REPUBLIC OF LATVIA

OMBUDSMAN

# Report on the Year 2013 by the Ombudsman of the Republic of Latvia

Riga, 2014

# Contents

# Abbreviations Used in the Text

APL – Administrative Procedure Law

CL – Civil Law

CM – Cabinet of Ministers

Constitution – Constitution of the Republic of Latvia

CPL – Civil Procedure Law

CrL – Criminal Law

CrPL – Criminal Procedure Law

ECHR – European Court of Human Rights

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

EU – European Union

LAVC – Latvian Administrative Violations Code

MH – Ministry of Health

NGO – Non-Governmental organizations

OCMA – Office of Citizenship and Migration Affairs

SI – State Inspectorate

SPA – State Procurement Agency

SRS – State Revenue Service

SSCC – State Social Care Centre

UN – United Nations

VAT– Value Added Tax

# Preamble by the Ombudsman

*Dear Reader,*

When looking back to the events of 2013 related to the issues within the competence of the Ombudsman's Office – human rights and good administration – general characteristics would be lack of solidarity and interaction.

Many activities performed by the Ombudsman's Office in 2013 were related to solidarity in the society, starting with the rights of children left without parental care to grow up in a family, rights of people with mental disabilities to live in the community, and, finally, the right of everyone to receive fair wage for their work and not be discriminated in any way.

This report contains examples of under-developed solidarity in our society and its incapability to defend the rights of the groups to which they currently do not belong themselves. However, the tragic events of November in Zolitude district showed that the society is able to be supportive as well.

Like every step of a thousand mile road is not only some centimeters but also a small accomplishment in the long way to a great goal, each improvement related to human rights and good administration has also positive impact on the relevant case and interacts positively with other processes. For example, ensuring fair wage to everyone would not destroy the economy, as someone tries to convince us, but would help to reduce social inequality and improve people's welfare. This would not only stimulate the economy but also enhance people's faith in their State and encourage the emigrated compatriots to return. Therefore, it is unacceptable that the proposals to solve the identified problems related to human rights and good administration issues, are rejected by high public officials who say that "it is impossible because there is no money in the budget". At the same time, the Constitution does not state - especially when it comes to the eighth chapter on fundamental rights - that this State was founded in the framework of budget.

Human rights are not an exclusive thing, it is the basis for human welfare, development and person's opportunity to be happy, which affects not only himself, but also the development of the State.

Best regards,

Juris Jansons, the Ombudsman

# I Children's Rights

## 1. Children's Rights to Education

### 1.1. Rights to Acquire Education Free of Charge

Speaking about the priorities of 2013 related to the rights of children, special attention was paid to the topic that applies to everyone, not only to socially disadvantaged persons, i.e. the children. It is access to education free of charge.

In line with the Ombudsman Law, the Ombudsman's function is to promote the protection of human rights of individuals and to detect weaknesses in the laws and their implementation in matters related to respecting of human rights, as well as to promote the elimination of these weaknesses. In performing this function, in June 2011, the Ombudsman began to study the content of the rights to acquire education free of charge guaranteed by Section 112 of the Constitution. Thus,

1) an advisory council on availability of education was created,
2) parents were invited to report cases when school had asked them to buy learning materials,
3) 119 municipalities of Latvia were asked for information on development of budget of educational institutions, and other measures were taken to study the situation.

Having summarized the obtained information and analyzed the normative regulations, it was established that the right to acquire education free of charge is not ensured sufficiently and the real situation does not provide equal rights and possibilities to acquire education to everyone as defined in regulatory acts.

If the Ombudsman, while exercising his functions, establishes that regulatory acts define that learning materials should be paid by the State or municipality but in reality parents are obliged to buy them, the Ombudsman has to promote changes in this unlawful practice. Therefore,

1. On May 23, 2012, the Ombudsman submitted a report to the Commission of Education, Culture and Science of the Saeima on ensuring rights to acquire primary and secondary education free of charge in educational institutions founded by municipalities. The report was also submitted to the Commission on Human Rights and Public Affairs of the Saeima, the Prime Minister, the Minister of Education and Science.

2. In June 2012, the report was sent to all Latvia's schools, requiring changes in the unlawful practice.

3. In January 2013, letters were sent to all 119 municipalities asking to allocate funding for educational institutions in the budget 2013 to the extent that could help them to ensure learning materials necessary for full implementation of education programs. Responses of municipalities to this call were very different – some municipalities really allocated funding for learning materials, however a large part of municipalities reacted negatively and emphasized: we will decide on it when the legislation clearly defines what to finance.

4. On May 20, 2013, the Ombudsman sent a letter to the State Control on compliance with legislation in the field of education. The State Control replied that it had already carried out an audit of legality "Implementation of the General Education System in Line with the Set Targets" in 2007, which showed important deficiencies in all the areas examined, including the funding of general education, and implementation of certain recommendations still continues[1].

However, the Ombudsman actively participated in elaboration of amendments to the regulatory acts. On August 7, 2013, the amendments to the Education Law entered into force clearly defining that parents should buy only individual learning materials: stationery, clothes and shoes, special clothing, shoes and hygiene accessories necessary for some compulsory subjects (sport, housekeeping and technologies, etc.) and materials used by a pupil to create some object or product for his own needs. It is stated by the Section 58, paragraph 3 and Section 1, paragraph $12^4$, sub-paragraph "k" of the Education Law. Learning materials necessary for studying the learning content have to be bought by the school using the funding of the State and municipality.

When the new regulation had entered into force, the Ombudsman sent a letter to the schools with explanations on purchase of learning materials. Taking into account the fact that one of the Ombudsman's functions is to promote compliance with the principle of good administration in the public administration, the Ombudsman asked the schools to inform parents of the pupils before the beginning of the school year that starting from school year 2013/ 2014 the school would provide them with all learning materials (including workbooks) necessary for implementation

[1] Available: http://www.tiesibsargs.lv/sakumlapa/valsts-kontroles-atbilde-par-trukumiem-visparejas-izglitibas-joma

of education program. Besides, the Ombudsman reminded that the council of educational institution is entitled to decide only what kind of individual learning materials the parents of the pupils should buy, such as everyday or holyday clothing. The council is not entitled to decide on learning materials that are needed for studying the learning content, ensurance of such materials is within the competence of the Sate or municipality.

More information on purchase of learning materials can be found on the homepage of the Ombudsman's Office.[2]

In order to find out how the new regulation is implemented in the real life, the society is asked to report cases when a school has asked parents to buy learning materials.

In August and September 2013, 226 persons turned to the Ombudsman's Office in order to receive consultation on the new regulation or to inform about possible violations of children's rights to receive education free of charge. The most part of the submissions was related to provision of learning materials in schools, less – to preschool educational institutions. Mostly, the Office received general questions without mentioning the name of the educational institution. Parents and pupils wanted to know their rights in the relevant situation, how to behave appropriately and whether the behavior of their educational institution has been lawful. Examples:

- Does the new regulation concern nursery schools (kindergartens) as well?
- Does the new regulation concern groups delegated by the municipality in private nursery schools as well?
- Are parents allowed to buy workbooks?
- What should we do if a pupil is asked to rewrite exercises from a workbook?
- What should we do – to buy or not to buy workbooks if some parents have already bought them?
- Is a school allowed to collect money for pupil's diary?

The Ombudsman's Office has established cases when a teacher has asked to buy workbooks without consent of the director. There have been many cases of communication problems between the school and parents, e.g. parents have aggravated the received information, school has informed parents via children or it

[2] Available: http://www.tiesibsargs.lv/sakumlapa/papildinats-skaidrojums-par-macibu-lidzeklu-iegadi

has not provided complete information that have resulted in misunderstandings that were solved after involvement of the Ombudsman.

The main problem related to preschool education: all lists given to parents contain both individual learning materials that should be bought by parents and learning materials needed for studying the learning content that have to be provided by educational institution. All cases showed that the list should be adjusted in line with the amendments made to the Education Law.

The main problem related to basic and secondary education – at the beginning of the school year 2013/ 2014, the most of municipalities of Latvia (Saulkrasti region, Saldus region, Rezekne city, Kraslava region etc.) did not have sufficient funding to buy necessary learning materials. Educational institutions were placed in situation when funding allocated by the State and municipalities was not enough to pay program costs, but asking parents for some funding was forbidden by regulatory acts.

A similar situation was in all municipalities where the allocated funding was inappropriately low (up to 10 Latvian lats for one pupil). For example, during elaboration of budget for 2013, the council of Kraslava region allocated funding of 6.29 lats for one pupil.

The State has allocated earmarked subsidy of 8.26 lats for purchase of learning materials: purchase of educational literature (books) – 6.26 lats; purchase of workbooks equated to school textbooks – approximately 2 lats for one pupil. Summarizing this information, the council of Kraslava region has allocated approximately 14.55 lats for one pupil in a school year while purchase of educational materials necessary for implementation of educational program for one pupil in one school year requires about 40.00 lats.

Educational institutions of Kraslava region did not have sufficient funding for purchase of learning materials to ensure pupils' rights to acquire education free of charge. The council of Kraslava region allocated supplementary funding of 21,29 lats for one pupil starting from age of five, that together with the State earmarked subsidy was approximately 30 lats. The situation in the regions has been resolved.

Additional funding for the purchase of learning materials has been allocated in Saulkrasti, Saldus and Madona regions, Riga, Liepaja, Jurmala and other municipalities. However, it can be concluded that the situation related to provision of learning materials differs a lot: there are municipalities that have allocated funding of

40.00 – 50.00 lats for one pupil[3], but there are also municipalities that allocate up to 10 lats for one pupil. Thus, there are municipalities that ensure all necessary materials for the learning process, including workbooks, but there are also municipalities that do not have sufficient funding for purchasing learning materials. In any case, the purchase of learning materials may not stay under responsibility of parents.

### 1.2. Rights and Possibilities to Acquire Education in Compliance with Child's Capacities

In 2013, a question was raised concerning rights of children with disabilities to acquire education in compliance with their state of health, level of development and skills. The Ombudsman's Office received submissions indicating several factors that limit the rights of children with disabilities to acquire education.

Municipalities are not interested in licensing special education programs in institutions of general education, therefore it is difficult for parents to choose educational institution appropriate for the needs of their children[4]. If there is no such educational institution near their home, children are most likely placed in boarding schools where they stay until holidays because municipalities are unable or unwilling to provide transportation of pupils to their educational institution and back home. In cases when the child is provided with transport to get to his educational institution, he has to spend a lot of time travelling which results in difficulties to concentrate on learning process.

Basing on these submissions, the Ombudsman initiated a verification procedure and conducted examination of the situation in relation to the availability of special education programs in the State.

Section 110 of the Constitution of the Republic of Latvia (hereinafter – Constitution) states that the State protects the rights of children and especially helps children with disabilities. By acceding to the Convention of the Organization of United Nations (hereinafter – UN) on the Rights of the Child, Latvia undertakes to ensure rights of children with mental and physical disabilities to have fulfilled and dignified living conditions that help them to keep self-respect, self-confidence and

[3] For example, Jaunpils, Cibla, Olaine, Jelgava and other regions.
[4] Since the beginning of 2013, the term "special education institution" is officially replaced by the term "institution of general education implementing program of special education". As educational institution that implements only programs of special education equals special education institution, this term is used in this report as well.

promote possibilities to participate in social life. Section 23, paragraph 3 of the Convention especially underlines necessity to implement rights of children to acquire education with equal possibilities.

Section 24 of the UN Convention on the Rights of Persons with Disabilities, which entered into force in Latvia on March 31, 2010 provides that persons with disabilities have rights to access an inclusive, qualitative and free primary and secondary education at their home on an equal basis with others. According to this document, the member states are obliged to provide reasonable adjustments in accordance with the individual needs and have to ensure possibility of persons with disabilities to receive necessary support for acquisition of proper education.

Several national laws and regulations[5] define the rights of a child with special needs to acquire primary and secondary general education of high quality in compliance with his physical and mental capacities and wishes. To ensure implementation of these rights, a system at the State and municipality level has been created in Latvia to allow the children to acquire education appropriate for their needs in institutions of special education or in institutions of general education including children with special needs.

Section 17, paragraph 1 of the Education Law states that the municipality is obliged to ensure possibility for each child to acquire primary and secondary education in the nearest educational institution to his place of residence. Interpretation of this regulation in line with Section 11, paragraph 1 of the Law on the Protection of the Rights of the Child and the principle of prohibition of discrimination shows that a child with special needs has also the right to acquire education in the nearest educational institution to his place of residence.

However, the real situation shows that in Latvia only 40 schools of 61 institutions of special education implement special programs for children with mental disorders, 21 schools – for children with functional disorders, such as visual or hearing disabilities, physical disorders, somatic disorders, learning, language or mental disorders. Besides, distribution of special schools is irregular.

Special schools for children with mental disorders are located in 36 of 119 municipalities of Latvia. Situation is different with institutions of special education for children with other kinds of functional disabilities. Riga is the only municipality

[5] Sections 11, 54 of the Law on the Protection of the Rights of the Child; Section $3^1$ of the Education Law; Law on General Education, etc.

which is able to provide almost all programs of special education. The only special school for pupils with vision disorders and one of two special schools implementing program for children with hearing disorders, are located in Riga. Thus, it can be concluded that many children with special needs do not have possibility to access the programs of special education in their neighborhood. It can be confirmed also by the fact that 61 special education institutions contain six day schools and 55 boarding schools.[6]

Although a number of special educational institutions provide pupils with the opportunity to use a boarding or lodging, the Ombudsman considers that it can be only an alternative in situations where parents, for example, have a shift work and therefore cannot take care of their child. In a situation where there are no obstacles for parents to combine work and family life, staying overnight in an institution is not in the child's interests, because every child has the right to grow up in the family.

In order to ensure education of high quality in special educational institutions, they must have appropriate provision and qualified staff. These requirements are determined in the Regulation No. 135 of April 4, 2000 by the Cabinet of Ministers (hereinafter - CM) "On the number of qualified staff and equipment necessary for the general child care and educational institutions". In accordance with Annex 5 of this Regulation, pupils of special educational institutions can receive the necessary care and support of care workers in compliance with their needs, including support for mobility and self-care in the educational institution.

Qualified staff and provision of equipment in the institution is influenced by logistical support in special educational institutions, the number of students and their individual needs, as well as understanding of these issues by the administration. It can also be affected by the funding allocated to the institution.

According to Sections 2 and 3 of the Cabinet Regulation No. 825 of August 31, 2010 "The Funding of Institutions of Special Education, Classes (Groups) of Special Education in General Educational Institutions and Boarding Schools", the national budget allocates earmarked subsidies for the wages of teachers working in special educational institutions or in programs of special education in general educational institutions.

[6] Research „Funding and Administration of Education of Children with Special Needs in Latvia". Center for Education Innovations, 2013, pp. 21–22. Available: http://www.iic.lv/lv/projekti/lppif_petijums_2013_bernu_ar_specialajam_vajadzibam_izglitibas_finansesana_un_parvaldiba_latvija.pdf

Grants for expenses related to maintenance of educational institutions basing on the number of students are allocated from the State budget for special preschools, special boarding schools and development and rehabilitation centers registered in the Register of Educational Institutions. Maintenance of other educational institutions that exercise programs of special education, including maintenance of special day schools, is obligation of the relevant municipality.

The Ombudsman has received information from the Ministry of Education and Science that public funding for maintenance of special preschools, special boarding schools and development and rehabilitation centers registered in the Register of Educational Institutions in recent years has been greatly reduced and currently provides only 77% of the funding defined in the regulations.

According to information established by the Ombudsman, due to insufficient public funding, special educational institutions in some cases are forced to economize, they reduce the purchase of learning materials, give up excursions, economize on heating, etc. It negatively affects the learning process and the rights of children to acquire education of high quality.

According to the information provided by the Ministry of Education and Science, at the beginning of the school year 2012/2013, 6102 pupils attended special educational institutions, while education in programs of special education in general educational institutions was provided to 4058 pupils. Thus, 41% of pupils with special needs received possibility to acquire education in general educational institutions.

Section 53 of the General Education Law provides that any general primary and secondary educational institution has the right to license a program of special education if it has appropriate provision and qualified support staff for providing students with special needs with education. However, the real practice in general educational institutions shows that not everything possible is done to provide children with special needs with opportunities and conditions to acquire education appropriate to their health, development level and abilities, and to prepare them for further life and integration into society.

Summarizing the above mentioned information, it can be concluded that municipalities are not sufficiently active in licensing programs of special education in general educational institutions on the grounds of risks associated with responsibility and ability to provide adequate material and technical conditions, as well as qualitative staff in the institution. Thus, a significant number of children with special

needs are not given the opportunity to learn in the general educational institution which is the nearest to their place of residence.

For a long time, the development of inclusive education has been one of national priorities in the field of education[7]. Therefore, the State should do everything possible to encourage municipalities to develop inclusive education. According to information provided by the Ministry of Education, the Ministry and its subordinate institutions regularly provide consultations, methodological advices, organize seminars, meetings, conferences and other educational events to inform education specialists, parents and others about organization of learning process for pupils with different special needs, topicalities of inclusive education and other issues related to special education. There is also a working group of inclusive education in the Ministry of Education and Science that develops proposals for integration of pupils with special needs into general educational institutions. Several working group's proposals were included in the Action plan for implementation of general education reform elaborated by the Ministry of Education and Science[8].

As a result of the research, the Ombudsman concluded that currently the support for education of children with special needs in the State is irregular. In several municipalities these children cannot access to education of high quality. Not all municipalities are able to implement the children's rights to education according to their special needs in the educational institution that is located near their place of residence. Besides, the use of special boarding schools can negatively affect the child's emotional and physical development, because everyone has the right to grow up in a family.

Although normative regulations define the right of a child with special needs to acquire education of high quality according to his physical and mental abilities in the educational institution which is the nearest to his place of residence, as well as the right to receive special assistance and support from the State for implementation of his rights, the real situation shows that the pupils' right to education is not guaranteed sufficiently.

The Ombudsman considers that, in order to better ensure availability of special education, it is necessary to change the current practice, by implementation of reforms

[7] Guidelines for Development of Education in 2007-2013, approved by the Cabinet Regulation No. 742 of September 27, 2006.

[8] Available: http://izm.izm.gov.lv/upload_file/memorands/Reformu_istenosanas_ricibas_plans_03.07..pdf

in the special education system if necessary. Currently, the State is already taking some measures to promote the rights of children with disabilities to acquire education of high quality on the basis of equal opportunities, but it must be recognized that, in order to achieve the desired change of the situation, the State and municipalities should express their will and get actively involved in solving this issue.

Although Ombudsman's strategy for the period 2011- 2013 does not define the special education as a priority for the relevant period, by recognizing the importance of this issue the staff of the Ombudsman's Office, meeting with local officials during the monitoring of municipalities, drew particular attention to the measures resulting from the obligation of municipalities to ensure availability of special education for their citizens.

## 2. Importance of Individual Preventive Work in the Protection of the Children's Rights

Every year, the Ombudsman's Office receives submissions on socially unacceptable behavior of children, including violence in educational institutions. A verification procedure was initiated relating to the event in Jaunjelgava that agitated the society of Latvia in 2013. The aim of this procedure was to assess the efficiency of protection mechanism of rights in the State in a case of violation of children's rights to safe life conditions in an educational institution, and to detect all weaknesses in the relevant legislation or its application. The opinion on this case has been published on the Ombudsman's Office website[9].

This case is not the only case of violence in educational institutions. According to information provided by the State Police, in 2012 the police received 5882 submissions on violence in schools. Although the regulatory framework to prevent such situations is sufficient, it is poorly used in practice. Both the school administration and teachers, as well as parents should know how to ensure safety of the child in the educational institution and how react in case of danger or real violence.

The law clearly states that crime prevention with children is implemented by the local municipality in collaboration with parents, educational institution, the State

[9] Available: http://www.tiesibsargs.lv/files/content/Tiesibsarga%20atzinums%20lieta%20Nr.%202013-88-2A.pdf

Police, public organizations and other institutions (Section 58 of the Law on the Protection of the Rights of the Child: Municipality elaborates a program of social correction and social behavior assistance for each child who has committed an unlawful activity defined by the Criminal Law or more than twice has committed unlawful activities defined by the Latvian Administrative Violations Code (hereinafter - LAVC), or takes other actions that can lead to unlawful actions).

If behavioral disorders have been detected, the child needs a special social behavior correction program adjusted to his individual needs, he has to receive psychological and social support.

In practice, there are two ways that help to involve children with behavioral disorders within the program of behavior correction. The first: to recognize that the child has behavioral problems and to request the relevant municipality to develop a correction program. The second: to adjudicate the infringement in the administrative committee of the municipality which may decide on application of force corrective means and to define behavior limits, i.e., to impose a duty to participate in the program of behavior correction.

In any case, the aim of behavior correction is not punishment, because antisocial behavior is a consequence of former violence of the child's rights to wholesome development. It is the easiest solution to impose a penalty and to let the child to re-evaluate his behavior himself, but it does not give results because a punishment does not help to change behavior.

Educational institutions often conceal violence among children and do not even require municipalities to develop behavior correction programs, perhaps for fear of discreditation of the school, lack of understanding from the part of the municipality and calling into question of teachers' capacities.

In 2011, the Ombudsman defined preventive work with children as one of priorities in the field of children's rights[10]. During monitoring visits, heads of municipalities were invited to enhance the preventive work, but people responsible for children's rights were educated about the importance of preventive work.

[10] The Ombudsman's Report on the Rights of Children in 2011, p.42, Available: http://www.tiesibsargs.lv/files/content/Tiesibsarga%20Bernu%20tiesibu%20jomas%20gada%20zinojums_2011.pdf

At the end of 2013, the situation was reevaluated, the results of this reevaluation were presented in the Ombudsman's Annual Conference[11].

Thus, the Ombudsman established that the majority of municipalities fail to comply with this statutory duty in long term, i.e. they do not timely elaborate behavior correction programs for children with antisocial behavior. Timely – it means when the first signs appear, and they usually occur in the preschool.

According to survey of all 199 municipalities carried out in 2013, four municipalities have not determined the institution responsible for preventive work, thus the preventive work is not done at all. Comparison with 2011, when the responsible for this work was not appointed in seven municipalities, shows that the situation has improved a little. However, the choosing of responsible authority does not mean that the service is rendered. For example, 18 municipalities in which the responsible institution has been chosen, in one year period had not developed any behavior correction program for any child, 41 municipalities had developed such programs for 1 - 3 children, 34 municipalities for 4 – 9 children. Thus, in 2013, 93 of 119 Latvian municipalities developed such programs for less than 10 children, although studies have shown that there are children with behavioral disorders in almost every class.

**Number of children for whom a program of behavior social correction has been developed in 2013**

| City of the Republic | Number of children |
|---|---|
| Daugavpils | 4 |
| Jekabpils | 12 |
| Jelgava | 32 |
| Jurmala | 0 |
| Liepaja | 21 |
| Rezekne | 14 |
| Riga | 46 |
| Valmiera | 18 |

[11] Ombudsman’s materials of the Conference of 2013. Available: http://www.tiesibsargs.lv/sakumlapa/tiesibsarga-2013.gada-konferences-materiali

| | |
|---|---|
| Ventspils | 20 |

A more important improvement, if compared with 2011, can be observed in relation to initiator of the commencement of preventive work. In 2011, only two municipalities indicated that the institution responsible for preventive work had received initial information on children whose families contained risks to provision of children's basic needs, from educational institutions, including preschool education institutions (no municipality had started preventive work basing on initiative of parents). In contrast, in 2013 there were already 51 municipalities who indicated that the need to develop program for behavior correction had been expressed by educational institutions, four – by the Board of Education. Taking into account the fact that the Board of Education receives information from educational institutions, it can be concluded that 55 municipalities had started preventive work basing on the initiative of educational institutions.

Eight municipalities indicated that the preventive work had been initiated by parents. In total, 13 municipalities indicated that the institution responsible for preventive work had been informed by family members or any other person who had noticed antisocial behavior of the child.[12] Thus, it can be seen that, compared with 2011, awareness of preventive work as of possibility to help children and support educational institutions and parents has evolved, but the overall situation has not improved significantly.

Unfortunately, 42 municipalities, including two cities, have elaborated program of social behavior correction only after the initiation of the State Police[13], in other four, including one city of the Republic – after initiation of the State Probation Service, court or police.[14] In total, 46 municipalities started the preventive work too late, thus violating the child's rights to wholesome development and society's rights to safety.

[12] Regions of Broceni, Carnikava, Durbe, Kandava, Krimulda, Krustpils, Kuldiga, Madona, Rucava, Sala, Salaspils, Saulkrasti and Sigulda.

[13] Regions of Aglona, Aizpute, Aloja, Alsunga, Babite, Baltinava, Burtnieki, Cesvaine, Dundaga, Gulbene, Incukalns, Jaunjelgava, Jaunpiebalga, Jaunpils, Jekabpils, Koknese, Kegums, Kekava, Lielvarde, Ligatne, Limbazi, Lubans, Malpils, Ozolnieki, Pargauja, Plavinas, Priekule, Rauna, Ropazi, Rujiena, Salacgriva, Seja, Stopini, Tervete, Valka, Varaklani, Viesite, Vilaka, Vilani, Zilupe, as well as Jekabpils and Jurmala cities.

[14] Regions of Ilukste, Priekuli, Strenci, as well as Daugavpils city.

There is also a negative trend: in the majority of municipalities, the Administrative Committee penalizes children who have committed unlawful activities defined by the LAVC, instead of using force corrective means. The exception is nine municipalities[15] where the preventive work is initiated by the Administrative Committee as well. This fact is confirmed by the statistics of the State Police – during the 12 month of 2012, administrative committees of municipalities have made 108 decisions on application of force corrective means, while 9270 children were brought to administrative responsibility for committing administrative offences[16].

In relation to the age of children when behavior correction programs are applied, only four municipalities indicated the age of preschool, including two municipalities that have indicated the age of mandatory preparation for school. 18 municipalities indicated that a certain age was not specified and that programs were developed according to necessity. 12 municipalities said that the programs were developed for children from the age of 11; 14 municipalities – form the age of 12 or 13; 16 municipalities - from the age of 14; 6 municipalities - from the age of 15 to 16.

The municipalities consider that the main problems affecting the effectiveness of the preventive work are: lack of resources (specialists (narcologist, psychologist, a social pedagogue) and availability of addiction treatment programs; interest and competence of specialists; possibilities of free-time activities and employment; negative public attitude and weak inter-institutional cooperation.

The Ombudsman considers that municipalities should look at the situation in the long run - if the child's behavior is not corrected, there is a risk that he would not become a wholesome member of society and would not be oriented to study, work, earn living or pay taxes. Worse still – he might even become a criminal. Therefore it would be much more profitable to invest efforts and resources to avoid such situation. Adults have to learn to recognize and solve problems professionally from an early childhood– the age of preschool.

[15] Regions of Aluksne, Cesis, Engure, Livani, Jelgava, Koceni, Ventspils, as well as Jelgava and Valmiera city.

[16] Review by the State Police on Juvenile Delinquency, Child Victims, Situation in the Field of Traffic and Prevention in 2012. Available: http://www.vp.gov.lv/?id=305&said=305

## 3. Children's Rights to Health Care Free of Charge

According to the Ombudsman's strategy for 2011 - 2013, one of priorities in the field of the rights of the child was the right of the child to State-funded health care. Given that the right to health is a fundamental human right, in 2013 the Ombudsman began research of the content of the Constitution (Section 111) on guaranteed rights to health care.

Section 111 of the Constitution states: "The State shall protect human rights to health and guarantee minimum medical assistance for everyone." Section 3, paragraph 2 of the Medical Treatment Law emphasizes that the child's health care should be a priority. Besides, Section 12, paragraph 2 of the Law on the Protection of the Rights of the Child states that the child has a right to free health care, which is provided by the national program.

Until December 31, 2013, the content of this State program was specified in the Cabinet Regulation No. 1046 of December 19 "Organization and Funding of the Health Care". From January 1, 2014, other regulation is applicable – the Cabinet Regulation No. 1529 of December 17, 2013 "Organization and Funding of the Health Care".

Article 24, paragraph 2 of the UN Convention on the Rights of the Child (hereinafter - the Convention) states that the Member States recognize the child's right to the highest attainable standard of health protection system services and means for treatment of illness and rehabilitation of health. The Member States strive to ensure that no child is deprived of his right of access to such health care services.

The Convention requires Member States to implement Article 24 "in the framework of the maximum of its available resources and, if necessary - even in the framework of international cooperation". The Convention does not mandate that health care for children must be completely free of charge, however, the manual for implementation of the Convention in practice states that Article 24 should be interpreted in the context of the principles set out in Article 6 on the right to life, survival and development to the maximum possible extent[17].

[17] Hodgkin R., Newell P. Implementation Handbook for the Convention on the Rights of the Child. UNICEF, 2002, p.344, p.652.

According to the National Program[18], the Republic of Latvia provides children with the following health care services free of charge:

1. Family doctor/ pediatrician care;
2. Preventive health screenings;
3. Vaccination;
4. Expert consultations;
5. Laboratory tests;
6. Dentistry and dental hygiene;
7. Rehabilitation;
8. Medications.

In order to receive state-funded health care services and expert consultations, you need a referral. To receive it, parents have to turn to the child's family doctor or pediatrician. Such referral is not necessary to access specialists of direct access. For example, children may attend pediatricians, oculists, gynecologists, child surgeons and dentists without referral of the family doctor.

An important condition for a child to receive state-funded health care services - doctor or medical institution should have a contractual relationship with the State or National Health Service (hereinafter - NHS). Given that all medical personnel and institutions have not concluded such contracts with the State, the availability of specialists (i.e. parents' freedom to choose a specialist for their child) decreases.

The State pays for vaccination of children according to the vaccination schedule, for example, on the second to the fifth day of the child's life he is vaccinated against tuberculosis; when he is two months old, he receives the combined vaccine against diphtheria, tetanus, pertussis, poliomyelitis, Haemophilus influenzae type b infection and hepatitis B, as well as the first dose of pneumococcal vaccine. Besides, the State pays for vaccines against tick-borne encephalitis for children from the age of one if their registered address is located in a tick-borne encephalitis endemic area, i.e. in an area where, according to epidemiological surveillance data provided by the Infectology Center of Latvia, the highest incidence of tick-borne encephalitis is observed.

[18] Types and amount of medical services paid from the State budget, as well as the procedures for payment for these services are prescribed by Cabinet Regulation No. 1046 of December 19, 2006 "Health Care Organization and Financing".

Children under the age of 18 are funded by the State for reception of dental services and dental hygiene, as well as for the first consultation of orthodontist. Nevertheless, these specialists also have to be in a contractual relationship with the State.

Besides, the State pays for children all emergency services, treatment of acute and follow-up assistance. They do not have to pay for family medical care and home visits if the patient's place of residence is located in the operating area of the family doctor (area where the doctor carries out his activities).

Detailed information on all state-funded services and medical institutions, as well as specialists who have contracted with the State is available on the website of the National Health Service.[19]

The regulatory framework and the availability of state-funded services may initially give an impression that there are no imperfections in the legislation related to the children's health care and its application, and that the children's health care really is a national priority. However, analysis of the situation as a whole shows that there are several significant imperfections in the field of children's health care, such as insufficient number of contracts with medical practitioners that provide state-funded health care services, as well as the amount of funding provided by the State.

It means that the health care institutions provide the state-funded health care services in line with funding (quota) defined in the contract concluded with the State. If the number of patients is higher the quota, they are registered for a visit in the next month, which creates a long waiting list to receive the relevant service. On the other hand, if the patient wants to receive this service sooner, it becomes a payable service.

In practice, there are situations when a child needs an immediate consultation with a specialist, but his fastest option is to wait for several months. In such situations, parents often choose to visit a specialist for a fee, which is violation of the child's right to free health care because the lack of availability of the service has affected this choice of parents.

Long waiting lists and quotas are also important reasons why parents are forced to take their children to dentists or other professionals whose attendance cannot be delayed for several months for fee, if consultation is needed immediately.

[19] Available: http://www.vmnvd.gov.lv

According to information gathered by the National Health Service, children have to wait 76 to 87 days to visit cardiologist, 87 days – ergotherapist, 90 days – rehabilotologist. To visit a state-funded physiotherapist, children have to wait 120 days.[20]

Most often, parents seek expert assistance when it is already an acute need, and, in some cases, such unnecessary delay can endanger the child's health and future development. For example, as recognized by physicians, a physiotherapist should be immediately visited in case of stop in the motor development of the child (e.g., the child has started creeping, but the stopped it). An immediate physical therapy is also needed if the child has such birth defects as leaning neck, hip dysplasia, clubfoot, or damage of shoulder nerve net (brachial plexus). However, if children have to wait 120 days to receive state-funded physical therapy, it can be assumed that the State does not provide children with the health care free of charge to the full extent.

Thus, one of the main disadvantages in the field of children's health care is insufficient funding. According to information provided by the National Health Service, public resources for providing health care services are planned and divided by service programs, different groups of patients are not separated (children do not form an individual group as well). In the secondary ambulatory health care, it could be considered that, for example, preventive visit of oculist is a separate service program for children, because this service is provided only for children.

Public funding resources for compensation for medications and medical devices are also planned in general order according to the number of patients with certain diagnoses, but without separating individual groups, such as children, pregnant women, etc.

According to information provided by the National Health Service, the amount of public funding resources for health care services is planned basing on information provided by medical institutions. Besides, the amount of funds can be adjusted in line with financial resources of the current year in the State budget available for paying for health care services.[21]

The Ombudsman considers that this procedure should be re-evaluated because the Medical Treatment Law identifies children as one of the priority groups of

[20] Available: http://www.vmnvd.gov.lv/lv/469-veselibas-aprupes-pakalpojumi/gaidisanas-rindas-planveida-arstniecibai-ambulatoras-iestades

[21] Letter No. 04.1-22/9595 of October 31, 2013 by the National Health Service.

patients, therefore, when planning health care budget, a full amount of services should be primarily ensured to priority patients.

## 4. Children's Right to be Listened and Respecting of Their Opinion

According to Article 12 of the UN Convention on the Rights of the Child, the State shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 12 of the UN Convention on the Rights of the Child contains a fundamentally important general principle, one of the fundamental principles of the Convention - respecting the child's opinion.

Besides, according to Article 3 of the Convention on the Exercise of Children's Rights by the European Council, a child considered by internal law as having sufficient understanding, in the case of proceedings before a judicial authority shall be granted, and shall be entitled to request, the rights to be heard and to express his opinion, but in accordance with Article 6, paragraph 'c', the court shall take due account of the views expressed by the child.

These laws cannot be considered as a requirement or compulsory obligation for a child to express his views on the relevant issue. The manual for the implementation of this Convention notes that, in this context, providing the child with an opportunity means offering him an opportunity to be heard. The child has the right to participate in a decision-making process that affects his life and to influence decisions made in relation with him.[22]

The respect of child's view means an active duty to hear his opinion and to take it seriously. In deciding how important should be the child's opinion in the particular case, two criteria should be taken into account - age and maturity. However,

[22] Hodgkin R., Newell P. Implementation Handbook for the Convention on the Rights of the Child. UNICEF, 2002, p.162, p. 652.

the child's age is not the decisive criterion because the Article 12 of the Convention does not specify the child's age for participation in decision-making.

According to Section 20, paragraph 20 of the Law on the Protection of the Rights of the Child, a child shall be given an opportunity to be heard in any adjudicative or administrative proceedings related to the child, either directly or through a lawful representative of the child or through a relevant institution. Section 27, paragraph 4, point 2 of the same Law states that "in selecting the form of extra-familial care, the point of view of the child shall also be taken into account".

National regulation does not directly determine that a due attention should be paid to the child's views and that his opinion should be taken into account in any case related to the child as it is stated in the Article 12 of the UN Convention on the Rights of the Child.

Interpreting literally the Law on the Protection of the Rights of the Child, it can be concluded that, although the child's views are being heard in any case related to him, his opinion is taken into account only in one issue - in selecting the form of extra-familial care. However, the literal method of interpretation is only the first of several methods, and it is not correct to be guided only by the word sense of legislation (*see Paragraph 6 of the Decision No. 2004-25-03 of April 22, 2005 by the Constitutional Court on Termination of Proceedings in the Case No. 2004-25-03*). As hearing but not taking into account the child's opinion is contrary to the Article 12 of the UN Convention on the Rights of the Child, it can be concluded that the child's point of view is important and should not be neglected in any case, especially when it concerns important aspects of his life.

This is also consistent with the recognition of administrative courts that "the child's opinion should be certainly taken into account according to the child's age and maturity. If the child is mature teenager, his opinion must be decisive. If the decision of the court is contrary to the child's opinion, the court should particularly motivate such decision"[23].

During several verification procedures, the Ombudsman has established that the child's views are formally heard in line with Section 20, paragraph 2 of the Law on the Protection of the Rights of the Child. The Orphan's Court finds out the child's

[23] Judgment of September 23, 2008 by the Administrative Cases Department of the Supreme Court Senate in the case No. A42527807, SKA-457/2008, [12].

opinion, mentions it in the decision, but does not take into account (take decisions contrary to the child's opinion) without any argumentation in the decision.

For example, within the verification procedure No.2013-115-23D, the Orphan's Court made a decision on cancellation of custody of three children and dismissal of temporary guardian. The decision reveals the views of children: the girls asked for possibility to stay in the family of the former guardian stating that they did not want to live in an orphanage. However, the Orphan's Court decided on the placement of children in an institution of social care and social rehabilitation. This decision revealed the opinion of the children, but did not take it into account.

Later, the conclusion made during psychological assessment of children carried out in the institution for extra-familial care showed that the girls' emotional state was identified as unstable because the girls had felt good, they had been loved and cared for in the family of the guardian. The separation from the family and change of the place of residence was painful for the girls. The children looked forward to the day when they would go back to their guardian, because there was still such hope.

Placing of children in the orphanage dramatically and negatively influenced their behavior. One of the sisters became aggressive against her peers, employees and herself. She regularly violated internal rules, was rude and intemperate. The girl became especially aggressive when she was prohibited to communicate with the former guardian.

The Ombudsman established a similar situation in the verification procedure No.2013-130-23B. Because of suspicion of domestic violence, the Orphan's Court decided on removal of a child from his family. During rehabilitation, the psychological assessment of both parents showed emotional violence from the part of both parents and physical violence from the part of the father: in case of disobedience, the parents obliged children to stand in the corner, the father easily slapped with hand. At the same time, the children were emotionally attached to their parents. The children actively expressed not only a desire to return to their parents, but also an anxiety and fear about the possible non-return to home and placing into an institution. The children were happy about meeting with the parents and expressed homesickness. The Conclusion advised to take the children's views on the return to the family into account.

In this case the girls wrote several submissions asking for possibility to participate in the court hearing and expressed desire to return home. The children's request was ignored, and no decision or other document gave analysis explaining why it should be ignored. Besides, no written response was provided to these submissions, which indicates that a child is not perceived as a full-fledged legal entity with the same right to receive response to his submission as a person of legal age.

The UN Implementation Handbook for the Convention on the Rights of the Child emphasizes that children can be invited to testify in court, for example, in matters of custody, if there are special reasons for doing so and if it is obvious that the child will not suffer from it.[24] The Ombudsman has information on rare cases when Latvian courts have wished to establish the child's opinion in person - in court proceedings. Most often, the child's opinion is established through the Orphan's Court. The child is not called to the court, even if he personally has expressed such wish and if the adjudicated matter can have a significant impact on his future life.

The practice indicates that children have the opportunity to be heard through the Orphan's Court in judicial or administrative proceedings they are related to, but these views are not given proper attention, so the children do not have a real opportunity to influence decisions affecting them. Thus, the rights of the child's participation stated in the Section 12 are not fully ensured.

After having established an unjustified ignoring of the child's opinion, the Ombudsman has made recommendations to the responsible authorities to pay due attention to the child's opinion.

## 5. Rights of Orphans and Children without Parental Custody

### 5.1. Children's rights to live in family or familial environment

Ensuring the rights of orphans and children without parental custody has been a topical problem in the State for a long time. According to statistics[25], on January 1, 2013, 8095 children were under extra-familial care, 1889 lived in a child care institution. In line with priorities chosen by the Ombudsman in his strategy for 2011-2013, a special attention was paid to this group of children, because ensuring the

[24] Hodgkin R., Newell P. Implementation Handbook for the Convention on the Rights of the Child. UNICEF, 2002, p. 165, p. 652.
[25] Summary of the Overview on the Work of the Orphans' Court in 2012.
Available: http://www.bti.gov.lv/lat/barintiesas/statistika/?doc=3204&page

rights and efficient protection of these children is largely dependent on their legal representatives (guardians), as well as actions and decisions made by the Orphan's Court.

In addition to the Ombudsman's statutory objectives in the field of the protection of children's rights, in 2013 the Ombudsman continued to work on issues related to the rights of children to grow up in a family, but, if it is not possible, to receive care in a familial environment – living with a guardian or in a foster family.

In order to stricter determine the obligation of the Orphan's Court to ensure the child's right to receive care in a familial environment, the Ombudsman participated in work sessions of the Human Rights and Public Affairs Committee of the Saeima and contributed to the adoption of relevant amendments to the Law on the Protection of the Rights of the Child. The amendments add paragraph $3^1$ to the Section 27 in the following wording: „*Extra-familial care in a child care institution is ensured if a guardian's or foster family's care is not applied to the relevant child. The child lives in the child care institution until the moment when he is provided with a care by a guardian or foster family".*[26]

These amendments were adopted in the wording offered by the Ombudsman, developed taking into account recommendations given to Latvia by the UN Committee on the Rights of the Child.

Until this moment, the orphan's courts could justify their decision on placement of a child into a child care institution with, for example, inability to find a guardian or a foster family. Now, the current legal framework clearly states that extra-familial care in a child care institution shall be provided only in case if the care by guardian or foster care is not applied to the relevant child. Primary, the orphan's courts have a duty to ensure the child's right to receive care in a familial environment - an opportunity to grow up with a guardian or in a foster family. These amendments state that the orphan's courts are obliged to regularly review the decisions on the placement of children into child care institutions and to actively search possibilities for alternative types of extra-familial care.

Similarly to previous years, in 2013 a significant number of submissions were received on the rights of children not to be separated from their parents without a legal basis. Such submissions have been received from all regions of Latvia and their

[26] Amendments to the Law on the Protection of the Rights of the Child, adopted on May 30, 2013, entered into force on July 4, 2013.

contents were often similar – basing on decision made by the Orphan's Court, a child was separated from his family and parents could not restore their custody rights for a long time. In several cases, the Orphan's Court based the decision on the child's removal from the family on Section 23 of the Law on Orphan's Court defining the rights to make an individual decision on the removal of the child care rights from the parents if it is detected that the child lives in conditions that are dangerous to health or life or if further living of the child in the family may endanger his or her wholesome development. The tendency characterizing the practice of the orphan's courts to make individual decisions on separation of the child from his family, raised discussions both in society and among professionals on competences and authority of the orphan's courts.

The Ombudsman considers that it is necessary to keep the right of the officers of the orphan's courts to make individual decisions on removal of the child care rights from parents, guardian or foster family, because such individual decisions are intended to immediately remove the child from conditions that are dangerous to his health or life or endangers his wholesome development. Contrary to decision made by general procedure (collegiate), this kind of decision is made on the basis of limited information and its primary purpose is to protect the child from hazard or risk of violence. The exercise of such individual decision is limited in time, and, in any case, during the next 15 days, the Orphan's Court is obliged to objectively and fully clarify the circumstances of the future possibility of parents to exercise custody of the child.

At the same time, it should be noted that, according to the Constitution, the State and municipality have a duty to protect and support the family and the rights of the parents and the child. The Law on the Protection of the Rights of the Child explicitly defines the obligation of the State and municipality to support the family and to provide assistance in child's upbringing and education, employment and housing. If a family does not provide the child with a favorable environment for his development, the municipality has a duty to help the family, by providing consultation with psychologist, social pedagogue or other professional, by finding a support family or a person of trust for the child who can help to normalize the parent-child relationship.[27]

[27] Article 110 of the Convention, Section 26 of the Law on the Protection of the Rights of the Child.

Thus, the main duty of the State and municipality is to try to remedy deficiencies that threaten children's development, well-being and safety in the family, by looking for alternatives, not by separating the children from their family. Separation should be only the last alternative, if it is not possible to prevent circumstances unfavorable for the child's development under the care of the parents, because it is in the child's best interests to live with his parents. It is determined by the Section 27, paragraph 2 of the Law on the Protection of the Child: „[..] *the child shall be separated from the family if it is not possible to allay the circumstances unfavorable to the development of the child if he or she remains in the family*".

Undoubtedly, the decision of the Orphan's Court to terminate the child custody rights restricts the fundamental right to family life, therefore, for justification of such interference with the family life, the Orphan's Court, in any case, before making an individual decision on termination of parental custody rights and separation of the child from his family, should evaluate the proportionality of such restrictions of the fundamental rights. So, it is necessary to evaluate all circumstances to find out whether it is possible to prevent the hazards in case of leaving the child in his family, that is, whether it is possible to achieve the goal by using less restrictive means. The Constitutional Court has also found that in cases where an institution has to issue a compulsory administrative act, the principle of proportionality should be taken into account, particularly in cases where a government's action restricts the fundamental rights of a person.[28]

A decision of the Orphan's Court to separate a child from his family is the last mechanism for protection of the child's rights and legal interests which is allowed only if a thorough analysis has showed that it is not possible to allay circumstances unfavorable for the child's development if he remains in the family.

The European Court of Human Rights (hereinafter - the ECHR) has also established recognition: to apply such tool, it is necessary to identify danger that cannot be prevented. In cases where the danger is obvious, it is not necessary. However, if it is possible to listen to parents and discuss the need for such tool, extraordinary measures are not necessary, especially if such danger has existed for a long time.[29]

[28] Decision by the Constitutional Court of February 28, 2007 in the case No.2006-41-01, Paragraph 11.
[29] *Haase v.Germany*. [2004] ECHR 11057/02, para. 99.

In some verification procedures initiated to evaluate the action of the Orphan's Court, the Ombudsman concluded that the Orphans' Court, before making an individual decision on termination of the child custody rights and separation of the child from his family, did not evaluate the proportionality. Thus, the procedure and the way the Orphan's Court responded to possible violations of the child's rights in his family and to the need for assistance to parents in the child's upbringing, were recognized as inappropriate for the child's best interests.

The issue related to the evaluation of the action of the Orphan's Court when making individual decisions, was also raised in the conference organized by the Latvian Association of the Orphan Court's Workers "Parental Irresponsibility. Child's Separation from the Family", where a representative of the Ombudsman's Office made a presentation on this issue. This issue was also discussed in the Ombudsman's Annual Conference in the context of problems identified by the Ombudsman regarding social work with families.

### 5.2. Ensuring the children's rights to extra-familial care and supervision of guardians

In line with Section 32 of the Law on the Protection of the Rights of the Child, during extra-familial care the child has rights to such circumstances that are favorable for his development and welfare, and that can support efforts of the child to be independent.

The child's guardian, foster family or child care institution has a duty to take care of the child in accordance with his rights and best interests. Given that extra-familial care is often applied to children from disadvantaged families where no appropriate care is provided, as well as to children with health and developmental disorders, behavioral problems, children who are victims of violence, the care and support must be appropriate and aimed to fully meet child's needs. It is also important to ensure that during extra-familial the child has personal and direct relations with his parents. The guardian, foster family and child care institution has a responsibility to promote parent-child communication and reunification of the family.

In practice, however, actions of the provider of extra-familial care (guardian, foster family, child care institution) are not always focused on ensuring the child's best interests. There are cases where guardian, foster family or child care institution

does not comply with the statutory obligations related to representation of child's care, supervision and interests, but in situations when faced with difficulties, lack of information or understanding how to solve the problem, they do not seek appropriate assistance.

For example, during evaluation of the verification procedure No.2013-75-23D, Ombudsman found that, instead of turning to the municipality, asking for elaboration of program of behavior social correction for a child with behavioral problems and active participation in the implementation of this program, the guardian – the head of the child care institution – made a decision to radically change the child's living environment by choosing a boarding school in Balvi region, although the child's place of residence was in Ventspils region.

In line with Section 35, paragraph 2 of the Law on Orphan's Court, the duties of the guardian of a child placed in a child care institution shall be performed by the head of such institution. Section 255 of the Civil Law (hereinafter – CL) states that a guardian especially shall provide for the upbringing of his or her ward with the same care as conscientious parents would provide for their children. In order to ensure protection of the child's rights and legal interests in relations with the child's guardian, the Orphan's Court has to perform a constant supervision of the guardianship.

Although in the present case, the head of the child care institution made the decision to change the school with a permission of the Orphan's Court, the Ombudsman considers that this solution was against the child's interests, because the change of educational institution cannot replace preventive work with a child who needs behavioral correction.

This verification procedure revealed several other violations: violation of the child's rights to development because the municipality did not perform the preventive work with the child for a long time (child's behavioral correction); violation of the child's rights to education in the nearest possible location to his place of residence; violation of the child's rights to family and private life, because by providing education in a boarding school which is inappropriately far from home, the child had obstacles to maintain personal relations and direct contacts with parents, relatives, friends and persons of trust.

Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – ECPHRFF) protects rights to create and

develop relationships with other persons. ECHR, while adjudicating cases on possible violations of Article 8 of this Convention, declared that for a young person who does not have its own family, the maintenance of social ties with other people and the society in which this person lives is an important element of private life.[30]

The provider of extra-familial care behaves unacceptably and illegally when he does not react in situations where rights of a child are endangered. Such failure to act by a guardian – the head of a child care institution - was identified during adjudication of the verification procedure No. 2013-130-23B. According to materials of the verification procedure, a child fell out of a swing in a child care institution and got an arm injury but did not receive necessary emergency medical treatment for twenty-four hours. The child spent all night in pain and his request to call the ambulance was not satisfied. The child was delivered to a medical institution by his parents, doctors diagnosed high temperature (38.2 ° C) and fractures of the two bones of the arm. Although Section 71, paragraph 1 of the Law on the Protection of the Rights of the Child states that managers and employees of childcare institutions 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, in this particular case the employees of the child care institution, by not delivering the child to a medical institution, created a threat to his health and violated the child's right to appropriate care. In this case, it was also established that the child had probably suffered from emotional and physical violence by his peers in this child care institution for a long time, but the employees of the institution had not acted properly to prevent this violence.

It is also considered to be against the child's interests that, after being informed of the fact that a child is using substances hazardous to health, nothing is being done to help him, to motivate him to change harmful habits and to protect him from threats to health and safety.

Sections 48 and 49 of the Law on the Protection of the Rights of the Child state that a child may not use alcoholic beverages, narcotic, psychotropic, toxic or other intoxicating substances. A child shall be protected from smoking, the use of alcoholic beverages, narcotic, psychotropic, toxic and other such intoxicating substances. Thus, where it becomes known that a child is using illegal and harmful

[30] *Maslov v.Austria*. [2008] ECHR 1638/03, para 63.

substances, his guardian, foster home or child care institution is obliged not only to negotiate with him, but also to look for a help of a professional - a psychologist, an addiction specialist, etc.

In such cases, it is also recommended to evaluate the need for elaboration of a program of behavior correction program for the child in collaboration with the municipality, and it is possible to impose obligation to attend a psychologist and addiction specialist, because practice has shown that under the influence of substances harmful to health the child's behavior often worsens and it can lead to illegal activities.

In the case referred to above, the head of the child care institution, having received information that a child was using illegal and harmful substances, imposed restriction for several months on the right to dispose of the personal money in order to prevent it from being spent on alcohol and other intoxicating substances. Although in the present situation, taking into account the reasons for the restriction of the child's right to deal with personal money, it was recognized that such restriction of the rights could be imposed to protect the child from harmful substances, after evaluation of the proportionality of this restriction the Ombudsman concluded that it was not reasonable because the objective could be achieved by less restrictive means, for example, the child could use the money by making purchases together with the teacher.

It should be noted that personal money provides the child with opportunity not only to satisfy his personal needs, but also helps to learn how to handle it, to plan spending and shopping. It is especially important to teach it to a child under extra-familial care, thus contributing to his training for the beginning of independent life. Taking into account the above mentioned information, the Ombudsman considers that the restriction for the child to deal with personal money in the present case was inappropriate.

As in previous years, during the reported period several persons turned to the Ombudsman's Office concerning issue of ensuring child's and his parents' rights to communication when the child is under the extra-familial care. It was found that the most common reason why parents cannot communicate with their children is the distance between the place where the child is receiving the service of extra-familial care and the parents' place of residence, as well as unwillingness of the guardian or

foster family to provide communication with parents and even trying to create a negative impression of them.

The child's and his parents' rights to maintain personal and direct relations are stated by the Civil Law. Section 181, paragraph of this Law emphasizes that this right shall be applicable also if the child is separated from one of the parents or both of the parents. The right of a child in extra-familial care to meet his parents is defined in the Section 33, paragraph 1, point 1 of the Law on the Protection of the Rights of the Child. Section 44, paragraph 2 of the same Law states that a foster family, guardian and a child care institution shall inform the parents about the development of the child and shall encourage the renewal of family ties.

In line with Section 39, paragraph 2 of the Law on Orphan's Court, an Orphan's court shall supervise how a guardian, a foster family or an institution of long-term social care and social rehabilitation promotes the communication of the child and the parents. Basing on the above mentioned information, the Orphan's Court, providing extra-familial child care, has to take into account the location of the provider of extra-familial care, because a long distance between the place where the child is receiving extra-familial care and the place of the residence of his parents may create obstacles to the exercise of the rights and not to promote reunification of the family. The Orphan's Court has to evaluate the activities of the guardian or foster family in cases where the information is obtained about trying to create negative child's opinion about his parents and creating obstacles to the parents to maintain personal and direct relations with the child, because such behavior of the guardian or foster family is contrary to the primary objective of the extra-familial care - the further reunification of the family.

According to the CL, a guardian replaces parents of a child, so it is his obligation to take appropriate care of the child and his or her property and to represent the child in his personal and property relations. In line with Section 269 of the CL, a guardian shall administer the property of a ward with the same care and conscientiousness as he or she, as a good proprietor, administer his or her own things.

In line with Section 331 of the CL, the Orphan's Court shall do all that is required by the interests of the minor. Thus, the Orphan's Court is obliged to ascertain whether the child's guardian manages the child's property according to his interests and in line with regulatory acts. If the child owns an apartment, the guardian and the Orphan's Court have a duty to take care of it to prevent deteoriation of this property,

to keep it in the child's possession and to cover all necessary payments for this apartment. If the Orphan's Court finds that the guardian does not to meet his obligations, and that the rights and interests of the child, while in the care of the guardian, are being threatened, it has to carry out measures provided by the Section 32 of the Law on Orphan's Courts. It means that if mistakes in the accounting submitted by a guardian or actions unfavorable to the interests of a child have been detected, an Orphan's Court shall: 1) provide the guardian with the relevant directions; 2) take a decision regarding the suspension of the guardian; 3) take a decision regarding the dismissal of the guardian. Besides, if the actions of a guardian have caused losses to the ward, for which the guardian is responsible, an Orphan's court shall bring the relevant action in a court.

In practice, there are still occasions when a guardian does not manage properly the child's property which results in losses to his or her economic interests. The Orphan's Court, whose duty is to protect the child's rights and interests in his relationship with the guardian, is superficial in supervision of the activities carried out by the guardian. Such situation was found during the verification procedure No.2013-58-23D.

A mother of a child turned to the Ombudsman's Office informing him that the child's guardian had accumulated a large debt for the daughter's apartment. In order to cover the debt, the guardian asked the permission of the Orphan's Court to sell the apartment owned by child and to buy another one, and the Orphan's Court allowed it. The mother stated that the guardian performed such activities repeatedly with the consent or the Orphan's Court. In the same way, the guardian had changed the previous apartment of the child to a smaller one. Thus, there was a risk that as a result of the guardian's activities related to repeated change of apartments, in the future the child could be left without his property.

The Orphan's Court had information about a debt of an apartment since 2009, which exceeded 660 Latvian lats. In March 2013, the debt had grown to 2 105,93 LVL. The Orphan's Court considered that the creation of this debt for the apartment was affected by insufficient family income, because the guardian was not employed for a long time due to unemployment and her state of health, besides the child was often sick, therefore they needed medications for his treatment and good nutrition. The Orphan's Court provided information that the guardian had repeatedly turned to

the Social Department asking for help, but it was refused. Thus, the Orphan's Court did not find any neglect or abuse in the activities of the guardian.

Basin on evaluation of the information provided by the Orphan's Court and the Social department during the verification procedure, the Ombudsman concluded that the activities performed by the Orphan's Court relating to the behavior of the guardian in looking for solution of the problem had been insufficient. As a result, the debt for the apartment continued to grow, and caused economic harm to the property interests of the ward. The Orphan's Court had not critically analyzed information provided by the guardian stating that the social support had been repeatedly refused to the family, and had not verified the information by requiring credible evidences from the guardian or Social department.

Factual circumstances indicated that the guardian had not turned to the Social Department with a submission asking for help in paying the debt for the apartment, therefore the Social Department did not even assess possibility to provide such assistance. The Ombudsman criticized the conclusion of the Orphan's Court that the guardian had been actively involved in solving the problem, including cooperation with the Social department, because the materials of the case indicated that in 2010 and in the period from December 1, 2011 to January 14, 2013 the guardian had not turned to the Social Department for assistance.

Thus, it can be concluded that the Orphan's Court had only partially carried out its duties in relation to supervision of the custody. It had evaluated the situation with the debt for apartment basing mainly on the information provided by the guardian and had not used the possibility to cooperate with the Social Department of the municipality to find out objectively all important circumstances and facts about the family's solvency and opportunity to solve the problem of debt repayment in the Social Department of the municipality. Lack of wholesome and objective information about all circumstances influenced behavior of the Orphan's Court and hindered to make decisions on the protection of future child's property rights and interests according to the situation and in the best possible way.

After having found violations of the rights of the child, the Ombudsman made recommendations to specific Orphan's courts inviting them to perform all activities necessary for ensuring children's rights and interests.

### 5.3. Support to guardians and foster families

To change the situation concerning the large number of children in child care institutions, alternative services of extra-familial care should be available. In order to promote the availability of such alternative care services (e.g. providers of familial care - foster families and guardians), an appropriate support system should be created. It must include an opportunity for foster families and guardians to receive training of high quality and to improve their knowledge about child care, they should be given an opportunity to receive psychological assistance for free, and receive sufficient funding to allow them to cover all costs related to the child maintenance. Foster families and guardians should receive adequate reimbursement and social guarantees for exercising the child care duties.

In 2011 already, looking at potential problems that hinder ensuring of the rights of children to receive care by a guardian or foster family, the Ombudsman concluded that it was related to the lack of foster families and guardians, which was affected by insufficient support by the State and municipalities. The government and the Saeima were informed about the need to review the amount of remuneration for guardians and foster families, and to increase the amount of minimal allowance for child maintenance by adjusting it to the actual expenses, as well as to improve the regulatory framework for ensuring social guarantees to guardians and foster families.

The Ombudsman is still receiving submissions from guardians that are pointing to the lack of family material resources that affects the guardian's ability to provide adequate child care (food, clothing, health care, education). The most common difficulties are related to the cost of child health services that are only partially paid by the State or not paid at all (e.g., orthodontic treatment, vision correction). If the health and development of the child require special care, the expenses increase.

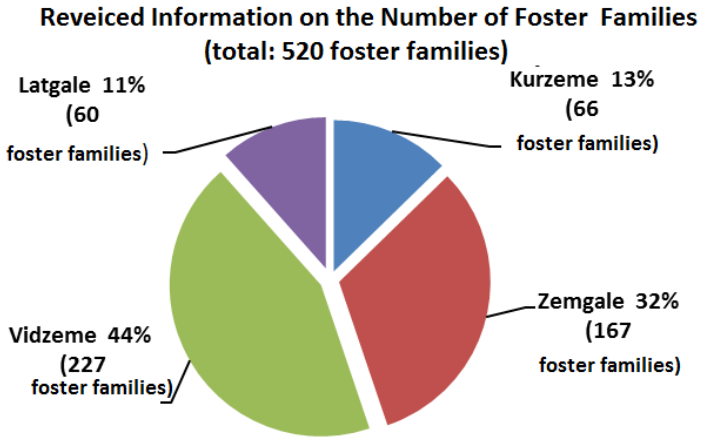
Although in cases when a person lacks material resources for satisfying his fundamental needs, he has rights to receive municipal assistance, in practice possibilities to receive such social assistance in municipalities is often limited. Contrary to Section 258 of the CL stating that a guardian does not have a duty to maintain the ward at his or her own expense, a guardian is obliged to maintain the child at his own expense, which results in worsening of his material conditions.

In order to facilitate the adoption of appropriate amendments and to increase the amount of financial support to foster families and guardians, in 2013 the

Ombudsman participated in work sessions of the Committee of Social and Employment Matters Committee.

Given that a part of allowances is paid to foster families by municipalities, material situation and needs of the foster families in different regions of Latvia differ significantly.

In order to clarify the situation of foster families and to create a general "portrait" of foster families, the Ombudsman's Office conducted a survey of Latvian orphan's courts in June 2013. The Ombudsman's request to participate in the survey and to provide updated information about foster families until June 1, 2013 was sent to all 146 Latvian orphan's courts. 123 orphan's courts replied to the questionnaire. Total information was given on 520 foster families.




The aim of the survey was to establish the number of foster families in each municipality and region of Latvia, as well as the age, education, type of income, place of residence, remuneration paid by the municipality for exercise of foster family's duties and amount of child maintenance allowance of persons who have the status of foster families.

The survey results show that in nearly half (45%) of all foster families this status is applied to one person. In the remaining 55% of the foster families, this status is applied to spouses.

Gathering information on place of residence of foster families, it was found that approximately 63% of foster families live outside the city and 37% is urban

population. The same division relates to the type of housing: 63% of foster families live in private houses and 37% - in apartments.

Most foster families live in the administrative territory of Kandava region - 75, in Riga - 52, in Tukums region - 30 foster families.

According to the regulatory framework[31], the status of foster family may be granted to spouses (a person), if at least one of them (the person) is in the age of 25 to 60. Exceptionally, if it is in the interests of the child, the status of foster family may be granted to spouses (person) who do not meet these age requirements. The data show that most of persons exercising the functions of foster families are 41 - 50 year old. These persons form 38.27% of the total number of foster families. The second place (36.7%) is occupied by 51-60 year old persons.

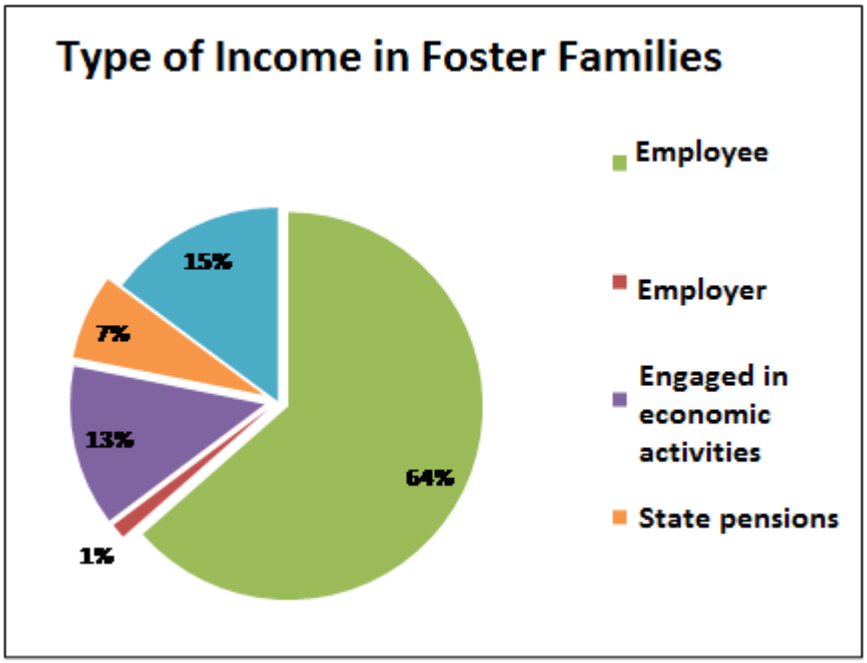
According to the survey, the age of persons having the status of foster family was:

- younger than 30 years – 1%;
- 31-40 years – 17.55%;
- 41-50 years – 38.27%;
- 51-60 years – 36.7%;
- older than 61 – 6.48%.

The data also show that the duties of foster family are often undertaken by persons with secondary and higher education, respectively, 51.63% and 28.01%, while in the rarest cases these persons have basic education - 3.58%.

The received responses on types of income of the foster families (including national and municipal social allowances) showed that 64% of the 520 foster families were employed. Economic activities were performed by 13% of foster families and only 7% received state pensions. 15% of foster families had no income from employment or state pensions, they were farm owners, housewives, unemployed persons, etc.

[31] Regulation No. 1036 by the Cabinet of Ministers of December 19, 2006 „Regulation on Foster Family", Point 11.




According to the Law on State Social Allowances and Section 2 of the Cabinet Regulation No. 1549 of December 22, 2009 "Procedures for the Granting and Disbursement of the Remuneration for the Fulfilment of Foster Family Duties", in 2013 the remuneration paid by the State to foster families, regardless of the number of children, was LVL 80 per month. The allowances for child's food, clothing and soft furnishings are paid to foster families by the municipality.

The amount of allowance for a child may not be less than minimum amount of maintenance allowance for a child determined by the Cabinet[32], which in 2013 was LVL 50 per month for children until the age of 7 and LVL 60 for children in the age of 7 to 18.

According to the survey results, most municipalities ensure higher maintenance allowances for children. The biggest allowance – LVL 180 per month – was paid by the municipality of Liepaja City and the municipalities of Iecava and Olaine regions.

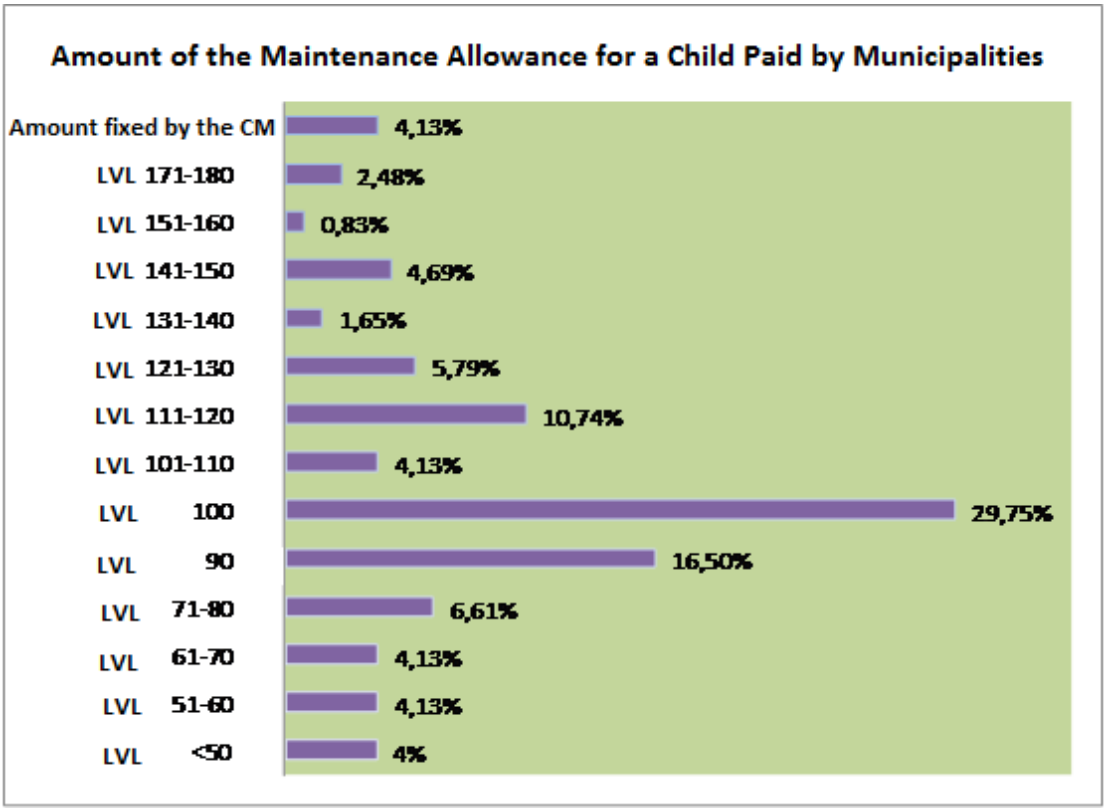
29.75% of the responses received indicate that the municipal maintenance allowance for a child was 100 per month, while 16.5% of municipalities paid LVL 90 per month. Several municipalities determined the amount of maintenance allowance for a child in percentage rate, in dependence on the minimum wage in the State. Thus,

[32] Regulation No. 1036 by the Cabinet of Ministers of December 19, 2006 „Regulation on Foster Family", sub-paragraph 43.1.

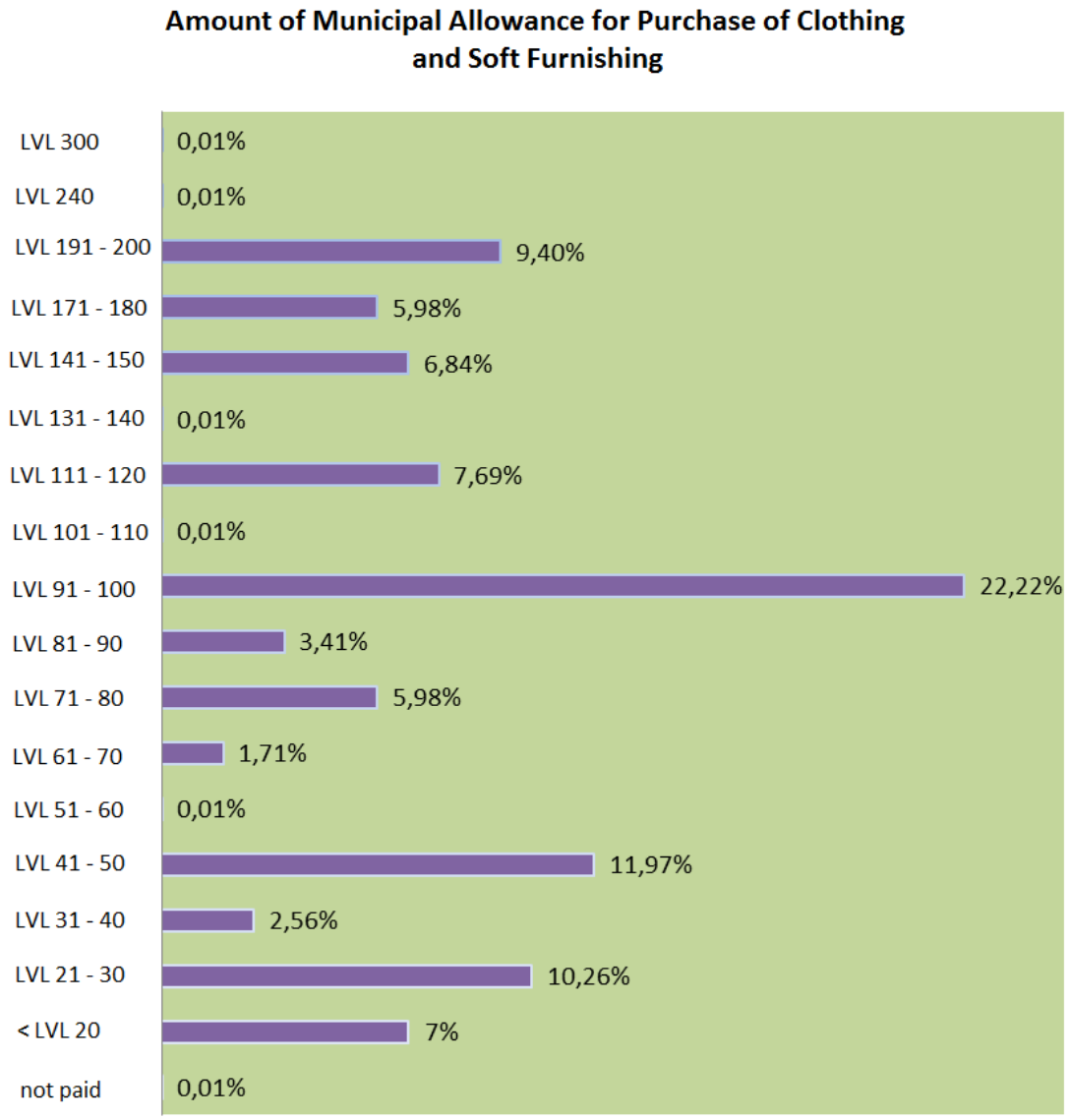
an increase of the minimum wage set by the CM increases the amount of the allowance as well.

Approximately four percents or five municipalities paid the municipal allowance in accordance with the minimum amount set by the CM. The same number of municipalities paid allowance of LVL 50 or even less. Thus, according to information received in 2013, the maintenance allowance of LVL 50 for a child was paid by Karsava, Ropazi and Varkava regional municipalities.

Municipality of Balvu region paid maintenance allowance of only LVL 45, while in Naukseni region the amount of this allowance was only LVL 30 per month, which does not comply with regulations of the CM.




The data on the amount of allowance paid by the municipality for purchase of clothing and soft furnishings are very different. The amount of this allowance varies from LVL 5 up to LVL 300. In addition, several municipalities pay this allowance once when placing a child in a foster family, but at the same time there are municipalities that pay this allowance regularly, i.e., on a monthly or quarterly basis.



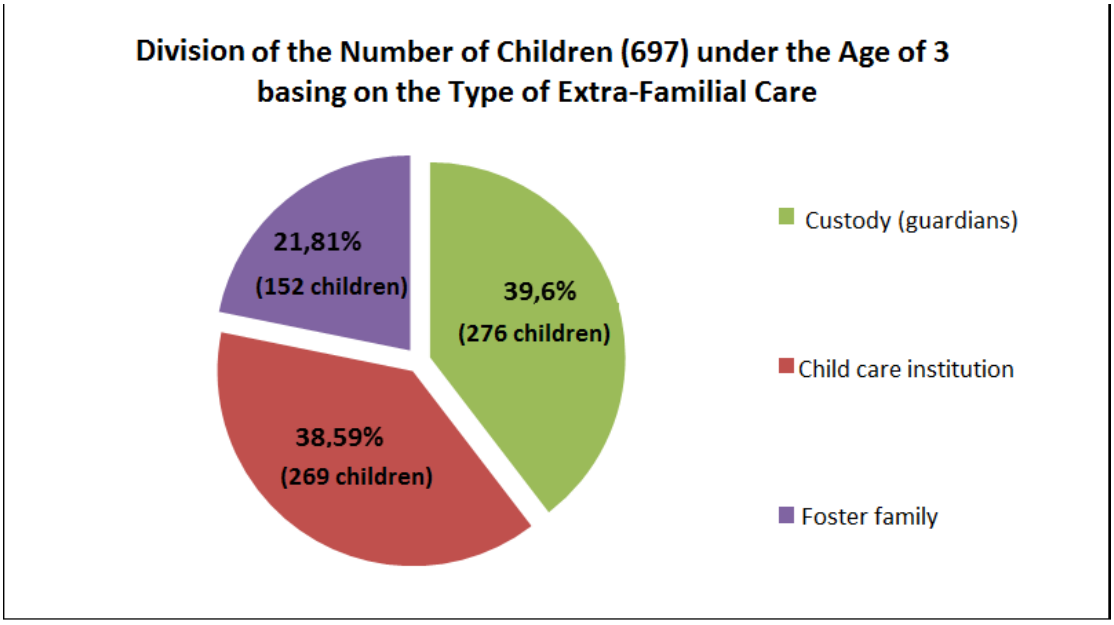

Having summarized the results, the Ombudsman concluded that the amount of allowances paid to foster families is low and insufficient to ensure the child's needs. Only in some cases - about 20% - the municipalities provide the necessary funding.

The survey also reveals that several municipalities have not provided allowances for child maintenance and purchase of clothing and soft furnishings in their binding regulations. The orphan’s courts stated that fixing of such allowances was not necessary because there was no foster family in the municipality. At the same time, according to the data, the fact that there is no foster family in the municipality does not mean that there is no demand for this type of extra-familial care. This fact is confirmed by the information provided by the Orphan's Court on the number of

children placed under extra-familial care, including children who are placed in a child care institution.

In the framework of the survey of the Orphan's Court on foster families, information was received about the number of children under extra-familial care and their division basing on the types of care. Summarizing all the responses received, information was obtained about 7606 children who were under extra-familial care on June 1, 2013. 60.56% or 4606 children of the total number of orphans or children left without parental care lived with a guardian, 24.44% or 1859 children were placed in a care institution and only 15% or 1141 children lived in a foster family.

39.6% or 276 children of the total number of children under extra-familial care until the age of three (697) lived with a guardian, 38.59%, or 269 children were placed in a care institution and only 21.81% or 152 children received care in a foster family.




In assessing the data on the number of children under extra-familial care, it can be concluded that availability of foster care is not sufficient and is the less used type of extra-familial care. Statistical data on young children shows that there are still many children who are placed under institutional care - more than a third of the total number.

The Law on the Protection of the Rights of the Child states that municipality is one of the subjects responsible for child protection, it is obliged to ensure extra-

familial care for those children, who for a time or permanently are without their own family, or who for their own best interests may not be left in their own family. Thus, it can be concluded that the municipality, in order to ensure the rights of children under extra-familial care to grow-up in familial environment, i.e. to receive care by a guardian or foster family, has to provide availability of this type of care for children.

The Ombudsman considers that it is important for municipalities to be interested in promoting an increase in the number of foster families. For this purpose, the municipality should take the first step and clearly determine what allowances, discounts or other assistance and to what extent it would give to people who want to become a foster family and take care of children. There are municipalities that can be mentioned as a good example because, in addition to the mandatory allowances, they pay additional sum of money to the foster families. Such municipalities are, for example, Jekabpils, Riga, Salaspils, etc.

Similarly to foster families, municipalities may also support guardians because, due to the lack of funding, this group is disadvantaged if compared with foster families. Taking into account the fact that custody-related costs are fully paid by the State budget[33], it can be seen in practice that municipalities often do not want to pay additional allowances for guardians. There are even cases of lack of understanding about obligation of the municipality to support and especially help families that provide child custody.

For example, the verification procedure No.2013-116-18AA showed that a municipality formally followed the law in deciding to refuse registration of a guardian and her three grandchildren that were placed under her guardianship for reception of assistance by the municipality in solving the housing issue. The municipality based this refusal on the fact that the guardian family was not a large family because there were less than three children under the natural custody of the guardian.

The children's mother had died, so their grandmother was appointed to be their guardian, besides the children had lived with the grandmother even before their placing under extra-familial care. According to the binding municipal regulations, the right to register for assistance in renting of place for living is primarily given to low-income persons who have three (or more) children under their natural custody and who are renting inappropriately small apartment. The guardian had repeatedly

[33] Law on State Social Allowances, Section 3.

complained to the municipality, providing information that her family of four people was using a one-room apartment in a poor technical and sanitary condition, with no facilities and insufficiently large number of occupants. The family was recognized to be poor, the guardian was determined to have disability therefore her own capabilities to deal with the housing issue were limited.

Taking into account the circumstances of the actual situation, the Ombudsman concluded that, due to binding regulations of the municipality on the basis of which the municipality refused to register the guardian's family for assistance in solving the housing issue, the children of this family were placed in a worse position than they would have been, if their mother would be still alive. The place of residence of the guardian's grandchildren (as well as the place of residence of their mother) had always been a municipal apartment rented by the guardian, therefore, if the children's mother had not died, the children would have been under her natural custody and the family could have been registered for assistance in renting the place of residence. In this case, the municipality should have evaluated the individual circumstances and should have taken into account that the children would keep rights to use the relevant apartment even after termination of extra-familial care. The Ombudsman invited the municipality to reevaluate the problem of family registration for assistance in solving the housing issue. The municipality postponed such reevaluation until adoption of appropriate amendments to the binding regulations that would regulate similar situations.

Another practice showed that, compared to maintenance costs of children in institutional or foster care, guardian's care has the least impact on the municipal budget. Therefore the Ombudsman considers that, in order to fully ensure the right of children to proper life conditions and care in guardian's family, the municipalities should be interested in paying more attention to support guardians by providing them with the necessary psychological, social, financial and other assistance. In some cases, not providing timely assistance may even increase the expenditures of the municipality in the future regarding the relevant individuals and children, besides it can have a negative impact on the municipal budget in general.

The Ombudsman will continue to control the issue of the provision of necessary support to foster families and guardians in order to resolve it and improve the situation as soon as possible.

# 6. Topicalities of the Division of the Children's Rights

## 6.1. Statistics and general overview

In Latvia, there is no special ombudsman for protection of children and no special institution for ensuring the functioning of such representative of children. Thus, the Ombudsman has a function to protect the rights of children. The Ombudsman's Office has established the Division of the Rights of Children, and its lawyers work exclusively with issues related to the rights of children.

In 2013, the Ombudsman's Office received 1 131 submissions on issues related to the rights of children, including possible violations. 173 of these submissions were in written form, while 958 of them were in oral or electronic form not signed with a secure electronic signature. In 2013, in order to clarify the circumstances and to deal with submissions of individuals, 37 verification procedures were initiated.

In 2012, the total number of submissions was 665, 139 of them were written and 526 were oral and electronic. Thus, compared with the year 2012, the number of submissions has increased by 466 or 70.1%.

In relation to the Ombudsman's activities in actualization of free education and in making amendments to the Law on Education in 2013, there was a significant rise in the number of submissions on the rights of children to receive the basic education free of charge. 254 submissions were received regarding this issue. The second largest number of submissions - 163 – was received in relation to the rights of children to grow up in a family (for example, the exercise of rights to communication, rights not to be separated from the parents for no good reason, restoration of custody rights, etc.).

61 persons have turned to the Ombudsman's Office in relation to the rights of children to receive pre-school education free of charge, the same number of submissions was received regarding issues of orphans and children left without parental care. 55 submissions were received in relation to child maintenance claims (for example, maintenance payments in case of divorce, the right to ask the court for temporary decision, the amount of maintenance payments and modification of this amount, carrying out of the decision, etc.).

Compared to the statistics of submissions of previous years, the following issues are still topical: the right of children to grow up in a family (94 submissions in

2012, 163 submissions in 2013), the rights of orphans and children left without parental care (8 submissions in 2010, 29 – in 2011, 45 - in 2012, 61- in 2013). There is a slight decrease in the number of submissions related to maintenance payments (from 73 submissions in 2012 to 55 submissions in 2013). The number of submissions related to the rights of families with children to receive a municipal social assistance has remained approximately at the level of the previous year (38 – in 2012, 32 – in 2013). Individuals have more often asked to provide information on how to handle a particular legal situation (96 submissions in 2010, 42 - in 2011, 19 – in 2012 and 47 – in the reporting period).

In 2013, the Ombudsman continued monitoring visits in the municipalities of Latvia started in 2012. The officials of the Division of the Rights of Children of the Ombudsman's Office participated in all municipal monitoring visits, during which a particular attention was paid to ensuring the rights of children and recommendations were made to improve the situation. During the monitoring of municipalities, a special attention was paid to the availability of special educational programs, individual preventive work with children[34], social work with at-risk families, activities set by municipalities to support foster families and guardians, as well as application of coercive educational means in the work of municipal administrative committees.

The monitoring visits of municipalities revealed several positive examples, e.g. the municipality of Jelgava has set additional remuneration for foster families. The amount of this remuneration for one child is LVL 100 per month and additional LVL 50 per month for each new child placed in this foster family.

If the Ombudsman establishes violations of the rights of the child or violation of the principle of good administration, he makes recommendations for institutions. For example, schools were recommended to improve internal rules relating to the use of learning materials; social services were informed about the rights of parents to get acquainted with all materials relating to their child because the parents are not the third party in relation to their children; hospitals received recommendation on keeping the correspondence addressed to a child locked and transferring it to the subjects defined by the law; municipalities received recommendations relating to ineffective

[34] In line with Section 58, paragraph 2 of the Law on the Protection of the Rights of the Child, local governments shall establish a prevention file and formulate a social behavior correction and social assistance program for each child who has committed illegal acts or other acts which may lead to illegal actions.

social work with families with children and availability of professionals; the Orphan's Court received information on supervision of guardians, etc.

Besides, in 2013 the Ombudsman expressed his opinion on several issues of public importance, mostly relating to application of new regulation on the purchase of learning materials and the regulatory framework for reducing violence in schools.

In 2013, experts in the field of the rights of children from the Ombudsman's Office participated in elaboration of several laws and regulations and amendments thereof, for example, presented proposals for amendments to the Law on Education for ensuring the rights of children to equal access to preschool education[35].

Given that the Law on Education provides rights to basic, secondary and preschool education free of charge, the Ombudsman considers that preschool education should be funded by the State or municipality to the fullest extent. If the municipality is not able to provide the child with a place in a municipal preschool, it has to provide this service by buying it from a private service provider. Parents do not have to pay for preschool education, unless they have freely chosen a private preschool.

The Ombudsman strongly supports the principle of preschool education that is completely funded by the State or local government. Unfortunately, the Ombudsman's recommendation in relation to funding of preschool education was not implemented. It was determined that the municipality pays to a private service provider an amount corresponding to the average cost of educational institutions of the relevant municipality.

Similarly, the Ombudsman made a proposal for the bill "On Amendments to the Civil Procedure Law" (No.331/p.11), namely to Section 594, stating that a debtor has to keep a sum corresponding to the amount of minimal maintenance payment set by the CM for each dependent minor child (LVL 50 or 60 depending on the age of the child). However, this proposal for the bill was not passed. It was determined that it is necessary to keep a sum corresponding to the amount of State social security benefit for each dependent minor child (LVL 45.00).

However, basing on the Ombudsman's initiative, amendments were made to the Law on the Protection of the Rights of the Child, in order to improve ensuring of

[35]Available:http://www.tiesibsargs.lv/files/content/vestules/Tiesibsarga%20vestule_PII_finansesana_30.05.2013.pdf

rights of orphans and children left without parental care. Besides, a regulation was made for settling disputes of parents relating to issues of application of tax reliefs.

In 2013, the Ombudsman actively promoted public awareness of the rights of children and their protection mechanisms, paying particular attention to the issue of children's safety in educational institutions. Seminars were organized for social pedagogues, class teachers, teachers of social studies, school directors and other persons involved in the field of the rights of children. Besides, the experts of the rights of children from the Ombudsman's Office participated in several public debates, such as the discussion "The Teacher's Role in Reducing Violence in Schools" organized by the Latvian Trade Union of Education and Science Employees and the newspaper "Education and Culture".

Besides, the experts of the rights of children from the Ombudsman's Office participated in several inter-institutional meetings and discussions, for example, the discussion "Behavioral Problems in the Orphanage of Liepaja and Possibilities of their Solution" organized by Bureau of Kurzeme region of the State Police, and meeting on the safety of pupils in educational institutions organized by the Security, Corruption Prevention and Public Order Issues Committee of the Riga City Council.

In 2013, the Ombudsman's Office cooperated with the Faculty of Law of the Riga Stradins University, thus providing students with the opportunity to learn in depth the issues related to the rights of children.

In terms of international cooperation, on March 21-22, 2013, the Ombudsman held the annual Baltic seminar for Ombudsmen for the rights of children, during which the Ombudsman institutions presented their work topicalities and exchanged experiences in social work with families and problematic aspects of exercise of rights to communication. At the end of the seminar, the Ombudsman presented a topical issue related to the rights of the child and public space – guidelines of professional ethics for journalists "How to Speak about and with Children in Media?" elaborated in collaboration with the Latvian Association of Journalists".[36]

On August 19-21, 2013 the experts in the field of the rights of children from the Ombudsman's Office participated in the Seminar for Nordic and Baltic Ombudsmen for Children in Jyväskylä, Finland. The thematic of the seminar was related to the rights of children not to suffer from domestic violence and corporal

[36] Materials from the seminar are available: http://www.tiesibsargs.lv/sakumlapa/materials-from-the-annual-workshop-for-baltic-countries-ombudsmans-on-children-rights

punishment or slapping. It was found that, regardless of the country's property level and statutory prohibition to slap children in family, in all Nordic and Baltic countries slapping of children is still a common method of upbringing. Therefore, the Nordic and Baltic ombudsmen for children signed a joint statement urging their governments to prohibit and eliminate corporal punishment of children in the family[37].

From 25 to 27 September 2013, the Ombudsman participated in the 17th Annual Conference of the European Network of Ombudspersons for Children (ENOC) and General Assembly in Brussels, Belgium. Conference was focused on several topics, including the rights of children in the context of international migration, rights of children to rest, play and recreational activities, cultural life and the arts. On the second day of the conference the following topics were presented: "The European Convention on Human Rights and the Right of Children to Move", „Unaccompanied and Separated Children and Children in an Irregular Migration Situation", „Guidance on Best Interests Determinations for Separated Migrant Children". The last day of the conference was dedicated to the reports of ENOC annual activities and other formalities.[38]

From 3 to 5 October 2013, the Ombudsman participated in the International Conference for the Rights of the Child in Chisinau, Moldova organized by the Centre for Human Rights of Moldova. The conference was dedicated to the rights of children to grow up in a family environment. A particular attention was paid to legislation related to children left without parental care, institutional and alternative child care, as well as national and international child adoption. In this conference, the Ombudsman presented a thematically appropriate paper "Institutional Mechanisms for Protection of the Rights of Children Left without Parental Care in Latvia".

Within the ENOC cooperation, the experts in the field of the rights of children of the Ombudsman's Office provided information to European ombudsmen for children on such topics as extra-familial child care system in Latvia, professional qualification of specialists involved in extra-familial care (Malta); food safety requirements in school canteens (France), etc.; they met representatives of the Norwegian non-governmental organization "Save the Children" and with a

[37] Available: http://www.tiesibsargs.lv/cilvektiesibas/bernu-tiesibas/bernu-drosiba-izglitibas-iestade-tiesiskais-regulejums/ziemelvalstu-un-baltijas-valstu-bernu-ombudi-mudina-savas-valdibas-aizliegt-un-noverst-bernu-fizisku-sodisanu-gimenes

[38] Program of the conference is available: http://crin.org/docs/FileManager/enoc/2013_ENOC_Annual_Conference_-_Final_programme.pdf

representative of the Swedish World Childhood Foundation. During the meeting, there were discussions on topicalities in the field of the rights of children, and the delegation presented the most topical projects related to resocialization of street children and strengthening families.

In the framework of international cooperation, an overview on the situation in Latvia was provided relating the rights and possibilities of children to communication with the mother or father who is in prison, and this overview was published in a special newspaper edition "*Justice for Children of Prisoners*."[39] Despite the fact of imprisonment, a person continues to be the father or mother of his or her children, however children in Latvia have difficulties in meeting their parents in prison. Therefore, the Ombudsman will pay attention to promotion of ensuring the rights of prisoners' children to communication with their parents.

### 6.2. Children's rights to privacy and video surveillance

The Ombudsman's Office regularly receives submissions on conducting video surveillance by various groups and institutions, including educational institutions. As video surveillance is related to processing of personal data, it does affect a person's right to privacy.

In 2013 the Ombudsman raised the issue of conducting video surveillance in public and semi-public places, starting discussion of professionals on improvement of laws and regulations in this field, including those relating to pupils and employees of educational institutions. It was concluded that the legal framework has to be improved.

Currently, many schools have installed video cameras in order to ensure order and security. The child's safety is the only legitimate purpose of video surveillance in some places where violence is possible.

Having evaluated the will of educational institutions to conduct video surveillance in classrooms in order to ensure the required level of quality of education, the Ombudsman pointed out that this objective can be achieved by less restrictive means. When conducting video surveillance, schools should respect the principle of proportionality by determining that video surveillance is conducted only

[39] Available: http://childrenofprisoners.eu/wpcontent/uploads/2013/12/PrisonsAcrossEuropeNewsletter.pdf

in the necessary objects and by turning off the systems of video surveillance in premises which should allow personal privacy, as well as in classrooms.

At the end of 2013, the Ombudsman turned to the Ministry of Justice asking to remedy deficiencies in the legal framework, namely to set a regulatory framework for video surveillance in the special legislation related to educational institutions and other groups of people.

### 6.3. Children's rights to privacy and responsibility of journalists

In 2013, during verification procedures in the field of the rights of children, the Ombudsman established deficiencies in the legal framework on responsibility of journalists in disclosure of secret information about the child.

In line with Section 7, paragraphs 6 and 8 of the Law on Press and Other Mass Media, it is prohibited to publish information concerning the state of health of citizens without their consent; to publish information that allows identification of a child victim having suffered from an unlawful act, minor offender or witness without a consent of persons or institutions specified in the Law on the Protection of the Rights of the Child.

The verification procedure No.2013-88-2A[40] revealed that publishing of information in media allowed the society to identify both the child victim and the alleged offender, while the verification procedure No.2013-57-5D revealed aspects of the child's private life. In future, open availability of such information can negatively affect the wellbeing of children, aggravate their psychological and physical condition, as well as create new risks of violence.

The media has a duty to inform the public about important issues, including the safety of children in schools, violence among children and validity of actions performed by local authorities. Restriction of such information is not allowed in a democratic society. However, in disclosure of such information, it is necessary to take into account rights and legal interests of the involved persons.

[40] Available: http://www.tiesibsargs.lv/files/content/Tiesibsarga%20atzinums%20lieta%20Nr.%202013-88-2A.pdf

Therefore, the State is obliged to create an appropriate legal framework for the protection of person's privacy. Rules and means should effectively protect individuals from any unlawful interference with private life. [41]

Section 28 of the Law on the Press and Other Mass Media defines mechanism for protection of rights: injury, also, moral injury, caused by a mass medium to a child by publishing data and information the publication of which is prohibited by law, a mass medium shall provide compensation in accordance civil liability order. However, this protection mechanism is not effective enough, because the right to claim compensation in line with civil liability order is an individual choice. Therefore, if the injured person does not use this right, the journalist has no liability, so there is also a higher possibility of recurrence of publishing secret information about children.

Taking into account this information, the Ministry of Welfare was asked for an opinion on development of the existing legal framework by establishing administrative liability of journalists for disclosure of information and data prohibited by the laws and regulations.

The Ministry of Welfare responded that the Parliament was considering amendments to the Law on the Press and Other Mass Media that stipulate to increase the amount of non-publishable information (amendments entered into force on January 10, 2014), and the working group of the bill did not see the need to apply administrative liability on journalists. Thus, it is considered that it would be a reasonable solution to develop educational work of future journalists in the field of protection of the rights of children, as well as to use effectively legal instruments of the competent authorities in order to prosecute persons who have violated protective regulations of the rights of children.

In order to improve the quality of media content, as well as to reduce and timely eliminate possible consequences that publishing of information would cause in the life of the child in short and long term, in 2012 the Ombudsman, in cooperation with the Latvian Association of Journalists, prepared guidelines "How to Talk with and about Children in the Media?"[42] Thus, activities have been performed to promote media education and awareness-raising on child protection issues.

[41] CCPR, General Comment No. 16, HRI/GEN/1/Rev.9 (Vol I) para 9.
[42] Guidelines for media professionals „ How to Speak with and about Children in Media?" 2012. Available: http://www.tiesibsargs.lv/petijumi-un-publikacijas/petijumi

Given that educational activities are not enough to sufficiently prevent violations of the children's rights to privacy and that the current enforcement mechanism cannot be considered effective, the Ombudsman will continue filling the gaps in the legal framework on journalistic liability.

### 6.4. Children's rights to State-funded protection in criminal proceedings

In 2013, during a verification procedure, possible deficiencies were identified in legal regulations relating to coverage of expenses for State-funded legal aid in criminal proceedings in case of mandatory defense.

In line with Section 83, paragraph 1, point 1 of the Criminal Procedure Law (hereinafter – CrPL), the participation of a defense counsel is mandatory in criminal proceedings if a minor has the right to assistance of a defense counsel. According to Section 85, paragraph 1, the following persons have the right to exemption from payment for the assistance of a defense counsel, which in such case shall be covered from State resources:1) a person whose financial situation excludes the possibility to ensure payment from his or her own resources for the assistance of a defense counsel; 2) a person who has not wished for a defense counsel in criminal proceedings wherein the participation of a defense counsel is mandatory.

The verification procedure No.2013-53-4K revealed that the child was provided with participation of a defense counsel in criminal procedure. The State-ensured legal aid was provided by a sworn advocate. According to information provided by the court, the advocate had not presented proofs to the court on the status of a needy family of the minor's family and had not asked for exemption from payment for assistance of the defense counsel. Therefore, the court recovered procedural costs of the defense counsel's legal aid from the child for the benefit of the State.

A letter sent by the court indicates: if, during adjudication of a criminal case, the court would have had information on the status of a needy family of the child, the court would have made decision on payment of procedural costs to the advocate in line with the requirements of Section 85, paragraph 1, point 1 of the CrPL (would exempt from payment).

Evaluation of the legal framework and actual situation in the verification procedure No.2013-53-4K revealed that the defense counsel did not clarify financial

situation of the child's family and did not provide information on it, besides he did not explain regulation of Section 85 of the CrPL to the child and his legal representative. Thus, the child did not use his rights to exemption from payment for the defender's assistance. Besides, the CrPL does not oblige the court to establish the person's financial situation on its own initiative and to explain the regulation of the Section 85, paragraph 1, point 2 of the CrPL. Thus, the child paid procedural costs for remuneration of the advocate for the benefit of the State, although, according to legislation, the family had already the status of a needy family, and thus the child was entitled to exemption from payment for the defender's assistance.

Basing on the above mentioned information, the sworn advocate was asked to comment on the settlement of the particular case - the opportunity to compensate the child's financial losses (LVL 76). The sworn advocate avoided the answer, therefore the Latvian Council of Sworn Advocates was asked to evaluate his behavior. Unfortunately, the Council of Sworn Advocates expressed concern about the Ombudsman's position and doubted his conclusion that the financial losses of the child were caused by the advocate's behavior.

In line with Article 40, paragraph 2, point 2, sub-point ii) of the UN Convention on the Rights of the Child, the States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law, to have legal or other appropriate assistance in the preparation and presentation of his or her defense. Participation of the defense counsel is not required in all cases, but it should be appropriate (useful). The State has the discretion to determine how implement the right to defense but this right should be implemented for free.[43]

In addition, the ECHR has strengthened the opinion that it is required to assess the social and personal status of the relevant person, his ability to effectively participate in legal proceedings. Otherwise, his rights to fair trial are being violated.

Because of his special social status, the child is not able to effectively participate in legal proceedings, therefore the CrPL states that participation of a defense counsel is mandatory in proceedings with children who have rights to defense. However, the law does not provide that these rights are to be exercised for free.

[43] General Comment No.10 of the Committee on the Rights of the Child CRC/C/GC/10 – Children's Rights in Juvenile Justice. (2007), para.49.

In relation to children, there is no specific regulation for implementation of the right to exemption from payment for assistance of the defense counsel. Section 85 of the CrPL contains general regulation that applies to all persons, i.e. the same regulation for both adults and children.

Taking into account the child's physical and mental immaturity, he needs a special protection, including appropriate legal protection. The Ombudsman has established that the mechanism created in the State for exemption of children from the payment for assistance of the defense counsel, based on their financial state, is not efficient enough. Therefore, the Ombudsman will ask the Ministry of Justice to review the changes in regulation of the CrPL by defining the rights of children who have rights to defense, to receive legal aid in all cases for free, covering the resulting costs from the State budget.

### 6.5. Solving parental disputes related to application of tax reliefs

During the reporting period, several parents asked the Ombudsman's Office to provide information on legal regulations in the field of parental disputes related to application of tax reliefs. A verification procedure was initiated concerning possible deficiencies in legislation on application of personal income tax relief for a dependent child.

Given that the State policy is focused to rise the non-taxable minimum for dependent persons and hence the importance of tax relief is growing, the possibility of disputes between parents on application of tax relief is also higher. This topic is especially important in cases when parents are divorced and there is a joint custody of both parents.

According to Section 13, paragraph 1, point 1 of the Law on Personal Income Tax, for the maintenance of a minor child, tax reliefs shall be provided to one of breadwinners. Paragraphs $3.^1$ and $3.^2$ of the same Section define cases when tax reliefs are provided to one of the both parents:

*„$3.^1$ A relief for the maintenance of such minor child for whom disbursements of the means of support are carried out from the Maintenance Guarantee Fund shall be applied to such tax payer to whom the means of support are paid out for this child by the administration of the Maintenance Guarantee Fund.*

*3.[2] A relief for subsistence of a minor child shall be applied to such taxpayer for whom a separate custody of one parent has been established on the basis of parental agreement or adjudication of court ."*

In other cases when means of support are not paid from the Maintenance Guarantee Fund or if the child is not under separate custody of one of the parents, tax reliefs are applied basing on agreement between both parents.

Given that disputes about tax reliefs are based on rights to custody (tax is applied for a dependent children, while the duty to provide the child's maintenance derives from the right to custody), the Ombudsman considers that parental disputes on this issue should be settled in line with Section 19, paragraph 2 of the Law on Orphan's Courts: *"An Orphan's court shall settle disagreements of parents in the issues related to the care and custody of a child (except disagreements regarding the determination of the place of residence of a child) and, where necessary, shall take a decision".*

Decision of the Orphan's Court on application of tax reliefs after relevant amendments to the Section 13 of the Law on Personal Income Tax would be the basis for the application of tax reliefs.

The Ombudsman promoted adoption of appropriate amendments to the Law on Personal Income Tax. The amendments add a sentence in the following wording to the Section 13, paragraph 3.[2]: *"If parents exercise joint custody and cannot agree which of them shall be entitled to receive relief for a dependent person, relief for the dependant person shall be applied to such tax payer – parent - who shall be indicated in the operative part of the decision made by the Orphan's Court on settlement of parental disagreements."*[44]

### 6.6. Case-law of the European Court of Human Rights in the field of children's rights

In 2013, a comprehensive analysis of the ECHR practice was made in the field of children's rights. In total, 42 rulings of the ECHR were examined in cases related to the right to life, prohibition of torture, slavery and forced labor, the right to freedom and security, the right to fair judgment, private and family life, efficient ensuring of

[44] Amendments to the Law on Personal Income Tax, adopted on November 6, 2013, but entered into force on January 1, 2014.

protection, education, and prohibition of discrimination. A summary was made on each ruling of the ECHR, these summaries are presented in a table.[45]

During the analysis of the ECHR rulings, a special emphasis was placed on factual circumstances of the case, the most important court assessments and conclusions, as well as on principles established in court practice.

The most part of the analyzed ECHR rulings - 26 - were related to the right to private and family life. During evaluation of cases related to possible violations of Section 8 of the ECPHRFF, the following principles and rights defined in the UN Convention on the Rights of the Child were analyzed: priority of the rights of the child, the right to communication, the right to reunification of the family, prohibition of arbitrary or unlawful interference with the child's rights to private life, protection from all forms of violence and the right to adequate standard of living.

The most part of cases concerning the right to private and family life are related to the right of parents and children to communication and their right to reunification of the family. During evaluation of this category of cases, the ECHR has repeatedly acknowledged that complete termination of communication between parents and children is allowed only in exceptional situations, and interference may be justified by especially important circumstances aimed at protection of the best interests of the child.

Every child has the right to the care of his parents. If a child is placed in extra-familial care, it does not mean that family relationships are permanently terminated. Generally, the placement of the child in extra-familial care has to be temporary and is to be stopped when circumstances are favorable. As long as the child is placed in extra-familial care, everything necessary should be done to promote reunification of the family.

Before removing the child from the family, the State has a duty to carefully examine the possibility of applying alternative measures and their effects on parents and children.

Parent-child mutual presence is an essential element of family life. If parents and children do not have the opportunity to meet, it has a negative impact on their relationship and does not promote reunification of the family.

[45] Available: http://www.tiesibsargs.lv/files/content/ECT_prakse_bernu_tiesibu_joma_2013.pdf

The practice of the ECHR has revealed reasons which themselves do not justify the application of such measure as separation of a child from his biological parents. For example, a child may be placed in an environment that is more favorable for his development; one of the parents has mental or intellectual disorders; the family is experiencing economic and social difficulties, but alternative means of assistance have not been provided; lack of cooperation from the part of parents; there has been a danger in the family for a long period of time, but it is possible to listen to parents and discuss the need for alternative measures.

It is important to base the separation of a child from his family on significant and sufficient reasons; it has to be justified by opinions of independent experts; it is necessary to listen to the child's point of view; before the removal of the child from his family in difficulties, the family has received financial and social assistance.

In many cases, the ECHR bases its activities on the above mentioned recognitions which shows its unequivocal position in issues related to the right of children and parents to communication and the right to family life.

# II Civil and Political Rights

In 2013, the Division of Civil and Political Rights (hereinafter - DCPR) received 1524 submissions. Similarly to previous years, the largest number of submissions was received from prisoners on various topics related to execution of sentence. In 2013, special attention was paid to ensuring the rights of persons with mental disabilities.

## 1. Ensuring the Rights of Persons with Mental Disorders

### 1.1. Report on systematic defects in State social care centres

In February 2013, the Saeima and the Ministry of Welfare received the Report[46] on systematic defects in State social care centres (hereinafter – SSCC) containing conclusions on facts established in a period of several years, as well as suggestions for elimination of these defects.

It was indicated that the most important was the lack of society-based or alternative social care services although the need for such services has been included

[46] The Report of the Ombudsman on the State social care centres for adults with mental disabilities. Available: http://www.tiesibsargs.lv/files/zinojums_par_vsac_-_kopsavilkums_gala.pdf

in policy planning documents since 1997 by the Ministry of the branch. At that time, it was decided that one of the most important trends to provide social care services would be the funding principle "money follows the client" and transfer of social assistance services to the municipalities. However, the SSCC are still funded only from the State budget, the above mentioned funding principles are not implemented and alternative social care services are underdeveloped.

Currently, provision of social services in Latvia does not meet the needs of persons with mental disabilities, society-based alternative services are available for a small number of interested parties. As a result, in many cases, people with mental disabilities are forced to choose care in long-term social care and social rehabilitation institutions.

Many customers of the SSCC would like and would be able to live in the society if they would be provided with support at home. However, the most visited SSCC have expanded and deinstitutionalization efforts have been limited or there have been no such efforts at all.

With regard to the life conditions in the SSCC, the key recommendations were the following:

- To provide the clients with all necessary conditions for spending time meaningfully, as well as, according to the functional state of each client, to provide the opportunity to acquire necessary household and self-care skills, to provide activities taking into account their skills and abilities;
- To provide the clients living in the SSCC with more living space and to accommodate as few clients as possible in one room;
- To ensure the compliance of isolation facilities in the SSCC with all necessary hygiene requirements, including availability of toilet at any time.

Regarding restrictions of the right to freedom, there were the following recommendations:

- To review the status of persons having entered SSCC being incapacitated, and for whom the consent for receiving services was given by a trustee;
- To draw up contracts of the SSCC with customers in simpler language, avoiding difficult legal terminology, or to annex a "translation" to the contract for customers using more easily understandable language;
- To change the practice where clients are limited and even forbidden to leave the area of the SSCC for a short period of time. In cases where there are

objective reasons to deny such freedom of customers, it would be necessary to review the legal status of the customers of the SSCC.

During inspection visits, with the assistance of a qualified psychiatrist, availability and quality of health care provided for the clients of the SSCC was evaluated. It was found that a large part of customers receive significant doses of medications, many of them use many medications simultaneously, besides in most cases, alternative care methods are being replaced by medications.

Thus, the customers receive several medications simultaneously and in high doses. In many cases, such combinations of medications do not comply with treatment guidelines indicated for relevant patients.

It was also found that in many cases, medications are being prescribed to control behavior of the customers of the SSCC. It was found that the need for such measures could be significantly reduced if the SSCC would offer trainings and care appropriate for the needs of their customers. It means that currently in many cases the customers of the SSCC are receiving high doses of medications and are being isolated only because of the lack of targeted trainings and wholesome rehabilitation process.

The Ombudsman's report indicates that a number of customers who tend not to swallow or hide medications are however forced to receive these medications in a dissolved form. This practice shows that several clients receive the treatment against their will, and it is unlawful. Only a court decision can force a person to receive treatment without his or her consent, and it can be done only in psycho-neurological hospital.

Basing on these facts, the Ombudsman recommended to receive, as much as possible, a deliberate consent of each customer for the offered process of treatment in the SSCC.

It is also necessary to elaborate individual treatment plans for customers who are subject to regular treatment. Besides, it is recommended to review the status of the SSCC, because factually they contain a large number of clients with mental health problems, and in practice the SSCC have already largely been dealing with ensuring the health care services. It would also be necessary to create an individual medical history record for each client.

According to the Law on Social Services and Social Assistance, a long-term stay in social care and social rehabilitation institution is provided for persons who are unable to care for themselves due to their age or medical condition. Accordingly, the

law provides the following definition of social rehabilitation: *"Social rehabilitation service is a set of measures aimed at the renewal or improvement of the social functioning abilities in order to ensure the recovery of social status and integration into society"*.

It was found that employees of the SSCC often have the understanding that the rehabilitation institution is not intended to preparation of the customers for life in society, that its only function is social care which is not focused on returning these people back into society.

The Ministry of Welfare, upon the Ombudsman's report, acknowledged that some of the identified deficiencies can be eliminated within a few months, however, significant improvements need more time and financial investments. Besides, there is need for systemic cooperation of the Ministry of Welfare and the Ministry of Health (hereinafter - MH) and governmental support in general.

This year, the employees of the Ombudsman's Office continued to visit the SSCC to determine whether the recommendations are taken into account, and concluded that, after the report, the situation had improved in certain issues. For example, customers who use medication "Leponeks" have blood tests.

In response to infringements in the field of health care in the SSCC identified by the Ombudsman's report, the Minister of Welfare in her submission of February 28, 2013 asked the Health Inspectorate (hereinafter - HI) to examine the SSCC to see if medical practitioners have reasonably determined courses of treatment for the clients of the SSCC and have regularly followed the changes in the patients' state of health and modified the use of medications accordingly, whether, when determining the course of treatment, there are no signs of chemical restraint.

In almost every visit, the experts of the HI found many violations, but decided to refuse to initiate proceedings of administrative violation. In order to verify whether such action is not inconsistent with the obligation of the State to ensure effective implementation of health care control, the employees of the Ombudsman's Office examined certain SSCC that were attended by the expert commission of the HI. Particular attention was paid to the work of psychiatrists that revealed a number of violations committed by these professionals. The Ombudsman's Office informed the Ministry of Health and the HI about the established problems and asked them to evaluate legality of actions of relevant psychiatrists and the quality of provided services.

The right to health obligates the State to take the measures necessary for the protection of human health, including ensuring efficient quality control of the health care in the State.

The Ombudsman understands that many clients of the SSCC are unable to protect their rights due to their state of health and considers that the officials who receive information about unprofessional behavior of medical personnel should react immediately, because this is the only way to eliminate irresponsible behavior of medical personnel and to protect vulnerable people from violations of human rights.

### 1.2. Problems in Implementation of the Law on Social Services and Social Assistance

On December 22, 2012, amendments to Section 28, paragraph 3 of the Law on Social Services and Social Assistance entered into force stating that: *„In the cases referred to in Paragraph two of this Section, the decision on suspension of the provision of a service shall be taken by the head of the relevant institution, informing thereof the local government within the administrative territory of which the person has been living prior to entering into the institution. If the administrative territory, in which the person has been living prior to entering into the institution, cannot be ascertained, the local government, the administrative territory of which holds the last detectable location of the person, shall be informed. The local government has a duty to ensure accommodation for the relevant person, if it is not possible for such person to accommodate in the residential premises previously occupied in accordance with the procedures specified by the law".*

The Ombudsman also contributed to the adoption of amendments to laws and regulations that make mandatory the criterion that municipalities are obliged to ensure a place of residence for a person if this person asks to suspend State-funded services provided by long-term social care and social rehabilitation institutions. The aim of these amendments was to prevent possible violations of human rights related to unreasonable restrictions of person's rights to freedom, pointing out that Section 19 of the UN Convention on the Rights of Persons with Disabilities states that: „*States Parties to this Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this*

*right and their full inclusion and participation in the community, including by ensuring that persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement*."

In spring 2013, the Ombudsman received information that there had been decisions on suspension of long-term services provided by social care and social rehabilitation institutions in relation to several clients of state social care institutions, without duly informing the municipality and without providing information about what services should be provided for the client in his place of residence. In addition, customers have been delivered to the municipality without having received an answer that there was a place of residence for them.

Considering that such facts are alarming from the point of view of human rights, the Ombudsman immediately asked the Ministry of Welfare to:

1) identify all cases (starting from January 1, 2013), when clients of the SSCC and its affiliates have expressed a desire to live in the society and see the further reaction of centers (whether the needs and necessary services have been evaluated), identify cooperation with municipalities and where the customer has arrived (whether he is provided with housing, or has been placed in a municipal care institution, etc.);
2) assess whether in all cases there has been compliance with the Cabinet Regulation No. 288 of April 21, 2008 "Procedure for Receiving Social Services and Social Assistance" providing the order of termination/ suspension of long-term social care services;
3) take appropriate preventive measures in order to protect rights and interests of clients when deciding the question of suspension of long-term services provided by social care and social rehabilitation institutions.

Additionally, the Ombudsman drew the attention of the Ministry of Welfare to the fact that the Commissioner for Human Rights of the European Council had indicated the following information in his report of March 13, 2012 on "The right of people with disabilities to live independently and be included in the community" : „*Even if the person with disabilities are provided with residence physically located in the community, various other factors should be taken into account*: „ *physical size and structure of the residence, rights to choose, qualities and attitudes of providers, actual*

*access to community life and how support and access needs are met*[47]*. The way all services revolving around the right to live in the community are provided – not only residential services – also affects the degree to which one is included and participates in the community."*[48]

In previous reports, the Commissioner for Human Rights of the European Council had already warned that no measures were permitted which could suspend the person's rehabilitation or endanger the health and capacity of this person.[49]

The Ministry of Welfare identified the number of customers who lodged submissions expressing desire to start an independent life from January 1, 2013 to May 20, 2013. The Ministry explained to the Ombudsman that there were several important aspects interfering with implementation of these rights.

The main mentioned problem: the Law on Assistance in Solving Apartment Matters does not identify the persons who leave the long-term social care and social rehabilitation institutions as a group of people that should be provided with municipal residential area immediately or primarily. No specific time limit is defined for a municipality to provide a person with residential area. Given that the person's right to return to his or her municipality (the right to choose the place of residence) is not to be limited, it was pointed out that the possibility of realizing this right is subject to economic situation, infrastructure and budget of the relevant municipality.

In order to solve one of these problems, in July 2013 the Ombudsman asked the Public Administration and Local Government Committee of the Saeima to adopt amendments to the Law on Social Apartments and Social Houses in order not to limit the rights of persons with disabilities that suspend long-term services provided by social care and social rehabilitation institutions to live in the society.

However, in order to objectively analyze the potential risks and to make suggestions, the Ombudsman additionally analyzed 15 situations related to clients who had ended receiving long-term services provided by social care and social rehabilitation institutions and returned to life in society.

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[47] The Report by the Commissioner for Human Rights of the European Council of March 13, 2012 on "The right of people with disabilities to live independently and be included in the community", point 1.3.5.

[48] The Report by the Commissioner for Human Rights of the European Council of March 13, 2012 on "The right of people with disabilities to live independently and be included in the community", point 3.2.2.

[49] Hammarbergs T. Recommendation of the Commissioner for Human Rights on the implementation of the right to housing. 30.06.2009., COomm DH (2009)5.

The collected information clearly pointed out that the exchange of information between the SSCC and local authorities was insufficient to provide the customer with severe mental disorders with continuity of services in the municipality. In some cases, the municipality did not receive information at all. It was found that in several cases, although municipalities had rejected provision of living area, persons were delivered to these municipalities without prior notice.

The action of municipalities in such situations was different - some municipalities did everything possible to ensure that persons with shelters and to provide the necessary support, but in some cases the only possibility of such persons was going to asylums.

The Ombudsman pointed out that automatic suspension of services without wholesome cooperation with local authorities according to Section 28, paragraph 2, point 3 of the Law on Social Services and Social Assistance, is not to be encouraged in relation to persons with hard mental disabilities who want to leave the SSCC basing on personal submission, as this practice is not compliant with human rights.

According to the Convention on the Rights of Persons with Disabilities, the clients of the SSCC are to be considered as one of the most vulnerable groups of persons, and the State in general is responsible for ensuring and respecting the rights of such persons when they start independent life in society. Rights to independent place of residence and inclusion into community defined in Section 19 of the Convention, are based on three main criteria: choice, access to support services, and availability and relevance of social services and facilities equal to other members of society.

The Ombudsman points out that the current practice is not compliant with Section 10, Paragraph 5 of the State Administration Structure Law defining the principle of good governance, which includes openness to individuals and society, data protection, implementation of fair procedures within a reasonable period of time and other provisions aimed at making the State Administration respect individuals' rights and legal interests.

The Ombudsman sent his conclusions and proposal to develop specific guidelines or amend and clarify the regulatory framework to the Ministry of Welfare. In addition, the Ombudsman asked to examine the cases when persons, after suspension of services provided by care institutions, were transported to municipalities, but having failed to receive the necessary support, were later found

dead. In 2014, The Ombudsman will continue to supervise the implementation of proposed solutions of the identified problems.

### 1.3. Improvement of legislation in psychiatry

Given that in previous years, the Ministry of Health (hereinafter - MH) avoided addressing the issue of the lack of statutory regulation in the field of psychiatry, the Ombudsman sent a letter to the Prime Minister on March 12, 2013. The Ombudsman drew the attention of the Prime Minister to the fact that one of the main long-term problems in the field of mental health is the disorganized normative basis. Although in recent years some things have improved, for example adoption of amendments to the Medical Treatment Law related to forced placement of a person into a psycho-neurological hospital, many things are still disorganized, thus causing violations of human rights. For example, psycho-neurological hospitals where the forced treatment is used, use several forced measures and limit the rights of individuals to privacy, however, there is no general regulatory framework - the limits are determined by internal regulations of each institution.

In response to the Ombudsman's letter, the Prime Minister pointed to the guidelines developed by the MH “Improvement of Community Mental Health in 2009 - 2014 ", which also provided one activity in relation to the development of the regulatory framework, i.e. in the second quarter of 2014 it is planned to examine the necessity for the development of a bill on Psychiatric assistance.

The Ombudsman considers that it is not acceptable to set such a disproportionately long term for the evaluation, given that many persons are subject to forced treatment in psycho-neurological hospitals and that their human rights are often limited. Thus, these institutions violate human rights every day because of the absence of a regulatory framework. It is needed immediately. In addition, the description of the plan for implementation of these guidelines does not show a real intention to develop such bill.

Unlike people subjected to the forced treatment, other persons who are placed in closed-type institutions have a very detailed regulatory framework concerning restrictions that may be imposed while in prison.

Taking into account the urgency of elaboration of such regulatory framework, the Ombudsman held a meeting with the MH on June 5, 2013. They came to an

agreement that within two months the MH would elaborate initial version of a bill, which would regulate issues related to limitations of human rights in psycho-neurological hospitals. It resulted in the bill "On Amendments to the Medical Treatment Law". In November 2013, the Ombudsman made specific recommendations to the MH on the improvement of the elaborated project.

### 1.4. Compliance with human rights in psycho-neurological hospitals

Due to the topicality of this issue, the compliance with human rights in psycho-neurological hospitals was also one of the topics in the Ombudsman's Annual Conference that was discussed by professionals in this field. At the conference, G. Brunenience, the deputy head of the Division of Political and Civil Rights of the Ombudsman's Office, presented the research conducted by the Ombudsman's Office "Human Rights of Patients in Psycho-Neurological Hospitals"[50]; E. Terauds, the president of the Latvian Association of Psychiatrists, presented a paper on the role of a psychiatrist in the process of stationary treatment; I. Leimane-Veldmeijere, the director of the resource center for people with mental disorders "Zelda", presented reports of the European Committee for the Prevention of Torture and the practice of the ECHR in handling complaints about limitations of human rights in psycho-neurological institutions.

E. Endzelis, sworn advocate, analyzed protective mechanisms available to the patients of psychiatric hospitals in Latvia and the effectiveness of these mechanisms. Besides, E. Endzelis provided his own suggestions for improving the situation. Finally, L. Cipule, the Parliamentary Secretary of the MH, provided information on the elaborated bill with substantive amendments to the Treatment Law concerning limitations of human rights in psycho-neurological hospitals.

### 1.5. New regulation on incapacitation

On January 1, 2013, a new regulation on the limitation of incapacity came into force, which, although not fully complies with human rights, significantly improves the situation in this area. In line with the new regulation, it is not allowed to

[50] Available: http://www.tiesibsargs.lv/img/content/pacientu_tiesibas_psihiatrijas_slimnica_2012.pdf

completely deprive a person from the status of incapacity and to limit personal moral rights. In relation to economic issues, there are various options:

1. Any person, at any point of his or her life, may issue a future authorization providing that a particular person or group of persons may in the future make decisions on issues important for the principal if he or she would not be able to act or express his or her will due to health problems, including mental disability (these amendments entered into force on June 1, 2013).

2. The capacity of a person is not limited, but a temporary guardian is appointed for a term not exceeding two years. This solution can be applied if the person is unable to communicate and express his/ her will due to medical condition, but it is necessary to ensure protection of his/ her interests and rights. This solution is possible if:

a) it is an urgent need for protection of personal interest;

b) impairment is transient;

c) activities of the person cannot result in harming him / herself.

3. Capacity of a person may be limited partially or a guardian may be appointed. The capacity may be limited only in particular fields, such as financial matters and the right to manage his/ her property. Complete limitation of capacity is no longer possible.

When appointing a guardian, a court initially determines areas where the guardian and the dependent person shall act together, and only then areas where the guardian shall be entitled to act alone.

The person him/ herself may request to review his/her capacity, besides the law also obliges to review periodically the limitation of capacity.

In 2013, the Ombudsman's Office was actively involved in the training process on the new regulation, presented it in the conference organized by the Ministry of Justice and lectured in the Judicial Training Centre.

## 2. Efficiency of Protection of Private Life

### 2.1. Representation of personal names

Following the survey of 2012 "Writing of Personal Names and Human Rights" and the topic on representation of personal names in connection with the individual's right to private and family life, in December 2013 a special discussion was dedicated

to representation of personal names in the context of human rights that took place in the Annual Ombudsman's Conference. This topic was included in the conference because in 2013 it was still a topical issue in the society, as well as in the practice of the administrative court and the media. Besides, the Ombudsman's Office had received many requests to provide consultations on this matter.

There were participants from the State Language Centre and the Civil Register Department of the Ministry of Justice, as well as lawyers and authors of the research of 2012.

During the discussion, the main emphasis was placed on the representation of personal names in personal identification documents. One of the main discussed problems was inclusion of personal names represented in Latin-alphabetic transliteration on the main data page of the passport and the resulting problems related to personal identification in foreign countries and certification of kinship between members of one family. There was also emphasis on the negative impact of the transformation of personal name on individual's private life, in particular identity of the person and belonging to the family. The need for entering personal names into the State language system, as well as preservation and protection of the national language were mentioned as the main reasons for preservation of the existing regulatory framework.

Inclusion of the original script of personal name on the second page of the passport (data page), additionally including personal names in Latin-alphabetic transliteration on the third page of the passport (i.e., actually swapping the former location of the original script and transliterated version), was mentioned as a solution that would be acceptable for individuals and, at the same time, would comply with public interests in preservation and protection of the official language.

At the end of the discussion, the director of the State Language Centre invited the Office of Citizenship and Migration Affairs (hereinafter - OCMA) to create a working group that would discuss proposals made during the conference, including clarification, simplification and making more understandable the system for reproduction of personal names.

In 2014, the Ombudsman's Office intends to continue supervision and participation in solving issues related to representation of personal names, putting particular emphasis on possibilities to evaluate the need for representation of personal names and the associated limitations of human rights in each individual case.

The Ombudsman's Office is planning to contact the competent authorities, including the Ministry of Interior and the OCMA, with proposals to promote discussion at institutional level with the aim to improve the regulatory framework in the field of representation of personal names.

### 2.2. Improvement of legislation related to video surveillance

Currently, one of the most common measures for ensuring security and order is video surveillance. However, as video surveillance requires procession of personal data, it limits the right of a person to privacy.

In order to update results of the study of 2012 "Video Surveillance as a Restriction of Individual's Right to Privacy and Its Acceptable Limits", in 2013 the Ombudsman's Office organized a discussion for representatives of the Ministry of Justice and the Data State Inspectorate. The aim of the discussion was to hear the views of industry experts about the need to improve the legal framework relating to video surveillance.

During the meeting, the Ombudsman's Office presented legislation and practice of several EU Member States in the field of video surveillance, and paid particular attention to complaints received in submissions and facts established during monitoring visits in relation to video surveillance of clients of social care centers, patients of psycho-neurological hospitals, teachers and students of educational institutions, as well as persons in closed-type institutions.

The Director of the Data State Inspectorate S. Plumina briefly presented inspections carried out in relation to video surveillance and provided information on the identified problems. A representative of the Ministry of Justice gave her opinion about the issues at stake and possible solutions.

During the meeting, it was concluded that the problems are related to storage duration, providing information about video surveillance, etc., because the Personal Data Protection Law provides only general rules on data collection, processing and storage. Therefore the legal framework in the field of video surveillance should be improved.

After the meeting with the representatives of the State Data Inspectorate and the Ministry of Justice, the Ombudsman's Office sent a letter to the Ministry of Justice with a proposal to develop a regulatory framework in special laws and regulations on

video surveillance relating to persons in psycho-neurological hospitals and social care centers, educational institutions, as well as in closed-type institutions. This framework should include the following requirements: the obligation to provide information about video surveillance, the storage period of the obtained data, compliance with the principle of proportionality and adequacy, and other principles of personal data protection.

In 2014, the Ombudsman's Office will continue to supervise this issue and to participate in the improvement process of the regulatory framework.

## 3. Protection of the Rights of Prisoners in Closed-Type Institutions

### 3.1. Life conditions

In 2013, the most of submissions were received on violations of human rights related to life conditions in prisons. Such submissions have been received from persons imprisoned in Brasa prison, Riga Central prison, Jekabpils prison and Daugavpils prison.

Similarly to previous years, applicants expressed complaints about conditions in living, quarantine and isolation cells. The most significant deficiencies indicated in these submissions: overcrowding, lack of ventilation, lack of natural light, formal isolation of sanitary facilities, anti-sanitary hygienic conditions in showers and toilets.

It should be noted that the Ombudsman has made recommendations on the improvement of the life conditions to the competent authorities for several years, however, such complaints are still being received and the situation is not significantly improved. There is an interesting trend: prisoners are turning to the Ombudsman with a request to provide information on violations of human rights detected during prison visits, and the Ombudsman's response is used as an evidence in the administrative court.

Similarly, prisoners have asked to carry out an inspection in particular prison, giving precise details on the problematic aspect. For example, in the first half of 2013, submissions were received on video surveillance cameras installed in living cells of Daugavpils department of Daugavgriva prison. The prisoners required to carry out examination and to provide an assessment on the compliance of such activities with human rights. At the same time, the submissions indicate that, after lodging submissions to the administrative court on the factual activities of the institution

without providing dignified imprisonment conditions, the prison has started to improve the situation in cells.

In 2013, the employees of the Ombudsman's Office made ten visits to prisons. The aim of these visits was to examine some submissions lodged by the prisoners. Every year, the employees of the Ombudsman's Office choose one of the prisons for carrying out an inspection for several days. In 2013, such a visit was made to Daugavgrivas prison. Besides, the several days inspection launched in 2012 was concluded in Brasa prison.

With regard to the living conditions in prisons, the Ombudsman sent the Conclusion about his visit to Daugavgriva prison on April 18-19, 2013 to competent authorities where he pointed out several deficiencies. There is a need for repair works in most living cells of Griva department, a special attention should be paid to the natural and artificial lighting in cells, as well as ventilation. Besides, there is overcrowding in some cells.

There is also a positive aspect. In Daugavpils department, repair works are being done in some living cells on the second floor. Repaired cells are light-colored and well-arranged. Sanitary facilities are isolated from the rest of the room. Boundaries are high enough and provide the necessary privacy. On the other hand, looking at some living cells on the second, third and fourth floor of the prison (non-repaired), it could be seen that walls, floor and ceiling were in poor condition. The paints were peeled off, and, similarly to Griva department, some cells were obscure and overpopulated. In relation to quarantine cells, it was repeatedly[51] indicated that it is necessary to provide sufficient natural lighting and ventilation.

The most important recommendations included in the Conclusion on facts established in Brasa prison are related to the lack of natural light, insufficient isolation of sanitary facilities and ventilation in cells. It is also recommended to pay attention to the number of prisoners in cells.

In 2013, a several days inspection was started in Ilguciems prison which will be continued in 2014.

[51] The Ombudsman has already made such recommendations for the competent authorities: the Letter No. 6-8/758 of September 17, 2010 and the Letter No. 6-8/648 of October 12, 2011.

### 3.2. Infringement of the principle of good administration

In 2013, there have also been submissions on several aspects of the principle of good administration. There have been several submissions providing information that prison officers, during the night patrol, are loud, use obscene language and shine the light into eyes. Such submissions were received, for example, from Jelgava and Skirotava prison.

Similarly to previous years, in 2013 there have been submissions on non-use of the official language in communication with the prisoners whose native language is the official language of the State. In addition, there are employees who are not fluent in the official language. This aspect was already pointed to the Latvian Prison Administration by the Ombudsman in 2012. In 2013, a letter was sent to the State Language Centre stating that the employees of the Daugavgriva prison were speaking with prisoners mostly in Russian. Representatives of the State Language Centre visited the Daugavgriva prison and examined the use of the official language among employees of the Social Rehabilitation Department. It was found that two employees did not have appropriate language skills necessary for performing professional duties. It was told that the non-use of the official language is mostly based on the fact that in Daugavpils, especially in a closed-type institution, there is a complete self-sufficiency of the Russian language, because most of the employees and prisoners are Russian-speaking people.

Additionally, prisoners have complained that their submissions to different institutions are being read by the employees of the prison or they are called by a prison officer who asks to tell the contents of the letter. There have been cases when the Ombudsman's Office initiates investigation on conditions specified in a particular submission, but then another submission is received from the same prisoner where he cancels the previously sent submissions stating that the problem has been solved. Besides, prisoners have stated that employees of the prison, after reading submissions of the prisoners to other public authorities, have used repressive measures and initiated conflict situations. Such submissions have been received from Jelgava, Liepaja, Olaine and Jekabpils prisons. Complaints about failure to send submissions to public authorities have been received from prisons with a large number of prisoners, such as the Riga Central prison and Daugavgriva prison.

During the visit to Daugavgriva prison, the Ombudsman found that the system of submission movement is complex and non-transparent, therefore he advised to take measures to simplify and improve this system. There have also been submissions stating that prisoners have turned to the administration of the prison with complaints about behavior of employees of the prison, but no answers were given or the administration did not receive such submissions.

During the past year, there have been several submissions in which prisoners ask the Ombudsman to help them to be moved to another prison because of potential danger, or state that their relatives cannot visit them because of living too far from the relevant prison. Prisoners consider that the answers given by the Prison Administration are formal and in reality the indicated circumstances are not examined. At the same time, the prisoners emphasize that the Prison Administration overtrust conclusions provided by representatives of administration of particular prisons and does not take into account the prisoner's point of view.

For example, a prisoner of the Riga Central prison stated in his submission that he had wanted to meet with his mother, wife and three-year-son at the same time. However, the employees of the prison explained him that, during a meeting, an arrested person has the right to meet with two adults and a child under the age of one. Besides, Section 35 of the Cabinet Regulation No. 800 of the November 27, 2007 "On Internal Order in Remand Prisons" provides that *"prisoners are provided with the opportunity to meet with two visitors at the same time".* The Ombudsman informed the applicant that, according to the principle of good administration, the head of the prison, having assessed the individual case and found objective reasons, is entitled to allow the arrested person to meet with two adults and a small child even if he is older than one year.

### 3.3. Elaboration of plan for individual risk assessment and resocialization of prisoners

Imprisonment can be judged controversially because, on the one hand, it aims to protect the society by isolating prisoners from it, but on the other hand, the aim is to prevent prisoners from committing new crimes after returning to the society. International documents on human rights emphasize the need to protect the society

from repetition of crimes, while noting that this goal can be achieved only by providing the prisoner with a regime aimed to adaptation to the life in the society.

Recommendation Rec (2006) 2 made by the Committee of Ministers of the European Council to the Member States on the European Prison Rules (hereinafter - the European Prison Rules) interpret penal regime as the involvement of prisoners in the implementation of a balanced program, taking into account their needs for social welfare. These guidelines are included in "The Concept of Resocialization of Persons Sentenced to Imprisonment" and form the basis for further development of penal policy in Latvia.

In early 2012, according to the above mentioned concept, amendments to the Latvian Penal Execution Code entered into force that significantly change the goals, directions, objectives and content of penalties, as well as the means to achieve these goals. The aim of the amendments was to establish a reintegration mechanism, thus making the execution of penalties more efficient. Section $61^5$ of the Latvian Penal Execution Code provides necessity to assess risks and needs of the convicted person, which should take place within two months after putting the convicted person in the prison.

During the assessment, it is necessary to establish: reintegration needs of the convicted person, level of risk of antisocial behavior and level of risk of repeated offense, the most appropriate measures for social behavioral correction or social rehabilitation and other measures that are to be taken during the execution of the penalty and included into the reintegration plan of the convicted person. According to Section $61^6$ of the Penal Execution Code, the resocialization plan of the convicted person provides the course of person's reintegration and its results. Reevaluation of the convicted person has to be performed at least once a year.

Since 2012, the Ombudsman's Office has paid particular attention to the problems of implementation of the above mentioned amendments. Thus, a more detailed study of this topic in relation to prisons was set as the priority in 2013. Elaboration of plan for individual risk assessment and resocialization plan was analyzed in Brasa and Daugavgriva prisons.

After a two-day visit (on April 18 – 19) in Daugavgriva prison, a Conclusion was drawn-up where a separate section was devoted to the issues of individual risk assessment and elaboration of resocialization plan for the convicted persons.

The Conclusion pointed out significant deficiencies in the implementation process of the amendments concerning all prisons:

1. Evaluation of risks and needs is a very slow process. For example, on the day of the visit to Daugavgriva prison, according to Transitional provisions of the Latvian Penal Execution Code, the resocialization plans had to be already fully prepared, however, during the visit, complete resocialization cases were ready only for 70-80 per cent of convicted persons. In other prisons as well – even in September, October 2013 - reintegration plans were not fully prepared for all convicts (such as Ilguciems and Skirotava prisons).
2. Individual risk assessment and reintegration plans are prepared by a psychologist, social worker, Senior Officer of the Social Rehabilitation Department (Head of the Unit). In accordance with "the concept of resocialization of persons sentenced to imprisonment", proportion of resocialization personnel and convicts is a very important issue determining the effectiveness of the resocialization. Peculiarity of the resocialization personnel is that this work cannot be done qualitatively, if the maximum ratio of personnel and convicts is exceeded. Having evaluated the situation in Daugavgriva prison, it can be concluded that the number of psychologists currently working there does not comply with the number set by the Concept, and thus quality requirements provided by the Concept cannot be met.
3. Following negotiations with employees of the prison, it can be concluded that the current assessment of risks and needs is carried out formally and superficially. The requirement to carry out such assessments of risks and needs and to prepare resocialization plans has created additional duties for the employees. However, the number of the employees has not increased, and the salary has remained at the same level. Besides, the employees did not have a common opinion about the benefits of the assessment. The impression was that they only tried to meet the "formal" requirements of the law due to the lack of time, although almost two years had already passed from the date when the amendments entered into force. Concepts provided by the law and actions must be filled with content, creating awareness of the sense of resocialization in prisons and making the statutory tasks possible to implement (financial resources, additional workplaces, salaries).
4. Having got acquainted with the assessment of risks and needs, several problematic aspects were found in the evaluation forms. Evaluations are carried out based on point and letter assessment scale. Description is minimal or does not exist at all.

Thus, it can be concluded that in some cases there is a need for sufficient description of assessment of the convict because specialists who will work with these convicts after some years, may need conclusions made by the prior employees during this initial assessment of the convict.

5. The assessment of risks and needs reveals that there is a lack of cooperation among the resocialization workers (psychologists, senior inspectors, social workers), i.e. each of these professionals fills his own chapter in the assessment form. The best result can be achieved in discussions on established problems involving all employees related to the assessment procedure. It would result in finding the best options for the work with convicts.
6. The Ombudsman pointed out the established problems related to the assessment of individual risks and resocialization plans and provided this information to the Ministry of Justice, Prison Administration and Daugavgriva prison. The received responses indicate that the competent authorities fully recognize problems related to the assessment of individual risks and resocialization plans in prisons. The Prison Administration carried out monitoring of the work of the Social Rehabilitation Department of the Daugavgriva prison and found out that risk assessments are mostly formal.

To prevent problems in the future, the Prison Administration plans to continue training of employees of all prisons on preparation of assessments of individual risks and elaboration of resocialization plans. Besides, it is planned to promote discussions on problematic aspects of each convict once a week (involving different specialists), to raise the quality of the work done by the personnel of prisons, to perform work optimization and reevaluate job description of psychologists, to identify key priorities in the work of psychologists and carry out a serious control of the quality of the risk assessment in order to achieve the maximum effect of resocialization.

In 2014, a special attention will be paid to the assessments of individual risks and resocialization plans by carrying out inspection visits to the prisons.

### 3.4. Short meetings

The Ombudsman's Office is still receiving submissions stating that short meetings with convicted persons take place behind a glass barrier. The Ombudsman has repeatedly pointed out that the regulatory framework does not provide necessity

for the glass wall between the convict and the visitor during short meetings. In contrast, the Prison Administration has told the Ombudsman that the legislation does not allow convicted persons to have physical contact with visitors during the short meetings, and it is possible during long meetings.

However, it should be noted that none of the normative acts entitle the Prison Administration to organize short meeting for the convicts without allowing them to have physical contact with visitors. The Ombudsman considers that when organizing short meetings and using glass walls, the Prisons Administration inadequately restricts the rights of individuals to privacy. This practice has to be stopped, and all places for short meetings should be equipped with movable glass walls which can be used in case of necessity.

It is easy to understand concerns of the administration about possible security threats or transfer of illegal items / substances to prisoners, but such concerns cannot be the cause of absolute restrictions of the rights of individuals to privacy, because there are other, less restrictive means for ensuring security, for example, examination of the visitors or activization of the Security Department of the prison.

### 3.5. Problems related to persons sentenced to life imprisonment

Similarly to previous years, in 2014 several aspects related to persons sentenced to a custodial sentence - a life imprisonment - have become topical. On April 1, 2013, amendments to the Latvian Penal Execution Code came into force providing that such special means as handcuffs can be applied to a person convicted to life imprisonment by analyzing the hazards and need. Such decision is to be made by the commission created by the head of the prison. The commission is obliged to listen to the convict as well.

European Committee for the Prevention of Torture (hereinafter - Committee), after several visits to Latvia, has repeatedly pointed out that there can be no excuse for systematic use of handcuffs in relation to persons sentenced to life imprisonment, especially if it is done in a safe environment. The Committee has repeatedly asked the Latvian authorities to take immediate action to carry out a proper risk assessment of all individual life-sentenced prisoners and to adapt security measures (Report to the Government of Latvia on the visit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from September 5 to

September 15, 2011 to the Latvian Government). As shown by information received by the Ombudsman's Office, this norm is not fully implemented. Thus, in 2014 it is planned to continue working on the research of this issue.

Besides, in 2013, topical is the question of progressive execution of sentence in relation to life-sentenced prisoners. The progressive execution of sentence for the life-sentenced men is possible only in a closed-type prison, while for women – in a semi-closed prison. Although these individuals are sentenced to custodial sentence - a life imprisonment, the law provides possibility to ask for early conditional release. Section 5, paragraph 3 of the Clemency Law provides that life-sentenced prisoners may request a clemency after having served at least 20 years of the sentence of deprivation of liberty. Thus, it is possible that the life-sentenced prisoners may return to the community. However, the progressive execution of sentence does not allow these persons to move to lighter prison regime, in which the existing regime would be more comparable to life in the outside. This question will be explored in depth in 2014.

### 3.6. Video surveillance in cells of the Daugavgriva prison

In 2013, many submissions were received with complaints on continuous video surveillance in the cells of Daugavpils Department of Daugavgriva (persons who are sentenced to life imprisonment).

In the Conclusion on the visit to Daugavgriva prison on April 18-19, 2013, the Ombudsman repeatedly[52] pointed out that: although there is a general regulatory framework that allows video surveillance, however, with regard to prisoners, there is a need for special legal framework, particularly in view of the fact that prisoners' living cells may not be considered as public places.

The Ombudsman pointed out that it is necessary to define the situations and the period when it is permissible to subject prisoners to video surveillance. At present, the restriction resulting from the constant video surveillance does not comply with quality criteria defined by the law. In addition, the Ombudsman said: it is unacceptable to subject prisoners to enhanced security measures, if there is no

[52] In 2012, such recommendation was made in the Conclusion on Life-Sentenced Prisoners in Daugavgriva prison.

objective basis and evaluation and if the behavior of the prisoner has not created such need.

In the present situation, the Ombudsman did not see any basis for video surveillance of the prisoners and concluded that video surveillance is to be considered as a disproportionate interference with the person’s right to privacy. The Ombudsman also pointed out that in certain situations video surveillance in cells should be even encouraged, but such measure should be based on serious reasons explaining why a particular person needs video surveillance or supervision. For example, suicide attempts, planned or implemented attacks on staff, other prisoners, etc.

### 3.7. Violence, self-regulation and suicide of prisoners in detention facilities

Reports received by the Ombudsman's Office and the information obtained during visits show that in prisons there is a very pronounced prisoners' self-government or hierarchy. Prisoners who are placed on the lowest level of this self-created "hierarchy" are constantly being humiliated. For refusal to comply with the orders of other convicts, they are subject to physical violence.

Such submissions have been received from Jekabpils, Skirotava and Brasa prisons. Besides, the existence of such practice was confirmed by the prisoners during negotiations, when the employees of the Ombudsman's Office visited the Skirotava prison. At the same time, the prisoners have emphasized that this "self-government of prisoners" is supported and sometimes even provoked by employees of the prison.

The hierarchy of prisoners is a factor favorable for violence among prisoners, and prison officers have to understand it. This problem was also emphasized by the Committee after visiting prisons in Latvia. The Committee noted that it is necessary to stop immediately the delegation of powers to prisoners.

The Ombudsman has also repeatedly drawn attention to the pronounced hierarchical system in different prisons and the resulting violence. For example, the Conclusion on the visit to Jekabpils prison in 2008 and Conclusion on the visit to Skirotava and Valmiera prisons in 2011 stated that, when there is a suspicion of possible violence against prisoners, the Prison Administration is obliged to carry out an investigation, and this investigation must be efficient and aimed to establish the truth and punish the offenders.

In 2013, the Ombudsman repeatedly sent a letter to the Prison Administration and the Ministry of Justice with a request to seriously address this issue. The Prison Administration replied that the placement of prisoners in small cells and continuous supervision are the key factors to prevent cross-violence. The Prison Administration considers that the problem could be resolved by construction of appropriate prison facilities. At the same time, the lack of supervisory personnel is also emphasized. Without a doubt, the arguments provided by the Prison Administration are considerable, but the Ombudsman considers that, even if the prison's resources are very limited, the attitude of the prison personnel can help to achieve significant results and create a microclimate that would comply with human rights and principles of good administration.

In 2013, the Ombudsman also raised the issue on the causes of suicides in prison. There are many factors that may cause suicides of the prisoners, such as hierarchy, negligent attitude from the part of personnel.

It is the duty of the State to guarantee safe conditions for execution of penalty. The Ombudsman's letter to Prison Administration emphasized the importance of professional psychologists in prevention of suicides, and noted that the attention paid to the service of psychologists in Latvia prisons is not sufficient, so it is possible that prisoners do not receive psychological assistance timely.

The Prison Administration replied: although prisoners are provided with the opportunity to participate in psychological care measures, however, the number of psychologists working in prisons is insufficient. Therefore, various measures are planned that will contribute to the development of psychological care of high quality. In 2014 and 2015, it is planned to increase gradually the number of psychologists working in prisons.

### 3.8. Availability of the court to prisoners

In 2013, the Ombudsman's Office received several submissions on access to the court of the prisoners who are not fluent in Latvian. The Ombudsman has concluded that prisoners, if they are not fluent in Latvian and material considerations do not allow them to request a translation of a submission or a complaint, are limited in opportunity to access to the court in issues that are not directly related to his criminal proceedings. Opportunities provided by the State Ensured Legal Aid Law are

limited. Therefore, the Ombudsman's Office has asked the Ministry of Justice what measures, in cooperation with the Prison Administration, are taken to facilitate prisoners' access to the court that is currently impossible for them due to ignorance of the official language.

The response pointed to the regulatory framework for state-ensured legal aid in civil, administrative and criminal cases, and civil cases on cross-border disputes. Also, information was given about the opportunities to learn the language through self-education and general education programs.

The Ombudsman will continue to supervise the opportunities and efficiency of learning of the official language.

### 3.9. Information availability

Since January 1, 2013, in accordance with the Law on Official Publications and Legal Information, the official publication is provided in electronic form only, which is published on the website *www.vestnesis.lv*. Given that most prisoners do not have access to the Internet, the Ombudsman's Office asked the Prison Administration to express the opinion on access to external laws and regulations in prisons. The Ombudsman's Office received the Prison Administration’s response, which shows the following: in line with the Law on Submissions, prisoners may turn to administration of the prison expressing a reasoned request to get acquainted with external laws and regulations published in the official journal free of charge. The Administration of the prison provides the prisoners with opportunity to get acquainted with external laws and regulations free of charge, to use printout of official publication for a short period of time or, in the presence of employees, access to sites *www.vestnesis.lv* and / or *www.likumi.lv*.

There have been submissions stating that there is no librarian in the libraries of prisons for a long time, even for half a year, and thus it is not possible to receive and return books. The Ombudsman's Office has informed the Prison Administration about this problem. The Prison Administration considers that it is necessary to create Library of Riga Central Prison (National Library), with branches in other prisons. The Prison Administration believes that the National Library in prison can be established if there is a conceptual decision providing adequate funding and policy (funding is needed for remuneration of librarians, arrangement of the premises, updating and

maintenance of book collection). The Prison Administration has asked the Ministry of Justice to examine the issue of funding for this purpose. The Ombudsman's Office will follow up with the solution of this situation.

### 3.10. Health care of prisoners

In relation to health care, in 2013 many submissions were received with complaints about medical treatment, actions of medical personnel in prisons (such as not sending to different procedures or to the Committee of Doctors for Health and Work Ability Expertise in order to determine disability or to carry out a repeated examination of disability), negligence of medical personnel resulting in a worsened state of health. The Ombudsman, after receiving such submissions, transmits them to the Health Inspection for examination.

Similarly to previous years, a topical issue in prisons is the lack of access to dental care and dental treatment. Section 2.2 of the Cabinet Regulations No.199 of March 20, 2007 "On the Health Care of the Prisoners and Convicts in Prisons and Detention Facilities" states: "*Prisoners receive a free emergency dental care*." Thus, prisoners, like free persons, can receive dental treatment teeth only at their own expense. They do not have to pay only for emergency dental assistance.

In this context, there are two major aspects. Firstly, the availability of dentists in acute cases. Prisoners have provided information on the fact that when a prisoner is suffering toothache, he has to wait for a help of dentist for a long time. There is no dentist in Brasa and Daugavgriva prisons, and in Correctional institution of Cesis. Until October 1, 2013, there was no dentist in Valmiera prison as well.

In these cases, the dental services are provided in medical institutions outside the prison. However, there is a tendency that the prisoners cannot be transported to the hospital in due time. For example, after the visit to Daugavgriva prison on April 18 and 19, 2013, the Ombudsman concluded that on the day of visit 45 prisoners waited for a tooth extraction, but only 6-8 prisoners can be transported to a dentist during a week, so waiting period is about one month long.

In prisons with their own dentist, practice of emergency dental aid is different. For example, Jekabpils prison provides assistance in three to five working days; Skirotava prison provides emergency dental assistance three times a week, in case of necessity more often; Jelgava prison provides emergency assistances basing on a

submission, on the next dentist's working day; Ilguciems prison provides this type of assistance for a period of time from one hour to three days.
It should be noted that, without provision of timely access a dentist, in case of toothache, it is possible to create such level of suffering that violates the prohibition of inhuman treatment (Section 3 of the ECPHRFF).

Secondly, availability of dental services in cases when prisoner does not have the financial capacity to cover medical expenses, but dental treatment is needed. If teeth are not treated duly, it can result in deterioration of the state of teeth and the general state health and can lead to the need for tooth extraction.

As previously mentioned, the regulatory framework does not provide that dental treatment costs for prisoners should be paid from public funds. However, the Ombudsman considers that, if a prisoner is in an objective need for dental help and has no financial resources, if the prison does not provide him with job possibilities or if the prisoner is incapable to work due his age or illness, the State has to ensure dental care according to the person's needs.

In general, the evaluation of submissions and information received during the visits to Medical Departments of the prisons show that conceptually no one tries to solve the issue of motivation of the medical personnel to work in prisons. Besides, prisons fail to comply with recommendations made during the visit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to Latvia (from May 5 to 12, 2004 and from November 27 to December 7, 2007) to ensure availability of a medical professional - at least a nurse - in prisons at night and on weekends, especially in prisons with separate cells for ill prisoners[53]. The exception is the Division for Mothers and Children of the Medical Department in Ilguciems prison. The competent authorities still have to think about wholesome use of the Prison Hospital of Latvia.

[53] Report to the Government of Latvia "Visit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to Latvia from November 27 to December 7, 2007". Available: http://www.vvc.gov.lv/advantagecms/LV/tulkojumi/dokumenti.html?folder=%2Fdocs%2FSTA%2FTulkojumi_no_anglju_val%2FZinojumi%2F

# 4. Guarantees of Protection of the Rights of Persons in Contact with the Police

In 2013, the Ombudsman's Office carried out several examinations initiated in 2012 for alleged violations of Section 3 of the ECPHRFF committed by police officers. According to Section 13 of the Convention, the State is obliged to create an effective defense mechanism that a person can use in case of violation of his or her rights. It means that in cases, when a person has not used possibilities of this defense mechanism, the Ombudsman's Office evaluates its effectiveness in the given situation. In several cases, the assessment of the defense mechanism created by the State Police has revealed several serious deficiencies. The issue of complaints about the quality of investigations of alleged violence in Latvia has emerged with a number of the ECHR judgments against Latvia, which point to ineffective investigation of violence-related cases. Therefore, the Ombudsman considers that there is an urgent necessity to reform the existing system that does not meet the requirements of human rights, and to ensure that complaints about violence are investigated by an independent authority.

For example, the Ombudsman's Office initiated the verification procedure Nr.2012-204-2A on the police activities and effectiveness of investigation. The circumstances of the case are similar to the case "Jasinskis against Latvia" investigated by the ECHR. The police received information about a person lying on the street. Arriving at the scene and seeing that the person was under the influence of alcohol, the police delivered this person to the police station. Later, officials found that the state of health of the detainee had deteriorated. They called ambulance and the person was transported to a hospital where he died.

During the verification procedure, it was found that the institution had not examined and evaluated conditions and time when the bodily injuries were caused. Accordingly, there is a possibility that the established bodily injuries could have occurred while the person was at the police station.

From the perspective of human rights, in case of alleged violation of Articles 2 and 3 of the ECPHRFF, requirements for the operation of the protective mechanism of human rights are high. In the present case, the analysis of materials of the case revealed that the inspection performed by the police office was not sufficiently careful and can be considered inefficient in the context of Section 13 of the ECPHRFF.

In another verification procedure - No.2013-54-2A - the Ombudsman found that the State Police had not carried out inspection with due diligence. The detainee refused to give his cell phone to the police. Police officers, believing that there are indications to administrative violation in the behavior of the detainee - non-compliance with the legal requirements of the police officers -, resorted to physical force resulting in bodily injuries of the detainee. However, the officials of the relevant Police station, after evaluation of the materials of administrative case, did not see indications to violations and decided to close the proceedings. On the other hand, the State Police department carried out inspection and came to the opposite conclusion but did not take any action to prevent inconsistencies. Only after the Ombudsman had sent his Conclusion to the competent authorities, these inconsistencies in the assessments of the State Police departments were resolved.

In 2013, the Ombudsman's Office initiated a verification procedure on alleged violation of the rights to freedom of expression within proceedings on administrative offense. The applicant B. stated in a submission that he wanted to make a video recording in the premises of the police station while the administrative violation protocol was being drawn up. State Police officers asked to stop recording, but the applicant continued to make the video. For refusing to stop these activities, a new administrative violation protocol was drawn-up for non-compliance with the legal requirements of police officers. The decision was appealed, but the court did not change it. The verification procedure is currently being evaluated in order to examine if forbidding the recording a video aimed to fix the process of writing the administrative violation protocol, does not violate a person's right to freedom of expression and does not violate the principle of good administration.

It should be noted that individuals continue to submit submissions on living conditions in detention premises of the State Police.

## 5. Supervision of Pretrial Criminal Proceedings

In 2013, the Ombudsman's Office received submissions where the applicants expressed their dissatisfaction with the progress of criminal proceedings. Equal number of submissions was received from victims and suspects, accused persons and their advocates.

Submissions often contain complaints about behavior of the party who initiates the lawsuit or the supervising prosecutor and decisions made during pretrial investigation of the criminal proceedings. For example, it is noted that during pretrial investigation persons do not have access to interpreters or advocates. Submissions also point to incorrect conduct of search of various goods, including computers, as well as seizure and non-returning of these goods for a long time.

Several submissions complain about inefficiency of human rights protection mechanisms used in criminal proceedings. The applicants state that the prosecutor's office does not asses the complaints of persons with sufficient care or provide only formal responses.

From the point of view of human rights, the State is obliged to create an effective defense mechanism. However, requirements defined in Section 375 of the CrPL (restriction to obtain information on the process of pretrial investigation) do not permit the Ombudsman to conduct a comprehensive assessment of the efficiency of the protection mechanism. In 2012 already, the Ombudsman's Office asked the Saeima to adopt the necessary amendments to the CrPL that would allow the Ombudsman to get acquainted with the materials of criminal proceedings at the pretrial stage. However, such amendments have not been developed. Getting acquainted with the received submissions and accompanying materials, it can be seen that in most cases the parties to the proceedings have not used protective mechanisms to protect their interests, therefore, in the particular case, the evaluation of the effectiveness is not possible. In his response letters, the Ombudsman informs the applicants about these mechanisms and invites people to use them, or, in accordance with the Law on Submissions, forwards the received submissions to the competent authorities.

In 2013, the Ombudsman's Office received several submissions about police decisions to refuse to initiate criminal proceedings in cases where the proprietor enters the person's dwelling against the will of this person or without complying with the statutory order. For example, a representative of the proprietor of an apartment repeatedly tried to enter the rented apartment. The police were called several times, however, an active police action did not follow. Once, the representative of the proprietor managed to enter the apartment during the absence of the tenant and to deny access of the tenant to his dwelling. Criminal proceedings about such an arbitrary action were initiated a month after the first attempt of intrusion.

# 6. Rights to Freedom

The Ombudsman's Office has received several submissions on criminal procedure decisions relating to the restriction of freedom. CrPL provides that the monitoring of human rights in criminal proceedings shall be the supervised by the prosecutor's office and the investigating judge. At the same time, it clearly describes the order of appeal in order to change the decision or action of the person who directs the lawsuit. Therefore, in most cases the parties were invited to use the opportunities for protection of their rights provided by the CrPL.

Section 375, paragraph 1 of the CrPL significantly restricts the Ombudsman's possibilities to provide an objective assessment of the specific situation from the point of view of human rights. In some cases, when persons provided sufficient information or when the person who directs the lawsuit considered it possible to provide the necessary information to the Ombudsman, the particular situation was evaluated from the perspective of human rights.

For example, the applicant S.P. stated in his submission that he was detained without a valid court decision. Getting acquainted with the actual facts, it was found that the applicant, at his own initiative, was having forensic psychiatric examination. While the applicant was in the State Ltd. "Riga Centre of Psychiatry and Addiction Disorders", the materials of criminal proceedings were also transferred to the Centre of Psychiatry, therefore the court could not carry out periodic supervision of detention without the materials of criminal proceedings. However, after the completion of the psychiatric examination, the materials of criminal proceedings were sent back to the court, which immediately assessed the need for further imposition of detention.

Although the periodic supervision of detention took place by violating the two-month period set by the CrPL, the offense was not established because the court had assessed the need for further imposition of detention without an unjustified delay.

In 2013, several verification procedures for alleged violations of the right to freedom were initiated. In the framework of a verification procedure, a question of a possible violation of the maximum term of detention was examined. However, evaluation of the obtained materials showed that the court had regularly assessed the need for further imposition of the preventive measure – detention, therefore all decisions can be justified accordingly.

In contrast, the verification procedure No.2013-164-3D was initiated on the basis of a person's submission on unjustified imposition of a preventive measure related to custodial punishment, but the verification procedure No.2013-107-3D was initiated by a representative's complaint about detention of a person exceeding the maximum term provided by the Law. Both cases are still under examination.

The verification procedure No.2013-111-3C was initiated on implementation of administrative arrest after the end limitation period provided by the Law. The Conclusion states that the police officers imposed administrative arrest four months after the date when the punishment was no longer imposable due to limitation set by the Law. The established facts were provided to the administration of the State Police and the relevant police station. After the Conclusion was sent, the Internal Security Office of the State Police sent a response letter with results of internal examination explaining that this situation had occurred because the police officers had not timely got acquainted with the latest changes in the legislation. In order to prevent similar situations in the future, the head of the relevant police station was asked to organize informative meetings in order to inform the personnel on changes in legislation in due time.

In 2013, a complicated verification procedure on a possible violation of the right to freedom was closed. This case had been initiated in 2011. In his submission, the applicant K.C. stated that he was sentenced to custodial punishment but afterwards he fell ill with tuberculosis and therefore the imprisonment was not acceptable.

Having evaluated information gathered on the verification procedure, Ombudsman concluded: motivation of the court decision did not reflect the need for imposition of custodial punishment, thus violating Section 5, paragraph 2 of the ECPHRFF which provides that any arrested person must be informed immediately of the reasons for detention. At the same time, the Ombudsman established violation of Section 6 of the ECPHRFF failing to ensure receipt of a motivated court judgment within a reasonable time - the full text version of the judgment was given to the applicant only four months after his arrest and the date of the abbreviated judgment. In addition, the verification procedure revealed violation of Section 5, paragraph 5 of the ECPHRFF, because the applicant did not receive effective periodic control of detention after sending the criminal proceedings to the Court of Appeal. It was found that the decisions made on further detention had been formal and arguments provided

by the applicant had not been evaluated. The verification procedure did not reveal violations of Section 3 of the ECPHRFF.

## 7. Extradition of a Person to a Foreign State

In 2013, the Ombudsman's Office received submission from the sworn advocate and defender of D. Calovskis on alleged serious violations of human rights in the process of detention and search, as well as on possible violation of Section 3 of the ECPHRFF in case if it is decided to extradite D. Calovskis to the United States (U.S.) due to the alleged cybercrimes in the U.S. jurisdiction.

Examination of the received information revealed that, in case of extradition of D. Calovskis to the U.S., there is a possibility that the fact of this extradition can cause an irreparable violation of his fundamental rights. Thus, even before the completion of the verification procedures, the Ombudsman considered it necessary to draw attention of the CM on the following considerations. Section 98 of the Constitution stated that a citizen of Latvia may not be extradited to a foreign country, except in the cases provided for in international agreements if, by the extradition, the basic human rights specified in the Constitution are not violated.

The ECHR has also set that States have a duty not to extradite a person if there is a reasonable suspicion that the person in the receiving country can be subjected to inhuman or degrading treatment or punishment. Thus, the State is obliged to exclude any reasonable doubt that, in case of extradition, the person’s fundamental rights could be violated. If the State fails to comply with this procedural obligation, it can be the basis for violation of Article 98 of the Constitution, besides it can also lead to violations of other binding international agreements such as the UN International Covenant on Civil and Political Rights and the ECPHRFF.

Section 13, paragraph 12 of the Ombudsman Law determines the right of the Ombudsman to participate in the meetings of the CM with advisory rights. In view of these rights, the Ombudsman asked the Prime Minister to take into account the above mentioned considerations during the evaluation of the issue of extradition of D. Calovskis to the U.S. (letter Nro.6-4/59 of April 12, 2013).

On August 6, 2013, the CM made a decision on admissibility of the extradition D. Calovskis. The ECHR has received a submission of D. Calovskis against Latvia on possible violations of Sections 3 and 5 of the ECPHRFF and has

determined temporary protection - the prohibition of extradition of D. Calovskis to the U.S.

In October 2013, D. Calovskis was released from custody, because there was no basis for further custody.

# 8. Legal Status and Protection of Detained Foreigners and Asylum Seekers

## 8.1. Integration and social protection

In December 2012, the Ombudsman's Office completed the study on access of persons with alternative status to social assistance and social services. The respondents of the study were persons with alternative status which are subject to State protection for a different time period (1-5 years) and whose ability to integrate into society is determined by gender, age, marital status, education level, language skills and cultural background of the country of origin. The study allowed to obtain data indicating that the persons with alternative status are very unstable and insecure in issues related to income, housing and employment. In addition, it cannot be seen that the State intends to take long-term integration measures aimed at faster inclusion of these groups of persons in the labor market and society, thus preventing their being among persons who constantly ask for social assistance.

On February 8, 2013, in order to discuss the conclusions made during the study, the Ombudsman's Office held a round table discussion and invited all institutions that are responsible for integration and social protection of persons with alternative status: the Ministry of the Interior, OCMA, Ministry of Culture, Ministry of Welfare and State Employment Agency, representatives of municipalities of Riga and Ropazi, non-governmental organization "Latvian Centre for Human Rights", "Shelter "Safe House"" and representatives of the Latvian "Red Cross". During the discussion, representatives of the Ministries confirmed that the study has identified two major problems that can be addressed only at the executive level by determining an institution responsible for integration of persons who have received international protection and by setting a goal to create a permanently functioning mechanism of integration which includes such measures as courses on the State regime and language learning courses (as it is in the Scandinavian countries) and

creation of an integration center with social workers that are specially trained to work with this group of people.

The representatives of the municipalities put emphasis on the need for changes in the regulatory framework and integration of these individuals in politics. They proposed the following solution: to provide public funding to one of the ministries, to delegate functions to NGOs and to use individual approach for ensuring integration and social assistance to beneficiaries of international protection. The municipalities expressed their willingness to engage in the process of integration of beneficiaries of international protection, however, they pointed out that the delegation of functions without constant funding is not possible. It was pointed out that currently the municipalities are not ready to deal with integration issues related to refugees and beneficiaries of alternative status and to solve their everyday problems without additional state funding.

The NGOs repeatedly drew attention of the relevant ministries to the critical situation of the refugees and the persons with alternative status, and stated that it was the time to make the necessary changes because, at present, the number of such people in the State is small. The NGOs said that there is an urgent need to identify the authority responsible for integration of refugees and persons with alternative status because the Ministry of the Interior only decides on provision of protection to these individuals, but later municipalities and the NGOs have to deal with their integration without any funding. It was emphasized that currently there is a situation in which the State provides physical protection to groups of people, but there is no plan of further action or vision regarding integration of individuals of these groups.

Following the discussion, in March 2013 the Ombudsman's Office sent a letter to the CM stating that the State has a duty to fulfill its international obligations: the State does not only has to ensure physical protection of refugee and persons with alternative status, but it also has to create a clear and comprehensible legal framework for protection of these individuals. The letter sent by the Ombudsman’s Office to the government pointed out that the State, contrary to Section 34 of the Directive 2011/95/EU, does not provide the access of these individuals to independently-functioning integration programs elaborated by the State and considered to be appropriate to comply with the specific needs of these individuals; besides, the State does not create pre-conditions which can guarantee availability of such programs.

The CM was asked to express opinion on this issue and to evaluate the need for designation of an authority that would be responsible for the integration of the beneficiaries of international protection and that would prevent their social exclusion.

On 3 May 2013, the CM responded to the Ombudsman's letter and recognized that there is was a need for an independently-functioning integration program / plan, in accordance with the special needs of beneficiaries of international protection. However, the CM also pointed out that the program / plan, in line with Section 41 of Preamble of the Directive 2011/95, should be elaborated with regard to the aspect of proportionality, because this program does not have to be more favorable than the set of services that are ensured to the nationals of Latvia.

Furthermore, it is necessary to evaluate the aspect of available financial resources for this objective. At the same time, the CM concluded that currently the chosen authority responsible for the integration of beneficiaries of international protection is the Ministry of Culture who coordinates the work of the Advisory Board for the Integration of the Third-Country Nationals, therefore there is no need for an additional competent authority.

### 8.2. Supervision of Procedure on Force Return of Foreigners

Since July 1, 2011, on the basis of Section $50^7$ of the Immigration Law, the Ombudsman is responsible for supervision of the process of force return of foreigners. In 2012, in the framework of the project of 2011 by the European Return Fund, the Ombudsman's Office completed the methodology for questioning the foreigners that are to be expelled.

From July 2013, while continuing the improvement of the monitoring mechanism, the Ombudsman's Office continued the implementation of the project “Establishment of the Force Return Monitoring Mechanism” included in the program for 2013 by the European Return Fund.

The aim of the project is to develop a methodology for tasks involved in the monitoring process: inspection and monitoring of the places of detention of returnees during the factual expulsion. Besides, the project aims to draw up questionnaires for the inspection of accommodations of the detained foreigners subjected to force return. To achieve the aim, in 2013 accommodations of the detained foreigners subjected to force return were inspected in border inspection posts or in the State Border Guard

units of Riga airport, Riga port area in Liepaja, as well as all along the eastern border of the State.

The employees of the Ombudsman's Office have participated in the monitoring of two factual expulsions: expulsion to the Russian Federation and factual expulsion to the State border with the Republic of Belarus.

In 2014, in the framework of the project, it is planned to continue to perform the monitoring of the force return process, by interviewing the returnees. Besides, it is planned to complete and to approbate the questionnaire on the inspection of the place of detention and the questionnaire on the monitoring of factual expulsion. These questionnaires will be also based on the conclusions derived from the planned foreign trips for experience exchange and from problematic issues established in studies of the ECHR case-law.

It should be noted that, beside the project activities, the Ombudsman's Office continues to monitor all the foreigners that are subjected to forced expulsion. From January 1 to December 31, 2013, 33 decisions were received on force expulsion of foreigners. During the last year, 29 foreigners subjected to force return have been interviewed.

It should also be noted that after the report was sent to the Ministry of Interior at the beginning of 2013, the Ombudsman's Office noticed improvements in the work of the State Border Guard, which has changed its behavior towards long-term keeping of returnees in the temporary accommodation rooms in Riga, Rudolfa Street, 5. In view of the fact that the above-mentioned premises are not rebuilt and no significant improvements have been made, the Ombudsman's Office repeatedly points to the deficiencies described in the report sent to the Ministry of Interior in 2013: complaints about food quality and quantity, limited access to shower, insufficient lighting and ventilation, non-compliance with the standards of size of the detention premises. The Ombudsman's Office reiterates that detention premises for foreigners subjected to force return in Riga, Rudolfa Street, 5 are not intended for long-term detention.

Inspection carried out in the accommodation center “Daugavpils” for foreigners revealed a need to improve the provision of privacy during medical examinations, lack of a room appropriate for long-term placing and observation of ill detainees, as well as lack of a button for calling Security in isolation premises.

It was also found that persons in wheelchair have difficulties to enter the catering unit. Additional problem is related to placing persons in wheelchair on the

second floor, especially because the security requirements prohibit using elevators in case of fire. Besides, during the monitoring procedure, the employees of the foreigner accommodation centre “Daugavpils” could not present a list with providers of legal aid in case if the detained returnees (including asylum seekers) require assistance of an advocate within an appeal process.

Finally, during inspection carried out in the II-Category Border Inspection Post of the State Border Guard in Riga Commercial Port, the employees of the Ombudsman's Office found that in the temporary accommodation rooms of the Border Inspection Post (BIP) there were no beds or other furniture suitable for sleeping. However, in the temporary accommodation rooms there was a pillow and bed linen on a table. In addition, it was observed that the food provided to detainees contained a pack of crackers, a pack of biscuits, instant soup and 0.5 liters of water per day.

The registration journal of persons placed in the temporary accommodation rooms of the BIP revealed that persons had been placed in these rooms for a period of up to two days. After the inspection carried out in the BIP, the Ombudsman immediately sent a letter to the Head of the State Border Guard, informing about facts established in the temporary accommodation rooms and recommended not to place detainees in these rooms until the mentioned deficiencies are remedied.

### 8.3. Health care in the center “Mucenieki” for asylum seekers

After receipt of submission of an asylum seeker, in 2013 a verification procedure No. 2013-113-2A was initiated on the lack of provision of medical care in the center for asylum seekers "Mucenieki", including insufficient provision of analgesics after a bone fracture.

In the framework of a verification procedure, the employees of the Ombudsman's Office visited “Mucenieki”. Besides, upon the Ombudsman's request, the Health Inspectorate issued Conclusion on the quality of health care provided to the applicant. This Conclusion reveals that no violations related to the applicant's health care have been identified and the amount of analgesics provided for the applicant was appropriate to the applicant's state of health. In addition, it was found that the applicant had not been following medical advices for a long time, which resulted in significant deterioration of his state of health.

Thus, the Conclusion reveals that neither medical personnel of "Mucenieki", nor doctors of the applicant have committed violations that could cause a long period of severe pain suffered by the applicant. Thus, no violation of Article 95 of the Constitution on prohibition of inhuman treatment has been established.

## 9. Rights of Foreigners

In 2013, the Ombudsman's Office completed the first legal proceedings where he used the rights specified by Section 13, paragraph 9 of the Ombudsman's Law[54] to turn to regional administrative court in the interests of an individual if violations of guaranteed rights have been established.

The background of these legal proceedings consists of two verification procedures that were initiated in 2010 and 2011.

In the Conclusion on the first verification procedure, the Ombudsman's Office, making reference to the case-law, stated that each carrier of power, exercising his powers and making decisions (including the withdrawal of citizenship), has to verify compliance with the principles of legality, rationality and proportionality[55].

In deciding the question of the withdrawal of citizenship, the State is obliged to assess the proportionality of this measure, taking into account all the circumstances of the case. Besides, all along the process of the withdrawal of citizenship, it is necessary to comply with relevant procedural guarantees.

In order to avoid situations when a person becomes a stateless person, the State is not required to withdraw citizenship of persons who have acquired the citizenship by fraudulent practices, providing false information or concealing any relevant facts. In this case, it is needed to take into account the seriousness of the facts, as well as other relevant circumstances, such as the real and factual relations of the person with the State.[56]

[54] Section 13, paragraph 9 of the Ombudsman's Law : "In the performance of the functions and tasks specified by this Law, the Ombudsman has the right: [...] upon termination of a verification procedure and establishment of a violation, to defend the rights and interests of a private individual in administrative court, if that is necessary in the public interest".

[55] Vildbergs H.J., Feldhune G. References for the Constitution: learning material. Riga: LU, 2003, p.3,6.

[56] Recommendation R (1999) 18 of September 15, 1999 by the Committee of Ministers of the Council to the Member States on the Avoidance and Reduction of Statelessness. (1999) 18, 1.4/II/C/c.

In the case *"Janko Rottmann v. State of Bavaria"*[57], the Court of the European Union concluded that "[...] the Member States' action is not contrary to EU rights [...], when withdrawing citizenship of a citizen of EU, if this citizenship is acquired by fraudulent means, provided that the decision on the withdrawal of citizenship complies with the principle of proportionality".

The Ombudsman's Office stated in its Conclusion that the decision to withdraw the citizenship of the Republic of Latvia did not comply with the principle of proportionality or with the UN Convention on the Reduction of Statelessness of 1961.

The second verification procedure was initiated by the Ombudsman's Office in relation to refusal by the OCMA and the Minister of Interior to grant permanent resident status after the withdrawal of citizenship and obtention of statelessness status.

The OCMA informed the applicant that under Section 23, paragraph 1, point 27 of the Immigration Law, if the status of a stateless person has been granted to a foreigner in the Republic of Latvia, this person has the right to request a temporary residence permit for a period of time not exceeding five years.

The applicant refers to the fact that she belongs to the basic nation - the Latvians, she was born, has grown up and studied in Latvia, one of her parents is Latvian and the citizen of Latvia, here she owns a real estate and she has the most direct relation to Latvia. On February 4, 2011, the applicant turned to the Minister of Interior with a request to grant her a permanent residence permit because she considered that, by issuing a temporary residence permit, her social rights and access to health care etc. would be unreasonably limited.

On February 25, 2011, she received a reply that did not include an assessment on the merits, but indicated that the submission was being forwarded to the OCMA basing on the principle of competence, because the Section 24, paragraph 2 of the Immigration Law states that the Minister of the Interior issues permanent residence permit only in cases not laid down in this Law, if it complies with the State interests of Latvia. Besides, it should be noted that the verification procedure revealed: despite the fact that the applicant asked the OCMA too to issue the permanent residence permit, the OCMA, without making any decision, returned all documents to the

[57] Judgment by the ECHR of March 2, 2010 in the case No.C-135/08 *Janko Rottmann v. Freistaat Bayern*. Sections 56–58.

applicant and pointed out that she was entitled to receive only a temporary residence permit.

If a stateless person deprived of the citizenship of the Republic of Latvia has had a legal relationship only with this State and there is no other State that can guarantee protection or minimum social guarantees, not entitling such person to receive the permanent residence permit places this person in a particularly disadvantageous situation compared with other persons who have lost the citizenship of the Republic of Latvia due to rejection, are under protection of other State and can receive a permanent residence permit in Latvia.

The Conclusion points out that the OCMA as any government authority is bound by conclusions of the rulings of the Constitutional Court. As stated by the Constitutional Court in the decision of February 28, 2007 on termination of legal proceedings in the case No.2006-41-01, even in circumstances where the law *expressis verbis* does not provide possibility to asses proportionality of fundamental right limitations in case of issue of compulsory administrative act, the authority and the Court shall do it according to Section 1 of the Constitution. The obligation to respect the principle of proportionality is binding not only to legislators, but also to the public administration and courts. Not only the legislator, when adopting laws, is obliged to assess the compliance of these laws with the principle of proportionality, but also the public administration has to take into account the principle of proportionality in each individual case, especially if the action performed by the public administration limits the fundamental rights.

Administrative Procedure law aims to ensure the following: during the decision-making process, the decision should be adapted to human rights; the result - the decision in the field of administrative material rights - should also be consistent with human rights[58]. Thus, all the provisions of the Administrative Procedure Law and the Immigration Law have to be interpreted in the way that allows adapting the decision made by the public administration to human rights and complying the result with these rights.

After evaluation of the answers provided by the OCMA, the Conclusion notes that the authority, when issuing the mandatory administrative act, has not considered compliance of the norms of the Immigration Law with the principle of

[58] Levits E. Comment of Section 2 of the Administrative Procedure Law. Collection of Scientific Papers for Administrative Law Judges. Riga: Institute of Public Rights, 2003, p.155.

proportionality. Besides, because of refusal to provide the applicant with a permanent residence permit, she as a stateless person who had been a citizen of the Republic of Latvia, was subjected to unequal treatment and there have also been violation of Article 91 of the Constitution.

On July 11, 2011, in the interests of the stateless person, the Ombudsman lodged a submission to the Administrative Regional Court on the Decision No. 251 of June 3, 2011 by the OCMA on the refusal to issue a permanent residence permit. The submission pointed to all violations of the principle of good administration described above and asked to cancel the decision and to adopt an administrative act that would be favorable to the person.

In July 2013, the Ministry of Interior and the OCMA offered to come to a settlement in administrative proceedings, and the Ombudsman's Office and the applicant accepted this offer. In August 2013, the applicant received the permanent residence permit.

## 10. Rights to a Fair Trial

In 2013, the Ombudsman received a total of 253 submissions related to various aspects of rights to a fair trial. Compared to the year 2012, the number of submissions has not increased significantly.

As the scope of these rights is very broad (from ensuring access to the court both in civil and administrative cases, including the stage of pretrial investigation of criminal proceedings, to the actions of the bailiff when ensuring implementation of the judgment), attention will be focused only on the aspects that were highlighted the most often.

Compared to the previous year, in 2013 one of the topical problems arising from the received submissions was related to person's right to prosecution of the case in reasonable period of time. Thus, in order to highlight this issue timely and to point to specific problems, on June 29, 2013 the Ombudsman informed the Saeima, the Judicial Council, the Minister of Justice, the Heads of the Supreme Court and the Court Administration about problems identified during the first semester, putting a particular emphasis on reasonable terms and avoiding long court hearings.

It should be noted that these problems were also noticed in the second half of 2013. However, it is important to note that the Ombudsman welcomes the

amendments made to the Law on Judicial Power, which entered into force on September 1, 2013, because they provide more opportunities to the Heads of regional (city) courts and to the Heads of district courts for efficient management of adjudication process, including the control of case prosecution within a reasonable period of time.

Similarly, positive changes are related to amendments concerning publication of the court decisions which will undoubtedly contribute to the "transparency" and efficiency of the work of courts. In 2014, the Ombudsman's Office, when evaluating the submissions about the right to a fair trial within a reasonable time, will pay particular attention to see whether these amendments have made a positive change.

Besides, the submissions point to other aspects of the right to a fair trial: access to court, quality and amount of ensuring the legal aid. This year, the Ombudsman's Office will pay a particular attention to these issues.

### 10.1. Availability of the Court

One of topicalities that have not been emphasized by the Ombudsman previously is related to the access to the administrative courts and the need for legal aid.

Despite the fact that the Administrative Procedure Law (hereinafter - APL) provides the principle of objective investigation, people continue to turn to the Ombudsman's Office and report in their submissions and during oral consultations about difficulties with correct elaboration of submissions to the Administrative Court.

In contrast to the civil and criminal procedure, the legislator, during the development of the APL, included there the principle of objective investigation which was aimed to exempt individuals from using the assistance of advocate. Principle of objective investigation obliges the court to request the necessary evidences, to establish the truth and to find a just result during the adjudication of the case.

In relation to the form and content of the submission, Section 186 of the APL does not provide specific requirements related to indication of legal reasoning or compliance with other requirements for the protection of the interests at stake in court.

Individuals who believe that the administrative court, during examination of the submission, has not complied with the principle of objective investigation, int.al. has not asked for all evidences, are proposed to appeal against court decisions in a

higher court. However, it must be noted that, in atypical and complex cases, it is important for the applicant, when telling all the facts to the court, to distinguish facts of primary importance from the secondary facts, while, in some points, it is needed to bring out the legal arguments that are important for fair settlement of the dispute. In such cases, low-income persons and persons without sufficient legal knowledge need legal aid very much. The Ombudsman's Office has not made an overview on the influence of the principle of objective investigation on fair adjudication of cases in administrative courts, however, it is possible to refer to the research carried out by "Providus" which reveals the need for state-ensured legal aid in administrative proceedings.[59]

Given that every year the Ombudsman's Office receives complaints about the lack of State-ensured legal aid when turning to the Constitutional Court, in cases related to compensation of moral damage, claims on harm to honor and dignity, at the national level there is a need for serious review of the regulatory framework establishing the amount of State-ensured legal aid for the vulnerable groups of individuals.

Authors of several submissions have drawn the Ombudsman's attention to the fact that, in situations where courts have made unreasonable or erroneous judgments, individuals should receive State-ensured legal aid in claims for compensation for moral damage. Besides, several submissions have pointed to possible cases of insufficient legal aid or legal aid of a law quality.

The Ombudsman's Office is still receiving submissions pointing to the fact that the amount of the State fee is a real obstacle to the realization of the right of access to court. Similarly to 2012, examination of several submissions, including those received from prisoners, reveals that such situations occur if the person has not exhausted all possibilities for providing objective and comprehensive information to the court on his/ her financial situation, which could be the basis for full exemption from the State fee. However, in one of the cases the Ombudsman saw the basis for initiation of a verification procedure.

[59] Activity No.3 „Assessment of the Impact of Implementation of the Administrative Procedure Law and Propositions for Rendering It More Efficient" of the Project administered by the State Chancellery „Reduction of Administrative Burden and Simplification of Administrative Procedures". See p.8-52. Available: www.mk.gov.lv/file/files/ESfondi/2013/2zinojums_apl_11junijs.pdf

For example, a person in the submission stated: although, in the framework of a civil case, the state fee was reduced to 1000 Latvian lats, a person whose income was 280 lats per month was unable to pay even the reduced state fee. However, the person's request to split the payment in several installments, paying the whole sum in a longer period of time, was rejected by the court because the regulatory framework did not provide such procedure. Within the verification case, the Ombudsman's Office has asked the competent ministry to give its opinion and final conclusion whether such a regulatory framework that does not provide possibility to split the state fee into several installments, is compliant with human rights. The opinion and conclusion is not yet received.

An important aspect that can deny access to the court mentioned in some submissions: a person is unable to pay for reception of a certification issued by a State or municipal institution (such as a certification issued by the State Archive to prisoners), which is important for initiation of court proceedings. However, no offenses in this regard have been identified.

### 10.2. Rights to justice in relation to penalty reform

In 2013, starting from May, the Ombudsman's Office regularly received submissions form prisoners, where they asked to assess whether the Transitional provisions of Amendments to the Criminal Law which entered into force on April 1, 2013 (hereinafter – Transitional provisions) do not restrict the rights of applicants to a fair trial, because the adopted regulation allows reviewing only those entered-into-force court decisions where the duration of custodial punishment exceeds the maximum duration of custodial punishments defined by the new amendments.

On April 1, 2013, the Law on Amendments to the Sentence Execution Code entered into force which supplemented the Transitional provisions with Paragraph 26 in the following wording*: "The sentence execution institution shall within one month, in accordance with amendments to the Criminal Law coming into force from 1 April 2013, lodge a submission to a court on releasing a person from serving of the sentence or amending of the judgment or on cancelling of the probation period of a conditional sentence. Execution of a criminal punishment – community service – shall be suspended until examination of the submission in a court."*

At the same time, the convicts themselves had also an opportunity to turn to the administration of the prison in written form, if they believed that the amendments to the regulatory framework related to the relevant case. In such cases, the prison prepared the necessary documents and sent them to the court for evaluation. Taking into account the above mentioned information, it was not found that the adopted regulation denies access of individuals to court. On the other hand, on the basis of one submission lodged by a convicted person, a verification case was initiated.

In this case, the applicant asked to examine alleged violations of human rights at the stage of sentence execution, because Tukuma regional court and Zemgale district court had not properly examined the reduction of sentence in accordance with the amendments to the Criminal Law (hereinafter - CrL), which came into force on April 1, 2013. In the framework of the verification case, an explanation was also requested from the Ministry of Justice.

According to the Transitional Provisions of the Law of December 13, 2012, punishments of deprivation of liberty shall be reduced to the maximum punishment provided for in the relevant Section of the Criminal Law for persons who have been convicted until the day of coming into force of this Law and are serving the punishment of deprivation of liberty, if the punishment of deprivation of liberty adjudged by a court exceeds the maximum punishment, which is provided for in the Section of the Criminal Law for the relevant criminal offence after the day of coming into force of this Law.

The Ministry of Justice responded to the Ombudsman's Office's request for opinion, whether, in accordance with the Transitional provisions, the courts dealing with the issue of amending the court decision must take into account not only the maximum custodial sentence in the relevant section of the CrP, but also the qualification of the relevant paragraph. The reply of the Ministry of Justice was: if, in case of conviction, “the adjudged punishment of deprivation of liberty exceeds the maximum punishment, which is provided for the relevant criminal offence after the day of coming into force of this Law, the punishment of deprivation of liberty shall be reduced to the maximum punishment provided for in the relevant Section of the Criminal Law which is provide for commitment of relevant offences [..]. According to Section 8 of the Transitional Provisions of the amendments to the Criminal Law, it is not provided to re-evaluate the penalty imposed on the convicted person by viewing

only the relevant paragraph of the relevant Section. It is necessary to evaluate the disposition of the criminal offense for which the person was convicted.

The amendments to the CrL eliminate the repetition which was a qualifying element of criminal offense. If a person has been convicted for repeated offenses and no other qualifying elements of criminal offence set by the relevant Section of the CrL have been established (for example, a group of people, a large amount, etc.), then the penalty of such person shall be reviewed in accordance with the basic composition of a criminal offense without qualifying elements. [..] Transitional provisions of the CrL do not provide possibility to change the qualification of criminal offence adjudged to the convicted person due to the amendments in the disposition of the relevant Section of the CrL, they only provide possibility to change the adjudged penalty by assessing the qualification of the criminal offense, which the relevant person would have if he or she would be judged after the day of coming into force of the amendments to the CrL".

Upon completion of the verification procedure, it was found that the court had not properly assessed the reviewing of the penalty of the convicted person, therefore, in order to protect the rights of the person, the Attorney General was asked to submit a protest against the particular court decision.

### 10.3. Rights to case adjudication within in reasonable time limits

Adjudication of cases in reasonable time limits is a long-lasting problem; the Ombudsman has highlighted this problem for several last year, however, it is still topical. The most of the received submissions are related to long adjudication of criminal proceedings, but such trend is also observed in adjudication of civil cases.

The major problems related to the time of case adjudication arise in the court of appeal. In several cases, the Ombudsman has found that for persons who have been convicted by judgment of the court of first instance and continue to be in custody because they have appealed against the judgment of first instance, appellation court proceedings take years, and sometimes the time spent in custody is similar to the custodial penalty adjudged by the court of first instance.

In some cases, there was a tendency that, when the time spent in prison approached the deadline of the term of custodial sentence adjudged by the court of

first instance, during the last half-year, the court of appeal held even several court hearings.

The main problem affecting the progress of the case within reasonable time limits, is still disproportionately long waiting periods between court hearings when nothing happens. The Ombudsman considers that a special attention should be paid to adjudication time of cases where persons serve the sentence in custody, because non-compliance with the principle of reasonable time limits can lead not only to violations of Section 6 of the ECPHRFF, but, in long term, also to violation of the right to liberty (Section 5), privacy (Section 8) and other serious violations of human rights. Once again, it should be noted that in cases adjudicated by the ECHR against Latvia there are violations related to adjudication of cases within reasonable time limit.[60]

The Ombudsman welcomes the situation that in some cases the court, having established that the criminal proceedings have not complied with the rights of the accused to adjudication of the criminal case within reasonable time limits, has correctly applied Section $49^1$, paragraph 1of the CrL. Taking into account the opinion of the ECHR stating that usage of Section $49^1$ of the CrL is considered to be an effective mechanism for protection of the right to case adjudication within a reasonable time,[61] this regulation should be applied more often.

With regard to adjudication of civil cases within reasonable time limits, it is necessary to mention one case that, within six years, has not been adjudicated even in the court of first instance, which, of course, raises concern about the total time of adjudication. The case revealed that that long adjudication process is related to the active behavior of the parties, and thus, in accordance with the practice of the ECHR, it was pointed out that the State is not responsible for delays in the proceedings caused by the conduct of the parties.[62]

However, in relation to this case, it should be noted that failure to adjudicate the case within reasonable time limits cannot be justified by the fact that the parties are actively using their procedural options, such as submitting ancillary complaints. The State has a duty to organize the court proceeding in such a way that even active

[60] The newest of these cases: Judgment of May 28, 2013 by the ECHR in the case „*Sorokins and Sorokina v. Latvia"*, No. 45476/04; Judgment of October 2, 2012 in the case „*Dmitrijevs v. Lettonie"*, No.37467/04.
[61] Decision of December 4, 2012 in the case "*Trūps v Latvia"*, No.58497/08, Section 51.
[62] Judgment of June 28, 1978 by the ECHR in the case "*König v.FRG",* No.6232/73, Section 103.

usage of procedural options by the parties does not interfere with the possibility to reach the result within a reasonable period of time.[63]

### 10.4. Non-appointment of court hearing

Similarly to 2012, in 2013 the Ombudsman's Office received several submissions stating that in some cases, courts do not appoint court hearings for a long period of time. This problem has been revealed during oral consultations as well. It should be noted that, in some cases, the hearing was appointed only after the intervention of the Ombudsman, and, in these cases, the Court pointed out that it had been an exceptional case. Thus, it can be concluded that in some courts this practice is considered to be normal, although the regulatory framework provides for a specific procedure. The Ombudsman considers that such behavior of the court violates the principle of legal certainty and does not contribute to the credibility of the judicial system as a whole.

In addition, it was found that the CPL does not specify time limits within which the court should appoint a hearing after the transfer of the case for repeated adjudication in a court of lower instance. The Ombudsman drew the attention of the Chamber of Civil Cases of the Supreme Court to this problem, asking to consider the need for amendments to the legislation and to provide such time limits.

In response to the Ombudsman's request, the Chamber of Civil Cases of the Supreme Court stated that the issue was going to be discussed and noted that giving priority to certain categories of cases would prolong adjudication process of other cases. The Chamber of Civil Cases of the Supreme Court considers that the key factor for ensuring reasonable time limits is the amount of incoming cases that affects the workload of judges. In addition, the increased workload of judges could affect the quality of adjudication in a negative way.

Given that such problems were detected only in some courts, the Ombudsman asked to take necessary measures to dissolve them.

[63] Team of authors, scientific redaction by the prof. R. Balodis „Comments on the Constitution of the Republic of Latvia, Part VII. Fundamental Rights", Riga, Journal "Latvijas Vēstnesis", 2011, p.124.

### 10.5. Extension of elaboration term of full text version of the court decision

In the field of guaranteed right to a fair trial, it is necessary to point to an important problem: delay of elaboration term of full text version of the court decision, by unjustified and sometimes repeated extension of the elaboration term.

Over the past three years, the Ombudsman's Office has received submissions from the defendants and their advocates with complaints about delays in drafting the judgment in criminal cases, however, it should be noted that a similar problem has also been found in civil matters.

To show the things that the Ombudsman's Office has done to prevent these problems, it should be noted that at the end of 2011 several people turned to the Office and pointed to deficiencies in Section 530 of the CrPL. The historical version of the text provided that in criminal proceedings a court may prepare a judgment in an abridged form, but the full judgment shall be prepared within 14 days, announcing the date of the availability thereof. Paragraph 3 of this Section stated that if, due to plausible reasons, the full court adjudication is not drawn up in a specified time, a judge shall notify a public prosecutor, accused, victim, defense counsel and representative, when a full court adjudication will be available. The regulation did not provide for the maximum deadline or the number of times for preparation of full adjudication, besides it did not specify the plausible reasons that would allow extension of term for preparation of the text.

On December 8, 2011, the Ombudsman's Office asked the Ministry of Justice to assess the identified problems and to find ways to make amendments to the regulatory framework, because a long delay in the drafting process and issuing of the court decision can potentially create the following consequences:

- it may affect the overall duration of case adjudication in reasonable time limits;
- it leaves the accused person within state of legal uncertainty which is not acceptable from the point of view of rights to a fair trial;
- it can violate the right of the accused person to liberty.

In March 2012, the Ombudsman's Office received the reply from the Ministry of Justice which approved the need to make amendments to Sections 510 and 530 of the CrPL. Accordingly, in May 2012, the Saeima adopted amendments to the Section

530, paragraph 3 of the CrPL stating that the term for preparation of full court judgment may be extended only once if due to the amount of the case, legal complexity or other objective circumstances, the full court judgment was not made on time.

This wording has improved the situation, although it should be noted that in any case the article still contains deficiencies. One of them is not fixing the maximum term for preparation of full judgment. The Ombudsman drew the attention of the Saeima to this problem too, but the proposal was rejected.

Despite amendments to the regulatory framework, this year the Ombudsman's Office continues to receive complaints of a similar nature. For example, in several verification procedures, the Ombudsman found that the court had failed to comply with the order specified by Section 530, paragraph 3 of the CrPL allowing postponing the preparation of full court judgment only once. In addition to the fact that such behavior of the court violates procedural rules, the Conclusion also pointed out: repeated delay of the term for preparation of full court decision violates the principle of legal certainty and such practice is incompatible with guaranteed rights to a fair trial provided by Section 6 of the ECPHRFF.

In 2013, delay of preparation of full judgment was identified not only in the court of first instance but also in the court of appeal. For example, in early November 2013, the Office received a complaint from an attorney about action of the Supreme Court which had postponed preparation of full judgment in a criminal case four times, justifying it by the judge's workload in other proceedings. In connection with this complaint, the Office has initiated a verification procedure and has asked the Court Administration to provide comprehensive summary of statistical data on the judgment elaboration deadlines in courts of all instances, in order to establish: firstly, whether all courts are still practicing the extension of duration of court decision preparation over 14 days as provided by the law, and secondly, to which deadlines the preparation of full judgments is being extended.

In case of necessity, it is planned to submit recommendations to the Minister of Justice on amendments to Section 568 of the CrPL, in order to prevent undue delays in preparation of full judgments by courts of appeal which, undoubtedly, extends the whole duration of court proceedings.

It should be noted that, basically, complaints about delays in issuing full judgments in civil cases were received during oral consultations, and communication

with chanceries of the courts has confirmed these complaints. The Ombudsman has drawn the attention of the society and competent authorities to the fact that complications in organization of the court's administrative work should not transform into violations of the guaranteed rights to a fair trial.

### 10.6. Rights to be informed about court hearing and made decisions

In 2013, several submissions pointed to possible violations committed by courts by not informing the parties about court proceedings and the decisions taken. Such submissions have been received in relation to both civil disputes and criminal proceedings when the court has decided to replace conditional sentence with custodial punishment if a person fails to comply with statutory obligations arising from the Penal Execution Code and mandatory to individuals sentenced to conditional sentence.

In such cases, during evaluation of the alleged violations, the applicants were informed that the right to be present at a court hearing includes the right to be informed timely and adequately about the time and place of the hearing, and the right to attend the hearing and to fully participate in procedural activities during the hearing in person or through a representative. However, the State cannot be held responsible for the fact that the party of proceedings has not fulfilled his/ her obligations, i.e. has not registered his/ her place of residence or has not indicated another address where he/ she could be found for maintenance of legal relations with the State.

In view of the above mentioned information, none of the cases revealed any violations. At the same time, a particular attention should be paid to certain cases where the materials indicated that the court of first instance had not duly informed the applicant about the time and place of the hearing, but the court of appeal, after receipt of complaints, had corrected these mistakes.

### 10.7. Opinions of the Ombudsman submitted to the Constitutional Court

In 2013, the Ombudsman's Office provided his Opinion for the Constitutional Court on several cases concerning the individual's right to a fair trial.

[1] The Constitutional Court has initiated the case No.2013-02-01 “On the Compliance of Section 464[1], paragraph 2, point 2 of the Civil Procedure Law (Contested provision) with the first sentence of Article 92 of the Constitution."

The contested provision stated that the collegium of the Senate may refuse to initiate cassation court proceedings if no doubts have arisen regarding rule of law of the judgment of an appellate instance court and the matter to be examined has no meaning in establishment of jurisdiction. Having analyzed the compliance of this provision with human rights, the Ombudsman gave the opinion that the contested provision is not in itself contrary to Article 92 of the Constitution.

However, the Ombudsman pointed to another provision which causes violation (it was not contested): application of the contested provision together with Section 464, paragraph 4 providing that the decision on refusal to initiate cassation proceedings may be taken by the executive session of the Senate in the form of a resolution. This means that decision can only specify the time and place of its adoption, the name and composition of the court and the decision. Thus, the law allows refusing to initiate cassation proceedings without providing any motivation in the decision.

[2] The Constitutional Court has initiated [and at the beginning of 2014, a judgment was announced that stated that the contested provision was compliant with the Constitution] the case No.2013-04-01 “On compliance of Section 33, paragraph 3, point 1 of the Civil Procedure Law (hereinafter – Contested regulation) with Articles 91 and 92 of the Constitution of the Republic of Latvia”.

The contested provision stated that costs for advocate assistance are also costs related to proceedings. The applicant of the Constitution claims - "Gardie Visdari, Ltd." (hereinafter - the applicant) considers that the Contested provision violates the right to choose a representative in civil proceedings and, in case of a positive judgment, to receive compensation for payments made to the representative (which is not a sworn advocate) for the proceedings before the court.

The Ombudsman established that the contested provision did not comply with the Constitution, and also pointed out that the legitimate target of the States is to ensure possibility of a person to receive legal aid of high quality. Thus, the State might require the representatives, i.e. providers of legal aid, to be appropriately qualified in legal matters. However, a high-quality legal aid can be provided not only by advocates.

The Ombudsman pointed out that it is possible to achieve the goal, i.e. provision and reception of a high-quality legal aid, in more proportionate and effective way. This could be achieved by establishing uniform requirements and responsibilities of providers of legal aid, including the requirement to register as a provider of legal aid.

The Ombudsman pointed out that it was not clear why the State had not resolved the issue of the quality of legal aid providers at regulatory level for many years. Within the system, where the right to require compensation from the other party for legal aid is limited, in many cases the legal aid in the state is provided by other lawyers, not advocates. In legal proceedings, other lawyers are mostly used by persons with lower incomes, because the aid of advocates is more expensive, but the compensation for the legal aid may be required only in case of positive result which is not guaranteed by the participation of the advocate in the legal proceedings.

[3] Besides, the Ombudsman expressed his opinion on the case No. 2013-08-01 "On Compliance of Sections 483 and 484 of the Civil Procedure Law with the first sentence of Article 92 of the Constitution of the Republic of Latvia", adjudicated by the Constitutional Court.

Section 483 of the CPL states that "*a protest regarding a court adjudication that has entered into effect may be submitted to the Senate by the Prosecutor General or the senior prosecutor of the Department for the Protection of the Rights of Individuals and State of the Office of the Prosecutor General, provided that not more than 10 years have elapsed since the adjudication entered into effect*". Section 484 of the CPL provides that "*the grounds for submitting a protest regarding a court adjudication are the breach of substantive or procedural norms of law as has been ascertained in matters which have only been adjudicated in a first instance court, if the court adjudication has not been appealed pursuant to procedures laid down in law due to reasons independent of the participants in the matter, or the infringement, pursuant to a court adjudication, of the rights of State or local government institutions or of such persons as were not participants in the matter".*

The Constitutional Court has defined that the concept of "fair trial" includes a process characterizing a State governed by a rule of law, i.e. a process that is not only fair, but also effective. Article 47 of the EU Charter of Fundamental Rights states that everyone whose rights and freedoms guaranteed by the law of the Union are violated

has the right to an effective remedy before a tribunal in compliance with the relevant conditions.

The ECHR in its case law has stated that legal certainty presupposes respect for the principle of *res judicata*[64], which is the principle of the finality of judgments. This principle underlines that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. The power of review of the Higher Court should be exercised to correct judicial errors and miscarriages of justice, but not to carry out a fresh examination. The review should not be treated as an appeal in disguise, and the mere possibility of there being two views on the subject is not a ground for re-examination. A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character[65].

The right of the parties to be informed about the proceedings and about the time of adjudication, as well as the right to take part in the trial can directly influence the results of a fair trial. Implementation of procedural rights in the form of competition is one of the means by which the court, in adjudication of any case, can find out the objective truth, and the right of the parties to a case review in appeal or cassation order only strengthens the prevention of errors and establishment of the objective truth in cases where, in the court of first instance or the court of appeal, due to some circumstances, evidences have not been evaluated properly, or if the court has not correctly translated or applied any of the rulings on which the decision is based. In practice, however, cases are possible where the persons directly affected by the court decision, have not been invited or informed about the trial or about its results. Such consequences may affect the parties who, due to reasons beyond their control, have not been able to appeal against the court decision, as well as third parties and State or municipal authorities. In such cases, the State should create an effective mechanism to ensure the protection of fundamental rights.

The right to a fair trial is not absolute and may be restricted, however, the State, when setting such restriction, has to note that the restrictions should be set to achieve the legitimate goal, they should be proportionate and necessary in a democratic society. The principle of procedural equality and the principle of justice

[64] Judgment of October 28, 1999 by the ECHR in the case *Brumărescu v. Romania*, No. 28342/95), paragraph 62.
[65] Judgment of July 24, 2003 cy the ECHR in the case *Ryabykh v. Russia*, No.52854/99, paragraph 52.

require that the rights of the parties should be fairly balanced, and the result should also fair. Chapter 60 of the CPL also guarantees this balance and fairness because it provides a mechanism for protection of violated rights: 1) if the court adjudication has not been appealed pursuant to procedures laid down in law due to reasons independent of the participants in the matter, and 2) in case of an infringement, pursuant to a court adjudication, of the rights of State or local government institutions or of such persons as were not participants in the matter.

The Ombudsman sent the Conclusion to the Constitutional Court stating that the restrictions imposed on the parties concerning revision of the court judgment in force are determined by law, and in this point non-compliance with fundamental rights cannot be established. When assessing if the restriction imposed on litigants in line with Chapter 60 is reasonable and if it is necessary in a democratic society, the Conclusion pointed to the following considerations.

Submission of a protest is permitted in case of strictly regulated conditions:

• only with a decision of the first-instance that has entered into force and that has not been subjected to appeal and cassation. Interdiction imposed on an outside and/or inside party to use the right to appeal the judgment is possible only insofar as his right to appeal is denied on the merits. If there was no Section 483 of the CPL, the subjects identified in Section 484 of the CPL would be forbidden to use the right to review the court decision in the order of appeal and cassation in case of evident unfairness. Regulations of Chapter 60 of the CPL reasonably balance the two elements of Article 92 of the Constitution – equality of procedural rights and access to the court, because proceeding of the case to re-examination allows to balance the rights of the parties to implement the principle of competition and to appeal an unfair court decision;

• The law provides a strict time limit - 10 years after the entry into force of the decision imposing restrictions on litigants, including possibilities of the State, municipality or a third party to make objections and to request cancelation of the decision.

Proceeding of ineffective and useless complaints about decisions of the court of first instance to the Supreme Court is prevented by initial assessment of the complaint in the Prosecutor General's Office, which does not always submit a protest to the Supreme Court and does not always ask for cancellation of the judgment of the court of first instance.

In line with its powers, the Prosecutor General's Office should ensure compliance with the requirements of Section 484 of the CPL, that provide objective and reasonable conditions to ensure the protection of the violated rights of absent or uninvited litigants. In addition, it should be noted that the above mentioned regulation guarantees restriction of multiple and unreasonable reviews of judgments entered into force. Besides, the ECHR has also defined it as an unacceptable mechanism.[66]

In view of the foregoing, the Constitutional Court received the Conclusion stating that the Chapter 60 of the CPL (namely, Sections 483 and 484) complies with Article 92 of the Constitution.

## 11. Freedom of Assembly and Association

### 11.1. Prohibition to border guards to organize labor unions

Articles 102, 103 and 108 of the Constitution protect the person's freedom of assembly and association, which is one of the most important political rights of individuals. In 2013, topical issues in the Ombudsman's Office were related to the right to form trade unions, as well as the right of groups of people to participate in peaceful pickets and demonstrations. Here it would be necessary to mention the Ombudsman's submission to the Constitutional Court on compliance of the statutory prohibition of border guards to form trade union with the Constitution. Besides, a verification procedure was initiated on pickets and demonstrations of the March 16.

In September 2013, the Constitutional Court received an application on compliance of the words "joining in trade unions" (Section 49, paragraph 1 of the Border Guard Law) with Article 102 of the Constitution on the right to form trade unions and with the second sentence of Article 108 of the Constitution which requires State protection of the freedom of trade unions.

Section 49, paragraph 1 of the Border Guard Law states that a border guard is prohibited from joining in trade unions, organizing strikes and participating in them. Such prohibition imposed on the border guards to form trade unions and to take part in their activities, restricts their fundamental rights specified in the Constitution. The right to form trade unions is also guaranteed in several binding international

[66] Judgment of July 25, 2002 by the ECHR in the case *Sovtransavto Holding v. Ukraine*, No.48533/99, Paragraph, point 77.

instruments. Although the practice of the ECHR acknowledges that countries have the right to legally limit the persons who form the police, the armed forces and the public administration, these limitations must be clearly defined, they should serve a legitimate goal and be proportionate to the pursued legitimate goal.

Prohibition of border guards to form trade unions is prohibition of their rights, not only restriction of the rights. Such an absolute prohibition of border guards to form trade unions is the last resort which is not necessary in a democratic society because joining of border guards in trade unions does not endanger national and international security or the rights and freedoms of other people in Latvia.

The benefit of a democratic society from this prohibition is higher than the losses caused to border guards. In a democratic country, trade unions play an important role in protecting economic, social and work interests of the workers, as well as the freedom of expression. On October 1, 2013, the First College of the Constitutional Court initiated the case "On compliance of the words "joining in trade unions" in Section 49, paragraph 1 of the Border Guard Law Article 49 with Article 102 and the second sentence of Article 108 of the Constitution".

### 11.2. Freedom of assembly

In 2013, in relation to demonstrations of the March 16 near the Monument of Freedom, the Ombudsman's Office initiated the verification procedure No. 2013-83-12.

The freedom of association is recognized as one of the fundamental rights of a person and an important value of a democratic society. It is an essential prerequisite for the functioning of a State governed by a rule of law. It is closely related to the freedom of expression, which also belongs to the most important political rights of individuals. Moreover, the freedom of assembly protects not only the rights of participants of a peaceful march that has been previously announced according to the legal order, but also the rights of participants of a peaceful march intended as a protest against the initially announced march (contra-demonstration).

During the verification procedure, it was found that normative regulations related to freedom of peaceful assembly of two opposing groups specify the rights and obligations of the State and both involved parties. The municipality, in cooperation with the organizers and the police, has many powers to avoid all possible threats of

violation of the freedom of assembly of both parties starting from the planning process. In cases where unforeseen circumstances endanger any of the events, wide powers are given to the police. In addition, the law and the fundamental principles of a democratic society require that participants of both events express their views in good faith and with the required tolerance for the opposite point of view.

The Conclusion states that, at that period of time, the law already provided the municipality and police with many rights to prevent possible turbulences in the process of organization and during the event. The Ombudsman made recommendations to the local government to adopt internal regulations, which "would be focused on explaining to employees of the Riga City Council their rights and obligations provided by the law related to the process of event coordination, and thus would prevent future cases, when turbulences that can have been detected and prevented during the coordination process, are not appropriately identified and dealt with".

Besides, the Conclusion also reveals, that the police officers have broad powers to control the events. If, during the event, the used technical means are a dangerous for public safety and order, the police officers have the right to warn and to ask to stop the use of such means or to stop it themselves.

On December 11, 2013, amendments to the Law on Meetings, Street Processions and Pickets entered into force specifying the powers of municipalities to set limits and to prevent turbulences in the process of event coordination, as well as the right of police officers to control the course of event, setting limits during the event.

## 12. Voting Rights

### 12.1. Supervision of municipal elections

In 2013, some of the topical issues in the Ombudsman's Office were related to the rights of various groups of people during the municipal elections.

On the day of municipal elections (June 1), representatives of the Ombudsman’s Office were in election supervision missions in social care centers and old people's homes. Thus, the election process was supervised in the SSCC "Ilgi", branches “Ropazi” and “Ruja” of the SSCC "Vidzeme", branches "Ezerkrasti" and "Jugla" of the SSCC “Riga”, branch “Kauguri” of the SSCC “Zemgale”, nursing

home “Dzimtene, Ltd.” , nursing home "Valmiera", as well as in polling stations No. 218, No. 219 and No. 220 in Jurmala City.

During the supervision process, it was concluded that the main problematic aspects of the electoral process were related to the quality and availability of information about the electoral process and to the provision of secrecy of the voting process. In some cases, clients of the SSCC did not understand the order of voting. In some SSCC and nursing homes, problems were related to provision of privacy, especially when voters shared their living rooms with other clients.

### 12.2. Rights of prisoners to participate in municipal elections

In 2013, after a number of submissions, the verification procedure No. 2013-89-13A was initiated on the rights of prisoners to participate in municipal elections. On the day of preparation of this report, the verification procedure is still under examination.

On the date of lodging of the submissions, all applicants, in the framework of criminal proceedings, had been serving custodial punishment for more than nine months. Thus, on the day of municipal elections - June 1, 2013 - they were in remand prison or in its relevant department. The applicants claimed that they were deprived of the opportunity to participate in municipal elections on the grounds that the information about them was not included in the list of the relevant polling station in whose territory the remand prison or department was located. The applicants point out that this restriction has violated their rights specified by Articles 101 and 91 of the Constitution.

Following the Ombudsman's letters, on October 11, 2013 the Ministry of Justice held an inter-institutional meeting on participation of arrested persons in municipal elections. The meeting was attended by representatives from the Ombudsman's Office and the Central Election Commission, the representatives of the Cabinet of Ministers in international institutions of human rights, the OCMA and the Prison Administration. At the meeting, it was recognized that the current order related to detained persons is incomplete. However, the search for a solution was delayed for the time after the European Parliament elections and elections of Saeima in 2014.

However, following the Ombudsman’s request for information, on January 9, 2014, the representatives of the Ombudsman's Office were invited to attend the

meeting of the Central Election Commission, which examined application of regulations provided by the Electoral Register Law defining the way the voters may change polling stations, to the detainees.

In 2014, the Ombudsman intends to pay particular attention to the issue of electoral rights. The Ombudsman's Office plans to engage timely in the electoral process, drawing the attention of the competent authorities to the existing problem aspects in the electoral process, and to continue to participate in the supervision of voting on the election's day. Besides, after completion of the verification procedure on the rights of detainees to participate in municipal elections, and according to legal and technical solutions found for the European Parliament elections and Saeima elections, the Ombudsman will encourage responsible authorities to make the necessary changes in the regulatory framework or its practical application, to ensure an effective implementation of electoral rights of detained persons.

## 13. Topicalities of Human Trafficking

In 2013, the Ombudsman was actively involved in issues relating to human trafficking, including ensuring participation of a representative of the Ombudsman's Office in the working group created following the Prime Minister's order "On Coordination of Program Implementation for Prevention of Human Trafficking for 2009- 2013". It was created in order to coordinate activities of public administration institutions, municipal and non-governmental organizations in the process of implementation of the "Program for Prevention of Human Trafficking for 2009-2013", and to ensure efficient exchange of information and coordinate action in the prevention of human trafficking and the provision of social services to victims. The working group developed and discussed draft guidelines "Guidelines for the Prevention of Human Trafficking for 2014 – 2020". The Ombudsman expressed his opinion on these guidelines to the Ministry of Interior.

In a letter to the Ministry of Interior, the Ombudsman, planning further measures in this field, put emphasis on the need to pay special attention to coordinated activities of public administration in order to eliminate the causes of human trafficking.

Regarding preventive measures, the Ombudsman pointed out that organization of informative campaigns should be focused on specific at-risk groups and performed together with events organized by other competent ministries. Such campaigns should be aimed to elimination of social and economic inequality. Social and economic instability is the main reason why the at- risk groups and individuals need to obtain additional funds by concluding marriages of convenience or seeking alternative sources of income abroad.

In addition, the Ombudsman emphasized the need to pay particular attention to adjudication of criminal cases related to human trafficking within a reasonable period time, because delays in this field may become a hindering factor in combating human trafficking. It means that, due to non-compliance with reasonable time limits for legal proceedings, convicted persons are sentenced to lighter punishments, thus reducing the deterrent function of the sentence and negatively affecting the overall understanding about capacities of the law enforcement institutions to effectively punish the offenders.

Finally, the Ombudsman asked to urgently address situations when victims of human trafficking have to wait for social rehabilitation services for a long time, as well as to review, in case of necessity, the possibility of these victims to receive rehabilitation services for more than six months currently provided by the law, basing mainly on the person's factual needs in the rehabilitation process. The draft guidelines were approved by the Cabinet Order No.29 of January 21, 2014.

On October 18, 2013, in order to inform the society, the Ombudsman, together with the society "Shelter "Safe House"" informed the representatives of mass media about the topicalities in the field of human trafficking. The event was also attended by representatives of the U.S. Embassy in Latvia, as well as by representatives of Estonian and Lithuanians NGOs. The Ombudsman provided information about activities related to the prevention of human trafficking, while the representatives of NGOs presented the campaign against human trafficking and its results in Latvia, experience of Estonia in this area, trends in detection of profiles of trafficking victims and main problems.

### 13.1. Priorities for 2014

1. Improvement of the Medical Treatment Law in relation to limitations of human rights while staying in mental hospitals.
2. Ensuring and respect of the rights of clients of SSCC, when returning to life in society (to keep up with the measures taken by the Ministry of Welfare in order to remedy the identified deficiencies).
3. Exercising the right to compensation guaranteed by the Constitution in case of unjustified violation of rights.
4. Compliance with human rights in the electoral process.
5. Improvement of regulatory framework in the context of video surveillance.

# III Social, Economic and Cultural Rights

## 1. Rights to Social Security

### 1.1. Compliance with the human rights principles in the social insurance system

During the reporting period, the Ombudsman was actively following the government's commitment to reduce poverty and social exclusion, highlighted the issue of the right to a fair wage, minimum wage rates, and its compliance with obligations defined in international agreements. It was emphasized that the government should not focus only on certain economic objectives, forgetting about the social security and quality of life.

The Ombudsman participated in the 9th National Seminar of the European Network of Ombudsmen "Good administration and the rights of citizens in a time of austerity", which took place in Dublin (Ireland) from September 15 to September 17, 2013 and presented a thesis[67] on the importance of social rights in the framework of human rights and socially responsible government policies, emphasizing European values. The Ombudsman emphasized the fact that one of the principles characterizing the social rights is the principle of progressive development. International rights oblige the State to achieve the fullest possible realization of social rights, by using maximal available resources and appropriate means.

In 2003, the Latvian nation voted for the accession to the EU and decided to join the EU not only as an economic union by implementing common security and monetary policy, but also as a union whose Member States have undertaken to promote compliance of economic and social development of their nations in accordance with the principle of sustainable development.[68]

Article 2 of the Treaty on European Union defines human rights as one of its core values. Article 3 states that one of the EU's objectives is the promotion of the welfare of people, as well as combating social exclusion and promoting social justice.

In the Treaty on the Functioning of the European Union, the Member States have included a desire to increase the prosperity level in accordance with the

[67] Thesis "Keeping administrations accountable". Available: http://www.tiesibsargs.lv/sakumlapa/juris-jansons-piedalas-eiropas-ombudu-tikla-9.–nacionalaja-seminara

[68] Treaty on European Union, preamble; Treaty on the Functioning of the European Union, preamble. Available: http://eur-lex.europa.eu

principles of the UN Statutes. Article 9 of the Treaty contains a commitment that, in defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of adequate social protection and the fight against social exclusion.[69]

According to the Charter of Fundamental Rights of the European Union (hereinafter - the Charter), the EU recognizes and respects the rights of elderly people to lead a life in dignity and independence and to participate in social and cultural life. In the section of the document "Solidarity", it is stated that, in order to combat social exclusion and poverty, the EU recognizes and respects the right to social and housing assistance to ensure decent existence for all those who lack sufficient resources, in accordance with the rules laid down by the Community law and national laws and practices.[70]

Although the principles laid down in the Charter are directly applicable only to the EU institutions and bodies, and the public authorities of the Member States have to apply the Charter only when they are implementing EU law, namely, the EU regulations, decisions or directives,[71] the Ombudsman considers that this does not mean that the public authorities of the Member States can ignore the EU targets and approaches for reducing poverty and social exclusion.

The Ombudsman pointed out that the desire of the government to reduce poverty and social exclusion has to be realistic, not just declarative. Undoubtedly, during the economic recession period (2008 to 2010), the State introduced austerity measures, however, the Ombudsman considers that these measures should not have been applied to vulnerable groups: children, persons with disabilities, seniors, young families. Austerity measures may not affect such areas as health care, education and social security. It is essential that Latvia still stands out among other EU countries with the lowest rates of GDP in measures taken both in the field of health care and social support.[72]

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[69] Therein

[70] Charter of Fundamental Rights of the European Union, Articles 25 and 34. Available: http://eur-lex.europa.eu

[71] Report of 2010 by the European Commission to the European Parliament, Council, European Committee on Economic and Social Affairs and Regional Committee on Application of the Charter of Fundamental Rights of the EU. Available: http://eur-lex.europa.eu

[72] Eurostat, General government expenditure in 2011 – Focus on the functions "social protection" and "health". Available: http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-13-009/EN/KS-SF-13-009-EN.PDF

In the context of protection of person's rights, it is important to realize that, in the field of socially economic rights, an individual has no possibilities to receive any compensation, contrary to the field of civil and political rights where the person concerned may turn to the ECHR to protect his/ her rights.

### 1.2. Controversial amendments to the Law on State Pensions

In 2013, the Ombudsman repeatedly turned to the Saeima with a call to make amendments to the Law on State Pensions, specifying necessity, in relation to persons with disabilities of I and II group that have been subject to the compulsory social insurance from January 1, 1998 to December 31, 2002, in case of granting disability pension, to take into account the length of insurance accumulated during the above mentioned period.

In line with Section 14, paragraph 1 of the Law on State Pensions, insured persons with a length of period of insurance which is not less than three years, have the right to a disability pension before reaching the age laid down in Section 11 of this Law if such persons have been recognized as disabled persons, except persons for whom the cause of disability is a work accident or an occupational disease and for whom an old-age pension (old-age pension of another State, as well) has been granted before reaching the referred to age, if it has not been laid down otherwise in Regulation No. 883/2004 or international agreements ratified by the Saeima. Thus, to obtain rights to disability pension, it is necessary to pay social insurance for at least three years for a case of disability.

On January 1, 1998, the Law on State Social Insurance entered into force which replaced the Law on Social Duty. The Law on State Social Insurance established a different procedure for paying social insurance contributions for persons with disabilities of I and II group.

Section 6, paragraph 2 of this Law stated that disabled persons with disabilities of I or II group are subject to pension insurance, maternity and sickness insurance, as well as occupational accident insurance. Such order existed until January 1, 2003, when new amendments entered into force stating that persons with disabilities of I and II shall be subjected to invalidity insurance as well.

It can be concluded that from January 1, 1998 to December 31, 2002, persons with disabilities of I and II group were not subjected to invalidity insurance, which

prohibits possibility to count the time worked during that period into the insurance period necessary for granting disability pension.

Starting from January 1, 2003, persons with disabilities of I and II group are subjected to insurance for a case of disability. Thus, the legislator has remedied deficiencies in the regulatory framework. However, negative consequences for those who worked during that time period, are still present.

According to the above mentioned facts, the Ombudsman considers that, in order to avoid the negative consequences of the previous regulatory framework and to restore social justice, it is necessary to determine that the insurance period accumulated during that period is counted into the insurance period necessary for granting the disability pension.

Since the Ministry of Welfare and the competent commission of the Saeima have not supported this proposition, the Ombudsman evaluates possibility of turning to the Constitutional Court.

### 1.3. Deficiencies in application of regulations related to social assistance

During a verification case, an individual case was evaluated on alleged non-provision of a timely social assistance and support, resulting in death of a person.

The verification procedure revealed that, according to Section 3, paragraph 1 of the Law on Social Assistance, a person incapable to overcome particular difficulties and who does not receive sufficient assistance from anyone, have the right to personal and material assistance meeting the needs of this person, allowing self-help and promoting involvement in public life. Section 10, paragraph 1 of the Law on Social Services and Social Assistance provides that each local government shall have at least one social work specialist per every thousand inhabitants.

This regulatory framework indicates that the State has an obligation to provide a professional assessment appropriate for the needs of inhabitants and ensure provision of high-quality social services and social assistance.

Section 11, paragraph 1 of the Law on Social Services and Social Assistance states that a municipal social service office shall perform social work with persons, families and groups of persons. The professional activity of a social worker and a caritative social worker shall be aimed towards achieving and promoting practical

resolution of the social problems of an individual and improvement in his or her quality of life, integration in the society, and the ability to help himself or herself.

Section 45, paragraph 2 of the Law on Social Services and Social Assistances specify many measures that shall be taken by a social worker and a caritative social worker after evaluation of circumstances:

1) provide a person with assistance and support in resolving social problems;

2) help the person to develop the ability to resolve personal, interpersonal and social problems;

3) support the possibilities for the development of the person, as well as the right to take decisions independently and to implement them;

4) attract social and economic resources and the appropriate social services for the resolution of the social problems of a person or a group of persons;

5) provide information regarding social service providers and establish contacts between the recipients and providers of social services.

The Ombudsman drew the attention of the municipal social service on the facts established during the verification procedure. The verification procedure revealed that the material social assistance is just one of the social aspects of the social work. The Social Service, after receiving the first information on social situation disadvantageous to a person, is obliged to carry out a survey in the place of residence of this person, assess and fix all important circumstances in a written form. Subsequently, the social service is to decide about future administration of the relevant social case, the need for the involvement of other professionals, such as psychologists, by finding a way to motivate the person to find an efficient solution appropriate for current situation and the needs of this person, in cooperation with social workers. An important aspect of social work is the work with unmotivated clients who initially refuse the social assistance.

In response to the established circumstances, the social service informed the Ombudsman that it had organized discussions with social workers in order to take the necessary steps to find out all related circumstances and to assess the necessary assistance.

At the end of the verification procedure, the Ombudsman asked the social service to take all necessary measures to prevent the recurrence of such events. Besides, he asked to improve internal regulatory framework of the social service defining the way how social service workers react to information received about a

person who is likely in need for social assistance, as well as the procedure for further administration of the social event.

## 2. Rights to Housing

### 2.1. Admission to possession of real property

During the reporting period, the Ombudsman's Office was still receiving submissions regarding alleged possible arbitrary evictions from dwellings or eviction attempts by admission of the proprietor to the possession of real property and acting not only against the debtor, but also against third parties who live in the dwelling. Often, submissions reveal not only violation of the right to housing, but also violation of the inviolability of home and privacy. The State Police does not engage in such disputes as if they were private, while bailiffs as representatives of the State authority allow and sometimes even participate in such illegal activities.

The Ombudsman considers that, if residential premises are used by a tenant on a legal basis, admission of the new proprietor to possession of real property stops at the door of the dwelling rented by the tenant if he refuses to let the new proprietor, bailiffs and other persons into the dwelling. Otherwise, the rights of the tenant to inviolability of home are violated.

The concept of "inviolability of home" means a tenant's right to reside in the house undisturbed. The right to inviolability of home is set by the Constitution, Article 12 of the UN Universal Declaration of Human Rights, Article 17 of the UN International Covenant on Civil and Political Rights and Article 8 of the ECPHRFF. In case of violation of the inviolability of the home, the offender is criminally liable in accordance with Section 143 of Criminal Law (Transgression of Inviolability of the Apartment of a Person).

Admission to the possession of real property, in accordance with laws and regulations, should end up with a settlement between the new proprietor and the tenant (holder of the apartment) on conditions of residential tenancy agreement. In fact, it is also provided by Section 48 of the Law on Bailiffs: "*In fulfilling official duties a sworn bailiff shall in accordance with the official activity to be performed explain to the parties their rights and obligations for the implementation of their procedural rights in good faith".* Such provision of information to parties is not to be

considered an assessment of the lawfulness of the tenancy agreement, which is the competence of the court.

In the past, the Ombudsman has already expressed the opinion that representatives of the State and sworn bailiffs should actively respond to and prevent violations of the fundamental rights, by preventing arbitrariness of the new proprietor and security companies.

On June 27, 2013, the Ombudsman's Office held a discussion on problems related to admission to possession of real property, which was attended by the Minister of Justice, the Minister of Economy and by the Head of the Division for Ensuring Functioning of Rent Board (Housing and Environment Department of the Riga City Council). During the meeting, the participants acknowledged that the current situation and the unclear legislation create a confrontation between two fundamental human rights: the right to property and the right inviolability of home. Therefore, the existing practice should be changed.

The Ombudsman considers that it should be done by amending several laws, including the Law on Residential Tenancy, the Civil Procedure Law and the Law on Police. In view of the urgency of the problem, the Ombudsman made several proposals for amendments to the legislation and asked the Saeima to pass them to examination in the autumn session 2013. For example, it was proposed to create a publicly accessible register of residential tenancy, which would be administrated by the Land Registry or municipalities and would allow the police, a sworn bailiff and the new proprietor to ascertain the presence of rental agreement, while protecting the rights of tenants to housing and privacy.[73]

Solutions proposed by the Ombudsman during the meeting were conceptually supported. It was concluded that the problem situation should be addressed immediately, given that it has reached a critical threshold. However, after the meeting, evaluation of explanations provided by the Ministries reveals that, with regard to the possible elaboration of amendments to the Law on Residential Tenancy, there are inconsistencies between two Ministries who ask each other to elaborate amendments but at the end do not achieve the aim. Thus, no measures have been taken to balance the rights of the proprietor and the tenant. Such behavior of the Ministries does not

[73] Ombudsman agrees with the Minister of Economics and the Minister of Justice about balancing the rights of the proprietor and the tenant. Available: http://www.tiesibsargs.lv/arhivs?d=27&m=6&y=2013&p=0

comply with Section 10, paragraph 5 of the State Administration Structure Law providing that State administration in its activities should observe the principles of good administration.

The Ombudsman considers that the main emphasis should be placed on the results, to ensure that the legislation justifies its goals and to achieve legal certainty which is absent in the current regulatory framework. Procrastination is unacceptable, and it is not clear why there is no progress if the competent Ministries have already acknowledged the existence of the problem.

### 2.2. Municipal assistance in housing issues

Similarly to previous years, in this reporting period, in the majority of submissions on the right to housing, the Ombudsman was asked to deal with civil liability matters. Many submissions contain complaints about alleged errors in invoices issued by house managers. These errors are related to unjustified payment positions of maintenance costs, failure to provide precise information, behavior of neighbors, etc.

The Ombudsman explained that he is not entitled to intervene directly in such disputes, because relationship between the residents of the house and the manager of the house are private - regardless of who owns the housing fund. Similarly, he explained the situation and provided consultations how to act in a given situation in compliance with applicable law. However, if the house is owned by a municipality or if the house is administered by a municipal corporation or agency, in some cases the Ombudsman carried out an inspection to determine whether the municipality had complied with the principles of good governance in relation to the residents and had properly supervised the work of the corporation.

#### *2.2.1. Non-provision of basic services*

The right to housing means the right to live in security, peace and dignity. Documents on international human rights set the minimum standard of these rights that has to be provided by the State in correspondence with its available resources. The right to housing cannot be interpreted in a restricted sense, it does not mean only "a roof over your head." This right includes a number of elements that the State has to take into account.

According to General Comment No.4 of the UN International Covenant on Economic, Social and Cultural Rights, the right to housing consists of a minimum standard of services, such as access to services, for example, access to water supply systems. The State and municipalities are also obliged to refrain from activities that limit the opportunities of each person to take care of his or her health.

During the reporting period, examination of a verification procedure about obligation to ensure basic services reveals an illegal interruption of water supply and subsequent failure to provide this service resulting in non-compliance with the minimum sanitary standards, thus violating not only the right to housing but also the right to health.

Within the verification procedure, a person stated that in September 2010, without warning or explanation, water supply in her apartment was interrupted. In order to tackle the problem, the applicant turned to the house manager Ltd. "Karsavas Namsaimnieks" and to the municipality, but the water supply was not restored. At the same time, Ltd. "Karsavas Namsaimnieks" continued to require full amount of payments for provided services, which, according to the applicant, included the water supply in her apartment.

Later, the applicant got to know that the water supply had been interrupted due to a debt. However, the applicant did not find out, for what services, by whom and to what extent the debt existed. The applicant received oral explanations that she had no debts for water supply.

At the moment of initiation of the verification procedure, the Ombudsman informed the applicant that her relationship with Ltd. "Karsavas Namsaimnieks" had a civil liability nature and that the Ombudsman could not deal with it. Therefore, in the framework of the verification procedure, the Ombudsman evaluated only the behavior of the municipality related to non-provision of water supply service.

The Ombudsman pointed out that according to Section 15, paragraph 1 of the Law on Municipalities, one of the permanent functions of municipalities is to organize utility services for residents, including water supply, regardless of who owns the housing fund.

The Cabinet Regulation No. 298 “Procedure for interruption of public services” (hereinafter - Regulation No. 298) of July 3, 2001 provides procedure for a public service provider to terminate the provision of public services for users who have not paid for the received public services or have failed to comply with other

liabilities. Sections 26 and 27 state that a public service provider may interrupt services of water supply and sewerage by giving a written 10 days notice to the users in the following cases:

. • user, by his action or inaction, obstructs or hinders an employee of the service provider to access the water supply or drainage devices and equipment (e.g., water meter);

• the user does not provide information necessary for water consumption recording;

• the user has damaged or arbitrarily regulated control devices;

• the user does not comply with the specified mode of water use and wastewater discharge;

• the user has arbitrarily connected new water supply and sewerage systems, and has installed unauthorized connection that does not comply with hydraulic or other technical parameters.

If the user does not pay for received services within the period prescribed in the agreement, the service provider has the right to stop providing water and sewerage services by giving a written notice to the user 30 days in advance. The user is repeatedly informed in writing three working days before the interruption of service provision.

Similarly, Section 19 of the Regulation No. 298 provides as follows: if the user – a natural person - does not pay for services received in residential premises, the service provider can reduce the volume of services provided until the minimum sanitary standards defined by the World Health Organization, i.e. 25 liters of water per person per day, by drawing up an appropriate act. Reducing the volume of provision of the service does not relieve the user from the obligation to pay for the consumed water.

The municipality informed the Ombudsman that Ltd. "Karsavas Namsaimnieks" had not taken any measures to interrupt the water supply to the applicant, even though she had accumulated a large debt, and such possibility, according to legislative requirements, had been considered. The Municipality of Karsava region stated that the water supply in the applicant's apartment had been interrupted by her neighbor who had disconnected water pipes, because there had twice been water leaks in the applicant's apartment, causing losses to the neighbor.

The municipality emphasized that no one had asked for dismantling of water pipe and that the Construction Boards of the municipality had not issued a permit.

The Ombudsman pointed out that the municipality of Karsava region is obliged to provide legality of construction process in its administrative territory and, in case of unauthorized construction, to eliminate consequences caused by such construction. One of solutions provided by the laws and regulations: the municipality has the right to oblige the performer of illegal activities to restore the previous state of the object. If the person does not take measures to eliminate consequences caused by the construction process described in the decision of the municipality, the municipality has the right to perform this work itself and to recover the costs related to consequence eliminating from the liable person.

In relation to the provision of water supply, the Ombudsman concludes that the obligation of the municipality to provide utility services does not end at the moment when a decision is made to transfer this function to Ltd. "Karsavas Namsaimnieks". The municipality is also obliged to supervise whether the authorized company performs its duties appropriately. No interruption of water supply is acceptable, without notifying the recipient of the service in order described in the Regulation No. 298 and without providing the person with the volume of water supply service to the extent of minimum sanitary standards provided by the World Health Organization.

*2.2.2. On municipal assistance in housing issue to persons leaving State social care institutions*

On December 22, 2012, amendments to Section 28, paragraph 3 of the Law on Social Services and Social Assistance (hereinafter – LSSSA) entered into force stating that: *„In the cases referred to in Paragraph two of this Section, the decision on suspension of the provision of a service shall be taken by the head of the relevant institution, informing thereof the local government within the administrative territory of which the person has been living prior to entering into the institution. If the administrative territory, in which the person has been living prior to entering into the institution, cannot be ascertained, the local government, the administrative territory of which holds the last detectable location of the person, shall be informed. The local government has a duty to ensure accommodation for the relevant person, if it is not*

*possible for such person to accommodate in the residential premises previously occupied in accordance with the procedures specified by the law".*

Since 2006, Article 28 of the LSSSA contains regulation that a person is entitled to leave the SSCC by his own choice, and this right has been exercised by a considerable number of clients of SSCC. The amended regulation in Section 28, paragraph 3 of the LSSSA specifies obligation of the long-term social care and social rehabilitation institution to inform the head of municipality about the desire of the person to withdraw from the institution, as well as obliges the municipality to provide accommodation for the relevant person if it is not possible for such person to accommodate in the residential premises previously occupied.

Based on information provided by the Ministry of Welfare and obtained from SSCC, from January 1, 2013 to May 2013 there have been 27 submissions about desire to start an independent life outside the long-term social care and social rehabilitation institution. On May 20, 2013:

- 13 persons or 48.1% have withdrawn from the institution (9 of them went home, 2 of them moved to a group house (apartment), 1 of them moved to a social house, 1 of them moved to municipal long-term social care and social rehabilitation institution).
- 11 or 40.1% of these submissions were pending - letters were sent to the municipalities informing about the suspension of service provision and about social services needed by these persons. Responses have been received stating that the municipalities could not provide assistance in the housing issue. The relevant persons do not have place of residence any more, besides those who have lived in long-term social care and social rehabilitation institutions since childhood have neither experience of life outside the institution, nor relatives who could support them in starting an independent life. At the same time, these individuals have refused the offer to undergo social rehabilitation in a "halfway house", before moving to the municipality.
- Three persons or 11% of applications have cancelled their submissions. These individuals are offered services of the so-called halfway house. Currently, work on client motivation is going on.

According to information provided by the SSCC, in all cases, before deciding on termination of service provision, measures have been taken to inform

municipalities, but the response and interest in co-operation has been different, in most cases negative.

During the reporting period, the Ombudsman has established that, in relation to several clients of state social care institutions, decisions have been made to suspend services provided by long-term social care and social rehabilitation institutions, without timely informing the municipality and without providing it with information about what services should be provided to the client in his place of residence. Besides, the clients have been transported to the municipality before the municipality has replied that the place of residence is available. Such behavior can seriously violate the clients' rights and interests and is not compliant with human rights. This practice reflects misinterpretation and incorrect implementation of regulatory provisions.

Similarly, the Ombudsman agrees with the opinion of the Ministry of Welfare on current problems: non-compliance of laws and regulations in different areas or absence of regulatory framework, problems with material capacity and capacity of human resources. These problems reduce efficiency of the preventive measures taken by the Ministry of Welfare.

Namely, Article 28, paragraph 3 of the LSSSA in the wording of December 22, 2012 obliges municipalities to provide accommodation to persons who have expressed a desire to withdraw from SSCC, but no regulation specifies the period when the municipality should carry out this obligation. On the other hand, the procedure of assistance in housing issues provided by the municipality is specified by the Law on Assistance in Solving Apartment Matters (hereinafter - LASAM) and binding regulations of municipalities, but this law is not consistent with Article 28 of the LSSSA. Therefore, municipalities unduly narrows interpretation of Article 28, paragraph 3 of the Law on Social Services and Social Assistance, unduly limiting the right of persons who withdraw from the long-term social care and social rehabilitation institutions to live in the community.

According to the LASAM, assistance, when renting residential area for people who are unable to provide themselves with a residential area in a free rental market due to objective reasons, is liability of municipalities. The law determines which groups of people, when and in what order are eligible for renting residential area owned by the municipality.

Persons who withdraw from a long-term social care and social rehabilitation institution, do not belong to the group of people set by the LASAM that should be

provided with residential immediately or primarily. Thus, the regulation of the LASAM entitles municipalities, with a help of binding rules, to define only those groups of people that should be provided with a municipal residential area according to the general procedure.

It is important to bear in mind that these persons, due to objective reasons, are unable to obtain a residential area in a free rental market and their ability to exercise the right to an independent life is directly dependent on the desire and capacity of the municipality to include them in the group that is eligible for municipal residential area.

Taking into account the above mentioned facts, in June 2013 the Ombudsman sent a letter to the Ministry of Economy, the Ministry of Welfare and to the Public Administration and Local Government Committee of the Saeima with a request to define persons who have withdrawn from long-term social care and social rehabilitation institutions as a class of persons to whom assistance should be provided primarily, and to make amendments to the Law on Assistance in Solving Apartment Matters.

In light of this, municipalities should also amend binding rules to prevent restrictions of the right of persons with disabilities to live in the community when these persons leave long-term social care and social rehabilitation institutions, providing them with rights to eligibility for municipal residential area.

## 2.3. Problematic issues in management of apartment houses

### *2.3.1. Debts of neighbors*

For a long time, the Ombudsman's Office received complaints about orders issued by house managers or public service providers (water supply and heating companies) obliging the apartment owners who have paid in good faith for the services received to pay for their neighbors who have debts or for dishonest or insolvent house managers who has misappropriated funds of the residents or uneconomically spent these funds for other purposes. Despite the fact that it would be necessary to initiate specific proceedings against these house managers, i.e. insolvency or criminal proceedings, inhabitants of the house need the service continuously, and in such cases it is not possible to wait for the conclusion of the proceedings. There are different causes of neighboring debts, but the most typical of

them are lack of honesty, poor social situation, long-term absence of the apartment owner, property forfeited by a credit institution, insolvency proceedings of a natural person etc.

The Ombudsman considers that situation when service providers require to pay for the debts of neighbors and house managers, in order to ensure continuity of provided services, are forced to bow to the pressure of the service providers, is consistent with the existing framework, but is to be is considered unjustified and therefore illegal. Unfortunately, inhabitants, in order to receive basic services (water, heat), are sometimes forced to pay debts of their neighbors.

In the framework of current laws and regulations, inhabitants of apartment houses should be aware that only fulfillment of obligations to the house keeper (paid invoices) does not ensure continuous provision of utilities (heating, water). Namely, each of the apartment owners has the right and obligation to provide management of the house. In cases, where the apartment owners have authorized a manager to perform duties related to the management, including settlements with service providers, but the keeper or manager has not done it in good faith, the apartment owners are still liable for non-payments or improper performance in relations with third parties.

Relating to cases when an apartment of a person (a debtor) has been seized in an auction and there are no funds to repay the debt, it is possible to turn against the debtor in civil proceedings.

In case of insolvency of the apartment owner / natural person, the contract between the keeper and the apartment owners has a great importance. Basing on evaluation of this contract, the insolvency administrator will decide which of the creditor's claims is justified and which is not.

Evaluating the Insolvency Law, it can be concluded that within insolvency proceedings, the creditor may not get full satisfaction of the claim and, in case of insolvency, the creditor may sustain losses. In a situation where a part of the creditor's claim remains uncovered, after completion of the procedure for extinguishing liabilities, the relevant debt is to be extinguished and is not to be exigible from any other person.

It is possible that the service provider will not submit a claim of the creditor because he will want to get the maximum payment for services rendered. According to Section 2307 of the CL, the authorizing person (owner of the house) has a duty to

compensate expenditures, because the authorized person (house keeper) may not be requested to pay for goals set by others. However, the Ombudsman considers that the service provider should undertake the irrecoverable part of the debt as creditor's losses, which derives from the Insolvency Act.

Basing on the above mentioned facts, it can be concluded that there is a need to strengthen discipline of inhabitants' payments for utilities and home management services. This can be partially achieved by an initiative of the housekeeper and, in particular, in collaboration with the debtor, in order to prevent accumulation of a large debt, informing him of the possibilities to reduce the debt, e.g., by turning to the Social Service for housing allowance.

It should be noted that amendments to the Law on Administration of Residential Houses adopted on December 19, 2013 will enable apartment owners to choose - to maintain the current policy or to choose direct settlements with the service provider. At the same time, it will create the legal certainty defining which of the parties - the provider or keeper - will be obliged to control the settlements, including work with debtors.

*2.3.2.Payments for waste management*

As mentioned above, the Ombudsman does not examine disputes related to the management of houses, however, given that the framework of human rights also includes a clear and specific legal provisions and one of the functions of the Ombudsman is finding deficiencies in laws and their implementation, as well as promotion of elimination of these deficiencies in issues related to human rights and principle of good administration, the Ombudsman's Office gets involved in solving a problem situation if many submissions are being received expressing dissatisfaction with the existing regulatory framework.

On October 1, 2013 amendments to the Cabinet Regulation No.1013 "Procedures by which an Apartment Owner in a Residential Apartment House shall Pay for Services, which are Related to Usage of the Residential Property" entered into force changing the current payment procedure for calculation of the difference in water consumption and waste disposal.

The Ombudsman does not oppose the new regulation which refers to the calculation of the difference in water consumption, but the regulation related to the cost of waste management is not fair.

The current regulation provides calculation of the fee in accordance with the number of individual apartments, rather than the number of persons living (registered) in the apartment. It is obvious that in an apartment with one person and an apartment with several persons the amount of produced waste is different, while the cost of waste removal is the same. Thus, the Ombudsman considers that these amendments are unfair to one-person households. Based on the content of received submissions, the difference that is to be paid by a one-person household can reach up to 45 Euros per year. Thus, it is possible that the new regulation violates Article 105 of the Constitution on protection of rights to property, as well as the principle of legal equality set by Article 91.

The Ombudsman assesses the possibility of asking the government to abolish the regulation violating human rights and proposing to calculate payments for waste management basing on the factual number of people living in the apartment.

## 3. Rights to Health

During the reporting period, the Ombudsman continued to work on this priority in the field of social and economic rights, when analyzing the received submissions. The Ombudsman's Office received 25 submissions on problematic issues of health sector, mostly on lack of funding for state-ensured health care (17 submissions), on quality and operational efficiency of the HI - eight applications. In addition, operational efficiency of the Health Inspectorate is evaluated together with the facts established during monitoring visits in State-ensured social care centers.

### 3.1. On change of model of health care funding

On March 19, 2013, the Cabinet of Ministers examined Concept project on health care system funding model (hereinafter - the Concept), the implementation of which was scheduled to begin on January 1, 2014. In 2012, the topicality of the issue was also discussed during the Ombudsman's annual discussion "Pros and Cons of Mandatory Health Insurance". Then, the Ombudsman pointed to State's obligation to

ensure the right of every person to health and to guarantee minimum level of health care for everyone.

The Ombudsman pointed out that the health care funding system should be looked at in the context of all the health care system. Any health care reform must focus on the necessity to increase the level of individual's right to health security. According to the Comment 14 of the UN Committee on Economic, Social and Cultural Rights, the right to health includes the following interrelated elements: availability, equal access (*accessibility*), compliance (*acceptability*) and quality.

Therefore, the Ombudsman drew the government's attention that the following aspects are not permissible: when deciding on health care funding reform, there are no discussions about its impact on any of the above listed elements, such as the quality of health care, availability. Legitimate aim of the change of the concept of the health care budget funding system is social justice and solidarity. The public benefit is stability of income in the budget of health care, clearly marked distribution of resources, personal motivation to make payments rather than aspects of ensuring the public's right to health. Similarly, there was no assessment on how implementation of this reform would improve, for example, the availability and quality of services rendered.

The Ombudsman pointed out that the public should see a significant benefit from such reforms because, in accordance with the Concept, the administration of the system will require considerable additional resources (3-6% instead of the previous 0.8%).[74]

In line with regulations of several international documents on human rights[75], some vulnerable groups need a special State protection and support, such as children, persons with disabilities, refugees, persons with mental disabilities. Evaluating the list of persons included in the Concept project for whom the State will make payments, the Ombudsman identified a number of groups that have been not included in this list.

In addition, the Ombudsman drew attention to the fact that it is important for the State, in accordance with the principle of good administration, to ensure the person's right to participate in health care policy.

[74]In line with the current annotation of the draft law «Law on Health Care Funding», maintenance costs of the system will increase for approximately 10%, Chapter III.

[75] UN Declaration on the Rights of the Child, UN Declaration on the Rights of Disabled Persons, UN Declaration on the Rights of Mentally Retarded Persons, etc.

The European Charter of Patient's Rights sets out three principles that allow individuals and non-governmental organizations to promote the patients' rights: 1) to carry out activities in the public interest; 2) to protect their rights; 3) to participate in the health care policy.

Thus, in order to implement principles of good administration, it is important for institutions to listen and to take into account opinions expressed by non-governmental organizations of the sector. If representatives of the sector (such as the Latvian Association of Family Physicians and the Latvian Association of Rural Family Physicians) categorically opposes the introduction of the Concept pointing to several significant risks possible in case of introduction of this reform, the government is required to express convincing arguments justifying why these objections are not taken into account.

Concept project did not include references to prevention, treatment and control of occupational and other diseases. It might lead to dangerous consequences – the amount of chronically ill patients in Latvia will rise rapidly and the State will have to pay double cost for the treatment process, rather than ensure effective and appropriate use of financial resources provided for the health care. It is important to emphasize that, from the perspective of the patients' rights, preventive measures planned by the State can guarantee healthy and long-living society.

Since the end of 2013, the Concept is a bill and it has purposefully continued its course. It is important to note, that currently the bill proposes new ideas that has not been previously evaluated within the framework of the Concept. Therefore, the Ombudsman has repeatedly expressed his opinion on the planned health care funding reform.[76]

In the Opinion, the Ombudsman drew the attention of the legislator to the aim and utility of the reform. In line with the Report on assessment of initial impact of the reform (hereinafter – Annotation),[77] the bill plans to include a certain part of health care funding in the personal income tax (hereinafter - PIT) in order to increase the

[76] Opinion expressed by the Ombudsman on February 12, 2014 on the bill "Law on Health Care Funding" (doc. No.1-8/3). Available: http://www.tiesibsargs.lv/sakumlapa/papildinats-tiesibsarga-viedoklis-par-veselibas-aprupes-finansesanas-likumprojektu

[77] Report on assessment of initial impact of the bill "Law on Health Care Funding", Chapter I, paragraph 1. Available: http://titania.saeima.lv/LIVS11/saeimalivs11.nsf/webAll?SearchView&Query=%28[Title]=*Vesel%C4%ABbas+apr%C5%ABpes+finans%C4%93%C5%A1anas+likums*%29&SearchMax=0&SearchOrder=4 pi

funding for 0.25% of GDP, until it will have reached 4.5% of GDP in 2020. However, this is based solely on Annotation and is not included in the text of the bill.

Article 2 of the bill "Sources and Amount of Health Care Funding" includes only a reference to the source of funding, but there is no indication to the amount of funding. Thus, there is no assurance that the reform will reach the set goal. It is important that this goal can be achieved by fulfilling the government's political commitment. Namely, the Action Plan of the previous government[78] already included a commitment to reach such amount of funding in 2014.

However, the Ombudsman considers that the main objection related to the obligation of the State to ensure comprehensive access to health care, is the fact that, according the bill, a person who pays personal income tax but whose income is irregular or small is not provided with the State-funded health care. In line with the new order, access to State-funded health care services, including primary health care, will be denied to a significant number of the Latvian population.

According to data provided by the MH,145 thousand inhabitants, which is about 7% of the population of Latvia, are persons of working age who are not paying personal income tax and are not State insured persons.[79] The Ministry itself predicts that only 5% of that amount or 7250 residents shall join the national insurance system through voluntary contributions of 28 Euros per month. It is possible that this group includes illegal employees, unregistered unemployed persons who, with the help of this reform, will arrange their social status by joining the national health insurance system. However, it is expected that the State-funded health care services will not be available for at least 100 thousand inhabitants of Latvia. Particular attention should be paid to the fact that the State-funded health care, including primary care, will be denied to people who are honest tax payers, only their income, according to the Latvian socio-economic situation, is irregular or small.

It should be noted that it is a group of people of working age who, in the reporting period[80], are unable to earn an income of at least 12 minimum wages

[78] Government Action Plan for implementation of the Declaration on Measures Planned by the Cabinet of Ministers directed by Valdis Dombrovskis.
Available: http://www.mk.gov.lv/lv/mk/darbibu-reglamentejosie-dokumenti/ricibas-plans-dv/
[79] Report on assessment of initial impact of the "Law on Health Care Funding". Chapter III, paragraph 6.2.
Available: http://titania.saeima.lv/LIVS11/SaeimaLIVS11.nsf/0/50843B52838DC30CC2257C32004A6798?OpenDocument
[80] With the exception of persons in employment relationship.

defined by the government (or 3840 Euros). According to the new concept, inhabitants of low income will be forced to pay 28 Euros per month from their already low income to gain access to the State-funded health care, which, in the view of the Ombudsman, is not commensurate with the socio-economic situation.

Thus, the risk group includes self-employed persons and economic operators with seasonal, low income, who, however, pay taxes from their low income. It can be expected that such approach will increase illegal employment and avoiding paying taxes, because it will be more profitable for people with irregular and low incomes to hide them, by qualifying for unemployment status.

In addition, the bill also reveals violation of the principle of legal equality. In relation to persons in employment relations (employees), the sole criterion for access to the State-funded health care is the fact of employment relationship for at least 11 calendar months (Section 12, paragraph 2 of the bill). Respectively, no specified amount of income is required, thereby formally there is a possibility that a person works a part-time job or even just one hour per day and has the access to the health care services.

This would cause no objections in case of equal attitude towards all employed persons and taxpayers. However, it means that self-employed persons with seasonal, irregular income, who, probably, have a higher income during the reporting period and pay personal income tax, are required to gain a specified amount of income (at least 3840 Euros in the reporting period). Thus, even in cases when the amount of personal income tax paid by a self-employed person is equal to the amount paid by a person in employment relationship for not less than 11 calendar months, the self-employed person is placed in an unequal situation and excluded from the group of people who receive health insurance services.

The Ombudsman considers that there is no objective and reasonable justification for such difference in attitude, and it is not compliant the principle of legal equality set by Article 91 of the Constitution.

In addition, persons excluded from the State-funded health care system are:

1) persons who have reached retirement age, but who have not accumulated sufficient insurance period for receiving pension and who do not receive State social security benefit;

2) asylum seekers;[81]

3) persons who receive parental, child-care or family State benefit, and who have at least three children, the youngest of whom has reached the age of 7 years but has not yet started attending primary school.

Article 3 of the bill on State-Funded Basic Health Care Services defines the health care services that will be available to everyone, regardless of the fact and amount of tax payments. Naturally, with this regulation of the bill the government proposes to define the minimum of medical assistance in Article 111 of the Constitution.[82]

Thus, services guaranteed by the State are the following: 1) emergency medical treatment, 2) systematic health care to patients for detection and treatment of certain diagnosis, 3) reimbursement of purchase of medications and medical devices for ambulatory treatment.

At the same time, paragraph 2 of the above mentioned Article provides the delegation of the CM to determine amount and provision procedure of the basic services, as well as amount of patient co-financing and payments. The Ombudsman considers that, by such wording of the bill, the legislature allows too much discretion to the government. According to such regulation, there is a risk that the emergency medical treatment may be "quoted" and patient's co-financing may be determined, which may violate the obligation of the State defined by Article 111 of the Constitution to guarantee minimum medical assistance for everyone. It is inacceptable to delegate determination of the amount of emergency medical treatment to the CM. Such wording would be contrary to Section 16 of the Medical Treatment Law, which provides that "*everybody has the right to receive emergency medical care in accordance with procedures prescribed by the Cabinet*". Currently, the legislator has delegated the Government to prescribe only procedure of emergency medical assistance, not amount.

Besides, it is inacceptable that the State guarantees only services provided by emergency medical assistance team, while ambulatory emergency medical assistance is already limited with a specific patient co-financing. The CM has already violated

[81] In line with Section 10 of the Asylum Law, the asylum seekers have a right to receive State-funded emergency medical treatment and primary health care.

[82] Article 111 of the Constitution: „The State shall protect human health and guarantee a basic level of medical assistance for everyone".

the delegation limits determining that emergency medical services provided ambulatory are to be paid by patients.[83]

At the end of 2013, the Ombudsman's Office, in cooperation with the Marketing and public opinion research centre „SKDS", carried out a survey.[84] The obtained data demonstrate sums that have had to be paid by respondents for ambulatory emergency medical care: up to 10 Latvian lats - 47%, from 10 to 20 lats- 32%, and more than 20 lats - 16% of respondents.

In addition, physicians working in the Ombudsman's Advisory Council have drawn attention to the fact that the specified section of the bill does not contain all diagnoses. This list is not exhaustive, as there are severe and life-threatening diagnosis and states that are not mentioned in this section, for example, cardiovascular diseases which are the most common causes of death in Latvia; severe rheumatologic, gastroenterological patients, groups of genetic diseases.

Basic services of health care at the level of principles guaranteed to everyone by the State, must be clearly defined by law, and the legislator should not delegate everything to the CM, without clear determination of the amount and availability of services. One of characteristics of the health policy that is important to the public health is comprehensive availability of services and low co-financing in the primary health care[85], therefore the Ombudsman considers that the basic primary health care should also be considered a basic service.

Besides, it is necessary to specify by the law the vulnerable categories of the population (children, low-income persons, persons with disabilities, politically persecuted persons, etc.), that the State has committed to protect particularly. Currently, the categories exempted from the patient's contributions are defined by government regulations[86]. According to the bill, the government has a full discretion to limit the amount of health care services provided for the vulnerable categories, to determine the amount of co-funding or to exclude them from the "exempted" categories.

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[83] Section 23.8 of the Cabinet Regulation No. 1529 of December 17, 2013 "Procedure for Organizing and Funding of Health Care": „Patient contributions are not to be paid (..) by persons who receive emergency medical assistance provided by emergency medical assistance team."
Published: *Latvijas Vēstnesis*, 253 (5059), 30.12.2013. Available: http://likumi.lv/doc.php?id=263457

[84] Available: http://www.tiesibsargs.lv/sakumlapa/tiesibsarga-2013.gada-konferences-materiali

[85] Starfield B. Primary care: an increasingly important contributor to effectiveness, equity and efficiency of health services. SESPAS report 2012., Gac Sanit. 2012. Doi:10.1016/j.gaceta2011.10.009.

[86] Section 23 of the Cabinet Regulation No. 1529 of December 17, 2013 "Procedure for Organizing and Funding of Health Care".

Taking into account the high poverty and social exclusion risks in Latvia[87] , and the small amount of social assistance, the Bill and the Concept proposed by the Government are not to be recognized as socially just because they restrict human rights disproportionally. They shall not provide the minimum medical assistance for everyone, but shall increase the amount of unemployed persons and allowance receivers, contribute to social exclusion and worsen the state of health of the population of Latvia which is already critical.

During the discussion about the Bill it was found that almost all non-governmental organizations representing the industry - Latvian Association of Family Physicians, Latvian Association of Rural Physicians, Latvian Society of Hospitals - have criticized the Bill and objected to its further utility, indicating that, in case of adoption of the law in the present writing, there is a high risk of increase of number of "neglected" diseases and consequent disability indicators, number of emergency calls which, in long term, will cost much more. Therefore, the Ombudsman has not supported further passing of the Bill.

## 4. Rights to Work and Fair Wage

### 4.1. On minimum wage

Evaluation of submissions received by the Ombudsman's Office in the field of the social and economic rights points to increase of number of submissions received not only from vulnerable groups such as retired person, people with disabilities or long-term unemployed persons, but also the workers. Mainly, people ask one question: how to survive with a minimum wage defined by the Latvian government? Often, the income of these people is only a little bit higher than the minimum wage, therefore they cannot receive municipal social assistance. In addition, these persons indicate that the situation in which a working person has to ask for assistance in order to satisfy minimum needs, is hopeless, humiliating and offensive to human dignity.

[87] 40% of the inhabitants of Latvia are subject to the risk of poverty and social exclusion. Data provided by the Eurostat. Available: http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_peps03&lang=en
The Central Statistical Bureau of the Republic of Latvia.. Available: www.csb.gov.lv

At the end of 2012 the Ombudsman issued a report on the risk of poverty in Latvia,[88] where he drew attention to the following: despite the economic recovery, economic tension is still being felt by more than a half of Latvian residents, in Vidzeme and Latgale region even in up to 77.7% of households.[89] The data indicate that economic tension in households is not diminishing, on the contrary – it continues to grow. 40% of the Latvian population are subject to the risk of poverty and social exclusion, including 43% of children and 33% of retired persons.[90]

The report states that the minimum wage in Latvia since January 1, 2011 is 200 Latvian lats per month. After payment of taxes, only 144 lats remain which is less than the estimated poverty threshold in 2011 (147 lats per person per month)[91]. It is also much smaller than the minimum consumer basket calculated by the Central Statistical Bureau for one person, which in December 2012 was 177 lats.[92] Statistics show that 193.9 thousands of the inhabitants of Latvia [93] or 27% of all employees receive the minimum wage or even less.

Article 89 of the Constitution provides that the State shall recognize and protect fundamental human rights in accordance with this Constitution, laws and international agreements binding upon Latvia. The right to fair wages, undoubtedly, is to be recognized as a fundamental human right. This is enshrined in Article 107 of the Constitution and in several international agreements binding on Latvia:

1) Article 23, paragraph 3 of the UN Universal Declaration on Human Rights[94]: „*Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.*"

2) Article 7 of the UN International Covenant on Economic, Social and Cultural Rights[95]: „*The States Parties to the present Covenant recognize the right of*

[88] The Report of November 30, 2012 on Poverty Risk in Latvia (document No.1-5/298). Available: http://www.tiesibsargs.lv/sakumlapa/tiesibsarga-zinojums-starptautiskajiem-partneriem-par-nabadzibas-risku-latvija

[89] Central Statistical Bureau. Available: http://www.csb.gov.lv./dati/statistikas-datubazes-28270.html

[90] Eurostat. Available: http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_peps03&lang=en; Central Statistical Bureau. Available: www.csb.gov.lv

[91] Eurostat. Available: http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_li01&lang=en

[92] Central Statistical Bureau. Minimum Amount of Necessary Goods and Services. Available: http://www.csb.gov.lv/statistikas-temas/iedzivotaju-ienemumi-galvenie-raditaji-30268.html

[93] Therein, table DS14. Available: http://www.csb.gov.lv./dati/statistikas-datubazes-28270.html

[94] The Republic of Latvia joined with a declaration of May 4, 1990 "Declaration of the Supreme Council of the Republic of Latvia on Adherence to International Legal Documents in Issues of Human Rights".

[95] Therein.

*everyone to the enjoyment of just and favorable conditions of work which ensure, in particular: (a) remuneration which provides all workers, as a minimum, with: (i) fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; (ii) a decent living for themselves and their families in accordance with the provisions of the present Covenant (..)".*

3) Article 3 of the Minimum Wage Fixing Convention (No.131) [96] of 1970 by the International Work states that „*the elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, include the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups, as well as economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment*".

These documents on human rights indicate that the concept of "fair wages" basically comprises two main elements: firstly, a certain level of remuneration that provides employees and their families with a decent living (in dignity), and, secondly, equal remuneration for equal work.

Although the Republic of Latvia has not ratified Article 4 of the European Social Charter[97], the principles of this Article are commensurable with the interpretation of Article 107 of the Constitution.[98] The European Committee of Social Rights has issued explanations applicable to determination of rights to fair wage.

According to the explanation, the minimum wage limit may not be less than 60% of the average wage in the State after payment of State mandatory fees. In addition, the wage should exceed the poverty threshold of the State.[99]

According to Article 107 of the Constitution, the State lays down the basic principles of determination of wages ensuring that the wages are commensurate with the employee's work invested. Thus, the Constitution guarantees the right of the

[96] The Republic of Latvia ratified it with the Decision "On Ratification of Conventions of International Work Organization" made on January 12, 1993 by the Supreme Council of the Republic of Latvia.
[97] Law on European Social Charter, Article 2.
[98] Team of authors. Comments on the Constitution of the Republic of Latvia, Part VIII. Fundamental Rights, Riga, Journal "Latvijas Vēstnesis", 2011, p.510.
[99] Therein, p. 510.

employee to require the State to participate in the reception of fair wage.[100] Accordingly, the State is obligated not only to establish a minimum wage, but also to determine a wage that, firstly, is commensurate with the employee's contribution and, secondly, is sufficient for minimum needs of the employee and his family members. Looking at the above mentioned statistics, it can be concluded that the State has failed to fulfill this obligation now.

Thus, in 2013 the Ombudsman drew the Government's attention to priorities set in its declaration [101] for the next three years: a stable and sustainable development of Latvia, contributing to everyone's welfare, reducing social inequalities, with the goal to implement the reform of the social assistance system, by a gradual transition from passive system, i.e. social assistance system of allocations, to active system, i.e. system focused on motivation of clients interested in the improvement of their situation, in order to the ensure the greatest possible added value for customers and society as a whole with the help of available resources.

One of priorities of the Strategic Development Plan of Latvia for 2010 – 2013[102], along with economic growth, is "social security", and one of the main action lines is employment and social support in order not to increase the risk of poverty until 2013 (poverty risk rate after social transfers- 26%).

In the Concept on Minimum Wage Determination for Future[103] (hereinafter - Concept), the Ministry of Welfare has drawn the Government's attention to the fact that, on the basis of international agreements, Latvia has certain obligations regarding wage regulation. Therefore, the State should take all necessary measures as soon as possible in order to properly comply with these obligations, and the amount of the minimum wage in the State could achieve survival rate. One of the tasks of the Concept is to choose basic principles for minimum wage determination and review that would allow ensuring minimum monthly wage commensurate with the Latvian level of material well-being and economic situation in the framework of normal work schedule (average wage levels, social security, cost of living and other factors). In

[100] Therein, p.519.
[101] The Declaration on Measures Planned by the Cabinet of Ministers directed by Valdis Dombrovskis. Available: http://mk.gov.lv/lv/mk/darbibu-reglamentejosie-dokumenti/valdibasdek/
[102] Order No. 203 "On Strategic Development Plan of Latvia for 2010-2013" issued on April 9, 2010 issued by the Cabinet of Ministers.
[103] Concept on Minimum Wage Determination for Future Years. Approved by the Order No.111 of the Cabinet of Ministers of March 16, 2011.

addition, the wage should be socially just and should ensure as high level of employment as possible.

After analysis of the above mentioned statistics, the Ombudsman considers that the current amount of minimum wage does not comply with the goal set in the Concept, it does not guarantee a commensurable income and socially equitable remuneration, because such income is not sufficient to satisfy the basic needs of the employee and his family members (to cover expenses for food, shelter, utilities), not to mention person's social needs.

In 2011, the government, when approving the Concept, chose the first variant proposed by the Ministry of Welfare for minimum wage determination, i.e. the minimum wage was not linked to specific macro-economic and other factors, but its possible changes were evaluated in terms of the economic situation in the State and other indicators.

The Ombudsman considers that this solution was probably acceptable during the economic crisis. However, given that the State is currently experiencing economic growth and that the government's decision on the minimum wage is largely a political choice, the government should immediately review the basic principles of minimum wage determination defined in the Concept. Socially equitable and more compliant with people's interests is the third version proposed by the Ministry of Welfare and included in the Concept: the minimum wage is increased in order to reach net amount of 100 percent of the average value of minimum consumption basked calculated by the Central Statistical Bureau during a five-year transitional period. What is more, it would be only fair and proportionate, if such transition period would not exceed three years.

At the same time, the Ombudsman welcomed the changes in legislation aimed to increase the minimum tax-free sum and tax relief for dependents.

### 4.2. Rights of sworn bailiffs to fair wage

During the reporting period, the Ombudsman's Office submitted an Opinion to the Constitutional Court in the Case No. 2012-22-0103. The case was initiated about Section 567, paragraph 3 of the Civil Procedure Law (CPL), in so far as it does not provide compliance of the coverage of compensation to sworn bailiffs from the funds of the State budget in cases where a judgment creditor is exempt from payment of

enforcement of judgment expenditures, with Article 107 of the Constitution, and compliance of Sections 8, 9, 10, 11, 12 of the Regulation No.670 "Regulation on Necessary Amount of Expenses Necessary for Executive Actions and Payment Procedure" (Regulation Nr.670) issued on August 30, 2011 by the Cabinet of Ministers with Articles 64 and 105 of the Constitution.

The Ombudsman pointed out that wage-earning is the most important criterion for determining whether a person has the rights enshrined in Article 107 of the Constitution. However, it is also possible to include self-employed persons in the group of subjects of the Section 7 of the Constitution, especially if that person, regardless of his or her legal status and autonomy of the work, carries out certain functions in the public interest, his or her activities are governed by the law and are comparable to State officials. Thus, fundamental rights enshrined in the Article 107 of the Constitution are also applicable to the bailiffs.

Although in the cases where a judgment creditor is exempt from payment of enforcement of judgment expenditures, the relevant expenditures may be recovered from the debtor, however, very often in such cases, recovery is not possible. Moreover, in some cases, the legal framework does not provide such possibility at all, and bailiffs are forced to work without compensation. Fair compensation for activities carried out by the bailiff can be achieved by not only providing compensation for each activity, but also by alternative mechanisms (cross-subsidization principle). However, such measures must be effective and equally accessible to all bailiffs, regardless of the place of practice. Limitations of fundamental rights set in Section 567, paragraph 3 of the CPL 567 do not have a legitimate aim, therefore, this provision is to be declared non-compliant with the Article 107 of the Constitution.

The Ombudsman pointed out that Sections 8-12 of the Regulation No.670 are not intended to fully reimburse expenditures of judgment creditors necessary for their professional activities, but to compensate them only partially. This produces a situation where judgment creditors have to pay the rest of expenditures related to enforcement of the court judgment. This violates fundamental rights defined in Article 105 of the Constitution.

Sections 8-12 of the Regulation No.670 has been adopted to save the funds of the State budget and to ensure a fair distribution of resources among all bailiffs. However, given that the Regulation No.670 was taken on August 30, 2011, respectively, at the time when the country experienced economic growth, it is

questionable whether such considerations may be recognized as the legitimate aim of restrictions of fundamental rights. In addition, this aim could be achieved through other, less severe means, including ensuring that the bailiffs are included in the group of institutions and officials who have a free access to information necessary to carry out delegated public functions from public records. Thus, Sections 8-12 of the Regulation No.670 are not compliant with Article 105 of the Constitution.

The Ombudsman pointed out that the right of the CM to determine the payment procedure of expenditures related to implementation of the judgment should be primarily evaluated as the right to establish procedural order and cannot include substantive provisions that restrict fundamental rights. Sections 8-12 of the Regulation No.670 were taken on the basis of delegation enshrined in Section 657, paragraph 4 and Section 620[10], paragraph 2 of the CPL. Evaluation of content of the act adopted by the Cabinet reveals that it contains not only the procedural framework, but also norms of substantive rights that reduce the amount of reimbursable expenses to bailiffs. Thus, the Regulation No. 670 does not comply with the delegation enshrined in Article 64 of the Constitution.

The Constitutional Court declared the impugned provisions – Section 567, paragraph 3 of the CPL- to be compliant with Article 107 of the Constitution, while the relevant points of Cabinet Regulation No.670 - to be incompatible with Articles 64 and 105 of the Constitution.

### 4.3. Rights to choose freely the occupation

The Ombudsman has submitted his Opinion to the Saeima on the bill "Amendments to the Law on Taxes and Fees" which was intended to introduce a new term "risk person" and to define the criteria for the identification of such risk person, as well as a procedure for determination of this status.

The Ombudsman acknowledged that the system, intended to determine the range of risk persons who circumvent or help to circumvent payment of taxes to the State budget, as well as to set obstacles (limitations) to the relevant persons to carry out activities that harm the national interest, is to be supported.

The Ombudsman also noted the following considerations.

1. The bill "Amendments to the Law on Taxes and Fees" provides that the notion of risk person may be applied to a person whose registered place of residence is a night shelter.

The Ombudsman points out that the mere fact that a person is living in a night shelter, cannot be an obstacle to establish, for example, a micro-enterprise. It is important for the State Revenue Service (hereinafter - SRS) to have sufficient evidence that the person has no intention to do business. This legislative initiative would contradict Article 15 of the European Union Charter of Fundamental Rights and Articles 91 and 106 of the Constitution. Decisions to forbid commercial activities because of the person's place of residence and social status (in this case, the night shelter) in cases where there is no other, objective justification, would be a direct discrimination based on social status. The Ombudsman found that the unlawful actions in the process of foundation of commercial companies can be avoided by other, less restrictive means.

2. One of the objectives of the bill was to define the notion “the risk person”, to maintain the SRS’s register of risk persons and to provide information about the persons registered in the Register of Enterprises. Criteria for determining the status of risk person were selected, taking into account the SRS’s statistics available about the techniques used to defraud taxes from the State budget. The objective to protect the public interests from unlawful activities must be regarded as proportional to the obstacles, because the person who avoids paying taxes causes losses to the national interests and to every inhabitant of the State. For such offences, the legislator has provided not only administrative, but also criminal liability (Section 218 of the Criminal Law).

Basing on the above mentioned information, the Ombudsman concludes that the provisions of the bill do not penalize, but create certain obstacles (constraints), which, for a certain period of time in the future, will interfere with activities aimed to deliberate non-compliance with obligation to pay taxes and will prevent tax frauds.

3. The bill was intended to make amendments to the law on Taxes and Fees, by adding a regulation on a five-year term for the status of risk person and determination of relevant limitations.

The Ombudsman found that the proposed limitation period corresponds to the maximum term of supplementary penalty (limitation of rights) specified in the CrL (five years). Thus, the proposed limitation period is equivalent to penalty.

Since the restrictions provided by the bill, however, are not intended as a penalty, these restrictions have to be commensurate with the penalties for activities of a similar nature provided in the Latvian Administrative Violations Code and the CrL.

If the restrictions are not commensurate, a situation may arise when an administrative or criminal punishment is less restrictive than a restriction applied to a person who is not punished but is included in the list of risk persons. Such situation is not proportionate to the objective pursued.

4. The Ombudsman points out that the bill does not provide sufficient legal certainty, for example, it does not state whether a person, after imposition of the limitation period of five years to occupy certain positions in corporations, may be subjected to restrictive punishment in the framework of administrative violation case or criminal proceedings, and vice-versa. This uncertainty raises doubts as to whether the application of the bills will be complied with the principle of prohibition of double punishment specified in Article 4, paragraph 1 of the Seventh Protocol of the ECPHRFF.

5. The Ombudsman also notes that the five-year term set in the bill can be ambiguously interpreted. In particular, it is unclear whether five years is the term for information used for decision making, or the term of legal consequences of the fact established in the decision. This uncertainty does not comply with the principle of legal certainty.

6. Besides, the bill did not specify behavior of the SRS in cases when the restriction period applied to a risk person has expired. Thus, it was not clear whether the person is automatically removed from the register of risk persons, or the SRS makes a relevant decision by personal initiative. The Ombudsman drew attention to the need for such a framework in order to ensure legal certainty because a person has to be aware of consequences that will occur after the expiration of the restriction period.

In summary, the Ombudsman called for clarifications in the writing of Sections 1, 4 and 9 of the bill on Amendments to the Law on Taxes and Fees and in the writing of Section 6 of the bill on Amendments to the Law on the Latvian Register of Enterprises, in line with the above mentioned considerations.

# 5. Rights to Property

## 5.1. Reconciliation of the rights of proprietors and tenants in force tenancy relations

In the report of the previous year, the Ombudsman already emphasized the topicality of commensurable rights of owners in compulsory lease relations, the issue was also included in the annual Ombudsman's conference. The Ombudsman considers the right to property is limited both in relation to land and apartment owners, the limitation is set by law, and it has a legitimate aim, but a fair balance in the joint property relations is not achieved.

In summer of 2012, the Government came up with several proposals. They stated that one will not be able to build residential buildings, including apartment houses on a land belonging to another person (and thus, in the future, the forced land rent relations will be excluded between owners of apartment of the residential building, or joint owners of the apartment house, and the owner of the land); the leaseholder, in addition to the rent charge, is not obliged to reimburse the immovable property tax on land, and the lessor with the Immovable property State Cadastre information system should register the part of the land unit, which will be used for the purpose of establishing the compulsory rent charge for the land. Only in the case when the land owner is not entitled to use the remaining part of the land unit for other purposes (e.g., to create a parking lot, to build new structures, etc.), the owners of apartments and the owners of other residential buildings and structures will also have to rent the remaining land unit. If the owner of the land does not create the land unit and fixes the land compulsory rent charge, the fixed land compulsory rent charge can be consented in court.

The Ombudsman supported the said amendments but indicated that the situation is only slightly improved, but not resolved completely. At first reading, the Saeima passed the bill on Amendments to the Law on Land Reform in the Cities of the Republic of Latvia (No. 423 / p.11) and the bill on Amendments to the Law on State and Local Government Residential Houses (No. 421 / p.11), however, currently, passing of the bill to second reading is suspended, therefore no factual improvement in the legal framework is achieved.

In addition, the Ministry of Justice was asked to develop projects of regulations aimed at termination of the forced joint property relations. The CM had

determined that projects of regulations relating to termination of the existing joint property relations should be submitted by July 1, 2013 (prot. Of the MC No. 54, 34§).

According to information furnished by the Ministry of Justice in relation to termination of joint property relations, the Ministry of Justice is still working on inclusion of issues and proposals discussed in inter-institutional working group into bill versions. However, the most important issue is the bill's financial impact and possible financial support for termination of forced joint property relations. Therefore, the Ombudsman concludes that the competent ministry has identified the existence of a problem, but its successful resolution depends on political decision on the form and amount of support provided by the State.

### 5.2. On protection of creditor's interests in company's insolvency procedure in case of dispute about rights

During the reporting period, the Ombudsman submitted his Opinion to the Constitutional Court in the case No.2012-25-01 on compliance of Section 138 (contested provision) of the Insolvency Law of November 1, 2007 with Articles 92 and 105 of the Constitution.

Resolvable question: is it possible to complete the bankruptcy procedure in insolvency proceedings (Section 138 of the Insolvency Law) while civil proceedings of this insolvency case are not completed?

The Ombudsman considered that the contested provision was not compliant with Articles 92 and 105 of the Constitution, and violation of fundamental rights of the applicant was caused by application of the norm rather than the norm itself. During insolvency proceedings, judicial control is ensured, and the applicant has used the opportunity to appeal the administrator's decision and to ask the President and the Attorney General of the Department of Civil Cases of the Supreme Court to submit a protest. On the other hand, by turning to the court in line with general procedure with the same requirement to recognize her as a secured creditor, the applicant put an additional burden to the judicial system – this is what the legislator sought to prevent by the adoption of the contested provision.

The Ombudsman agreed with the applicant's view that rights to property are being violated if an action is brought before the court of general jurisdiction with a request to declare a person a secured creditor, but, before termination of this action,

the insolvency proceedings are terminated. However, the Ombudsman noted that this violation is considered to be commensurable if one takes into account violation, which might affect other creditors and the general business environment. The Ombudsman considers that it would not be commensurate if the legislator would have provided that insolvency proceedings are not to be terminated until all possible disputes related to the debtor outside the insolvency proceedings are not settled. The aim of insolvency proceedings is to protect the interests of all creditors in case of the debtor's limited solvency or insolvency.

The Constitutional Court closed the case, finding that the there is a dispute about the application of the contested provision in the relevant insolvency proceedings, not a violation of fundamental rights caused by the contested provision.

### 5.3. On restrictions of property rights of the owner of a vehicle

During the reporting period, the Ombudsman submitted an Opinion to the Constitutional Court in the Case No. 2012-23-01 on compliance of Section 257, paragraph 1 of the Latvian Administrative Violations Code (the contested provision) with Article 105 of the Constitution.

The contested provision provided that if a third party has driven a vehicle owned by another person under the influence or drugs, etc., the vehicle is removed and deposited in the State Procurement Agency, until the moment when the third party has paid the fine imposed. One of the owners of a vehicle objected to such procedure, stating that it violated his property rights.

The Ombudsman considers that the contested provision was restricting property rights. A vehicle is a movable property involved in free civil liability circulation which the owner is entitled to use. Thus, a person's right to use a vehicle in his possession is a part of fundamental rights specified by Article 105 of the Constitution. However, the contested provision limits this right of the owner for a certain period of time.

The Ombudsman acknowledges that the consented provision has a double legitimate aim, namely, to prevent the initial threat to public security forbidding a driver under the influence of alcohol to drive, and later - to ensure payment of the fine. Therefore, we can agree that the legitimate aim of the contested provision is the protection of the rights of others and public safety.

Although such restriction is appropriate and can contribute to the payment of the fine, the Ombudsman pointed out, however, that this restriction is not commensurate, especially considering that the contested provision applies regardless of who – the person called to administrative responsibility or other person – owns the vehicle. Such restriction is not necessary, because the legitimate aim can also be reached by less restrictive means.

The Ombudsman points out that it is important to distinguish if the person who has committed the administrative offense is the owner of the vehicle or other person. Administrative liability may be only applied to the person who has committed an administrative violation. When applying the contested provision, where the owner is the same person who has committed the administrative violation, administrative liability and a fine are imposed.

The Ombudsman agreed that the owner of the vehicle has to reckon with the possible hazards that the vehicle may create, and is obliged to choose the driver wisely. The legislator could impose administrative liability on a vehicle owner for, e.g., giving the vehicle (which is a high-risk source) to a person who is under the influence of alcohol. However, such liability of vehicle owners has not been established in the laws and regulations.

When the owner becomes aware of the vehicle removal and deposit, he has the right to turn to court and ask to recognize him as a third party to this administrative case on the grounds that his property rights may be affected by the judgment. Similarly, the court has the right, at its own initiative, to recognize the applicant as a third party. It should be noted, however, that the provisions of the LAVC do not provide the right for a person, who is not a member of a particular case, to object to the application of penalty imposed by administrative act or decision of the judge. However, the lack of appropriate regulatory framework in the LAVC should not hinder the person from asking to prevent violation of his or her rights. Consequences imposed by the contested provision to the owner of the vehicle who has not committed administrative violation, are not legally considered to be an administrative penalty, but, in reality, are equivalent to the penalty.

The Constitutional Court acknowledges that the contested provision is not commensurate, therefore it does not comply with Article 105 of the Constitution.

### 5.4. Rights of persons with partial incapacitation to property

A verification procedure has been initiated in order to establish whether prohibition deriving from Section 16.4 of the Cabinet Regulation No. 1080 "Vehicle Registration Regulations" that does not allow a person under guardianship to register a car in his/her possession violates human rights. It was determined that a person under guardianship can register owned, held or controlled vehicles and register owned numbered units only if this person is the only heir of the vehicle or numbered unit.

It was concluded that Section 16.4 of the Cabinet Regulation No.1080 violates the rights of persons with limited capacities to register owned, held or controlled vehicles, because persons with limited capacities can exercise these rights only very rarely.

The Ombudsman asked the Ministry of Transport to prevent the identified violations of human rights and to make amendments until November 15, 2013 to Section 16.4 of the Cabinet Regulation No.1080, by deleting the words "if this person is the only heir of the vehicle or numbered unit".

During the reporting period, changes in the Cabinet Regulation No.1080 have not been made.

### 5.5. On vehicle wheel blockers

Following the Ombudsman's initiative, the initiated verification procedure on usage of vehicle wheel blockers in cases when users of paid parking lots have not duly paid for the use of the parking lot revealed that:

1) several municipalities, in their binding regulations, have determined the rights of authorized persons to use the vehicle wheel blockers on vehicles placed in municipal paid parking lots;

2) The Consumer Rights Protection Centre has received and reviewed a number of individual complaints about behavior of private parking lots, putting vehicle wheel blockers for violation of terms of the use of the private parking lot.

The Ombudsman concluded that usage of the vehicle wheel blockers is to be regarded as disproportionate measure for achieving the aim - ensuring traffic order and security on municipal streets and roads – set by Section $4^1$ of the Law on Motorways, and, most importantly, such procedure disproportionately restricts the

rights of vehicle owner (possessor) to property (possession). It was found that the vehicle wheel blockers are still used in Daugavpils, so it was recommended to the City Council to amend the binding regulations, abandoning the usage of vehicle wheel blockers as control measure in paid parking lots.

In relation to behavior of the owners of private parking lots by putting vehicle wheel blockers for violations of regulations of the relevant private parking lots, it was found that there is a system in Latvia that helps to limit unjustified behavior of the owners of private parking lots.

### 5.6. On collection of capital gains tax from income earned by selling a real property

The Ombudsman's Office has received several submissions on alleged unjustified obligation to pay capital gains tax from the income from sales of real estate, because, over the last five years, individuals have not been able to declare their place of residence in this estate during a period of one year. It was found that this situation was caused by a variety of reasons, e.g. a person for many decades has owned property acquired in different ways - inherited, denationalized or received as a gift land, built garden house, cottage where it is impossible to declare, or the property that has not been possible to enter into the Land Register, etc.

The Ombudsman acknowledges that non-application of capital gains tax to the sale of a property possessed by a person for at least five years is understandable and complies with the aim of amendments to the law, however, in some cases, the condition of the declaration of the place of residence causes unequal and unfair attitude towards taxpayers and disproportionately violates the right to property.

The Ombudsman turned to the Ministry of Finance with a request to review the mandatory necessity for declaration and, before application of the provision, to take into account the actual circumstances in conjunction with the aim of the provision.

### 5.7. Obligation to pay for maintenance of confiscated property

During examination of a submission lodged by a private individual, the Ombudsman established that the State Procurement Agency (hereinafter – SPA) has

incorrectly applied regulations relating to coverage of expenses incurred due to storage of violation objects and instruments confiscated in the framework of administrative case (hereinafter - the property).

Submission reveals that the SPA obliges the person sentenced to administrative punishment to reimburse the costs of storage of the confiscated property.

The Ombudsman concluded that the SPA did not take into account that the issue of imposing an obligation on a person sentenced to administrative punishment to reimburse expenses after the decision on confiscation of property has entered into force (i.e., after sending a notification to the administratively penalized person) is related to the nature of confiscation of property.

Section 28 of the LAVC provides that the confiscation of an administrative violation object or an instrument used in its commitment shall mean the forcible transfer thereof without compensation to the ownership of the State. It means that the property confiscated on the basis of decision on confiscation of the seized property becomes the state jurisdiction, namely, the administratively penalized person is deprived of property and possessory rights, leaving the possibility to contest the decision and to postpone enforcement of the confiscation.

Since, at the moment when the decision enters into force, the seized property becomes the state jurisdiction, a person cannot be held responsible for its storage.

By obliging to pay expenses - 8 LVL per day – for the property of State jurisdiction, the administratively punished person would be penalized for using his/her rights to contest the decision, having regard to the long legal proceedings.

The Ombudsman considers that the SPA is not entitled to oblige the administratively penalized person to pay for storage of confiscated property (State jurisdiction), because such behavior complies neither with the aims of the LAVC, nor with the principle of justice. As it is possible that the SPA has also used the same approach in other cases, the Ombudsman asked the SPA to examine carefully the applicable laws and to change this practice.

# 6. Rights to Live in Favorable Environment

During the reporting period, there was an increase in the number of submissions pointing to impact of disturbing noises (both residential and industrial) and harmful, disruptive odors on people's living conditions.

## 6.1. Influence of disturbing noises and smells

In 2013, during verification procedure, the Ombudsman examined a complaint about problem of excessive acoustic noise in Gulbene region. It was found that administrative liability set in Sections 167 or $167^1$ of the LAVC for the noisiness is inefficient. Besides, the municipality of Gulbene region has not set binding rules on forbidding noisiness.

The verification procedure revealed that Latvia has created a defense mechanism to prevent harmful noises, and implementation of this mechanism depends on its application in each particular case. At the same time, relying on the best practices in other municipalities, the Council of Gulbene region was asked to modify the binding rules by introducing liability for disturbance of peace. However, the Council of Gulbene region has refused to implement the Ombudsman's recommendations.

Another verification procedure, initiated on the base of a submission of a person who complained about noises created by a karting track located near a residential house, revealed that the Council of Kandava region had taken only formal measures to reduce the noises (only organized a meeting with the applicant and the owner of the karting track), which did not help to find a solution of the problem on its merits. Such behavior of municipalities was recognized as a formal looking for a solution, which is contrary to the principle of good administration.

Based on the above mentioned information, the Council of Kandava region was asked to review compliance of the operation of the track with legislative requirements and the need to ask the owner to take measures for sound isolation in the track.

Besides, in 2013, within a verification procedure, the Ombudsman examined a complaint about air pollution caused by professional activities of enterprises (operators, terminals) in the territory of the Freeport of Riga, which was characterized

by an elevated concentration of benzene in the environment and impact of smells on health and property of the applicant and his family.

During the verification procedure, the problem situation was partially remedied. Due to activities of Lielriga Regional Environmental Board of the State Environmental Service, the air quality in 2013 was better, i.e., the amount of benzene did not exceed permissible limit, but nothing changed with regard to the disturbing effects of the odor.

In giving his Opinion, the Ombudsman concluded that cooperation of public administration institutions may help to remedy causes of problematic situations, such as incomplete regulatory framework for odor control and prevention, etc. However, there is a need for more efficient cooperation between the Lielriga Regional Environmental Board of the State Environmental Service and the Freeport of Riga, in monitoring compliance with environmental protection requirements, in determining regulations related to environment protection for companies working in the port area, including optimal installation of air pollution monitoring stations, by joint liability for air pollution in general.

In relation to verification procedures, the Ombudsman recommended to:

1) to pass for adoption the Cabinet bill that would replace the regulation No. 626 of July 27, 2004 "On Methods for Detection of Odors Caused by Polluting Activities and Procedures for Restricting the Spread of Odors", in order to effectively prevent possible impact of odors on the general population and to better identify surpluses and respond to them;

2) to review and evaluate the Cabinet Regulation No. 1290 of November 3, 2009 "Regulation on Air Quality", by fixing maximum acceptable concentration of benzene in the environment per hour or per day, by keeping the period of a calendar year as the period of benzene annual limits.

3) amend Sections 58, 59 and $88^6$ of the LAVC, by increasing the administrative fine tenfold;

4) effectively and comprehensively continue to deal with development of railroad crossing of railway station "Mangali" and Ezera Street for optimal organization of traffic to prevent environmental damage.

### 6.2. Harm caused by corrosive fumes

In the past year, the examination of submissions revealed that, in November 2012, a pellet production plant started to work and worked twenty-four hours, without breaks, creating a continuous noise and corrosive fumes.

The following authorities were involved in the tackling of the problem: the State Environmental Service, the Health Inspectorate, the Riga City Council. Following the Ombudsman's intervention, the Health Inspectorate carried out inspections and the Construction Board of Riga City suspended operation of pellet production plant.

It was found that the competent authorities had taken the necessary steps to reduce noise and environmental pollution caused by pellet production plant. It was also noted that the situation had improved.

During other verification procedures, the Ombudsman evaluated citizens' complaints about construction of flue gas outlet opening near the window of the apartment owned by neighbors that constantly subjected inhabitants of other apartments to the impact of low-quality air.

It was established that the flue gas outlet was constructed four meters away from the applicant’s apartment window. Such construction of apartment flue gas outlet opening near the window of the neighbor’s apartment complies with regulations of the relevant time period.

The verification procedure did not reveal any violations of human rights or violation of the principle of good administration in activities of the State or municipality. It was recognized that the situation was a civil dispute of private individuals and that the Ombudsman did not have a duty or task to resolve this problem.

Since the relevant property is administrated by the municipal corporation Ltd. “Riga House Manager”, the Ombudsman asked the corporation to carry out mandatory actions defined in the Law on Administration of Residential Houses and to perform regular visual inspection of equipment and utilities. Besides, if irregularities are detected, the Ombudsman asked the corporation to provide information on the results in line with the laws and regulations to the apartment owners who can make the necessary decisions to solve the potential problem. At the same time, it was pointed out that the house owners are also entitled to remind the house manager to

fulfill the said duty, if the manager performs the management of the building as an authorized person.

### 6.3. Aspects of environment availability

*6.3.1. Traffic organization, access of inhabitants to the public transport*

During a verification procedure, the Ombudsman examined the issue of traffic organization on railroad crossing in Riga, Ezera Street. The applicant complained about the order set by the SJSC "Latvian Railway", that on weekdays the crossing is open only two hours a day, but at other times it may be closed for up to two hours, claiming that, due to the difficulties in crossing the railroad crossing, her rights to use public transport, as well as the rights of others are limited.

The verification procedure in relation to that particular case revealed that the applicant's right to use public transport had not been violated, but there was a need to solve several issues concerning organization of traffic. Therefore, the Ombudsman asked the Transportation Department of the Riga City Council to review the organization of traffic at the crossing, namely to:

1) find a solution that would provide the opportunity for pedestrians to cross the railroad crossing (crossing the railroad crossing at different levels);

2) by using road signs and instructions, timely inform drivers that the crossing is closed and indicate alternative roundabout ways;

3) speak with the SJSC "Latvian Railway" to install an electronic information sign that would indicate time remaining until the opening of the crossing;

4) review horizontal road markings at the crossing, to ensure that the driver, without violating traffic regulations, could turn around.

*6.3.2. Access to medical institution*

Following the initiative of inhabitants, the Ombudsman evaluated issue of the poor condition of the sidewalks to the health center "Metalurgs" in Liepaja. Access of persons with disabilities to this institution was limited.

Following the Ombudsman's call, the Liepaja City Council got actively involved in addressing this problem, which resulted in construction of a section of the sidewalk and ensured direct access to the JSC "Liepajas Metalurgs".

# 7. Compliance with the Principle of Good Administration

## 7.1. Promotion of providing society with information about its rights and about principle of good administration

In order to inform the public, at the end of the year, the Ombudsman gave an interview to “Protection of Administration" for the edition "Latvia’s Interests in the European Union”.[104] This edition of the magazine was devoted to the theme of good administration.

In the interview, the Ombudsman expressed his vision on how the government implements the principle of good administration, understanding of the public administration about good administration, how the citizens see the principle of good administration. He also mentioned areas where administration should be improved. Besides, the Ombudsman also expressed the need for public participation and change of attitude from the part of officials. In particular, he stressed the need for the promotion of good practice.

In honor of the event of magazine's opening, the Ombudsman’s Office and the Political Science Association organized a discussion “Participation and Involvement: Practice of Good Administration”.

## 7.2. Promotion of fundamental rights of a person

During the reporting period, an Opinion was sent to the Constitutional Court in case No.2012-18-01 on compliance of the wording of Section $33^3$, paragraph 1of the Law on Taxes and Fees: “if a taxpayer agrees with the amount of additionally calculated tax, fee or other charge set by the State [including cost of delay calculated with regard to period of delay of tax payment starting from the day following the relevant tax payment period until the day when tax audit is stared] and if, within 30 days from the date of receipt of the decision of the tax administration on results of the tax audit, he pays the calculated sum of the tax, fee or other charge set by the State together with a fine of 15 per cent of the principal debt” (contested provision in the wording that was in force until 9 November 2011) with Article 1 of the Constitution.

[104] Latvia’s interests in the European Union, No.2013/4.

The Ombudsman noted that liability for tax violations should depend on the gravity of the infringement, the taxpayer's attitude towards the committed action and other considerations. However, the contested provision transfers liability for evaluation of tax violations from the tax administration to the taxpayer, because it does not provide the tax administration with the right to vary the amount of the fine, depending on, for example, the taxpayer's attitudes towards the committed offence. Possibility to impose more commensurate punishment should not depend on the fact of consent with the decision. The Ombudsman considers that the contested provision reveals an attempt to limit personal initiative to achieve a fair decision, it does not provide the tax administration with an opportunity to evaluate each individual case and to impose fines of an appropriate amount. The Ombudsman considers that the aim of the contested provision (to reduce the number of cases in which justice and usefulness of decisions made by the public administration has to be reevaluated), is not important enough to confront it with the aim to ensure fair decisions made by the public administration and to apply commensurate fines.

The Constitutional Court acknowledged that the contested provision was not compliant with Article 1 of the Constitution.

### 7.3. Avoiding to respond in due term or to respond at all

The Ombudsman has given his Opinion in relation to failing to respond in due time specified by the State Administration Institution Law. The Ombudsman states that, while performing functions in public sector, every institution has an obligation to respond to the submitted documents not formally, but factually and in substance, by providing clear and precise answer within its competence. This obligation derives from guarantees provided to the person by Article 104 of the Constitution. Besides, the answer, regardless of whether it is an informative letter or an administrative act, should be provided within the time limit defined in the legislation.

For example, during evaluation of a submission, it was concluded that the Ombudsman could not resolve the raised problem, but at the same time it was found that the Jurmala City Council, within a privatization process, had repeatedly violated the principle of good administration, i.e., over the years it had not responded to several submissions of an applicant. The Jurmala City Council has been informed of the established violations.

In another case, the Ombudsman drew the attention of the State Labor Inspectorate on the fact that the lack of capacity in the institution and the large number of submissions possibly reveals objective difficulties to comply with laws and regulations in the field of examination of submissions. However, these arguments can never be an excuse for delays. It should be noted that the authority's delay to respond or to issue an administrative act subjects the person to substantial legal consequences, therefore such practice should be eliminated. The State Labor Inspectorate was asked to review the mechanism by which examination terms of submissions, administrative cases and other documents are controlled, as well as to take steps to prevent similar violations in the future.

### 7.4. Validity of response or decision made by an institution

In each decision-making process it is essential to evaluate and to take into account all individual circumstances of the case on the merits, according to the meaning and purpose of the applicable law, and the case law, including recognitions of the European Union's Court and the Supreme Court.

When giving a response or explanation to an individual, it is necessary to refer to the law that justifies the view of the authority. Besides, there is a need for logical reasoning about activities of the relevant authority, based on sound and verifiable considerations.

For example, within a verification procedure, a person asked to provide an explanation, whether the SRS is entitled to require a commercial corporation to enter into an employment contract with board members, if they are performing not only company's operational management functions, but also other activities, such as release of goods etc., on the basis of gratuitous authorization agreement.

The verification procedure revealed: if the SRS, during the tax control measures (thematic inspections, tax audits, etc.), has found that the board members, subject to gratuitous authorization agreements on the duties of the board, carry out other duties, it is recognized that board members actually perform additional duties, which have characteristics of gainful employment. The SRS believes that, in case of such additional duties, it is necessary to enter into in an employment agreement and determine remuneration, which is subject to personal income tax and mandatory state social insurance contributions.

In the Opinion, the Ombudsman evaluated behavior of the SRS in the context of good administration, and concluded that the most important factor that the SRS should establish in such cases is whether there is an employment relationship between the company and a board member. In this context, the SRS has a duty, when applying laws and regulations in the field of taxation, to carefully evaluate the regulations of the Labor Law, Commercial Law and Civil Law and their correlation, and to comply with recognitions of the European Union's Court and the Department of Administrative Cases of the Senate of the Supreme Court. According to these recognitions, the following set of criteria should be established: performance of certain service; service performance over a certain period; service performance under guidance (authority) of another person; service performance for remuneration.

If the recognitions of the European Union's Court and the Department of Administrative Cases of the Senate of the Supreme Court are ignored, or if, when imposing certain sanctions on a taxpayer, any of the above mentioned conditions is not established, or lack of any of conditions is not appropriately justified, behavior of the authority may be considered as non-compliant with the principle of good administration.

Examination of another verification procedure revealed that the Ombudsman cannot solve the problem of the person, but, at the same time, it was found that the Council of Jelgava Region, during a building process, had not provided a clear and comprehensive response to the applicant's requests. The reply letter did not contain references to laws and regulations that could justify the point of view of the municipality. Besides, the letter did not provide logical reasoning explaining activities of the municipality. The Council of Jelgava Region, in similar cases, is asked to justify the reply letters by relevant laws and regulations and logical and legal considerations.

There was also another verification procedure that showed that the Ombudsman could not solve the problem, but it revealed the following:

1. If the SRS does not provide justifications in the response letters which inform that the submission has been accepted for informative purpose only, the individual can have doubts about certainty and consistency of the authority’s behavior. Firstly, an individual may not understand the meaning of the concept of "for informative purpose". Secondly, the lack of motivation creates risk of different interpretation of the contents of the relevant letter, which can affect not only the legal

consequences, but can also promote disputes. The Ombudsman pointed out that such behavior of the authority does not meet the principle of good administration, as it is not favorable to individual's legal interests. In similar cases, the SRS was asked to justify the response letters with relevant laws, regulations and legal considerations.

2. In relation to the submission, the Ombudsman also gave an assessment of effectiveness of the current mechanism which helps to prevent situations where the same tax for the income of one natural person for the same period of time is paid (or obligated to pay) by two persons at the same time.

According to the current systems, the only mechanism to remedy this situation is provided by Section 16 of the Law on Taxes and Fees stating that a person has right to get a refund of overpaid taxes from the State. This means that only by private initiative it is possible to prevent double taxation. Laws and regulations do not provide rules that would oblige the SRS, after an audit, to inform taxpayers who are entitled to get a refund of overpaid taxes. The taxpayer who, due to the audit results, is obligated to pay taxes for another person, is also not obliged to inform the relevant taxpayer. It means that a taxpayer who has the right to get a refund of overpaid taxes, can be unaware of such right.

The Ombudsman concluded that the current mechanism is not sufficiently effective. After an audit, the SRS, according to the principle of good administration stating that the authority's conduct must comply with the individuals' rights and legal interests, should inform taxpayers who have already paid taxes for a certain period as self-employed persons, that, as a result of the audit, another taxpayers are obligated to pay the same taxes as employees in a specific period of time. Such conduct would provide the right to request refund of overpaid taxes from the State, according to Section 16 of the Law on Taxes and Fees.

Without such feedback from the SRS, in the situation described in the submission, the rights provided by Section 16 of the Law on Taxes and Fees would become formal; it would restrict, rather than ensure the rights of taxpayers.

To avoid such situations, the Ombudsman advised the SRS, after an audit, to send an informative letter to the taxpayer who is entitled to request a refund of overpaid taxes about his or her rights.

Besides, during the reporting period, the Ombudsman has repeatedly received complaints of taxpayers about the practice of the SRS in cases related to VAT. Taxpayers expressed concern that, during VAT audits, the SRS adds surcharges to

taxes and fines or does not refund overpaid taxes, mainly basing only on explanations of counterparties who deny the fact of the trading activity. Taxpayers pointed out that the SRS biasedly audits honest taxpayers, leaving dishonest or fictitious taxpayers, including counterparties, unpunished.

The verification procedures revealed two types of problems:

1) In some individual cases, the SRS has not comprehensively evaluated the evidences obtained during the audit and has based conclusions mainly on explanations provided by the counterparties. The Ombudsman considers that such one-sided approach in evaluation of evidences does not meet the principle of good administration and limits the right of honest entrepreneurs to do business;

2) The SRS does not take sufficiently active preventive measures to limit fictitious business activities. There are no convincing evidences that, if an audit reveals a fictitious company, the SRS takes steps to stop further activities of this fictitious company.

The Ombudsman informed the Ministry of Finance and the SRS about the identified problems and asked to perform serious evaluation of laws and regulations and deficiencies in the activities of the SRS.

In the framework of another verification procedure, a taxpayer turned to the Ombudsman with information that the SRS had requested him to submit an additional declaration of income. The SRS justified this request by the fact that expenditures for maintenance of family members registered in the taxpayer's annual declaration did not comply with the amount of income registered in the taxpayer's declaration.

The SRS informed the applicant that the taxes are calculated on the basis of the value of minimum consumer basket determined by the Central Statistical Bureau by multiplying it by the number of dependent family members.

The Ombudsman found that the SRS has made the amount of personal income tax dependant on the number of dependents in the family, by calculating expenditures for their maintenance according to the value of the minimum consumer basket determined by the Central Statistical Bureau.

The Ombudsman concludes that the SRS in its activities has not complied with the Section 22, paragraphs 2 and 3 of the Law on Personal Income Tax, section 4 and 8 of the Cabinet Regulation No. 780 of September 19, 2006 “Regulations on Additional Declaration Regarding Income, Receipts, Monetary and other Provisions, Property and Change in Value thereof, and the Procedure how the State Revenue

Service on the Basis of Calculations Determines the Income of Payers Chargeable with the Personal Income Tax" and Section 4, paragraph 1 of the Law on the Prevention of Money Laundering and Terrorism Financing, besides the SRS has violated rights to property set by Article 105 of the Constitution and failed to comply with the principle of good administration specified in Section 10 of the State Administration Structure Law.

The Ombudsman advised the SRS to be strictly guided by the law and facts rather than allegations of possible unknown and unexplained income, indicating that expenditures for maintenance of family members would be a reason for the request of additional declaration and warning that they would be taken as the basis for the calculation of an additional tax.

### 7.5. Efficiency of the work of the institution of public administration

In 2013, when assessing submissions concerning issues of good administration, the Ombudsman evaluated the efficiency of the work of State administration institution. Some submissions noted that activities of the State administration had not been efficient enough to protect the interests of the population, namely, action was not sufficiently clear, accurate, timely, or compliant with individual's rights and interests.

#### *7.5.1. Duty of the institution to establish information in the possession of the State*

The Ombudsman examined a submission stating that a person - one of the child's parents, when receiving the European Health Insurance Card (hereinafter - EHIC) in the National Health Service (hereinafter - NHS), in addition to the identity card which was presented by the person, was asked to present a passport with a record of the registration of the child, or the child's birth certificate. Otherwise, the person was not allowed to receive the child's EHIC.

The Ombudsman acknowledged that the conduct of the NHS when asking the child's legal representative to present the child's birth certificate upon receipt of the child's EHIC, was not justified, but it is mandatory to examine information about the person in the Population Register.

The Ombudsman has asked the Ministry of Health and the NHS to improve the quality of services furnished by the NHS concerning access of population to the relevant service, by assessing the amount of information available in the Population Register necessary to the NHS for performing its functions. Besides, it was recommended to ask the Office of Citizenship and Migration Affairs to provide the NHS with the right to use the Population Register, on the basis of the principle of good administration and the obligation of public administration institutions to cooperate.

Following the Ombudsman's recommendations, the NHS has responded that necessary measures are being taken (procedure initiated) to enter into an inter-departmental agreement with the Office of Citizenship and Migration Affairs for usage of its elaborated and maintained computer software package "Personal Data Browser", that will allow the NHS to identify the legal representative of a person via online data transmission mode, in case of request of the EHIC.

*7.5.2. Inefficient internal control of the institution's work*

Examination of a verification procedure initiated for delayed investigation of an accident at work revealed the following: the Personnel Administration of the institution received information on the accident at work nearly three months after the accident because of incoherent and unsuccessful organization of document circulation. This situation shows that there are deficiencies in the institution's internal circulation of documents and violation of the principle of good administration within the institution.

*7.5.3. Insufficient diligence when working in public interests*

A verification procedure on real property restrictions showed that a person who started construction process got acquainted with the fact that the real estate was encumbered with a variety of utilities (water supply, sewerage communications, low-voltage power line), although at the moment of purchase of the land neither purchaser, nor seller was informed about it. This information was not entered in the land register and cadastre register. The Construction Board of Liepaja City, when approving the architectural and planning tasks, did not mention any possible encumbrances. Restrictions of the real property were identified in the process of development of

topographic plan for the building project. Due to the found restrictions, the person has serious difficulties to perform construction works in the real estate.

The verification procedure revealed that the relevant national and municipal authorities (State Land Service, Construction Board of Liepaja City, Liepaja City Council), by violation of the rule of law and the principle of good administration, have not properly met the regulatory requirements related to detecting and recording encumbrances of real estate. Because of such behavior, the encumbrances have not been registered in the Land Register.

It was concluded that the person is entitled to request reimbursement from the mentioned authorities for property damage, as well as personal or moral damage caused by the unlawful behavior of the relevant authorities.

*7.5.4. Unclear interpretation of laws and regulations*

The Ombudsman's Office received a submission about request expressed by the SRS requirement to register as an official VAT payer, although this person was not an economic operator. At the same time, the SRS did not enter the applicant into the register of VAT payers stating that this person must firstly be registered as an economic operator.

The letter of the SRS indicated that the same applicant is and is not an economic operator at the same time, which, undoubtedly, is not possible. The SRS considers that the person has a duty to register as a VAT taxable person and pay the VAT to the State budget, even if this person is not an economic operator as defined by the Law on Personal Income Tax.

Section 1, paragraph 7 of the Law on Value Added Tax (entered into force on December 1, 2009 and valid until December 31, 2012) stated that a person taxable with value added tax is a natural person or a legal person or a group of such persons who are bound by a contract or an agreement, or a representative of such group who perform economic activities and who are registered with the State Revenue Service Register of Value Added Tax Taxable Persons.

The Ombudsman found that the SRS, in the response letters to the applicant, in explanatory notes to the Ombudsman and guidance material has misinterpreted the Law on Value Added Tax, ignoring Section 1, paragraphs 7 and 26 and Section 2, paragraph 2 stating that the VAT taxable transactions are transactions carried out in

the framework of economic activities. The SRS has determined that transactions that are not related to economic activities are also subject to VAT. According to the SRS, these transactions become an economic activity if they include supply of goods for remuneration or provision of services for remuneration.

Thus, the SRS has expanded the range of taxpayers, by adding persons who receive income outside the economic activities, because of characteristic typical for economic activities. Since the law does not list the characteristics that allow the SRS to see economic activity in every transaction, the person has no opportunity to know before the transaction whether he would be subjected to the VAT or not. It means that a person is deprived of the opportunity to plan his or her actions and to increase the value of transaction for the payable VAT (for example, sale of property possessed by a natural person or other transactions).

The Ombudsman concluded that such interpretation of the law also creates inequality among persons who are performers of economic activities and the persons who are not in accordance with the Law on Personal Income Tax, because the performers of economic activities are entitled to deduct operating costs and input VAT from the income. Such interpretation makes it possible to impose VAT on income from any transaction that is not an economic activity.

Since January 1, 2013, Section 3, paragraph 1 of the Value Added Tax Law provides similar provisions to the provisions of the former Law on Value Added Tax: "The taxpayer is a person who independently carries any economic activity in any place, irrespective of the target or result of this activity". It can be concluded that the legislator does not want to impose VAT on the income of someone who does not carry out economic activity, regardless of the amount of the income, regularity within 12 months or other criteria applicable by the SRS.

It is concluded that the order of tax application implemented by SRS has been controversial and non-compliant with the legislation, because of an unduly broad interpretation of the concept of economic activity. Such conduct is unlawful and does not meet the principle of good administration. The case examined in the framework of the verification procedure indicates that the SRS, through a method of targeted interpretation of laws and regulations, have obliged persons to pay a tax that is not provided by the law and to accept registration of economic activity that is not allowed to be registered. The facts established during the verification procedure reveal that there is a need for tighter control of tax administration operations on a daily basis, by

not leaving this problem only in the competence of the injured persons and the administrative court.

The Ombudsman advised the Ministry of Finance to take measures to remedy deficiencies identified in the work of the SRS. The Opinion and information was sent to the Department of Protection of Personal and National Rights at the Prosecutor-General's Office.

*7.5.5. Authority's failure to act (duty of the State to cover the cost of management of a property without heirs escheated to the State)*

An Association of the Apartment Owners (the applicant) that manages residential property in an apartment building, turned to the Ombudsman with s request to explain which State authority is responsible for coverage of expenses for management and public utilities of a property without owner.

In line with Section 416 of the CL, an apartment was recognized as a property escheated to the State for which none of the responsible authorities - neither the Privatization Agency, nor the State Revenue Service - paid utility bills and administration costs from the time when a notary drew up an act about termination of heritage case until the moment when the apartment was placed into possession of the municipality.

After the death of the heritage-leaver, a notary announced a deadline by which heirs had to appear. If there are no heirs or such heirs fail to appear, the property escheats to the State.

Until June 30, 2013, a regulatory framework was in force which stated that the notary sends the act on termination of heritage case to the SRS. The SRS describes the property and enters it in the stock records of the State, sends a package of documents on the property without heirs to the Privatization Agency that offers the municipality to take possession of the real estate escheated to the State. If the municipality agrees, the Privatization Agency prepares order for the Cabinet of Ministers on transfer of a real estate escheated to the State to the possession of the municipality. The Cabinet issues the order, and, basing on this order, the SRS transfers the relevant property to the municipality free of charge.

The SRS indicates that the legislation does not provide a deadline that the SRS has to comply with, when transferring the real estate escheated to the State to the municipality. The Opinion establishes that from the time when the property is

escheated to the State, the State is liable for the management and utility expenses, like any apartment owner. Therefore, payments for these services have to be made by the authority, which, at the relevant period of time, deals with the property escheated to the State.

The Opinion establishes that, in accordance with the Cabinet Rules of Procedure, the SRS had to execute the Cabinet order within two months, although in fact it was done in almost seven months. The Ombudsman advised the Privatization Agency and the SRS to agree on coverage of utility bills and administration expenses for the applicant, and made recommendation to the SRS to comply with deadlines provided by laws and regulations.

*7.5.6. Non-compliance with the principle of prohibition of obstruction of justice*

In a similar case, it was established that a property without heir escheated to the State (an apartment) was encumbered by claims of creditors. The Privatization Agency and the Ministry of Economy indicated that the legislation does not provide a mechanism for corroboration and alienation of real estate escheated to the State encumbered by claims of creditors and therefore such estate is appropriate for including into the project of the Cabinet Orders. Thus, the apartment was entered into stock record of the government, but the Privatization Agency did not take possession of it.

On January 17, 2013, the Saeima adopted amendments to the Civil Law, Notariate Law, Law on Bailiffs, Law on Alienation of Public Property, which entered into force on July 1, 2013, and transferred the function of takeover of property without legal heirs to the competence of bailiffs. Thus, it can be concluded that the State has created a sufficient mechanisms for protection of the rights of individuals, and that the applicant will receive compensation for utility costs for the residential property.

The Opinion points out that, according to the principle of prohibition of obstruction of justice, the Privatization Agency was not entitled to take possession of the residential property.

*7.5.7. Unclear behavior of the public administration institution, deficiencies in the circulation of information*

During examination of a verification procedure, the Ombudsman established that the Riga City Council had been invited as a defendant in two civil cases relating to the same property for restoration of property rights of inheritors of the former landowner.

In both civil cases, the object of the claim was the same. The Riga City Council did not ask the court to invite the other claimant to participate in each of the court proceedings as a third party, which resulted in situation when two judgments of the Riga Regional Court entered into force, but one of them was not enforceable. In court proceedings of one applicant, the Riga City Council submitted an appeal claim, while in other, identical court proceeding it did not do it. Therefore the judgment in the case where the claimant initiated the proceedings later, was the first to enter into force.

The verification procedure revealed that the problem situation was based on insufficient communication between registers of the Riga City Council and on organization failures within one department, i.e. the Head of the Legal Department of the Judicial Board is obliged to know the content of the tasks of the Department.

*7.5.8. Refusal to issue a duplicate of a document issued by a public authority*

Evaluation of a submission revealed that a person could not make changes to a construction project approved by the municipality because the building permit had been lost. Besides, the municipality did not extend the building permit because there was no original document of the building permit.

The verification procedure shows that the Construction Board has no right to refuse to issue a duplicate of a lost building permit, therefore the behavior of the Construction Board has violated the principle of good administration. The Construction Board, when asked to issue a duplicate of the building permit to the applicant, stated that, historically, the building permit was not drawn up as a document, but as a seal on the construction project.

*7.5.9. Institution's refusal to evaluate circumstances of a certain case*

A verification procedure on an alleged infringement of the principle of good administration by the Consumer Rights Protection Centre (hereinafter - CRPC), by not performing an effective investigation of an alleged violation of consumer rights and by refusing to examine extraordinary circumstances within the meaning of Regulation No. 261/2004, revealed that the CRPC had violated the principle of good administration.

Firstly, it was established that the evaluation was not carried out properly, because the CRPC had initiated investigation of objective circumstances only upon reception of the applicant's second letter providing additional proofs.

Secondly, the CRPC had refused to make decision on existence of exceptional circumstances, advising the person calling for this purpose to turn to the court. The Ombudsman considers that the CRPC has to make decision (even if for the decision-making it is necessary to evaluate existence of exceptional circumstances), and such decision can be appealed in the Administrative Regional Court. It would be much more efficient than the necessity of a person, in case of exceptional circumstances, to turn immediately to a court in civil liability order as advised by the CRPC.

*7.5.10. Institutions failure to act timely*

Basing on submissions of individuals, the Ombudsman evaluated the conduct of the Riga City Council when it did not try to solve regular flooding of residential houses and backyard gardens on the Bolderajas Street. The problem was caused by a ditch filled up during construction works.

During the verification procedure, it was found that the Construction Board of the Riga City Council had not dealt with the problem since the beginning of 2010. It was solved only in 2013. The Ombudsman considers that such delay is inappropriate.

It was found that the Construction Board of the Riga City Council had not timely reacted to the demand of the Riga City Council's Housing and Environment Department to take measures in order to eliminate consequences of arbitrary construction works in the lands located on the Eduarda Smita Street. It was explained that the reason of failure to act by the Construction Board of the Riga City was unwillingness of the owner of the relevant lands to cooperate with the Construction Board and non-compliance with regulations of drainage maintenance.

The Ombudsman acknowledged that actions of one person had limited the rights of other landowners to property and friendly environment. However, the failure to act by the Riga City Council's Housing and Environment Department and the Construction Board in this situation violated the principle of good administration, because these authorities did not fulfill their statutory obligations in a timely and duly manner.

In spite of this, the verification procedure welcomed the solution provided by the Riga City Council through temporary arrangement of the drainage. However, the Ombudsman drew the attention of the Riga City Council by *obiter dictum*, stating that the reaction of municipality should be immediate, or take place at least in a foreseeable future, rather than based on a probability and potential plans for some future action.

*7.5.11. Inefficient carrying out of municipal autonomous functions (waste management)*

After reception of several complaints, the Ombudsman evaluated the request for a specific minimum amount of waste in the territory of the municipality of Aluksne region provided by the binding regulation No.31 / 2010 of the Aluksne City Council (August 26, 2010) "On the Household Waste Management in Aluksne Region".

Section 2.4 of the binding regulation provided the following: one person produces 0,36m³ waste per year (0,03m³ per month). Besides, a person who produces more than the minimum amount of waste, ensures collection of all produced waste and its delivery to specially designated places and pays to the waste manager for the factually removed waste.

Section 10 of the binding regulation provided a fine of up to 250 Latvian lats for non-concluding a waste management agreement.

The Ombudsman found that the regulation of Aluksne region did not set criterion of the amount of waste produced by one household. Thus, it was concluded that Section 2.4. of the municipal binding rules: 1) do not provide the mandatory waste management from those who "produce" more waste than the minimum standards, because they themselves have a duty to ensure collection of all waste produced and its delivery to designated places; 2) those who "produce" less than the

norm, have to pay inappropriately elevated price; 3) create a situation where the manager has no possibility to enter into mandatory agreement on management of the real amount of waste (lower or higher than the specified minimum); 4) lead to a situation where the manager, due to forced agreements, receives payment for waste management that does not depend on the amount of waste to be removed, but on the number of residents; 5) are contrary to Section 8, paragraph 1, point 3 the Waste Management Law.

The Ombudsman found that the attitude towards inhabitants of Aluksne region was unfair and unequal, because each of them had to pay the same price for the waste management, regardless of the actual amount of waste produced.

Following the Ombudsman's recommendation, the binding regulation has been amended and the deficiencies have been remedied.

# IV Legal Equality, Prohibition of Discrimination

## 1. Rights of National Minorities to Education

### 1.1. Segregation of Roma in the Evening Secondary school of Ventspils

On February 28, 2014, during the monitoring in the municipality of Ventspils, the Ombudsman found that there are still ethnic classes for Roma children in the Ventspils Evening Secondary School. Besides, the Ombudsman just received information that ethnic classes for Roma have also been established in the school of Kuldiga.

After examination of the situation, the Ombudsman concluded that education of Roma in separate classes is not effective[105] and makes it difficult for representatives of Roma to continue their education in high schools, universities and to integrate into the labor market. This view is also approved by representatives of the Roma Advisory Council: “The fact that Roma children are educated in separate classes from the rest of the children is not acceptable, because children are divided by

[105] The study “The Right of Roma to Education: Situation of Implementation in Latvia” organized by the Centre for Education Initiatives in 2011 revealed: after completion of Roma classes, children are not ready for a new social environment, and their learning outcomes are lower than performance of the rest of the children. In addition, in Ventspils Evening Secondary School the Roma children learn in separate classes until the seventh form. Thus, these children are even more separated from the rest of society and do not receive education of equal quality”.

ethnicity, so there is no full-fledged communication and cooperation with other nationalities and cultures from an early age".

Taking into account the Ombudsman's recommendations, since September 2013, the municipality of Kuldiga region has not continued to form separate classes for Roma children.

In Ventspils Evening Secondary School, the Roma children are separated from the others, without implementation of a relevant program for Roma minority. Even in younger classes for Roma children, learning process of the basic subjects is not provided in Romani language with a proportional increase of the amount of national language, as it is in schools implementing program for minorities. The facts established in Ventspils initiated a broader study of minority education.

### 1.2. Monitoring of educational institutions with educational programs for national minorities

Monitoring was carried out in schools implementing educational programs for national minorities, including Poles, Ukrainians, Belarusians and Jews. Employees of the Ombudsman's Office visited 49 schools implementing educational programs for national minorities in Riga (33), Jurmala (2), Jelgava (2), Rezekne (4), Daugavpils (4), Liepaja (4).

Responses to the questions of structured interview were given by directors of 49 educational institutions. The employees of the Ombudsman's Office monitored 215 lessons (forms 6, 9 and 12) and interviewed teachers about bilingual education control. Questionnaires were filled by 3272 pupils.

Bilingual education system, distribution subjects in basic education programs for national minorities basing on one of the five models with progressive increase of the number of subjects in the national language comply with documents on international human rights related to education of minorities: International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural rights, UN International Convention on the Elimination of All Forms of Racial discrimination, UN Convention against Discrimination in Education, UN Convention on the Rights of the Child, European Convention for the Protection of Human Rights Fundamental Freedoms, Framework Convention for the Protection of National Minorities.

Parents of children of any nationality[106] may choose the educational institution for their children after getting acquainted with the content of the proposed educational programs. Thus, ethnic composition in educational institutions implementing educational programs in the official language, and in educational institutions implementing programs for national minorities is different. However, not all minorities have the opportunity to educate children in a public or municipal educational institution where they can learn their language and get education at the early stage in their language. This option is provided to seven ethnic minorities: Russians, Poles, Jews, Ukrainians, Estonians, Lithuanians and Belarusians[107].

Ombudsman sees unequal opportunities for the minorities for whom none of public or municipal educational institution provides appropriate minority program. As a result, these children cannot learn and preserve their language, culture or to learn basic subjects in their own language in the primary school. Roma are particularly excluded, because, in spite of the law, they cannot develop and implement a program for the Roma minority due to the lack of teachers with appropriate qualification. There is a need for special support measures for education of Roma and preservation of their language and culture.

### 1.3. Information established during the monitoring

The monitoring revealed a causal link between the attitude of the school administration and teachers towards the quality of education, the need for the official language and the children's level of knowledge (in response to a question about self-assessment of their knowledge, the self-assessment of pupils' knowledge of the official language was relatively higher in the following schools: Jankas Kupala Belarusian School in Riga, Riga Estonian School, Rezekne Polish State Gymnasium, Riga Lithuanian Secondary School).

The control of implementation of educational programs, including bilingual methodologies, is carried out by school administration through monitoring of lessons. The State authorities have carried out a control only in 3 schools of 49.

[106] The population of Latvia consists of people from different nationalities. According to the data of Central Statistical Bureau, at the beginning of 2013 the ethnic composition of permanent residents was as follows: 61.1% Latvians, 26.2% Russians, 3.5% Belarusians, 2.3% Ukrainians, 2.2% Poles, 1.3% Lithuanians, 0.3% Jews, 0.3% Roma, 0.1% Germans and 0.1% Estonians.
[107] Available: http://www.ikvd.gov.lv/licenceto-izglitibas-programmu-registri.html

During interviews with teachers, the employees of the Ombudsman's Office established that some teachers are not able to answer in the official language in a form that would show understanding of the question. State Language Centre, according to the Ombudsman's request, conducted an inspection and found that six teachers did not use the official language at the amount necessary for performance of professional duties. During the inspection, one teacher was incapacitated to work. In addition, the State Language Centre pointed out that in 2013 administrative liability was imposed on one school director, one deputy director, 21 teachers, 13 pre-school teachers, 31 assistant teachers, and two pre-school directors. These persons were required to improve their language skills.

Some teachers were not able to define implementation of bilingual education. It was observed that subjects that should be taught bilingually, were taught in Russian with translation of separate terms into Latvian (Riga Pardaugava School, Riga Daugavgriva Secondary School No.33).

Relatively small control from the outside and negligent attitude of directors towards laws and regulations lead to situation when teachers do not have skills of the official language defined by the law, and in everyday life, in the teaching process do not comply with the regulatory framework, inter alia in relation to the language that should be used for teaching the subject.

### 1.4. Propositions in order to remedy the deficiencies established during the monitoring

1. To increase the use of the official language in preschool educational institutions.
2. To ensure appropriate and equal opportunities for all national minorities to receive education in the minority language, with special attention to the historically marginalized minority - the Roma.
3. In schools with diverse ethnic composition, to pay attention to the right of children from all minority groups to preserve their language and culture, by implementation of several minority programs, if possible.
4. The education system for representatives of different nationalities should be directed primarily to unification, rather than separation. Thus, it is recommended to teach subjects of general education program in the official language for all

children in the class, regardless of their nationality. By contrast, subjects for each specific minority and bilingual subjects are taught separately for each ethnicity, but in the older classes it is recommended to unite children who have studied minority programs with children who have studied in the official language. Such approach would provide practical opportunities for children of different nationalities to get to know each other and would ensure the rights of children of national minorities to be included in society and, at the same time, to preserve knowledge of the uniqueness of their nation.

5. Quality of educational process is the priority, which is now calling for attention. In order to ensure compliance with the laws and regulations, it is recommended to increase State control of usage of the State language and quality of education process in minority educational institutions. Quality of education and teachers' work should be controlled regardless of how many languages are used in educational work. Teachers' knowledge of everything (not only official language) that relates to a new, modern education and methodology must reach the highest criteria.
6. To specify in laws and regulations that secondary education for pupils who have studied in the Latvian educational system for a specific period of time, e.g. five or six years, takes place only in the official language, while keeping the following subjects in minority language - minority language, literature, culture. In case of necessity, exception for the need to know the official language can be applied to those pupils who have just entered Latvia and are not familiar with the official language. The recommendation focuses on the best interests of children for their integration into higher educational institutions and the labor market of Latvia, and it is compliant with international recommendations in the field of minority education. The OSCE Hague Recommendation on the Education Rights of National Minorities states that in secondary school the proportion of subjects taught in official language, has to be increased as much as possible. Research shows: the higher this increase, the better for the child[108].
7. There is a need for language courses for teachers in order to improve the skills of Latvian, including the usage of the language in the teching process.

[108] Hague Recommendation on the Education Rights of National Minorities. OSCE HCNM, 1996, Section 13. Available: http://www.osce.org/hcnm/32180?download=true

# 2. Violations of the Prohibition of Discrimination and the Principle of Legal Equality

## 2.1. Discrimination based on gender in employment relations

The Labor Law provides legal protection in the period of pregnancy and after returning from childcare leave thus implementing regulation of the Council Directive 1992, 92/85 / EEC of October 19, 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding. However, there are still problems in practical implementation of laws and regulations.

Similarly to previous years, people have turned to the Ombudsman, referring to individual cases where an employer has treated women in a discriminatory manner on grounds of pregnancy. Several verification procedures indicate that employers still have no understanding of the prohibition of discrimination against pregnant women.

For example, in the verification procedure No.2013-4-26H, the applicant pointed to discrimination in the period of pregnancy. The applicant worked as a cleaner, and when she got to know that she was pregnant, she informed the employer that she could not continue to work with the harmful chemical cleaning products. Despite the doctor's statement, the applicant's work schedule contained duties that she could not perform because of her state of health. The Ombudsman established violations of laws and regulations and recommended to the employer to provide safe, harmless working conditions, especially in cases where the party has informed the employer about the pregnancy. However, the employer claimed that the applicant had provided false information to the Ombudsman and did not agree with the opinion stated.

In the verification procedure No.2013-121-26B, the applicant pointed to discrimination because of her gender because the employer had terminated his employment relationship with a woman during the probationary period after he had learned that she was pregnant. The employer explained that the applicant has committed fraudulent activities, because she was aware of her pregnancy when they started employment relations. Applying obligation of reverse proving, the employer failed to provide sufficient justification that, in this case, there has been no breach of the prohibition of discrimination. During the verification procedure, the Ombudsman established that the employer was not entitled to terminate the employment

relationship with a pregnant woman, according to Section 47, paragraph 1 of the Labor Law 47. Besides, the employer was not acting appropriately in accordance with Section 101, paragraph 1, points 1 and 2 of the Labor Law.

In addition, the Ombudsman pointed to the judgment of the Court of Justice of the European Communities of 4 October 2001 in case No.C-109/00, where the Court explained that prohibition on dismissal also applies to cases where a pregnant woman knows the fact of her pregnancy at the moment when she enters into employment agreement and deliberately does not inform the employer about this fact (this case concerns workers who has become pregnant before the establishment of legal employment relations), thus disagreeing with the employer's argument that, by a deliberate choice not to inform the employer about the fact of her pregnancy before starting legal employment relations, the worker had violated the principle of good faith.[109]

Thus, the Ombudsman completed the verification procedure with the following recommendations: firstly, to assign the applicant to her previous position with an appropriate wage, and, secondly, to pay her average earnings for the entire period of forced absence.

### 2.2. Discrimination of young parents related to availability of goods and services

In 2013, the Ombudsman's Office received telephone calls, electronic and written submissions about violations of the prohibition of discrimination denying equal opportunities to purchase goods and receive services for people with child carriages.

For example, in the verification procedure No.2013-158-26B, an applicant indicated that on September 3, 2013 employees of a store denied her access to the store with child carriage. There are also other mothers who were not allowed to enter the store with child carriages, instead the store offered them to take their goods (children's clothing - footwear) out of the territory of the store and to try them there (witness contact information is provided in the submission).

[109] Judgment the Court of Justice of the European Communities in case No.C-109/00, *Tele Danmark A/S vs. Marianne Brandt-Nielsen*.

The applicant states that she has turned to the administration of the store asking to explain the situation, and has received a reply that the issue was going to be solved. After two weeks, a sticker appeared on the door of the store forbidding entering the store with child carriages.

The applicant considers that she has been discriminated because of her gender (maternity). The Ombudsman initiated a verification procedure, turned to representatives of the store and asked to remove immediately the sticker from the window with prohibition to enter the store with child carriages. Employees of the store have reported that it has been done.

The Ombudsman has informed parents with children about prohibition of discrimination against parents with young children through the mass media.[110]

### 2.3. Respecting rights of persons with disabilities

In 2013, work has continued with monitoring of implementation of the UN Convention on the Rights of Persons with Disabilities (since March 31, 2010 in force in Latvia [111]). The law has entitled the Ombudsman to be an independent monitor of implementation of the Convention.[112]

By ratifying the UN Convention on the Rights of Persons with Disabilities, the Saeima of the Republic of Latvia has expressed its commitment to:

• take into account protection of human rights of persons with disabilities in all policies and programs;

• adopt a regulatory framework implementation of the rights recognized in the Convention;

• amend or repeal legislation and practices that constitute discrimination against persons with disabilities;

• eliminate discrimination due to disability by an individual, organization or private entrepreneur;

[110] Available: http://www.tvnet.lv/zinas/latvija/491218-vecakiem_nedrikst_liegt_iebraukt_veikalos_ar_bernu_ratiniem

[111] Information No.41/174-1047 of March 10, 2010 by the Ministry of Exterior „On Entering into Force of the Convention": „The Ministry of Exterior informs that on March 31, 2010 in the Republic of Latvia, the Convention on the Rights of People with Disabilities of December 13, 2006 will enter into force". Available: http://www.likumi.lv/doc.php?id=206558

[112] Law on the Convention on the Rights of People with Disabilities, Section 2.

• in all actions concerning children with disabilities, to take into account the child's best interests;

• change the stereotypes, prejudices and harmful practices relating to persons with disabilities by disseminating examples of good practice through social campaigns;

• provide to people with disabilities access to the physical environment, to transportation, to information and communications, including information and communication technologies and systems, and to other facilities and services open or provided to the public, both in urban and rural areas;

• ensure the protection and safety of persons with disabilities in situations of risk and in cases natural disasters;

• ensure effective access to the court, inter alia through the provision of procedural accommodations appropriate to the age;

• take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both at home and outside the home, from all forms of exploitation, violence and abuse;

• ensure that persons with disabilities are not deprived of their ability to obtain, possess and utilize documentation of their nationality or other identity documents;

• ensure that persons with disabilities have access to a variety of services provided at home and in their place of residence, as well as other measures of social assistance;

• provide to persons with disabilities access to mobility aids, devices, assistive technologies and intermediaries, providing them at an affordable price; including the promotion of new information and communication technologies;

• promote inclusion of universal design in the standards;

• provide information intended for the general public in a timely manner and without additional cost to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities (easy language, increased font, Braille);

• ensure that persons with disabilities are not excluded from the general education system, and that children with disabilities are not excluded from free and compulsory primary or secondary education;

• ensure that persons with disabilities, either directly or through freely chosen representatives can effectively and fully participate in political and public life on an

equal basis with others, including the right and opportunity for persons with disabilities to vote and be elected.

In spite of objections of non-governmental organizations and the Ombudsman, on January 1, 2014 amendments came into force to the Cabinet Regulation No. 60 of January 20, 2009 “Regulations on Minimum Requirements for Medical Institutions and Their Departments” (hereinafter - the Regulation), which provides reduced requirements for medical institutions in the field of accessibility.

Section 4 of the previous wording of the Regulation stated: “If a medical institution is placed above the first floor of the building, there should be elevator or sliding slope in all floor levels. On all floors there is at least one toilet room available for persons with reduced functional abilities". In contrast, the amended regulation states that in a health center which provides health care services for persons with functional disabilities, at least one toilet room is available for persons with functional disabilities, while in stationary treatment center there should be at least one toilet room for persons with functional disabilities available on each floor where the health care services are provided to persons with disabilities.

In collaboration with association of persons with disabilities and their friends "Apeirons", during the visit to P. Stradins Clinical University Hospital in Riga, the Ombudsman saw that, in reality, the regulation is not complied with and that persons with disabilities do not have access to facilities.[113] It should be noted that, during elaboration of these amendments, the opinion of persons with disabilities was not taken into account.

During evaluation of submissions from individuals, the Ombudsman found that the authorities had not taken measures to provide persons with disabilities with technical aids appropriate to their individual needs. The applicants state that they have not received technical aids timely or these aids have not been suitable for their needs.

In 2013, employees of the Ombudsman's Office observed the election process in social care centers and established that there were no election materials for persons with disabilities in a comprehensible form, i.e. so-called easy language. Besides, personal identification documents were often kept by administration of the care centre, and some individuals had the opportunity to vote only at the request of the employees of the Ombudsman's Office.

[113] Available: http://www.tvnet.lv/zinas/latvija/493725-stradina_slimnica_parkapumi_pret_cilvekiem_ar_kustibu_traucejumiem

There have been cases when social care centers placed persons with locomotor disabilities higher that the first floor, where the persons could not move freely in and out of the building (no elevators, narrow hallways). However, it should be noted that, after repeated Ombudsman's request, the Valmiera nursing home moved a person with disability to the first floor, thus ensuring accessibility of the environment.

Practice of the last year has also shown that no equal opportunities are created for persons with disabilities to have access to public spaces. No special parking spaces are installed, regulations of services provided by assistants is not improved, etc.

Besides, the Ombudsman has established some violations of the rights of individuals to access goods and services due to disability and related to employees' attitudes. For example, the verification procedure No.2013-10-26H revealed that a person with a visual impairment wanted to buy a mobile phone in installments, but the seller of the goods did not want to talk to the guide of the person and to explain him the contract terms. The person had previously used services of the enterprise and had no debt. On the same day the person had no problem to enter into an agreement with another operator. The applicant thinks that such attitude of a seller of goods is not acceptable, is offensive and discriminatory because, in spite of the disability, the person is bringing up small children, works, is socially active, and sometimes uses assistance of other persons.

At the conclusion of the case, the Ombudsman established that, in line obligations of sellers defined in the Consumer Rights Protection Law, the service provider is required to offer a product and service in a way that is accessible to everyone, including persons with visual impairment. The Ombudsman acknowledged that in line with the principle of reverse proving set by Section $3^1$, paragraph 5 of the Consumer Rights Protection Law and basing on the above mentioned considerations, the defendant, by denying the applicant's access to goods and services, had violated prohibition of different treatment specified by Article 91 of the Constitution and Section $3^1$ of the Consumer Rights Protection Law.

The Ombudsman turned to the parties in an attempt to reconcile them, but the parties failed to agree on a settlement.

# V Information by the Ombudsman's Office

## 1. Financial Resources and Operating Results of the Institution

The Ombudsman's Office is financed from the State budget. Although in 2013, the Latvian economic growth continued and it was possible to support several areas by granting additional funding, the funding from the State budget provided to the Ombudsman's Office remained at level of 2012. During the reporting period, the factual performance was 688,8 thousand Latvian lats, including projects and activities co-financed and financed through the European Union policy instruments and other foreign financial assistance – 10,3 thousand lats.

Part of the financial resources used for coverage of expenses is the revenue from the leased premises (in 2013 - 22.8 thousand lats), while funding from foreign partners for implementation of various projects and activities – 8.2 thousand Latvian lats. Besides, during the reporting period, the Ombudsman's Office continued the cooperation with the Friedrich Ebert Foundation whose financial support helped the Ombudsman's Office to conduct a study on "Problem Issues in the Field of Human Rights and Health Care", as well as the analysis of Latvian media content "Hate Speech on the Internet" within the study "Index of Aggressiveness ".

In 2013, the Ombudsman's Office also participated in the project of the Nordic-Baltic Mobility and Cooperation Network Program for Public Administration of the Nordic Council of Ministers "Monitoring of Human Rights and Good Administration in Denmark and Iceland".

**Funding from the State budged and its use in 2013 (in Latvian lats)**

| No. | Financial Indicators | During the previous year (actual performance) | Reporting Year | |
|---|---|---|---|---|
| | | | Approved by law | Actual performance |
| 1. | Financial resources to cover expenses (total) | 706 542 | 701 454 | 688 801 |
| 1.1. | grants | 669 190 | 679 254 | 669 729 |
| 1.2. | paid services and other own revenue | 373 52 | 22 200 | 19 072 |
| 1.3. | foreign financial aid | – | – | – |
| 1.4. | donations and contributions | – | – | – |

| | | | | |
|---|---|---|---|---|
| 2. | Expenses (total) | 708 364 | 701 454 | 688 801 |
| 2.1. | maintenance expenses (total) | 678 744 | 699 784 | 687 133 |
| 2.1.1. | current expenses | 676 987 | 698 013 | 685 362 |
| 2.1.2. | expenses on interest | – | – | – |
| 2.1.3. | subsidies, grants and social benefits | – | – | – |
| 2.1.4. | current payments to the European Community budget and international cooperation | 1 757 | 1 771 | 1 771 |
| 2.1.5. | transfers of maintenance expenses | – | – | – |
| 2.2. | expenses for capital investments | 29 620 | 1 670 | 1 668 |

In the middle of 2013, the Ombudsman's Office entered into agreement with the Ministry of Interior for implementation of the Project „Development of Supervision Mechanism of the Persons Subject to Forced Expulsion" performed within the framework of the General Program „Solidarity and Management of Migration Flows" of the European Return Fund (total amount of 87.7 thousands of Latvian lats). Activities of the Project will be implemented until the middle of 2015.

In 2013, the maximum number of staff units established for the Ombudsman's Office was 42. 10 of these posts were related to the institution's support functions, which are essential for providing basic functions - management, secretariat, economic provisions for institutional activities, property management and maintenance, financial management, accounting, international cooperation and communication.

The issue of involvement of additional human resources still remains topical, because the current resources are lacking capacity to ensure performance of all functions and tasks assigned to Ombudsman's Office, especially in regions where the Office is available.

**Information on Execution of the Performance Indicators of the Ombudsman's Office in 2013**

| Performance Indicator | Plan for the reporting | Execution of the plan for |
|---|---|---|

| | period | the reporting period |
|---|---|---|
| *Activity result: society informed and violations prevented in due time* | | |
| Verifications organized in governmental and municipal institutions (closed and semi-closed type institutions, orphan's courts, educational institutions etc.). | 40 | 83 |
| Organization of educational seminars, discussions and other events. | 30 | 23 |
| Participation in events organized by other institutions – lectures on issues within the competence of the Ombudsman | 12 | 13 |
| Preparation of mass media publications | 2 000 | 3 969 |
| *Activity result: compliance with the principle of good administration* | | |
| Conclusions provided to the Constitutional Court | 15 | 15 |
| Conclusions provided to the public authorities on bills | 45 | 42 |
| Participation in working groups and commissions | 150 | 105 |
| *Activity result: effectiveness and authority of the Ombudsman has been increased* | | |
| Submissions received (examined) | 2 600 | 2 563 |
| Prepared responses to submissions | 1 720 | 2 505 |
| Prepared refusals to submissions | 600 | 546 |
| Verification procedures initiated on the bases of submissions | 280 | 161 |
| E-mail replies prepared to the questions within the competence of the Ombudsman's Office | 500 | 967 |
| Consultations provided in oral form: | 4 000 | 8 115 |
| ➢ in presence | 1 400 | 2 639 |
| ➢ by phone | 2 600 | 5 476 |
| Verification procedures initiated on the Ombudsman's initiative | 25 | 5 |

Analysis of the work done in 2013 shows that the policy and activities undertaken by the Ombudsman's Office have been fruitful, because more and more persons have asked the Office for help. At the same time, there is a tendency of rapid responding, therefore more and more people ask questions to the lawyers of the Office using electronic correspondence or telephone, rather than written submissions. For example, in 2013, the Office provided 8115 oral consultations, i.e. about 1913 more consultations than in 2012.

The number of completed verification procedures has remained at the same level: in 2012, 235 verification procedures were completed, while in 2013 – 234. In cases, when it was not necessary to initiate a verification procedure for addressing the person's problem, the Ombudsman's Office prepared a detailed response to the submission of the person. In 2013, the Office prepared 2505 answers, i.e. 1138 answers more than in 2012.

Public awareness and knowledge of their rights was also encouraged by publicity activities and cooperation with the media. During the reporting year, 3 969 publications have been published in the media on issues falling within the Ombudsman's competence, besides the Ombudsman's Office has prepared 23 press releases.

In order to facilitate the access to the Ombudsman's Office in regions and to see the compliance with the human rights and the principle of good administration in municipalities, in 2012 monitoring of municipalities was launched that enabled the residents of the respective municipality to receive consultations from legal advisors of the Ombudsman's Office on the issues related to the human rights and the principle of good administration. During the reporting year, this work continued and monitoring visits were organized to the following 5 municipalities (Jelgava region and city, Ventspils, Garkalne region, Jekabpils).

## 2. Personnel

There are 41 job positions in the Ombudsman's Office (42 including the Ombudsman). In the reporting year, all positions were occupied.

From all the staff members 28 have been employed in legal analysis and consultations, 7 – in provision of administration, document management, personnel

and financial management functions, 4 – in supplies and management, and 2 – in communication and international cooperation matters.

The Ombudsman's Office employ 1 Doctor, 27 Masters of Sciences, 8 Bachelors, 3 employees with the secondary professional education and 2 employees that are studying to get the Bachelor's degree.

Distribution of the personnel of the Ombudsman's Office by age groups: 7 employees are 20-30 year old, 23 employees are 30 - 40 year old, 7 employees are 40-50 year old, 3 employees are 50 - 60 year old, and 3 employees are more than 60 year old. Average age of the team of the Ombudsman's Office is 38 years.

It should be added that there are 7 men and 36 women working in the Ombudsman's Office.

## 3. Communication with the Public

The Ombudsman Law prescribes that one of the functions of the Ombudsman is to promote the public awareness and understanding of human rights, of the mechanisms for the protection of such rights and activities of the Ombudsman, therefore, in 2013, the Ombudsman's Office had active communication with the public. The Ombudsman participated not only in explanation of Conclusions, but also many times expressed his views on processes important to the society, for example, during the ratification process of the revised European Social Charter, he asked to ratify the articles on fair remuneration and other articles of the Charter that would promote the public welfare.

Continuing the previous practice, in 2013 the Ombudsman's Office actively promoted public awareness of the rights of the child and mechanisms for their protection, by paying a particular attention to the child's safety in educational institutions, organized seminars for social teachers, class teachers, teachers of social studies, school directors and other subjects related to the child protection.

Experts in issues related to the rights of children of the Ombudsman's Office participated in several public debates (such as the discussion "Teacher's role in Reducing School Violence" organized by the newspaper "Education and Culture" of the Latvian Trade Union of Education and Science Employees), and in inter-agency meetings and discussions.

In order to educate pupils about the rights of the child, in 2013 an informative material “Convention of the Rights of Children” was elaborated by using a child-friendly manner to explain the UN Convention on the Rights of the Child to children. The material is also available electronically in the section “Information materials” on the internet homepage of the Ombudsman’s Office.

For the purpose of informing the public, the Ombudsman's Office cooperated with higher educational institutions and institutions for increasing the professional capacity. During the reporting year, the students of Riga Stradins University and Alberta College had the opportunity to learn in-depth issues related to human rights.

In 2013, the Ombudsman's Office was involved in the training process on the regulation on incapacitation, by participating in the conference organized by the Ministry of Justice and by lecturing at the Judicial Training Centre.

An annual tradition is the Ombudsman’s conference on the International Human Rights Day. In 2013, the conference took place from December 10 to 13, and it included six discussion topics: [1] Bilingual education in Latvia and social integration. Assessment and proposals; [2] Representation of names and Human rights; [3] Article 111 of the Constitution – reality or declaration ?; [4] Human rights of patients in psycho-neurological hospitals; [5] Importance of individual preventive work (social behavior correction) in protecting children's rights; [6] Effective social work with families - problems and solutions. Materials and videos from the conference are available on the homepage of the Ombudsman's Office.

In total, in 2013 the Ombudsman’s Office organized 23 educational seminars, discussions and other educational events.

The Ombudsman's Office has established a long and successful cooperation with the association of persons with disabilities and their friends “Apeirons”, association “Latvian Movement *for an independent life”*, association “Shelter “Safe House””, members of the Alternative Childcare Alliance and other organizations.

It should be noted that on October 18, 2013, the Ombudsman’s Advisory Board was created concerning the issues of health care in order to assess the current situation in Latvia and the compliance of the minimum medical care guaranteed by the State with Article 111 of the Constitution, Article 12 of the International Covenant on Social, Economic and Cultural Rights (which determines that the States Parties to the Covenant recognize the right of everyone to the enjoyment of the highest

attainable standard of physical and mental health), the Universal Declaration of Human Rights and international legislation.

## 4. Opinions Provided by the Ombudsman's Office to the Constitutional Court

| | | | |
|---|---|---|---|
| 1. | 14.01.2013. No.1-6/1 | On the Opinion in the case No.2012-18-01 „On the compliance of the wording of Section $33^3$, paragraph 1of the Law on Taxes and Fees: "if a taxpayer agrees with the amount of additionally calculated tax, fee or other charge set by the state [including cost of delay calculated with regard to period of delay of tax payment starting from the day following the relevant tax payment period until the day when tax audit is stared] and if, within 30 days from the date of receipt of the decision of the tax administration on results of the tax audit, he pays the calculated sum of the tax, fee or other charge set by the state together with a fine of 15 per cent of the principal debt" (that was in force until November 9, 2011) with Section 1 of the Constitution of the Republic of Latvia". | Ieva Dambe |
| 2. | 22.02.2013. No.1-6/2 | On the Opinion in the case No.2012-21-01 "On the Compliance of Section 5 of the Law of March 12, 2009 „Amendments to the Law On the Career Course of Service of Officials with Special Service Ranks Working in Institutions of the System of the Ministry of the Interior and the Prisons Administration" with Article 1 and 91 of the Constitution of the Republic of Latvia" | Sarlote Berzina |
| 3. | 26.02.2013. No.1-6/3 | On the Opinion in the case No.2012-22-0103 „On the Compliance of the third part of Section 567 of the Civil Procedure Law, insofar as it does not envisage covering the remuneration for the duties of office performed by a sworn bailiff from the state budget resources, when the enforcer of the debt is exempt from paying the costs of enforcing the judgment, with Article 107 of the Constitution of the Republic of Latvia and the compliance of Paragraph 8, 9, 10, 11 and 12 of the Cabinet of Ministers Regulation of 30 August 2011 No. 670 | Monta Tigere |

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|---|---|---|---|
| | | "Regulation on the amount of expenditure necessary for performing enforcement activities and the procedure for paying it" with Article 64 and Article 105 of the Constitution of the Republic of Latvia | |
| 4. | 18.03.2013. No.1-6/4 | On the Compliance of Section $671^1$, paragraph 3 (wording of December 28, 2010) of Cabinet of Ministers Regulation No. 899 of October 31, 2006 "Procedures for the Reimbursement of Expenditures for the Acquisition of Medicinal Products and Medicinal Devices Intended for Out-patient Medical Treatment" with Article 91, sentence 1 of the Constitution of the Republic of Latvia" | Sarlote Berzina, Arturs Kucs |
| 5. | 26.03.2013. No.1-6/5 | On the Opinion in the case No.2012-23-01 "On the Compliance of the first part of Section 257 of the Latvian Administrative Violations Code with Article 105 of the Constitution of the Republic of Latvia" | Monta Tigere |
| 6. | 08.04.2013. No.1-6/6 | On the Opinion in the case No.2012-22-0103 "On the Compliance of Section 567, paragraph 3 of the Civil Procedure Law, in so far as it does not provide compliance of the coverage of compensation to sworn bailiffs from the funds of the State budget in cases where a judgment creditor is exempt from payment of enforcement of judgment expenditures, with Section 107 of the Constitution of the Republic of Latvia, and compliance of Sections 8, 9, 10, 11, 12 of the Cabinet Regulation No.670 with Articles 64 and 105 of the Constitution" | Monta Tigere |
| 7. | 15.04.2013. No.1-6/7 | On supplementing Opinion in the case No.2012-26-03 "On the Compliance of the Cabinet Regulation No. 899 of October 31, 2006 with Section 91, sentence 1 of the Constitution" | Sarlote Berzina |
| 8. | 15.04.2013. No.1-6/8 | On the Opinion in the case No.2013-02-01 "On the Compliance of Section $464^1$, paragraph 2, point 2 with Section 92, sentence 1 of the Constitution" | Gundega Bruneniece |
| 9. | 17.04.2013. No.1-6/9 | On the Opinion in the case No.2012-24-03 „On the Compliance of Annex 1 to the Cabinet of Ministers Regulation of 7 July 2009 No. 733 "Regulations of the Level of the Proficiency in the Official Language and the Procedure of Testing the Level of Language Proficiency for Professional and Craft Duties for Receiving of Permanent | Sarlote Berzina |

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|---|---|---|---|
| | | Residence Permit, and Obtaining the Status of Permanent Resident of the European Community, and State Fee for Examination of Skills of the State Language" with Article 91 and Article 101 of the Constitution of the Republic of Latvia, as well as Section 6, paragraph 1 of the Official Language Law and Section 31 of the Law on the Structure of the Cabinet of Ministers" | |
| 10. | 26.04.2013. No.1-6/10 | On the Opinion in the case No.2012-25-01 "On the Compliance of Section 138 of the Insolvency Law of 1 November 2007 with Article 92 and Article 105 of the Constitution of the Republic of Latvia" | Elina Birgele |
| 11. | 06.06.2013. No.1-6/11 | On the Opinion in the case No.2013-01-01 "On the Compliance of Section 3, paragraph 3 of the Law on the Service Pensions of the Officials of the Corruption Prevention and Combating Bureau with Article 91 and Article 109 of the Constitution of the Republic of Latvia" | Anete Ilves, Arturs Kucs |
| 12. | 12.06.2013. No.1-6/12 | On the Opinion in the case No.2013-04-01 "On the Compliance of Section 33, paragraph 3, point 1 of the Civil Procedure Law with Article 91 and Article 92 of the Constitution of the Republic of Latvia" | Gundega Bruneniece |
| 13. | 19.07.2013. No.1-6/13 | On the Opinion in the case No.2013-05-01 "On the Compliance of Section 22, paragraph 1 (wording of November 8, 2012, enters into force on January 1, 2015) of the Law „On National Referendums, Initiation of Laws and European Citizens' Initiative" and Sections 4 and 5 of the Transitional Provisions with Articles 1 and 2 of the Constitution of the Republic of Latvia". | Ilze Tralmaka |
| 14. | 29.07.2013. No. 1-6/14 | On the Opinion in the case No.2013-06-01 "On the Compliance of Section 23, paragraph 5, point 2 and Section $32^1$, paragraph 1 of the Law „On National Referendums, Initiation of Laws and European Citizens' Initiative" with Article 1 of the Constitution of the Republic of Latvia" | Santa Tivanenkova |
| 15. | 26.08.2013. No.1-6/15 | On the Opinion in the case No.2013-08-01 "On the Compliance of Sections 483 and 484 of the Civil Procedure Law with Article 92, sentence 1 of the Constitution of the Republic of Latvia" | Santa Tivanenkova |

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|---|---|---|---|
| 16. | 27.08.2013. Nr.1-6/16 | On the Opinion in the case No.2013-09-01 "On the Compliance of the Words in Section 21, paragraph 2 of the Latvian Administrative Violations Code "if the fine intended for it does not exceed 30 lats" with Article 91, sentence 1 of the Constitution of the Republic of Latvia" | Anete Ilves |
| 17. | 15.10.2013. No.1-6/17 | On the Opinion in the case No.2013-11-01 "On the Compliance of Section 246, paragraph 2 of the Criminal Procedure Law with Section 92, sentence 1 of the Constitution of the Republic of Latvia" | Daina Lepika, Ilze Tralmaka |
| 18. | 26.11.2013 No.1-6/18 | On the Opinion in the case No. 2013-12-01 „On the Compliance of Section of $43^2$ the Road Traffic Law, insofar it affects the rights of the vehicle owner in administrative violations record-keeping, with Article 92 of the Constitution" | Juris Silcenko |

# Statistics on the Work of the Ombudsman's Office in 2013

| | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Received submissions** | | | | | | | | | | | | | |
| Division of Civil and Political Rights | 157 | 157 | 172 | 128 | 125 | 126 | 138 | 114 | 109 | 96 | 99 | 103 | 1524 |
| Division of Social, Economical and Cultural Rights | 76 | 89 | 94 | 75 | 45 | 49 | 49 | 35 | 49 | 60 | 55 | 45 | 721 |
| Children's Rights Division | 21 | 16 | 15 | 12 | 15 | 9 | 18 | 8 | 11 | 18 | 17 | 13 | 173 |
| Division of Legal Equality | 7 | 10 | 11 | 6 | 8 | 11 | 5 | 13 | 6 | 16 | 7 | 11 | 111 |
| Other personnel | 1 | 6 | | 7 | 2 | 2 | 2 | 3 | 7 | 1 | 1 | 2 | 34 |
| **total** | **262** | **278** | **292** | **228** | **195** | **197** | **212** | **173** | **182** | **191** | **179** | **174** | **2563** |
| **Initiated verification procedures** | | | | | | | | | | | | | |
| Division of Civil and Political Rights | 2 | 4 | 5 | 6 | 3 | 0 | 3 | 3 | 7 | 3 | 3 | 6 | 45 |
| Division of Social, Economical and Cultural Rights | 3 | 6 | 10 | 5 | 7 | 2 | 1 | 5 | 2 | 2 | 5 | 0 | 48 |
| Children's Rights Division | 5 | 8 | 1 | 5 | 4 | 2 | 4 | 6 | 1 | 0 | 0 | 1 | 37 |
| Division of Legal Equality | 2 | 0 | 3 | 3 | 3 | 2 | 4 | 2 | 0 | 3 | 5 | 4 | 31 |
| **total** | **12** | **18** | **19** | **19** | **17** | **6** | **12** | **16** | **10** | **8** | **13** | **11** | **161** |
| **Refusal to initiate a case** | | | | | | | | | | | | | |
| Division of Civil and Political Rights | 15 | 12 | 12 | 4 | 12 | 6 | 7 | 13 | 2 | 11 | 11 | 6 | 111 |
| Division of Social, Economical and Cultural Rights | 19 | 28 | 33 | 35 | 46 | 20 | 25 | 17 | 24 | 22 | 20 | 24 | 313 |
| Children's Rights Division | 6 | 8 | 8 | 8 | 6 | 8 | 3 | 4 | 1 | 2 | 4 | 9 | 67 |
| Division of Legal Equality | 4 | 5 | 6 | 7 | 2 | 2 | 7 | 2 | 4 | 4 | 8 | 4 | 55 |
| **Total** | **44** | **53** | **59** | **54** | **66** | **36** | **42** | **36** | **31** | **39** | **43** | **43** | **546** |

| | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Responses to submissions (that are not refusals)** | | | | | | | | | | | | | |
| Division of Civil and Political Rights | 154 | 115 | 184 | 148 | 151 | 110 | 132 | 100 | 98 | 120 | 90 | 89 | 1491 |
| Division of Social, Economical and Cultural Rights | 70 | 60 | 51 | 82 | 81 | 74 | 58 | 75 | 46 | 52 | 78 | 63 | 790 |
| Children's Rights Division | 10 | 4 | 4 | 7 | 12 | 11 | 1 | 8 | 16 | 15 | 15 | 19 | 122 |
| Division of Legal Equality | 4 | 0 | 8 | 4 | 5 | 3 | 2 | 7 | 21 | 12 | 4 | 9 | 79 |
| Other personnel | 5 | 2 | 1 | 6 | 0 | 0 | 2 | 1 | 0 | 4 | 2 | 0 | 23 |
| **total** | **243** | **181** | **248** | **247** | **249** | **198** | **195** | **191** | **181** | **203** | **189** | **180** | **2505** |
| **Finalized and terminated verification procedures** | | | | | | | | | | | | | |
| Division of Civil and Political Rights | 0 | 2 | 3 | 3 | 5 | 1 | 2 | 3 | 5 | 5 | 5 | 2 | 36 |
| Division of Social, Economical and Cultural Rights | 8 | 6 | 6 | 14 | 12 | 13 | 10 | 15 | 8 | 17 | 2 | 4 | 115 |
| Children's Rights Division | 6 | 4 | 6 | 5 | 4 | 8 | 1 | 3 | 2 | 5 | 6 | 1 | 51 |
| Division of Legal Equality | 0 | 8 | 4 | 3 | 2 | 3 | 6 | 1 | 3 | 1 | 0 | 1 | 32 |
| **Total** | **14** | **20** | **19** | **25** | **23** | **25** | **19** | **22** | **18** | **28** | **13** | **8** | **234** |
| **Consultations** | | | | | | | | | | | | | |
| Division of Civil and Political Rights | 27 | 35 | 30 | 23 | 21 | 21 | 28 | 18 | 16 | 32 | 14 | 24 | 289 |
| Division of Social, Economical and Cultural Rights | 27 | 39 | 34 | 28 | 33 | 31 | 36 | 18 | 42 | 29 | 27 | 16 | 360 |
| Children's Rights Division | 12 | 14 | 13 | 15 | 14 | 20 | 13 | 7 | 10 | 20 | 10 | 5 | 153 |
| Division of Legal Equality | 4 | 2 | 4 | 1 | 5 | 2 | 6 | 15 | 4 | 6 | 2 | 3 | 54 |
| Telephone consultations | 528 | 680 | 534 | 437 | 431 | 352 | 420 | 377 | 503 | 464 | 390 | 360 | 5476 |
| Replies via e-mail | 94 | 79 | 64 | 64 | 50 | 105 | 57 | 91 | 117 | 96 | 71 | 79 | 967 |
| Visitors without appointment | 188 | 165 | 217 | 174 | 146 | 105 | 109 | 103 | 124 | 134 | 144 | 174 | 1783 |
| **Total** | **880** | **1014** | **896** | **742** | **700** | **636** | **669** | **629** | **816** | **781** | **658** | **661** | **9082** |

| | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Conclusions** | | | | | | | | | | | | | |
| To public institutions on draft legislation | 4 | 2 | 1 | 1 | 5 | 4 | 4 | 0 | 2 | 3 | 1 | 0 | 27 |
| To the Constitutional Court | 1 | 2 | 2 | 2 | 0 | 2 | 2 | 2 | 0 | 1 | 1 | 0 | 15 |
| **Total** | **5** | **4** | **3** | **3** | **5** | **6** | **6** | **2** | **2** | **4** | **2** | **0** | **42** |
| **Monitoring visits** | | | | | | | | | | | | | |
| **Total** | **6** | **9** | **5** | **3** | **0** | **0** | **0** | **2** | **1** | **2** | **50** | **5** | **83** |