local governmetns where no children are placed in the orphanage; as examples can be mentioned Durbe, Aglona, Rucava, Nīca, and Mālpils municipalities, or in the last year no children have been placed in the orphanage, as in Skrīveri and Cesvaine municipalities.

8. Some local governments have no foster families at all, including, Jaunjelgava, Koknese, Babīte, Lubāna municipalities, etc.

It should be added, that on 18 May 2015, the Ombudsman informed the General Prosecutor of the Republic of Latvia on violations of rights of children left without the parental care detected during the research of situation in municipal child care institutions,

and asked to begin the inspection. A letter for information was sent also to the Human Rights and Public Affairs Committee of the Saeima.

The General Prosecutor's Office provided a reply that according to the instructions of the General Prosecutor the issue on inclusion of appropriate inspection in work plan of the Prosecutor's Office for 2016 shall be decided.

3. The Right of Orphans and Children Left Without Parental Care to Housing

Regulatory enactments provide guarantees to every child in an out-of-family care the right to receive social guarantees after reaching the age of majority and termination of out-of-family care. One of the rights is the right to receive the assistance of the local government in solving the housing issue.

By the beginning of 2015, the Ombudsman's Office received submissions from several persons on the right of the orphans and children left without parental care to receive assistance of the local government in solving the housing issue after 1 January 2015.

On 19 June 2014, the Saeima accepted amendments to the Law "On Assistance in Solving Apartment Matters", thus from 1 January 2015 implementing a new type of assistance - apartment benefit to the orphan children and children left without parental care. Thus amendments created an opportunity for orphans and children left without the parental care to choose between two types of assistance. One of the variants offers an opportunity to the child until reaching age 24 to choose the right to lay a claim on renting municipal living quarters by registration for receipt of this assistance. But according to the second variant, the child until reaching age 24 may choose the right to receive the apartment benefit in the amount stipulated by the binding provisions of the local government, yet in this case he or she may not claim the renting of municipal living quarters.

The representative of the Ombudsman participated in the working group and sessions of Public Administration and Local Government Committee of the Saeima, where the mentioned amendments were discussed. These were developed according to the suggestion of the Latvian Association of Large Cities and Riga City Council Housing and

Environment Department. The Ombudsman supported the amendments in part, by drawing the attention of the members of the Parliament to necessity to specify the wording.

Namely, the Ombudsman supported the proposal on implementation of apartment benefit believing that it may be an alternative solution to those orphans and children left without parental care whose actual place of residence in their time of out-of-family care has changed to another municipality and who upon reaching the age of majority and termination of out-of-family care do not intend to return and live in the administrative territory of the municipality that was its place of residence until transfer to out-of-family care. According to the regulatory enactments on ensuring social guarantees, including provision of assistance in solving the apartment matter, responsibility lies with the local government that has made a decision on transfer of the child to out-of-family care and having the place of residence of the child in its administrative territory before the making of this decision, and not the municipality in the territory of which the child actually lives. The same way an opportunity to receive the apartment benefit would allow independent solving of the housing issue on the part of the young people who after termination of out-of-family care due to various reasons do not wish to rent the municipal living quarters (they are not satisfied with the utilities, space of these quarters, deadlines for assignment of assistance, etc.)

At the same time the Ombudsman expressed an opinion that acceptance of amendments in the offered wording may worsen the situation and exercise of the rights of orphans and children left without parental care who have reached the age of majority. In the view of the Ombudsman, it is not permissible that the legal framework puts the young people in a different situation depending on if the local government has available housing that it may immediately secure. Namely, according to the new procedure, in the local governments with the available housing the young person has an opportunity both to rent a municipal apartment and to receive the apartment benefit. But in a situation when the local government that cannot immediately provide the living space to the young person, upon receipt of apartment benefit they lose the right to receive another kind of assistance - the right to rent the municipal living quarters or social apartment. Thus the framework may lead to the situation that in municipalities without available housing, the matter of housing for orphans and children left without parental care shall be solved only by paying apartment benefit. Taking into consideration, that the legislative authority has delegated the right to determine the amount of apartment benefit to the local governments, in

practice it may be insufficient in separate cases for coverage of actual expenses and allowing the person to solve the housing issue. Therefore, the Ombudsman offered in situations when the local government cannot immediately ensure the living quarters to the orphan or child left without the parental care and thus is formed an objective need to receive the apartment benefit, not to restrict the right of the young person to receive assistance in renting the municipal living quarters, unless the person refuses from such assistance. Unfortunately, the working group did not take into account the indicated considerations of possible risks and suggestion to amend the wording of provisions, and Public Administration and Local Government Committee of the Saeima did not consider it necessary to begin discussion on the respective issue when reviewing the proposals on amendments to the Law "On Assistance in Solving Apartment Matters".

Submissions that were received by the Ombudsman's Office in 2015 criticised the new procedure by indicating that it increases the vulnerability to social risk of orphans and children left without parental care having reached the age of majority. In large municipalities lacking in available housing assistance in relation to renting the municipal living quarters might actually not be received by the child. For instance, already now the Riga municipality is unable to ensure the living quarters in a timely manner to orphans and children left without parental care who have been registered for receipt of this assitance; and once the children will have reached the age of 24, the local government will make a decision of excluding them from the assistance register. But regarding children who choose to receive the apartment benefit the amount determined by the local government is insufficient and does not provide for coverage of actual expenses.

According to the information available to the Ombudsman, in 2015, the amount of municipal apartment benefit for orphans and children left without parental care ranged between 50 to 200 euros per month. By looking at the information on rent amounts for living quarters of private persons that is publicly available in advertisment portals, it may be concluded that in separate cases the amount of benefit denies to the orphans and children left without parental care the opportunity to find suitable living quarters, and part of expenses for apartment use they have to cover themselves. The following actual situation is contrary to the essence of amendments and the purpose of the legislative authority - to provide support to orphans and children left without parental care in solving the housing matters and reduce the burden of expenses that they are faced with right after termination of out-of-family care.

It should be considered that many orphans and children left without parental care upon reaching the age of majority and termination of out-of-family care may not right away be able to sustain themselves due to objective reasons because they continue full time studies in general or professional education institutions. Thus they need the support of the local government in order to obtain education, acquire vocational skills instead of giving all of their time and strength to earn the living and for solving the question of survival.

The right to receive municipal assistance in solving the apartment matters is one of the social guarantees provided by the state to the orphan or a child left without the parental care upon reaching the age of majority. Obligation of the local government to specially assist such children is based also on Section 110 of Constitution. In a situation when the local government is unable to immediately ensure the living quarters to the child who has reached the age of majority after the termination of out-of-family care, apartment benefit is the only way for a young person to solve the housing issue. Thus, the local government is obligated to ensure that assistance would not be formal, and the amount of the benefit would be sufficient for coverage of the actual expenses.

4. The Right of the Child to Be Protected from Violence

4.1. Unacceptable Content on the Web

In 2015, several shocking sexual offences against children took place and were publicly discussed in Latvia. As a result, became important the question on amendments to the Criminal Law that would provide more severe punishment for sexual violence against children.

The Ombudsman received information that an audiovisual recording is available on the internet site *www.youtube.com* in the form of the animated film that pictures childhood memories of a young person on sexual violence that had taken place. From the text recorded in Latvian it is very clear that the boy had supported and justified such a sexual violence against himself because he had wanted to bring joy to a person (character) that was emotionally dear to him. By allowing himself to be sexually abused, the boy expressed his thanks to imaginary character Shrek.

In addition to this animated short film, at least two short films of similar content were available where the boy's, who was the main hero, imaginary character Shrek rapes and kills other children (these actions were shown both visually and named verbally), but

at the end of the short film the main hero himself willingly becomes involved in sexual relationships with Shrek, thus showing his love and gratitude.

Section 50, Paragraph one of Protection of the Rights of the Child Law stipulates the prohibition to demonstrate, promote to the child the video recordings, computer games, newspapers, magazines and other publications that promote cruel behaviour, violence, erotica, pornography that pose a threat to psychological development of the child.

Section 50, Paragraph two of the Protection of the Rights of the Child Law materials, which promote cruel behaviour, violence, erotica and pornography and which pose a threat to the psychological development of a child may not be accessible to a child, irrespective of the form of expression, devices for showing and location thereof.

According to Section 7 of the Law "On Press and Other Mass Media" it is prohibited to publish child pornography and materials that demonstrate violence turned against the child. Section 2 of the above mentioned law provides explanation that according to this law press and other mass media are newspapers, magazines, newsletters and other periodicals (published not less frequently than once every three months, with a one-time print run exceeding 100 copies), as well as electronic mass media, newsreels, information agency announcements, audio-visual recordings intended for public dissemination.

The above mentioned animated short films were freely accessible in internet environment to any internet user, and they were to be considered as promotion of sexual violence against the child. The main hero was pictured as unhappy child (who had suffered from violence in the family, orphan, receiving threats from peers at school, etc), whose only friend and saviour is Shrek who abuses him sexually. Prototypes of such children are easy to find in the society; thus it is of concern that the purpose of the animated short films is recruitment of the children in this risk group and justification of paedophilia. Additionally it is of concern that the animated short film was available in English, but a direct quality translation was recorded for it in Latvian, testifying of organised activities in the area of sexual abuse of children. It is important that the storyline used a character familiar to the children, Shrek, thus creating additional threat because children could find this recording by accident, entering the key word "Shrek" in the search window in order to find the original of the animated film with that title.

Section 110 of the Constitution establishes the obligation of the state to protect the rights of the child. Both UN Convention on the Rights of the Child and Protection of the

Rights of the Child Law defines that the child is to be protected against all types of violence.

Taking into consideration the above mentioned, the Ombudsman asked the State Police to evaluate the situation and take an urgent action in order to stop the violations of the children's rights and prevent further public accessibility of the mentioned animated film. The Police were invited to perform investigation actions to investigate individuals who are involved in creation and publishing of the short films, with what purpose it has been done, and if authors and recorders of these animated short films have not committed criminal offences for which the liability has been defined in Chapter XVI of the Criminal Law, "Criminal Offences against Morals, and Sexual Inviolability".

Currently the mentioned short films no longer can be found on the internet by using the original key words.

4.2. More Severe Punishment for Sexual Offences against Children

In 2015, the Ombudsman was involved also in development of amendments[16] to the Criminal Law determining more severe punishments for sexual offences against children. As recognised by the specialists, sexual violence against the child is the least discovered type of violence because the victims usually do not speak of it. There are several reasons for it: the children are afraid that people will not believe them, that they will experience revenge; they do not know what will happen afterwards, how emotionally close people will react to it. Most often small children do not report a sexual violence because they do not understand what is happening to them, but older children usually hide the violence because they feel a strong sense of shame, guilt, and/or fear.[17]

It can be concluded from the above that the person begins to realise that they have been sexually violated only when they grow up, and even then they do not always choose to speak of it, and thus it is difficult to hold the guilty person liable. But in cases when the person is finally psychologically ready to testify about the sexual violence that had taken place, there is a possibility that a limitation period for criminal liability may become applicable.

[16] In 12 November 2015, in the third and final reading the Saeima supported amendments to the Criminal Law and Criminal Procedure Law developed by the Ministry of Justice and improvign the criminal framework in the area of sexual offences.

[17] Sexual violence.
Available at: http://www.bernskacietusais.lv/lv/vardarbiba_pret_bernu_teorija/definesana/novarta-pamesana-82/

Taking into account the above mentioned, the Ombudsman invited the Ministry of Justice to assess the need to make amendments to Section 57 of the Criminal Law by stating that limitation period of criminal liability shall not be applicable to the person who has committed a crime against the morals and sexual inviolability of a minor.

The mentioned proposal was supported in part by setting a longer time period when the person has a right to report the offence. The developed amendments to the Criminal Law stipulate that in cases when a criminal offence has been done against sexual inviolability of a minor, the limitation period shall be estimated from the day when the victim has reached the age of 18, that is, 20 years since the day when the victim has reached the age of 18, if the offence has been done against morals and sexual inviolability of a minor, or 30 years since the day when the victim has reached the age of 18, if the offence requiring a life sentence has been committed.

It is generally known that sexual violence has a deep and devastating effect on psychological and physical health of the person. Practice shows that the younger the age of a child when he or she has been abused, the more serious the consequences. Thus the Ombudsman invited to assess the need to make amendments to Section 162 of the Criminal Law by defining the young age of the victim as a qualifying feature.

The mentioned proposal was taken into consideration, and currently for the criminal offence described by Section 162 of the Criminal Law, if it has been committed against the very young children, applicable punishment is deprivation of liberty for a term up to seven years and probationary supervision for the term up to five years.

At the same time the Ombudsman suggested to provide criminal liability if the person who is the family member of the person who has committed the offence or lives with that person in the same household knows about the offence against the morals and sexual inviolability of the minor but does not inform the law enforcement institutions.

The developed amendments to the Criminal Law[18] stipulate that term of probationary supervision shall be extended to five years (previously it was a term from one up to three years) for sex offenders. Amendments to the Criminal Law also provide for application of probationary supervision as obligatory additional punishment for all criminal offences against the sexual inviolability of the minors.

But separate sexual offences that have been classified as less serious criminal offences this far, are now classified as serious criminal offences since the amendments, thus failure to inform about these offences is a criminally punishable action.

[18] These and other amendments to the Criminal Law came into force on 2 December 2015.

5. Safety of Children in Public Events

In summer of 2015, namely, on July 6 - 12, XI Latvian School Youth Song and Dance Festival took place in Riga, and approximately 38,000 children and youth from all over Latvia participated in it. On 14 July 2015, the Ombudsman received a letter from the Latvian Medical Association on possible criminal negligence and violence against children in dress rehearsal of XI Latvian School Youth Song and Dance Festival. Mass media as well reflected several facts that testified of serious violations of children's rights during the festival.

According to Section 11, Clause 4 of Ombudsman Law, one of the functions of the Ombudsman is on issues related to the observance of human rights and the principle of good governance, as well as to discover deficiencies in legal acts and their application, and to promote the rectification of such deficiencies. When performing functions and tasks defined by the Ombudsman Law, the Ombudsman is eligible on the basis of available materials to address other competent institutions in order to decide the issue on initiation of proceedings.

Since the Ombudsman received information on violations of children's rights during the time of organising the festival, including insufficient and non-quality meals, overwork, too many people on the stage, etc, the Ombudsman made a request to the General Prosecutor's Office to examine the information and if necessary to initiate the criminal proceedings. In January of 2016, this issue was still being assessed in Riga City Ziemeļi District Prosecutor's Office.

The Ombudsman made a request to the Cabinet of Ministers to assess the actions and suitability to appointed positions of the organisers of the XI Latvian School Youth Song and Dance Festival. At the same time a request was made to submit to the Ombudsman specific suggestions on how from now on the compliance with the children's rights shall be ensured in the time of hosting mass events in order to avoid repetition of similar violations.

In order to assess the possible violations, by the order of the Minister of Education and Science an evaluation committee was formed to evaluate the work organisation of XI Latvian School Youth Song and Dance Festival. Its report of 2 September 2015 provided conclusions that several violations had taken place during organisation of the festival, and it should be regarded as inaction of the responsible officials.

Namely, the mentioned report offers a conclusion that the acceptable number of participants was exceeded during the festival. The infrastructure of the Grand Stage at Mežaparks may provide conditions appropriate for safety of health and normal functioning of body's physiological systems for no more than 10,000 participants. Furthermore, information was published that civil engineers assessed the structural and technical options and recommended to place on the platforms no more than 6,000 children, yet the organisers ignored this recommendation and placed up to 12,500 children on the platforms.

The same way, when planning the menu for the participants of the festival, Cabinet regulations No. 172 of 13 March 2012 "Regulations Regarding Nutritional Norms for Educatees of Educational Institutions, Clients of Social Care and Social Rehabilitation Institutions and Patients of Medical Treatment Institutions". Commission concluded that in providing the meals not only age differences of participants were disregarded, as well as portion sizes or amount of calories required for a body on a daily basis, but also hot meals were not always provided. It was also concluded that the time allotted to the meals was inadequately short. Signs of dehydration were detected in children due to insufficient intake of water.

Report of the Committee states that State Fire and Rescue Service detected several violations of fire safety in accommodation locations of festival participants (in schools). Festival organisers publically provided information that Rescue Service and State Emergency Medical Service assessed all venues of the festival, yet the representative of State Fire and Rescue Service said that Service was not invited and did not participate in the centralised development of risk analysis.[19]

Committee report also states that violations have been detected in planning of the schedule, thus causing exhaustion of children; and the children had not been prepared for action in non-standard situations, thus leading to panic attacks.

Taking into consideration the above mentioned, the Ombudsman asked the Prosecutor's Office to assess the actions of the responsible officials regarding the decision to place 12,500 children on Mežaparks stage that is not intended for such a number of participants, thus committing a serious breach of safety rules and creating a risk to health and life of children.

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[19] SFRS were not invited to participate in development of centralised analysis of song festival risks. Available at: http://www.ir.lv:889/2015/7/22/vugd-nav-aicinats-dziesmu-svetku-risku-analizes-izstrade

The Ombudsman also asked to assess the compliance of ensured meals to children with requirements of the regulatory enactments, and the possible violations of fire safety in the accommodation locations of the festival participants.

According to Section 50^1, Paragraph one of Protection of the Rights of the Child Law, a child may participate in various activities (events) if it does not hinder his or her acquisition of education, as well as does not threaten his or her safety, health, morality or other substantial interests. According to Section 50^2, Paragraph one of the Protection of the Rights of the Child Law, child safety shall be ensured at public events in which children participate, or a public recreation activity, sports or recreation location accessible to children.

Section 72, Paragraph one of the Protection of the Rights of the Child Law states that organisers of events for children and such events in which children take part shall be liable for the protection of the health and life of the child, that the child be safe, that he or she is provided with qualified services and that his or her other rights are observed. Paragraph two of the mentioned section provides that for violations committed the organisers of events shall be held disciplinarily or otherwise liable as laid down in law.

In the opinion of the Ombudsman, thorough examination of the circumstances regarding compliance of the festival organisers with the children's rights during the Song Festival may provide a significant contribution to child safety issues in future when organising festivals of such scale. Position of the Ombudsman regarding liability of the responsible persons as laid down in the law caused criticism from festival organisers who had committed violations of regulatory enactments directly or indirectly by their action or lack thereof. However, it should be considered that children's rights have been set as state priority, thus, in the view of the Ombudsman, organisational side of the Song Festival should be thoroughly examined and responsibility of each involved person should be assessed regarding the detected violations.

6. Mass Media and the Right of Children to Private Life

While reviewing the verification procedures in the area of children's rights, the Ombudsman detected deficiencies in the legal framework regarding liability of mass media and journalists on release of prohibited information.

Frequently media reporting on possible criminal offences against children describe thoroughly intimate details and disclose information by which it is possible to

unmistakably identify the child, for example, in school or in the municipality. Media are obliged to inform the society on essential issues, including criminal offences against children, mutual violence of children, and legitimacy of action for municipal institutions. Restriction of such information is not acceptable in a democratic society. However, when releasing such information, the rights and legal interests of the involved persons, first of all, children should be taken into consideration. It is unacceptable to identify the child. Even though the society has a right to know of violations of children's rights, obtaining accurate information on which exact child has suffered, is a mere satisfaction of curiosity without a legitimate purpose.

Clearly, public availability of such information may unfavourably affect future welfare of the children, may worsen their psychological and physical condition, as well as create new risks of violence.

By balancing the right of the person to private life and right to freedom of speech, European Court of Human Rights (hereinafter - ECHR) evaluates what important contribution shall be provided by the publication to the societal discussion. The Court analyses if the society has a legitimate interest to know all details of private life and observes what consequences the publication in question has had on the person.[20]

Even now the Protection of the Rights of the Child Law stipulates that action should be taken only for the best interests of the child. Section 71, Paragraphs one, two, and three of the mentioned law prohibits distribution of information which could in any way harm the future development of the child or the maintenance of the psychological balance of the child, as well as personally obtained information regarding a child who has become a victim, a witness or has committed a violation of the law, as well as such information as could harm the child now or in the future; it is forbidden to interview the child and disseminate in the press or other mass media information about the child who has become a victim or a witness of illegal activity or has committed a violation of the law, except in the events prescribed by the law. Paragraph five of the same section states that persons at fault for utilisation or dissemination of information as is prohibited shall be held disciplinarily liable or otherwise liable as provided by law.

Section 7, Paragraph six of Law "On Press and Other Mass Media" prohibits release of information on health condition of the persons without their consent. Paragraph eight of the same section states that without consent of the persons and institutions mentioned in Protection of the Rights of the Child Law it is prohibited to publish: information that

[20] ECHR judgments in cases *Von Hannover v. Germany* (2004) and *Von Hannover v. Germany* (2012) - 2

permits identification of a minor offender or witness; image of the child who has suffered due to the results of illegal activity; and such information that may be a basis for endangering the interests - privacy, identity and reputation - of the child who has suffered due to results of illegal activity.

Section 4 of the Law "On Press and Other Mass Media" stipulates the duties for the mass media to gather, prepare and disseminate information in accordance with the laws of the Republic of Latvia, but Section 16 states that the editor (editor-in-chief) shall be responsible for the content of the materials to be published in the mass medium. Sections 24, 25 of this law state that the journalist has a right to disseminate information, excluding information that shall not be disclosed in accordance with Section 7 of this law, and that the duty of the journalist is to comply with the rights and legal interests of the persons.

Section 24 of Electronic Mass Media Law stipulates that he electronic mass media shall comply with the human rights and ensure that facts and events reflected in broadcasts comply with the generally accepted principles of journalism and ethics.

Article 10, Paragraph two of European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – CPHRFF) states that restriction of freedom of expression may be permissible if required in a democratic society to protect dignity and rights of other persons, avoid the disclosure of confidential information.

Also Article 19, Paragraph three of International Deed on Civil and Political Rights stipulates that freedom of expression carries with it special duties and responsibilities. Therefore it may be subject certain restrictions, but these shall only be such as are provided by law and are necessary for respecting the rights and reputation of other persons and for protection of national security, social order, social health, or morals. Thus, International Covenant on Civil and Political Rights stipulates that freedom of expression may be subject to restrictions that have to be provided by the law. In the specific case, legislative authority has determined the restrictions for freedom of expression or prohibition to publish information of a specific content: information on sensitive personal data and information that permits identification of the child who has suffered due to illegal activity, or of a possible minor offender.

Article 8, Paragraph one of CPHRFF stipulates that everyone has a right to their own private and family life, secret of correspondence and inviolability of apartment.

ECHR widely interprets the concept of the private life to include also the right to physical and moral inviolability, privacy, acquisition and publication of personal information.[21]

Article 8 of CPHRFF provides two types of duties for the state: prohibition to interfere in individual's private and family life, correspondence and home (negative duty); to undertake measures to ensure effective compliance with the rights to private and family life, inviolability of home and correspondence between the state and individual, individual and private structures, as well as between private persons by using means of protection; ensuring legal and regulatory framework and resources (positive duty). [22]

Furthermore, Article 17 of International Covenant on Civil and Political Rights stipulates that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, or to unlawful attacks on his honour and reputation. According to Article 17, Paragraph two, everyone has the right to the protection of the law against such interference or attacks.

Thus, the member states shall be obliged to develop an appropriate legal framework for protection of the private life of the person. Rules and means must be such that they effectively protect the persons against any unlawful interference in their private life.[23]

Section 24 of International Covenant on Civil and Political Rights also stipulates that every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. Member states also have the special responsibility, namely, the above mentioned article defines the right of the children to necessary protection by the state.[24]

In verification procedure No. 2013-88-2A was detected[25] that reflection of prohibited information in mass media allowed the society to identify both the victimised child and the possible offender, but in procedure No. 2013-57-5D - the aspects of the child's private life. In verification procedure No. 2015-25-5F it was concluded that state does not have an effective protection mechanism in order to protect the right of the child to private life in case of publishing of prohibited information about the child, if the violation has been committed by a journalist or mass medium.

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[21] R.Clayton and T.Tomlinson. The Law of Human Rights (2nd edn, OUP, 2009). See also ECHR judgment in case *Connors v. the United Kingdom* [2005], 40 EHRR 9. Para 82.

[22] See, for example, I.Roagna. Protecting the right to respect for private and family life under the European Convention on Human Rights (Council of Europe, 2012), 60-76.

[23] CCPR, General Comment No 16, HRI/GEN/1/Rev.9 (Vol I) para 9.

[24] CCPR, General Comment No 17, HRI/GEN/1/Rev.7, para 6.

[25] Opinion on verification procedure No..2013-88-2A., [7], [8]. Available at: http://www.tiesibsargs.lv/atzinumi-modulis

Already in 2013, the Ombudsman asked Ministry of Welfare as the leading state governance institution to provide an opinion in the area of protection of the children's rights on the necessity to improve the legal framework regarding the liability of the journalists providing administrative liability for dissemination of information about the child that is prohibited by the regulatory enactments.

However, in the view of Ministry of Welfare it is not necessary to specially stipulate the liability of the journalists in LAVC. The Ministry believes that promotion of effective use of current legal instruments should be made by the competent institutions by holding responsible the persons who have violated the legal regulation on protection of the children's rights. Ministry draws attention to the fact that processing data of natural person is protected according to Personal Data Protection Law (hereinafter - PDPL) and Section 204.[7] of LAVC, providing liability for unlawful actions with the data of a natural person. Considering that suggestion to make changes to the legal framework of administrative violations is connected with making changes to the policy of administrative penalty laws in general, the necessary changes were discussed also with the Ministry of Justice; the view of this Ministry on changes to the area of administrative penalty policy in general is in line with the position of the Ministry of Welfare. [26]

The Ombudsman made a request to DSI to provide an opinion on legal framework on protection of the private life of the child by indicating if the framework set out in Section 204.7 of LAVC is applied in practice in order to hold responsible the persons who have violated the prohibition stipulated in Section 71 of Protection of the Rights of the Child Law to disseminate information about the child.[27]

Data State Inspectorate informed[28] that according to Section 29 of PDPL its competence does not include evaluation if Section 71 of Protectiion of the Rights of the Child Law has been violated. Inspectorate applies Section 204.[7] of LAVC if unlawful actions with data of a natural person have been detected, namely, Inspectorate evaluates if legal basis for data procession determined by Section 7 of PDPL exist. At the same time Inspectorate points out that according to Section 5 of PDPL, Section 7 of this law shall not be applied if the personal data are processed for journalist needs according to the Law "On Press and Other Mass Media". Thus PDPL does not obligate the journalists to ensure any of the legal bases for data processing defined in Section 7 of PDPL. Journalists are obliged to comply with the Law "On Press and Other Mass Media".

[26] Letter No. 33-1-07/2509 of Ministry of Welfare dated 4 November 2013, page 4.
[27] Letter No. 6-8/86 of the Ombudsman, dated 8 April 2015.
[28] Letter No. 2-1/4134 of Data State Inspectorate, dated 14 May 2015.

The letter states that DSI is not eligible to apply the liability provided in Section 204.[7] of LAVC on processing of personal data without a legal basis regarding mass media. However, in other cases, if information about the child has illegally been disseminated by a subject who is not a journalist or mass medium, Inspectorate is eligible to apply the liability provided by Section 204.[7] of LAVC.

Section 27, Paragraph one of the Law "On Press and Other Mass Media" stipulates that a person committing a breach of confidence with respect to publication of non-publishable information defined by Section 7 of this law shall be held liable in accordance with laws of the Republic of Latvia. Section 28 of the same law states that injury, also moral injury, caused by a mass medium to a person by publishing of data and information the publication of which is prohibited by law, a mass media shall provide compensation to such person in accordance with the procedures prescribed by law.

It may be concluded that according to the effective framework the only type of liability of guilty persons - journalists and mass media - is civil liability. However, this mechanism for protection of rights is not sufficiently effective because the right to demand compensation by civil procedure is the choice of the private persons. If the legal representative of the child does not use the right to demand compensation by civil procedure for the injury caused to the child, the journalist may avoid any liability. Thus, there is a greater possibility of recurrence of publishing prohibited information about the child.

In the opinion of the Ombudsman, in order to prevent abuse of the lack of regulatory enactments and violations of the children's rights committed thereof, the legal framework must be improved by determining administrative liability for any subject, including journalists and mass media, for dissemination of information and data prohibited in regulations, including Section 71 of Protection of the Rights of the Child Law.

In July of 2015[29], the Ombudsman pointed out to the Ministry of Justice the detected problem and asked to provide opinion on the necessity to improve the legal framework. Ministry of Justice invited competent persons to the meeting in order to discuss the necessity of such framework. Representatives of journalists present in the meeting stated that in case of such violation it would be more appropriate to transfer this case for assessment to the journalist professional associations within the framework of the code of ethics.

[29] Letter No. 6-8/172 of the Ombudsman, dated 2 July 2015.

Code of Ethics of Latvia's Journalists Association states that its violations are reviewed by the Ethics Committee of the mentioned Association, and that journalists are to comply with the children's rights when using them as sources of information. Code of Ethics also states that in publication the journalist shall respect the person's private life, norms of morals, and shall protect the general human values such as human rights.

In the opinion of the Ombudsman, the offered solution is not effective because the professional journalist organisations are eligible to assess only the violations committed by their members. If the journalist is not the member of the mentioned organisation, his or her violation may not be reviewed by the professional journalist organisation. Thus, in the autumn of 2015[30], the Ombudsman repeatedly addressed the Ministry of Justice, as well as the Human Rights and Public Affairs Committee of the Saeima, and the Legal Affairs Committee, by offering the draft of the legal framework that would provide administrative liability for unlawful dissemination of information about the child. The suggested wording: "For release of prohibited information specified in Section 71 of Protection of the Rights of the Child Law about the child in press and other mass media a fine shall be imposed - for natural persons from 250 to 500 *euro*, but for legal entities - up to 2500 *euro*."

At the same time the letter was sent to the professional journalist organisations by asking the representatives of the sector to provide opinion the wording of the suggested legal framework by 14 October 2015. None of the addressees has provided the reply even by January of 2016.

7. Individual Preventive Work in Local Governments

Preventive work with children in municipalities initially was not included in the work strategy of the Ombudsman. The issue became relevant by the end of 2011 at the time of review of a submission on socially unacceptable behaviour of children in the interest education institution, and it is still relevant today. UN Committee on the Rights of the Child already in 2006 in its last recommendations to Latvia stated that Committee is concerned about intimidation of children in schools.

In 2011, the Ombudsman performed the research of the situation on preventive work with children. The main conclusion was that educators and parents sufficiently early

[30] Letter No. 1-8/18 of the Ombudsman, dated 11 September 2015.

are able to notice the behavioural problems of the child, yet the child most often does not receive the necessary support in time. It is difficult for the parents to accept the fact that behavioural disorders might have psychological health, neurological or other causes, including errors in raising the child. Educators, in their turn, do not consider themselves as subjects of children's rights protection who are obliged to react when faced with the first signs of behavioural, emotional or learning disorders.

Section 58, Paragraph one of Protection of the Rights of the Child Law states: "Work with children for the prevention of violations of law shall be carried out by local governments in collaboration with the parents of children, education institutions, the State Police, public organisations and other institutions." According to Paragraph two of the section the local government develops a behavioural social correction program for each child who has committed unlawful actions or such actions that may lead to unlawful action. Thus the local government is obliged to develop a program appropriate to the needs of every child of the risk group.

In 2015, the Ombudsman updated the issue on preventive work with children. In order to clarify the current situation in local governments regarding execution of Section 58, Paragraph two, Clause 7 of Protection of the Rights of the Child Law a questionnaire of all local governments was performed. Responses were received from all 119 local governments of Latvia.

Results of the questionnaire show that in 104 local governments the development of behavioural social correction programs has been delegated to social services, in 6 - to the interinstitution committee, and in the rest - to other municipal institutions. In two local governments - in Ilūkste and Pāvilosta municipalities - the programs are not developed at all. In comparison with the previous period, the situation has slightly improved because in 2013 the programs were not developed in four local governments, but in 2011 - in seven local governments.

In 2011, only in two local governments behavioural correction programs for children were developed on initiative of the education institution, but in 2013 - in 55, and in 2015 – already in 69 local governments.

Taking into consideration that there are 119 local governments in Latvia, it may be concluded that in 50 local governments behavioural correction programs for children are not being developed on initiative of education institution, even though according to regulatory framework it is obliged to report to the local government if the child's

behaviour does not improve after the support measures[31] undertaken by the school or kindergarten. In the questionnaire the social services pointed out as a problem that information from schools arrives late to the social service, namely, when problems are already very relevant.

In 2013, behavioural social correction programs were developed in 42 local governments only on initiative of State Police; in 2015 - in 28 local governments. It is too late any time when the child has already committed an offence. It is confirmed by the local governments as well: "Since active preventive work with the child is started after the report from the police or probation service, then often it is already too late and does not provide the desired effect."

In 98 local governments in 2015 programs were developed for 0 - 10 children.[32] Taking into consideration that children with behavioural disorders area almost in every class, it shows that every child of the risk group does not receive assistance appropriate to his or her needs.

Number of children for whom in 2015 were developed behavioural correction programs	**Number of local governments**
0	32 (Daugavpils. Aglona, Alsunga, Auce, Baltinava, Brocēni, Burtnieki, Dagda, Grobiņa, Ilūkste, Jaunpiebalga, Kārsava, Krimulda, Lubāna, Mazsalaca, Mērsrags, Naukšēni, Nereta, Nīca, Pārgauja, Pāvilosta, Preiļi, Priekule, Priekuļi, Rauna, Ropaži, Rucava, Salacgrīva, Sēja, Vaiņode, Vecpiebalga, Viļaka municipalities)
1 – 5	49
6 – 10	17
11 – 20	8 (Ventspils, Valmiera. Alūksne, Bauska, Gulbene, Krāslava, Madona, Ventspils municipalities)

[31] Cabinet regulations No. 1338 of 24 November 2009 "Procedure for Ensuring Safety of Pupils in Education Institutions and Events Organised by Them", Section 5.2: "If the behaviour of the educatee does not improve, and parents are not willing to cooperate with education institution and wish to involve other specialists in solving the situation, the head shall send this information to the respective local government."
[32] Data as to 1 October 2015.

21 – 30	5 (Liepāja, Rēzekne. Dobele, Ogre, Saldus municipalities)
31 – 40	1 (Jēkabpils 34)
41 – 50	2 (Jūrmala 46, Tukums municipality 47)
61	1 (Jelgava)
70	1 (Rīga)
No response	3 (Ādaži, Mālpils, Mārupe municipalities)

In the report of 2011 and 2013 on detected issues, the Ombudsman informed the legislative authority and government; in the course of monitoring visits invited the heads of local governments to improve the preventive work; subjects of children's rights protection were educated on importance of preventive work. In May of 2015, the Ombudsman addressed all local governments of Latvia and invited them to ensure effective execution of municipal obligation stipulated by the law to develop behavioural social correction and social assistance program for each child with behavioural disorders.

As previously mentioned, in December 2015, the Ministry of Justice in cooperation with the Ombudsman hosted a public expert discussion: "A Child or a Law Breaker? To Punish or to Educate?, and the Ombudsman organised the first part of discussion on current situation. In the course of this part were sought answers to questions on what obstacles local governments encounter in order to successfully implement the obligation required by the law, and why education institutions do not provide information to the local government. Two local governments (city of the Republic, Jelgava, and Bauska municipality) shared their experience. Video recording of the discussion is available on the website of the Ombudsman.[33]

The Ombudsman's recommendations to local governments in this area are not properly implemented. Several local governments have not developed a system, and do not even have a vision of how preventive work should take place, it is considered to be walking of the child from one institution to another and talking with the staff. "There are cases when the child must visit police, and probation service, and social service. In such cases functions of each institution should be separated more accurately because conversations on similar topics, for example, attendance of education institution, leisure, etc, are often repeated in every institution."

[33] Available at: http://www.tiesibsargs.lv/sakumlapa/iespeja-verot-tiesraide-publisku-ekspertu-diskusiju-berns-vai-likumparkapejs-sodit-vai-audzinat

The same way preventive work with children does not receive sufficient funding. In some local governments where the only specialist is a social worker who takes on preventive work with children alongside other official duties.

In the opinion of the Ombudsman, it is short-sightedness on the part of local governments because remuneration to specialists who would in timely manner develop and implement effective behavioural social correction program for each child living in municipality and whose behaviour might lead to unlawful action requires much less contributions in comparison with resources that would be used in future by the local government for every socially rejected inhabitant of the municipality, social benefit, social work and ensuring the housing and thus paying for the consequences of failure to do preventive work.

In the view of the Ombudsman, lack of a more detailed framework cannot be used as an excuse not to perform the preventive work altogether. Principles of the children's rights - rights to full development - and Section 58 of Protection of the Rights of the Child Law provide sufficient legal basis in order to give sufficient support to every child with behavioural disorders.

This is an area in which positive changes might be ensured with a more active involvement of society, therefore the Ombudsman invites parents to be active and ask to ensure kindergarten and school as a safe and violence-free environment for their children.

8. The Right of the Children of Imprisoned Persons to Access to Their Parents

In 2014, the Ombudsman for the first time turned attention to the problems of implementation of the rights of the children of imprisoned persons. In order to evaluate the compliance of the situation with the human rights standards and to promote the understanding of the conditions, needs and rights observance of these children, in the second half of 2014, the Ombudsman initiated a research on rights of contact of imprisoned persons and their children, one of the most serious problems children of the imprisoned persons face being restriction of right to access. In 2014, in cooperation with Prison Administration (hereinafter - PA) was performed questionnaire of 430 imprisoned persons in all prisons of Latvia, but within the framework of orphanage monitoring - questionnaire of 44 children in 11 municipal orphanages.

As a result of situational research conclusions were drawn that children have restricted opportunities to access their parents who are imprisoned: meetings take place seldom, and meeting rooms are not appropriate to the needs of the children. Yet one of the biggest problems faced by imprisoned persons when meeting their children is short and rare telephone conversations. Both imprisoned persons and children showed a great desire to be in touch with each other by means of video conferencing.

In 2015, research on issue of rights of children of imprisoned persons to access their parents was continued. Local governments were asked to provide information on foster families and guardians with whom live the children whose parents are imprisoned, and information was summarised on number of such foster families, guardians and children. In order to obtain enhanced information on providing children in out-of-family care access to parents who are in places of imprisonment were conducted telephone interviews of foster families.

In cooperation with experts in the area of psychotherapy was developed informative and educational material for promotion of communication of children and parents and for reduction of negative influence imprisonment has on implementation of parental functions - "How a small conversation over telephone can achieve much" is available on the Ombudsman's website[34]. However, the material that was initially meant for the target audience of imprisoned persons may be useful to any parent who for some reason may not be with their children.

Ministry of Justice and PA were informed by the Ombudsman on detected problems that restrict communication of children and parents who are imprisoned. Ministry of Justice was asked to provide information on accomplished and planned actions regarding improvement of the legal framework for ensuring the access rights of imprisoned persons and their children.

On 16 December 2015, a meeting of Standing Working Group of Criminal Punishment Execution Policy took place. Agenda included suggestions of PA regarding amendments on expansion of access rights of prisoners.

Ministry of Justice and PA offered the following suggestions in order to improve the access rights of imprisoned persons with their children:

1) provide rights to the foreign national by the means of video call to communicate with a child who is outside the Republic of Latvia. The working group supported this

[34] Available at: http://www.tiesibsargs.lv/files/content/Ka_maza_telefonsaruna_var_veikt_lielu_darbu_2015.pdf

suggestion, providing that this group of convicts has a right by means of a video call to communicate not only with a minor but with any other person outside the Republic of Latvia;

2) stipulate that minor convicts in Cēsis education institution have a right to use an unrestricted number of telephone conversations. The working group fully supported this suggestion;

3) provide the rights for imprisoned foreign nationals to contact children who are outside the Republic of Latvia by using video calls, and such practice was already started in 2016 in Iļģuciems prison within the framework of pilot project.

4) provide the rights to imprisoned persons in a long-term imprisonment to a long meeting - such a practice was already started in 2016 within the framework of pilot project in Iļģuciems prison.

Regarding amendments to Section 66 of Cabinet regulations No. 423 of 30 May 2006 "Internal Procedures of Liberty Deprivation Institution" about increasing the number of visitors of the imprisoned person, PA pointed out that this issue may be solved only in the context infrastructure development of places of imprisonment. However, in the meeting of the working group the decision was made to amend Section 66 of the above mentioned regulations by stipulating the opportunity to modify the number of visitors of imprisoned persons, for example, three children and one adult.

Conclusions made from the questionnaire of foster families regarding the rights of the children of imprisoned persons to access to their parents revealed the following situation - according to the information provided by the local governments in the time period between 24 April 2015 to 16 September 2015 in Latvia 159 guardians ensured care to children whose parents are imprisoned. Total number of children under guardianship is 202. 48 children whose parents are imprisoned live in foster families. Total number of foster families is 31.

Results of enhanced interview of foster families show that children living in foster families mostly do not communicate with their parents, and the main cause is indisposition of parents and children themselves (54%). Relationships between children and parents were assessed as rather negative, and it was also indicated that children experience disappointment on unfulfilled promises of their parents and are ashamed of their imprisonment. Most often children and parents communicate by telephone conversations (56%).

Children living in foster families are informed of location of their parents. Forster families indicated that such attitude is held by Orphan courts. Furthermore, several foster families added that communication shall be implemented if Orphan courts shall emphasise the necessity thereof.

Regarding aspects that could improve the communication of imprisoned persons and their children, it was said that social work with children and their imprisoned parents should be performed. Several times an opinion was expressed that parents use their children and keep in touch only in order to reduce the imprisonment time, change the measure of security, etc. It is difficult for children to retain relationship with imprisoned parents, especially if communication is rare and indifferent. Thus many foster families pointed out that it is important that parents themselves are motivated and honestly want to communicate. On visiting parents in prison, several foster families expressed the view that prison is not an appropriate meeting place for a child.

Taking into account the above mentioned, it should be concluded that children living in foster families are less motivated to contact their parents who are in imprisonment. If the child has no wish to contact his or her parents, then foster families are rather inclined not to promote and support it.

Article 9, Paragraph 3 of UN Convention on the Rights of the Child stipulates that member states shall respect the rights of the child separated from one or both parents to continuously maintain personal relationships and direct contact with both parents except cases when it is against the interests of the child. These rights are established also in Section 33, Paragraph one of Protection of the Rights of the Child Law that stipulates that a child who has been placed under guardianship or with a foster family or has been placed in a child care institution, has the right to maintain personal relationship and direct connection with parents. Paragraph two of this section stipulates that, the Orphan’s court may make a decision on restricting the access rights in cases when contact with parents brings harm to the child or poses a threat to guardians, foster families, staff of child care institutions, or other children. Section 44, Paragraph two of Protection of the Rights of the Child Law prescribes that foster family, guardian and child care institution inform the parents on development of the child and promote renewal of family bonds. Therefore, if Orphan's Court has not made a decision on restriction of access rights, guardian or foster family should promote contact between the child and parent who is in imprisonment.

II. Civil and Political Rights

1. Ensuring Rights of Persons with Intellectual Disabilities

1.1. Characterisation of Received Submissions

According to the competence, the Ombudsman has chosen as one of work priorities for the last few years promotion of right protection of persons with mental disabilities. In 2015, just like in previous years, the Ombudsman received a rather small number of submissions from persons with mental disabilities, yet it should be stated that lack of submissions does not automatically mean lack of problems in this area. It should be emphasised that persons with mental disabilities are to be included to the groups of persons who are the least protected and who have limited possibilities of protecting themselves, thus protection of rights of these persons should be significantly focused on.

Number of submissions is small, yet in 2015 a tendency can be observed that persons with mental disabilities or their relatives more often use an opportunity to address the Ombudsman in order to receive consultations on their rights both electronically and in person, both in cases of forced hospitalisation and legal proceedings initiated regarding restriction of person's ability to act, as well as on other aspects of rights.

No less important is to indicate that there have been separate situations when relatives have expressed dissatisfaction with decisions made by the council of doctors stating that no need has been detected to apply to the person with mental disabilities the treatment in the hospital against their will. In separate submissions persons have expressed complaints on decisions of the court by which the person has been assigned a medical treatment in a general hospital, requests had been made to assess the possible violations in these proceedings by pointing out that person has not received the adjudication of the court, or in another situation - effective state representation had not been ensured in the court session. By taking note of the above, in 2015, with a purpose to promote the rights of persons with mental disabilities, the Ombudsman has focused both on aspects of private life and aspects of the right to freedom and right to fair trial.

1.1.1. The right to private life - the right of the patient of psychiatric hospital to meetings

It is important to note that the Ombudsman quite often receives information on violations of the rights of persons with mental disabilities also from non-governmental

organisations. It should be noted that one of the most active non-governmental organisations - association "Resource Centre for Persons with Mental Disability "Zelda", a longstanding cooperation partner of the Ombudsman, has reported to the Ombudsman on several occasions on possible violations of human rights faced by persons with mental disabilities. In 2015 as well, for instance, was received information on the client of psychiatric hospital who stayed in the hospital according to the adjudication of the court in the criminal proceedings applying to him a forced medical treatment and who was denied the right to meet his family members, including minor children. In reaction to the received information and by clarifying the actual circumstances, the Ombudsman initially drew the attention of the hospital to Section 69.[1], Paragraphs one and two of Medical Treatment Law describing the procedure for restricting the rights of the person to meetings. At the same time by detecting that the specific situation involves both children and persons with intellectual disabilities with restricted possibilities to defend their rights and objectively evaluate the actual and legal circumstances, the Ombudsman asked the administration of the hospital to assess the specific situation according to procedure prescribed by Section 69.[1], Paragraph ten of Medical Treatment Law. Additionally, the Ombudsman sent a letter to the responsible Orphan's Court with a request to be involved in evaluation of objective circumstances of the case according to the competence stipulated by the Law on Orphan's Court and to undertake measures in order to ensure compliance with the rights of the children involved in the actual situation.

1.1.2. Informed consent

In their monitoring visits, staff of the Ombudsman's Office quite often have received information from inhabitants of state social care centres that one of the methods to solve the conflict between the clients and care institution is to send the client to psychiatric hospital. Even though the Ombudsman has not identified this problem as systematic, yet there is concern regarding helplessness of the clients and limited possibilities to protect themselves in such situations.

In 2015, the Ombudsman has reviewed the verification procedure No. 2014-100-3F and in it emphasised that persons with mental illnesses or disorders that stay in an institution and receive the service of state social rehabilitation and social care are especially unprotected. Thus, these persons should be treated with special care in order to prevent action or lack thereof that could harm their wellbeing. To these persons as well the psychiatric assistance should be provided by observing the principle of voluntary

consent. Within the framework of the above mentioned verification procedure by assessing the materials of the case in general it was impossible to exclude reasonable doubt that action of staff of state social care centre branch was aimed at solving the current conflict situation between the client and staff by hospitalisation of the client in the psychiatric hospital. Furthermore, it was concluded: even though formally requirements of the regulatory enactments regarding the hospitalisation procedure were observed, submission signed by the client – consent to be submitted to the hospital cannot be considered as voluntary.

1.1.3. The right of the person to participate in the court hearing in the case on restriction of legal capacity

In 2015, a submission was received from a judge, drawing the Ombudsman's attention to essential aspects of human rights in the specific civil action by pointing out that before preparing and submitting an application on restriction of the person's legal capacity, the prosecutor had not met the person, and appearance of person to the court and hearing of the person was difficult because the person remained in the psychiatric hospital for a long time.

By pointing out the independence of the judiciary and inadmissibility of interference with the work of the court, as well as taking into consideration that the new framework of restricting the legal capacity is applied to comparably short time and its inadequate application may infringe upon essential fundamental human rights, the Ombudsman provided a general explanation regarding the application of the new framework of legal capacity and possible violations of human rights during the proceedings.

Thus, the Ombudsman expressed the opinion that in situations when the request on submission of application to the court on restriction of legal capacity is received by the prosecutor, according to the standards of the human rights the prosecutor shall initially clarify the opinion of the person on whom the issue shall be decided on necessity of restriction of legal capacity. By stipulating the duty of the prosecutor to protect the rights and interests of the person with disabilities, as well as opportunity to address the court with an application to restrict legal capacity in the interests of the person, the regulatory framework has provided sufficient authority to the prosecutor, including the possibility not only to obtain information from other institutions and undertake other necessary events, but also to visit various institutions, including psycho-neurological hospital.

Already by initial meeting with the person and hearing his or her opinion are ensured the rights of the person in the least restrictive way, as well as effective protection of the person from abuse. In addition it was stated that in a situation when the person remains in the treatment institution for a long time, it is essential that prosecutor would examine the compliance with the rights of this person while in the treatment institution, namely, has the person given informed consent regarding the provisions of the Law on the Rights of Patients and the principle of voluntary choice defined in the Medical Treatment Law.

According to the standard set by ECHR, mentally ill person shall be provided an opportunity to be heard in person or, if necessary, by the means of any kind of representation[35]. The new legal framework of Section 266, Paragraph three of the Civil Procedure Law included the duty of the court to invite to the court hearing a person on restriction of whose legal capacity the proceeding is held, and only as an exception the issue on proceeding without the person being present.

ECHR has pointed out in its practice that when dealing with proceedings with the involvement of mentally ill person the state courts should have a certain freedom to act. For example, the courts might determine appropriate procedural measures in order to ensure good legal proceedings, health protection of the respective person, etc. Yet such measures must not influence the right of the applicant to fair trial guaranteed in Section 6 of CPHRFF. When evaluating if specific measure, for instance, exclusion of the applicant from the court hearing was necessary, ECHR takes into consideration all essential factors.[36]

The mentioned guarantees arise also from Article 12, Paragraph four of Convention on the Rights of Persons with Disabilities providing that "States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests."

[35] ECHR judgment of 27 March 2008 in the case Shtukaturov v. Russia, Clause 71.
[36] ECHR judgment of 27 March 2008 in the case Shtukaturov v. Russia, Clause 68.

Regarding the duty set to the court by Section 266, Paragraph four of the Civil Procedure Law to collect evidence, it was indicated in the proceedings that in connection to the possibilities of the court to obtain objective information on the health condition of the person the legislative authority has provided an opportunity to the court to receive a reference from the medical institution, as well as in case of insufficient evidence to make a decision on ordering a psychiatric and, if necessary, psychological examination.

Even though designation of examination in a greater measure restricts the right of the person to the private life, in every specific case due to insufficient evidence the court has an opportunity to decide this issue according to essence by finding out the opinion of the participants of the proceedings, including the person who shall be submitted to the examination.

1.2. Discussion on Application of Section 68 of Medical Treatment Law - Rights of Persons with Mental Disabilities to Freedom and Fair Trial

Article 14, Paragraph 1, Clause b) of UN Convention on the Rights of Persons with Disabilities stipulates: States Parties shall ensure that persons with disabilities, on an equal basis with others are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

Article 13 of Convention states that effective access to justice shall be ensured for persons with disabilities on an equal basis with others. In its practice ECHR has emphasised that mental illnesses may not be a cause to ignore the rights of the person to fair trial: "Even though mental illness may create definite limitations regarding the implementation of rights to fair trial, it may not justify complete denial of these rights guaranteed by Article 6 (1) of European Convention for the Protection of Human Rights and Fundamental Freedoms." [37] The same way it should be stated that the purpose of convention is to guarantee practical and effective rights, not theoretical or illusionary rights.

Section 68, Paragraph one of Medical Treatment Law provides cases when freedom of the person with mental disabilities may be limited and psychiatric assistance provided without the person's consent by adjudication of the court. Section 68, Paragraph nine of

[37] ECHR judgment in the case *Winterwerp v. Netherlands*, Clause 75.

Medical Treatment Law stipulates that patient shall participate in the court hearing in which the judge shall examine the materials submitted regarding the provision of psychiatric assistance in the psychiatric medical treatment institution without the consent of the patient if his or her health condition allows it, the public prosecutor, representative of the patient or advocate.

In spring of 2015, the Ombudsman organised the round table discussion with the judges of the Riga City Ziemeļi District Court, representatives of the prosecutor's office and resource centre for persons with mental disabilities "Zelda". The purpose of the discussion was to update and discuss aspects of human rights in relation to ensuring the rights of the persons with mental disabilities to fair trial by reviewing the submissions on providing psychiatric assistance without the patient's consent. Prior to discussion adjudications made in 2014 by Riga City Ziemeļi District Court were analysed.

In the course of discussion attention was paid to the following issues: the right of the person to be present in the court hearing; the right to be heard (by mediation of the representative and/or in writing); the rights of the person to effective defence (the right to receive advice of defender before and after the court hearing); role of the prosecutor in the given proceedings; the obligation of the court to evaluate objectively the materials, existence of evidence in the case (reports provided by the police and emergency medical aid team); grounds for court's adjudication (reflecting opinions of all participants of the proceeding in the decision); the right of the person to appeal the adjudication of the court; and efficiency of appeal mechanism.

In ECHR[38] practice an insight has been firmly grounded that in order to detain mentally ill persons the absolute minimum of legal procedure is the right of the individual to protect him or herself in court and to challenge the medical and social evidence used to support his or her detainment. It is highly important that person with mental disability has an opportunity to be heard, if necessary, by using assistance of the representative, else the person would not have been ensured the fundamental procedural safeguards that are applied in case of deprivation of liberty. Mental disabilities may be a cause for limiting the implementation of such rights, yet it may not be a basis for limiting these rights in essence. There is also no doubt that special procedural protective mechanisms may be used to protect the persons who may not fully protect themselves due to mental disabilities.

[38] ECHR judgment in the case *Winterwerp pret Nīderlandi*, Clause 60.

Taking into consideration that health condition of the patients is subject to change, and the decision of the council is made a day or two previously, the participants of the discussion acknowledged that in the course of the court hearing it is essential to ascertain the health condition of the person in the day of the court hearing by listening to the advice of the representative of the medical treatment institution, and, if necessary, judge shall contact the patient in the hospital. The representatives of the court added that such practice exists because medical treatment institutions offer judge an opportunity to visit the hospital and contact the person. Even though in the opinion of the discussion participants such practice should be supported, the representatives of the court pointed out that in separate situations this action should not be permissible, namely, if the person has severe health issues, as well as for the reasons of safety.

Regarding aggressive patients, representatives of the association "Zelda" drew attention of the present participants to the fact that aggression of patients sometimes is connected exactly to the restriction of their right to freedom - their placement in the hospital, conflict situations with relatives whose explanations are given a greater degree of credibility. Thus, when assessing the possibility of the person's participation in the court hearing, as well as when assessing the necessity of providing psychiatric assistance against the patient's will, this aspect should be considered. The same way the person or its representative should have an opportunity to provide their opinion of actual circumstances of the case to the court in writing, if the person wishes for it.

Regarding the defence provided for the person, it should be pointed out that from the reviewed decisions it is clear that in most cases for the defence of the patients in such proceedings state funded advocates are invited. It is important to note that regardless of the fact if the person has hired a defender for themselves or defence is provided by the state funded defender, defence shall be qualitative and effective. It should be considered that the person with mental disabilities may perceive the court proceedings as alarming and strange, but providing grounds for restriction of freedom is a part of professional work of the representative of the medical treatment institution. In this situation the patient may find it difficult to defend him or herself, to acquaint him or herself with all evidence obtained in this case, as well as in separate cases ability to concentrate may be reduced due to influence of the medication.

It is no less important to note, that ECHR in its practice has stated: appointment of a defender in itself does not guarantee effective assistance to the person with mental disabilities, and it is important to be aware that person should not always take on initiative

to find representation. Section 68, Paragraph eight of Medical Treatment Law stipulates that the psychiatric medical treatment institution on the basis of a request from the representative of the patient or advocate shall ensure the possibility to meet with the patient in order to provide consultations.

Only from separate reviewed adjudications of the court it is obvious that defender has met with the client prior to the court hearing and has heard the person's opinion and has expressed it later to the court in the hearing. It should be noted that in most cases defender in providing defence has expressed an opposite opinion to the one expressed by the patient in the court hearing. Participants of the discussion shared their thoughts on what shall be considered as effective defence of the rights and interests of the person with mental disabilities by pointing out the balance between the right of the person to freedom and the right to health care. In the course of discussion the representatives of the court confirmed that in cases when the opinion of the defence has been opposite to the one expressed in the court hearing by the patient, the defender had supported his or her opinion by setting as a priority the right of the patient to health care. However, from the aspect of the human rights it should be noted that in these situations the defender represents the patient, and thus expressing opposite or his or her own personal subjective opinion is not acceptable, since in that way the right of the person to defence is violated.

Participants of the discussion drew attention to the fact that prosecutor participating in these proceedings upon detecting that in the proceedings effective defence is not ensured or defender acts contrary to the rights and interests of the person, should interfere and promote assurance of person's rights and interests.

In order to promote the right of the persons to receive legal assistance prior to the court hearing, the court representatives made a specific suggestion - upon beginning the hearing, the court is eligible to ascertain if the person has received a consultation, wishes such a consultation, as well as cooperate if necessary in order to provide it. At the same time it was stated that provision of such consultation should not interfere with the work of the court, and such practice should be ensured and promoted that defence provide consultation in due time, prior to the court hearing.

The right to a motivated adjudication of the court is closely related with the right to comprehensive and objective assessment of the circumstances of the case and the right to appeal the adjudication. By reviewing the adjudications, it was detected that mostly these were detailed and motivated, and only in separate adjudications were detected such

deficiencies as lack of reflection of opinions expressed in the court hearing by the participants of the proceedings.

It should also be noted that mainly the motivation of the court is based on the decision of the doctors' council, in separate cases lacking the exposition of the hospitalisation circumstances. Participants of the discussion drew attention to the fact that in practice there are problems with reports of emergency medical care unit and police, namely, these are short or have not been received at all, thus making the work of the court more difficult in assessing the necessity for providing psychiatric assistance to the person against their will in situations when such evidence is critically important.

By assessing the necessity to hospitalise the patient against their will, the principle should be adhered to that restriction of freedom due to mental illness would be unfounded if based on discrimination or prejudice against persons with disabilities. According to CPHRFF, mental disabilities should be of a definite severity in order to justify the restriction of freedom.

1.3. Improvement of Regulatory Framework

Already previously in his annual report the Ombudsman has stated that in September 2014 upon coming into force of the amendments to the Medical Treatment Law, one of the longstanding problems in mental health area was being solved. Regulatory framework stipulated that restricting means may be used to persons who have been hospitalised in the psychiatric hospital against their will. Section 69.[1], Paragraphs three and nine of the Medical Treatment Law included delegation to the Cabinet of Ministers to determine the procedure for limiting patients by using restrictive means and the list of items prohibited to be kept and received with consignments (parcels) in psychiatric treatment institution.

Even though late, yet welcome was action of Ministry of Health by the end of 2015 both in undertaking measures and organising meetings and discussing draft regulations of Cabinet, and transfer it for further review and acceptance by the government. Staff of the Ombudsman's Office also took place in discussions on compliance of the draft regulations with human rights. Acceptance of such a regulatory framework is fundamentally necessary in order to ensure the treatment process in compliance with the standards of the human rights.

1.4. Observation of Elections in Psychiatric Hospitals

Already in the report of 2014 the Ombudsman informed that staff of Ombudsman's Office in 2014 performed observation of both European Parliament elections and Saeima election process in psychiatric hospitals. In connection with ensuring the right to vote for persons with mental disabilities in psycho-neurological hospitals were detected specific problems of systemic character for solution of which in the beginning of 2015 the Ombudsman summarised the results of election observation and his recommendations and sent these to the Central Election Commission, Ministry of Justice, as well as to all psycho-neurological hospitals.

Ministry of Justice in reaction to the Ombudsman's recommendations stated in its response letter that part of these recommendations are aimed at organisational issues of election for implementation of which amendments to regulatory enactments are not necessary. Ministry of Justice has expressed an opinion that implementation of the mentioned recommendations is possible within the framework of election procedure prescribed by the regulatory enactments, by means of issuing relevant instructions of the Central Election Commission, organising training of election commission members and measures determined by the management of the psycho-neurological hospitals.

Ministry of Justice has fully acknowledged as supportable that recommendations of the Ombudsman on the necessity of support measures during election for persons with mental disabilities that would promote the availability of elections to this group. At the same time it drew attention to the fact that support provided to the persons with mental disabilities must not create the risk to the restriction of free will of these persons. It should be considered that political participation rights prescribed by UN Convention on the Rights of Persons with Disabilities are to be viewed in connection with the obligation of the member states to acknowledge that persons with disabilities equal to others have a legal capacity in all areas, including in political rights. UN Committee on the Rights of Persons with Disabilities in explaining Article 12 of the mentioned Convention emphasises that in order to support provided to the implementation of legal capacity of the person should not be a basis for restriction of other fundamental rights, especially emphasising the right to vote.

1.5. Personnel Policy in Psycho-neurological Hospitals

By positive evaluation of amendments to the Medical Treatment Law, the Ombudsman emphasises that these were developed in cooperation with the Ministry of Health, as well as by taking into consideration the suggestions of Association of Psychiatrists. At the same time being aware that work with mentally ill persons or persons with mental disabilities always provides a difficult task to all categories of involved personnel, a special attention should be paid to the issue connected with the personnel policy of the psycho-neurological hospitals.

By noting that psychiatric treatment is based on individual approach, and the treatment plan should include a spectrum of rehabilitation and therapeutic measures, the resources of personnel should be sufficient regarding its number, categories (psychiatrists, nurses, psychologists, ergotherapists, social workers, orderlies, etc), experience and practice. Publicly information has been available that in somatic hospitals fixation of patients has been applied due to lack of personnel. However, according to the standards of human rights, fixation is to be considered as the last resort and may be applied only to such patients who are placed in the hospital against their will.

The Ombudsman is informed that psycho-neurological hospitals desperately lack personnel, and as a result there are situations when also to especially monitored patients including voluntary ones are fixated, and there are also problems with providing everyday walks for the patients. Also European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has emphasised in its reports that lack of personnel resources often is a cause for reduced opportunities to offer the aforementioned activities that ensure therapeutic environment, and thus situations of heightened risk and violations of rights may be caused.

In order to receive objective information on issues of personnel policy, in 2015 the Ombudsman asked all psycho-neurological hospitals of Latvia to provide information on if they have a sufficient number of medical personnel in order to ensure appropriate care and treatment to persons with mental disabilities. Summarisation and assessment of the received information shall be continued throughout the first quarter of 2016, and Ombudsman shall inform the Ministry of Health on his conclusions and suggestions.

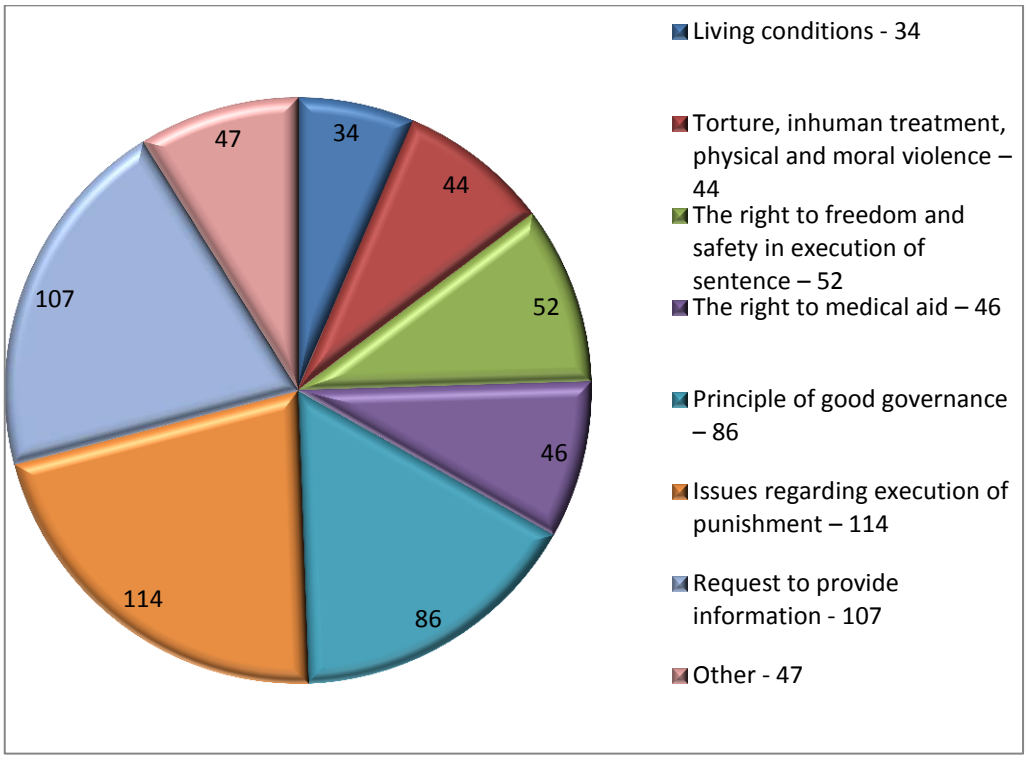
Yet already at the moment a positive example can be presented that in a situation when psycho-neurological hospitals outside the capital city have observed a desperate insufficiency in a number of doctors psychiatrists, and, for example, VSIA "Daugavpils psihoneiroloģiskā slimnīca" in cooperation with Daugavpils City Council has undertaken measures in order to attract future doctors for work in the hospital by the use of grants

provided by the local government and offering them support in their years of studies. However, the management of the hospital has pointed out the limited number of residents in the psychiatric residenture, including the number of resident places funded by the state that are by far fewer than the deficit of doctors outside Riga and thus create objective obstacles for involvement of future doctors. The mentioned example illustrates a positive action on the part of the local government; however, it also reveals the necessity to look at the systemic solution of the problem at the state level.

2. Protection of Persons' Rights in Places of Imprisonment

2.1. General Information

Activity of the Ombudsman's Office in the protection of prisoner's rights is manifested in several ways: review of submissions, including electronic ones; oral consultations; participation in working groups; monitoring visits to places of imprisonment, etc. The Ombudsman's Office constantly every year receives a large number of submissions from the places of imprisonment on possible violations of rights of imprisoned persons. In 2015 were received approximately 530 such submissions as well:



In the reporting year the Ombudsman participated in two working groups of the Ministry of Justice connected with criminal punishment execution policy, namely, the standing working group for criminal punishment execution policy and a working group for development of a new Criminal Punishment Execution Law. However, within the reporting year the staff of the Ombudsman's Office have participated in five such working groups.

Regarding the monitoring visits to the places of imprisonment, it should be pointed out that Latvia still has not signed and ratified the Additional Protocol to UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Ombudsman's institution may not be considered as effective independent preventive mechanism in the understanding of the Additional Protocol because no preventive regular visits are made to secure institutions, but rather reactive visits on the basis of information received on possible violations of human rights. In the reporting year, a total of 10 such monitoring visits have been made to the prisons, of which six were to Riga Central Prison, one to the Latvian Prison Hospital in Olaine prison, and one to Jelgava, Brasa and Daugavgrīva prisons each. The purpose of all these visits was to clarify the necessary information regarding separate submissions and/or verification procedure. However, complex monitoring visits lasting for several days to any one of Latvian places of imprisonment have not been made in 2015.

2.2. Characterisation of Submissions

2.2.1. On living conditions

As every year, also in 2015 a greater part of submissions from prisoners are in relation to living conditions in prison; however, in comparison with previous years, in the reporting period such submissions have been decreased in double. Namely, in 2015 there were 34 submissions, while in 2014 there were 66. Possibly the aforementioned fact may be explained by increased interest of the responsible officials within last years and the attempts to improve the living conditions in places of imprisonment.

Just as before, also in 2015 requests have been received from administrative courts to provide information on observations of the Ombudsman during the monitoring visits to the places of imprisonment. Thus is may be concluded that regarding the actual activity of the prison by not ensuring conditions respecting human dignity, the prisoners actively make use of the existing mechanism for protection of the rights and initially turn to the

responsible officials in whose competence it is to solve the respective problem, but if the decision is not satisfactory, they use the right to appeal it in administrative court. ECHR as well has acknowledged review of complaints on inappropriate living conditions at a national level in administrative courts as effective mechanism for protection of the rights. Thus, the Ombudsman as well in the time of last two years has paid much less attention to inspection of living conditions in places of imprisonment, even though these questions are important and essential from the view of the human rights aspect.

In 2015, the most submissions with complaints on unsatisfactory living conditions have been received from the Jelgava prison, Daugavgrīva prison, Riga Central Prison, Brasa prison. As previously, submissions have been received with requests to send conclusions and opinions of the inspection visits of the Ombudsman on compliance of conditions with the requirements of the human rights.

2.2.2. On violence and self-government of the prisoners

The Ombudsman's Office still receives submissions on hierarchical system (self-government) existing among the imprisoned persons and on mutual violence. Even though the Ombudsman had already previously pointed out this problem both to PA and to Ministry of Justice and had asked to take appropriate measures to eliminate it[39]; however, submissions still indicate that the prison administration supports the existence of hierarchical system allowing the prisoners to settle accounts among themselves physically and morally. Furthermore, information on marked hierarchical system among prisoners has been confirmed several times during the monitoring visits.

Taking into consideration that PA has competence and responsibility in these issues, the Ombudsman forwards the submissions to this institution to be reviewed with a request to inform on results of inspection, while at the same time taking into account for further work the conditions indicated in submissions, as well as paying more attention to places of imprisonment from which these submissions have been received in a greater number.

Plans have been made to continue researching this issue and to promote discussion with the officials of PA on ways and measures of how to eliminate the hierarchical system existing among prisoners and the mutual violence by emphasising the role and responsibility of the personnel in this process.

[39] Letter No. 6-1/1008 of the Ombudsman dated 16 May 2013 to Prison Administration and Ministry of Justice.

2.2.3. On paid services provided by Prison Administration

Over the reporting period several submissions were received from arrested persons who expressed dissatisfaction that they just like convicted persons had to pay for the used energy when making use of individual household appliances, and even at a greater rate than persons being at liberty.

As of 14 July 2015, amendments to Section 14, Clause 10 of Law on the Procedures of Holding under Arrest stipulating that arrested persons are obliged to pay for paid services provided by PA and defined by Cabinet regulations No. 739 of 3 September 2013 "Charges for Paid Services of Prison Administration". Already in 2014, the Ombudsman submitted an opinion pointing out that calculations of charges for paid services in the above mentioned regulations are not clear and transparent, are disproportionately high, as well as do not provide a sufficient notion on basis of calculations reflected and their correspondence to the real situation.

By repeatedly reviewing the answers to the mentioned verification procedure provided by the responsible authorities, the Ombudsman asked State Audit Office to audit the grounds, proportions and usefulness of the calculations of paid services provided by Prison Administration and included in the regulations. The received answer states that State Audit Office has held negotiations with Prison Administration, and as a result it was ascertained that suggestions have been developed for amendments to the regulations, after review of the prices of paid services and recalculations of prices of several services. Currently these suggestions have been sent for assessment by the Ministry of Justice. At the same time the State Audit Office has pointed out to the Ombudsman that it shall consider an opportunity to plan inspections on the grounds of paid services of prisons in financial audit. The Ombudsman shall be involved in solving this issue in 2016 as well.

According to the submissions received in the reporting year there is concern that in many places of imprisonment a situation has formed that prisoners who do not receive money from the persons outside the prison, for instance, from the family members, and who cannot be involved in paid work are denied the opportunity to watch the television programs. Namely, the places of imprisonment are not able to ensure an opportunity for the prisoners to attend the common room for watching television programs as prescribed by the provisions of the Sentence Execution Code of Latvia. Research shall be conducted on this issue in 2016.

2.2.4. On health care

In 2015, the Ombudsman's Office received 46 submissions regarding provision of medical aid to imprisoned persons. Unchangeably the greatest part of the submissions are complaints on quality of the provided medical treatment and professionalism of the doctors when examining the patient and determining the necessary medical therapy. Frequently these submissions state that in prison only pain medication is given, but not medication for treatment. Thus quality medical treatment process is not performed. Furthermore, with such complaints defenders of the imprisoned persons, sworn advocates, have turned to the Ombudsman's Office.

In their submissions, the prisoners also indicate that prison doctors therapists are unwilling to send the patients for examination by other specialists in Latvian Prison Hospital or in other medical treatment institutions outside the places of imprisonment. Such complaints have been received from Jelgava, Jēkabpils, Brasa, Liepāja prisons, as well as from Riga Central Prison.

Upon receiving submissions with complaints on professionalism of medical staff of prison or the quality of treatment, Health Inspectorate as the competent institution is asked to evaluate each specific case.

In comparison with the previous years, in 2015 the Ombudsman's Office has received fewer complaints about the availability and services of dentists. There are also positive trends that for receipt of dental care the prisoners are conveyed to hospitals or dental clinics outside the prison.

The Ombudsman has continuously turned attention to diagnostics and treatment of Hepatitis C in places of imprisonment. One of the obstacles for improvement of situation for treatment of Hepatitis C was the co-funding by the prisoner - approximately 300 Euros per month - for purchase of medication. Truth be told, on 8 December 2015, the Cabinet of Ministers accepted amendments to regulations No. 899 of 31 October 2006 "Procedures for the Reimbursement of Expenditures for the Acquisition of Medicinal Products and Medicinal Devices Intended for Out-patient Medical Treatment", thus providing that as of 1 January 2016 shall ensure 100% state budget funding for acquisition of state compensated medication for treatment of Hepatitis C.

2.3. Imprisonment Conditions for Persons with Disabilities

In the last years special attention is given to imprisonment conditions of persons with disabilities. Considering the amount of hours imprisoned persons spend in their cells, imprisonment conditions have a significant effect on serving the sentence of deprivation of liberty.

When the state officials decide to imprison persons with disability and keep them imprisoned for a lengthy period of time, these persons should be ensured care that would correspond to the special needs of the specific person with disabilities. Furthermore, imprisonment of a person with disabilities in a place where he or she is not able to move around independently and especially where the person cannot leave the cell on their own can be compared to degrading action. The same way imprisonment conditions shall be comparable to degrading if persons with severe physical disability are left to trust in the help of their cell mates in order to use the toilet or shower, as well as when dressing or undressing[40]. Such a solution as leaving the persons with severe physical disability to supervision and care of other inmates is questionable even though it may be short-term.[41]

UN Convention on the Rights of Persons with Disabilities includes fundamental international standards. As the Ombudsman has pointed out repeatedly, according to Article 14, Paragraph two of the Convention, States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation. Article 2 of the Convention provides a definition of "reasonable accommodation" by which is understood necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms

Thus, the definition of "reasonable accommodation" in Article 2 of Convention on the Rights of Persons with Disabilities includes the obligation of the State to perform appropriate changes to procedures and rooms of prisons in order to ensure the opportunity

[40] ECHR judgement in case 6087/03 dated 25 June 2013, *Grimailovs v. Latvia*, para 151, 153. Available: http://hudoc.echr.coe.int.ECHR judgment in the case 2689/12, dated 6 February 2014,*Semikhvostov v. Russia*, para.72, 74. Available: http://hudoc.echr.coe.int

[41] ECHR judgement in case 4672/02 dated 2 December 2004 Farbtuhs v. Latvia, paragraph 60. Available: http://at.gov.lv/lv/. ECHR judgment in case 6087/03 dated 25 June 2013, Grimalovs v. Latvia, para.152. Available: http://hudoc.echr.coe.int

for the persons with disabilities on equal basis with others to use or implement all human rights. Non-existence of "reasonable accommodation" may lead to imprisonment conditions reaching inhumane treatment or torture.

Latvia has internationally taken on the obligation to ensure holding of imprisoned persons in such conditions that are compatible with human dignity. While visiting places of imprisonment, several times it was found that persons with disability are not ensured appropriate imprisonment conditions, including supervision and care. Namely, everyday responsibility for the person with disabilities has been laid upon other imprisoned persons, also such who themselves are ill; and such treatment is unacceptable. It was also found that mostly prison rooms are not reasonably accommodated for the persons with disabilities. Rooms are not technically adapted to persons with disabilities, and architectural obstacles to the persons in wheelchairs create difficulties of movement. Thus, due to placement of exercise yards and cells, the persons in wheelchairs are not able to go out for a walk on their own.

In each individual case regarding the found problems was informed management of PA and the Minister of Justice. Moreover, the minister of the sector is invited to see to adapting the environment of prisons in Latvia to persons with disabilities. It should be considered that Council of Europe Anti-Torture Committee (hereinafter referred to as CPT) already in its report of 2013 expressed regret to the government in Latvia that even after the recommendations given after the visit in 2011, in Riga Central Prison (also in Jelgava prison) imprisoned persons still perform various duties in Medical Department of the prison, including care for the patients.[42]

The Head of PA and the Minister of Justice have provided information on intended measures for improvement of imprisonment conditions and accommodation for placement of persons with reduced mobility. For instance, in Riga Central Prison no later than by the first quarter of 2016 would be prepared a cell accommodated for placement of persons with reduced mobility. At the same time the Minister of Justice informed that a new prison shall be constructed in Liepāja, and it shall comply with the requirements of the international human rights.

When visiting the places of imprisonment, the Ombudsman will still pay special attention to the holding conditions of imprisoned persons with disabilities. The same way

[42] Report to the Latvian Government on the visit to Latvia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrding Treatment or Punishment (CPT) from 12 to 17 September 2013, para. 42.
Available: http://www.cpt.coe.int/documents/lva/2014-05-inf-eng.pdf

it should be noted that the Ombudsman's Office more often receives submissions from imprisoned persons with disabilities, including from their relatives, on conditions of imprisonment and health care.

2.4. Availability of Regulatory Enactments

According to Section 90 of the Constitution everyone has a right to know their rights. Already in the previous reporting year the Ombudsman raised an issue on access of the imprisoned persons to the regulatory enactments. Also in 2015, when visiting places of imprisonment, this issue was paid special attention.

On the basis of received information, the Ombudsman turned to PA with a request to provide information on access of imprisoned persons to websites *www.vestnesis.lv* and *www.likumi.lv*, as well as an opportunity to read the official information placed therein for free, especially in Jelgava prison. Head of the PA provided information on action of officials of prisons and procedure for imprisoned persons to read the external regulatory enactments published in the official magazine.[43] At the same time she informed that regarding Jelgava prison and taking into account the technical specification of the computers, the use of website *www.likumi.lv* has been intended in mobile version because it is adapted for use in lower performance computers and for users who only require the basic functions of the website, as well as for persons with impaired vision who use special software for browsing the web. Mobile version of *www.likumi.lv* ensures access to all regulatory enactments of the Republic of Latvia that are in force or are no longer effective, as well as to the judgements of the Constitutional court. Imprisoned persons in Jelgava prison have an opportunity to connect to the full version of *www.likumi.lv*, but due to the great amount of data, it is difficult to work with this version.

On 26 August 2015, the staff of the Ombudsman's Office visited Jelgava prison and found that in the computer room of the building for persons sentenced for life website *www.likumi.lv* is not accessible, thus an opportunity to be acquainted with the regulatory

[43] Namely, imprisoned persons may turn to administration of the place of imprisonment in due procedure prescribed by the law with a request to be able to access external regulatory enactments published in an official magazine without charge. In its turn, administration of the place of imprisonment upon receipt of a motivated submission by an imprisoned person and evaluating the current possibilities of the infrastructure of the place of imprisonment shall ensure the person with a possibility to read the external regulatory enactment without charge by providing for temporary use a printout of the official magazine in a paper format or by mediation of an official shall ensure to the imprisoned persona visit *to www.vestnesis.lv and/or www.likumi.lv* (in a presence of officials or staff). To a room with available computer with a connection to the website *www.likumi.lv* the imprisoned persons are taken on the basis of submission to the head of the place of imprisonment. Upon receipt of permission the submission is transferred to the on-duty assistant of the head of place of imprisonment who shall organise the person's access to the computer room.

enactments free of charge is not available. Namely, even though the mobile version of *www.likumi.lv* is available, it does not react to any 'command' from the user. Connection to full version of *www.likumi.lv* is not possible. Taking into consideration that publishing of the law is a paid service, the Ombudsman concluded that in this case the rights guaranteed by Section 100 (the right to free access of information) and Section 90 (the right to know their rights) of the Constitution have been violated.

Administration of Jelgava prison and management of PA were informed about this violation. In the response letter to the Ombudsman, it pointed out that information kiosk *Capital NEO GX29* with a possibility to connect to full versions of 12 websites has been installed in the computer room of the building for persons sentenced for life in Jelgava prison. The response letter also held an explanation that ten such information kiosks have been acquired and are already installed in Daugavgrīva prison (three), Liepāja prison (one), Riga Central Prison (three), Valmiera prison (one), and Jelgava prison (two).

On 24 November 2015, the staff of the Ombudsman's Office visited Daugavgrīva prison. At the time of the visit it was found that staff of the prison do not have complete information on these kiosks. Namely, separate staff were not informed about these at all, but other staff including Daugavgrīva prison administration did not have information that with these kiosks there is/will be an opportunity to connect to full versions of 12 websites.[44]

At the time of visit it was also found that information kiosks at Daugavgrīva prison do not ensure access to two websites - *www.likumi.lv* and *www.vestnesis.lv*. It was also found that information kiosks in this place of imprisonment have been for approximately two months.

Taking into account that the aspect of good governance includes also effective exchange of information between PA and its structural units, the Ombudsman turned to PA with a request to provide a comment on the facts discovered during the visit to Daugavgrīva prison on 24 November 2015. At the same time the Ombudsman asked to pay attention so that administration and staff of other places of imprisonment would also have sufficient information about the information kiosks and how these might be used.

In their letter of response, PA informed that on 14 September 2015 three information kiosks were set up in Daugavgrīva prison. In the time period to 30 November 2015 the imprisoned persons at Daugavgrīva prison had an opportunity to connect to the

[44] *www.likumi.lv; vestnesis.lv; vsaa.lv; nva.gov.lv; vni.lv; probacija.lv; tm.gov.lv.; ievp.gov.lv. varam.gov.lv; pmlp.gov.lv; cvk.lv; lps.lv.*

full versions of websites *www.likumi.lv* and *www.vestnesis.lv* by using information kiosks. But from 1 December 2015, the imprisoned persons located in Daugavgrīva prison have an opportunity to connect to full versions of 14 websites.[45] According to the information provided by Daugavgrīva prison administration, staff and officials of the prison have also been informed about the installed kiosks.

In 2016 as well, when visiting places of imprisonment, the staff of the Ombudsman's Office shall pay attention to opportunity of access to information by imprisoned persons.

2.5. Right of Imprisoned Persons to Private Life

2.5.1. On correspondence restrictions for prisoners

In 2015, the Ombudsman raised an issue on correspondence restrictions for prisoners. According to the Sentence Execution Code of Latvia, the correspondence of the convicts is examined by reading it, except for correspondence with state and municipal institutions and addressees defined in Section 50, Paragraph three - UN institutions, Human Rights and Public Affairs Committee of the Saeima, the Ombudsman's Office, the Prosecutor's Office, courts, advocate, as well as the correspondence of a convicted foreign citizen with the diplomatic or consular mission of his or her residence country, which is authorised to represent his or her interests. Also regarding the arrested persons according to the provisions of the Law on Procedures for Holding under Arrest all correspondence of the arrested persons is subject to examination, except the above mentioned institutions and advocate.

The rights to inviolability of private and family life, home and correspondence have been prescribed by Section 96 of the Constitution and Article 8 of CPHRFF. The mentioned fundamental rights must not be restricted except cases stipulated by the law and necessary in the democratic society in order to protect the interests of state security, public order, or state welfare, and in order to prevent disturbances or crimes, in order to protect health or morals, or to protect the rights and freedoms of others.

It should be acknowledged that the rights of the imprisoned persons are not the same as those of persons being in liberty; however, the restriction of these rights should arise from the meaning and essence of the imprisonment itself. Article 3 of European

[45] *www.likumi.lv; vestnesis.lv; vsaa.lv; nva.gov.lv; vni.lv; probacija.lv; tm.gov.lv.; ievp.gov.lv. varam.gov.lv; pmlp.gov.lv; cvk.lv; lps.lv. www.likumi.lv; vestnesis.lv; vsaa.lv; nva.gov.lv; vni.lv; probacija.lv; tm.gov.lv; ievp.gov.lv; varam.gov.lv; pmlp.gov.lv; cvk.lv/pub/public; lps.lv; tiesas.lv* - lists of designated hearings..

Prison Rules (Recommendation Rec(26)2 of the Committee of Ministers of the European Union to member states on the European Prison Rules emphasises that restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed.

By evaluating the practice of ECHR regarding the control of correspondence of the prisoners, it may be concluded that in assessing the necessity and proportion of such control, it has used similar criteria. Regarding the convicts, restrictions for correspondence mostly are connected with ensuring the sentence execution because the investigation is finalised, and the person serves sentence of deprivation of liberty, one of its purposes being reintegration in society. In its judicature, ECHR has emphasised that automatic examination of correspondence of persons sentenced with deprivation of liberty is even less permissible because the investigation is finished. Such interference might be justified in connection with existing security risk or secret agreement between the prisoner and the third party, for instance, regarding any process or criminal activity taking place at the state level.[46] Yet such a risk should be pointed out in each separate case instead of examining all correspondence.

The same way according to ECHR judicature, restriction of correspondence regarding some addressees is less required than others, thus varied regulations should be including in the law as well[47]. Correspondence with the public institutions should not be subject to examination. Correspondence with the doctor has been compared to correspondence with the advocate. Thus, if nothing shows that a prisoner abuses such confidentiality, there is no basis to restrict the inviolability of correspondence by subjecting it to examination. Correspondence with family members also is highly protected, especially because as much as possible the state should ensure maintenance of relationships with the family members.

In general, by assessing the regulatory framework regarding the control of the prisoners (arrested and convicted persons), the Ombudsman detected substantial problems and non-compliance with the ECHR judicature. Namely, in his opinion the Ombudsman stated that automatic control procedure prescribed by both the Sentence Execution Code of Latvia, and the Law on the Procedures for Holding under Arrest regarding all addressees who are not included in the list of institutions (persons) with whom the law

[46] ECHR judgment in case No. 23284/04, dated 28 October 2010, *Boris Popov v. Russia*, 108 p.
[47] For instance, ECHR judgment in case No. 2795/95, dated 4 July 2000, Niedbala v. Poland, 81-82 p.

allows uncensored correspondence, is contrary to the provisions of the international legal acts and the Constitutions.

The Ombudsman also pointed out that it is not permissible that correspondence with the doctor automatically without individual assessment is subject to examination. The law should provide a special protection for private correspondence of the prisoner with the family members. Correspondence with the family members may be controlled only in exceptional situations.

At the same time the Ombudsman said in his opinion that the regulatory framework should precisely determine in which cases the prisoner's correspondence is subject to examination, namely, in what cases it is permitted to examine it only by opening the letter, and when it is permitted to read it, and when it should be suspended or expropriated. The law should also determine the term for such restriction. Procedural mechanism should be provided, so that the prisoner might be able to contest possible arbitrariness of the prison officials.

2.5.2 On ensuring long-duration visits for convicted persons

The Ombudsman's Office finds that issue on ensuring long-duration visits for convicted persons has become repeatedly important. Namely, during the reporting year a submission was received where applicant pointed out that in long-duration visits he was not allowed the right to meet his girl-friend because he cannot prove that he had lived together with this person before serving the sentence.

According to Section 45, Paragraph three of Sentence Execution Code, during long-duration visits the convicted persons shall be permitted to stay with their relatives – parents, children, adopted persons, siblings, grandparents, grandchildren or a spouse. By the decision of the head of the imprisonment institution long-duration visits may be permitted also with another person if by beginning of serving the sentence the convict had a common household or a child with this person. Thus the law provides two criteria in order for the convicted person to have a long-duration visit with the person who is not a relative.

Already in 2014, the Ombudsman pointed out to PA and the Ministry of Justice that it might be useful to evaluate the practice of application of Section 45, Paragraph three of Sentence Execution Code and the possible problems in various places of imprisonment in order to understand if there is a necessity to improve these rights. PA did not see such a need stating that by implementing individual assessment of circumstances long-duration

visit with another person may be permitted. Taking into account that the Ombudsman's Office repeatedly received submission on this issue, the Ombudsman addressed PA again with a request to gather information on practice of application of Section 45, Paragraph three of Sentence Execution Code. In the view of PA, this issue should be raised with the working group organised by the Ministry of Justice regarding the development of the new Criminal Punishment Execution Law, in which in the capacity of expert takes part also a representative of the Ombudsman's Office.

2.5.3. On necessity of improving legal framework regarding supervision of convicted persons when on temporary leave from the place of imprisonment

Over the reporting period, the Ombudsman's Office has received a submission in which the imprisoned person stated that the head of the prison granted the permission to leave the place of imprisonment, but with the obligation to remain in the place of residence at specific times. According to the submission, the police officers visited the specific address and found that the applicant was not there.

According to Section 49 of Sentence Execution Code, the administration of the deprivation of liberty institution shall forward the information regarding the convicted person who has been permitted to temporarily leave the territory of the deprivation of liberty institution to the territorial structural unit of the State Police. This information is only informative. The Ombudsman found that the legal acts do not define the rights or obligations of police officers to inspect if the convict who has received permission of temporary leave from prison is at the specified address. Such rights would arise if in the vicinity of the respective place of residence a criminal offence of a similar or the same type would have been committed. Thus the Ombudsman concluded that currently the regulatory enactments do not include a legal framework that would provide supervision of convicted persons outside the deprivation of liberty institution, even though in practice it sometimes takes place. In the opinion of the Ombudsman, thus systematically the right of the persons to private life are being violated. At the same time it should be noted that not only the right of these persons, but also fo their relatives is violated in cases when they provide accommodation to the convict who has been given permission for a temporary leave of the deprivation of liberty institution. PA, the State Police and the Ministry of Justice have been informed on the Ombudsman's conclusions.

In its letter of response PA stated to the Ombudsman that supervision of the convicts outside the territory of the deprivation of liberty is not in its competence, but

supported the necessity of the framework. However, the State Police explained that it is not obliged to perform such checks on convicts, yet in practice there have been cases when it happens because such rights can be assumed from the law "On Police".

The findings of the Ombudsman in his opinion on necessity to improve the legal framework regarding supervision of convicted persons upon temporary leave from the place of deprivation of liberty was viewed also in the standing working group for Criminal punishment execution policy of the Ministry of Justice. It did not support the Ombudsman's suggestion because the number of such cases when the convicted person is supervised or does not return to the place of imprisonment is very small, and PA theoretically has other means to ensure the compliance of the actions of convicted persons with the rules. The State Police also does not wish to receive additional functions.

2.6. Protection of Rights of Persons Sentenced to Life Imprisonment

Holding conditions of persons sentenced to life and rules of regime for places of imprisonment have been in the view of the Ombudsman already for several years. Exactly on issues regarding this category of prisoners Latvia has received the greatest criticism from the Council of Europe Anti-Torture Committee.

Regarding the topic of persons sentenced to life the Ombudsman in 2015 gave an opinion on changes and direction of the regime for serving the sentence within the framework of progressive execution of sentence. The persons sentenced to life contrary to other prisoners have been denied the opportunity within the framework of progressive execution of sentence to be moved to partly closed or open prison. Currently the persons sentenced to life within the execution of progressive system may move up the grades only within the closed prison.

By evaluating fundamental principles set out in documents of international human rights and insights of CPT, the Ombudsman concluded: even though the person has been sentence with the deprivation of liberty - life imprisonment, yet this category of prisoners by regulatory framework has been provided an opportunity similar to any person sentenced with deprivation of liberty, by serving the time stipulated by the law to be conditionally released before the term or to be pardoned. Furthermore, the system of progressive execution of punishment may be applied also to persons sentenced with a deprivation of liberty - life imprisonment, and one of the purposes of the punishment regarding this group of convicts is that upon return to liberty these persons would be

ready to fully be included in life in society without committing repeated criminal offences. Thus, the Ombudsman concluded that, taking into consideration current specifics of punishment execution for persons sentenced for life, excessive security measures, long-lasting isolation, it is even more important that this group of prisoners would have an opportunity to serve the sentence in partly closed or open prisons that would allow them to be gradually prepared to live in society.

Current execution of punishment for persons sentenced to life is not oriented towards wholesome integration in society after release from the place of imprisonment. However, at the same time it should be acknowledged that during the last years progress may be observed in punishment execution of persons sentenced to life. The view of the Ministry of Justice expressed within the framework of verification procedure should be agreed with that changes to practice and regulatory framework should be made gradually and thoughtfully by evaluating both the infrastructure of the places of imprisonment and the number of staff. For instance, in 2015, amendments to Sentence Execution Code have come into force providing that persons sentenced to life have additional right to an hour of communication (one to three times a month depending on the level of punishment execution regime) by video call with relatives and other persons. Amendments have come into force that stipulate that persons sentenced to life from the building with enhanced supervision may be transferred to premises where other convicts (not those sentenced to life) serve their sentence, if this transfer would promote re-socialisation of the convict. Moreover, in the second half of 2015, after visits to places of imprisonment it could be concluded that there have been separate cases when such an opportunity had been provided to persons sentenced to life. In the opinion of the Ombudsman, the mentioned amendments are progressive, and in the context of punishment execution development in Latvia the initiative of responsible institutions should be welcomed and supported.

Already since 2013, the Ombudsman has raised the issue regarding the work of commission and decisions made regarding the necessity of using special means on persons sentenced for life. It is important that this provision would not be formal and in practice the special means - handcuffs - would be used on persons sentenced for life when they are moved within the territory of the prison by assessing individually the need for these. It should be noted that also CPT in its report of 12 - 17 September 2013 on Latvia expressed criticism on content and assessment quality of these decisions.

In 2015, after the visits to the places of imprisonment where persons sentenced to life served their sentence, namely, Jelgava and Daugavgrīva prisons, and after studying

the decisions on necessity to use special means - handcuffs, it may be concluded that the quality has improved, they are comprehensive, with argumentation of each member of commission and the opinion, explanation of the person sentenced to life. Decisions are well-founded, and it is clearly understandable why commission has come to such or such conclusion. Furthermore, condition should be considered that only to a few persons sentenced for life commission had decided on necessity to use handcuffs.

By the end of 2015, the Ombudsman's Office based on received information raised an issue on video surveillance of persons sentenced for life in the rooms of Daugavgrīva prison where meetings with advocates, social workers, chaplains, psychologist, etc. takes place. During the visit to Daugavgrīva prison the mentioned information was confirmed, and several persons sentenced to life pointed out that in these rooms consultations with medical personnel have taken place, and in separate cases also medical examinations. In 2016, the work on research of this issue shall be continued.

2.7. On Use of Special Means during Conveyance

Over the time of the reporting year the issue of using special means on convicts during conveyance was raised. Namely, suggestions were received from the prisoners whom the court of first instance has sentenced to life with complaints that every time they are conveyed to the court hearing, special means are used - arm and leg irons connected by a chain.

The Ombudsman initiated a verification procedure on compliance of regulations on use of special means with standards of international human rights. In the opinion was found violation of prohibition on inhuman treatment prescribed by Section 95 of the Constitution and Article 3 of CPHRFF.

Section 19 of the Cabinet regulations No. 55 of 18 January 2011 "Regulations Regarding the Types of Special Means and the Procedures for the Use Thereof" provides an imperative provision stipulating that special means - arm and leg irons - shall be used, if it is necessary to transfer such person outside of a place of imprisonment, who has been sentenced to life imprisonment. The arm and leg irons shall not be removed throughout the time that the person is being transferred and under supervision. In the specific situation within the framework of the verification procedure the State Police pointed out that a reason for use of special means on the prisoner was information provided by Riga Central Prison that the person to be conveyed is sentenced to life imprisonment and should be isolated from the rest, the person has a tendency to escape and may assault the

convoy. During the verification procedure the fact that this person would be sentenced to life imprisonment by an effective court judgment or injunction of the prosecutor on punishment was not confirmed. The Ombudsman also concluded that it is not permissible that use of special means - arm and leg irons - excludes implementation of Sections 15, 16, 17, and 18 of Regulation 55 prescribing removal of special means in specific circumstances. At the same time it was indicated that in every case an individual risk assessment is necessary that would be based on specific and provable evidence.

Currently the decision of the head of the convoy to use or remove the special means is not documented, thus it is impossible to evaluate it. The opinion stated that in circumstances when the person has been placed in cage, cannot go to the washroom without arm and leg irons, rest arms, straighten up, shall be ascertained as violation of Article 3 of CPHRFF. In situations when special means are used without legal basis, evaluation of proportion is not necessary.

The Ombudsman gave recommendations to the responsible institutions: Ministry of Justice and Interior Affairs were asked to review the compliance of Section 19 of Regulations 55 with standards of international human rights, and the State Police were asked to perform appropriate measures to establish individual assessment for use of special means, and in each case to provide grounds and document the use and removal of special means. The State Police also were given a recommendation to terminate the use of chains to persons.

It should be added that the practice of joining arm and leg irons is not in compliance with Article 33 of UN Standard Minimum Rules for Treatment of Prisoners and Article 68(1) of European Prison Rules prohibiting it. At the same time the Ombudsman turned the attention of PA, Court Administration and State Police to the fact that causes for erroneous information shall be evaluated when false information is provided on person's status (in the specific case - information that person has been sentenced to life imprisonment) and find solutions to preventing such causes.

Ministry of Justice informed that agrees with the recommendation of the Ombudsman and is ready to provide support to the Ministry of Internal Affairs for development of necessary amendments. But Court Administration informed that it has contacted PA and has discussed possible solutions for information exchange. In the near future it is intended to develop new interservice agreement because the current agreement does not regulate all relevant issues. Furthermore, development of additions to Court

Information System has been performed in order to ensure the opportunity for the court institutions to send conveyance requests electronically to the State Police.

The State Police in reaction to the opinion of the Ombudsman, developed draft Cabinet regulations that would permit the use of special means according to the standards of international human rights. After refining the project, it shall be forwarded for proclamation in the meeting of State secretaries.

2.8. Organising and Ensuring Video Conferences in Places of Imprisonment

By the end of 2014, the Ombudsman's Office raised an issue of observance of the right guaranteed to imprisoned persons to fair trial in the court proceedings taking place by means of video conferencing. On 17 June 2015 was prepared the Ombudsman's report "Ensuring the Right to Fair Trial in Court Hearings by Using Video Conferencing"[48]. Due to research of the topic four places of imprisonment were visited - Jelgava prison, Riga Central Prison, Brasa prison, Iļģuciems prison.

By summarising the information obtained during the visits, it was found that there are no unified internal procedures in places of imprisonment regarding organisation of video conferences and ensuring other related issues. Taking into consideration that the given issue is not structured internally, organisation and ensuring of court hearings by the means of video conferencing is viewed as burden by officials and staff of the places of imprisonment, since it provides additional obligations to the current insufficient resources without appropriate regulation and without ensuring additional human resources. Since the time of video conferencing is unpredictable, ensuring video conferences burdens the ability of officials and staff of places of imprisonment to do their direct work duties fully.

By the report PA and Ministry of Justice were recommended to promote a unified practice regarding solving issues related to video conferencing in places of imprisonment, as well as solve the issue of personnel policy, namely, the necessity to involve additional trained staff in order to ensure video conferences.

In their response letter the Ministry of Justice pointed out that by assessing the conclusions and suggestions included in the Ombudsman's report regarding PA work in ensuring court hearings by the means of video conferencing, the video conferences in places of imprisonment are organised and ensured according to internal rules No.1-2/14 of Ministry of Justice of 12 June 2013 "Procedures for Booking and Using Video

[48] Report available at the website of the Ombudsman: http://www.tiesibsargs.lv/files/content/zinojumi/Zinojums_Videokonferences_17062015.pdf

Conferencing Equipment in the Court Proceedings". In connection with the necessity to solve the issue pointed out in the Ombudsman's report regarding personnel policy in order to involve additional trained staff for ensuring video conferences, the Ministry of Justice informed that personnel of the places of imprisonment participated in training organised by Court Administration regarding court hearings by means of video conferencing. But in cases when the imprisoned person needs information on the rights during the court hearing by the means of video conferencing, then he or she may address the prison administration. Both Court Administration and PA have assigned contact persons for ensuring operative and immediate cooperation on issues regarding the use of video conferences and staff training.

Yet, by assessing the information available to the Ombudsman's Office, it must be concluded that regardless of internal rules No.1-2/14 of Ministry of Justice of 12 June 2013 "Procedures for Booking and Using Video Conferencing Equipment in the Court Proceedings", officials and staff of places of imprisonment perceive organising and also ensuring court hearings by the means of video conferences as a burden. Thus, for example, Iļģuciems prison head has given an order to set the procedure for work in the place of imprisonment by organising remote participation of imprisoned persons in the court hearing. The same way training of prison personnel regarding court hearings by the means of video conferencing does not solve the issue of personnel policy. Namely, places of imprisonment mostly do not have recruited enough personnel, and along with current obligations, additional ones are provided due to ensuring video conference. Insufficiency of personnel in places of imprisonment is still a relevant issue to be solved.

At the same time, the report on the right to ensured fair trial in court hearings by the means of video conferencing turned attention also to the fact that by growing demand for video conferencing, the issue should be raised on suitability of the rooms prepared for video conferencing in places of imprisonment. Initially the administrations of prisons were told that they should find a room that could be used for video conferencing, other conditions, such as logistics, security issues, etc, were not set at the time regarding the choice of the room. Thus, possibly, in some prisons the rooms for video conferencing have not been chosen as successfully as they should have been. Furthermore, administrations of prisons had not thought that these rooms would be used so often. For instance, in Iļģuciems prison and Brasa prison the room is small, and it may cause difficulty if for one court case several participants of the case would have to be heard. Moreover, in Brasa prison, by standing on the other side of the door to the video

conferencing room, the persons passing by may easily hear what is being said, and on the other side of the wall sewing unit is located. When the equipment is at work, then audibility in the room worsens significantly.

In its response letter, the Ministry of Justice according to the information provided by PA, informed regarding suitability of the rooms that in each place of imprisonment these were accommodated by taking into consideration the structural possibilities of the buildings and availability of rooms, security reasons, for instance, conveyance of the imprisoned person to the rooms of the video conferencing would not create a threat to the person to be conveyed or to other persons. At the same time it was pointed out that PA has not received complaints on unsuitable rooms currently used for court hearings by the means of video conferencing.

Regardless of the information provided in the response by the Ministry of Justice, by visiting places of imprisonment it was found that such conditions as logistics, security reasons and other important aspects in the choice of the room were not required from the prison administrations. Thus, PA should find solutions for improvement of the current situation because that fact alone that no submissions have been received from the imprisoned persons does not mean that everything is in order.

3. The Right to Fair Trial

3.1. Characterisation of Submissions

In 2015, the Ombudsman received a total of 343 submissions in which population expressed complaints regarding the rights to a fair trial. In comparison with the previous year, the number of submissions has decreased slightly; however, over the last years in general the number of submissions on this topic has not decreased significantly. It should also be noted that aspects of the right to fair trial are among the most popular, and the staff of the Ombudsman's Office provide also oral consultations.

In their submissions the persons point at the problems regarding access to court (expensive legal services; inaccessible state funded legal assistance; rather high state fees); long terms for hearing the cases in all types of procedures; insufficient justification for adjudications; expensive and complicated execution process of adjudication; as well as other aspects of the right to fair trial.

By evaluating the character of the received complaints, it should be acknowledged that these show individual character, thus the Ombudsman turned the attention of the

responsible institutions to problems of systemic character only in separate situations. For instance, when finding that cassation complaints submitted by the persons for a long time, sometimes even longer than one and a half years or two years remain in the Higher Court without any movement forward, the Ombudsman has invited to pay special attention to the action of the court after receipt of cassation complaints by ensuring a more timely determination of action hearting in order to make a decision on initiating the cassation case, thus not allowing a situation when cassation complaints remain for a long time in the court without being moved forward.

The Ombudsman still received complaints from the population on, according to their opinion, unlawful action of sworn court bailiffs by seizing the accounts in credit institutions, turning recovery against the only housing, etc. It should be pointed out that such complaints are not reviewed in the Ombudsman's Office because according to Section 632 of Civil Procedure Law, actions of the bailiff in executing the judgment or his refusal to execute such actions, except the case defined in Section 617 of the Civil Procedure Law, collector or debtor by submitting a motivated complaint may make an appeal to the regional (city) court according to the place of office of the bailiff within the period of 10 days from the day of executing the action to be appealed or day when the plaintiff who has not been notified of time and place of the action to be performed, has found out this information. The Ombudsman has invited the submitters of complaints to use the remedies for protection of the rights stipulated by the law and to entrust assessment of legitimacy of the action of sworn bailiffs to the courts. Furthermore, submitters of the complaints have received explanation that in cases when amounts have been transferred to bank accounts that cannot be recovered (Section 596 of the Civil Procedure Law) and they should be excluded from the amount of recoverable funds, debtor is obliged to inform sworn bailiff about it.

3.2. The Right to Fair Trial within a Reasonable Period of Time

In general it may be considered that average time for hearing the case continues to decrease, yet in separate cases concern about the proportion of length allotted to hearing the case remains. In 2015, the Ombudsman provided several opinions in which he detected a violation of the right to a fair trial within a reasonable period of time. Due to court reform in transition to 'clean instances', in several cases the Ombudsman turned attention of the courts to the necessity to pay attention to terms of hearing the cases in

situations when the court has not been able to accomplish it within the transition period provided by the legislative authority, and as a result the case in another court is started all over.

The Ombudsman has become aware of a criminal case that is in adversial procedure in appellation instance already for seven and a half years. Currently adversial procedure has been started anew by sending the case from Higher Court to Riga Regional Court according to jurisdiction. In the opinion on verification procedure No. 2014-16-3E-4D-5D the Ombudsman emphasised that criminal proceedings that were sent to Court Chamber of Criminal Matters of the Higher Court as the court of appeal by 31 December 2013 and adversial procedure of which was not started till 30 June 2014, are subject to considerable risk of violation of the right to fair trial within a reasonable period of time, and special attention should be given to supervising the hearing of the case within a reasonable period of time. In this specific event the verification procedure was not initiated because currently the criminal case is in the stage of adversial procedure, and the person has available the remedies for protection of rights provided in Section 33, Paragraph five of the Law on Judicial Power and Section 49^1 of the Criminal Law.

It should also be noted that both Section 33, Paragraph five of the Law on Judicial Power and Section 49^1 of the Criminal Law include mechanisms for protection of the right of person to a fair trial - hearing of the case within a reasonable period of time, yet in several cases problems in implementation of Section 49^1 of the Criminal Law may be observed. For example, in verification procedure No. 2015-54-4D, by evaluating the length of hearing of the case it was found that court of appeal has not at all assessed the request of the defendant provided in the court hearing to evaluate claims on hearing the case within a reasonable period of time, but the reference included in the decision of the Higher Court has been highly formal. The opinion emphasised that the request to observe a reasonable period of time in case is a part of the right of the person to a fair trial. When the court after the request of the participant of the proceedings or on their own initiative would raise a question on possible violation of reasonable period of time of the proceedings, it should provide a well-founded, comprehensively motivated opinion on this question by providing a specific assessment on if the current term of proceedings can be viewed as reasonable.[49]

[49] Senate Criminal Affairs Department of Higher Court of the Republic of Latvia: Judicial Practice regarding the Right to Completion of Criminal Proceedings in a Reasonable Period of Time and Determination of Punishment if the Right to Completion of the Criminal Proceedings in a Reasonable Period of Time Has not Been Observed. p. 29.

No less essential and relevant is an issue also on the rights of the victims to compensation if the criminal case has not been heard within a reasonable period of time because the right to a fair trial within the reasonable period of time can be applied to the victims as well. While reviewing the verification procedure No. 2015-4-4C within the reporting period, the Ombudsman discovered the violation of the right to fair trial within a reasonable period of time in the hearing of a criminal case. In this case the court proceedings of the first instance court did not contain long waiting periods (except designation of the first court hearing after a year), but the court of appeal did have disproportionately long periods of waiting for the court proceedings when no actions were taken in the case. It can be concluded that a lengthy period of hearing the case has not been due only to the actions of the participants of the proceedings, but also due to actions of the court. By observing that the law determines the procedure for persons who have a status of a victim in criminal proceedings and whose right to case hearing within a reasonable time has been violated may turn to court, the Ombudsman explained the right of the person to turn to a court of general jurisdiction on the basis of the insights by the Constitutional Court on applicability of Section 92, Paragraph three of the Constitution, as well as insights found in the practice of the Higher Court.[50]

In addition it should be pointed out that the same problem can be seen in cases of lengthy period of hearing the civil cases because the regulatory framework does not provide a procedure for the state to compensate to the participants of the case the violation committed by the state. The only possibility to receive compensation on violation of the rights is to turn to the court of general jurisdiction on the basis of Section 92, Paragraph three of the Constitution ". Everyone, where his or her rights are violated without basis, has a right to commensurate compensation."

3.3. The Right to Oral Hearing

In 2015, to the attention of the Ombudsman came several situations in which the persons have expressed dissatisfaction with the action of the court when it has not acknowledged the failure of the person or his or her authorised representative to appear to the court hearing as justified and has analysed the substance of the case in the absence of the person. In connection with this aspect of the rights it should be acknowledged that in

[50] Judgment by the Constitutional Court on 5 December 2001 in the case No. 2001-07-0103, Clause 1. Judgment of Senate Civil Affairs Department of Higher Court dated 24 November 2010 in the case No. SKC-233, Clause 17..

last years the legislative authority has accepted several amendments in order to avoid the possibility for the participants of the case to delay the hearing of the case without cause; however, in the opinion of the Ombudsman, it is important to make sure that hearing of the case without the presence of the person would not violate the right of this person to fair trial.

In most situations the Ombudsman informed the persons on their right to appeal the adjudication of the court, but regarding verification procedure No. 2014-19-4F discovered a violation of the person's right to fair trial because the court when analysing the case had not ensured the right of the person to participate in the hearing of the court (oral process was not ensured) when the decision was made regarding the question on conditional punishment. The opinion emphasised that even though ECHR has admitted that the right to a fair trial does not guarantee oral proceedings in deciding any issue connected with the case, it still has pointed out that according to the general principle the court at least in one instance should ensure the right of the person to oral proceedings if the person requests it.[51] The same way ECHR has acknowledged that case on application of the punishment may be analysed by the court without the presence of the defendant only if the person actively evades appearance in the court hearing, as well as exceptions to this provision may be permitted only in the instance of court that does not assess the actual circumstances.[52]

Appropriately to the discovered circumstances, the Ombudsman believed that in a situation when circumstances of the case point to the violation of the first instance court in communication with the convicted person[53], approach of the court of appeal to hearing the case must not be formal. Consequently in the given situation when court decides the question on replacement of conditional punishment with real deprivation of liberty and does not ensure oral proceedings to the person at least in one of the instances, violation of the rights to fair trial prescribed by Section 92 of the Constitution and Article 6, Paragraph one of CPHRFF is found.

It should be added that within the framework of verification procedure opinion of the Ministry of Justice was received. The Ombudsman asked the responsible ministry to evaluate if it is necessary to amend Section 651, Paragraph seven of Criminal Procedure Law in order to provide an opportunity for the judge of a higher level court to designate

[51] ECHR judgment of 23 February 1994 in the case *Fredin v. Sweden*, Clause 21.
[52] Commentary on the Constitution of the Republic of Latvia. Chapter VIII Human Fundamental Rights. Editorial team under scientific guidance of prof. R.Balodis – Riga: Latvijas Vēstnesis, 2011, p. 137.
[53] Decision of 28 October 2013 by the judge of Criminal Affairs Judicial Board of Zemgale Regional Court

oral proceedings when the court considers that it would be more useful to review the complaint in the court hearing, and by this ensuring the right of the person to participate in the court hearing, especially in situations when due to justifiable reasons (or due to unjustified action of the court) has not participated in the hearing of the first instance court, but during the proceedings the question on person's real restriction of liberty shall be decided.

Ministry of Justice in its response letter to the Ombudsman stated that the convict who has not participated in the court hearing on decision of cancellation of conditional sentence has a right to appeal the mentioned decision and to turn the attention of the court to all justifiable circumstances that have been a cause to failure to fulfil the obligations and failure to appear before the court. By evaluating the provided information and evidence, judge of a higher level may make a decision on cancellation of the decision made by the lower level court and/or transfer of the case for a repeated hearing. In addition it was stated that Section 651, Paragraph seven of the Criminal Procedure Law prescribes that judge of higher-level court shall adjudicate a complaint in a written procedure, court has a right to choose a type of procedure more favourable for the person, namely, the court may exercise the discretion to designate adjudication of the issue also in an oral procedure if the person has indicated essential justifying circumstances in the complaint. Thus, the working group of the Ministry of the Justice concluded that regulation currently in force does not deny the court an opportunity to designate the adjudication of the issue in an oral procedure, if deemed appropriate.

Upon informing the respective court on the violation detected in this verification procedure, the court expressed a view that the right of the person to access to court are not absolute and in order to achieve a legitimate purpose may be reasonably limited as far as these are not removed. The opinion of the court is that the right of the person to access to the court were ensured according to the requirements of the regulatory enactments.

3.4. The Right to Legal Assistance

The Ombudsman positively assesses the reforms made to the judicial system, including increase of number of judges in courts, yet the right to fair trial may not be ensured without qualitative and accessible legal help.

The issue on amount of state ensured legal assistance to persons who cannot afford to hire advocates due to their limited resources is still relevant. Even though legislative

authority in State Ensured Legal Aid Law expanded cases when state ensures legal assistance in administrative cases by providing legal aid also to appealing the decisions of the Orphan's Courts in administrative court; however, in the Ombudsman's opinion the amount of state ensured legal assistance is still insufficient.

At the beginning of 2015, the Ombudsman began research of the question on necessity of state ensured legal assistance in administrative proceedings. Within the framework of the research the courts, state administration institutions and local governments were asked to provide information on involving advocates for representation of institution interests in administrative proceedings in the time period between 1 June 2013 and 1 January 2015 in order to find out if such practice of institutions affects the hearing of cases in the court, and if it may hinder observance of the right of private persons to fair trial.

Even though Administrative Procedure Law has established the principle of objective investigation, practice proves that the least protected groups of population often ask for aid in administrative proceedings, yet cannot receive state ensured legal assistance in administrative cases. However, state administration institutions, local governments and capital companies formed by it tend to hire advocates, lawyers in administrative cases by using budgetary means even though their structure includes formed legal services and employed lawyers.

Data provided by state administrative institutions and local governments show the following:

1) Of 80 state administration institutions who provided answer to the request of the Office, 58 respondents denied involvement of advocates/advocate offices for representation of the institution in court, three respondents said that they have involved lawyers, and 19 respondents replied that they have involved advocates/advocate offices, and 12 of these confirmed involvement of advocates/advocate offices in administrative processes;

2) of 90 local governments, on condition that request was sent to all local governments, 50 local governments indicated that they have not involved advocates/advocate offices in providing legal assistance, 36 local governments confirmed that they have hired advocates, three local governments indicated that they have invited lawyers, and one local government replied that it has involved both lawyers and advocates. For administrative cases, advocate/advocate office were invited by 17 local governments.

The courts surveyed generally were critical towards outsourced services provided to institutions for representation in courts, emphasising that position of the institution in the court should be represented by a qualified lawyer of the institution and only by exception in specially complicated cases it would be permissible to involve providers of outsourced legal services. Regarding necessity state funded legal assistance in administrative proceedings, the court primarily emphasised the meaning of the principle of objective investigation and the active role of the courts in hearing the administrative cases, yet admitted that state funded legal assistance might be desirable in complicated cases, adding emphasis that individual traits of each person should be taken into consideration, for instance, age, education, etc.

By taking into consideration the above mentioned, the Ombudsman positively assesses the action of Ministry of Justice in developing amendments to the Administrative Procedure Law in order to provide state funded legal assistance to the persons in complicated cases. Yet from the aspect of the function included in the Ombudsman's mandate - compliance with the principle of good governance in state administration - it should be specially emphasised that public persons should comply with the prohibition included in Section 9.1 of Law On Prevention of Squandering of the Financial Resources and Property of the State and Local Governments to conclude agreements on services in issues solving of which is included in duties of the official or employee of the respective institution.

3.5. The Right to an Advocate in the Process of Cancellation of Accessibility to Official Secrets

In 2015, the Ombudsman assessed the right to fair trial in the process of cancellation of accessibility to official secrets. At the moment law does not directly prescribe the right to be heard before the decision is made, and issue on the right of the advocate to participate in the negotiation of Constitution Protection Bureau with the client in the process of granting access or cancellation is not regulated.

By reviewing the submission of the person it was concluded that even though the process of granting or cancellation of access to official secrets may not be examined in the court and substantial restrictions of the rights to fair trial determined by Section 92 of the Constitution are permissible for the protection of state security interests, yet the process of granting or cancellation of access to official secrets may affect further court proceedings

on legitimacy of termination of legal relationships of civil service. Hearing out the person is an essential procedural guarantee that should be ensured to the person before making the decision. Even though designation of the type of hearing is in the competency of the institution, it should ensure that hearing is effective and not formal.

In the opinion of the Ombudsman, legal provisions regulating the protection of official secrets may be interpreted in a way that would as much as possible ensure the interests of each person to be examined, and consequently the efficiency of the hearing. Information containing official secrets may be disclosed in negotiations only in that case if persons participating have appropriate access, or another regulation exists by which to ensure the protection of official secrets. It is permissible that there may be situations when participation of a provider of legal assistance in negotiations might be restricted due to protection of state security; however, the institution should be able to provide sufficient basis for reasons and proportion of restrictions in each individual case. Without providing specific prerequisites for restriction of such rights, the activity of the institution is unpredictable, thus creating concern on efficiency of right protection of the person in the specific process.

3.6. Access to Court of Cassation

By verification procedure No. 2015-56-4C was assessed the possible violation to the right of the person to access to court. In the specific civil proceedings the representative of the person submitted to the regional court a cassation complaint that did not comply with the provisions of Section 82, Paragraph six of Civil Procedure Law. The regional court received the mentioned cassation complaint after payment of security and sent it to be processed by the court of cassation without detecting the deficiencies in authorisation. Only after more than a year Department of Civil Cases of Higher Court made a decision to refuse initiation of cassation proceedings, because cassation complaint was not submitted by an advocate or the person him/herself. In response to the request of information by the Ombudsman, the Higher Court agreed that in the specific situation the regional court had to make sure that the representative has a right to submit the cassation complaint before accepting the mentioned cassation complaint, and upon detection that representative has no such rights, according to Section 453, Paragraph three the cassation complaint should have been returned to submitter. It would not have created obstacles for the person to submit repeatedly a cassation complaint signed by the person and within the term defined by Section 454 of Civil Procedure Law. By noticing that in the specific

situation the cassation complaint was submitted in timely manner - a week before the termination of the ruling set by the law - and regional court did not identify deficiencies in authorisation, the person was denied the right to submit a cassation complaint prepared according to the provisions of the law within the term of procedural term. Thus, the action of the court by erroneously assessing the acceptability of the complaint impacted the observance of the person's rights to access to court. At the same time the violation of the right to fair trial was not detected because in this case the regional court has formed practice favourable to protection of the private person's rights by admitting the error of the judge of regional court in assessment of acceptability of cassation complaint as a justifiable circumstance for renewal of procedural term. By taking into account the above, there is no basis to doubt efficiency of such protection means of the rights, and currently no violation of the person's right to fair trial stipulated by Section 92 of the Constitution and Article 6 of CPHRFF.

3.7. The Right to Fair Trial by Video Conferencing

In 2015, the Ombudsman continued the research on issue on use of video conferencing in courts and places of imprisonment.

On 17 June 2015, report "Ensuring the Right to Fair Trial in Court Hearings by Using Video Conferencing" was sent to the responsible institutions, indicating the detected deficiencies and providing recommendations in order to improve the situation.

The report included recommendations regarding possible improvement of regulatory framework, the right of the person to receive quality defence, information received by visiting the places of imprisonment, as well as data obtained in court survey.

With a view to the rights to ensuring fair trial by using the opportunity to hear the person by the means of video conferencing, the Ombudsman's opinion is that the most attention should be paid to procedural principles and guarantees arising from Section 92 of the Constitution and Article 6 of CPHRFF.

From ECHR judicature it is clear that hearing the person in the case is permissible by the means of video conferencing, and it is not contrary to the requirements of the convention; however, in each case the court should indicate the legitimate purpose of the chosen measures, as well as the use of video conferencing should be compatible with the requirements for fair trial on the basis of Article 6 of CPHRFF[54]. From the above it is

[54] ECHR judgment of 5 October 2006 in the case *Marcello Viola v. Italy*, clauses 63-77.

possible to conclude that in every case the court should thoroughly assess the opportunities of using video conference both in situations when the use of video conference has been appointed by the request of the participant of the case so that the rights of other participants of the case would also be observed, and in situations when the court due to other objective causes has decided to use video conferencing, for instance, to ensure the processing of the case within a reasonable period of time.

With satisfaction it should be acknowledged that the performed research was seen as valuable and on its basis discussions have taken place among professionals, and specific measures for improvement of the situation have been taken. However, essential issues are still relevant that influence and may influence the rights of the persons to fair trial, namely, the issue on the right of the participants of the proceedings to defence and representation, confidential communication with the provider of legal assistance in the court proceedings in which video conferencing is used. Issue on organisation of training and informative and explanatory events is still relevant in order to promote the use of video conferencing in the court proceedings.

3.8. On Regulations of Chapter 54^1 of Civil Procedure Law

In 2015, the Ombudsman received several complaints with a request to address deficiencies in regulations of Chapter 54^1 of Civil Procedure Law. Applicants saw a deficiency in regulations that define the obligation of the court to refuse acceptance of appeal complaint in a small claim if it has been submitted with insignificant deficiencies.

In February 2014, draft law "Amendments to Civil Procedure Law" was submitted to the Saeima; according to this draft law was changed the previous appeal procedure in proceedings with small claims. Persons who submitted the amendments to the Civil Procedure Law indicated in annotation that examination of cases on small claims according to the substance of the matter in two court instances is contrary to the meaning and purpose of this legal institution. Therefore, in order to ensure the speed of circulation of civil liability and avoid overworking the regional courts, a different court procedure differing from the general appeal system was determined for cases due to small claims.

Persons who submitted the proposal in the annotation of the draft law provided grounds for restrictions including the one specified in 440^6 of the Civil Procedure Law, that appeal complaint acceptance is refused if state fee has not been paid, submission is not signed, claiming that by it legitimate goal is reached - procedural economy, effective

functioning of making court decisions, as well as prevention of overworking the courts. Authors of the provision pointed out that along with implementation of so called "appeal permit" the criteria were set according to which processing of cases due to small claims in court of appeal is permissible, as well as provided the means to process the mentioned cases in written procedure.

Section 440² of Civil Procedure Law determined three foundations to be assessed for initiation of appeal procedure. Namely, cases due to small claims shall be processed by appeal only if the first instance court has wrongly applied or interpreted material or procedural provision or has wrongly established the facts, wrongly assessed evidence, and has provided a wrong legal assessment of circumstances of the case, and if that has led to wrong adjudication of the case.

In the opinion of the Ombudsman, faster processing of cases should be promoted, yet restrictions to access to the court are justifiable if they are necessary for reaching a legitimate purpose, and the chosen means are proportionate with the purpose to be reached.

Section 440^{6} of the Civil Procedure Law stipulates that appeal complaint is not accepted if a) appeal complaint without signature has been submitted or it has been submitted by a person who is not authorised to appeal the court judgment, and b) state fee for submission of the appeal complaint has not been paid. Decision on refusal to accept the appeal complaint shall not be appealed.

Regulations of Chapter 54^{1} of the Civil Procedure Law does not provide the court with opportunity to leave the appeal complaint without further attention if the person has not signed it in haste, is poor or indigent, and has asked to be released from payment of state fee or by error has paid the state fee incompletely.

With the right to process the case within a reasonable period of time being set against the right to access to court, there should be an essential assessment of proportion in order not to deny the individual a chance to defend their violated rights if these rights have been removed completely.

Regulations of Chapter 54^{1} of the Civil Procedure Law already restrict the cases when it is allowed to submit the appeal complaint on judgments regarding small claims. Payment of state fee in inappropriate amount or prohibition to continue the court proceedings if the court has refused the release from payment of state fee, as well as non-signature of the appeal complaint significantly restrict access to court, and has been determined disproportionately. Legislative authority could have reach the legitimate

purpose - faster and more efficient processing of the case - possibly even then, if there was an opportunity to leave the appeal complaint without further action for a definite time period by stating that this decision shall not be appealed.

Responding to the request of the Ombudsman to provide an opinion on proportion and necessity in a democratic society of prohibitions set out in Section 440^6 of the Civil Procedure Law, as well as assess the necessity to make amendments to the mentioned section, the Ministry of Justice provided explanation that spectrum of procedural guarantees regarding appeal procedure for small claims are restricted in favour of procedural economy, and due to these considerations there would not be grounds to hold a view that this way the rights of the person to access to court have been restricted. By justifying the implemented regulations Ministry of Justice indicated that in Chapter 54^1 of the Civil Procedure Law the reasons for refusal to accept the appeal complaint with a decision not to be appealed was determined with a purpose to prevent abuse of rights in order to delay further action in the case by not signing the appeal complaint or not paying the state fee. In the opinion of the Ministry of Justice, the state is obliged to provide measures in order to prevent the participants of the case from using such abusive actions that affect the terms of processing the case.

Non-payment of state fee for the person in material difficulties is possible according to the requirements of this category, if the person turns to court according to Section 43 of the Civil Procedure Law and asks to be released from payment of state fee. Ministry of Justice holds a view that suggestion of the Ombudsman to limit the terms for elimination of deficiencies for participants of the case in order to avoid extending the term for processing the case, is not of use. Civil Procedure Law has an independent legitimate purpose aimed at preventing the abuse of rights determined by the law and respectively balancing the rights of the parties to fair trial.

Restrictions stipulated by Section 440^2 of Civil Procedure Law should not be viewed as more lenient means in reaching the respective legitimate purpose, and restriction set in Section 440^6 are to be viewed as the most appropriate means for reaching the legitimate purpose. Ministry of Justice does not believe that obligation to pay state fee and to sign the documents and check the amount of authorisation should be seen as such requirements that are not understandable and could not be fulfilled by reasonable effort.

Ministry of Justice pointed out to the Ombudsman that Civil Procedure Law does not deny the person whose appeal complaint has not been accepted due to detected

deficiencies, the right to apply repeatedly to the court after elimination of deficiencies and in case of justifiable reasons also request the renewal of the procedural term.

By taking into consideration the arguments of the Ministry of Justice against amendments to Section 140 of the Civil Procedure Law, as well as number of small claims on which dissatisfaction about the regulations was expressed, the Ombudsman shall continue to follow the effect of the stipulated restriction to access of individuals to court regarding small claims and shall assess the necessity to turn to the Constitutional Court.

3.9. Opinion to Constitutional Court

In the reporting period, the Ombudsman provided opinion to Constitutional Court regarding the case No. 2014-33-01 on compliance of Section 279, Paragraph one and Section 288, Paragraph One of LAVC with Section 92 of the Constitution.

Thus, Sections 288 and 257 of LAVC prescribe that during the proceedings regarding administrative offence, the right of person (also legal) to property may be restricted (withdrawal of property) or removed (confiscation) regardless of the procedural status (including its lack) of the owner in the case. In most cases, official and the court have options to choose from when deciding on restriction or removal of the person's right to property. Yet, Section 279, Paragraph one and Section 288, Paragraph one of the effective LAVC, the wording does not provide the right to appeal the decision (action) of the official to the person whose legal interests are affected by the decision made in the case of administrative offence, but who is not the defendant or victim (hereinafter - the third party).

The Ombudsman concluded that by denying the right to the third person to contest the decision made by an official within the framework of LAVC, and at the same time legitimacy control of state administration actions is lessened. Respectively, the gain of society from such restriction of rights should be evaluated critically. The right to contest the action or decision made by the official in the case of administrative offence is not absolute. Even though it would not be reasonable to ensure that any person may contest the decision made in the case of administrative offence, yet the same way it is disproportionate to deny the opportunity to the person whose legal interests are affected by the decision of the official to be able to take any action in order to protect the affected rights. By taking into consideration the above mentioned, the Ombudsman expressed the

opinion that restriction to the third persons stipulated by Section 279, Paragraph one and Section 288, Paragraph one of LAVC disproportionately limits the rights guaranteed by the first sentence of Section 92 of the Constitution.

4. Inviolability of Private Life, Home and Correspondence

4.1. Characterisation of Submissions

4.1.1. Access to data existing in Courts Information System to unlimited number of persons

In 2015, the Ombudsman received complaint that contained a request to evaluate the issue on access that is too broad to data existing in Courts Information System (hereinafter - CIS) to unlimited number of persons.

In order to assess the genuineness of the received facts and possible violation of Section 96 of the Constitution, information was requested from the Court Administration being the custodian and manager of CIS data base, with a request for explanation if in such categories of cases that have touched upon the rights protected by Section 96 of the Constitution - divorce, confirmation of adoption, establishing the descent of the child, determination of guardianship - is not detected too broad access by all CIS users.

In response to the Ombudsman's request, the answer was provided that a judgements made in a closed session of the court in such categories of cases as divorce, confirmation of adoption, establishing the descent of the child, determination of guardianship are fully placed in CIS on the basis of Cabinet regulation No. 582 "Regulations on Procedures of Establishment, Maintenance and Use of Courts Information System and Minimum Amount of Included Information". According to Clause 14.5.2. of these Regulations, the cases in the system are not categorised according to the form of the hearing; only the type of session is noted in the case - closed or open, and it ensures availability of information on cases processed in closed hearings in a limited amount. Texts of adjudications made in closed session of the court may be opened if the person has been given respective access. Adjudications in data viewing mode may be accessed only by a user with a special access right, but the external users of the system cannot access the adjudications from the case card at all.

Explanation was provided to the Ombudsman that judges and court officers may receive rights to use CIS when they begin their duties of office. According to the prescribed duties of office, the court requests from the Court Administration access rights

to the system to such amount as needed for the court officers, as well as judges in order to carry out their duties. Court Administration grants the access right according to the data provided in the request.

To the institutions who require the use of data of the system in order to carry out the functions prescribed by the regulatory enactments, Court Administration grants access to CIS data to a definite amount required for fulfilment of functions. No access is granted to the data of pre-litigation procedures. Court Administration ensures that CIS users commit in a writing to keep and not disclose the data available in CIS during the time of their office, as well as after termination of employment relationships. Court Administration regularly audits the user rights and removes or locks access to CIS, if it is no longer necessary or has not been used for a long time. Thus, the Court Administration does not detect problems connected with the amount of access rights in such categories of cases as divorce, confirmation of adoption, establishing the descent of the child, determination of guardianship, and informs that it is intended to improve the functionality of access rights amount for more effective administration.

4.1.2. Patient fixation

In 2015, the Ombudsman's Office received two submissions on fixation of patients in medical treatment institutions. The Ombudsman had already previously urged to make changes in regulatory enactments regarding fixation of patients in psycho-neurological hospitals; and currently to patients who require psychiatric care fixation is applied according to the procedure set out in Section 69^1, Paragraph six of the Medical Treatment Law. Yet at the moment there are no regulations in relation to other persons whose movements should be restricted in specific cases of the treatment process.

As pointed out to the Ombudsman's Office in a submission by an official of a medical treatment institution, currently regulatory enactments do not provide instructions on how to balance the rights of the patients to freedom with their rights to safe treatment implemented in peaceful circumstances, as well as guaranteeing the rights of other patients to safety.

By evaluating the permissibility of fixation, the Ombudsman took into consideration the insights on permissibility of restricting a person's movements to patients in psycho-neurological hospitals expressed in the research by the Ombudsman's Office[55].

[55] Human rights of the patients in psycho-neurological hospitals. Available: http://www.tiesibsargs.lv/img/content/pacientu_tiesibas_psihiatrijas_slimnica_2012.pdf

Indisputably there are cases when fixation of such patients is necessary immediately, for instance, for persons who due to cognitive deficiencies endanger themselves, or have become aggressive as a result of alcohol or narcotics use. Yet the current situation when patient fixation may be used completely arbitrarily is not permissible in the view of the Ombudsman.

By taking into account the above mentioned, the Ombudsman turned to the Ministry of Health by turning attention to the current situation and invite to review the regulatory framework in order to ensure the protection of the rights of persons in cases of applying the restrictive means. Ministry of Health essentially agreed with the opinion of the Ombudsman on permissibility of fixation admitting that fixation of patients might be used as a last resort to restricting the patient in cases when alternative means do not provide the results, and the risk of the patient injuring themselves or others is unacceptably high. Ministry of Health also informed that amendments to the Medical Treatment Law to be reviewed include an issue on prescribing a procedural procedure for application of fixation.

The same way, a submission was sent to the Ombudsman's Office by the family members of a patient by stating that fixation of almost 90 years old patient in the hospital was explained by the lack of personnel resources. Regarding the received submission, the Ombudsman addressed the Health Inspectorate by asking to perform an inspection in the respective medical treatment institution and expressing the view on permissibility of such fixation. As a result of submission by the Ombudsman and the private persons, a violation was found in the activity of the doctor treating the patient and a process of imposing an administrative penalty of the person has been initiated.

However, neither application of administrative penalty, nor amendments to the Medical Treatment Law may solve the issue on sufficient recruitment of medical personnel to the regional hospitals of Latvia, and as a result treatment quality suffers, and a person's life may be lost.

4.1.3. Photographing in public places

Several persons have turned for explanations on legitimacy of filming, photographing of persons in public places, especially in the hospital yard, work place, and airport. Such activities are regulated by Personal Data Protection Law, thus frequently the provisions of this law are explained to the persons, and the persons are invited to

primarily turn to DSI if they believe that another person is performing unlawful filming or photographing.

4.1.4. Receipt of advertisements by e-mail

The Ombudsman's Office has also received a submission in which the person complained on receipt of such internet advertisement by e-mail, the content of which made it possible to make conclusions on health condition of the person. Furthermore, the received e-mail also showed other recipients of the message. The Ombudsman turned to DSI with a request to assess the situation; as a result, the sender of the message was imposed an administrative penalty for illegal processing of sensitive personal data.

4.2. Submission to Constitutional Court on Disclosure of Personal Data of Defaulting Maintenance Debtors

In 2015, the Ombudsman submitted an application to the Constitutional Court on compliance of Section 5.[1] of Maintenance Guarantee Fund Law, providing disclosure of personal data of defaulting maintenance debtors, with the right to private life included in Section 96 of the Constitution. Both before and after the acceptance of the contested provision the Ombudsman turned to the Saeima by inviting to eliminate the by 25 May 2015 the deficiencies identified by the Ombudsman. However, since Saeima did not do it, the Ombudsman made an application to the Constitutional Court.

In his application to the Constitutional Court, the Ombudsman pointed out that the restriction of the fundamental rights prescribed by the contested norm has a legitimate purpose - to promote the fulfilment of parental obligations. This purpose is aimed at protection of welfare of society in the best interest of which is not to assign significant amount of funds from the state budget in order to cover the civil liability of the maintenance debtors. However, it is doubtful that such a restriction of the right to inviolability of the private life is appropriate for reaching the legitimate purpose. Maintenance debtors mostly are persons without income, and their inability to fulfil the court judgment on maintenance recovery has been acknowledged in the procedure prescribed by the law. It is not understandable how, for instance, data disclosure of long-term unemployed persons would improve the financial status of these persons and promote payment of maintenance.

Annotation of the contested provision emphasises that data disclosure of the maintenance debtors would allow any interested person to obtain information on debtors of maintenance guarantee fund. In his application, the Ombudsman emphasises that from the standpoint of personal data protection it is disproportionate that without a legal basis personal data are available to any person. Republishing and use of data for abusive purposes will create a greater risk of violations to personal rights than the interest of the third persons and the need for such data. Besides, it may lead to unlawful theft of personal data. PDPL does not discuss further processing of publicly available data.

Disclosure of such data may also seriously injure the interests of the child, for instance, by subjecting the child to the risk of emotional violence, creating social rejection. In many cases the child might be placed in uncomfortable situation or humiliated when other persons find out about the indebtedness of their parents.

In the view of the Ombudsman, Maintenance Guarantee Fund would be eligible to provide such data only on the basis of a motivated request by the person, if these data might be legally used and if there would be a lawful basis for further processing of the data. The right and necessity to be acquainted with the debtor's data would be to persons for whose work needs it might be necessary, for example, credit institution. Thus in application it was emphasised that already at the moment state information system "Register of Applicants and Debtors of Maintenance Guarantee Fund" that is under management of Maintenance Guarantee Fund administration is being used. The right to receive the information included in the register is given to the state and municipal institutions, for information necessary for fulfilment of work or service functions: sworn bailiffs, credit institutions, branches of credit institutions, capital companies that provide services of loans and financial leasing, insurance companies, and providers of electronic communication services.

In his application the Ombudsman also pointed out that it should be considered how to make the maintenance recovery more effective. By paying maintenance instead of parents, the state has provided support to parents on whom the child is dependant. Thus the state should also think of effective and legal means to recover the debt. In the opinion of the Ombudsman, the current legal framework should be used in order to prevent evasion of maintenance payments. For instance, when solving this problem law enforcement institutions should be more involved. For avoiding in bad faith to care for and maintain the children, criminal liability of the person is stipulated according to

Section 170 of the Criminal Law. For this criminal offence the punishment may be temporary deprivation of liberty or community service, or a fine.

By evaluating the application of the Ombudsman, on 27 July 2015, the Constitutional Court initiated the case "On compliance of Section 5.1. of the Maintenance Guarantee Fund Law with Section 96 of the Constitution of the Republic of Latvia."

4.3. Opinions to Constitutional Court

In 2015, the Ombudsman provided an opinion to the Constitutional Court in case No. 2015-14-0103 "On Compliance of Section 1, Clauses 2 and 6, Section 4, Section 10, Section 18, Paragraph one of Law On Development and Use of the National DNA Database, as well as Clauses 2 and 13 of Cabinet Regulations No. 620 of 23 August 2005 "Procedures for the Provision of Information to be Included in the National DNA Database, as well as the Collection of Biological Material and Biological Traces" as Far as They Are Applied to Suspected Persons with Section 96 of the Constitution of the Republic of Latvia".

The applicant pointed out in the constitutional complaint that taking cell samples and storage of DNA profiles violate the rights to inviolability of the private life of a person whose guilt in committing a criminal offence was not proved or detected.

The Ombudsman in his opinion concluded that acquisition of cell samples and DNA profiles restricts the rights of the person to inviolability of private life because the Criminal Procedure Law provides the obligation of the person directing the proceedings to assess the necessity of such action in each separate case. But information from DNA national database on person whose guilt in committing a criminal offence was not proved but whose cell samples and DNA profiles were obtained during the preliminary investigation of criminal proceedings may be deleted according to the application of the person or automatically after 10 years. The mentioned cases of data deletion were assessed separately.

The Ombudsman concluded that after the final decision in the criminal proceedings that did not prove the guilt of the person or in whose action no signs of criminal offence were found, but whose cell samples and DNA profiles were obtained, the state should, by observing the principle of good governance, destroy these samples without waiting for such application from the private person.

In the opinion of the Ombudsman, it is disproportionate to expect that a private person has de facto knowledge that he or she has an opportunity to request the state to perform certain actions in this situation, considering that in the process of obtaining the samples the persons are not informed on it. Thus, the state does not fulfil the positive obligation given to it by Article 8 of CPHRFF to protect the person's right to inviolability of the private life.

Section 2 of DNA Law prescribes that DNA national database is primarily used for disclosure of criminal offences. Yet it is not obvious how reaching the mentioned purpose would be promoted by the circumstance that DNA national database shall store for 10 years the information about the person in whose actions signs of criminal offence were not detected.

The Ombudsman drew attention of the Constitutional Court to the facts that:

1. By storing data on individuals who were not convicted might to especially great damage to the minors, taking into consideration their special status and how important is their development and integration in society. Accordingly there should be especially important reasons to store cell samples and DNA profiles of persons (also minors) who were not convicted of committing a criminal offence.

2. There are no reasons to store also the cell samples and DNA profiles of a victim after criminal liability limitation period has elapsed regarding a certain criminal offence. Yet Section 18 of DNA Law does not provide storage term for DNA profiles of the victims and obligation of deletion thereof, namely, the data may be stored for unlimited term.

The Ombudsman concluded that information storage term specified in Section 18, Paragraph one of DNA Law disproportionately restricts the right of persons to inviolability of private life.

4.4. Law Initiative

4.4.1. Processing of air passenger data

On 4 June 2015, in the Meeting of State Secretaries was announced a draft law "Law on Processing Passenger Data" that authorises the Security Police to perform extensive collection of personal data of natural persons from air carriers as well as storage, processing and provision of the data to other institutions, and other countries specified by the law.

The Ombudsman turned to the Ministry of Internal Affairs by indicating that such extensive collection of data of natural persons shall significantly affect the human rights of the persons, including the rights to private life. Emphasis was placed on the fact that even though observation, disclosure of offences, terrorist crimes are to be considered as legitimate purposes, the draft law already initially causes concern on proportion of restrictions on human rights. The Ombudsman drew attention to the fact that the draft law in its current wording causes many issues on volume of processing of personal data, number of involved institutions, and legitimacy in obtaining personal data, supervision of data processing, and use of personal data only for initially intended purpose. Special attention should be paid to incomplete annotation of the draft law that does not provide full answers to necessity of such amendments.

The Ombudsman shall continue to follow the development process of the draft law.

4.4.2. Data disclosure in emergency situations

After the Zolitude tragedy issue on data disclosure in emergency situations was raised. Namely, after publishing of unofficial name list of casualties in mass media discussion was initiated on if and who could publish these names. By the end of 2013, the Ombudsman provided an opinion on data disclosure in emergency situations. The opinion expressed conclusion that legal acts do not determine the institution that is responsible for the procedure of compiling and disclosure of such a list of casualties. Therefore, in this aspect deficiencies of regulatory framework in the country should be urgently eliminated. The Ombudsman turned to the Cabinet of Ministers with this message.

In 2015, the Ombudsman asked the Cabinet of Ministers to provide information on what measures have been taken in the respective time period to ensure a timely processing of personal data in emergency situations while at the same time observing the human rights according to the Constitution and international documents on human rights. The Ombudsman indicated that action of institutions in emergency situations is not understandable, as well as cooperation of institutions, and which institution and to what extent has an obligation to provide information to the society on personal data of victims and casualties. Regulatory framework regarding such situations should be clear in order to prevent misunderstandings in action of institutions and violations of personal data processing while at the same time providing to the society information on victims and casualties of the emergency situation in a timely manner.

In emergency situations the rights guaranteed to society by Section 100 of the Constitution to receive information, including information on victims, casualties collides with the rights to privacy, including protection of personal data, guaranteed by Section 96 of the Constitution. At the same time in situations of crisis several rights of the persons may be reasonably restricted. In emergency situations the state is obliged to ensure observance of individual human rights, yet it should be kept in mind that interests of society in situations of crisis may be more important than in everyday situations. Thus in such cases, when a large-scale catastrophe has taken place, for example, collapse of the buildings, air crash, natural disaster with potentially large number of victims, etc, interests of victims and their family members may collide with the interests of other members of society who do not know what has happened to their relatives.

In order to inform the society and to facilitate the work of the responsible services, release of specific information should be permitted in order to inform the society. A list of names and surnames of casualties is a part of information to be released, and in global practice it is not accepted to classify such information by assigning it the status of restricted access. Furthermore, it should be emphasised that in emergency situations quick reaction is important in order for information on victims and casualties to be provided as soon as possible, while at the same time ensuring accuracy of the provided information and personal data.

A response was received from the Prime Minister emphasising that: Section 36 of National Security Law stipulates that Ministry of Internal Affairs in cooperation with the other ministries shall develop the civil protection plan of the State and it shall be approved by the Cabinet of Ministers. State civil protection plan includes measures for ensuring state civil protection system as well as preventive, readiness and response measures for emergency situations and measures for dealing with consequences of such situations. It also prescribes the action of civil protection system in case of military invasion or war. State civil protection plan (approved by Cabinet order No. 369 of 9 August 2011 "On State Civil Protection Plan") studies the possible types of threats and accordingly provides action of state institutions, local governments and rescue services in order to take urgent preventive, readiness, response and elimination of consequences measures, as well as provides execution terms for the measures.

Attention of the Ombudsman was drawn to the fact that State civil protection plan does not specify one responsible institution for all possible types of catastrophe, but for each type of possible threat its own responsible institutions has been determined. As

indicated by the Prime Minister, from the current framework it is clearly understandable that each institution has an obligation in each specific case assess the necessity to disclose the personal data in the interests of the victims and make a decision, respectively. In addition, the responsible institution - State Police, Emergency Medical Care Service or medical treatment institution - shall assess at what time and how, and in what amount the personal data should be published. Thus, the action of institutions in emergency situations regarding disclosure of personal data is understandable, and there is no need to make amendments to the legal acts.

4.5. Opinions to Institutions

4.5.1. Secret recording of conversations between employer and employee

Regarding secret recording of conversations between employee and employer in order to use the recording for the rights protection in order to prove mobbing, DSI asked for an opinion of the Ombudsman on legitimacy of such violation of private life.

In order to admit that person's rights have been violated, it is important to detect the importance of restriction of human rights in relation to a specific person, namely, status, circumstances of the specific person should be considered, and other factors that in every specific situation may be important when making a decision, if decision or action essentially affects the human rights of the specific person.

Recording conversations without consent in itself without assessment of a specific situation, might not be considered as violation of the rights to private life. Namely, it is not enough to make an abstract observation that unlawful recording of the person's conversations has taken place, but specific circumstances should be assessed, for instance:

1) in what circumstances did it take place (did the person have a reasonable reliance on privacy);

2) for what purpose the conversations of the person were recorded (was there a legitimate purpose and proportion observed);

3) what was the framework of conversation (are the rights of the person to protection of deeply personal details of private life not violated by disclosing them to a wide circle of society);

4) how is the recorded material used (for protection of what interests is it used).

Furthermore, there is a need to assess: 1) were there other possible evidence that could prove the existence of the specific violation just as effectively, 2) did excessive provocation of the recorded person take place.

Consequently, it was concluded that secret recording by the employee of his or her conversations with employer without informing the employer about it in order to use the recording later as evidence when turning to State Labour Inspectorate or court in order to ensure the protection of employee's rights might be justifiable in specific circumstances. Such a conclusion arises from ECHR insights and judgment of Constitutional Court of the Czech Republic of 9 December 2014 in a similar case No. II. ÚS 1774/14.

4.5.2. Member lists of political parties

From DSI was received a request to provide opinion on permissibility of restrictions on person's human rights to data protection.

According to DSI request was evaluated restriction on the right of private life stipulated in Section 27, Paragraph 6 of Law on Political Organizations that provides that information on participation of the person in a political party is generally available.

In the opinion of the Ombudsman, for candidates of the parties who have chosen to perform their activity publicly and have set the goal of activity - to assume an elected office in the Saeima or local city council, such requirements of information availability are justified. Yet at the same time such persons are active in the parties who wish to be members of parties, yet do not wish to be candidates in elections or assume any other public offices or ones connected with governance of the party. For instance, according to Section 33, Paragraph two, Clause 5 of the Labour Law no questions are allowed in the job interview about the affiliation of the person with any political party, employee trade union or other public organization. Yet in this specific case party had general access to such information, and a risk of differing attitude exists due to person's political affiliation.

When obtaining information on data protection framework of the European Union, the Ombudsman concluded that member states of European Union set especially high requirements for protection of sensitive personal data. Essentially, the person has a right to choose freely to publicly express his or her political affiliation, and it should be critically evaluated if society in any situation has equally justified interest to receive information on every person's participation in a political party.

4.5.3. Video surveillance in a psycho-neurological hospital

From DSI was received a request to provide opinion on if personal data processing (video surveillance) done by state limited liability company "Daugavpils psihoneiroloģiskā slimnīca" in all acute rooms of the hospital buildings complies with Section 96 of the Constitution.

The Ombudsman already previously on 27 December 2013 in a letter No.1-5/34 addressed to the Ministry of Justice in assessment on permissibility of video surveillance in psycho-neurological hospitals concluded that video surveillance may be performed for the security of patients, clients and personnel, but is not permissible for observation of sanitary rooms. By taking into consideration the above mentioned, the Ombudsman's view is that in certain cases video surveillance may be implemented for patients who are in acute hospital rooms of the hospital buildings by taking into account that patients in this condition require enhanced supervision. However, also in this case it is necessary to perform individual assessment in specific cases in order to lessen restriction of person's right to private life as much as possible. Definitely continuous video surveillance of the person would not be permissible already once the initial reason does not stand.

4.5.4. Permissibility of obtaining and processing of biological traces of contact

The opinion of the Ombudsman was requested by the law enforcement institution regarding permissibility of obtaining and processing of biological traces of contact that has been performed in order to obtain the DNA profile of the person and to perform processing of the data.

Elements, for instance, name, sex, sexual orientation is included in the scope of private life. Also other elements that may identify the person or point to their family, as well as information on health and ethnic origin of the person is protected. DNA data allows clear and unambiguous identification of a specific person. That way ECHR has acknowledged that storage of cell samples and DNA profiles restricts the right of the person to inviolability of the private life in the understanding of Article 8, Clause one of CPHRFF. Acquisition of information from samples is collection of personal data to which PDPL is applied. In order for such acquisition and processing of data to be legal and not in violation of the rights of person to private life, it should be performed according to the requirements of the law. Thus, collection of biological traces of contact without consent of the person is a violation of the private life.

5. Freedom of Speech and Expression

5.1. Characterisation of Submissions

During the reporting period several persons turned to the Ombudsman regarding offensive comments on the internet. Taking into consideration the recent judgment of ECHR in the case *Delfi v. Estonia*, it was pointed out that comments expressed on the website may injure the rights and interests of other persons, and medium should assume certain responsibility on the content expressed therein, and its supervision. More enhanced research of this topic shall be continued also in 2016.

In February 2015, attention of the Ombudsman was drawn to the episodes of the program broadcasted on Latvian Television "Aizliegtais paņēmiens" (Forbidden technique). The program showed persons against their own will, without covering their faces or otherwise concealing their identity. Even though within the framework of the specific submission no infringement of person's rights was discovered because the person had applied in order to protect the rights of other persons, the answer was provided that by pointing out the necessary considerations of human rights in such cases, as well as the right protection mechanism existing in the country.

ECHR practice shows that photographing and filming without consent in itself without assessing the circumstances of the specific situation may not be considered as a violation of the rights to private life. In order to determine if a fair balance between two interests protected by CPHRFF and possibly colliding in such cases has been reached, namely, freedom of expression protected by Article 10 of the convention and the right to private life established in Article 8. The interest of the society in published image and the need to protect the private life should be balanced. Both established values are equally important. In its practice ECHR has established criteria that should be evaluated amount others when balancing the freedom of expression and the right to private life. These criteria are the following:

1) contribution to the discussion on issue the society is interested in;

2) how well-known is the involved person, and what is the subject of this publication;

3) previous action of the involved person;

4) believability of information and method of acquisition, circumstances in which the image of the person was obtained;

5) content, form and consequences of publication.

In a situation when the persons seen in the television program believe that by the circumstances of the specific situation their rights to private life are disproportionately restricted, these persons have a right to turn to the general jurisdiction court with a motivated application. By taking into account Sections 7 and 28 of the Law "On Press and Other Mass Media", if information is published by violating the right of the person to private life, mass medium is legally liable for the incurred moral injury (see Section 1635 of the Civil Law). In addition, if disseminated information unlawfully violates dignity and honour of the person, then this person has a right to demand revocation of the information and remuneration by the way of court procedure (see Section 2352^1 of the Civil Law).

By discovering the importance of such problems, the Ombudsman on his own initiative initiated the verification procedure in the framework of which he requested explanations from the content editor of the program and DSI, as well as analysed most recent ECHR judgments - Peck v. United Kingdom, *Bremner v. Turkey* and *Haldimann v. Switzerland,* in which were expressed insights on legitimacy of secretly performed recordings.

Within the reporting period, the issue was raised regarding the inclusion of data of wanted persons in advertisements of the newspaper. The Ombudsman suggested that the newspapers refrain from processing the personal data in cases when there is doubt on ensuring data protection.

5.2. Role of Media in Ensuring Freedom of Speech

The role of media in ensuring freedom of speech according to the framework of human rights is a relevant topic both in international society and that of Latvia. In 2015, Media Policy Department was formed for the first time in Latvia in Ministry of Culture, thus showing the desire of the government to form a strong, professional, sustainable and stable environment of media. Media Policy Department developed and gave to public consultation "Latvian Media Policy Framework 2016 - 2020".

Within the framework of rights to freedom of speech the Ombudsman turned to assessment of media topic, namely, electronic mass media.

Section 100 of the Constitution guarantees to every resident of Latvia the right to freedom of speech and the right to obtain information. Article 10 of CPHRFF stipulates that the right to free expression of opinion includes freedom of opinion and the right to

receive and disseminate information without interference of the state institutions and regardless of country borders.

Throughout the year the Ombudsman met with media experts in order to understand the problem aspects of the sector of media. As known, the freedom of media is essential to protection of all human rights, not only the freedom of speech. In order to discuss the relevant issues in the sector of electronic mass media with the representatives of the sector itself, the Ombudsman allotted one day of the annual conference only to the topic of media. In the course of the Ombudsman's conference discussion on such topics as the role of state in development of media policy, public service remit, editorial independence of the media, national informative space, and information pluralism was held.

The conference was informed on the state policy in the area of media and challenges by Roberts Putnis, the Head of the Media Policy Department of Ministry of Culture, and Uldis Lielpēters, the representative of Ministry of Culture. On public service remit of Latvian TV and Latvian Radio spoke Sergejs Ņesterovs, board member of the LTV, and Sigita Kirilka, board member of LR. Antra Cilinska, member of the Public Consultative Council of NEPLP informed on the role of the Consultative Council of NEPLP in development of public service remit. Associated professor Anda Rožukalne informed on a research on problems of editorial independence in Latvia. NEPLP member Dace Ķezbere pointed to the conflict of interests included in NEPLP functions. Ineta Ziemele, the judge of Constitutional Court, discussed the media environment in Latvia by emphasising that Preamble to the Constitution is necessary in order to protect the internal cultural environment, understanding of values, and history of the country.

Media must ensure information both on events in Latvia and European Union. Ieva Dzelme-Romanovska, the board member of Centre for East European Policy Studies, emphasised that media are to be viewed in the context of state security because they may be used as instruments for influence. Propaganda foundations laid in due time may later form the perception of the society of events. Guna Paidere, the senior public notary of the Enterprise Register defined the Enterprise Register as the front line because the registration of company is viewed as acknowledgement of the state.

Tarmu Tammerk, the Ombudsman for Estonian public media, also participated in the conference and shared on the role and functions of the ombudspersons. Ombudsman for the public media in Estonia acts as a mediator between private persons, interest groups and public media. The main activity instrument of the ombudsman is providing recommendations. For reflection of contested issues the ombudsman's program in

Estonian public radio once a month is used. Among others such issues are solved that are related to protection of children's rights by reflecting events in mass media, data protection, and independence of media. The ombudsman hosts training for journalists on issues of ethics, as well as promotes the understanding of persons on media by meeting with the representatives of society. Answers provided by the ombudsman to the submissions of persons are reviewed in Estonian Press Council that ensures self-regulation of media area.

In 2015, by paying attention to the activity of media, listening to media experts, being acquainted with the documents for media environment planning, regulatory enactments and international documents binding to Latvia, the Ombudsman made the following insights or suggestions:

- Public broadcasting currently does not reach all inhabitants of Latvia, and it must be assessed negatively.
- In order to avoid the propaganda opposed to the statehood of Latvia, critical thinking and skills of using media should be promoted among the populace. On promotion of this skill should responsibly think every resident of Latvia according to his or her competence.
- The National Electronic Mass Media Council should ensure that assessment is made in a timely manner and mess media are punished for hate speech and reflecting unilateral information on issues essential to society.
- Politicians should be responsible regarding strengthening of mass media. Unfortunately, budget for 2016 has decreased funding in comparison with 2015, and it is an obvious violation of law, because Section 70, Paragraph 1, Clause 1 of Electronic Mass Media Law stipulates that a State budget subsidy for the implementation of the public service remit, may not be less than that for the previous year.
- In the media environment, especially internet, violations of ethics, personal data are often found. The problem is exacerbated by the fact that many internet portals don't see themselves as media, thus stating that regulatory enactments regulating the media environment do not apply to them. Such violations can be much less observed in public media.
- The National Electronic Mass Media Council is the holder of public media shares and regulator of media environment of the whole Latvia. By uniting these two functions the conflict of interests is inescapable. The representatives of the Council have admitted it themselves.

- A thought of Ombudsman for the media is to be considered, and it would promote the improvement of media environment according to human rights.

5.3. Opinions to Constitutional Court

5.3.1. Opinion on placement of the national flag of Latvia on private house

Within the reporting period the Ombudsman was asked to provide an opinion to the Constitutional Court in the case No. 2015-01-01 "On Compliance of Section 7, Paragraphs one and two of the Law on the National Flag of Latvia and Section 201^{43} of Latvian Administrative Violations Code with Section 100 of the Constitution of the Republic of Latvia". The applicant contested the obligation prescribed by the law to place the national flag on private houses.

Annotation of the law mentions that obligation to continually use the national flag of Latvia on the buildings of sector ministries and local governments was prescribed in order to promote the use of state symbols of Latvia by society and to strengthen the national awareness. It may be concluded thus, that the idea on promotion of national awareness applies to private persons as well. Namely, a strong national awareness strengthens the democratic state system as well and indirectly could promote the welfare of society.

While assessing the necessity of the current restriction in democratic society, also its social necessity and proportion were analysed. By observing the proportion of the specific restriction it may be concluded that restriction was set with a purpose to promote national awareness, to remember historical events of importance to society, and is aimed at recognition and development of society's values.

On November 18, the Proclamation Day of the Republic of Latvia was celebrated in Latvia. But on May 4 we remember the Day of Restoration of Independence of the Republic of Latvia because on 4 May 1990 was proclaimed the Declaration on Restoration of Independence of the Republic of Latvia. To a numerically large part of population who arrived in Latvia after 1940 and to their descendants due to logical considerations these are not historical memories, thus the rest of the Latvian society and state even has an obligation to explain the importance of certain historical facts and dates. Placement of the national flag of Latvia on November 18 and May 4 on buildings of the state and local governments, and on residential houses of private persons would promote the national awareness and belonging to this country. Placement of the national flag

would promote commemoration of these fundamentally significant events in the history of Latvia.

At the same time it should be pointed out that over the time many historical events have taken place in Latvia, commemoration of which causes various attitudes among population. Currently individuals are denied the opportunity to express their views and attitude towards these historical events freely, thus restricting the freedom of expression of these persons. On these dates (March 25, June 14, June 17, July 4, and on first Sunday of December in mourning presentation, as well as on May 1, August 21, November 11) it is not possible to find the suitability of restriction because the purposes may be reached with less restrictive means. A situation has formed that private persons on days determined by the law often raise the flag on the buildings owned by them not due to their patriotism in commemoration of a historical event or in solidarity with the victims of the specific event, but rather in fear of possible administrative fine, and it does not promote national awareness and strengthening of democratic system.

The same way it is impossible to detect the necessity for the restriction because its goal could be reached by other means. Promotion of commemoration of historical events might be implemented, for instance, by informing the population on historical events, explaining the importance of these events in the history of Latvia and the world and development of society's values, as well as invitations to remember and honour these events by placing the national flag of Latvia. By evaluating the necessity of the implemented means, it may be concluded that means mentioned in the previous clause might be just as effective and would place less restrictions on fundamental rights. Thus the chosen means may not be considered appropriate to the criteria of necessity.

In the opinion of the Ombudsman, administrative penalty imposed according to Section 201.43 of LAVC for failure to place the national flag should be kept regarding two dates - November 18 and May 4 - yet the amount of the fine may be discussed. Currently the administrative fine is sufficiently severe, and sometimes owners of the buildings who are elderly people or do not live in the buildings owned by them for long periods of time, may not be able to fulfil the duty of raising the flag due to objective reasons.

By taking into consideration the above, it may be concluded that regulation on raising the national flag on the residential houses of private persons prescribed by Section 7, Paragraph one of the Law on National Flag of Latvia on May 1, August 21, November 11, as well as Section 7, Paragraph two of the Law on National Flag of Latvia - on March

25, June 14, June 17, July 4, and the first Sunday of December server a legitimate purpose. However, restriction should not be considered as proportionate and necessary in a democratic society. There are other means that might be just as effective and would place fewer restrictions on fundamental rights. Thus the mentioned restriction cannot exist in a democratic state.

However, November 18 and May 4 are dates that were crucial to formation and restoration history of independent Republic of Latvia. Therefore, according to opinion of the Ombudsman, the obligation to place the flag of Latvia on these dates should definitely be kept regarding the buildings of public persons, buildings of private rights legal entities and associations of persons, and the residential buildings of private persons.

5.3.2. Opinion in the case on compliance of Section 11.[6], Paragraph one of Judicial Disciplinary Liability Law with Section 100 of the Constitution

Within the reporting period, the Ombudsman provided an opinion also in case No. 2015-06-01 "On Compliance of Section 11.[6], Paragraph one of Judicial Disciplinary Liability Law with Section 100 of the Constitution".

The mentioned provision lays a prohibition on persons who have available the materials of a disciplinary case initiated against a judge of disclosure of the information regarding these materials until the moment when the disciplinary board makes a decision. The Ombudsman acknowledged that interest of society to know of possible violations in activity of judiciary system is not to be viewed as simple curiosity but rather as a legitimate interest. By observing the above, the Ombudsman agreed with the applicant - Administrative Affairs Department of Higher Court, by expressing opinion that Section 11.[6], Paragraph one of Judicial Disciplinary Liability Law does not comply with Section 100 of the Constitution.

In the opinion of the Ombudsman, the disclosure of information should not be applied in similar amount to all situations. Yet, by prescribing a complete prohibition on disclosure of any information regarding the initiated disciplinary case and without setting any specific criteria for provision of information, including not provided by the judge him or herself against whom the disciplinary case has been initiated, restriction on the right to request disclosure of information cannot be viewed as proportionate.

5.3.3. Opinion in the case on compliance of transitional provisions of Electronic Mass Media Law with the Constitution

Within the reporting period opinion was provided to the Constitutional Court in the case No. 2015-15-01 "On compliance of Section 27 of transitional provisions of Electronic Mass Media Law with Section 1, first sentence and Section 105 of the Constitution of the Republic of Latvia".

By the mentioned regulatory enactment the provisions are changed regarding issued broadcasting permits, thus stipulating that radio stations whose broadcast in the official language exceeds 50% are obliged to re-register the issued permit starting by 1 January 2015 in order to broadcast only in official language.

The Ombudsman acknowledged that essential interests of society may justify the restriction on person's rights to freedom of speech and ownership, including by amendments to regulation that defines the requirements for radio program broadcasts thus respectively restricting the use of rights. However, also in this case it is necessary to assess the applicability of the specific regulation for reaching the legitimate purpose, as well as its proportion by paying attention to the legal trust of the person in the use of rights assigned by the administrative act - the broadcast permit. Only immediate interest of society to apply the accepted regulation to issued broadcast permits may justify a significant restriction of person's rights.

In this case, the immediate interest is not unanimous, especially by taking into account that regulations of transitional provisions of Electronic Mass Media Law are not consistent in stipulating that electronic mass media that this far broadcasted in official language less than 50% of the programs the right to broadcast only in a foreign language hereafter. The same way, the opinion of the Ombudsman is that a regulation is possible that in order to reach the legitimate purpose would less infringe upon the rights or legal interests of the applicant of constitutional complaint. Situations when programs are broadcasted in official language only at night, but during the day broadcast takes place only in a foreign language may be prevented by a request to broadcast the radio program in specific hours of transmission time both in official language and foreign language in equal parts.

5.4. Filming of Officials

In 2015, DSI asked the opinion of the Ombudsman on the right of the private person in various situations and for various purposes to obtain photographs of an official. Without assessing the circumstances of a specific case, the Ombudsman pointed out that Section 96 of the Constitution and Section 8 of CPHRFF stipulate that everyone has a right to inviolability of their private and family life, home and correspondence. The concept of private life involves such elements as person's name or image. Yet, it should be considered that by fulfilling the official duties, an official performs the functions of the institution and implements the state authority.

Person who of their own will participates in the area of public rights may not require for themselves the same attitude as a private person who has a right to anonymity. The right of society to obtain information in certain circumstances may refer also to separate aspects of private life of public persons.

There is a difference between the protection level of rights to private life of politicians, officials and private persons. Furthermore, at the time of fulfilling official duties, the officials are assigned special rights as well as special obligations and restrictions. Officials in state service have high requirements for ethics and conduct, execution of which is applied also to the time when the persons are not fulfilling the duties of office. Restrictions of fundamental rights are also in force, regardless of whether the person at the specific moment is fulfilling official duties in a broader sense of this concept, or not. Necessity to restrict the person's right to obtain information and express opinion must be convincing, namely, there must be genuine interest of society.

Acquisition of information on officials who ensure secretive execution of public order and national security functions by the private person may negatively affect the efficiency of activity of this institution. Respectively, free acquisition and access of such information is not in the interest of the state and society.

At the same time it is in the interest of society to prevent or stop unlawful action of an official regardless of the time it is committed. The responsible institution should perform comprehensive assessment of circumstances regarding violation of law detected by the private person. The institution should fulfil the mention obligation even when for some reason this private person has chosen to publish this information even though no infringement of interests and rights of a specific person has taken place.

The right to express the opinion and discussion in policy area would be endangered if public officials would be able to limit (censor) them by referring to protection of their

private rights. Furthermore, by using the authorisation assigned to the office for protection of their private rights, the official may have conflict of interest, namely, use public power (position of office) in personal interests.

It should be considered that actions of an official are not always legal or ethical. Moreover, court in judicature assigns a high degree of believability to testimonies of officials if no illegal action or interest has been detected on their part. In case of disagreements, recording done by technical means may provide a more comprehensive and objective information on circumstances of the event rather than any other way of recording the action. By taking into account the above mentioned, as well as the circumstance that individual in relationship with the state, for instance, during interrogation, objectively is a weaker party, absolute prohibition to the private person to record the action of official in any way if the institution itself does not record this action, should be considered as a disproportionate restriction of fundamental rights because it would deny an effective way of protection of interests.

At the same time it should be emphasised that any person even one recognised by society should have an opportunity to legitimate expectations that their private life will be protected. In the opinion of the Ombudsman, in order to ensure a reasonable balance between protection of private life and freedom of speech it is crucial if the published article or photograph contributes to a discussion that is significant to society. Thus, information on the activity of official outside the duties of office may be assessed from the viewpoint of legal interest of society. The mentioned interest includes the activities of the person that in any way are connected with execution of official duties in the area of public rights. However, curiosity of an individual person or a group of persons, as well as commercial interest of a newspaper or publication is not to be considered a legal interest of society and may not serve to justify the restriction of the official's rights to private life outside the time of execution of official duties. Thus, in such cases the right of the private person to acquisition of information may be restricted.

6. Rights of Foreign Nationals, Status and Rights of Asylum Seekers and Internationally Protected Persons

6.1. Characterisation of Submissions

In 2015 the trend still continued that the Ombudsman's Office received a small number of submissions from foreign nationals and persons having requested and received international protection. In comparison with the previous years, such persons came more actively to the Office for help who do not have a citizenship in any country and who lived in the territory of Latvia illegally for a long time, as well as persons who asked for advice regarding refusal to issue a residence permit in the Republic of Latvia to the spouses who were foreigners.

In 2015, three persons addressed our Office with submissions for aid in legalisation of non-citizen's status, and the same number of submissions regarding the compliance with the rights of foreigners in the Republic of Latvia was received. Mostly above mentioned persons were invited to turn to OCMA with a submission on assigning the status of a non-citizen or in court in order to contest the refusal to issue a residence permit.

With submissions for aid within the framework of asylum procedure two foreigners turned to Ombudsman's Office in 2015. In 2015, the Ombudsman initiated a verification procedure No. 2015-37-8G on the basis of submissions on insufficient amount of expenses for purchase of subsistence, hygiene and basic necessities for asylum seekers; the rights to information; efficiency of project implementation; lack of leisure activities for teenagers; failure to provide clothing and shoes; as well as unkind and deprecatory attitude of staff of accommodation centre for asylum seekers "Mucenieki" towards the inhabitants of the centre.

In the course of verification procedure several deficiencies were detected in the work of the centre "Mucenieki" and OCMA, as well as deficiencies in the regulatory framework. One of the main conclusions of the verification procedure regarding the amount for purchase of subsistence, hygiene and basic necessities, 2.15 Euros a day or 64.50 Euros per month, is not enough to provide a standard of living enabling the person to live in dignity and according to the condition of health, as well as staying in the centre, since it is lower than the actual minimum subsistence amount existing in the country.

Ministry of Welfare pointed out that according to Directive 2013/33/EU the guaranteed minimum subsistence level for the Latvian national may be adapted to the part of material conditions to be ensured to asylum seeker regarding food and clothing. Thus, the amount could be set at 1.66 per day.

At the same time, the Ministry of Welfare recognised that on a national level the defined minimum income levels in regulatory enactments have been defined not on the basis of any specific methodology, but by taking into account the financial capacity of state and local governments at the specific time. Currently no methodology has been developed in Latvia that would determine a real minimum income level in the country, thus it is not clear according to what criteria, for instance, the benefit has been set for ensuring the guaranteed minimum income level.

By taking into account the above mentioned, opinion of the Ministry of Welfare is difficult to oppose, because Article 17, Paragraph five of Directive2013/33/EU states that amount of material conditions of receipt shall be determined on the basis of levels set by each member state not only in legal acts but also in practice in order to ensure sufficient standard of living for the nationals of the country. Amount of minimum guaranteed level that may currently be used (official data) is annual risk of poverty threshold (260.17 euro per month) calculated by Central Statistical Bureau and minimum subsistence calculations of December 2013, which is 252.19 euro. Thus, Ministry of Welfare was invited to repeatedly evaluate increase of amount of expenses for the purchase of subsistence, hygiene and basic necessities for asylum seekers; and Ministry of Internal Affairs was asked to initiate amendments to Cabinet regulations No. 24 of 12 January 2010 "Regulations Regarding the Amount of Expenses for the Purchase of Subsistence, Hygiene and Basic Necessities for Asylum Seekers and the Procedures for Covering of these Expenses".

In his opinion the Ombudsman turned the attention of competent institutions to elimination of such deficiencies as accessibility of information on asylum procedure, rights and duties during this procedure, and competence of institutions involved in asylum procedure. UN High Commissioner for Refugees has acknowledged that provision of information should be effective, such that person would fully understand it and would be able to be fully involved in the procedure of asylum. Taking into consideration that the centre "Mucenieki" has available the Cabinet regulations No. 173 in Latvian, English, French, Arabic, Georgian, and Russian, and Cabinet regulations No. 24 in Latvian and

English, the centre "Mucenieki" were invited to check regularly if regulations are available to asylum seekers by placing them on information board.

Complaints of inhabitants of the centre "Mucenieki" on inconsiderate content and quantity of food packages and sets of hygiene items did not prove effective implementation of ERF project regarding food and hygiene packages because the issued goods were not usefully applied, and as a result the asylum seekers had formed stores of goods. The Ombudsman invited to put together the content of food and hygiene packages so that its use would be effectively implemented: in volume and quantity (compliance with the indicator of quantity), combination of specification and characteristics of item or service in a way that would determine the ability to satisfy certain or expected needs (compliance with the indicator of quality). In order to develop the content of packages, it was suggested to form cooperation with the Ministry of Health, Ministry of Agriculture, and Ministry of Culture (as a responsible institution that implements the state policy in the area of integrated society and facilitates development of civil society and cross-cultural dialogue), as well as Food and Veterinary Service.

In accordance with Article 30, Paragraph one of Convention on the Rights of the Child, States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. During inspection of "Mucenieki" recommendations were made to inform the asylum seekers on possibilities of leisure, especially children's play room, library, playground, as well as provide the centre with wireless internet thus allowing all asylum seekers living at the centre to use internet because the room of the centre intended for this purpose has only four computers, and furthermore separate asylum seekers according to their cultural traditions are not allowed to be in the same room with unknown representative of the opposite sex.

According to Section 11, Paragraph 3 of the Ombudsman Law one of the functions of the Ombudsman is to assess and promote compliance with the principle of good governance in state administration. Taking into consideration that practice not compliant with the principle of good governance was discovered during inspection, the staff of the centre "Mucenieki" are invited to improve the quality of provided services by taking into consideration life experience of the asylum seekers and in communication with the inhabitants of the centre to avoid actions that might offend them, thus ensuring compliance with courteousness and the principle of good governance. Furthermore, attention was turned to the fact that processing of complaints promotes sustainable

development, improvement of services and circumstances, as well as development of good practice. Thus, the staff of the centre are invited to be courteous and be tolerant towards all inhabitants of the centre, including those, who turn to institutions with complaints.

On 16 November 2015, in response to opinion OCMA provided an explanation that it shall consider a possibility to establish wireless internet in the centre "Mucenieki", as well as within the framework of Asylum, Migration and Integration Fund 2014-2020 make an assessment of food and hygiene packages intended for asylum seekers in coordination with Ministry of Health, Ministry of Agriculture, Ministry of Culture, and Food and Veterinary Service.

In reaction to discovered insufficient amount of means for purchase of subsistence, hygiene and basic necessities, Ministry of Welfare pointed out that on 2 December 2015 Cabinet of Ministers gave an order No. 759 by which it approved "Action Plan for Transfer and Acceptance of Persons in Need of International Protection in Latvia". Section 3.5 of this document states that by 1 January 2017, Ministry of Welfare and Ministry of Internal Affairs should evaluate the opportunity to review the amount of benefit for purchase of subsistence, hygiene and basic necessities according to the concept "On Planned Actions of Determination of Minimum Income Level".

In 2016, one of the priorities set by the Ombudsman is to follow the implementation of Order 759 of the Cabinet of Ministers and informing the responsible institutions on the findings during monitoring visits.

6.2. Challenges of Integration of Internationally Protected Persons

In a similar way to a request to review the amount of funds allocated to asylum seekers for purchase of subsistence, hygiene and basic necessities, in 2015, the Ombudsman expressed his protest to the decision of the government to decrease benefits to internationally protected persons because such reduction may become contrary to international obligations assumed by the state.

As a full member state of the European Union Latvia has undertaken the obligation within the framework of social aid to provide without discrimination to internationally protected persons adequate social welfare and subsistence means in order to prevent social difficulties encountered by persons who seek aid outside their country of origin due to war conflicts, persecution, and threat to life. When assessing what are adequate subsistence

means for internationally protected persons, in the initial stage of integration it is important to consider the fundamental needs arising to these persons. Currently effective Asylum Law and Cabinet regulations No. 210 "Regulations on Benefit to a Refugee and Person Granted Subsidiary Status" stipulate that benefit is received only by those internationally protected persons who, firstly, do not have subsistence means, and secondly, persons receive this benefit only for a definite period of time: 9 - 12 months.

Grant of the benefit is aimed at covering the basic necessities: apartment rent and expenses for utilities, food and clothing, as well as for purchase of basic necessities. When reducing the amount of benefit the state may not reduce it so far as to deprive the persons of minimum subsistence means for ensuring existence worthy of dignity. Therefore, the Ombudsman invited not to reduce the amount of benefit for internationally protected persons because the research performed by the Office in 2013 shows social rejection in the mentioned group of vulnerable persons, critical condition in acquisition of subsistence means and inclusion in labour market, non-existence of state-wide effective and sustainable integration program. The Ombudsman reminds that similar conclusions have been mentioned in the research published by UN Refugee Agency in 2015 "*Integration of refugees in Latvia. Participation and Empowerment*".

On the basis of conclusions of previous research by the Office, the Ombudsman reminded in 2015 in a public space, and representatives of the Office participating in discussion of the draft law "Asylum Law" in Saeima reminded several times that by solving the consequences of refugee crisis and expected arrival of a large number of asylum seekers in Latvia in 2016, it is important that state would have an existent and effective mechanism for integration of internationally protected foreigners in society without creating a rejected part of society that might cause risks to the state, its development and security. For the purpose of integration of internationally protected persons in Latvia it is suggested to form not only a one-stop agency that would coordinate integration of these persons by developing for each person an individual integration plan (learning official language, in addition - professional skills, etc), but it is also possible to consider the necessity to implement an integration agreement that would be signed between an individual and state.

The Ombudsman draws attention to the fact that state is in need of not only political framework for integration, but also an institution that is able to ensure a long-term implementation of the mentioned document. Learning of official language and state system must be allocated sufficient funds, and the programme for learning these skills

should be developed. The State must not allow the possibility that ranks of non-citizens and stateless persons may be increased by persons who have received international protection and are not able to accept the order of the country and the necessity for integration.

Alongside the above mentioned it is important to note that in 2015 within the framework of draft law "Asylum Law" processed in the Saeima the Ombudsman asked to find an opportunity to include in Section 11 of the law a provision that by taking into account the special reception needs of the asylum seeker would guarantee assignment to minors of state-funded medical aid of all kinds refusal of provision of which would endanger the child's development and health.

6.3. On Deliberation of Draft Law of Repatriation

On 25 March 2015, the representative of the Ombudsman's Office participated in deliberation of draft law "Repatriation Law" in the Human Rights and Public Affairs Committee of the Saeima by expressing the opinion that the purpose of the effective Repatriation Law was and is the return to their native land of indigenous nation - the citizens of Latvia, Livs and their descendants. The plan of re-emigration that was at the basis of beginning the discussion for development of a new Repatriation Law encompasses a broader range of persons in comparison with subjects to which the effective Repatriation Law is applied. The attention of MPs was drawn to the fact that needs of economic emigrants and returning migrants are different, and the state should form a different approach and measures in order to promote return and integration of returning migrants and persons who had migrated within the last years.

If the state would choose to enhance the concept on returning migrants to include the economic migrants as well, it was recommended to review the list of family members of the returning migrant who are eligible to return with this person. The same way invitation was given in the process of solving the re-emigration problem to find out reasons that hold back the economic migrants from returning to their country, and to assess the usefulness of the amendments to the regulatory framework or to develop a new law that would solve specific problems fo emigrants. It was indicated that the suggested draft law applies social assistance and integration measures only to returning migrant, though a similar measures would be useful regarding his or her family members. Risks of abuse of the law were also discovered in the suggested draft law; it did not limit the

number of times the person may request the status and receive material help upon return to the country.

7. On Observation of Forced Removals

7.1. General Information

In 2015, the Ombudsman continued execution of the functions stipulated by Section 50.[7] of Immigration Law - observing the forced removals. Within the reporting period the Ombudsman's Office finished development of guidelines for observation of forced removals, that being a part of EDF project. The same way the Ombudsman performed the survey of foreigners to be forcibly removed and inspection of their place of detention, especially paying attention to inspection of ACDF "Daugavpils" and short-term detention centres (hereinafter - STDC), as well as by participating in observation of actual removals. In 2015, a special emphasis was placed on observation of forced removed of vulnerable groups - minor unaccompanied foreigners, persons with reduced mobility, etc.

Within the reporting period the Ombudsman's Office received more than 400 notices of forced removals of foreigners, and it was possible to survey the third part of these persons to be removed.

By surveying the foreigners to be forcibly removed, in 2015 complaints on living conditions were received mostly regarding meals and overcrowding, lack of privacy during the examination by a doctor, and delayed issue of a decision.

Within the reporting period overcrowding of the centre "Daugavpils" was observed, but the responsible institutions tried to solve the problem as much and as quickly as possible by providing accommodations to the foreigners in Daugavpils STDC building by separating the detained foreigners from other detainees, as prescribed by Immigration Law.

When inspecting the centre and reviewing the menu, staff of the Ombudsman's Office did not find that the offered meals would be provided in insufficient amounts or of bad quality. However, similar to the previous reporting period, the observers still found that privacy was not being ensured during the examination by a doctor. The Ombudsman repeatedly drew the attention of State Border Guard (hereinafter - SBG) to the fact that according to provisions of CPT assurance of privacy during medical examinations in the police departments and other institutions of deprivation of liberty shall be observed to the same measure as outside the institutions of deprivation of liberty. Presence of other

persons in the room with a patient and medical staff when medical examination is being performed or person is speaking with the medic should be justifiable only in cases when examination cannot be performed without the aid of interpreter, there is a threat to the life and health of the patient or medical personnel, as well as in other emergency situations when such measures are objectively required.

Within the reporting period complaints were received from several citizens of Vietnam on quality of translation. By looking into the cases of the persons to be removed it was discovered that SBG had ensured the assistance of the interpreter to the foreigners when issuing the decision on removal. The observers cannot examine the fact if decisions on forced removal are fully translated or if only the essence of the decision has been explained to the foreigners to be deported and the most important sections translated. The Ombudsman recommended that SBG would pay attention to the quality of translation ensured by officials of State Border Guard and as much as possible ensure that persons to be removed have understood the translated decision, its consequences and procedure of appeal. Recommendation was given to avoid the practice when decisions to the persons to be deported are translated by inspectors themselves, not an interpreter hired by SBG.

The Ombudsman also recommended that OCMA and SBG would inform the foreigner to be removed in a timely manner both on making the decision about removal and the time of actual removal in order to provide a reasonable time period to appeal the decision if the person would express such a wish.

7.2. Return of Unaccompanied Minor Foreign Nationals to Their Country of Origin

In 2015, within the framework of project by European Return Fund "Development of Mechanisms for Forced Return Monitoring" Ombudsman performed a research on receipt and stay of unaccompanied minor foreign nationals in the Republic of Latvia, as well as their return to the country of origin.

On 7 May 2015, the Ombudsman organised a round table discussion on ensuring rights and interests of minor foreigners in Latvia without accompaniment of legal representatives, as well as possible deficiencies in the legal framework, including Cabinet regulations No. 707 of 16 December 2003 "Procedures by which Alien Minors Enter and Reside in the Republic of Latvia Unaccompanied by Parents or Guardians".

Participants of the discussion acknowledged that Regulations 707 are outdated and do not comply with current requirements. Contradictions between the provisions of these regulations and Immigration Law were also found. By taking into account the special status of unaccompanied minors, and the obligation of our state to especially protect the rights of every child left without parental care, the Ombudsman asked the responsible institutions to improve the legal framework.

On 22 July 2015, the Ombudsman's Office received a response from the Ministry of Internal Affairs to the letter regarding unaccompanied foreign nationals, and therein the Ministry admitted that it would be useful to make amendments to the regulatory enactments regarding the legal framework on acceptance, maintenance and return to the country of origin of unaccompanied minor foreign nationals, as well as define the procedure for placement, maintenance and transfer of children to Juvenile Prevention Department. The Ministry explained that the problematic issue shall be solved in the context of execution of Governmental Action Plan (Order No. 78 of the Cabinet of Ministers, dated 16 February 2015) by preparing the new project of Immigration Law and improving the procedure for entry, stay, transit exit and detention of foreigners, as well as procedure for detention of foreigners in the Republic of Latvia and deportation thereof.

In 2015, when performing the survey of minors to be returned, as well as after looking into the personal files, it was found that minors are deported without complying with the Article 10, Paragraph 2 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals. It stipulates that before removing an unaccompanied minor from the territory of a Member State, the authorities of that Member State shall be satisfied that he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return. This provision is included in Section 50.^{8}, Paragraph three as well.

Thus, before an unaccompanied minor is deported from the territory of the member state, the institutions of the member state shall ensure that the minor is returned to his or her family member, guardian, or to appropriate reception facilities in the state of return. Otherwise the right of the minor to life, survival, and development, as well as the right to protection from all kinds of exploitation are endangered.

By taking into account the recommendations provided by the Ombudsman, SBG has changed the practice regarding application of Section 50.8, Paragraph three of Immigration Law. It is demonstrated by several examples provided below.

On 7 May 2015, the Ombudsman's Office received a decision of SBG on forced return of a minor - citizen of Russia. It was intended to escort the minor to the border crossing point of the Republic of Latvia - to Terehova I category border crossing point of Ludza Department of SBG and to deport from the country. The interviewed person stated that they had no means to get from this point to home in Russia. The Ombudsman pointed out that return of this minor is not permissible without ensuring that the minor will be taken to the family member, guardian, or to appropriate reception facilities in the country of return. On 25 June 2015, the Ombudsman received information that on the basis of decision by the Head of SBG Daugavpils Department on forced return No.1, minor shall be deported in compliance with requirements of Section 50.8, Paragraph three of Immigration Law.

The same way, by interviewing several minors, citizens of Vietnam, it was found that SBG asks the minors about the identity of their parents and requests a confirmation that minor shall be met in Vietnam by the legal representative. Minors pointed out that legal representatives are informed and are ready to receive them in Vietnam.

By reading the materials of files of minors, citizens of Vietnam, it was found that these include letters from supposed legal representatives of minors; however, it is not possible to verify the origin of these letters (there is no date, signature and information of how and who has sent it). The Ombudsman indicated that such letters may not serve as a confirmation that minor foreign national shall be transferred to the legal representative in the receiving country.

Republic of Latvia and Socialist Republic of Vietnam have not concluded the agreement of international cooperation that would promote the compliance with requirements prescribed by Section 50.8, Paragraph three of Immigration Law. Ministry of Foreign Affairs provided information that at the beginning of 2015, a suggestion was repeatedly sent to the Socialist Republic of Vietnam with an offer to conclude an agreement on readmission of persons illegally staying in Latvia and the protocol of its implementation. No answer has been provided thus far. After a request of Ministry of Internal Affairs of 25 November 2015, Ministry of Foreign Affairs addressed the party of Vietnam again by sending an improved agreement and the draft protocol of its implementation. Thus, until the conclusion of agreement on international cooperation of the states the competent institutions of Latvia have limited possibilities to ensure transfer of the minor citizens of Vietnam to their family, guardian, or to appropriate reception facilities.

7.3. Accommodation Centre of Detained Foreigners "Daugavpils"

In 2015, the staff of the Ombudsman's Office performed repeated inspections of the centre. The management of the centre had to find a solution to the issue of overcrowdedness due to unexpectedly extensive illegal arrival of foreigners, especially citizens of Vietnam, in the country. The Ombudsman acknowledges that SBG managed to find an operative solution to the problem of accommodation for illegally arrived and detained foreigners by preparing additional detention rooms in Daugavpils STDC.

On 12 June 2015, the staff of the Ombudsman's Office and invited specialist with medical education inspected the centre in order to examine the provision of medical aid to the detained foreigners. Provision of medical aid in the centre was inspected, as well as medical cards of the deported foreigners, in order to ascertain that medical examination of persons to be returned has been performed before deportation.

Specialist invited by the Ombudsman's Office at the end of the visit concluded that health care in the centre "Daugavpils" is ensured according to the regulatory enactments of Latvia - detained persons are ensured initial health examination prescribed by the laws, and Sections 7., 8., 9.2.2., 10 of Cabinet regulations No. 742 of 15 September 2008 "Internal Procedure Regulations of the Accommodation Centre". It was found that entries in out-patient medical cards reflect performance of initial medical examination and further medical events; however convincing entries verifying examination of persons before discharge from the centre could not be found in inspected cards. Information was also verified that medics of the centre perform adequate health care of the persons who have gone on hunger strike; however methodology is necessary for such and other critical situations. The Ombudsman's Office has no basis to question and has no evidence that the medics of the centre do not perform the medical examination of the persons to be removed before deportation, or that it is only formal; however, attention of the infirmary and administration of the centre were drawn to the requirement to ensure on a mandatory basis before the actual removal that health condition of the person to be deported allows it to travel.

After the inspections of the centre, the Ombudsman recommended improving the awareness of detained foreigners on their rights, duties and procedures of the centre, providing various leisure activities, because most of the interviewed foreigners pointed out that they spend their leisure time watching TV or walking in open air. It was also

recommended that knowledge of foreign languages, preferably several, as an essential criterion for selection of personnel and to promote learning and strengthening the knowledge of foreign languages.

7.4. State Police Short-term Detention Isolators

By letter No. 6-8/456 of 27 October 2014, the Ministry of Interior Affairs and SBG were informed on conclusions regarding the verification procedure No. 2012-237-5A that provided assessment of return of foreigners. Within the framework of the mentioned verification procedure by evaluating international legal provisions, ECHR practice and CPT standards it was discovered that holding of detained foreigners in police departments is permissible, yet such placement of persons in STDC of State Police must be based on a law, and terms for stay may not be overly lengthy.

From 24 October to 1 November 2014, the staff of the Ombudsman's Office visited nine departments of State Police in order to ascertain the practice of placement in STDC of persons to be returned. During the mentioned visits were inspected STDC of Alūksne and Valka departments of Vidzeme Regional Administration, Bauska department of Zemgale Regional Administration, Daugavpils and Rēzekne departments of Latgale Regional Administration, Ventspils, Saldus and Liepāja departments of Kurzeme Regional Administration, as well as Short-term Detention Bureau of Riga Regional Administration.

While visiting STDC of several departments - Riga, Liepāja, Rēzekne, Bauska, Saldus, and Valka - the staff of the Ombudsman's Office gained confirmation to the information that persons detained according to the procedures of Immigration Law are placed by SBG in STDC of State Police on the basis of interservice agreement. Section 58, Paragraph three of State Administration Structure Law stipulates that the competence of institutions laid down in regulatory enactments may not be delegated or altered by an interservice agreement. It was previously found that law does not provide that foreigners to be deported shall be placed in STDC of State Police. Thus interservice agreement of such content is contrary to the State Administration Structure Law.

During the visits the staff of the Ombudsman's Office found that STDC of the State Police do not have common practice of hygiene requirements and ensuring of order, organising meals and examination of correspondence. Separate STDC ensure more favourable conditions than the minimum prescribed by Law On the Procedures for

Holding the Detained Persons, for instance, bedding, towel is issued, and it must be evaluated positively from the opinion of human rights.

On February 2015, the Ombudsman sent to the Ministry of Interior Affairs a report on monitoring visits to the short-term detention centres of State Police by inviting:

- State Police and SBG not to place foreigners detained according to the procedure stipulated by Immigration Law in STDC until respective amendments are accepted in the Law on the Procedures for Holding the Detained Persons;
- in case of acceptance of above mentioned amendments to ensure that foreigners placed in STDC of State Police have an equal amount of rights to what is prescribed by Cabinet regulations No. 742 of 15 September 2008 "Internal Procedure Regulations of the Accommodation Centre";
- to supplement Section 7, Paragraph four of Law on the Procedures for Holding the Detained Persons with a new clause three that would provide ensuring the placed persons with bedding and pillow, as well as an opportunity to receive a towel in case of attending the washing facilities (showers). Thus more favourable living conditions would be ensured to all persons placed in STDC of the State Police;
- supplement the Law on the Procedures for Holding the Detained Persons with a new section that would regulate the permissible length of stay of a person in STDC of State Police.

On 24 April 2015, the Ministry of Interior Affairs provided an answer to the report by stating that a draft law "Amendments to the Law on the Procedures for Holding the Detained Persons" has been developed intending to provide that a foreigner who has been detained according to the procedure of the Immigration Law may be placed in short-term detention centre in special cases and for a short term, except for less vulnerable groups; furthermore, it is intended that foreigners would be kept separately from the persons detained and arrested according to the procedure of Criminal Procedure Law. The draft law also provides that detained foreigners shall be ensured with the same rights as other persons held in STDC of the State Police, that they would have the right to a walk in fresh air lasting up to an hour, if the person is held for longer than 24 hours.

Ministry of Interior Affairs also stated that it is intended to determine delegation to the Cabinet of Ministers to define common requirements of hygiene in all short-term detention centres in order to reduce or eliminate possible harmful effect of environmental factors by guaranteeing environment that is safe and harmless to the health of persons.

The amendments to the law are intended to not restrict the time for meeting a representative of diplomatic or consular representation alone and without limitation.

Since the beginning of 2015, the observers have not found that foreigners to be deported were held and accommodated in STDC of the State Police.

7.5. Observation of Actual Removals

In 2015, by participating in two removals the staff of the Ombudsman's Office continued to observe the actual removal of foreigners to be forcibly deported.

Observers of the Ombudsman's Office did not detect violations of SBG officials at the time of actual removals. Regarding the person to be removed and assurance of their rights could be observed professional attitude and individual approach. Communication of SBG officials with the persons to be removed was professional and friendly. Persons to be removed had an opportunity to turn to any of the border guards of the convoy with requests or questions that were heard and ensured as much as possible. Regarding transportation of luggage and travel were applied the same provisions as to the other passengers. No conflict situations or use of force were observed at the time of actual removals.

8. The Right to Freedom

In 2015 the Ombudsman's Office received 19 submissions from persons regarding criminal procedure decisions on application of security means. In most cases the persons were invited to use the mechanism of right protection included in Criminal Procedure Law - to appeal the decision on application of arrest or submit a request to review the necessity of further application of arrest if circumstances have changed substantially. However, in 2015, several verification procedures were processed regarding possible violations of the right to freedom.

Even though already in the report of 2013 emphasis was placed on problems regarding efficiency of periodic control of arrest, also in 2015 were discovered violations regarding this element of the right to freedom. In at least two of the verification procedures circumstances were found to which might be applied insights of ECHR

judgment in the case *Urtāns v. Latvia* regarding the obligation of the court to justify the decision made within the framework of periodic control of arrest.

For instance, in verification procedure No. 2015-51-3E by assessing the decisions made in pre-litigation procedure and procedure of first instance court it was found that in the case of periodic control of arrest was not made a thorough examination of circumstances as in the initial decision on administration of arrest. Furthermore, as the relevance of initially discovered circumstances was reduced, other circumstances justifying the arrest were not assessed. Instead, the person was in custody almost for a year, justifying it in the decision essentially only by the severity of committed criminal offence. From the content of the decisions (reference that basis for administration of arrest is still effective, that terms of administration of arrest were not violated) it may be concluded that the periodic control was performed formally. Argumentation of the decisions was not aimed at observing the presumption in the favour of release. Judgments of the court were made with the presumption that the person is to be held in custody because no circumstances for release were discovered, and not with a presumption that person should be released unless circumstances for keeping in custody are found.

In the specific procedure the terms for periodic control of arrest were also regularly not observed, and in general it pointed to a systemic problem in the work organisation of the respective court, and the report on it was sent to the president of the court.

In the verification procedure No. 2015-52-3D in addition to already mentioned circumstances on inclusion of general phrases in the decisions of the court attention was drawn to the circumstance that previous conviction of the person according to ECHR practice does not mean that there are reasonable doubts that the person shall commit criminal offence repeatedly because the institutions should have available specific information on a specific offence. Furthermore, in the reviewed verification procedure even after the offence of the convict was re-qualified from a very serious offence to a less serious, it was stated in the decision on further administration of security means that circumstances that served as basis for extension of the term of arrest have not changed. Yet the facts available in the case show that these circumstances had changed during the criminal procedure, and thus they should have been assessed especially thoroughly by paying attention to reflecting motivation for the decisions made. It was also discovered in the specific case that maximum term for arrest was violated that could have been administered to the person until the time of being held to criminal liability. This finding was connected with the fact that harmonisation of the prosecutor for extension of the

arrest term was not fully established in the materials of the criminal procedure, thus it was not to be considered legal and in compliance with human rights.

In 2015, the issue was also assessed on the fact that after making the judgement of the court of appeal it is impossible to appeal security means - arrest - administered for the first time. In response to the person's submission it was emphasised that both in Criminal Procedure Law and CPHRFF status of the person is taken into account when applying arrest in the pre-litigation process or applying arrest according to convicting judgment of the court, even if it has not yet become effective.

Namely, according to ECHR practice, it is primarily acknowledged that according to Article 5, Paragraph four of the Convention control after making the decision after the first instance court is performed by assessing the administration of the security means in the judgment of the court; this is also confirmed by decision of ECHR of 23 July 2015 in the case *Pancers v. Latvia*. However, it cannot be denied that member states of European Council are eligible to include in its national framework the requirements that intend higher guarantees of human rights than prescribed by ECHR practice when interpreting the content of Article 5 of CPHRFF.

Already in 2008, the Ombudsman provided opinion on draft amendments No. 192/Lp9 to Criminal Procedure Law prepared by the Ministry of Justice by drawing attention to the circumstance that amendments to the Criminal Procedure Law should be supported by determining equal provisions in all court instances for implementation of periodic control of arrest. Also cassation instance would be in need of periodic control of arrest, if case may not be processed within the period of two months since its transfer to the court.

9. Observation of Human Trafficking

In 2015, to the Ombudsman's attention came only one minor who was acknowledged as a victim of human trafficking, yet it does not mean that the relevance of the topic in society has lessened. Victims of human trafficking still do not always report on cases, and it hinders investigation of the offences and punishment of responsible persons according to the criminal procedures. Historically the Ombudsman's Office has had a practice to organise educational activities for combating human trafficking, including implementation of society awareness campaign "Gards kumosiņš" (Delicious Bite) in 2014, and such activities have been planned also in 2016.

In prevention of human trafficking it is important to promote a successful coordination between responsible institutions by ensuring timely identification of victims of human trafficking, effective use of protection mechanisms of the person's rights, and informing victims on availability of protection mechanisms. In 2015 as well the representatives of the Ombudsman's Office have participated in meetings of working group for coordination of implementation of "Framework for Human Trafficking Prevention 2014 - 2020" coordinated by the Ministry of Internal Affairs. Therein it is possible to raise the detected problematic issues among the representatives of responsible institutions, learn of the experience of other institutions, and search for common solutions for combating human trafficking.

Regarding accessibility of effective protection mechanism for victims in 2015 was detected a problem in the procedure of public procurement organised by the Ministry of Welfare on social rehabilitation and provision of support measures. By the beginning of 2015 the procurement agreement on social rehabilitation and provision of support measures to victims of human trafficking was not yet concluded with the winner of procurement; however, the agreement was already terminated with the provider of previous services. After receiving information in February 2015, the Ombudsman addressed a letter to the Ministry of Welfare asking them to take immediate action in order to ensure necessary services of social rehabilitation and support for all victims of human trafficking in need of it. Even though it was explained that problems were caused by the weighty public procurement procedure, and as a result the procurement agreement was concluded only on 6 March 2015, the Ombudsman emphasises that responsible ministry is obliged to ensure a timely process of procurement procedure in order to prevent recurrence of such a situation in future.

The same way, by performing interviews of persons within the framework of the return process of illegal immigrants, in spring of 2015 the staff of the Ombudsman's Office have identified the mentioned persons as a risk group when assessing the aspects of vulnerability. In connection with detected characteristics, in June of 2015 the Ombudsman invited to the meeting provider of rehabilitation services - resource centre for women "Marta" - and drew the attention of working group for coordination of implementation of "Framework for Human Trafficking Prevention 2014 - 2020" to the detected characteristics. The Ombudsman invited the responsible institutions to pay special attention to identification of possible victims of human trafficking among illegal

immigrants and asylum seekers, and to coordination with the provider of rehabilitation services.

Risks of human trafficking can frequently be identified in connection with providing prostitution services, and already at the moment the Criminal Law prescribes liability for souteneurism, involving a person in prostitution, use of prostitution by a minor, or sending a person for sexual abuse. However, adults are not prohibited from providing prostitution services for charge, and the state may only provide restrictions to providing such services by the means of regulatory framework.

At the beginning of 2015, the Ombudsman was invited to provide an opinion on amendments prepared by the Ministry of Interior Affairs to Cabinet regulations No. 32 of 22 January 2008 "Regulations Regarding Restriction of Prostitution". By assessing the draft amendments, the Ombudsman expressed the opinion that currently included restrictions of human rights included in Cabinet regulations should be defined at the level of law and not the Cabinet regulations. On the basis of opinion expressed by non-governmental organisations and the Ombudsman, under the care of the Ministry of Internal Affairs has been formed a working group for development of draft law for restrictions of prostitution.

III. Developments and Problems in the Area of Social, Economic and Cultural Rights

1. The Right to Social Security

Within the reporting period the Ombudsman continued actively to follow the determination of the government to reduce poverty by paying attention to most vulnerable categories of population, such as deprived persons, the disadvantaged, persons in social care centres, and persons with disabilities.

As his task in the protection of social rights the Ombudsman has set the necessity to repeatedly draw the attention of the state government to fundamental elements of social rights - to create such conditions of life and labour for the population that these would ensure to each person a dignified life at least at the minimum level, by placing emphasis on the fact that in the area of social and economic rights individual has no opportunity to receive any reimbursements contrary to how it is in the area of civil and political rights where in order to protect their rights person may turn to ECHR, for instance.

Within the reporting period, the Ombudsman also addressed the State President[56] of Latvia pointing out the most pressing issues: high risk of poverty, inaccessible health care, and infringements of the right to housing. The Ombudsman emphasised: mostly it may be found that ministries of the sector mostly admit the existence of the problem and turn to the government with a respective request for the budget. However, when setting the priorities year after year the government finds other more important sectors to state development than social security, accessible health care, and welfare of population, thus solving the problems of the social area at a minimum level or actually leaving it up to the inhabitants themselves. The Ombudsman pointed out that due to such attitude it is difficult to acknowledge that social justice in Latvia would be implemented not only in word, but also in deed.

[56] Letter No. 1-12/5 of the Ombudsman dated 14 July 2015, to the prezident of the Republic of Latvia. Available: http://www.tiesibsargs.lv/sakumlapa/tiesibsargs-nosuta-vestuli-par-socialo-taisnigumu-valsts-prezidentam

1.1. Amendments to Law "On State Funded Pensions"

During the reporting period the Ombudsman continued to follow the verification procedure No. 2011-276-17AA[57] processed in the first half of 2014 on execution of recommendations given regarding the negative impact of the insurance contribution wage index on retirement pensions (hereinafter also - capital index)

In the opinion the Ombudsman concluded that effect of negative capital index on retirement pensions is unfair and non-compliant with Sections 1, 91, 105, and 109 of the Constitution. Thus, the Ombudsman recommended:

1) to the Saeima: make amendments in Section 12 of the Law on State Funded Pensions by supplementing it with a new paragraph in such wording: "If annual insurance contribution wage index is lower than number "1", the pension capital of the insured person shall be updated with index "1"", and Section 13 of transitional provisions of the Law on State Funded Pensions supplemented by a new paragraph in such wording: "If annual insurance contribution wage index is lower than number "1", the initial pension capital of the insured person shall be updated with index "1"", thus providing that in future the amount of pensions will not be affected by negative capital indices.

2) to the Cabinet of Ministers - develop a compensating mechanism in order to prevent the consequences created by the negative capital indices on pensioners whose fundamental rights are currently restricted due to implementation of the respective index.

Already in the report of 2014 of the Ombudsman it was indicated that the Cabinet of Ministers undertook[58] in May 2014 to change the legal framework of negative capital indices by 1 January 2016 and to obtain recalculation of pensions by 1 January 2016.

By taking into account the commitment of the government, on 9 December 2014, the Ombudsman sent a request to the Cabinet of Ministers asking them to provide information on the course of implementation of recommendations. In the session of 13 January 2015, the Cabinet of Ministers viewed the request[59] of the Ombudsman and in a response article stated that Ministry of Welfare is working on amendments to the Law on State Funded Pensions intended to solve the issue of effect the negative capital indeces have on amount of pension. The government made a commitment to submit the mentioned amendments to the State Chancellery by 30 March 2015.

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[57] Full text of the opinion is available on the internet website of the Ombudsman's Office: http://www.tiesibsargs.lv/files/content/atzinumi/Atzinums_Pensiju_kapitala_indekss_02042014.pdf

[58] Available: http://www.mk.gov.lv/lv/mk/tap/?pid=40319394&mode=mk&date=2014-05-13

[59] Available: http://tap.mk.gov.lv/lv/mk/tap/?pid=40342668&mode=mk&date=2015-01-13

On 19 February 2015, at the meeting of State secretaries (VSS-148) was announced a draft law[60] "Amendments to the Law on State Funded Pensions" that provided specific solutions to the problematic situation analysed in the opinion. Cabinet of Ministers discussed this draft law in the time period from 5 May 2015 to 19 May 2015. Coalition of the government assessed these amendments in the context of the state budget for 2016 and further years[61]. As a result, the government supported changes provided in the draft law "Amendments to the Law on State Funded Pensions" by the Ministry of Welfare regarding prevention of negative capital index in future, yet did not support the necessity of recalculation of retirement pensions for persons whose pensions are affected by the negative capital index by postponing the decision on this issue to the third quarter of 2015, namely, to the time when the state budget for 2016 would be assessed.[62]

Regardless of this decision on the part of the government, discussions on changes provided in the draft law "Amendments to the Law on State Funded Pensions" regarding the necessity of recalculation of retirement pensions for persons whose pensions are affected by the negative capital index were continued in the Saeima.[63]

As a result, on 18 June 2015, law "On Amendments to the Law on State Funded Pensions"[64] was accepted (entered into force on 1 July 2015), supplementing the transitional provisions of the Law on State Funded Pensions with the following provision: "Pensions of persons whose retirement, service or survivor's pensions were granted or recalculated according to this law from 1 January 2010 to 31 December 2015, shall be reviewed by recalculating the initial capital of the pension and the capital of the pension according to provisions of Section 12, Paragraph four of this law by observing the following provisions:

1) pensions shall be recalculated beginning with 1 January 2016;

2) pensions to be reviewed in specific years, and provisions of review shall be determined by the annual state budget law and medium-term budget framework law, taking into account the budget context.

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[60] Draft law and annotation available: http://tap.mk.gov.lv/lv/mk/tap/?pid=40348566

[61] Available: http://tap.mk.gov.lv/lv/mk/tap/?dateFrom=2014-07-01&dateTo=2015-07-01&text=Par+valsts+pensij%C4%81m&org=0&area=0&type=0

[62] Extract of the protocol of the Cabinet of Ministers, draft law submitted to the Saeima, and its annotation. Available: http://titania.saeima.lv/LIVS12/saeimalivs12.nsf/0/C31CBED7BAE8551BC2257E50002625A0?OpenDocument

[63] See more on the course of the review of the draft law. Available: http://titania.saeima.lv/LIVS12/SaeimaLIVS12.nsf/webSasaiste?OpenView&restricttocategory=265/Lp12

[64] Available: http://likumi.lv/ta/id/274899-grozijumi-likuma-par-valsts-pensijam-

3) when recalculating the initial capital of the pension and capital of the pension, in updates the insurance contribution wage indices for 2009, 2010, and 2011 shall be replaced with number "1" and in the following years the indices calculated for pension capital updates that exceed number "1" shall be replaced with index "1" up to the year when the multiplication of negative indices of previous years and following positive indices exceed number "1". In that year for update of pension capital shall be applied insurance contribution wage index formed by multiplication of negative indices of previous years and positive indices of following years;

4) amount of the pension after recalculation shall not be smaller than amount of previously received pension.

From the mentioned legal provision it may be concluded that, firstly, beginning with 1 January 2016, the state shall gradually begin recalculation of retirement pensions for persons whose pensions were affected by the negative capital index. Secondly, the amount and procedure for recalculation shall be additionally regulated by the annual state budget law and medium-term budget framework law, taking into account the budget context. It means that issue on calculation of retirement pensions for the mentioned persons every year shall be harmonised with the state budget.

It must be acknowledged that by amendments to the Law on State Funded Pensions the state generally eliminated the deficiencies in retirement pension system regarding prevention of negative capital index in future and pointed out in the opinion of the Ombudsman. At the same time it should be emphasised: even though by these amendments the state has undertaken to recalculate the retirement pensions for persons whose pensions are affected by negative capital index, a fact that may be evaluated positively from the viewpoint of legitimate expectations; however, by these amendments the legitimate expectation has not been defined clearly enough, namely, a clear term has not been set for the period when recalculation of retirement pensions shall be performed, and there is no procedure clarifying the persons whose pensions shall be recalculated first, and whose pensions shall be recalculated later. The mentioned issues are subject to traditional excuse of the state budget context.

Furthermore, in order to attain acceptance of amendments to regulatory enactments essential to the population of Latvia and in order for the recommendations of the Ombudsman to be implemented in the legal provisions, it took one and a half years. It should be added that currently relevant is the issue of quality and legitimacy of these amendments because according to application of twenty members of parliament of 12th

Saeima (Application No. 151/2015)[65] on 24 September 2015, the Constitutional Court has initiated the case "On compliance of Section 12, Paragraph one of the Law on State Funded Pensions as far as it provides use of index lower than "1" for update of pension capital, and Section 65.2 of transitional provisions to the first sentence of Section 91 of the Constitution, as well as Sections 105 and 109".

1.2. On Access to Social Rehabilitation Services

In verification procedure the Ombudsman analysed a situation when Social Integration State Agency did not ensure the person an opportunity to receive a social rehabilitation course due to long queues. The person reached the age of retirement, thus automatically followed exclusion from the queue. Furthermore, the person was not able to find out his/her number in the queue.

The Ombudsman pointed out that rehabilitation course for the person was not ensured in a reasonable term after submission of necessary documentation to agency, namely, due to limited financial means of the state, not because of the person's fault. The Ombudsman drew attention to the fact that issues of queue procedures and access to services have been viewed by the Ombudsman's Office before. Thus, according to the opinion of the Ombudsman, when solving issues of ensuring rehabilitation and technical aids, it is necessary to provide appropriate funding and thoroughly evaluate the necessity and efficiency of provided services. By denying the possibility to receive necessary aid or social rehabilitation service in a timely manner, the person's health only worsens and social integration of the person into society is delayed.

The Ombudsman drew attention to the fact that State Administration Structure Law provides formation of such state administration system and procedure that would be easily accessible and understandable to a private person, especially regarding the protection of rights and interests of the private person. In addition, the Ombudsman pointed out that "in order to be able to judge if people are satisfied with the activity of state administration, there must be possibilities to safeguard the rights of the population, i.e., the rights of a citizen to turn to the state authority with various complaints and requests indicating to deficiencies of existing procedures."[66] The Ombudsman emphasised that the current system that person does not receive information on its place in the queue on the basis of

[65] Available: http://www.satv.tiesa.gov.lv/upload/lem_ierosin_2015_21.pdf
[66] Commentary on the Constitution of the Republic of Latvia. Chapter VII. Fundamental Human Rights. Latvijas Vēstnesis. 2011. Riga. p. 451.

possible increase of complaints is advantageous and convenient to the Agency and not to the private person who is placed in the mentioned queue and would like to receive information regarding themselves. Thus, the current system is not open, accesible and clear to the private person.

The Ombudsman also emphasised the fact that according to first sentence of Section 10, Paragraph three of the State Administration Structure Law, state administration acts in the interests of the society. Thus, argument about the increase of the number of complaints is not correct and corresponding to the principle of good governance. The Ombudsman stated: if institution of state administration makes decisions or actions that are legal and corresponding to the regulatory enactments, there is no basis to deny the private person the right to information that would explain and justify the actions of the institution of state administration taken regarding the specific private person.

The Ombudsman made the following recommendations to the Agency:

1) in cooperation with the Ministry of Welfare to provide the opportunity for the persons to receive social rehabilitation services within a reasonable term in the time when it is necessary;

2) provide an opportunity for its clients to find out their place or number in the queue.

Ministry of Welfare informed that in 2015 the average time of waiting in the queue for receipt of social rehabilitation services was 2 years and 3 months. On 1 September 2015, the Cabinet of Ministers reviewed the conceptual report prepared by the Ministry of Welfare and made a decision to assign additional funds amounting to 754,792 euro in 2017 in order to ensure social rehabilitation services to 1140 persons. The mentioned financial means are intended in order to annually provide additional social rehabilitation services to 855 persons with functional disabilities who have requested the rehabilitation service for the first time; for 114 persons with functional disabilities who have requested hte services repeatedly; and to 171 politically repressed persons and Chernobyl nuclear power plant accident relief participants and victims of the accident. Ministry of Welfare believed that the above mentioned measures would ensure gradual execution of the recommendation given by the Ombudsman.

Ministry of Welfare also noted that Agency has provided an opportunity for its clients to find out their number in the queue because in the information system it is possible to follow the queue number in the form of report that shows the current information at the moment of its viewing. The report may be saved manually, and it is

also automatically saved on the first date of every month, thus providing an opportunity to inform the persons (clients) of their movement in the queue at any time.

The Ombudsman shall continue to follow the accessibility of social rehabilitation services.

1.3. On Municipal Public Procurements in Order to Ensure Social Services

On the basis of submissions wherein the clients of the state social care centre (hereinafter SSCC) "Riga" branch "Ezerkrasti" and their relatives expressed objections against being transferred to other social care centres in Latvia, the Ombudsman's Office initiated a verification procedure on possible violation of the principle of good governance by not observing the interests of the person, not providing a service in long-term social care and social rehabilitation institution.

The Ombudsman found that currently formed system provides that local governments provide long-term social care and social rehabilitation services in municipal social care centres. In cases when the local government does not have its own social care centre or it doesn't have enough places, it has a right to conclude an agreement with other providers of social services for provision of long-term social care and social rehabilitation services and payment (In Riga City Local Government - general agreement). Local government concludes such agreements on the basis of procurement procedure, finding the provider of the best and financially feasible service. Moreover, the local government has a right to conclude the agreement for the maximum term of three years.

Action of the local government in choosing provider of long-term services appropriate to its clients is limited by provisions of Public Procurement Law and Law on State Budget (for respective year)".

As a result it is possible that a certain provider of the service does not win in the next tender, and the clients have to go to a different institution or the one that has won the tender. Since transfer of the clients from one institution to another is justified only by financial reasons, then regardless of the fact that such system complies with currently effective regulatory framework, in the view of the Ombudsman it should not be supported. When providing long-term social care and social rehabilitation institutional services to persons of retirement age and persons with disabilities, the primary focus should be on the interests of the client - the opportunity to keep the initial service providing institution, and thus the usual environment, peers and emotional wellbeing.

The Ombudsman invited the Ministry of Welfare as the leading state administration institution in the area of social protection policy to evaluate with responsibility the possibility to amend the provisions of Public Procurement Law and, if required, also of the Law "On State Budget (for the respective year)" so that the clients regarding whom is concluded a general agreement would be able to keep their place in the initial institution and would not be subject to transfer to another institution in case when general agreement expires, and within the period of six months from the day of sending of opinion in cooperation with the Ministry of Finances as the leading state administration institution in the area of financial policy development submit to the Saeima amendments to the respective regulatory enactments.

In response to the recommendation of the Ombudsman, Ministry of Finances stated that Section 15, Paragraph five of the Law "On State Budget (for respective year)" includes exceptions and defines that local governments are eligible to assume long-term liabilities according to Section 22, Paragraph two of the Law "On Budgets of Local Governments" regarding also provision of long-term social care and social rehabilitation services. It means that hereinafter the local governments may conclude the agreement on provision of long-term social care and social rehabilitation services for unlimited period of time.

1.4. On Amendments to "Social Services and Social Assistance Law"

At the beginning of the reporting period the Ombudsman submitted to the Saeima several suggestions for the draft law "Amendments to Social Services and Social Assistance Law".

The Ombudsman's Office regularly receives oral complaints of individuals and reports of non-governmental organisations on insufficient amount of social assistance and limited access to social services for persons who have been granted subsidiary status. Especially relevant is problem of provision of place of residence because neither state benefit nor income from other sources after termination of state benefit payment are not sufficient in order for these persons to be able to pay rent of apartment and utility services on their own. At the same time night shelters and shelters are not an adequate and long-term solution for place of residence for this group, especially for families with minor children. Service of crisis centre also may be only as a temporary solution because it is intended for a temporary overcoming of crisis situation.

Thus, the Ombudsman invited to supplement Section 3, Paragraph five in order to provide that in a situation when in case of a person with a subsidiary status due to functional restrictions and lack of social skills services of shelters and night shelters are not applicable to solving social problems of the person and his or her family members, municipal social service is eligible to use other types of social services that are more appropriate for solving the respective problem or grant the apartment benefit.

The same way the Ombudsman urged to supplement Section 2 of the law in order to provide that every child who is a victim of violence has a right to receive social rehabilitation regardless of the legal status and term of stay in the country. The Ombudsman emphasised that according to provisions of the UN Convention on the Rights of the Child the state is obliged to provide the rights safeguarded by the Convention to every child in the jurisdiction of the state without any discrimination. Thus, the right to receive state social rehabilitation must be ensured to every child who is a victim of violence regardless of the legal status of the child and the term of stay in the country.

The mentioned suggestions of the Ombudsman were taken into consideration; and on 26 November 2015, the Saeima accepted the law "Amendments to Social Services and Social Assistance Law", having respectively become effective on 2 December 2015.

In addition the Ombudsman drew attention to the fact that since 2009 a provision is in place that if a person is in a long-term social care institution (children left without the parental care, orphans, and clients of social care centres), it is obliged to participate in covering its expenses by paying up to 90% of pension or benefit. Previously the amount had been set to 85%. Thus, a person has left only 10% of income to cover the personal needs, which is an average of 6.4 to 17 euro per month.

Regardless of the fact that a client of long-term social care institution while staying there is fully or partially cared for by the state, the financial means remaining for the personal needs of the person in the opinion of the Ombudsman are humiliating to the dignity and by no means promote the independence of the person. Therefore, the Ombudsman invited the Saeima to amend the provision of the Law regarding the financial means that are left to the person after settlement of the co-payment. Draft law is in the process of review before the 2nd reading.

1.5. Social Protection of Chernobyl Nuclear Power Plant Accident Relief Participants and Victims of the Accident

In 2011, the Ombudsman turned to the Constitutional Court regarding social protection of Chernobyl nuclear power plant accident relief participants and victims of the accident. Even though the Constitutional Court closed the case stating that fundamental rights of the person are possibly restricted by another legal provision and not the one under question, it clearly and explicitly indicated that the Saeima upon receipt of the Ombudsman's suggestions on necessity to make amendments to regulatory enactments, it shall assess such amendments as to the substance or provide an augmented opinion on why it is not being done.[67]

Senate of the Higher Court in the decision of 4 July 2013 regarding the case No. SKA-304/2013 concluded that compensation for harm is additional social guarantee for Chernobyl nuclear power plant accident relief participants and victims of the accident who have lost their abilities to work, and it shall be assigned also when the person already receives a state pension - retirement or disability pension that has been calculated in the amount equal to compensation.

The Ombudsman has found that after the mentioned decision State Social Insurance Agency decides to assign compensation in addition only when it has been prescribed by a court judgment and not due to systematic assessment of all cases when circumstances of the case are similar. In the view of Ombudsman, this way the principle of equality is violated and administrative and court resources are used inexpediently.

In addition, in order to promote the principle of equal treatment in assignment of social support to nuclear power plant accident relief participants and victims of the accident who are disabled, at the beginning of 2014, Ministry of Welfare had developed a draft law "Amendments to the Law of Social Protection of Chernobyl Nuclear Power Plant Accident Relief Participants and Victims of the Accident of Chernobyl Nuclear Power Plant Accident". Unfortunately the mentioned draft law has not been processed further neither at the end of 2014, nor in the reporting period.

2. Rights of Persons with Disabilities

2.1. Monitoring of UN Convention on the Rights of Persons with Disabilities

[67] Decision of the Constitutional Court of 1 March 2012 regarding termination of proceedings in the case No. 2011-12-01. Available: http://www.satv.tiesa.gov.lv/upload/2011-12-01_Lem%20par%20tiesved%20izb.pdf

On 31 March 2010, in the Republic of Latvia came into force UN Convention on Rights of Persons with Disabilities of 13 December 2006. Liabilities prescribed by it are coordinated by the Ministry of Welfare, but the Ombudsman ensures monitoring of its implementation according to Section 2 of the Law "On Convention on Rights of Persons with Disabilities" and Article 33, Clause 2 of the mentioned Convention.

In 2014, within the framework of monitoring, the Ombudsman performed survey of persons with disabilities regarding assessment of implementation of the said Convention, and survey of society on attitude against persons with disabilities. From September 2014 to January 2015 the Ombudsman collected data from local governments of Latvia regarding implementation and realisation of the Convention. Information was obtained from all 119 local governments. Data summary and analysis was done in 2015. For data summary was used desk-based research, meaning that truth of the provided data was not tested on location. For the summarisation of the data the Ombudsman cooperated with the foundation *"Baltic Institute of Social Sciences"*.[68]

Questionnaire questions of survey for local governments were divided in eight groups according to UN Convention, for example, information availability to persons with disabilities, environment accessibility, employment.

In addition, local governments were asked to provide information on examples of good practice, as well as specify the priority areas of the local government regarding improvement of welfare of persons with disabilities, as well as areas that in the opinion of local governments are sufficiently developed.

Local governments were asked to provide information on reporting period from 31 March 2010, being the effective date of UN Convention in Latvia, to 31 December 2013, being the period regarding which Cabinet of Ministers has provided a report on implementation of the Convention.

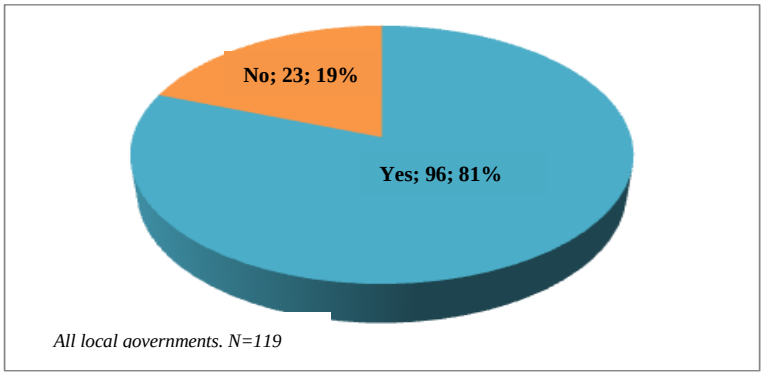
Local governments were grouped according to their categories regarding statistical regions (Riga, PIerīga, Vidzeme, Kurzeme, Zemgale, Latgale statistical regions), as well as according to population type (cities under state jurisdiction, municipalities with rural territory, municipalities with city territory).

Hereinafter is provided report on results obtained in the survey.

[68] Survey results are available on the website of the Ombudsman: www.tiesibsargs.lv.

Thus, as may be concluded, regulatory enactments in most local governments[69] have prescribed special advantages or benefits for persons with disabilities and for families with a child with disabilities.

Figure 1. Do regulatory enactments of the local governments prescribe special advantages, support measures or benefits for persons with disabilities or families with a child with disabilities?



As shown by information provided by local governments, current regulatory enactments provide various benefits for the persons with disabilities, for instance, for acquisition of clothing, provision of care or nursing care, prevention of emergency situations (natural disaster), payment for treatment and medical services, coverage of utility payments of residence or acquisition of firewood, provision of meals in schools, pre-schools, or for purchase of food, provision of social rehabilitation, ensuring transportation services, and other purposes.

Regulations of local governments provide an opportunity for persons with disabilities to receive tax rebates and deductions on fares for public transport, as well as guarantee from local governments for receipt of study or student loan.

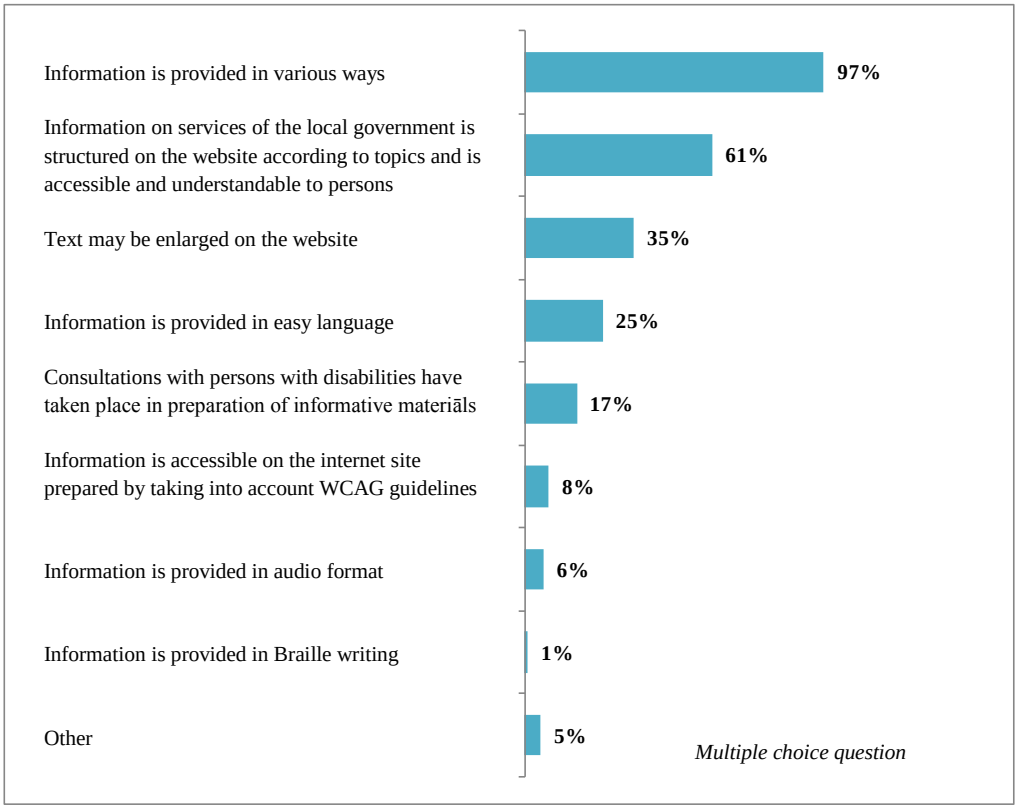
One of the most important principles of Convention is provision of information to persons with disabilities, including provision of information by using alternative means and methods.

As it may be concluded from information provided by local governments (Figure 2), they mostly provide information on services in various ways (97%), yet only in 17% of cases while preparing informative materials local governments have consulted with the

[69] Here and further the source of information „Monitoringof the UN Convention on the Rights of Persons with Disabilities 2010-2014. Results of the Survey of Local Governments." Foundation „ *Baltic Institute of Social Sciences"*.

persons with disabilities, and only in 8% of cases internet websites of local governments are formed according to guidelines for content availability of websites.

Figure 2. How do local governments ensure availability of information on provided services to persons with disabilities?



As may be seen in Figure 3, over the reporting period - from 31 March 2010 to the end of 2013 - only 5% of local governments according to the words of representatives have received complaints on availability of information.

Representatives of only few local governments have informed about the number of received complaints over this period, for instance, Aluksne municipality received 30 oral complaints, Skrīveri municipality - two complaints, and Kārsava municipality - one complaint.

Figure 3. Did the local government received complaints on availability of information over the reporting period?

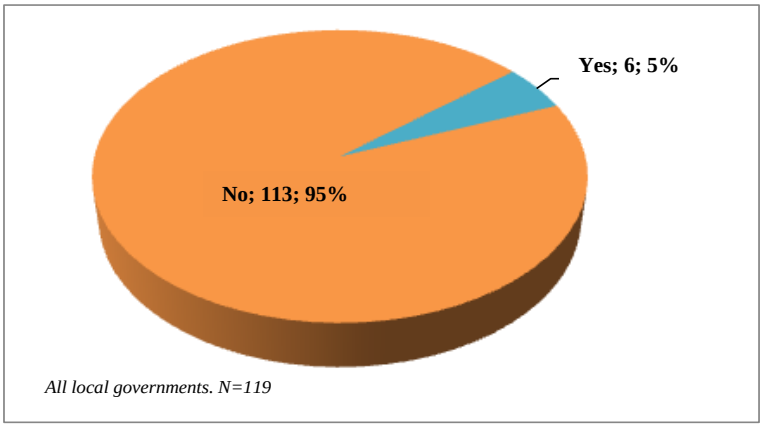
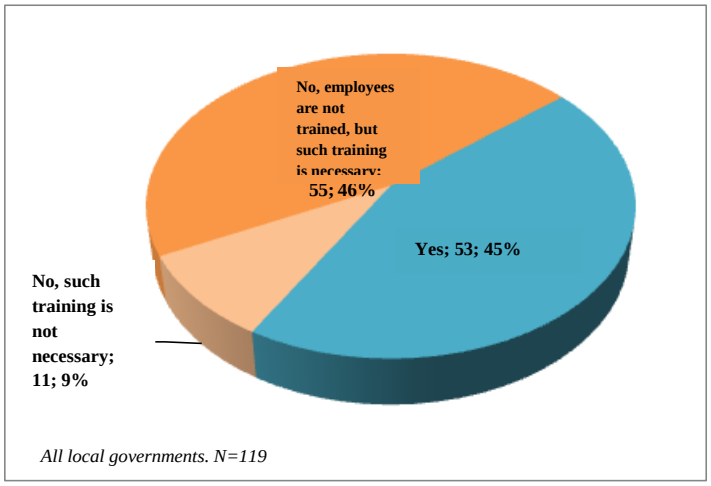


Figure 4. Are employees of local governments who provide consultations to inhabitants trained for work with persons with disabilities?



It is important to add that representatives of local governments have understood in various ways the question on readiness of employees to work with persons with disabilities. A part of representatives of local governments have expressed their evaluation regarding readiness of all employees of local government, but others have assessed the readiness of social staff only. At the same time also interpretation of provided variants of answers is differing. When providing the answer that employees are trained or admitting that they are not trained, employees of the local governments referred to higher education received by social service staff, since the mentioned education includes training for work with persons with disabilities.

55% of representatives of local governments believe that employees of the local governments are not trained for work with persons with disabilities. At the same time

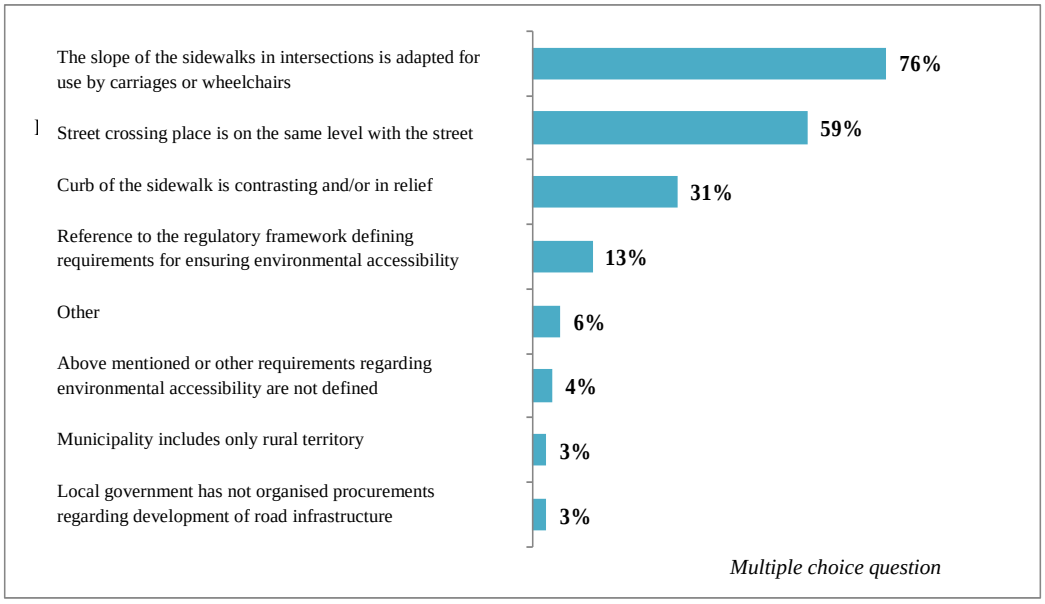
opinion on necessity of special training differs - 46% of local governments training would be necessary, but in 9% - not.

In several cases representatives of local governments have stated that even if social service staff are trained for work with persons with disabilities, such training would be necessary also to other employees of local governments, for instance, specialists of public relations, record keepers, etc.

Ensuring availability of environment is yet another very essential aspect. As seen in Figure 5, in 76% of local governments a requirement exists to make sure that slope of sidewalks in intersections should be adapted for the use by baby carriages or wheelchair. In 59% of local governments there is a requirement that crossing point of the street should be level with the street, but in 31% of local governments - that the kerb should be contrasting and/or in relief.

The above mentioned requirements to be observed when developing a technical specification for public procurement regarding development of road infrastructure are mostly noted by cities under state jurisdicture and representatives of municipalities with city territory.

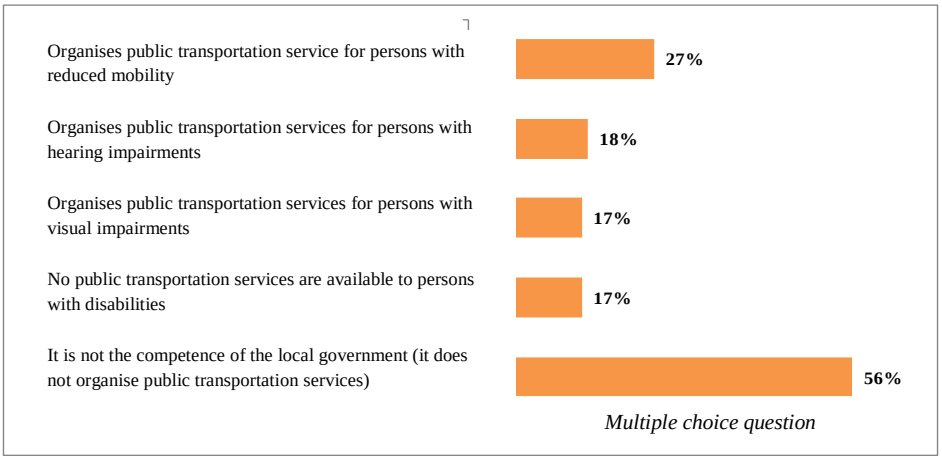
Figure 5. What requirements for ensuring availability of environment are stipulated by the local government when developing the technical specification for public procurement regarding development of road infrastructure?



Availability of public transport is one of the criteria for availability of environment. More than half of local governments (56%) indicate that do not ensure these services because it is not included in the competence of local governments (see Figure 6). At the

same time, 27% of local governments according to the words of representatives organise public transport services for persons with reduced mobility; 18% of local governments - for persons with hearing impairments; and 17% of local governments - to persons with visual impairments. Thus it may be concluded that there is greater understanding about the needs of persons with reduced mobility, and less so of persons with visual or hearing impairments.

Image 6. Types of public transport organisation by local governments in order to make the public transport available to persons with disabilities.



Employment is one of the main conditions for inclusion of persons with disabilities in society. Thus, local governments were asked to provide answers to several questions regarding area of employment.

By summarising answers of the local governments on support regarding employment of persons with disabilities, it may be seen that most of the local governments (70%) do not provide support for development of subsidised work places/special workshops for persons with disabilities, and thus such support is provided only by 30% of local governments (see Figure 7). Such support is mostly provided by municipalities with city territory (43%), less often - cities under state jurisdiction (22%), and rural territory municipalities (15%).

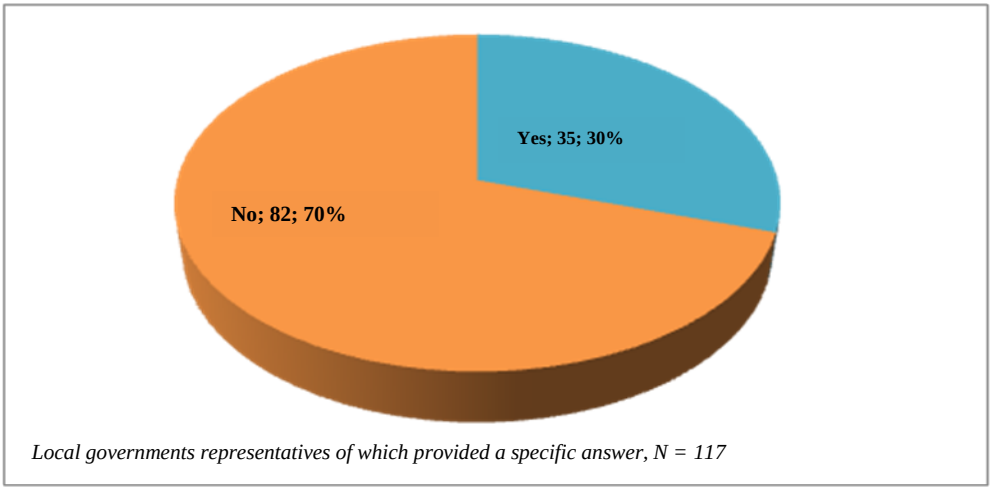
Considering the regions, development of subsidised work places/special workshops is supported by Riga local government, and more often local governments of Latgale (40%) and Kurzeme (35%) regions. Thus, local governments of other regions provide support less often: Vidzeme local governments - 31%, Zemgale - 24%, Pierīga - 21%.

Local governments supporting development of subsidised work places/special workshops for persons with disabilities mostly do it in cooperation with State

Employment Agency (subsidised work places or paid temporary community work), non-governmental organisations (for instance, they provide facilities; cover monthly expenses for mandatory payments of state social insurance), or form subsidised work places in their institutions, for example, in museum, special workshops in the day centre, in territory improvement.

One local government that would be willing to support development of subsidised work places/special workshops, and several local governments that noted that they don't provide support, admitted that thus far there has been no demand for such work places.

Figure 7. Support by local governments to development of subsidised work places/special workshops for persons with disabilities



When filling in questionnaires, local governments were asked to specify three areas they primarily work in regarding persons with disabilities (adults and minors). Four areas most often mentioned by the local governments are: environmental accessibility75%), social rehabilitation services (42%), benefit system (34%), and social participation (29%). One fourth of the local governments indicated also availability of information and inclusive education.

Less often local governments indicated such areas as participation in decision-making regarding the life of the child (14%), interest education (13%), medical services (13%), transport availability (12%), etc. Local governments that had chosen the option "other" as a priority provide assistant services to persons with disabilities, paid temporary community work, services of housing adaptation and day centre.

Similar to previous question, local governments had to indicate three areas that, in their opinion, have been covered by a developed required regulatory framework, have

been assigned appropriate financial resources, and compliance with the rights of persons with disabilities has been ensured. Three most often mentioned areas in this question coincide with previously discussed priority work areas in ensuring the rights of the person with disabilities, only sequence is slightly different. Therefore, in this case most often mentioned area is benefit system 56%), followed by social rehabilitation services (36%) and environmental accessibility (28%). The fourth most often mentioned area is inclusive education (23%) and interest education (23%), but less often are mentioned medical services (19%), social participation (18%), transport availability (15%), information availability (13%), and other. Local governments that chose the option "other" mentioned assistant services and available shower and laundry washing facilities.

2.2. Aspects of UN Convention on the Rights of Persons with Disabilities in Latvia

On 3 December 2015, on the international day of persons with disabilities, the Ombudsman in cooperation with association of persons with disabilities and their friends "Apeirons" and National Library of Latvia hosted a conference "Aspects of UN Convention on the Rights of Persons with Disabilities in Latvia".

Conference included three panels.

Within the framework of the first panel "Action of UN Convention on the Rights of Persons with Disabilities in Latvia in the View of Persons with Disabilities" spoke a representative of the Ombudsman's Office and presented results of the research "Monitoring of UN Convention on the Rights of Persons with Disabilities. 2010.-2014. Survey of Persons with Disabilities".

Survey of persons with disabilities consisted of several sections in order to gain understanding on how in the view of persons with disabilities they are treated by various groups of society; how persons with disabilities evaluate possibilities of participating in social life, quality of life, solutions of accessibility and infrastructure.

Thus, persons with disabilities believe that most support they receive from family (85%), while also pointing out that most do not know where to turn in case of violations of discrimination prohibitions. Considering that essence of UN Convention is to change the view seeing persons with disabilities as persons who need constant assistance to seeing them as persons who are subjects of human rights, the survey included questions on if and how persons with disabilities participate in social activities. The results of the

survey showed that persons with disabilities mostly are members or interested parties of non-governmental organisations for persons with disabilities (34%), yet almost as many (28%) said that they do not participate in any social activities by mentioning as a reason financial considerations (52%), and there are no such activities in the municipality that would interest them (23%). 13% of respondents indicated that they do not participate in social activities because they are not interested in them.

Persons with disabilities have emphasised that medical services, benefit system and subsidised work places are areas in need of urgent improvement when thinking of adults with disabilities. But considering children with disabilities, benefit system, area of medical services and medical rehabilitation services should be urgently improved.

I.Balodis, the Chairman of the Board of Association of persons with disabilities and their friends "Apeirons" noted that implementation of UN convention does not take place smoothly, but most often becomes lodged in various consultative boards, working groups and meetings. It was also stated that non-governmental organisations for persons with disabilities would need to cooperation with each other more in order to reach joint goals as soon as possible.

N.Pīlips, Deputy Chairman of the Central Board of the Latvian Society of the Blind stated that since implementation of the UN Convention the choice of available technical aids has improved, yet the progress should not stop there, and it would be necessary in the future to diversify technical aids for persons with visual disabilities.

E.Vorslovs, the representative of the Latvian Association of the Deaf pointed out as the main benefit the change of understanding regarding persons with disabilities included in the Convention, that is, transfer from a medical model emphasising inability of the person and dependence on other people to the model of human rights with the focus on the rights and independent life, and active participation of the person with disabilities in social processes. As the main factor was mentioned accessibility of sign language and sign language interpreters that ensure communication with persons with hearing impairments.

I.Leimane-Veldmeijere, Director of resource centre for persons with mental disabilities "Zelda" drew attention to reform of institution of legal capacity as the greatest success since the Constitution became effective in Latvia. Reform of institution of legal capacity (effective since 1 January 2013) includes future authorisation, temporary guardianship, restrictions of legal capacity in certain areas except non-material rights of the person. Positive tendencies in the reform of institution of legal capacity were noted:

full legal capacity is not possible; regulatory framework is comparably flexible; person has the right to participate in the court hearing; and the principle of objective investigation is applied. In addition, negative tendencies were pointed out, for example, restriction of legal capacity often is the only not the last resort, and it is not clear what is included in personal non-material rights, and joint and separate opportunities of decision-making offered by the legal framework are not fully used; and the court proceedings are not friendly to persons with mental disabilities. In addition to implementation of Convention the process of de-institutionalisation has begun, yet tremendous resistance on the part of many involved parties is of concern, as well as the expressed view that it would be better if persons with mental disabilities lived in institutions.

Second panel of the conference "UN Convention on the Rights of Persons with Disabilities and Society" was opened with a presentation of the Ombudsman on survey "Monitoring of UN Convention on the Rights of Persons with Disabilities 2010 - 2014. Survey of Latvian Population regarding the Rights of Persons with Disabilities".

Separate questions of the survey were provocative in order to obtain assessment of attitude that would be as accurate as possible. Survey consisted of several categories of questions, for example, regarding participation of persons with disabilities in social life and the right to family, children, work, and education. All answers reflect that persons with mental illnesses and intellectual development impairments are excluded from society the most. At the same time variety could be seen in attitude, for instance, if among the person's family, friends or colleagues was a person with disability, such a person is more open and more favourably disposed towards the person with disability. Thus, informative measures are necessary in order to promote tolerance of society towards persons with mental illnesses and intellectual development impairments, as well as towards the persons with disabilities in general.

A.Lūse, Docent of Communication Faculty of Riga Stradiņš University drew attention to understanding of health, ill health and illness in Latvia and the world, mentioning illnesses specific to culture, for instance, Syndrome of Persian Gulf in the United States of America, Canada and the Great Britain, "nerves" as illness in Soviet Union. Information was also provided on the spectrum of mental diagnoses that from seven units of nomenclature in 1880 has increased to more than 300 units in 1994. In addition it was noted that society holds a stereotype that mental illness is connected with violence, and there are four times more such stories in media than positive stories. At the same time it was emphasised that greater part of obstacles faced by persons with mental

or physical disabilities every day appear due to discrimination and prejudices of the society towards these persons, and not due to persons with physical disabilities or functional limitations.

I.Stabulniece, Personnel Manager of SIA "RIMI Latvia" informed of a good practice in SIA "RIMI Latvia" in promoting employment for persons with disabilities and stated that one of the seven fundamental principles for activity of the company is to value diversity of employees and promote development. In 2015, SIA "RIMI Latvia" received a special award - the company most open to diversity, as well as appreciation from Association of people with disabilities and their friends "Apeirons" for "Human Approach to Persons with Special Needs". Namely, SIA "RIMI Latvia" in 2010 employed 70 persons with disabilities, and in 2015 - 183 persons, being 3.2% of the total number of employees. Persons with disabilities are employed in the following positions: shop assistants, cashiers, senior cashiers, commodities specialists, manufacturing employees (bakers, confectioners, etc), warehouse employees, examiners of goods, members of shop's management team.

E.Bernāte, Special Education Teacher of Cēsis 2 Primary School also informed on the good practice in Cēsis 2 Primary School in providing inclusive education to a child with disabilities. By 2005, the right of the children with disabilities to education in Cēsis municipality local government were ensured in a special pre-school education institution, special boarding school or homeschooling. From 2006, grades for children with special needs were formed in comprehensive education institutions. Yet, upon beginning the inclusive education, several problems were discovered, for instance, living conditions were not appropriate for children with reduced mobility (children lived on the top floors without elevators), and the vehicle for transporting children was not adapted for the needs of children with disabilities. In 2006, the local government built a social home where families who had a child with reduced mobility were assigned apartments on the ground floor; a new, adapted vehicle was acquired; and in 2011, a rehabilitation day centre for persons with disabilities was formed.

In addition to the above, international project Sweden - Latvia - Russia „Integration of Children with Special Needs" was implemented, and within its framework representatives of Cēsis city council and leadership of the school were involved in activities of the project; training of specialists took place; as well as ensuring environmental accessibility and development of rehabilitation work. Project "Be my Friend" was also realised, and it promoted understanding of the type of social service,

"friend - assistant", for children with special needs, while providing social integration and reducing social exclusion of children with special needs, for instance, school, extracurricular measures, participation in class, school, extracurricular events, attending social activities in the free time, work of learners at school, summer day camp.

Third panel of the conference "UN Convention on the Rights of Persons with Disabilities and Society in the View of Local Governments" began with the presentation of the Ombudsman's Office on research "Monitoring of UN Convention on the Rights of Persons with Disabilities. 2010 - 2014. Survey of Local Governments". Main conclusions of presentation were that persons with disabilities note that information on services is not sufficient; however, only separate local governments have received complaints on unavailability of information. Thus, persons with disabilities should mention more actively that information is provided in a format that is not accessible to them. Training on how to work with persons with disabilities should be provided to employees of municipal institutions who are not social service staff. Issue of environmental accessibility is also an issue to be focused on more, since currently it may be observed that local governments have more understanding about the needs of persons with reduced mobility, while understanding of needs of persons with a different type of disabilities is less.

J.Zilvers, Deputy Chairman of the Sigulda Municipality Council, informed regarding the good practice of Sigulda municipality in ensuring provision of alternative services in municipality. Namely, Social Assistance Administration of the Sigulda Municipality assessed offers of social services and in 2005 concluded an agreement with societies "Cerību spārni" (Wings of Hope) and "Aicinājums Tev" (Calling for You) in procurement of rehabilitation services received by families with children with disabilities, as well as persons with disabilities. Society "Cerību spārni" provides ten various services, for instance, art therapy, sand therapy, canistherapy, etc. Society "Aicinājums Tev" ensures activity of the day centre for persons with mental disabilities "Saulespuķe" (Sunflower), organising various classes and creative workshops.

M.Caune, Deputy Chairperson of Salaspils Municipality Council in social and sports affairs, informed on good practice of Salaspils municipality local government in improving welfare of persons with disabilities. Salaspils municipality local government once a year pays benefits to persons with group I and II disabilities, as well as provides benefit for measures in adaptation of home environment for persons with functional disabilities. Salaspils municipality local government also has formed a day centre for

persons with functional disabilities, and provides services of special transport. Persons with disabilities are also offered services of reittherapy, animal therapy and art therapy, gym, and organised and supported sports games for persons with disabilities. Persons with disabilities may receive rebates for real estate taxes. Future vision of Salaspils Municipality local government is to develop a unique specialised gym, specially adapted for persons with disabilities. No other local government of Latvia has such a gym.

In the conclusion spoke I.Balgalve, Deputy Chairperson of the Board of Social Services Managers of Latvian Local Governments, and she informed on future challenges in the work of social services as implementation of Convention is continued. I.Balgalve mentioned several aspects, for example, necessity to provide support to family, relatives; to develop accessibility of society-based services in local governments; provide accessibility of environment and technical aids; promote understanding of society about the needs of persons with disabilities, as well as improve welfare of persons with disabilities.

Within the framework of the conference were organised two more events: contact exchange of non-governmental organisations, and award ceremony of competition "Annual Award for Support of Persons with Disabilities".

2.3. Ensuring Assistant Services to the Person with Disabilities

The Ombudsman's Office initiated a verification procedure on possible violation of the principle of good governance in activity of social services of local governments when providing assistant services for leisure for persons with group I disability who have been assigned a care benefit, and possible violation of the right of person with disability to inviolability of private life.

The Ombudsman found that persons with assigned group I disability and necessity for special care and who receive care benefit, and persons who have been assigned group I disability but without the necessity for special care are not in similar comparable circumstances since each of these groups have different needs for special care. Thus, a differing legal framework is permissible in order to ensure receipt of assistant services to persons with Group I disability who have been given a care benefit.

At the same time the Ombudsman found that social services of the local governments have no common approach to defining what confirmation documents or certificates are to be submitted to the social service, thus with the existence of equal actual

and legal conditions differing decisions are made. Since persons with group I disability who receive care benefit and live in various municipalities are in similar and according to definite criteria comparable conditions, when assigning the service of assistant social services are obliged to comply with uniform criteria. In its turn, Ministry of Welfare is obligated to develop a uniform practice for ensuring the receipt of assistant service.

The Ombudsman also found that obligation to submit receipts with specified personal data, certifications of event organisers, relatives and friends, and other documents that would help social service to be sure that assistant has provided the service, is not defined neither by the law, nor regulations of Cabinet of Ministers. Moreover, such collection of personal information is disproportionate and burdensome, and significantly affects person's freedom of speech and action, as well as the right to private life.

In the opinion of the Ombudsman, assurance that assistant has provided the service to the person with disability to such extent as they require to be paid for, is possible in a different way that is less burdensome and offensive to the person with disability and assistant, for example, by using a uniform template tables for listing the work time.

The Ombudsman recommended:

1) Ministry as Welfare as a leading state administration institution in the area of policy for equal opportunities for persons with disabilities should ensure a uniform practice regarding assistant services;

2) Ministry of Welfare should improve the procedure for administration and assignment of assistant services in social service, thus facilitating the administrative procedure of receiving the assistant service;

3) determine the way to certify the provision of assistant service, as social services of local government should comply with inviolability of the right to private life of persons with disabilities.

Regarding the execution of recommendations the Ministry of Welfare explained: in order to develop uniform practice for providing assistant services in the local government, Ministry has already placed in its website an extended explanation on application of Cabinet regulations No. 942 of 18 December 2012 942 “Procedure regarding Assignment and Financing of Assistant Services in Local Governments". Ministry also summarised and placed in the website the most successful examples of documents and forms used by social services in order to ensure the assistant services. On a daily basis Ministry provides consultations and explanations to social services and employees of local governments, assistants, persons with disabilities, and organisations representing their interests in order

to ensure common understanding about the purpose of assistant services and implementation practice of legal acts.

At the same time Ministry mentioned that social service of the local government is responsible for ensuring the service to the person with disability and effective and purposeful use of budgetary funds assigned to provision of assistant services. Ministry cannot define to the social services one specific way or indicate the most appropriate way of how to verify execution of contractual liabilities and legal use of state budget funds taking into account that requirements in each individual case may be different.

In addition, on 13 October 2015, amendments were made to the respective regulations of Cabinet of Ministers and became effective on 1 January 2016. Amendments to regulations cancel the differing approach to procedures of submission of reports, thus making the procedure easier. At the same time it should be noted that in relation to provision of assistant services it is intended to develop a new system oriented towards individual needs of the person.

2.4. On Observance of Equality Principle Regarding the Public Official (Judge) Providing Assistant Service to a Child with Disabilities

In the reporting period the Constitutional Court initiated the case No. 2015-10-01 "On compliance of Section 7, Paragraph three of law "On Prevention of Conflict of Interest in Activities of Public Officials" with the first sentence of Section 91 and Section 110 of the Constitution of the Republic of Latvia" and invited the Ombudsman to express the opinion in written form regarding issues that, according to his view, might have importance in the mentioned case, especially commenting upon case circumstances from the aspect of priority of the rights of a child with disabilities.

Public officials, including judges, mentioned in Section 7, Paragraph three of the Law On Prevention of Conflict of Interest in Activities of Public Officials are permitted to combined the position of public official only with aforementioned positions and jobs, for instance, educator, scientist, work of a professional sportsman or creative work, work in trade unions and societies, etc. Yet the mentioned provision prohibits the person (judge) to provide assistant services to their child and receive respective payment for it.

By evaluating compliance of Section 7, Paragraph three of Law on Prevention of Conflict of Interest in Activities of Public Officials with the first sentence of Section 91 and Section 110 of the Constitution of the Republic of Latvia, the Ombudsman found that

restriction for a judge, as well as other public officials mentioned in Section 7, Paragraph three of the Law on Prevention of Conflict of Interest in Activities of Public Officials to provide the assistant service receiving the payment for it infringes upon the rights and interests of the child, especially the rights of the children with disabilities to special protection, and thus the contested provision does not comply with Section 110 of the Constitution.

The same way the Ombudsman concluded that the contested position places the children of the judges in a more unfavourable situation than children whose parents are not judges, and thus, in the opinion of the Ombudsman, the contested provision does not comply with the first sentence of Section 91 of the Constitution.

On 23 November 2015, the Constitutional Court made a judgment in the case No. 2015-10-01 "On compliance of Section 7, Paragraph three of law "On Prevention of Conflict of Interest in Activities of Public Officials" with the first sentence of Section 91 and Section 110 of the Constitution of the Republic of Latvia" and acknowledged that the provision that prohibits the judge to be assistant to his own child with disability does not comply with the first sentence of Section 91 of the Constitution.

Constitutional Court concluded that the Saeima has not provided arguments why exactly provision of assistant services to his child would position the judge in a situation of conflict of interest or would subject the independence of the judge to greater risk than combining the office of a judge with types of activity permitted by the contested provision.

2.5. On Application of Minimum Personal Income Tax to Persons with Disabilities

Several persons with disabilities who perform economic activities, for instance, crafts, repeatedly complained to the Ombudsman that Section 19, Paragraph 2.1 of the Law on Personal Income Tax is too burdensome for persons with disabilities because the annual income often reaches the same amount or even less than stipulated minimum personal income tax payment.

When reviewing the submissions of persons regarding minimum personal income tax payment of 50 euro prescribed by Section 19, Paragraph 2.1. of the Law on Personal Income Tax, the Ombudsman recognised that such a payment is legal.

On his initiative the Ombudsman turned to the Ministry of Finances with a request to provide an opinion if it would be permissible that Law on Personal Income Tax would provide exclusion that Section 19, Paragraph 2.1. of the law would not be applied to persons with disabilities, considering that the indicators of their employment are not high.[70] The Ombudsman held a view that such exclusion might promote employment of persons with disabilities.

In August 2015 Ministry of Finances provided the answer that the suggestion of the Ombudsman shall be assessed when next amendments to the Law on Personal Income Tax would be developed. After a repeated request to provide information on further movement of the Ombudsman's suggestion, in November 2015 the Ministry of Finances informed that it understands the relevance of Ombudsman's suggestion; however, provisions for a separate exclusion are not supported by taking into account the tax optimisation risks. Ministry of Finances drew attention to the fact that currently regulatory enactments provide several tax rebates for persons with disabilities who perform economic activity. These persons should use the provided rebates according to the specific situation. Ministry of Finances also made a commitment to assess other variants of personal income tax payments in the context of the suggestion initiated by the Ombudsman regarding persons who perform economic activity and are with a disability, as well as provide a more appropriate mode for personal income tax payment.

[70] Research of State Employment Agency of 2014 „Discrimination in the Employment Market of Latvia". Available: http://www.nva.gov.lv/docs/30_53217f16241943.63850296.pdf