REPUBLIC OF CROATIA

OMBUDSMAN

REPORT ON WORK FOR 2008

Zagreb, March 2009

PART ONE

INTRODUCTORY NOTES

The Annual Report on the Work of the Ombudsman to the Croatian Parliament is a review of his work and of the data on the extent of respect for the citizens' constitutional and legal rights in the previous year, which he collected in his work.

The Report for 2008 uses the same methodology as last year's. In this Report, it is also possible to compare the number of complaints by legal sphere compared to the previous years, as seen in the statistical review included in this Report. Considering that the process of upgrading the new data processing system is still underway, several errors were observed in moving the data, so there might be negligible deviations in statistics.

The legal spheres with pronounced presence in the total number of complaints or regarded as important for the noted problems (e.g. the citizens' legal security and equality, efficiency, drawbacks in the normative regulation of issues, etc.) were illustrated in more detail than the spheres which were not as significant in terms of the number of complaints and their seriousness.

This report contains a statistical review of the cases the Office dealt with by individual administrative spheres and the geographical criteria, such as towns of the Republic of Croatia and foreign countries.

In 2008, the Office received 1 560 written complaints, which is 318 complaints less than in 2007 (1 878).

Just like in the past years, it must be noted that the total actual number of complaints is higher than the number shown in the Report, since joint complaints (submitted by several citizens) were considered as one. Besides, the cases in which the procedure was concluded in some previous period, but the complainants filed new complaints, were statistically registered as one case.

Considering that the Ombudsman bases his reports primarily on citizens' complaints, the reports should not be regarded as a comprehensive presentation of the human rights situation in the Republic of Croatia, but only a sample of the so-called "dark side" of the way administrative bodies and bodies vested with public powers act towards citizens. As we shall

see in further text, the problem primarily concerns unduly long procedures before the competent bodies.

Citizens still do not know enough about the Ombudsman as an institution, despite his presence in the media (both printed and electronic). This is evident from the fact that citizens address the Ombudsman only after trying to solve their problem for several years. There are numerous citizens of poor social status who do not have an opportunity to use the Internet, which is definitely the fastest way of acquiring information about the Office.

The Report of the Ombudsman for 2007 was discussed by the working bodies of the Croatian Parliament: Committee on the Constitution, Standing Orders and Political System, Judiciary Committee, Health and Social Welfare Committee, Committee on Croats outside the Republic of Croatia, Labour and Social Partnership Committee, Committee on Human and National Minority Rights and the Local and Regional Self-government Committee.

All of the committees unanimously issued conclusions accepting the Report of the Ombudsman for 2007.

The Report was then discussed at the 6th plenary session of the Croatian Parliament, held on 19 September 2008, when it was noted in a Conclusion (by the majority vote of 70 "in favour" and 33 "against").

PART TWO

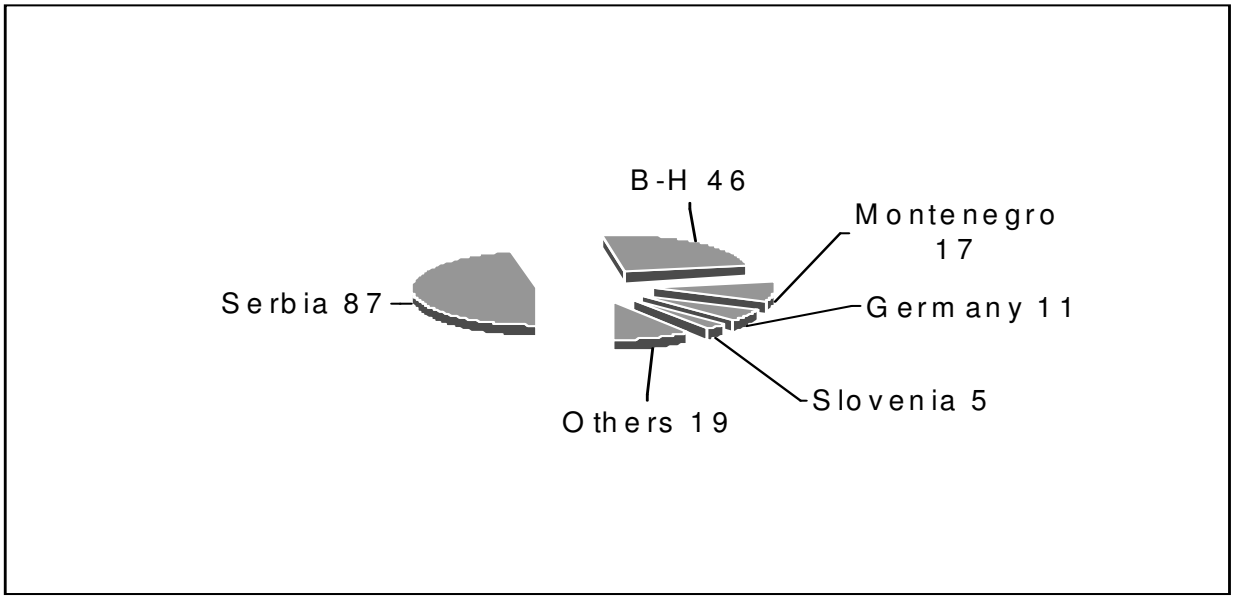
STATISTICAL DATA FOR 2008

Citizens address the Ombudsman personally at the Office, through written submissions / complaints, by telephone and by electronic means.

During 2008, altogether 635 citizens addressed the Ombudsman in person, between 20 and 30 citizens addressed him daily over the telephone, but these data are not included in the statistical review presented in further text.

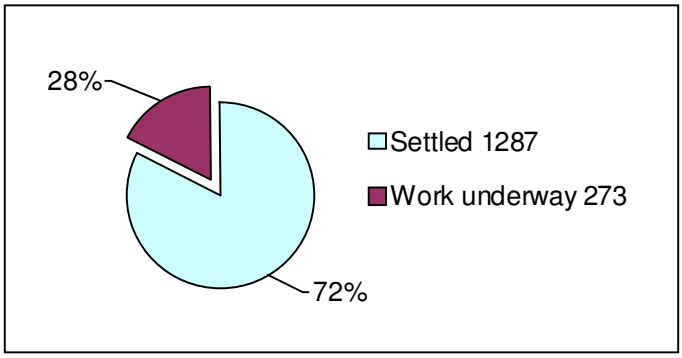
In 2008, the Ombudsman's Office worked on 2 119 cases, where 1 560 were newly received complaints.

Picture 1. Number of (written) complaints in the period between 2005 and 2008:



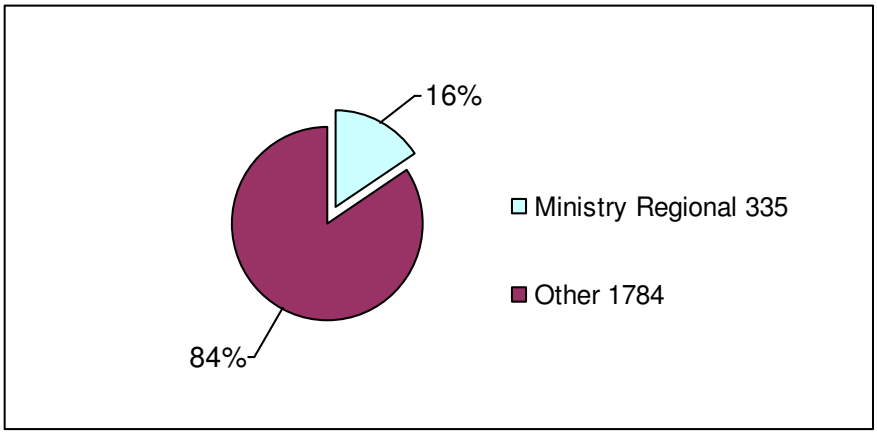
In 2008, in total 1 768 cases from earlier years and from 2008 were settled (concluded).

Picture 2. In 2008, the Ombudsman received 1 560 complaints. Ratio of settled and unsettled cases (received in 2008):

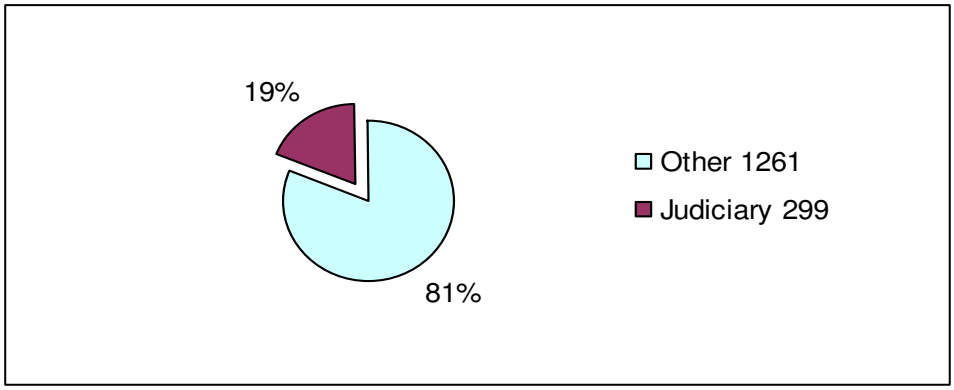


There is still a considerable share of complaints submitted to the Ombudsman against the work of the Ministry of Regional Development, Forestry and Water Management (Directorate for the Areas of Special State Concern and the Directorate for the Reconstruction of Family Houses).

Picture 3. Share of complaints against the Ministry of Regional Development, Forestry and Water Management in the total number of cases worked in 2008 (from 2008 and earlier years):

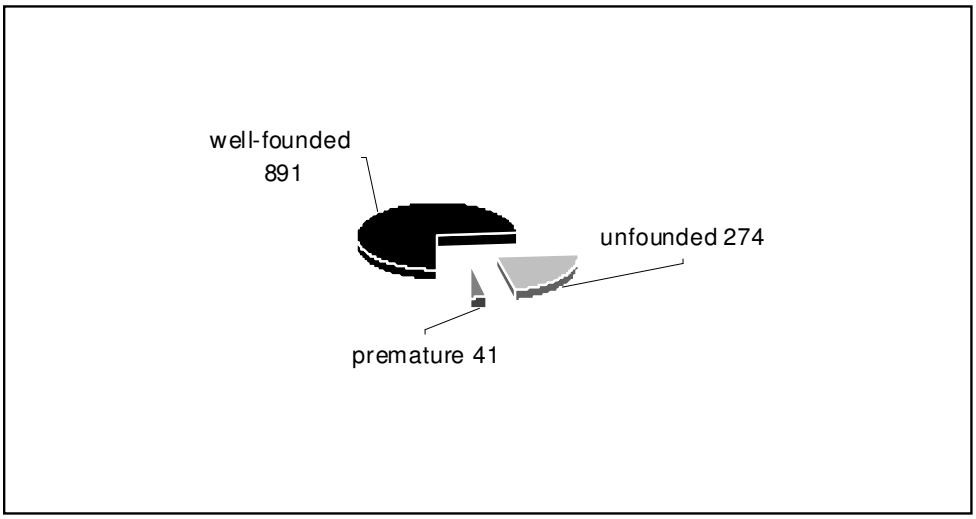


Picture 4. Of 1 560 new complaints in 2008, 299 were against the work of the judiciary:



Of altogether 1 768 **settled** cases in 2008 (both from 2008 and previous years), 1 206 were in the jurisdiction of the Office, and 562 complaints were outside its jurisdiction (for the sphere of the judiciary and other). Figure 5 shows the ratio of well-founded, unfounded and premature complaints from the group of 1 206 complaints referring to the sphere of jurisdiction of the Ombudsman.

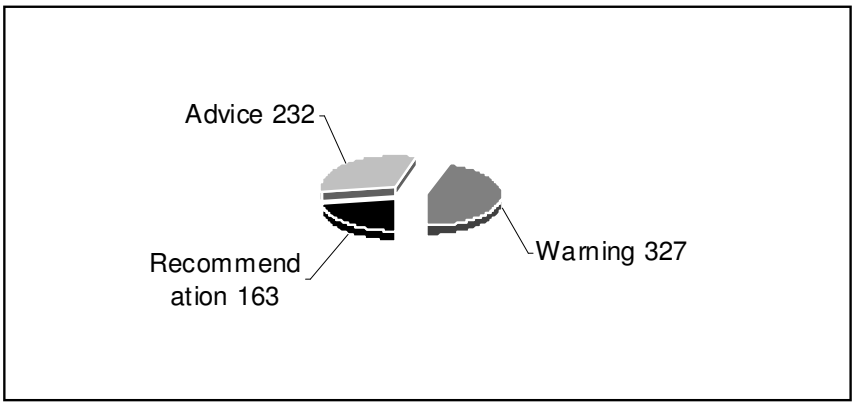
Picture 5. Ratio of well-founded, unfounded and premature complaints:



Note: Based on the insight into the data on the justifiability of complaints in some western countries, it has been noted that the ombudsmen have assessed only a small percentage of the complaints as well-founded. However, unduly long procedures present a minor problem to the parties in those countries, whereas dissatisfaction with the procedure outcome presents a major problem. In Croatia, unduly long duration of procedures is the key cause of a large number of well-founded complaints.

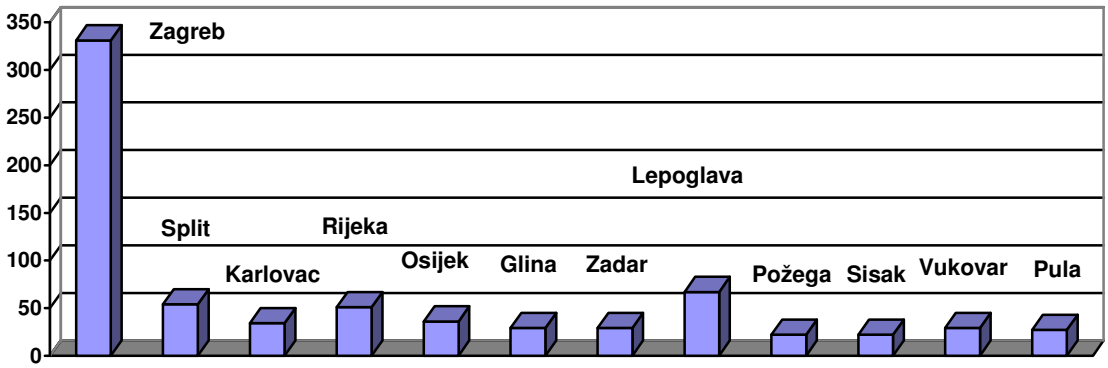
Furthermore, a large number of the 1 206 settled complaints within the jurisdiction of the Office were complaints submitted by citizens who could not obtain the requested information or who did not obtain an administrative act within the legal term. After the Ombudsman addressed the competent authorities, a large number of the complaints was finalised as requested by the citizens concerned. In a certain number of cases, it was necessary to use measures towards the competent authority (recommendations or warnings), that is, to advise the citizens on the way of resolving the disputable matter, as shown in Picture 6.

Picture 6. Undertaken measures (recommendations and warnings), and advice to the

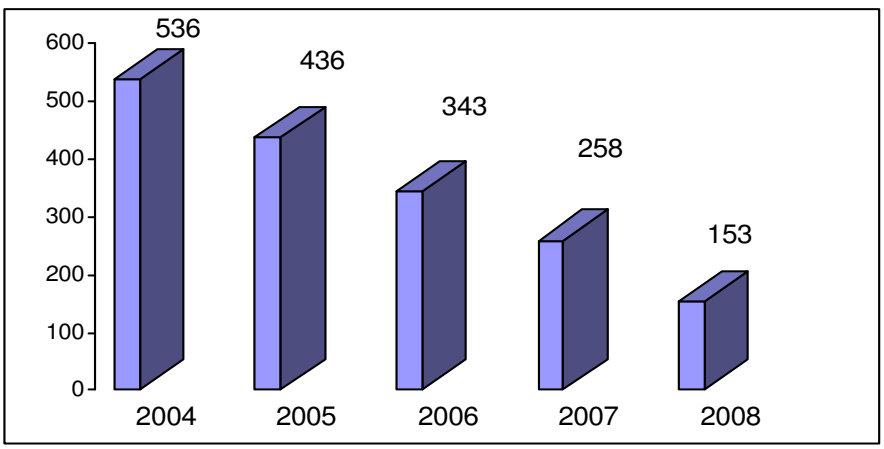


citizens):

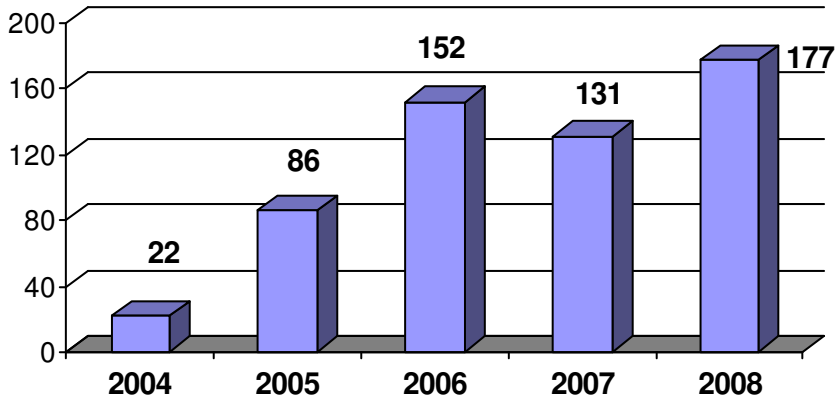
Picture 7. Complaints by the cities, where only those with over 20 complaints are included (showing the share of locations with prison facilities):



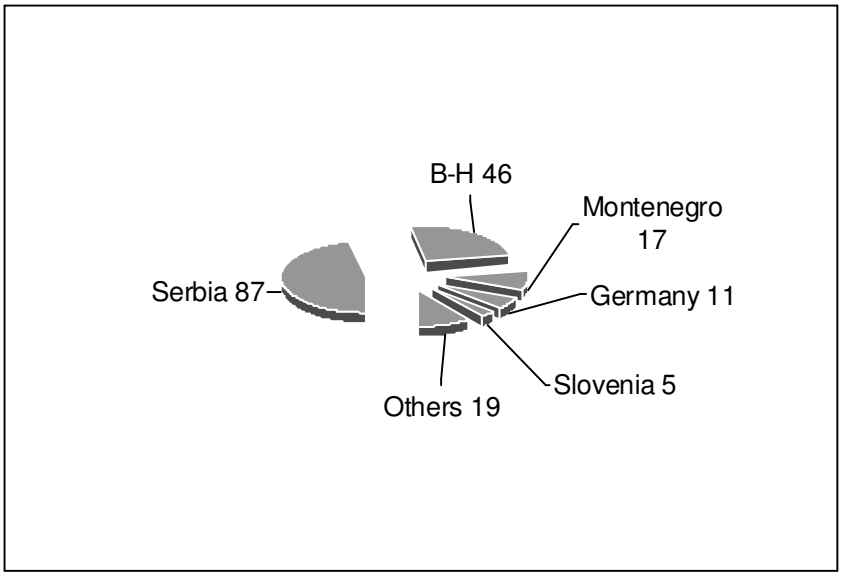
Picture 8. Number of complaints in the pension insurance sphere (2004-2008):



Picture 9. Number of complaints from persons deprived of freedom (2004 - 2008):



Picture 10. Complaints from abroad:



Picture 11. Comparable illustration of complaints by spheres (2005-2008):

Sphere:	2005	2006	2007	2008
Judiciary	254	266	276	299
Pension insurance	436	343	258	153
Right to reconstruction	191	207	208	116
Persons deprived of freedom	86	152	131	177
Construction / physical planning / environmental protection	117	73	129	81
Settling housing issues	5	63	117	56
Status-related rights	53	50	88	56
Ownership rights	46	19	88	129
Labour – civil servants	53	40	73	100
Social welfare	44	40	70	69
Conduct of the police officers	14	28	52	45
Healthcare	23	23	49	51
War veterans' rights	38	20	44	37
Housing issues	42	44	41	33
Denationalization	42	29	39	32
Refugees, exiles, returnees	17	43	7	4
Non-jurisdiction	40	65	61	48
Other	152	150	147	74
TOTAL	1 653	1 655	1 878	1 560

PART THREE

ANALYSIS OF WORK BY ADMINISTRATIVE SPHERES

Reconstruction – settling housing issues – restitution of the temporarily taken over property and damage compensation – status of exiles

Complaints in the said administrative spheres referred to the work of the Ministry of Regional Development, Forestry and Water Management (hereinafter the Ministry of Regional Development), especially the Directorate for the Areas of Special State Concern (formerly: Directorate for Exiles, Returnees and Refugees; hereinafter the ASSC Directorate) and the Directorate the Reconstruction of Family Houses (hereinafter the Reconstruction Directorate).

Of the 335 cases worked in 2008 referring to the work of the Ministry of Regional Development, the largest number 208 involved the reconstruction of family houses (of that 116 were new complaints from 2008), settling housing issues 79 (of that 56 new complaints from 2008), restitution of the temporarily taken over property 18 (of that 15 new complaints), exile and returnee status 11 (of that 4 new ones), and housing issues 19.

It was noted that in some cases the procedure was open for ten years.

Considering that in most cases the citizens who submitted the complaints are ignorant, we hold that the adoption of the Act on Free Legal Assistance, which entered into force on 1 February 2009, is significant.

Further text presents a detailed analysis of the work of both directorates.

A) Directorate for the Areas of Special State Concern (ASSC Directorate)

Complaints from within the jurisdiction of the Directorate referred to the handling of applications for the settling of the housing issue, for the restitution of the temporarily taken over property and damage compensation to owners who did not receive their property within term, and issues connected with the acquisition of exile status. In 2008, the Office also received complaints from citizens with problems in the field of housing, but exclusively in the area of

the Croatian Podunavlje (former UNTAES zones: eastern Slavonia, Baranja and western Srijem).

Settling housing issues

In several annual reports, the Ombudsman gave a very critical view of the quality and implementation of the Act on the Areas of Special State Concern.

In July 2008, the new Act on the Areas of Special State Concern was passed.

When compared to the old Act, we find significant improvements in terms of the possibility to procure housing for persons who own an uninhabitable building (apartment) or co-own real estate which they cannot use. The provisions of the former Act stipulated that any person co-owning a piece of real estate (which was frequently by inheritance, so sometimes it was only a couple of square metres) could not be granted any housing. The Ombudsman maintained that such interpretation was not in accordance with the intention of the legislator, so he advocated the standpoint that the provision had to be implemented in line with the spirit of the Act and that the provisions of the Reconstruction Act should also be taken into account. The said Act states that persons entitled to the reconstruction of their homes have the right to 35 sq.m. for one person, and 10 sq.m. for each and every additional person in the family. Further to the said provision, the Ombudsman proposed that the procurement of housing should be provided for persons who co-own (acquire) a piece of real estate under 35 sq.m., but the proposal was not accepted. Still, the Ombudsman's solution was accepted in the new Act, thus enabling continuation of the process of reviving the areas of the Republic of Croatia under special state concern.

Just like the old Act, the new Act on the Areas of Special State Concern (hereinafter the ASSC Act) regulates the settling of housing issues as a *right*, but other than the provisions on the jurisdiction to issue decisions and on the term for appeal does not include provisions on the procedure for the realisation of the right. Therefore, in the implementation of this Act it is necessary to apply the General Administrative Procedure Act (hereinafter the General Administrative Procedure Act) which stipulates that the bodies of state administration and other state bodies must act further to the Act whenever dealing with the rights, obligations or legal interests of the citizens, unless the procedure is regulated in a special law.

The problem with the work of the Ministry of Regional Development is failure to respect the General Administrative Procedure Act, which is a problem that the Ombudsman

pointed out on many occasions over the years and notified the competent minister. On several occasions the Central State Administrative Office did the same. The violations primarily involve failure to comply with the time limits for passing the acts, and failure to adopt an act at all (instead of the act, the parties receive a notification).

The Directorate still conducts its procedures in the following manner: citizens file a request for settling housing issues, after which they receive no information from the Directorate for a year or two, which is when they address the Ombudsman. At his request, the Directorate does send a notification to the citizens as to whether their housing problems will be settled or not. There is no administrative procedure which would serve to establish relevant facts concerning the well-foundedness of the request, no administrative act is adopted, and the parties to the procedure may not exercise the right to appeal. It was only recently that in several cases the parties obtained an administrative act. In other cases, the ASSC Directorate issues a statement that the administrative procedure is to be conducted subsequently, although the Ombudsman issues several warnings per case concerning the expiration of time limits (failure to adopt an act for a period of several years) and concerning the fact that the General Administrative Procedure Act does not recognise the subsequent administrative procedure.

It should be mentioned here that the Ombudsman usually does not instruct the citizens to file an appeal against the "silence of the administration", and later a complaint against the "silence of the administration" with the Administrative Court, because that is not an effective legal instrument. We believe it is more useful to issue warnings and rush notes concerning the activity of the competent body.

Another violation of the provisions of the General Administrative Procedure Act involves non-performance of the competent body's obligation to notify the party on the reasons for the duration of the procedure and on the actions to be taken to finalise the proceedings whenever a procedure lasts for more than 60 days (Article 296 of the General Administrative Procedure Act). Parties try to obtain such a notification through written rush notes or over the phone, but unsuccessfully, and they then address the Ombudsman asking for an intervention.

In numerous cases, the parties express their dissatisfaction with this type of work and state their reasons for such conduct (nepotism, corruption, bias, nationality). As frequently the parties live in small settlements, sometimes their suspicions seem well-founded, but the parties do not want to file complaints and testify before the competent bodies for fear of consequences and uncertainty as to the outcome in resolving their request.

The Croatian Parliament was notified of the foregoing in the Ombudsman's previous reports, but the practice of the Directorate for ASSC was different in only a small number of cases over the past several months.

The obligation to pay the reserve means is a specific problem in procedures involving the settling of housing issues of tenants (provided with an apartment for lease by the Directorate). The ASSC Directorate determines the component parts of the contract and regularly incorporates an obligation in the contract under which the tenant has the duty to pay the reserve means. The problem is specific to the area of the County of Vukovar-Srijem, and several cases were also recorded in Osijek, which was reported in the Ombudsman's Report for 2007.

Two years ago, the Ombudsman warned the Directorate that the owner of the apartment should pay the reserve means, and not the tenant (as stipulated in the Act on Ownership and Other Real Rights). In numerous cases, the Directorate refused to adopt the standpoint, but in late 2007 it did change it and accepted the suggestion made by the Ombudsman. However, several examples of such conduct were recorded even afterwards. In addition, the problem did not end there, as the courts in Vukovar (both the Municipal and County Courts) ruled in favour of the claimant ("Tehnostan" as the manager) in cases against tenants for the payment of the reserve means. In other Croatian counties, the courts rejected such statements of claim by providing an explanation that the reserve means are paid solely by the owners. The many judgements adopted by the courts in Vukovar shed light on the problem of non-uniform court practice in the Republic of Croatia. According to the data provided by associations from Vukovar, there were supposedly more than one thousand such cases, but despite the number in view of the small value of the disputes, the respondents (tenants) could not file a request for review by the Supreme Court, although some citizens did file a constitutional claim with the Constitutional Court of the Republic of Croatia.

The Constitutional Court rendered several decisions adopting constitutional complaints filed by the tenants, but there is still the problem of cases subject to enforcement pursuant to the judgments already adopted and the problem of numerous requests made by the citizens for the repayment of the funds paid (with respect to which the Constitutional Court established that they were not based on law). According to the data provided by associations, approximately 2 000 citizens filed applications for the conclusion of a settlement with the municipal state attorney offices, but unsuccessfully.

In 2008, several citizens (former holders of the right of tenancy) in Vukovar addressed the Ombudsman by filing identical complaints against the work of the ASSC Directorate. The

former holders of the right of tenancy concerned used the apartments without any interruptions (for decades), and in 2007 they were evicted, because the buildings had to be reconstructed. However, when the reconstruction of the buildings was over, they were not allowed to return to the same apartments, but it was suggested to them that they should file applications for settling housing issues, and they were granted "adequate" apartments, mostly smaller than their former ones. More information about this problem can be found in the example number 3.

Examples:

(1) Case description (P.P.-1/08): This case is mentioned in last year's report and it remains unsettled. The complainant, N.T., from Vukovar requested assistance in the procedure of settling housing issues by complaining against the work of the Directorate for Exiles. After filing a request for settling a housing issue, N.T. receives a notice from the Directorate that she has no right to the settlement of her housing issue, because she co-owns a house with the surface area of 9m2. In the complaint, she asks for help, because the competent body failed to adopt an act against which she might use legal remedies, but issued a notification.

Undertaken measures: The Ombudsman issued two warnings in this matter (and countless times in other cases) informing the Directorate that it had been supposed to issue an administrative act under the General Administrative Procedure Act. However, the Directorate responded that the administrative procedure would be conducted subsequently. Considering that the General Administrative Procedure Act does not stipulate the possibility of a subsequent administrative procedure, such statement is not acceptable. The complainant was not enabled to exercise her right to appeal.

As mentioned earlier, the new Act on the Areas of Special State Concern regulates this situation in a way that it recognises the complainant's right to the settling of her housing issue, although she co-owns a house (9m2). Namely, the new Act stipulates that procedures initiated under the former Act, which remain unsettled, are to be concluded according to the provisions of the new Act.

Although the new Act on the Areas of Special State Concern entered into force on 31 July 2008, the complainant addressed the Ombudsman again stating that the case had not been settled by the end of 2008 and that the decision had not been issued.

Case outcome: The administrative procedure is not over yet, although the time limits have expired, so the Ombudsman is still monitoring the situation in this matter.

(2) Case description (P.P.-1358/06): This case was also addressed in the Report for 2007. This is a case where the temporary user V.A. received an apartment for use in 1996 and then purchased a house in Zadar in 2005 for HRK 932 000, while she rented the apartment to the complainant Z.L. She later entered into a dispute with the complainant, and the police had to intervene. Although the Ombudsman warned the ASSC Directorate about the case at hand in 2006, the temporary user V.A. was still granted ownership of the disputed apartment by donation (in May 2008), because she had supposedly met the condition of having used the apartment for a period of 10 years. The apartment was owned by the Republic of Croatia.

Undertaken measures: The Ombudsman submitted the data on the case and requested the ASSC Directorate to check whether the apartment was being used lawfully, to consider the eviction of the temporary user and to provide a statement whether the temporary user would be enabled to purchase the apartment. The Ombudsman particularly pointed out that there were no apartments in B. for those who needed them.

The ASSC Directorate procrastinated with the answer to the Ombudsman and only after one year's time checked the way in which the apartment was being used: it requested a statement by the temporary user on the way the apartment was being used and obtained evidence on the payment of overheads. Furthermore, it conducted two controls of the way in which the apartment was being used (in 2000 and 2005), at which times no irregularities were detected.

The Ombudsman evaluated that the competent body was not handling state-owned real estate with due care, so he requested a copy of the police minutes, drawn up at the time of the intervention carried out on 15 September 2006.

In the procedure, it was established as follows:

- the temporary user did not use the apartment from 15 June 2006 to the end of 2006;

- on 15 September 2006, the police intervened at the time of an attempted eviction of the person to whom the apartment was leased;

- the police took statements from the temporary user and her husband, and from the two persons found in the apartment;

- the statements of the said persons are identical: the apartment was leased in the preceding 3 months (15 June – 15 September 2006);

- the Ombudsman received a copy of the payment slip for HRK 1 000.00 (to the current account) as rent for one month.

In accordance with the Act on the Areas of Special State Concern (Article 32 of the consolidated text, OG 26/03):

"(1) Where the Ministry finds out that a particular user is not using the house or apartment granted for use pursuant to the provisions of the Act on the Areas of Special State Concern (OG 44/96, 57/96 and 124/97), and the title to which he should acquire after 10 years of residence pursuant to Article 8 of the said Act, it shall issue a decision stating that the person is not using the house or apartment and in the same decision nullify the decision granting the house or apartment.

(2) An appeal against the decision of the Ministry is not permissible, but an administrative dispute may be initiated.

(3) Pursuant to the final decision referred to in paragraph 1 of this Article, the competent state attorney office shall submit a complaint for eviction."

Finally, in May 2008 the apartment became the property of the temporary user under the contract with the ASSC Directorate, subject to a prior consent of the competent state attorney office. However, the state attorney office had not been notified of the fact that the apartment had not been used during the mentioned period.

Case outcome: Holding that the actions taken by the ASSC Directorate were questionable, the Ombudsman had a meeting with representatives of the ASSC Directorate. On that occasion, the Ombudsman was notified that the apartment was not leased, but provided for use over a one-month period to a person who was without an apartment and who was awaiting finalisation of the procedure for settling his housing issue, and who would not leave the apartment. Considering that it follows differently from the said police minutes, the Ombudsman cannot accept such an explanation, especially in view of the fact that the state attorney office (when issuing the approval for the conclusion of the contract) was not aware of the fact that the apartment had not been used. It is precisely this fact that is the most important circumstance which should have been taken into account when determining the lawfulness of using the disputable apartment.

(3) Case description (P.P.-1199/08): S.F. from Vukovar requested the Ombudsman to help her in the matter of protecting her rights breached as the result of the conduct of the Ministry of Regional Development.

The problem concerns tenants in state apartments and, according to the media, in Vukovar there are several thousand identical cases.

The persons concerned were holders of the right of tenancy who used their apartments without any interruptions. In 2007, they moved out, because the buildings were to be reconstructed. However, when the reconstruction was finalised, they were not allowed to return to the same apartments. The Regional Office for Exiles instructed the citizens orally that they should submit applications for the settling of housing issues. After reconstruction, they were granted "adequate" apartments (mostly smaller), as if the persons concerned were applying for the settling of their housing issues for the first time.

In all of the said cases, the standpoint of the ASSC Directorate with the Ministry of Regional Development proved to be disputable in the part concerning the application of the regulations regulating the transformation of the institute of the right of tenancy into the institute of the right to the lease of an apartment. Namely, the Ministry maintains the standpoint that the Act on the Areas of Special State Concern applies to all cases in the area of the Croatian Podunavlje, and excludes the application of the Act on the Lease of Apartments.

Undertaken measures: The Ombudsman addressed the competent minister, pointing out that the Act on the Lease of Apartments stipulated that the former right of tenancy would terminate for all former holders and that they would become tenants *ex lege* throughout the Republic of Croatia. There are no provisions anywhere in the Act on the Lease of Apartments on the special territorial application of the Act, and the Act on the Areas of Special State Concern does not stipulate anything in that sense either. It is unacceptable that the Act on the Lease of Apartments applies to all other areas of Croatia, but not to the area of the Croatian Podunavlje.

The minister was also presented with the court practice supporting the Ombudsman's standpoint. Namely, there are citizens who successfully concluded court disputes in which they sued the Republic of Croatia – Ministry of Regional Development. In the judgements they were designated as tenants (pursuant to their former status as holders of the right of tenancy).

In the explanation of one of the judgments of the Municipal Court in Vukovar (December 2008), in a matter against the Republic of Croatia in the capacity of respondent, it is stated as follows: "*The respondent's claim that the right of tenancy terminated is unfounded, because the claimant is not asking the court to establish her right of tenancy, but her status as protected tenant. Therefore, the respondent may not procure the settling of housing issues at the detriment of the statutory rights of the citizens, in this case the claimant, and the respondent's reference to the Act on the Areas of Special State Concern and the Regulation on the conditions and criteria for the settling of housing issues is unfounded, because the*

legislation concerned does not entitle the respondent to act without authority and contrary to law.

It is true that on the entry into force of the Act on the Lease of Apartments the right of tenancy terminated for all holders of the said right. However, Article 30, paragraph 2 of the Act on the Lease of Apartments (OG 91/96) stipulates that "on the date of the entry into force of this Act, the persons referred to in paragraph 1 of this Article shall acquire the rights and obligations of the tenant."

The Ombudsman pointed out such practice of the courts and requested the Ministry to issue a statement.

Case outcome: In his statement (February 2009), the minister explained such conduct. Considering that, under the legislation in force, the time limit within which the tenants could submit an application for the purchase of their apartment expired, the Ministry acted in favour of the persons by ensuring the settling of their housing issues, on the basis of which they could realise their right to the purchase of the apartment.

We are of the opinion that the above standpoint is not correct, because the Ministry acted as if the persons did not have the status of tenant. Therefore, all tenants should have been instructed (i) to either retain the status of tenant without the possibility of purchasing the apartment or (ii) to submit an application for the settling of housing issues, with the possibility of purchasing the apartment.

In this way the citizens feel cheated: they submit applications for the settling of housing issues (expecting to be able to make the purchase), and later they are not provided with their former apartments as settlement of their housing issues, but with smaller apartments.

The Act on the Sale of Apartments Subject to the Right of Tenancy (and the decisions fixing the time limits for submitting the purchase application) resulted in quite specific problems in the Croatian Podunavlje (mostly in Vukovar). Considering that the technical preparations for the implementation of the purchase were behind schedule, the extremely short time limit for submitting the applications should have been extended in the concerned area of the Republic of Croatia, which is visible from the fact that only nine apartments subject to the right of tenancy were purchased (under the said Act).

The Vukovar Tenants' Association has over 3 000 members, mostly former holders of the right of tenancy. The association works to achieve that its members are enabled to purchase the apartments under the same conditions as other citizens who purchased the apartments in accordance with the Act on the Sale of Apartments Subject to the Right of Tenancy.

The Government should take these initiatives into account. The current situation implies that there are two conflicting groups of citizens: one, which was provided housing under the Act on the Areas of Special State Concern, with the possibility of purchase, and the other which acquired the status of protected tenant (under the Act on the Lease of Apartments, without the possibility of purchase). The first group was provided with an opportunity of purchase which will last for years (subject to certain conditions). On the other hand, the other group was provided with an opportunity to purchase the apartments only during an (inappropriately) short period of time in 1997 – and in both cases we are talking about state-owned real estate!

Clearly, the two groups of citizens are not the problem.

The problem lies in an unequal position of the citizens in the Croatian Podunavlje in relation to the citizens in the rest of the Republic of Croatia, who had the right of tenancy (the former holders of the right of tenancy in the unoccupied parts of the Republic of Croatia) on the one hand, and the citizens of Vukovar who had the right of tenancy on the other, but who were not provided with an appropriate term for the purchase of the apartments.

The principle of fairness requires that we approach the problem responsibly, bearing also in mind that the area concerned was gravely affected by the war and that the consequences of its horrors are still felt there.

In conclusion, the following question arises: if 15 years ago the state made the decision to make the purchase of the apartments possible, why would it want now to keep the thousands of apartments in Vukovar in its ownership?

The Ombudsman is still monitoring the resolution of this problem.

Acquiring exile status

In 2008, the Ombudsman received only 4 complaints relating to the acquiring of exile and returnee status.

Example:

(1) Case description (P.P.-740/07): The complainants (sisters) T. and Z. D. requested the Ombudsman to help them in a procedure being conducted before the ASSC Directorate. They used to live in an apartment (subject to the right of tenancy) in Dubrovnik. Their

apartment was destroyed during a bomb-raid in 1991. They were placed in a hotel for refugees. The apartment was not reconstructed, so they could not return to it. It was later sold (under strange circumstances), and they remained in the hotel for 18 years. The problems began in 1998 when their exile status was repealed in a decision, despite the fact that they had not realised their right to return to their home. In view of their ignorance and poverty, they did not take advantage of the legal remedies available against the decision. After the issuing of the decision (in 1998), the hotel charges HRK 25 per day for hotel accommodation, because they have no legal grounds for living there. There is a court proceeding underway for the payment of the debt, with interest, which the complainants are not in the position to pay. Both sisters live on the minimum pension that one of them receives and have no means at their disposal to rent an apartment.

Undertaken measures: The Ombudsman first requested in writing that the circumstances under which the complainant's exile status terminated be examined, and then there was a meeting in the ASSC Directorate.

At the meeting, it was established that the termination of the exile status was wrong, as the complainants had not realised any of their rights (the reconstruction and return to their apartment). It was agreed that the complainants would be offered the settling of their housing issue and that several apartments at various locations would be offered to them, and that the complaint filed in the matter of payment of the debt would be withdrawn.

Case outcome: The complainants informed the Ombudsman by phone that the Directorate had kept its word: the complaint had been withdrawn and several locations and apartments proposed for the settling of their housing issue.

Note: This would be an example in which the termination of status without a duly conducted procedure results in a very serious situation for persons who suffered great trauma during the war, the consequences of which can be felt even today.

Restitution of the temporarily taken over property and damage compensation to the owners of the temporarily taken over property

Restitution of the property of people who left the Republic of Croatia in 1995, which is located in the areas of special state concern, is soon to be finished, but there are several remaining cases which involve gross violations of human rights.

In his earlier reports, the Ombudsman also wrote about violations of the rights of the owners who could not take possession of their property for almost 14 years, resulting in a large number of court cases, including before the European Court of Human Rights.

Regarding the complaints to the Ombudsman in 2008, in some cases the complaints were unfounded, because the real estate was in the possession of persons without any legal grounds who did not wish to leave. In such cases, the Ombudsman instructed the citizens to follow the regular legal path: to submit a complaint and seek eviction.

However, where the owners had initiated court proceedings for the purpose of eviction of the temporary users, therefore persons having the legal grounds to use the real estate (pursuant to a decision of the competent body), a problem was detected in the form of excessively long procedures and delayed enforcement of the judgement. Considering that in the cases concerned the European Court adopted a different standpoint, it can be expected that the practice of the Constitutional Court of the Republic of Croatia is to change.

In the cases concerned, the owners filed suit for the purpose of evicting the temporary users, and the judgments read that the statements of claim are adopted, but that the enforcement of the judgements should not take place until the accommodation is found for the temporary users. It takes several years for the Ministry to procure alternative accommodation, so that the enforcement procedures cannot be conducted within a reasonable term. The constitutional complaints filed by the owners concerned were rejected in several cases.

The European Court in Strasbourg, as opposed to the Constitutional Court, states in Case of Kunić v Croatia that the term of six years - during which the owner was not able to exercise his right to peaceful enjoyment of his possessions - was excessive.

We should therefore bring to mind the standpoint of the European Court (in the Case of Kunić v. Croatia): *"... that execution of a judgment given by any court must be regarded as an integral part of the 'hearing' for the purposes of Article 6 of the Convention"*.

Further to the foregoing, in our opinion court protection of the rights of the citizens is insufficiently real and effective.

To the greatest extent, the citizens file complaints in view of the non-payment of compensation due to the owners for their inability to peacefully enjoy their possessions, because of the inordinate length of the proceedings. In certain cases, the blame lies with the Directorate for Exiles, and in others the citizens themselves are to blame for not having received the compensation, because of their (in)action (change of address, failure to submit the necessary information). Furthermore, there were also cases where the complaints were unfounded, because the citizens requested compensation from the state for their inability to

peacefully enjoy their possessions, only to be established later that the possessions were used by persons without any legal grounds, therefore by persons not having a decision of the competent body to use the possessions concerned.

The Directorate frequently does not respond to the citizens' requests, after which they address the Ombudsman. Usually, after the initial "silence of the administration", the procedure continues regularly.

However, because of its "silence", the Directorate is to blame for certain cases having become barred by the statute of limitations, where it should be pointed out once again that the citizens are ignorant, poor and not in the position to engage the services of a lawyer.

In addition, the problem of restitution still exists because in certain cases the line ministry has not received the list of cases from the competent bodies which granted the possessions of absent citizens to temporary users, as illustrated by the following example:

Example:

(1) Case description (P.P.-1423/08): N. Ć., from K., addressed the Ombudsman through his lawyer, stating that he could not take possession of his property which had been granted to a temporary user and that he could not exercise his right to damage compensation, because the Ministry of Regional Development – ASSC Directorate supposedly did not have any record of his real estate. The complainant had submitted documents to the Directorate from which it is evident that an act of the Commission for Granting the Lease of Apartments, class ..., dated 29 March 1996, existed, so he maintains that the Directorate is not acting in accordance with law. The complainant filed the restitution application back in 2004.

Undertaken measures: The Ombudsman sent a letter to the Directorate and requested a statement concerning the complaint. He also enclosed documents proving that an act by which the possessions of the complainant were granted to the temporary user Ž.A. existed.

Case outcome: Although the 30-day time limit expired, at the time of writing this Report, the statement has still not been received.

Note: The restitution application was filed 5 years ago. Considering that the matter also involves a pecuniary claim (and not only restitution), the complainant's case is to become barred by the statute of limitations, so the complainant announced that he would address the competent court. This is an example of unnecessary burdening of the courts.

B) Directorate for the Reconstruction of Family Houses

The Reconstruction Directorate issues decisions on appeals against decisions which are in the first instance adopted by the state administration offices in the counties.

Administrative procedures in the first-instance are mostly not conducted by graduate jurists, while the assessment of houses and apartments are conducted by persons who have no knowledge in civil engineering. Therefore, acts are frequently of poor quality and end up annulled in the appellate procedure. Lack of communication between the bodies of state administration, the Ministry and the commissions for the lists and assessment of war damages is very common in the work of the officials who work on the cases concerned. The Ombudsman reported on this to the competent ministers and the Croatian Parliament.

In 2008, the Office received 116 complaints in the field of reconstruction (in 2007, 182). As stated in the past reports, the cases are very complex, and some of them last for 10 years. The citizens' complaints refer primarily to the inordinate length of the proceedings (especially in the second instance), irregularities in the procedure of determining the degree of damage on family houses, violations of the General Administrative Procedure Act, and the quality of reconstruction works. The deadline for issuing a decision on the appeal is two months of the submission of the appeal at the latest (Article 247 of the General Administrative Procedure Act), so such inordinate length of the proceedings is unacceptable.

The inordinate length of the proceedings can partly be attributed to the first-instance bodies which conduct the evidentiary procedure upon the request of the second-instance body (such as the hearing of the parties and obtaining other facts), poor quality of the work of the commissions for the lists and assessment of war damages, which fail to submit reports on the degree of damage within the time limit and, sometimes, take several years to produce a report, so the second-instance body cannot issue a decision. Most complaints against the work of the commissions were filed in the County of Lika-Senj. The most frequent reason for the appeals was precisely dissatisfaction with the categorisation of the degree of damage on the building, so in order to be able to make a decision on the appeal it is necessary to obtain an additional opinion of the commission for the lists and assessment of war damages.

The Ombudsman requested information on the number of unsettled cases before the Reconstruction Commission as on 1 January 2009 and was informed that there were 4 000 cases less than the year before: the current number of unsettled cases stands at 10 500. The actual situation is somewhat better, because a certain number of citizens realised their right after having repeated their requests, although the proceedings in relation to the appeals

submitted against the dismissals after the expiration of the time limit of 31 December 2001 has never been formally concluded.

There are ten members of staff who work on the cases concerned, where in 2007 there were four of them. There is also a recruitment procedure underway for five trainees. For the past four years, the Ombudsman insisted on the strengthening of the administrative capacity. The criteria for resolving the problem have now been satisfied.

Examples:

(1) Case description (P.P. - 402/08): M.K. from K. complains against the work of the Reconstruction Directorate of the Ministry of Regional Development, Forestry and Water Management, which for seven years has failed to issue a decision on the appeal against the decision of the state administration office in the County of Karlovac of 30 November 2001. The complainant's attorney sent two rush notes to the Ministry, but has never received a reply. The Office received the complaint on 20 March 2008.

Undertaken measures: On 20 March 2008, the Ombudsman warned the Reconstruction Directorate about the missed deadline, and on 11 July 2008 the Reconstruction Directorate notified the Ombudsman that the party had been informed about the state of the procedure and that it was necessary to submit further evidence to be able to continue the procedure. Three months later, the Ombudsman requested another notification about the state of the procedure.

Case outcome: The decision was finally adopted on 2 February 2009.

Note: There was a violation of the General Administrative Procedure Act and of the complainant's rights, because of the inordinate length of the procedure.

(2) Case description (P.P.-1051/03): D. and D.K. from D.L. submitted a complaint against the work of the Reconstruction Directorate of the Ministry of Regional Development, Forestry and Water Management, which has not issued a decision on the appeal against the decision of the state administration office in the County of Lika-Senj of 6 March 2001. The Office received the complaint for the first time on 9 June 2003, and the citizen addressed the Ombudsman again in March 2008, stating that the decision on his appeal had not been adopted.

Undertaken measures: In the period 2003-2006, the Ombudsman requested the Reconstruction Directorate on several occasions to submit a statement on the state of the case and to explain the inordinate length of the procedure. He received answers from which it is

evident that the county commission for the lists and assessment of war damages is (still) due a statement.

Therefore, the Ombudsman sent a rush note to the office of state administration in the County of Lika-Senj. It follows from the received statement that the county commission for the lists and assessment of war damages tried to conduct an additional on-site examination (requested by the Reconstruction Directorate) on 7 September 2006, but that nobody was home, so the examination was not carried out. In an attempt to accelerate the procedure, the Ombudsman instructed the citizen to address the competent body directly with a view to scheduling a new on-site examination.

In the letter of 9 January 2007, the citizen informed the Ombudsman that no actions were taken to finalise the procedure. After that, the ombudsman sent a warning to the head of the office of state administration, stating that the citizen's rights were being violated and requesting that special actions be taken within 30 days. To the contrary, the Ombudsman stated that he would request the competent inspection service to take action. In the statement of the office, it is stated that the commission for the lists and assessment of war damages had conducted an on-site examination on 19 October 2006 and forwarded it to the Reconstruction Directorate on 20 October 2006.

The Ombudsman sent a new rush note to the Reconstruction Directorate, providing the new information and asking the matter to be handled speedily. He was informed by the Reconstruction Directorate that the commission's opinion had been received on 30 January 2007 (therefore, the service lasted three months), and that the appeal would be handled within one month's time.

As the decision was not adopted within the said term, on 3 March 2007 the Reconstruction Directorate notified the Ombudsman that the evidentiary procedure was still underway and that a decision on the appeal would be adopted after the conclusion of the said procedure and sent to the appellant. On 11 March 2008, the Ombudsman requested the Reconstruction Directorate to provide information about the outcome of the case. The Reconstruction Directorate notified the Ombudsman that on 3 May 2007 it had requested the first-instance body to hear the parties to the procedure, but that it had not received a report on the actions taken.

On 30 April 2008, the Ombudsman requested the head of the office of state administration in the County of Lika-Senj to examine why the first-instance body had not submitted the requested information concerning the hearing of the appellant to the Reconstruction Directorate, and to examine the possibility of disciplinary responsibility of the

official working on the case (failure to comply with the statutory term for submitting a report to the second-instance body). On 21 May 2008, the subsection for reconstruction and development with the office of state administration in the County of Lika-Senj sent a report to the Ombudsman, stating that the letter of the Reconstruction Directorate dated 3 May 2007 and the rush notes that followed the letter had not been received.

On 13 June 2008, the head of the office of state administration in the County of Lika-Senj was requested again to examine the possibility of disciplinary responsibility of the official working on the matter. Considering that there was no reply to the request, the Ombudsman sent a rush note on 3 September 2008.

On 13 October 2008, the head of the office of state administration in the County of Lika-Senj notified the Ombudsman that the employment contract of the official who was in charge of the matter terminated and that he was at the disposal of the Government of the Republic of Croatia. A disciplinary procedure against the said person was also underway for serious violations of his working duties, including in the case at hand (the official in charge of the case was sick, so the case was still at that moment).

On 28 November 2008, the Ombudsman proposed to the Reconstruction Directorate to issue a decision as soon as possible and to notify him of the actions taken.

On 15 December 2008, the Reconstruction Directorate sent a statement to the Ombudsman stating that the decision was not adopted, because of the stalling of the first-instance body in conducting the evidentiary procedure.

Case outcome: In February 2009, the Reconstruction Directorate notified the Ombudsman that the decision had been adopted.

Note: There was a violation of the General Administrative Procedure Act and of the complainant's rights, because the appeal was issued only after eight years.

Pension and disability insurance

In his past reports, the Ombudsman wrote about the problems pertaining to the pension insurance reform in terms of the war veterans and the so-called old and new pensioners.

In 2008, the Office observed the problem of pensioners receiving their pensions from the 1st and 2nd pension pillars. The media wrote that the pensioners who were over the age of 45 at the time of entering the 2nd pension pillar were wrong. Namely, those pensioners who had above-the-average income throughout their working age, and who decided to pay five

percent of their contributions into the 2nd pillar five years before retirement, were left with no bonus which would increase their pension.

The problem is justified by the fact that the selection of that particular capitalised system was not an ideal solution for persons who were over the age of 40 at the time of its introduction and under the age of 50 (especially persons over the age of 45), and who had average or above-the-average salaries.

However, it is questionable whether the insured persons were aware of the so-called ideal solutions. The Ombudsman is not disputing the fact that the system of intergenerational solidarity regulated under the 1999 legislation became unsustainable, especially because of the relationship between the number of the employed and the retired, and the fact that the pensions were becoming lower and lower, and contributions higher and higher. It is therefore indisputable that the pension system reform was inevitable, but it is questionable whether the reform model was acceptable and fair with respect to all insured persons, that is, pensioners.

Furthermore, it is questionable whether the presentations and simulations of the pension system reform carried out by the competent institutions (the former Ministry of Labour and Social Welfare, Croatian Pension Insurance Institute, Agency for the Supervision of Pension Funds and Insurance, etc.) showed everything that was illogical and that is now taking place in the implementation of the reform. One could rather say that the insured persons made a poor choice when they decided to have faith in the advocates of the pension reform.

For example, the long-term projection included in the document of the former Government of the Republic of Croatia – Strategy for the Development of the Republic of Croatia "Croatia in the 21st Century" – Strategy for the Development of the Pension System and the System of Social Welfare did not mention any of the above problems, and neither did various brochures and projects made by the said institutions.

However, in the said strategy it is stated as one of the activities that in 2006 there will be an analysis and re-defining of the basic pension (a new type of pension, the so-called basic pension within the 1st pension pillar to be received by the insured persons who were at the same time insured through the 2nd pension pillar), but this has never been carried out.

Unfortunately, the illogicalities in the reform system were not rectified according to the equality principle towards all insured persons, that is, pensioners, but the problems of only certain groups of pensioners were resolved periodically.

The latest amendments to the legislation in the system of pension insurance and the adoption of the new Act on the Addition to the Pensions Acquired under the Pension Insurance Act tried to rectify one of the illogicalities of the reformed system.

However, the amendments rectify the problems and illogicalities arising from the reform only partly, improving the material position of one category of pensioners, but making the material position and the problems of another even deeper.

Therefore, the Ombudsman would like to single out the current problem of new pensioners with pensions from the 1st and 2nd pillars. Although for the time being there are only few such pensioners (around 150 pensioners), it should be pointed out that they are mostly women and that they receive symbolic amounts from the 2nd pillar.

New projections show that the persons insured through the 2nd pillar will begin to receive pensions higher than the amounts they would receive only from the 1st pillar after years and years of saving (after 2035, provided that the pension funds generate on average relatively higher earnings).

The Ombudsman holds that, since the users of the basic pension do not have the right to an addition to their salary, and that the legal changes resulted in an increase of the pensions from the 1st pension pillar, the way in which the basic pension is calculated should also be changed (for the insured persons in the 1st and 2nd pension pillars), because it has remained relatively low.

One of the possible solutions is to make it possible for the insured persons who entered the 2nd pillar voluntarily (who were over 40 and under 50 at the time of entry in the 2nd pillar) to move to the 1st pillar, that is, they should be entitled to an addition to their pension.

In order to eliminate the illogicalities in the system, for the future generations of pensioners, it is necessary to review the possibility of calculating the basic pension with a view to raising and/or increasing the rate of contributions for the 2nd pillar.

Other than the above-described special problem relating to the alignment of the pension system at the general level, in the administrative field of pension-disability insurance in 2008 the Ombudsman received 153 complaints. Furthermore, he also took actions in 180 cases from earlier years.

In the reporting period, the number of complaints dropped. Along with those from the Republic of Croatia, the Ombudsman also received complaints from the Republic of Bosnia and Herzegovina (59), Republic of Montenegro (4), Republic of Serbia (31), Republic of Macedonia (1) and Republic of Kosovo (2).

He also acted further to 24 complaints in the field of pension-disability insurance by which he requested speedier decision-making in the administrative disputes before the Administrative Court of the Republic of Croatia.

In 153 cases in the jurisdiction of the Ombudsman, the competent authorities submitted the requested notifications, that is, statements.

Of the total number of received complaints, seven were premature.

Until 1 June 2008, most of the Ombudsman's actions were aimed against the work of the Central Service of the Croatian Pension Insurance Institute.

As a rule, the Central Service would send the requested statements and instructions (sometimes after repeated queries concerning the state of a specific file with its warning to a lower body of the Croatian Pension Insurance Institute in order to speed up the pace in the case concerned).

At the proposal of the director of the Croatian Pension Insurance Institute, there was a working meeting with the Ombudsman on 26 May 2008 concerning the restructuring of the Institute and the way of handling complaints against the work of the competent bodies of the Croatian Pension Insurance Institute received by the Ombudsman and the way of determining the method of communication between the Croatian Pension Insurance Institute and the Ombudsman's Office.

The Office of the Ombudsman accepted the proposal of handling the received complaints against the work of the Croatian Pension Insurance Institute and as of 1 June 2008 all complaints and requests made by the Ombudsman are forwarded to the Office of the Croatian Pension Insurance Institute for Financial Management and Control through the Department for Office Affairs with the Central Service of the Croatian Pension Insurance Institute.

The Central Service (or the regional service) is in charge of drawing up statements requested by the Ombudsman and submitting them to the attention of the Office for Financial Management and Control. The said Office has the duty to maintain a record of the complaints received and control whether the competent body of the Croatian Pension Insurance Institute has sent the requested answer (within 30 days, in accordance with Article 7 of the Ombudsman Act).

After the method of communication between the competent body of the Croatian Pension Insurance Institute and the Ombudsman were set out as described above, and in view of the number of complaints and the possibilities open to the competent bodies of the Croatian Pension Insurance Institute, one can say that all complaints were processed in accordance with the valid regulations and the said agreement. The same follows from the Report of the Croatian Pension Insurance Institute dated 16 January 2009 concerning the cases processed further to

the complaints of the Ombudsman to the Office for Financial Management and Control for the period from 1 June 2008 to 31 December 2008.

The complaints against the work of the Croatian Pension Insurance Institute in 2008 related mostly to the length of the procedure (both first- and second-instance), especially in the procedure of realising the rights arising from the international social insurance treaties, the right to the pension or proportionate part of the pension, and regarding the forwarding of data from the central records of the Croatian Pension Insurance Institute, payment of late pensions and compensation for physical impairment.

In the cases involving the international social insurance treaties, the complaints from the Republic of Serbia and Bosnia and Herzegovina stand out by their number.

The competent body of the Croatian Pension Insurance Institute notified the Ombudsman frequently that foreign pension insurers fail to timely submit duly completed documents stipulated in the international treaties.

In such cases also the Ombudsman monitored the settling of the case and, if necessary, after a reasonable term, requested a report on the state of the file.

Based on the data submitted by the competent authorities and the complaints, it is evident that there is a problem with the cooperation between the competent service of the Croatian Pension Insurance Institute and foreign pension insurers (especially the competent pension insurance bodies in the Republic of Serbia and Bosnia and Herzegovina).

In that regard, it is pointed out once again that the international treaties on social insurance and administrative agreements applied in the Republic of Croatia prescribe mutual provision of free official assistance between the liaison bodies and insurance holders, as well as free provision of legal assistance to the parties up to the initiation of the court proceedings.

In his Report for 2007, the Ombudsman proposed that the states signatories (in this case, Bosnia and Herzegovina and the Republic of Serbia) should be notified of the aggravating circumstances in the effective settling of cases involving an international element, that is, to seriously warn the parties in charge of pension and disability insurance to take the measures of urgently improving the implementation of the signed and ratified social insurance treaties between the Republic of Croatia and Bosnia and Herzegovina and Articles 2, 9 and 14 of the General Administrative Agreement for the Implementation of Social Insurance Agreements between the Republic of Croatia and the Federal Republic of Yugoslavia.

With a view to ensuring the best possible insight into the situation in the field of resolving requests connected with foreign insurers, and as requested by the Ombudsman, the Sector for the Implementation of International Social Insurance Treaties submitted a

promemoria concerning the realisation of the Social Insurance Treaty between the Republic of Croatia and Bosnia and Herzegovina, and the Treaty with FR Yugoslavia (for the Republic of Serbia).

The body of the Croatian Pension Insurance Institute competent for the implementation of international social insurance treaties holds that after the talks with the insurance holders in B-H and the Republic of Serbia communication between the insurance holders in the said states improved considerably with a view to settling the insured persons' requests.

The promemoria ends by pointing out that the largest number of states with whom the Republic of Croatia concluded social insurance treaties do not have a prescribed time limit for the length of the procedure in resolving requests pursuant to the treaties. Therefore, other than sending the usual rush notes, the Croatian Pension Insurance Institute does not have any influence in terms of the length and outcome of cases in other states.

Examples:

(1) Case description (P. P.-268/08): D. M. from B.G. complained to the Ombudsman on 7 March 2008 that the appeal she had filed concerning her application for the payment of mature, but outstanding pensions was not being settled.

Undertaken measures: On 10 April 2008, the Ombudsman requested a statement from the Croatian Pension Insurance Institute concerning the reasons for the stalling and delays in the adoption of a decision in the above legal matter.

Case outcome: On 12 May 2008, the Implementation Sector with the Central Service of the Croatian Pension Insurance Institute sent the requested statement with a copy of the decision of the Croatian Pension Insurance Institute, Regional Service in V., dated 11 April 2008, stating that the complainant, D.M., as the user of disability pension, was to receive pension payments as of 1 May 1997, and approving the payment of mature, but outstanding pensions for the period from 1 March 1996 to 30 April 1997.

It was concluded on the basis of the explanation of the first-instance body of the Croatian Pension Insurance Institute that the procedure had been initiated further to the application for the payment of mature, but outstanding amounts of pension of the complainant dated 6 April 1997.

Note: It was established that the complainant's rights had been violated as the result of the inordinate length of the procedure and failure to respect the provisions of Article 296 of the General Administrative Procedure Act.

(2) Case description (P.P.-1134/08): On 24 September 2008, the Ombudsman received a complaint from P.V. from T. in B-H against the work of the Croatian Pension Insurance Institute with a view to the realisation of the rights arising from pension insurance.

Undertaken measures: In his letters of 29 September 2008 and 19 December 2008, the Ombudsman requested a notification from the competent body of the Croatian Pension Insurance Institute concerning the reasons for the failure to submit a response to the requests of the Ombudsman, and concerning the work of the person in charge of the procedure with the competent body of the Croatian Pension Insurance Institute for the purpose of resolving the legal matter of the complainant.

The Croatian Pension Insurance Institute, Regional Service in D., submitted the requested statement in its letter of 9 January 2009, with a copy of the decision of the first-instance body of 20 August 2007, by which the complainant, the widow of the deceased insured person Đ.V., is recognised the right to family pension to be paid by the Croatian pension insurance holder as of 18 December 2002.

It is evident from the explanation of the decision of the Croatian Pension Insurance Institute, Regional Service in D., that the procedure for the recognition of the right to family pension was initiated on 2 April 2002, in the line of duty, in accordance with Article 43 of the Social Insurance Treaty between the Republic of Croatia and Bosnia and Herzegovina.

Note: It was established that the complainant's rights had been violated as the result of the inordinate length of the procedure.

(3) Case description (P.P.-1016/08): On 28 August 2008, the Ombudsman received a complaint from J.H. from P. regarding the payment, that is, the non-visibility of payment of the contributions paid into the 2nd pillar of (compulsory) pension insurance for the period 25 January 2005 – 24 May 2006.

Undertaken measures: In his letter of 25 September 2008, the Ombudsman requested the Croatian Agency for the Supervision of Financial Services in Zagreb to provide information about the complainant's claims and the non-visibility of the said contribution payments into the account of the selected pension fund (in the 2nd pillar).

The Croatian Agency for the Supervision of Financial Services sent a response to the complaint of J.H. in its letter to the Ombudsman of 26 November 2008.

It is evident from the response that after the inspection, that is, after the conduct of the Central Register of Insured Persons and the Raiffeisen Compulsory Pension Fund, which is operated by the Reifies Pension Company for the Management of Compulsory Pension Fund,

Inc., was examined in relation to the complaint filed by J.H., it was established that the entities connected with the subject-matter of the complaint had acted in accordance with the Act on Compulsory and Voluntary Pension Funds and the related subordinate legislation.

The Agency also sent the said response to the attention of the complainant.

Note: No violations of the complainant's rights were established.

Rights of the Croatian Homeland War veterans and members of their families

All changes having occurred after the adoption of the 2004 Act on the Rights of the Croatian Homeland War Veterans and Members of Their Families (and the implementing legislation), by the new structure of the Ministry of the Family, Veterans' Affairs and Intergenerational Solidarity (hereinafter the Ministry), have resulted in a continued decrease in the number of complaints connected with the work of the competent bodies in the realisation and protection of the rights of the Croatian Homeland War veterans

In 2008, the Ombudsman received 9 complaints in total (in 2007, he received 44).

As the result of improving the systematic and continued monitoring and recording of the veterans' problems, work with the trained staff of the Ministry for receiving and answering questions made by the parties, and resolving individual requests within the legally prescribed term, that is, as the result of timely submission of notifications and provision of legal assistance to the Croatian Homeland War veterans, the number of complaints to the Ombudsman also dropped.

The complaints related mostly to the inordinate length of the administrative disputes before the Administrative Court, the manner of recording information concerning the war path of the Croatian Homeland War veterans and the inordinate length of the review process.

In accordance with his powers, in 2008, the Ombudsman forwarded the complaints that he had received from the parties to the Administrative Court of the Republic of Croatia as a rush note of the party or as his proposal to review the possibility of faster processing in cases involving excessively long administrative disputes.

Persons deprived of freedom

In 2008, the Ombudsman received 177 complaints from persons deprived of freedom, which is an increase in relation to 2007, when he received 131 complaints. However, it is necessary to point out that the said number of complaints (177) means the number of citizens who in 2008 addressed the Ombudsman once or, usually, several times. The complaints mostly related to accommodation, healthcare, work, denial of benefits, transfers, etc.

In 2008, the Ombudsman examined the prisons in Bjelovar, Osijek, Požega, Pula, Rijeka, Sisak, Varaždin and Zagreb, the penitentiaries in Glina, Lepoglava, Požega, Valtura and Turopolje, the correctional facilities in Požega and Turopolje, and the Prison Hospital. In the visits, the Ombudsman established that the problems involving the accommodation conditions in the prisons and penitentiaries mentioned in his previous reports (such as the overcrowdedness, accommodation, lack of work, the treatment of prisoners) are not only still present, but that they even deteriorated considering that in certain segments the number of prisoners had risen even more.

However, it must be pointed out that in the visits it was established that in the entire prison system, either on the basis of the Ombudsman's recommendations or at their own initiative, there are numerous activities being taken to improve the living conditions of persons deprived of their freedom. Although as a rule the activities are small in scale and are mostly funded by the prisons in line with their resources (such as the adaptations of bathrooms, restrooms, the repair of installations, new boilers, new beds, re-arranging the walking yard to enable longer stay in the fresh air, the removal or partial removal of shades, etc.), they do present a contribution to the raising of quality or at least maintenance of the minimum living standard in the prison system.

As pointed out in the previous reports of the Ombudsman, the overcrowdedness, especially in terms of the prison conditions, is the underlying problem.

The causes of the overcrowdedness are indisputably complex, but the slowness of the judiciary has the main contributing rule and so do the stricter criminal repressive measures resulting from the amendments to the Criminal Code. According to the data provided by the Prison System Directorate dating back to November 2008, it follows that as of 2001 the total accommodation capacity grew by 342 places (in 2001, the total accommodation capacity was 3 159, in 2008, the capacity was 3 501), while the number of persons in the prison system grew

by 2 278 (on 31 December 2001, there were 2 679 persons in the prison system, and on 4 November 2008, 4 957). Therefore, the disproportionate rise in the number of persons deprived of freedom in relation to the growth of accommodation capacity is more than obvious.

Overcrowdedness, primarily of prisons, leads indubitably to the inability to provide for certain rights laid down in the Act on Serving Prison Sentences and the international standards (such as the right to accommodation in line with the health, hygienic and spatial requirements, the opportunity to be in the fresh air for at least two hours a day, work, healthcare, etc.).

The right to accommodation in line with the health, hygienic and spatial requirements is laid down in Article 14, paragraph 1, item 1 of the Act on Serving Prison Sentences. The said Act and the subordinate legislation stipulate that the right entails a separate bed, leisure time in the living room, at least 4m2 and 10m3 of space per prisoner in each sleeping room, the availability of drinking water and restrooms which ensure that the basic physiological needs can be met in adequate conditions. However, the situation in the prison system is such that in most prisons there is no longer a room which could be adapted to serve for the accommodation of persons deprived of freedom. Living rooms, chapels, social rooms, even parts of the administrative premises were all turned into sleeping rooms, while mattresses are placed on the floor, as there is no longer any place for the metal bed-frames. During the examination of the Prison in Osijek, it was established that Room No 7, 38m2 in surface area, accommodates 19 persons, and to be in line with the legal minimum it should have at least 76m2. Also, at the time of the examination of the Prison in Osijek, it was established that 29 persons did not have a bed of their own, but had to sleep on mattresses on the floor. However, it should be pointed out that the inability to ensure the spatial minimum is partly compensated by the extremely intensive engagement of the prison staff in Osijek and continued communication with persons deprived of their freedom. There are attempts to neutralise the negative impact of inadequate accommodation by longer stay in the fresh air in the playground and work of as many prisoners as possible. There is a similar situation in the Prison in Požega where the prisoners work on construction works and in the garden around the building in an attempt to spend some useful leisure time outside the sleeping room, thus indisputably diminishing the prisoners' dissatisfaction with the terms of their accommodation. In certain prisons, however, in view of their location in the centre of the town (for example, in Rijeka), the possibility of further work in the open or longer stay in the fresh air is simply not possible to organise. Furthermore, there is a very large number of complaints against violations of the right to accommodation in line with the health, hygienic and spatial requirements, which were submitted in the prisons in

which the restrooms are not completely separated from the rest of the room (for example, Prison in Zagreb, Prison in Bjelovar). In such cases, the provision of Article 74, paragraph 2 of the Act on Serving Prison Sentences, which states that the prisoner must as a rule be placed in a separate room to protect his privacy, seems like an unattainable goal. During the examination of the Prison in Sisak, in Room No 15, 26m2 and 65m3, there were 12 persons, so the room should be 48m2 and 120m3. The only window in the room faces the neighbouring wall which is only around 60cm away, so that not even fresh air or light can enter the room. There are 8 chairs in the room, since there is no place for more of them, because of the beds, so that the prisoners cannot eat at the table, but in their beds. Considering that there is a corridor in front of both rooms, which is closed off with steel bars, we proposed to the warden that the doors to the rooms should be left open during the day, so that more air could enter, and so that the persons could walk a few meters, thus compensating for the inadequate accommodation conditions. Naturally that the conditions in the said room are not even close to those described in Article 74, paragraph 4 of the Act on Serving Prison Sentences (each room in which the prisoners live must have both daylight and artificial light which enables reading and work without fear of the loss of eyesight).

In view of the foregoing, it is not necessary to emphasise again the inability or considerable limitations in view of the implementation of Article 96 of the Act on Serving Prison Sentences, which states that the penitentiary or prison are to provide for the premises and equipment to ensure purposeful use of leisure time.

Along with the described accommodation conditions, overcrowdedness is also reflected negatively on other rights, such as the right to work. Lack of work for the current number of persons deprived of their freedom is most surely one of the greatest problems facing the prison system. Namely, there are very few prisoners who do not want to work, as demonstrated by the fact that in the penitentiaries, both semi-open and open, all prisoners work, except those who are not able to work. For several years, the Ombudsman has been pointing out the problems of the printing-house in the Penitentiary in Glina, the capacity of which is almost completely unused, although blank forms for the entire judicial system could be made there, thus surely raising the number of prisoners who work. The use of the current and the opening of new possibilities for work is particularly important in the Penitentiary in Glina, in which not only are there mostly young persons for whom work is extremely important, but also one should bear in mind that a new facility for 420 prisoners is being built and that work for these prisoners should be taken into consideration.

In the examinations during 2008, just like in the previous years, it was established that overcrowdedness affects the provision of healthcare. Namely, in view of the increased number of prisoners and an insufficient number of judicial police officers and vehicles, the prisoners cannot be taken for medical examinations at the scheduled hours. The greatest number of complaints relates to the Penitentiary in Glina, where the prisoners state how they are not taken for check-ups (or removal of the drug) at the scheduled time, as recommended by their dentist, but up to a month later. Furthermore, in view of the increased number of requests for the provision of various medical operations, the penitentiaries are not able to bear the costs of treatment, and the length of the remaining part of the sentence is also taken into consideration at the time of scheduling individual operations. Adopting decisions on the taking of a particular medical operation on the basis of the remaining part of the sentence or making decisions on the basis of the financial resources of the penitentiary or other non-medical reasons might lead to violations of the right to healthcare and is contrary to Article 103 of the Act on Serving Prison Sentences, which stipulates that prisoners must be provided treatment and that the measures and activities of health protection in terms of their quality and scope must be in line with those in the public healthcare system for persons insured through compulsory health insurance.

During the examination of the Prison Hospital, it was established that in the previous 6 months there had been no testing of the prisoners for hepatitis, because the funds were not ensured (so far, the funds were ensured through a project with the Clinic for Infectious Diseases "Dr. Fran Mihaljević"). The only funds which the Ministry of Justice ensured in the field are the funds for the purchase of interpherone (a drug used for the treatment of persons with Hepatitis C) for 42 individuals.

Regarding the provision of health protection services to the persons in the prison system, it is necessary to describe the situation established during the visit to the Prison Hospital. Namely, the Prison Hospital is constantly overcrowded (on the date of the examination, the capacity was more than full at 141%), which considering that it is a healthcare institution is a serious problem. In the rooms, there are up to 10 patients, so that the health professionals have no beds available, which in certain cases can seriously jeopardise the quality of providing medical assistance. In the rooms, which are locked during the day, there are no toilets, so the patients must call the judicial police to meet their physiological needs. There are only 9 toilets and 12 showers for all persons in the Prison Hospital, and on the day of the examination, there were 149 persons in the Hospital. The condition of the building and of the rooms is inadequate and in certain segments even dangerous (such as old electrical installations, water pipes, etc.). In the hospital building there is no elevator, which creates great

difficulties in surgical or immobile patients, because they have to be carried to another floor. It frequently happens that the judicial police help carry immobile patients.

Furthermore, there is lack of space, so that all women who are in the Prison Hospital are put in a single department, regardless of the reason for their hospitalisation, so it can happen that persons subject to the security measure of compulsory psychiatric treatment share the room with surgical patients.

The Prison Hospital is a closed penitentiary. In view of that fact, it is completely unacceptable that the hospital garden has got only an inappropriate wire fence, which is the reason why most patients (other than those serving their sentences in semi-open or open facilities) are not allowed to walk in the very spacious garden, but that their movement is restricted to a small fenced walking-yard, which is 5x15m in size.

Considering that one in five prisoners suffers from a psychiatric disorder, it is extremely important to ensure adequate psychiatric treatment even for those prisoners who are not subject to the security measure of compulsory psychiatric treatment (Report on the Work of Penitentiaries, Prisons and Correctional Facilities of the Government of the Republic of Croatia, December 2008). As pointed out in the previous reports of the Ombudsman, in the prison system there are still too few psychiatry specialists, who brings into question the purpose of serving prison sentences in the said category of prisoners. An additional aggravating factor is an insufficient number of treatment staff in the prison system.

In the current conditions, the treatment departments, which in most institutions in the prison system do not have the capacity foreseen in the systematisation, along with the growing overcrowdedness, are not able to do their job to the extent expected of them. Namely, regardless of the expertise and commitment of the staff to their job, the prisoners frequently complain that nobody talks to them, that they are not involved in treatment programmes, procedures, training, development, etc., which would contribute to the realisation of the purpose of serving their prison sentences. The treatment departments are the main authority in charge of the serving of prison sentences. Considering that it is them that in each individual case propose the manner and procedures which will be used to realise the purpose of serving the prison sentence concerned, and monitor and propose changes to a particular programme, it is essential to take special care of the number and structure of the staff in each institution. During the examinations, it was established that in the prisons in which the number of treatment staff increased since the previous examination, the prisoners' mood improved significantly (for example, Prison in Osijek, Prison in Požega). It is also essential to systematically monitor the individual programmes of serving prison sentences, and the work of

the Department for the Valuation and Improvement of the Programme of Serving Prison Sentences with the Central Office of the Prison System Directorate in the Ministry of Justice should also be intensified. Without adequate work of the treatment departments, the prison sentence becomes imprisonment as punishment and the legally prescribed purpose of punishment is not realised, while the special prevention-oriented purpose of punishment prescribed by the Criminal Code is not achieved either.

According to the Prison System Directorate, the share of detainees in the prison system is around 30%. The complaints filed by the detainees still relate to the living conditions in the prison and to the length of criminal proceedings. The Constitution of the Republic of Croatia (Article 25) stipulates that detainees and persons accused of a criminal offence have the right to a trial within the shortest possible legally fixed term, and to be either freed or convicted within the legal term. The Ombudsman forwards such complaints to the Ministry of Justice in accordance with its legal powers. During the examinations in connection with the said problem in 2008, a particularly large number of complaints was submitted in the Prison in Rijeka, which can be interpreted by the fact that the prison concerned also accommodates detainees in the matters within the jurisdiction of USKOK. For example, the detainee S.G. states that she is in detention as of April 2007, and that only one hearing was scheduled until December 2008 (and later cancelled). The detainee V.V. also states that she is in detention since September 2007, and that there were no hearings until December 2008. The slowness of the judicial authorities in detention cases, along with being contrary to the Constitution of the Republic of Croatia and the Criminal Procedure Act, places a considerable "burden" on the prison system, and thus contributes to the overcrowdedness and indirectly to the described conditions in the prisons and penitentiaries.

Considering that it is more than obvious, just like in the previous reports, that the basic problem of the prison system is overcrowdedness, since it results in violations or threats to a number of other prescribed rights, the Ombdusman will pay special attention to the monitoring of the implementation of the measures to be taken with a view to reducing the prison population and increasing the accommodation capacities (for example, the issuing of detention, the issuing of alternative sanctions, the establishment of the probation system, the building of new capacities, the shortening of the duration of detention, etc.).

In relation to the cooperation of the Ombudsman and the Central Office of the Prison System Directorate in the Ministry of Justice, and all penal institutions, it is necessary to point out that it still happens that in individual cases it follows from the report that the requests made by the Ombudsman are not complied with, or that certain reports in the same matter are

contradictory. However, the said cases are an exception and the cooperation is still regarded as positive.

Examples:

(1) Case description (P.P.-1219/2008): The prisoner M.D. is serving his prison sentence in the Penitentiary in Glina. He submitted a complaint to the Ombudsman, to which he enclosed medical records, stating that his mother was very sick and that he had not seen her for two and a half years. The complainant states that his request to visit his mother was rejected, advising him to improve his conduct, and at the time of deciding on his request the competent authority took also into account the success of his individual sentence serving programme.

Undertaken measures: The Ombudsman requested the Penitentiary in Glina to issue a report, considering that the case concerned did not involve the approval of a benefit, but an extraordinary leave. Namely, the Act on Serving Prison Sentences enumerates reasons for the approval of an extraordinary leave (one of them being to visit a seriously ill family member). In his letter, the Ombudsman pointed out that it was not a benefit and that the conduct of the prisoner and the success of his sentence serving programme were not relevant for making the decision. However, in the report issued by the Penitentiary, there is disagreement with the Ombudsman, and it is stated: "... the statement that an extraordinary leave is not a benefit cannot be accepted, because in the eyes of the prisoners in a closed penitentiary every leave is a benefit, even if the reasons stipulated in the Act on Serving Prison Sentences involve the illness and death of a family member". Having acknowledged the provision on extraordinary leave and the provision of Article 130 of the Act on Serving Prison Sentences in which the said benefits are enumerated, the Ombudsman sent a recommendation to the Penitentiary pointing out that an extraordinary leave, in accordance with the Act on Serving Prison Sentences, was not a benefit based on either its concept or content, and that any interpretation of the Act on Serving Prison Sentences "through the eyes of the prisoners" was legally absolutely unacceptable.

Case outcome: Although more than two months passed since the last recommendation, the Ombusman was not informed about the action taken further to his recommendation.

(2) Case description (P.P.-338/2008): The prisoner M.B. submitted a complaint to the Ombusman regarding the provision of medical care. The complainant states that he has great

difficulty breathing and that an operation was scheduled at an examination, but that despite the passage of time no operation has been scheduled.

Undertaken measures: The Ombudsman sent a recommendation that the complainant should be provided treatment in line with what the medical documents recommend, and that special measures should be taken to schedule and perform the operation.

Case outcome: Having acknowledged the Ombudsman's recommendation, the Central Office of the Prison System Directorate in the Ministry of Justice notified the Ombudsman that an operation had been scheduled in accordance with his recommendation, and that the complainant had also been notified.

Construction and physical planning

The complaints in the field of construction mostly related to the work of the building inspection in connection with illegal construction.

In relation to 2007, in which the Office received 45 complaints, the number of complaints against the work of the building inspection in 2008 was at the same level: 53.

Other complaints related to the procedures of issuing the building permit and the field of physical (spatial) planning.

Building permits

Regarding the issuing of the building permit and the decision on construction terms, in 2008 the citizens requested protection before the Ombudsman against the missed deadlines for the issuing of the administrative act authorising construction. In the said cases, the deadline within which the administrative decision may be issued was missed repeatedly. Whenever a request is not settled or the procedure repeated in the cases where the building permit was nullified in the regular procedure, the citizens suffer great material, and often incompensable non-material damages. The practice shows that the legal remedy of "appeal when the first-instance decision was not adopted" (Article 246 of the General Administrative Procedure Act) is not effective, because the first-instance body usually does not issue the decision within the 30-day term provided by law, and the second-instance body did not take advantage of its

authority to settle the investor's requests on its own in any of the cases examined by the Ombudsman.

Physical planning

In 2008, the citizens requested the Ombudsman to protect their rights arising from the citizens' right to participate in the performance of the activities of local self-government concerning physical planning. The complaints received by the Ombudsman were filed as the result of the adopted changes to the urban zoning plan. The main reason for seeking protection is the violation of the rights of the persons having participated in a public debate to receive timely notice in the case of non-acceptance of the proposal and remarks made in the public debate about the proposal of the plan. The final proposal of the changes to the plan is submitted to the adoption procedure before the authority competent for drawing up the plan performed its obligation to issue a notification which would include an explanation of the reasons for the decision (Artice 96 of the Act on Physical Planning and Construction).

The complaints show that even where a timely explanation concerning the remarks made in the public debate is received, the citizens do not enjoy effective protection of their rights. A new public debate about the proposal of a plan, as a democratic means of protecting the citizens' rights, is carried out only where the plan changes as the result of acceptance of the remarks made in the public debate (the proposal of the plan is changed to the extent that a new public debate is necessary).

The most frequent citizens' complaints in public debates concerning the proposal of a plan relate to the establishing of the purpose and borders of construction zones, where the changed purpose results in a restriction or loss of value in relation to a specific land plot. In the said cases, the procedure of land acquisition from the owner is not conducted.

Although changing the purpose of a particular area is not contrary to the principle of non-violability of ownership as the highest value of the constitutional order, considering that changing the purpose does not affect ownership relations, the local self-government was warned that in the performance of activities involving spatial and urban planning it was working on the citizens' needs, so that any changes made to the current plans should not neglect or violate the citiziens' rights arising from the existing spatial documents, especially if the physical planning terms or the location permit had already been issued. The powers of the local self-government do not mean that the citizens' right to the current way of using the

building which they built in accordance with a buiding permit may be restricted through physical and urban planning.

Building inspection

When it comes to illegal construction, the Ombudsman is addressed by the citizens who are not satisfied with the way in which the building inspection works and by those who expect and demand from the building inspection to act in accordance with the documents issued, but not enforced.

Along with the 53 new complaints, in 2008 the Office worked on 70 cases of illegal construction from the previous years (submitted in the period from 1997 to 2007), with respect to which the procedure of the building inspection is not complete, and is still underway. The enforcement procedures are not conducted even after several years of the issuing of the inspection measure (the complaint with the longest non-enforcement period relates to an inspection measure issued 40 years ago). In such cases, the citizens address the Ombudsman asking protection, because they have no legal remedy at their disposal by which they, as the injured party, could demand finalisation of the inspection procedure within the shortest possible term before the body of state administration.

In most cases involving construction subject to inspection supervision in 2008, the procedures were duly conducted and despite the citizens' objections there were no grounds for filing an objection against an ommission in the procedure or an objection of "poor administration" to the Directorate for Inspection. The said decrease in the number of cases with respect to which the Ombudsman might file an objection concerning a violation of the complainant's rights shows that in the inspections the competent bodies acknowledged the earlier recommendations and warnings made by the Ombudsman, in which he had pointed out the obligation of taking the actions which the Ministry was authorised to take, but also proposed that in each case the authorities should act according to the principle of good and professional conduct of the administration towards the citizen.

In the cases where the Ombudsman conducted the procedure of examination, the Directorate for Inspection carried out new supervisions and examined all construction acts issued with a view to taking the measures of aligning inspection-related actions with the building regulations. It is important to point out that the inspection did not carry out the procedure of involuntary demolition in the cases in which it established that, for example, the

construction works had been performed in accordance with an act in force at the time of commmencement of construction, the construction of which was later completed, and where it established that the breach was not so extensive to render it more important than what was to be protected by the demolition. In such cases, no action was taken in order to provide an opportunity to adjust the construction to the building regulations.

It is also important to point out that with respect to the demolitions not conducted until 2008, for whatever reason, where the order is in force and enforceable, a warning was issued. The illegal investors, after the Directorate for Inspection warns them, perform the inspection measure on their own or, whenever possible, initiate the procedure for legalisation (by obtaining a decision on the on-site situation).

However, despite the fact that there is evident progress in resolving inspection cases, it is obvious that the cases subject to building inspection are not transparent, because the procedure is not complete within the time limit within which it could and should be concluded, and as a rule it is not possible to know when it will be finished. The citizens have no simple, fast and efficient mechanism of protection at their disposal, and they remain unprotected. On the other hand, with respect to the investors who fail to act in accordance with the inspection measure within the fixed term, in some cases there is no effective sanctioning mechanism. In some cases, the inspection can issue a measure sanctioning an investor having failed to conduct actions he has the duty to conduct for the purpose of enforcement of an inspection decision (for example, if in the case of having to remove an illegal part of the construction and reconstruct the existing building he fails to draw up documents in accordance with the conservational guidelines for carrying out the reconstruction).

During the discussion about the complaints filed for illegal construction in the course of 2008, it was established that a special problem arises from the fact that citizens whose legal interests are violated by illegal construction and who need protection of their right cannot protect the violated right in the inspection procedure, because the building regulations do not recognise them as a party to the procedure. Recognition of the status in the procedure of building inspection is possible only when the interested party makes such a request officially. The person requesting recognition of his status as a party in the inspection procedure must prove his legal interest or make it obvious that there is a need for him to become involved or paticipate in the inspection procedure (e.g., in the case where the construction enters the neighbour's plot, where the construction leans on the neighbour's building or damages the existing neighbouring building, and the like). Submission of the request for the recognition of the status of party in the inspection procedure does not mean that the status must be recognised,

because the provision of Article 284 of the Act on Physical Planning and Construction stipulates who may be a party to the procedure, and the owner of the neighbouring construction plot is not mentioned.

Considering that according to the rules of the administrative procedure the status of party in the administrative procedure must be recognised whenever the persons concerned can prove the existence of their rights and legal interests, it is both actually and legally illogical that the citizens in inspection matters can exercise their right more easily by seeking court protection before the Administrative Court than during the previous regular procedure (the first- and second-instance procedure). Namely, the Administrative Court adopted the following standpoint in deciding on a complaint against a decision on demolition and cancelling the second-instance inspection decision: "... *according to the legal opinion of this Court, the owner of the building plot enjoys the position of party in the inspection procedure being conducted in connection with illegal construction on the said plot within the meaning of Article 49 of the General Administrative Procedure Act. Therefore, in all phases of the procedure, and in the enforcement procedure, the owner of the plot has got all the rights of a party, and therefore is entitled to file an appeal for the 'silence of the administration' (...)*", and also to demand implementation of the procedure of administrative enforcement.

If the injured parties would be recognised the status of party more easily and more frequently, maybe the inspection procedure, regardless of the fact that it is initiated and implemented in the line of duty, would be concluded earlier in a larger number of cases, so it could be claimed that the the citizens receive fast and effective protection of their rights before the administrative body.

Examples:

(1) Case description (P.P.-1554/05)**:** In December 2005, D. M. from K. complained against the work of the building inspectors in her case. She requested the Ombudsman to protect her rights, because the procedure concerning the construction works performed by her neighbour with respect to which the building inspector had issued a decision on demolition almost forty years before, because of deviations from the building approval (on 16 October 1968), was still not concluded and was still "open". D. M. proves her position as party for the disputed construction and the justifiability of the complaint by the judgement of the Supreme Court dating back to 1974, the judgements of the Administrative Court dating back to 1979 and 1990, and the second-instance inspection decision of 6 June 2005. Although the objections relate to the work of various inspectors (the former municipal inspector and the inspector of the

association of municipalities, the building inspector of the regional unit), the burden of responsibility is on the Ministry, which is competent to conclude the matter.

Undertaken measures: At the objection of the Ombudsman for the inordinate length of the inspection procedure (40 years), in the letter of 30 May 2008 the Ministry responds that the complainant "is abusing her civil rights" by making frequent requests and sending noticees which directly "result in the waste of time by the state bodies, in particular the Ministry of Environmental Protection, Physical Planning and Construction, and thus indirectly, that is, primarily place all other citizens in a materially unequal position".

The received answer continues to explain the situation which is characterised by the fact that the case was within the competence of the former building inspections, where a significant portion of the answer is taken up by numerous and various actions taken by the administrative and court bodies. However, the same answer does not recognise that the building inspection, in the period after it was established at state level (1999), did not take advantage of the measure by which it would finally end this case of indisputably illegal construction, that is, that it failed to prevent the procedure from lasting over the next ten-year period, which is now in total almost forty (40) years, and that is still not finally settled. Even if the complainant did cause the state bodies to waste time on her case, such a qualification of her actions might possibly be given for the time period after 1996, when the second-instance procedure was concluded by the rejection of the appeal of D.M., and even then only if in 1996 the unfoundedness of D.M.'s request was indisputably and lawfully established and explained in relation to the structure on the plot of her first neighbour, at a distance of 0.25m from the border. However, it is obvious that there were still reasons for the implementation of the inspection procedure, because on 6 February 2002 with respect to the disputed construction works there were still reasons for the issuing of the measure by the building inspector, when he issued the decision ordering alignment of the situation on site with the building permit, that is, alignment with the newly-issued building permit of December 1995 for reconstruction.

Case outcome: The procedure is underway, and D.M. is still expecting and requesting the state authorities to take action in accordance with the acts issued by the building inspection.

Note: After she requested protection from the Ombudsman, there was an inspection in relation to the building of the complainant D.M.

On 25 April 2008, there was an inspection on the plot of D.M., at which time it was established that there had been construction works without a building permit: a roof above the terrace and entrance to the house. The building inspector issued the order to have the roof removed. The procedure of obtaining the permit is underway.

(2) Case description (P.P.-491/05): The owners of a yard residential building, D. and A. G. from Z., complained against the work of the building inspection on the grounds that the measure of demolition of the town building inspector (of 21 August 1992) for the construction of a street residential building erected on the plot which is co-owned by the complainants and the investor had not been enforced. Protection before the Ombudsman was requested after the Directorate for Inspection responded that they could not request administrative enforcement of the inspection decision, because the enforcement procedure was conducted in the line of duty, and because they were not a party to the inspection procedure. The construction works were performed without a building permit and forcibly, as the investor acted towards D. and A.G. from the position of power and influence. The complainants are exposed to everyday harrassment and occasional threats by the owner of the street residential building.

Undertaken measures: The length of the inspection procedure was first discussed before the Ombudsman, specifically: in relation to the non-suspensive character of the appeal issued against the decision of the building inspector, the enforceability of the decision on demolition (11 January 1993), the time period during which the administrative body failed to enforce its decision (until September 2008, when the complaint was discussed once again before the Ombudsman), that is, the time period during which the procedure of enforcement, initiated by the adoption of the conclusion on the permit for enforcement, was not continued.

An explanation of the duration of the inspection procedure was not provided directly. It was only twelve (12) years after the issuing of the conclusion on the approval of enforcement (in May 2005) that an action was taken with respect to the construction to determine the matter of the limitation period on enforcement (the commencement of the process of determining the period of duration of the procedure for keeping the structure in space, with a view to exactly determining the period during which in the period from 1992 to 1995 the inspection procedure could be interrupted). However, the only thing that was established is that the file for keeping the structure in space was lost in the city office, and until January 2006 its reconstruction was not completed.

On several occasions (seven in total), the Ombudsman warned that it was impermissible that the complainants cannot protect their rights, while such protection can be ensured through forced implementation of demolition of illegally performed works, that is, illegal construction.

Case outcome: Although the structure was on the List of Enforcements for 2003, the demolition was not performed, and the Ombudsman does not have information whether the enforcement of the inspection decision of 31 August 1992 is barred by the limitation period.

Note: The procedure was conducted in a way that it is not possible to determine whether there is any determination to carrry out the enforcement (the enforcement should have been carried out in 2003). Although the responsibility lies with the building inspection, the stalling of enforcement until the moment when there arises the danger of limitation for the implementation of the procedure was committed on the part of the city office for physical planning (the stalling of the procedure for keeping structures erected contrary to the zoning plans and without an approval for building, because it was concluded by the decision of 12 October 1998, supposedly the file was lost).

The building inspection cannot enforce a decision with respect to which it is possible to file an objection against the expiration of the term within which the demolition can be performed.

(3) Case description (P.P.-52/08): M.M. from Z. complains against the non-enforcement of a decision on demolition, which was established to be enforceable in the conclusion of the building inspector of 9 December 1999. The illegal structure is located partly on his plot, and it also prevents access to his family house and his only home. In the complaint, he says that in view of its state of dilapidation, the illegal structure is a constant threat.

Undertaken measures: In relation to the suspected danger and impending damages in view of the poorly built construction, the building inspection issued an opinion stating that the structure needed no emergency intervention.

The inspection did not conduct the procedure of involuntary enforcement, because after the inspection the procedure of legalising the auxiliary structure was initiated. As the parties also initiated a civil dispute for the purpose of the right of ownership, the inspection was suspended on 11 June 2003 until the adoption of a decision of the Municipal Civil Court in Zagreb in the matter under the number: XVI-…/00.

However, after the Ombudsman expressed his objection that the enforcement procedure with respect to the auxiliary structure had not been conducted within a reasonable term, and that it was stil not finished, there was also an inspection of the building of M.M. The report submitted to the Ombudsman mostly describes the conduct of the complainant, and not the illegal investor, and the fact that the complainant was also an illegal investor who instead of the current house built a new one without the building permit.

Case outcome: The procedure before the Ombudsman was concluded.

It was concluded that any further examination of the case would be contrary to the reasons why M.M. had requested protection in the first place. Even more, through the actions

taken by the Ombudsman the complainant "accelerated" the work of the building inspection in relation to his (illegal) building.

The enforcement of the decision on demolition will begin after the inspection procedure initiated against the complainant is over, and the enforcement will be carried out simultaneously with respect to both illegally constructed buildings on the same plot (the residential building and the auxiliary building).

Status-related rights and civil status

In 2008, there were 56 complaints in the field of status-related rights and civil status, where the largest number related to the procedures of acquiring Croatian citizenship and the procedures of approving the residence and work of aliens in the Republic of Croatia.

The complaints referring to the acquisition of Croatian citizenship were submitted mostly against the inordinate length of the procedure. In the Report for 2007, we pointed out that the procedure concerned sometimes lasts more than two years.

The complaints against the inordinate length of the procedure are followed by the complaints against the procedure of privileged naturalisation pursuant to Article 16 of the Croatian Citizenship Act. The said provision stipulates that Croatian citizenship may be acquired by a member of the Croatian people who does not have permanent residence in the Republic of Croatia if it follows from his behaviour that he respects the legal order and customs in the Republic of Croatia, that he accepts Croatian culture, and if he issues a written statement that he considers himself to be a Croatian citizen. The Interior Ministry requires that membership of the Croatian people as a subjective category should be made objective in a way that the applicant declares himself as a member of the Croatian people in legal transactions, especially by stating his Croatian nationality in certain documents. It follows from the decisions rejecting the complainants' applications for admission to Croatian citizens under Article 16 that the Interior Ministry frequently does not examine the characteristics of the applicant concerned and the documents that he may have in legal transactions.

On 1 January 2008, the Act on Aliens, which was passed on 13 July 2007, entered into force. The said Act stipulates more restrictive reasons for deviation from the rule that an application for the issuing of the approval for first-time temporary residence in the Republic of Craotia must be submitted to the competent diplomatic mission or consular post of the Republic of Croatia, which was the cause of several complaints. Furthermore, the Act also

stipulates that in order for the approval of temporary stay to be issued there must be proof of payment of all obligations arising from health insurance. Failure to meet the said condition was a frequent reason for refusing temporary residence applications.

The Act on Aliens, as a *lex specialis*, stipulates the obligation that persons filing an application for the issuing of the temporary residence approval must conclude mandatory health insurance, while the Mandatory Health Insurance Act stipulated the said obligation only for persons with approved permanent residence in the Republic of Croatia. The new Mandatory Health Insurance Act, which entered into force on 1 January 2009, introduced the obligation that aliens with approved temporary residence must also conclude mandatory health insurance.

The complaints in the field of civil status referred to the entry of the fact of birth, marriage and death in the state registers and the issuing of excerpts and certificates from the state registers.

Examples:

(1) Case description (P.P.–173/08): M. M. states in his submission to the Ombudsman that for ten years he has approved permanent residence in the Republic of Croatia. The application for admission to Croatian citizenship was submitted to the Interior Ministry on 8 May 2006. Considering that his application was not resolved for a period of two years after submission, he addressed the Ombudsman.

Undertaken measures: The Ombudsman requested the Interior Ministry to provide a notification about the reasons why the application of M.M. for admission to Croatian citizenship was not resolved and which actions the Ministry intended to take with a view to adopting a decision.

The Interior Ministry notified the Ombudsman that in the procedure further to the M.M.'s application for the acquisition of Croatian citizenship it had requested the submission of documents proving the citizenship of Bosnia and Herzegovina, because the official records had shown that M.M. had had a travel document of Bosnia and Herzegovina. In the same letter, it is stated that after the requested document is received, the decision will be issued and forwarded to the competent police administration to be served to the party.

One month after he received the letter of the Interior Ministry, the Ombudsman requested a notification about the state of the file of M.M.

Case outcome: The Interior Ministry notified the Ombudsman that it had issued a decision admitting the complainant to Croatian citizenship and forwarded it to the competent police administration to be served to the party.

(2) Case description (P.P. – 1319/08): In *Večernji List* of 12 November of this year, an article entitled "They won't give me my certificate of citizenship" describes the case of the family P. The spouses A. and M. P. have five underage children, three of whom are preschoolers. M.M. is a retired Croatian Homeland War veteran, and in hospital in Zagreb he was operated on because of a life-threatening disease. His wife A. is Hungarian by nationality. She was born in Serbia in 1978. Although she is married to a Croatian citizen, and has lived here since 1980, she does not have Croatian citizenship.

According to the information obtained, the wife A.P. was not granted permanent residence in the Republic of Croatia, because she does not meet the requirement laid down in Article 83, paragraph 1, item 3 of the Act on Aliens, that is, she has an outstanding debt resulting from unpaid contributions for health insurance in the amount of HRK 16 000.00 towards the Croatian Health Insurance Institute.

Undertaken measures: In agreement with the Ministry of Health and Social Welfare, the Ombudsman sent a recommendation that in view of the serious health and social conditions of the family the debt of A.P. towards the Croatian Health Insurance Institute should be written off.

If the debt resulting from unpaid contributions for mandatory health insurance were to be written off, all obstacles for resolving the status of A.P. would be eliminated, so the Ombudsman issued a recommendation to the Interior Ministry that in view of all circumstances of the case A.P. should be granted permanent residence in the Republic of Croatia.

Case outcome: The Interior Ministry issued a decision granting permanent residence in the Republic of Croatia to A.P.

Civil service and employment relations

1. Rights violations in the field of civil service and employment relations

In 2008, the Office received 100 complaints in the field of civil service and employment relations which referred to rights violations in proceedings before the bodies of state administration and other state bodies, and administrative and other bodies of the units of local and regional self-government.

The complainants referred to rights violations in the procedure of admission to the civil and local service, unlawful suspension of contests, disposal and termination of service, re-assignment, appraisal, disciplinary and similar procedures, mobbing in the civil and local service, and the status and rights of employees in state bodies.

At the same time, the complaints referred to rights violations in view of the implementation of the procedure of establishing employment in the institutions of culture and in schools, and in the municipal and other public services without a public contest or based on unlawful contests, thus preventing the unemployed Croatian Homeland War veterans from exercising their right of priority in employment in recruitment procedures in the institutions and other public services, which is stipulated in a special law.

Frequent changes of the legislation governing the civil service and employment also contributed to the violations of the rights, as well as numerous ambiguities arising from their application, the duration of administrative and administrative-court proceedings, especially as the result of repeated adoption of unlawful acts after judicial review before the Administrative Court, that is, inconsistent enforcement of administrative-court decisions.

1.1. Violations of the rights of civil servants and employees

Complaints in the field of civil service and employment relations in the civil service and other state bodies referred to violations of the rights which are the consequence of numerous ambiguities in the application of the Act on Civil Servants and the failure to adopt all regulations required after the adoption of the said Act, which the Ombudsman pointed out before in his previous reports.

According to the submitted complaints, the recruitment procedure for admission to the civil service laid down in Article 46 of the Act on Civil Servants still results in an unequal position of the candidates from the ranks of civil servants in terms of the accessibility of the work post under equal conditions. Namely, whenever the selected candidate works in another state body and has the status of civil servant only the decision on re-assignment is issued (without a decision on admission or selection), and the head of the body in which the civil servant works is asked to provide a written approval for the re-assignment. Where the selected candidate does not have the status of civil servant, in the contest procedure the decision on admission with the right to appeal is issued, which is followed by the decision on assignment, and no approval is necessary.

In practice, it was observed that the selected candidates from the ranks of civil servants in the contest procedure are instructed to terminate their service amicably in the body in which the candidate worked, which is contrary to the characteristics of the contest procedure.

In the procedure of admission to the civil service, such practice results in irregularities and harmful consequences, especially in relation to the selected candidates from the ranks of civil servants, which they pointed out in their complaints.

In the Report for 2007, we presented the case of M.M. from Zagreb who was selected as the best candidate in a contest, but received no official document (act) to that effect. In order to shorten the procedure as much as possible, she accepted the proposal and filed a request for amicable termination of employment at the position of clerk in the Municipal Court in Z., which was approved in a decision.

The contest procedure for admission to the civil service was later suspended contrary to law, and the complainant lost her previous job, as well. Although the administrative inspection of the Central State Administrative Office confirmed the irregularities in the procedure, because of the claim that by application of Article 36 of the Act on Civil Servants no appeal is permissible against the decision on suspension of the recruitment procedure, the damage that the complainant suffered by losing both her jobs was not remedied.

In 2008, in protecting the remaining rights of the complainant the Ombudsman sent a recommendation to the Municipal Court in Z. that it should renew the procedure against the decision on termination of service in the line of duty, which would not have taken place if the contest in another state body had not been unlawfully suspended. The Municipal Court in Z. accepted the recommendation of the Ombudsman, by which the complainant was enabled to return to her former job after one year. However, the consequences of the unlawful suspension of contest and the termination of service at her present work post which the complainant had to endure for one year have never been remedied.

In the reporting period, the Ombudsman also received other complaints referring to violations in the procedure of admission to the civil service, that is, the procedure of testing one's knowledge, skills and abilities, and in that respect against the suspension of the procedure of admission to the civil service contrary to the reasons laid down in the Act on Civil Servants.

According to Article 45, paragraph 5 of the Act on Civil Servants, the procedure of admission to the civil service is to be suspended if within the term stated in the contest the number of candidates is insufficient or if the candidates do not meet the formal requirements for admission to the civil service or if they do not achieve satisfactory results at the testing.

It is unquestionable that the procedure of admission to the civil service under the provision of Article 45 of the Act on Civil Servants (OG 92/05 through 27/08) will be suspended if no candidate applies for the contest or if no candidate meets the prescribed requirements or if no candidate achieves satisfactory results at the testing and during the interview (testing one's knowledge, skills and abilities) according to the standards laid down in Article 12 of the Regulation on the publication and holding of public contests and internal vacancies in the civil service (OG 8/06 through 13/08). In the said cases, the use of legal remedies is not foreseen and that is not disputable.

However, through the application of the provision of Article 45, paragraph 5 of the Act lawfully the contest should not be suspended if the candidates in the testing of their knowledge and skills achieve satisfactory results, in accordance with the procedure and standards laid down in the Act and the Regulation. The rights of the candidates who achieved satisfactory results in the testing of their knowledge and skills are thus unlawfully denied.

We should call to mind that the possibility of suspending a contest under the right of discretion of the head of the body was laid down in the former civil service legislation (Act on Civil Servants and Employees of 2001), and the new civil service law on civil servants in the local and regional self-government of 2008 also foresees it. However, the new Act on Civil Servants, which is applied since 2005, abandons the unconditional right of the head of the body to suspend a contest.

Therefore, although the legislation does not provide for the possibility of an appeal against a decision on suspension of contest, which was confirmed by the Central State Administrative Office in certain procedures in which the Ombudsman conducted the investigative procedure, there is the legitimate question of the dubious protection available to the complainants who participate in a contest for admission to the civil service if the decision on suspension of the contest denies their rights laid down by law. The Ombudsman warned the bodies concerned about the violations of the rights, but without any results, and in view of an increased number of complaints, the Ombudsman also requested an opinion of the Central State Administrative Office concerning the application of the provision of the Act in practice. Until the drawing-up of the Report, no answer was received.

Examples:

(1) Case description (P.P-529/08): The Ombudsman was addressed by B.P. from Z. who complained against a violation of her right in a contest for admission to the civil service in V.T. court in Z. She states that for the work post of advisor (based on the total number of

points) she was third on the ranking list, and that was the number of servants to be admitted. However, in the procedure of admission only two candidates were selected, while the contest was suspended with respect to the third.

Undertaken measures: Acting further to the complaints of B.P. and other complainants against violations of the rights arising from unlawful suspension of the procedure of admission to the civil service, the Ombudsman forwarded the complaints to the Central State Administrative Office and requested the submission of reports about the actions taken, but also a single opinion about the handling of such and similar cases.

Outcome: The procedure is underway even after several rush notes.

1.2. Protecting the rights of employees in the state bodies

According to the 2005 Act on Civil Servants, the rights of employees and the procedure of establishing employment in the state bodies is regulated through general employment regulations (Employment Act) and the regulation of the Croatian Government on the classification of work posts and the salary of employees, which has still not been passed.

According to the former legislation, the individual rights of employees were subject to the issuing of decisions as an administrative act and after the entry into force of the Act on Civil Servants in 2005 their status is regulated through employment contracts pursuant to the general employment regulations, that is, the Employment Act.

However, under the general employment regulations, employment contracts may not be concluded before the passing of the said regulation, while the decisions which regulated the rights of employees before were repealed by the current Act on Civil Servants.

For that reason, it is not possible to correctly determine which act regulates the status and rights of employees in the state bodies, and consequently the competence for the protection of their rights before the employment inspector or before the administrative inspection, that is the competence of general jurisdiction courts or the Administrative Court of the Republic of Croatia.

In view of the inability to ensure proper protection of the rights of this group of employees in the state bodies, the complainants have to bear the consequences, but also other employees in the state bodies, especially in the case of termination of employment or other forms of denying of their rights arising from employment.

There was an unsuccessful attempt to remedy this legal void for the conclusion of employment contracts for employees in the state bodies through the Collective Agreement for Civil Servants and Employees. The Collective Agreement could not achieve that purpose (because it is not a piece of legislation which regulates the essential elements of an employment contract, such as the names of work posts and salaries), but only the adoption of the said regulation.

Therefore, the Ombudsman still warns about the urgent need to remedy the described inconsistencies in the regulations and to adopt the regulation on the said rights of employees in the state bodies.

1.3. Rights violations in institutions and other public services

The complaints in this field referred to rights violations in recruitment procedures in the institutions and other public services where a public contest was not announced or where the contests were held irregularly, thus violating the right of accessibility of work posts in the institutions and public services founded by the local self-government and the Republic of Croatia to all citizens under equal conditions, although along with the Employment Act that obligation arises from special regulations and collective agreements on public services.

The unemployed Homeland War veterans referred to such rights violations in connection with the right of priority in employment under the provision of Article 35 of the Act on the Rights of the Croatian Homeland War Veterans and Members of Their Families, but other citizens also referred to violations of the right of accessibility of work posts in the public services to all citizens under equal conditions.

Namely, the Employment Act stipulates that public contests do not have to be announced for the purpose of contracting employment, and in the case where a contest is announced it is not necessary to forward notifications about the candidate to whom the employment contract is to be awarded.

Thus, the unemployed Homeland War veterans, despite the fact that there is a special law (Act on the Rights of the Croatian Homeland War Veterans...), may not take part in recruitment procedures without a contest, and where the contest is published, without a notice concerning the selected candidate they cannot seek protection of their rights before the employment inspectors with the State Inspectorate.

Namely, they may file a request for the protection of the rights laid down by law only if the contest was published and only within a specific period after they receive a notice about the selected candidate. After the employment contract is concluded with the selected candidate, they may no longer exercise that right.

The Ombudsman holds that all legal persons referred to in Article 35 of the Act on the Rights of the Croatian Homeland War Veterans, even those applying the Employment Act, have the duty to comply with the provisions of the said special law, and that at the time of recruitment they must announce contests and issue written notices about the selected candidate.

In view of the ambiguities in the implementation of the regulations pointed out by the State Inspectorate in the supervision of the application of the right of priority in employment of the unemployed Homeland War veterans, the Ombudsman held a meeting with representatives of the State Inspectorate and the Ministry of the Family, Veterans' Affairs and Intergenerational Solidarity. In order to eliminate any obstacles in the realisation of the rights of the Homeland War veterans, at the meeting it was concluded that the competent bodies should submit a query concerning the interpretation of the general and special law in practice or submit an initiative for amendments.

Considering that no action was taken, and the complaints received by the Ombudsman still referred to violations of the rights concerned, the Ombudsman notified the Croatian Parliament through the War Veterans Committee in accordance with his powers.

At the time when this Report for 2008 was being drawn up, the Croatian Parliament War Veterans Committee held a session at which the problem was discussed. Based on the flow of the discussion and the conclusion adopted, the War Veterans Committee evaluated that there was no need to raise the question of authentic interpretation or to initiate amendments to the two laws. The Committee instructed the State Inspectorate to apply the provisions of Article 35 of the Act on the Rights of the Croatian Homeland War Veterans consistently, and to take the prescribed measures, so that the unemployed Homeland War veterans might take part in the contests for vacancies in the institutions and other public services.

If the provisions of Article 35 of the Act on the Rights of the Croatian Homeland War Veterans continue to be applied inconsistently, the War Veterans Committee calls on the State Inspectorate to explain why that is not possible and, together with the Ministry of the Family, Veterans' Affairs and Intergenerational Solidarity, initiate amendments to the said Act.

Concerning the complaints referring to violations of the right of priority of the unemployed Homeland War veterans in seeking employment in the public services as the result of non-publication of contests, but also violations of the right of accessibility of work posts to all citizens under equal conditions, the Ombudsman conducted review procedures, requested administrative supervision and supervision of the implementation of the legislation, and will continue to do so in his attempts to protect the complainants' rights, but also the rights of other citizens, and in particular in relation to the right of accessibility of work posts under equal conditions.

Examples:

(1) Case description (P.P.-85/08): The complainant I.S., from S.B., referred to a violation of his rights resulting from the failure to announce a public contest for the position of librarian in the Town Library S.B. He could not take part in the recruitment procedure, although he is a graduate librarian, because the public contest was not announced, but he could not also take part as an unemployed Homeland War veteran pursuant to his right of priority under the Act on the Rights of the Croatian Homeland War Veterans and Members of Their Families.

Undertaken measures: The Ombudsman requested administrative supervision of the Town Library S.B. and inspection supervision by the employment inspectors with the State Inspectorate in S.B.

In the conducted administrative supervision, the Office of State Administration in the County of Brod-Posavina established that the director of the library was recruiting staff for vacant positions without public contests. The acting director performed the said acts after the duty, to which she had been temporarily appointed until the contest for the appointment of director, which has never been conducted, expired. By reference to the Employment Act, as if it were a private employer, and not a public institution, the acting director concluded employment contracts without authority and without a public contest. She also failed to perform that obligation under the binding provisions of Article 35 of the Act on the Rights of the Croatian Homeland War Veterans and Members of Their Families as a special law.

The Office of State Administration ordered measures to rectify the said irregularities and notified the Town of S.B. as the founder. Considering that the town failed to act according to the instructed measures, the Ombudsman requested as much in writing.

According to the report received by the Ombudsman, the Town of S.B. tried to justify the recruitment procedures in the library without a contest by reference to the Employment Act, and did not comment on the unauthorised conclusion of employment contracts after the end of the director's term, the failure to align the statute of the institution with the Act on Libraries after its adoption, and other irregularities identified during the supervision.

The Ombudsman notified the Ministry of Culture accordingly and requested that in accordance with its powers of supervision in the implementation of the regulations governing culture it should take adequate measures, and if the current regulations are not mutually aligned, to initiate their amendments.

Case outcome: The Ministry of Culture pointed out that in terms of recruitment (employment) the public services have the duty to announce contests by applying the regulations and collective agreements on public services, and the Office of State Administration in the County of Brod-Posavina was asked to conduct a control administrative supervision for the purpose of urgent taking of the instructed measures. After that, the Town of S.B. appointed a new acting director and took measures to rectify the irregularities and align the general acts of the Town Library. Until the time of drawing up this Report, the Ombudsman received no information about the final outcome of the unlawful employment in the Town Library after the appointment of the acting director.

(2) Case description (P.P.-686/08): The Ombudsman received a complaint from T.K. from O. who had submitted an application for the vacant position of piano teacher for an indefinite term at the School of Music F.K. in O. After the interview to which she was invited in the course of the contest, she was asked to have a medical examination and psychological testing.

In that regard, the complainant pointed out a number of irregularities, further to which she was informed that she was not competent for the position. She was removed from the list of candidates, while a person who was not eligible was admitted to the work post. Although the results of the first testing were normal, according to the complainant, she was asked to undergo other testing with a view to pronouncing her incompetent, although that was not in accordance with the regulations. The complainant pointed out violations in terms of the doctor's office and the type of tests which were subsequently used in her case without authority.

Undertaken measures: The Ombudsman forwarded the complaint to the School of Music and to the competent education review inspection for further action. According to the report received by the Ombudsman, the education review inspection did not examine the

authenticity of the certificate of work capacity and the tests conducted, while it evaluated that the procedure of recruitment itself further to the contest was duly conducted.

The complainant notified the Ombudsman later that the procedure she had conducted before the second-instance commission for the review of the certificate of incapacity was concluded positively, thus remedying the irregularities committed by the subsequent testing, which she had referred to in the complaint to the Ombudsman.

Based on the certificate of capacity obtained before the second-instance commission, the Ombudsman requested the education review inspection to conduct inspection supervision again.

Case outcome: The education review inspection cancelled the selection of the candidate and the contest and instructed the announcement of a new contest, at which the complainant participated. The School of Music submitted a report to that effect, and later the complainant notified the Ombudsman that all irregularities in her case had been rectified.

Local self-government and finances

In the field of local self-government, the Ombudsman received 46 complaints in 2008. They referred to violations of the citizens' rights before the competent representative, executive and administrative bodies of local and regional self-government.

There were complaints which referred to violations of the rights connected with the way of work and decision-making by the representative and executive bodies of local self-government, the general acts of local self-government, and in particular the unauthorised imposition of obligations on citizens, not based on law.

Regarding supervision of the general acts of local and regional self-government relating to municipal activities, which are conducted by the offices of state administration in the counties and the competent central state bodies, including the Central State Administrative Office, the Ombudsman pointed out on several occasions before the need to conduct supervision in a more consistent fashion, because based on the citizens' complaints received and the review procedures conducted by the Ombudsman, the supervision is not sufficiently effective and comprehensive.

The citizens' complaints against individual acts issued by the administrative bodies of local self-government referred also to the general acts in the field of municipal activities (such

as the supply with drinking water, water management fees, utilities, noise in inhabited areas, payments for cemetery construction), the field of local taxes and the holding of local elections.

Namely, in 2008 the citizens continued to file complaints against violations of their rights resulting from the price of municipal services (utilities), especially the cost of water and garbage disposal, stated in the pricelists for such municipal services (utilities) issued by the municipal legal persons with the approval of the authorities of local self-government, under the Utilities Act and other special regulations.

In connection with the complaints, the Ombudsman received reports from the ministries competent for the utilities and the control of the cost of utilities, and the State Inspectorate in charge of inspection supervision in the said fields. It is evident from the reports that in accordance with the Utilities Act and the Consumer Protection Act the cost of utilities is not consistently formed and controlled under the conditions where the services are delivered by a single supplier, that is, that the prices are not market-based and formed by two or more suppliers for one service. In terms of garbage disposal, the units of local self-government still do not ensure that the price is calculated on the basis of the quantity of service provided, which is stipulated in the Consumer Protection Act. Considering that the application of the regulations concerned is not postponed until Croatia's accession to the European Union or the meeting of other conditions for their application, it follows that the regulations which are aligned with the European practice in the field of municipal activities (utilities) and consumer protection are not respected.

Furthermore, in the complaints the citizens referred to violations of their rights, because the essential municipal infrastructure was not built after the payment of municipal contributions, in accordance with the Utilities Act and the adopted programmes of local self-government. At the same time, the citizens cannot realise the right to a refund of the paid municipal contribution, as foreseen in the Utilities Act.

The procedures conducted by the Ombudsman further to the complaints against noise in an inhabited area have not yielded any results so far. In this reporting year, as well, the Ombudsman requested the state and local bodies to conduct the prescribed procedures, including the measuring of noise levels by an authorised sanitary inspector in the presence of the complainant. Regularly, the measuring of permissible noise levels in the cases concerned yielded normal results, although the tenants – complainants still claim that they have to endure a lot of noise. Although the Ombudsman does not have any influence on decisions concerning the working hours of catering establishments in inhabited areas, or on the total number, type and purpose of such establishments and other entertainment-oriented activities in the open

(especially during the tourist season), he asked the units of local self-government to re-examine their decisions which can indirectly influence the levels of noise in inhabited areas at night. At the same time, he emphasised the importance of encouraging cooperation between the bodies of local self-government and the competent police administrations and inspection services in supervising the general acts of the local self-government and other regulations connected with the prevention of noise in inhabited areas.

Examples:

(1) Case description (P.P.-1048/08): The complainant I.B., from N.G., submitted a complaint to the Ombudsman in view of noise levels in an inhabited area. Namely, the complainant lives in the centre of the town and in the vicinity of her apartment there are numerous catering establishments which are open all night and create unbearable noise in the middle of the night. She filed numerous reports to the police and requested the permissible noise levels and working hours to be controlled by the competent sanitary inspection and economic inspectors, and she filed a request with the Town of N.G. to change the working hours of the catering establishments that work at night.

Undertaken measures: The Ombudsman forwarded the complaint to the police, labour inspectors, the sanitary inspection and the Town of N.G., and requested the submission of a report on the actions taken.

Case outcome: Based on the reports submitted, all values measured at the time of control (the working hours, work permits, noise levels) were within normal, and the noise levels were within the permissible range), although the complainants continue to claim that their rights are being violated.

(2) Case description (P.P.-461/08): B. M. from B. complains against the work of the Municipality B., because the Municipality B. introduced the obligation of payments for the construction of a morgue and at the same time prohibited the use of the morgue by those citizens who do not pay the amount, that is, the fee at the time of the first burial of a family member.

Undertaken measures: In May 2008, the Ombudsman requested the Municipally B. to provide a statement and the decision by which it regulated the said issue. It was only after the rush note of 12 August 2008 that the Municipality issued a statement, but did not provide the decision pursuant to which it charges HRK 2 500.00 for the first burial of a family member of those citizens who did not participate in the building of the morgue.

In the letter of 26 September 2008 and the letter of 12 December 2008, we issued rush notes with the aim of accelerating the submission of the decision, but the municipality did not send it until the moment of writing of this Report.

Case outcome: The case is not over, and the municipal decision regulating the citizens' obligations for the payment of the fee mentioned by the complainant was not sent even after several consecutive rush notes. The Ombudsman will request the implementation of supervision in the Municipality B.

(3) Case description (P.P.–544/07): G. K. from P. complains against the work of the Tax Administration, because of the received payment slips for the payment of contributions with interest for a business, although he no longer performs the said business. In 1995, the complainant opened a business, as confirmed by the decision of the Office for the Economy of the County of Šibenik-Knin of 26 April 1996 on the entry in the trades and crafts register. In addition, he also registered temporary termination of the activity in the period from 17 June 1996 to 31 August 1996, which he did not continue to perform.

The decision of the Office for the Economy of 29 September 1996 establishes termination of business by force of law.

At the complainant's request, the Office of State Administration in the County of Šibenik-Knin, Service for the Economy, issued a certificate on 1 March 2005, in which it is stated that it is issued as proof of de-registration of business.

Although the said decision was forwarded to the Tax Administration in the line of duty, the Tax Administration continued to send payment slips to the complainant for the payment of contributions with interest. In the Tax Administration, Regional Office Šibenik, on 10 May 2007, a procedure was initiated for establishing the limitation period on the right to collection of the contributions from the debtor – complainant, for the debt as on 1 January 2003, but the payment slips continued to be received.

Undertaken measures: Bearing in mind Article 6, items 3 and 4 of the Act on the Tax Administration, the Ombudsman proposed to the Tax Administration to update its database after examining the data concerned, and that in the future it should stop sending payment slips to the complainant for the payment of contributions for his business which he does not perform, and that the current relationship in terms of the tax owed should be resolved appropriately in accordance with the provisions of the General Tax Act.

Case outcome: The Tax Administration – Regional Office issued a decision establishing that the right to the collection of contributions was barred by the limitation period and that the debt would be written off as soon as the decision became final.

Social welfare – Family-legal protection and guardianship

Social welfare

In 2008, the Ombudsman received 46 complaints in the field of social welfare and the protection of people with disability. He also worked on 17 cases opened in the previous years.

Just like in the previous years, most complaints in the field of social welfare referred to the non-realisation of the more permanent forms of assistance or low amounts of such assistance.

Although as of 1 November 2008, the base for social contributions rose from HRK 400.00 to HRK 500.00, the amount of permanent assistance, especially for single people, remained extremely low and is not in line with the remarks made by the European Committee of Social Rights to the First Report on the Implementation of the European Social Charter – Article 13 (social assistance). It is particularly pointed out that in terms of the elderly who do not receive pension and do not have any other income the amount of permanent assistance (HRK 750.00) and the additions for assistance and care (which are used by most elderly people and the infirm in either the full amount of HRK 500.00 or in the reduced amount of HRK 350.00) cannot provide for the minimum living needs.

As a rule, the social welfare centres acted in accordance with the recommendations of the Ombudsman and good co-operation with them is emphasised.

In comparison to the previous years, there are more complaints referring to social housing and evictions. Most complaints come from families with multiple members and a large number of underage children who usually live in residential areas with very poor sanitary and other living conditions. One of the complainants from the area of the City of Zagreb is on the Final List outside the order of priority for the award of a city apartment for lease, but in view of the insufficient number of residential units to meet the demand his housing issue remains unsettled for years. Once again, the Ombudsman intervened to postpone evictions, because usually the families concerned have a large number of children and as the result of eviction the

children would have to be separated from their families. Therefore, this Report wishes to emphasise that poor social-housing status should not be the grounds for separating underage children from their families. We refer to the recommendation issued by the United Nations Committee on the Rights of the Child in connection with the First Report on the Implementation of the Convention on the Rights of the Child of the Republic of Croatia that the economic reasons or poverty should not be the reason to separate a child from his family.

The Ombudsman is often addressed by the Roma who seek help in resolving their housing issues. The families concerned frequently have many members with underage children and no regular income, and they live in extremely difficult social and economic conditions.

In each of the said cases, the Ombudsman sent recommendations to the town authorities and services asking them to take the relevant actions and measures to avoid the separation of children from parents, but unfortunately without any more permanent results. Namely, based on the Ombudsman's recommendations, the City Office for Health, Work, Social Protection and Veterans' Affairs issues recommendations for the purpose of the settling of housing issues, but in the end, other than the delayed eviction, the housing problem of the families concerned is not resolved in a more permanent way. That is the reason why the Ombudsman addressed the Government Commission for Monitoring the Implementation of the National Programme for the Roma with a request that the possibility of interventions in the settling of similar cases should be taken into consideration. Based on the submitted answers, it follows that the Commission and the Office for National Minorities do help in the settling of the housing issue of the Roma families, especially in cases where the families have more underage children.

Problems specific to the field still include low amounts of assistance in the system of social welfare and poor implementation of the social programmes of the units of local self-government, especially in relation to social housing and the approval of assistance for the settling of the costs of housing in the amounts which are not aligned with the Social Welfare Act. In accordance with Article 7 of the Social Welfare Act, the units of local self-government must ensure funds in their budgets for the realisation of the right to assistance for the settling of housing costs.

There is a considerable number of units of local self-government which do not adopt a general act (such as a decision or ordinance) in accordance with Article 7 of the Social Welfare Act, but at the beginning of the year issue social programmes for the current year. In their social programmes, they regulate conditions and the manner of approving assistance, although that should be regulated in a decision or ordinance. The censuses for the realisation of the right to assistance for the settling of housing costs are more favourable than prescribed by the Act,

but the amounts of assistance are either lower, that is, less favourable, or not approved in a monthly amount, but only as an one-off payment, which is contrary to the Social Welfare Act. It follows that through social programmes the units of local self-government regulate various subsidies and compensations which do not even fall within the field of social welfare, while the right to assistance for the settling of housing costs, which they have the duty to finance, is not ensured in a lawful manner.

Supervision of the lawfulness of the general acts of the units of local self-government in the field of social welfare is within the competence of the Ministry of Health and Social Welfare. Administrative supervision of the units of local self-government in the field of social welfare is usually not conducted, and the same is true for the supervision of the said general acts. The complainants complain indirectly to the Ombudsman against the unlawfulness of the general acts, although it is a duty of the state to ensure supervision of the lawfulness of such acts, and thus protect the citizens' rights.

In that regard, the Ombudsman points out the need to ensure continued and consistent implementation of administrative supervision in accordance with the procedure and powers laid down in the Act on Local and Regional Self-government and the special laws on the basis of which the units of local and regional self-government issue general and individual acts.

Examples:

(1) Case description (P.P.–128/08): B. K. from the Town of N. complained against the work of the town service and the competent county for the failure to issue a decision by which they would apply Article 8 of the Regulation on the amount of compensation for water management, that is, that they failed to regulate the possibility of exemption from the obligation to pay the water fee. The county responded to the complainant that the general acts by which they would assume the payment of debt or assume the obligation to pay the debt arisng from the compensation for water management for socially threatened citizens did not exist, but that they had sent it to the Town of N. which ensures funds in its budget for the realisation of the right to assistance for the settling of the cost of housing. The Town of N. responded to the complainant that she was not in the records of the Social Welfare Centre N. and therefore was not entitled to the form of assistance concerned.

Undertaken measures: The Ombudsman responded to the complainant that Article 8 of the Regulation on the amount of compensation for water management (OG 14/06) stipulates that the counties, towns and municipalities, with a view to protecting certain socially threatened and other categories of obligors, may assume their debt or the performance of their

debt arisng from the compensation for water management. Considering that the said assuming of the debt or its performance is not regulated as a right, but as a possibility, the Ombudsman did not act within the meaning of Articles 5 and 12 of the Ombudsman Act.

However, he did instruct the complainant to send a request to the administrative department competent for social welfare of the Town of N. in which he would request possibly to be granted the right to the settling of the costs of housing, further to which the competent service should conduct a procedure within the prescribed term and adopt a decision.

Furthermore, the Ombudsman sent a recommendation to the Ministry of Health and Social Welfare to take the relevant measures stipulated in Articles 79, 80.a and 82 of the Act on Local and Regional Self-government, considering that the Programme of Public Social Welfare Needs in the Town of N. in 2007, adopted by the Town Council of the Town of N. on 15 February 2007, was not aligned with Article 7 of the Social Welfare Act (Articles 34 through 38) and the Ordinance on the approval of assistance for support in the form of a loan, measuring and characteristics of the apartment necessary for the meeting of the basic housing needs of either a single person or family and on the approval of assistance from social welfare. He pointed out that the local self-government is obligated to ensure funds in its budget for the realisation of the right to assistance for the settling of the housing costs of lease at least in an amount fixed by law or in a larger amount if set in the general act, but not in an amount lower than the amount prescribed by law.

Case outcome: The Ministry of Health and Social Welfare acted further to the recommendatin of the Ombudsman by requesting the Town of N. to submit the file and the Statute of the Town and establishing that the Programme of Public Social Welfare Needs in 2007 and 2008 was not aligned with the Social Welfare Act and that the amount of assistance for the settling of the costs of housing was not fixed in accordance with the Social Welfare Act (the amount was lower than prescribed by law). The Town of N. submitted for examination the Proposal of amendments to the Programme of Public Social Welfare Needs in the Town of N. in 2008 in accordance with the issued remarks.

The intervention was successful. The case is closed.

Note: The Ombudsman established that the general act of the unit of local self-government was unlawful and that the planned and continued implementation of administrative supervision of the unit of local self-government had not been conducted by the competent office of state administration.

(2) Case description (P.P.-97/98): The Ombudsman was addressed by S.M., a citizen of Bosnia and Herzegovina, an alien with unregulated residence in the Republic of Croatia, who lived in Z. in a common law marriage with Ž.B., Croatian citizen with residence in Z. During the union, they had five children. The common law marriage was terminated in 2007 and since that time the father does not pay any support for his underage children. The complainant's alien status is not regulated in the Republic of Croatia (her temporary residence expired, she cannot extend it), and the underage children do not have permanent residence in Z., although they are Croatian citizens entered in the book of citizens in Z.

Undertaken measures: The Ombudsman recommended to the Social Welfare Centre Z. that it should take actions within its competence in the field of protection of the rights and interests of underage children (especially in the part relating to the permanent residence of children, where he pointed out Article 3, paragraph 1, items 4, 5 and 6 of the Act on the Citizens' Permanent and Temporary Residence). After that, the Social Welfare Centre Z. notified the Ombudsman about the actions taken in the matter of protecting the rights and interests of underage children (for example, based on the recommendation of the Ombudsman, they registered the children as having permanent residence in Z. and the children received the citizens' personal identification number ("JMBG"), previously domestic violence was reported). The mother is very caring in her relationship with the children. With a view to protecting the interests of the underage children, the Ombudsman asked the Section for Juvenile Delinquency with the General Police Directorate to take action in the procedure of ensuring a more permanent residence of S.M. in the Republic of Croatia.

Case outcome: The mother received temporary residence. The children received permanent residence in Z. and they were awarded the JMBG number. Through the competent social welfare centre, she receives permanent assistance, and occasionally one-off assistance, and the centre also provides systematic professional assistance through counselling and help with the overcoming of special difficulties. She also receives other forms of assistance through the social programme of the City of Z. Outcome of the case was successful.

Furthermore, the police filed criminal charges against the father, because of a justified suspicion of domestic violence and neglect and abuse of children or underage persons.

Note: In this case, the Ombudsman achieved very successful cooperation with the Interior Ministry, General Police Directorate, in the field of human rights protection.

(3) Case description (**P.P.**–959/08): The Ombudsman was addressed by the complainant N. L., from Č., former host of a girl Ž. G. (young adult), who expressed her

dissatisfaction with the work of the Social Welfare Centre P. In the complaint, she states that Ž.G. does not have any means of her own, does not have any place to live and does not have health insurance, although her disease requires continuous therapy. As she is pregnant, she returned to the former host who takes care of her.

Undertaken measures: The Ombudsman recommended to the Social Welfare Centre P. to examine the social and material situation of Ž.G. and to help her, especially in ensuring the basic living needs (such as food, housing, and the like), and then to notify the Ombudsman of the actions taken.

Case outcome: The Social Welfare Centre P. notified the Ombudsman that after having talked to Ž.G. they had immediately sent requests to a number of institutions providing the services of accommodation to children and young adults and psychosocial rehabilitation. However, Ž.G. abandoned such form of care and informed them that she would continue to live with the former host. In accordance with the recommendation of the Ombudsman, Ž.G. was granted the right to permanent assistance in an amount of 150% of the base for social payments (HRK 600.00), which is basically the amount for a single person increased by 50%, because Ž.G. is a pregnant woman with no means of her own. She was also granted one-off assistance in the amount of HRK 400.00.

The intervention was successful. The case is closed.

Note: In the system of social welfare, there should be systematic follow-up, especially on the part of the social welfare centres, of young adults who were within the system of social welfare as minors (especially those who were accommodated in the institutions of social welfare and host families on a permanent basis) in order to be able to provide care and assistance or support in gaining independence whenever necessary.

(4) Case description (P.P.-215/08): The Ombudsman was addressed by the Association of the Roma Women in Croatia "Better Future" on behalf of Mrs A.A. and Mr J.S. and their five children. This family was instructed in a legally effective court decision to move out of the apartment in which they lived and which was owned by the Republic of Croatia.

At the time of the filing of the complaint, A.A. was in the late stages of pregnancy, so her situation demanded special attention. Furthermore, in this case it was established that the judgment (for eviction) ordered them to pay litigation costs and the corresponding interest.

Undertaken measures: The Ombudsman issued a recommendation to the Commission for Monitoring the Implementation of the National Programme for the Roma to raise the question of the ethics and the respect of the principles of a social state in cases where Roma

families with no income of their own and who live in extremely difficult social and housing conditions are required to pay default interest on the amount of litigation costs (although the obligation of payment of the said costs is not legally disputable). The Ombudsman proposed that the possibility of discussing this issue with the State Attorney's Office from a different angle should be considered, so that any requests in court proceedings in the future might be drawn up differently.

Case outcome: The Office for National Minorities issued a statement that the Office and the Commission for Monitoring the Implementation of the National Programme for the Roma had requested the courts to comply with the recommendation of the Council of Europe that evictions should not take place in winter and to provide as much help as possible.

Considering that the local self-government has the duty to find more permanent solutions to the problem, the Commission invited the deputy mayor of the City of Z. to its sessions at which the president of the Commission pointed out once again the need to resolve the housing issues of the Roma national minority in the City. Furthermore, it was mentioned that in certain cases the Commission paid the costs of court proceedings on behalf of the Roma families with several children after they had addressed them either personally or through a Roma association. In relation to the recommendation of the Ombudsman to regulate the possibility of release from the payment of litigation costs and interest which the parties who belong to the Roma national minorities in the proceedings involving eviction must pay, the Office proposed to the line ministries to take the relevant actions to write off the debt.

Protecting people with disability

Considering that the Disability Ombudsman was appointed on 30 May 2008, in the course of 2008 the Ombudsman also acted in the field of the rights of people with disability.

With a view to enabling the best possible social integration of a wide circle of people whose disability affects their mobility, the Ombudsman proposed an amendment to Article 40 of the Draft Proposal of the Road Traffic Safety Act (the version of 25 January 2008). Namely, it was proposed that, along with persons with the degree of physical disability of 80% and more, persons with severe and profound mental retardation should also be enabled to enjoy the benefit of the accessibility sign on their vehicle. In the Council Recommendation of 4 June 1998 on a parking card for people with disabilities (98/376/EC), the EU Member States are instructed to approve a parking card to people whose disability causes them to have reduced

mobility (the parking card is not necessarily connected with a physical impairment, but with reduced mobility, which involves reduced capacity for orientation in space). The Interior Ministry, as the competent body for drawing up the Draft, did not accept the proposed amendment to the article concerned.

In the field of protecting the rights of people with disability, there has been significant progress in raising the quality of living in the local community, but the implementation of certain regulations is still not at a satisfactory level. The fact that the rights of people with disability are regulated through approximately 270 regulations contributes to the problem, because it is difficult to become acquainted with their rights, and access to the rights is also made more difficult. It is necessary to evaluate the application of the current legislation in the field of protecting people with disability, and especially in the field of rehabilitation and employment of people with disability by an independent body, as provided in the National Strategy of Equalization of Possibilities for Persons with Disabilities from 2007 to 2015.

It is pointed out that one of the priorities in the field of protecting the rights of people with disability is to urgently designate a single body for expertise and to draw up a single list of all impairments for all categories of people with disability, regardless of the manner and causes of appearance, because that is one of the important preconditions for non-discriminatory action, that is, respect of the equality of people with disability in all fields of social rights. Protection and support to people with disability should not be provided through pilot projects over a period of several years, without the legislation being in place. Pilot projects represent a good attempt at applying a new institute for a certain period of time. Should they yield good results (for example, the personal assistant project), the institute should be regulated through legislation. To the contrary, it is the problems of only certain groups of people with disability that are settled, where the right of equal accessibility to all rights, regardless of the cause of the same degree of damage, is not applied, thus only providing for a partial resolving of problems and postponing a systematic and permanent solution to the problem of people with disability.

Finally, there is still a large problem that people with disability have to face in terms of the architectural barriers in front of the state and public services and service-oriented companies and shops, which should have conformed to the current legislation by now.

Example:

(1) Case description (P.P.-1557/07): The Croatian Association of the Blind complained to the Ombudsman against the provisions of the Act on the Promissory Note and the Act on Cheques. Namely, according to the Association, the regulations concerned place

blind people in a position which is not the same as the position of people with normal eyesight, because the signature of a blind person on the promissory note or cheque is valid only if the court certifies it, which results in additional obligations and costs. In addition, the said Association voiced its dissatisfaction with the institute of payments for the help and care of blind people, the purpose of which should basically be to achieve equal opportunities for blind people. According to the Association, the purpose is not achieved, but quite to the contrary, depending on the system concerned, the aid ranges from HRK 280.00 to HRK 3 960.00, which could be regarded as discriminating.

Undertaken measures: The Ombudsman submitted a recommendation to the Government of the Republic of Croatia and the Croatian Government Commission for People with Disability that they should take the request of the Croatian Association of the Blind into consideration as an initiative for possible amendments to the regulations concerned, although it was evaluated that the purpose of the said standards in the Act on the Promissory Note and the Act on Cheques was to protect blind people against possible abuse. However, the protective measure should not result in additional obligations and costs for blind people.

The Ombudsman also stated the dissatisfaction of the Association with the amount of payments for the help and care for blind people, while a similar complaint was also submitted by the Association of People with Muscular Dystrophy, People with Cerebral Palsy and Invalids of Poliomyelitis and other Physical Impairments from Slavonski Brod in 2007. With respect to the latter complaint, the Croatian Government was recommended, in view of the discriminating position of people with disability and the need to align the national regulations on the matter, to bear in mind the statements made by the Association when drawing up new regulations or aligning the current regulations with the Constitution of the Republic of Croatia, the Declaration on the Rights of Children with Disabilities, the National Strategy of Equalization of Possibilities for Persons with Disabilities from 2007 to 2015 and the Convention on the Rights of People with Disabilities and its Optional Protocol, as soon as they enter into force. The recommendation was forwarded to the Ministry of Health and Social Welfare and the Ministry of Finance.

On the entry into force of the said Convention and Protocol (3 March 2008), the Ombudsman recommended to the Croatian Government once again that the said problems should be taken into special consideration in the alignment of the national legislation with the Convention and the Protocol. At the same time, it was pointed out that the National Strategy of Equalization of Possibilities for Persons with Disabilities from 2007 to 2015, in item 2.5.7., states that "the drawing-up of an expert and analytical basis for the possibilities of improving

the rights arising from disability" would be finished by July 2008. The Ombudsman asked to be informed whether the expert and analytical basis had been drawn up and whether the said problems had been discussed.

Case outcome: The Vice-president of the Croatian Government and the Minister of the Family, Veterans' Affairs and Intergenerational Solidarity, who is also the president of the Croatian Government Commission for People with Disability, immediately forwarded the complaint of the Croatian Association of the Blind and the recommendation of the Ombudsman to the Ministry of Finance and the Ministry of the Economy, Labour and Entrepreneurship, so that they could bear in mind the problems pointed out by the association when adopting new regulations, and to notify the Ombudsman of the implementation of the measure included in the National Strategy of Equalization of Possibilities for Persons with Disabilities from 2007 to 2015 – "the drawing-up of an expert and analytical basis for the possibilities of improving the rights arising from disability".

Note: The Vice-president of the Croatian Government and the Minister of the Family, Veterans' Affairs and Intergenerational Solidarity and the president of the Croatian Government Commission for People with Disability reacts promptly to the recommendations of the Ombudsman, but there is no feedback from the competent ministries about the actions taken.

(2) Case description (P.P.-522/08): The Ombudsman received a complaint from P.L. from Z., who stated that he was a person with seriously impaired mobility and that he, just like other people with disability whose mobility organs were damaged up to at least 70%, could not reach the Clinical Hospital Centre Zagreb, Zagreb, Šalata 2 (hereinafter the Clinical Hospital Centre Rebro) by an adjusted car, because the solutions provided by this medical institution in terms of the parking space in the garage were not satisfactory. He points out that the Clinical Hospital Centre Rebro does not satisfy the requirements laid down in the provisions of the Ordinance on ensuring accessibility to buildings for people with disability and reduced mobility, because the parking space must be located as close as possible to the entrance to the building, which is not the case at the Clinical Hospital Centre Rebro. In addition, it is pointed out that the parking spaces in the garage are not free, but that they cost HRK 25, which is a considerable expense for people with disability who have to attend therapy every day. Therefore, he proposes that the accessibility sign should be affixed to the parking spaces within the hospital circle.

Undertaken measures: The Ombudsman requested a statement about the complaint from the Clinical Hospital Centre Rebro.

Case outcome: The Clinical Hospital Centre Rebro notified the complainant and the Ombudsman that the Board, because "Zagrebparking" was not able to resolve the said problem, had ensured parking at 23 parking spaces at the parking-lot of the Clinical Hospital Jordanovac, that is, within the hospital circle, to make the hospital facilities more accessible.

The intervention was successful. Case closed.

Note: Unfortunately, there is a great number of public and state services which are obligated to conform to the Ordinance on ensuring accessibility to buildings for people with disability and reduced mobility, but have still not done so. Therefore, the line ministries should encourage the institutions from within their jurisdiction to conform to the said Ordinance.

Family-legal protection and guardianship

In 2008, the Ombudsman received 23 complaints from the field of family-legal protection and guardianship, and continued to work on 8 complaints from the field received in 2007.

In the field of family-legal protection in 2008, in relation to 2007, the number of complaints relating to the activities of social welfare centres in cases involving domestic violence increased. There is still a segment of the complaints against the work of the social welfare centres in the procedures of issuing opinions / proposals in court proceedings related to the decisions as to with which parent the underage child should live and the way and time of the child's meeting and spending time with the other parent. Although the court makes the decision, and the opinion of the social welfare centre is only one piece of evidence in the procedure, the citizens still see the social welfare centres as the bodies whose opinions are used by the courts to make the decision.

In the field of guardianship, the Ombudsman received complaints from citizens subject to guardianship who are dissatisfied with the activities of the social welfare centres or their guardians.

A certain segment of people with disability (mostly people with intellectual impairments) who are not able to take care of themselves or protect their rights and interests were appointed a guardian. As the Republic of Croatia ratified the United Nations Convention on the Rights of Persons with Disabilities, in accordance with Article 12 of the Convention,

which guarantees that all people with disability should have the right to legal capacity, amongst other things, the institute of guardianship should go through certain changes. A precondition for the acquisition of legal capacity would be age (usually legal capacity is acquired at the time of coming of age) and the ability to understand the meaning of one's actions and the consequences of such actions. In certain cases, where the persons are not able to take care of themselves and protect their rights and interests, the court issues a decision to restrict their legal capacity. Within the meaning of Article 12 of the Convention, the safeguards should be strengthened, so that all measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards should be proportional to the degree to which such measures affect the person's rights and interests.

Just like in the past years, the excessive workload imposed on the social welfare centres and the ever increasing number of wards per social worker in the centres in the cases of the so-called immediate guardianship (they perform the tasks as part of their regular work, and if they work outside their working hours, they receive additional payments) open up the possibility of omissions in the performance of their duties, and in some cases even actual damages. Therefore, sufficient funds should be ensures if not from the ward's income or property, then from some other sources used for the implementation of the provisions of the Family Act which prescribes the possibility of monthly payments to the guardian. Through consistent application of the provision to all guardians who make efforts to protect their ward's rights, the acquaintances or relatives of the wards might become interested in being appointed guardians. Such alleviation of the workload of the social workers in performing the task of guardian would create preconditions for their efficient work in other spheres from this field.

Furthermore, the institute of partial revocation of business capacity is used less frequently, although professional workers who work in the institutions that provide care outside the family to persons deprived of their legal capacity and who escort persons deprived of legal capacity on a daily basis point out that in time the grounds for complete revocation of legal capacity terminate for certain persons, which can represent a violation of the human rights of the persons deprived of legal capacity. It is necessary to insist that the social welfare centres pay regular visits to the wards (the law stipulates two times a year) and that there are regular opinions on the health of the ward in view of the grounds under which the legal capacity was terminated (in accordance with Article 165 of the Family Act, every 3 years the

social welfare centres must request the primary health provider to issue a report on the health of the ward), and in cases where the conditions are met, the social welfare centre should initiate the procedure of restitution of his legal capacity, either partly or in full. If there are social welfare centres which fail to apply this provision, the Ministry of Health and Social Welfare should take measures within their competence against them.

Examples:

(1) Case description (P.P.-358/08): The right of J. Č. from V. G. to live with her two underage sons was revoked, and the children were entrusted to the care of the Home for Children for a period of one year, as of 11 February 2008. It was determined that the meetings and the time to be spent together would take place on the premises of the Home in the presence of a professional worker in the Home. The complainants requested an intervention by the Ombudsman, because she was not enabled to be a party to the procedure, by which the ability to present an answer to the claims in the non-contentious procedure was denied to her and she was not able to file an appeal against the decision of the court. Furthermore, the parties waived their right to appeal, so that the decision became legally enforceable immediately. J. Č. did not receive the decision, but was informed about it indirectly.

Undertaken measures: In our opinion, in the said non-contentious procedure there was a major violation of the provisions of the non-contentious procedure, because a mother was not enabled to take part in the procedure as a party. As the procedure involved decision-making about the rights and duties of a parent, we hold that if the mother was not able to take part in the procedure and present facts and evidence connected with the performance of her parental duties, the court should at least have delivered the decision to her, thus enabling her to file an appeal. The party was advised to address the president of the Municipal Court and to point out the violation of the non-contentious procedure and to ask the judge to repeal the said decision.

As the mother stated that her children were abused by other children in the Home, the Ombudsman for Children was notified accordingly.

After the decision repealing the decision terminating the right of the mother to live with her underage children became legally effective, the competent social welfare centre was issued a recommendation to have the children returned to the mother (because there were no longer any legal grounds to keep them in the Home) for the purpose of implementation of the legally effective decision by summary procedure, and it was recommended to review the possibility of

issuing the family-legal measure of supervision of the performance of parental care by which the mother would receive help in the upbringing of her children.

Furthermore, after the decision terminating the right of the mother to live with her underage children was repealed, the Ministry of Justice was notified about the request of the court that J. Č. as a single mother should advance the price of expertise (HRK 10 000.00). The Ministry was asked to consider the possibility of refunding the amount of the paid advance or to ensure sufficient funds to the court to apply Article 154, paragraph 4 of the Civil Procedure Act, that is, that the court should bear the costs of the expertise.

Case outcome: The decision terminating the right of the mother to live with her underage children was repealed and the mother was recognised as a party in the procedure. The procedure of terminating the right of the mother to live with her underage children is underway. J.Č. advanced the price of expertise, and the amount was not refunded. The Ministry of Justice did not provide a concrete response to the proposal of the Ombudsman, but it was stated in general that the Ministry had no power to influence court decisions, including the decision on who is to advance or finally pay the costs of the procedure. They state that they are empowered exclusively for the examination of complaints filed by the citizens relating to the stalling of the court procedure.

Note: It should be mentioned that the provision of Article 310 of the Family Act may lead to a violation of the right of the parent to participate in the procedure as a party and in our opinion in Article 310 of the Family Act the legal definition of the term party should change. In addition, we hold that it is necessary to ensure sufficient funds to the courts, so that in the future single parents who did not initiate the procedure would not have to advance the costs of expensive expert analyses.

(2) Case description (P.P.-1662/07): The Ombudsman was addressed by S. K. from Š. who stated that his wife B. V. from Z. was a person with mental disabilities, deprived of legal capacity and under direct guardianship of the Social Welfare Centre Z. At the time when she was deprived of legal capacity, several professional workers in the office were appointed guardians over different periods of time. The Social Welfare Centre Z. placed her in the Home for the Mentally Infirm. It is stated that the Social Welfare Centre Z. refused his request to have the guardian of his spouse changed (he requested that he should be appointed guardian) and that he filed an appeal against the decision, which was not resolved within legal term.

It is also pointed out that he does not receive child allowance, although until 2006 his wife did exercise the right.

Undertaken measures: The Ombudsman requested a statement from the Ministry of Health and Social Welfare and asked it to resolve the matter speedily. The Ombudsman instructed the complainant that he should submit a request for the realisation of his right to child allowance to the competent service of the Croatian Pension Insurance Institute.

Case outcome: The Ministry of Health and Social Welfare notified the Ombudsman that a second-instance decision had been adopted on 1 September 2008 and that further to the appeal the first instance decision had been nullified, and the matter returned for a new procedure.

The complainant's right to a child bonus was recognised as of 1 March 2008.

The intervention was successful.

Note: The second-instance body is obligated to finalise the appellate procedure and to submit its second-instance decision to the party at the latest within the period of two months of the date of submission of the appeal (Article 247 of the General Administrative Procedure Act). In the case where the deadline for deciding on an appeal is exceeded, the official person conducting the appellate procedure should notify the appellant within 8 days after the expiration of the deadline for resolving it in a written act about the reasons why the second-instance decision was not adopted and which actions it intends to take (Article 296 of the General Administrative Procedure Act). In this case, the appellate procedure lasted longer than the prescribed deadline, but the appellant was not notified in accordance with Article 296 of the General Administrative Procedure Act.

Conduct of the police officers

The Ombudsman examines the conduct of the police officers in enforcing their police powers further to the complaints that he receives or he initiates the procedure based on information learned from the media. In 2008, the Ombudsman opened 45 new cases.

Just like in the previous years, in almost all reports received by the Ombudsman from the police administrations or the departments for internal control in the procedures opened to examine the use of coercive measures, the justifiability of the allegations in the complaints is denied. On the basis of the information and documents submitted (most frequently in the form of official notes made by the police officers in charge of the case concerned, etc.), it is not possible to establish whether the coercive measures were applied in accordance with the Police Act and the Ordinance on police conduct. Although it would not be justified to conclude that

the actions were contrary to law in all cases, the fact remains that most reports submitted to the Ombudsman do not remove the suspicion in the objectivity of the procedure of establishing facts and conclusions made. The information provided by the Analytical Department of the Interior Ministry of the Republic of Croatia supports the foregoing; according to the said information, of the total of 1 875 complaints settled in 2008, only 76 were well-founded.

Over the past several months, on several occasions we heard the interior minister and the chief of police repeating how it was essential to professionalise the service, which would result, one should hope, in a more professional and objective conduct and procedure for examining complaints, thus contributing to the strengthening of trust and reputation which the police indubitably deserves. One of the ways of building the trust of citizens in the police is indisputably the strengthening of the Department for Internal Control. However, the main precondition for the objective work of the Department is to lay down the procedure for examining complaints, which the Ombudsman pointed out in detail in his previous reports, and to have the citizens participate in the said procedure. If the procedure is not laid down and transparent, it is not possible to control whether everything necessary was established and taken in each individual case, so that a correct decision on the justifiability of one's complaint might be adopted. Laying down the procedure eliminates any arbitrariness in the procedure of examining complaints and any doubts as to the objectivity of the conclusions adopted. It is essential to understand that it is not pure formalism, but that the laying-down of procedural provisions guarantees the protection of the citizens' material rights, and indirectly also the protection of the police officers against unobjective general accusations concerning illegal and unprofessional conduct.

As opposed to the complaints for the application of coercive measures, in the cases in which the citizens address the Ombudsman against the conduct of the police officers during the use of other police powers (such as calling, bringing in and arresting, and the like), the complaints are mostly found justified. Namely, in the said cases, the Ombudsman does not base his decision on the justifiability of a complaint on the official records of the police officers on undertaking specific police powers, but on the official records (mostly standardised forms), which are free of any subjective interpretation, and on additional reports on individual claims from the complaint concerned.

As a rule, in most complaints it is established that the unlawful or methodologically wrong conduct was the result of poor knowledge of the regulations or wrong interpretation of the regulations. After the Ombudsman points out an act which is contrary to law, the police

reports to the Ombudsman usually emphasise that the act was not deliberate, but that by mistake the police officer marked the wrong basis in the form, etc. For example, further to a complaint that the search was conducted without a warrant, in the police report it is stated that by mistake the police officer marked search instead of examination, or the reasons for arrest are wrongly marked, which do not correspond to the event itself. Having acknowledged the foregoing, the fact that the adoption of the new Act on Police Powers is underway, and that the new Criminal Procedure Act also entered into force, one should not take the situation lightly, but it is vital to organise additional training for the police officers at the level of the entire state in order to avoid or reduce the wrong conduct caused by poor knowledge of the regulations to the minimum.

Last year, the Ombudsman examined the police custody area in the Police Stations Sisak, Bjelovar, 1st Police Station Osijek, 1st Police Station Rijeka, Pula, and those located in the building of the Požega-Slavonia Police Administration. The purpose of the examination was to establish whether the conditions on the said premises meet the CPT standards (which is the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment). During the examinations, it was established that the premises to the greatest extent meet the prescribed standards. However, certain deficiencies were observed.

Primarily, there is no video surveillance, but in line with the financial resources in the stations examined video surveillance is being introduced (for example, in the 1st Police Station Osijek, the premises in the building of the Požega-Slavonia Police Administration). In order to prevent the tragic cases of committed or attempted suicide during police custody, the Ombudsman holds that video surveillance at the level of Croatia is necessary. Considering that most premises are in the basement parts of the building, there are no windows, daylight and it is not possible to ensure natural airflow. During the examination, the police officers in certain police stations pointed out the problems they encounter in view of lack of space. For example, in the Sisak-Moslavina Police Administration, the head of the Police Station Sisak states that the detainees must be taken to other police stations, for example, to Sunja or Petrinja.

Cooperation with the police administration during the examination procedures is still positive in the part relating to timely reporting and acting in accordance with the Ombudsman's requests.

Examples:

(1) Case description (P.P.-400/2008): N.C. submitted a complaint to the Ombudsman against the conduct of the police officers during the criminal processing of her underage daughters. As the complainant stated, the girls were particularly agitated and scared after the criminal processing as the result of the rude behaviour of a police officer who was rude and yelled at them that they were lying.

Undertaken measures: The Ombudsman requested a report from the competent police administration concerning the actions taken in the case, pointing out the use of police powers towards minors in accordance with Article 66, paragraph 2 of the Act on Youth Courts, Article 24, paragraph 1 of the Police Act and Article 80 of the Ordinance on police conduct. Although it was established that the minors were not handled by a police officer who would be especially trained to deal with the suppression of juvenile delinquency, because he was not able to be present, in the submitted report of the police administration it is stated that in the case concerned the actions were taken in accordance with the Police Act and the Ordinance on police conduct. The Ombudsman requested an additional report on the reasons why the especially trained police officer was not able to handle the case, and it was established on the basis of the submitted report that he was on annual leave for a period of one month, which had been fixed in advance, and that during the mentioned period an adequate replacement was not ensured.

Case outcome: In view of the foregoing, the Ombudsman sent a recommendation to the Interior Ministry, pointing out the said case and requesting that in all police stations the use of police powers towards minors should be ensured in accordance with the Police Act and the Act on Youth Courts if trained police officers are not able to handle such cases. The complainant was notified of the content of the recommendation.

(2) Case description (P.P.-601/2008): M.B., S.H. and others filed a complaint to the Ombudsman against the conduct of the police officers. The complainant states that he has diabetes and that during the investigation for a minor offence he expressly asked the police officers to let him go home to eat the special food that he has to consume, so that his health would not deteriorate. After he insisted, he was told that they could not let him go in the middle of an investigation, but it was proposed to him that the police officers would take him home, but that he would have to return to the police station. The complainant did not accept the proposal, but continued to insist to be let home, which was not accepted.

Undertaken measures: The Ombudsman requested a report from the competent police administration concerning the conduct of the police in the said case, pointing out that the complainant had come to the police stations of his own volition and that it follows from the submitted documents that he had never been arrested before, and the court did not order police custody. Bearing in mind the foregoing, the legal bases for preventing him from leaving the police station are not clear. In the report of the competent police administration it is stated, amongst other things, that the complainant was offered that the police officers would take him home, so that he could eat the scheduled meal, but that he would then have to return to the police station. Regarding the proposed bringing in, the Ombudsman pointed out that it was not possible to bring in a person involuntarily, unless the person was arrested or the bringing-in order issued. The Ombudsman sent a warning to the competent police administration pointing out the legally prescribed ways and grounds for applying specific police powers.

Case outcome: The competent police administration notified the Ombudsman that it had organised additional training of the police officers in relation to the use of the police powers of calling, bringing-in, arrange and police custody. The complainant was notified of the foregoing.

Health care and health insurance

In 2008, the Office received 23 complaints in the field of health care and 28 complaints in the field of health insurance.

Health care

Most complaints in the field of health care in 2008 were submitted against the quality, content and type of health services rendered. It is important to point out that a significant number of complainants do not protect their right to health care in accordance with the provisions of the currently valid Health Care Act. The Act stipulates that the citizens should either directly or in writing seek protection of their rights primarily from the head of the health care institution in which the services were rendered. That serves to achieve faster and efficient protection of their rights, without unnecessary and long-lasting correspondence. Based on the

complaints received, it is evident that despite the foregoing provisions the citizens address the Ombudsman or the minister of health and social welfare directly.

Other complaints in the field vary in their content. We were addressed by the nurses and technicians subject to lease contracts who complained against their employment-legal status and the related rights. In connection with the complaint filed by the Croatian Association of Pharmacy Technicians, the Ombudsman issued a recommendation to the Ministry of Health and Social Welfare to review their proposal to have them listed as pharmacy workers.

Examples:

(1) Case description (P.P.–571/08): The Ombudsman was addressed by T.Š. from K. In his submission, he states that while doing his job as pyrotechnician he suffered a complicated hip injury in 2000. As the treatment could not be carried out in a medical institution which was in the system of the Croatian Health Insurance Institute, he addressed a private hospital in M. After the examination, the doctor in the private hospital said that he could resolve the complainant's problem permanently by implanting a special prosthesis in his right hip. The proposed operation cost HRK 48 150.00. The funds were provided by the International Trust Fund for Demining and Mine Victims Assistance. The complainant was operated on in September 2007. After the surgery, the doctor informed him that he had not performed the planned procedure, but that he had removed the existing prosthesis from his hip and sutured the wound. The complainant states that with the old prosthesis, although it was painful and he had to use a cane, he could walk. He feels cheated in terms of the quality, content and the type of service provided by the doctor, which is why he had addressed the health inspection of the Ministry of Health and Social Welfare on 9 October 2007. He points out that he received no information from the inspection concerning the measures taken further to his complaint, which is why he decided to address the Ombudsman.

Undertaken measures: The Ombudsman notified the Ministry of Health and Social Welfare about the content of the complaint and requested a report to be submitted within 30 days concerning the actions and measures taken further to the complaint of Š. against the professional work of the doctor in the private hospital.

The Ministry of Health and Social Welfare notified the Ombudsman that the complaint, along with a copy of the medical records, had been sent to the Croatian Medical Chamber, Commission for Expert Matters and Supervision, so that it would provide its expert opinion.

A month later, the Ministry of Health and Social Welfare sent a report of the Commission for Expert Matters and Supervision with the Croatian Medical Chamber to the

Ombudsman in which it is stated that the procedure of treatment of T.Š. in the private hospital was not in line with the rules of the medical profession.

Case outcome: The Ombudsman sent a copy of the report to the complainant, instructing him about the legal remedies available to protect his rights.

Note: It was established that the complainant's rights were violated in view of the quality and type of the medical service rendered.

Health insurance

As of 1 January 2008, the Act on Occupational Health and Safety Insurance is applied. Based on the complaints received, it is evident that neither the employees nor the employers are sufficiently informed about the rights and obligations at their disposal pursuant to the Act, so the Ombudsman intervened by issuing legal instructions.

The rights arising from compulsory health insurance in the case of a work-related injury or occupational disease may be exercised after the Croatian Occupational Health and Safety Insurance Institute conducts a procedure for establishing and recognising the work-related injury or professional disease. The procedure of establishing and recognising the work-related injury or professional disease is initiated in a way that the employer files an application with the Croatian Occupational Health and Safety Insurance Institute. A considerable number of complaints to the Ombudsman were filed because the employer refused to report a work-related injury to the Institute, which was also the most frequent reason for the Ombudsman's intervention in the form of legal advice. In accordance with the Act, in such cases the employee is authorised to submit a written request for the implementation of the procedure of establishing and recognising an injury at work or professional disease.

The largest number of complaints arising from compulsory health insurance referred to the realisation of the right to financial compensation, payment of compensation, realisation of the right to heath care and the realisation of the right to use medicinal products (drugs).

The problem that we would like to single out is the implementation of Article 33, paragraph 5 of the Mandatory Health Insurance Act. The said provision states that the Croatian Health Insurance Institute pays the compensation of salary to the insured person directly for the duration of sick-leave if the employer is not able to pay the salary because of insolvency, that is, compensation of salary in the duration of at least three calendar months. The Croatian Health Insurance Institute on the other hand requires the insured person to submit a certificate

of the employer's insolvency within the prescribed period, so that the compensation could be paid out. The Financial Agency (FINA) and the commercial bank of the employer do not issue the said certificate to the citizens by reference to their obligation to keep bank secrets, which is laid down in Article 99 of the Act on Banks. Therefore, the insured person is required to obtain a certificate which can be obtained only by the employer. The insured person has no effective remedy available to force the employer to obtain the certificate. The most frequent reason why the employer refuses to obtain the certificate of insolvency is that at such time the employee finds out that the contributions for mandatory health insurance were never paid in the first place, that is, that he was not registered as employee.

Examples:

(2) Case description (P.P.–511/08): M.K. from Z. addressed the Ombudsman with a complaint against her employer, because he had refused to report her work-related injury, suffered on 19 March 2008, to the Croatian Occupational Health and Safety Insurance Institute (hereinafter the Institute), as the result of which she was not able to realise her right to health care or the right to the compensation of salary for the duration of her temporary inability to work in accordance with the Act on Occupational Health and Safety Insurance.

Undertaken measures: The Ombudsman informed the complainant about the provision of Article 26, paragraph 5 of the Act on Occupational Health and Safety Insurance which stipulates the obligation of the Institute to conduct the procedure of establishing and recognising a work-related injury if reported by the insured person subject to the failure of the employer to report the injury to the Institute. The complainant was advised to report the injury herself to the Croatian Occupational Health and Safety Insurance Institute in Zagreb, Jukićeva 12/III, thus initiating the procedure of establishing and recognising the work-related injury.

Case outcome: The Ombudsman has no feedback, because the complainant did not address the Ombudsman again. It can be presumed that she complied with the instructions and realised her rights arising from occupational health and safety insurance.

(3) Case description (P.P.–379/08): The Ombudsman was addressed by M.M. from Z. The complainant works in a trading company. She temporarily cannot work because she is sick. The employer is insolvent and did not pay any salaries as of September 2007. In accordance with Article 33, paragraph 5 of the Mandatory Health Insurance Act, the compensation of salary is paid by the Croatian Health Insurance Institute if the legal person cannot pay the salary for a period of at least three months in view of its insolvency.

The complainant states that the Institute did not pay out the compensation, because she had not submitted a certificate on the employer's insolvency. She points out that on several occasions she tried unsuccessfully to obtain the required certificate from the Financial Agency.

Undertaken measures: The Ombudsman sent a recommendation to the Croatian Health Insurance Institute to obtain the certificate of insolvency of M.M.'s employer in the line of duty pursuant to Article 136, paragraph 3 of the General Administrative Procedure Act, because the Financial Agency and the commercial bank must keep official records of the facts concerned.

The Croatian Health Insurance Institute notified the Ombudsman further to his recommendation that the commercial bank and the Financial Agency had refused to issue the information by reference to their obligation to keep bank secrets under Article 99 of the Act on Banks.

Although he is not authorised to act towards trading companies, the Ombudsman requested the employer of M.M. to obtain the certificate of insolvency from its commercial bank, so that the complainant could receive compensation of her salary for the duration of her temporary inability to work.

Case outcome: Until the date of submitting the Report, the complainant has still not received the compensation of her salary.

Persons with mental disabilities (admission to a psychiatric institution)

In 2008, the Ombudsman received 4 complaints referring to forced or involuntary hospitalisation (the complainants, on behalf of persons with mental disabilities, were an association, son and the social welfare centre in the case of the person deprived of her legal capacity). The Ombudsman was also addressed by an association for social affirmation of persons with mental disabilities "Sjaj", which stated in its complaint a number of allegations about possible human rights violations of the patients in the Psychiatric Hospital L. Further to that complaint, the Ombudsman requested a report from the Ministry of Health and Social Welfare (which conducted an inspection and established a number of irregularities in the work of the institution and instructed the established irregularities to be remedied). In addition, the Ombudsman also kept an eye on the printed and electronic media which wrote about possible human rights violations of the mentally infirm.

Further to the foregoing, in 2008 the Ombudsman initiated cooperation in the field of human rights protection of persons with mental disabilities between the Office of the Ombudsman and the State Commission for the Protection of Persons with Mental Disabilities. It was agreed that the cooperation should focus on a proactive approach to the human rights protection of persons with mental disabilities. In November 2008, there were visits to the Psychiatric Hospital "Sveti Ivan" in Jankomir and the Psychiatric Hospital Vrapče. During the visit, there were conversations with the heads of the two institutions and with the staff (in the form of a questionnaire, drawn up specifically for that purpose). The areas in which the staff works and the conditions under which the patients live were also examined. In addition, the representatives of the Office interviewed a few patients.

The health professionals mention a number of proposals which would ensure optimum health care for the persons with disabilities. For example, they point out that it is necessary to code the service rendered in the community (psychiatry in the community) to avoid the current situation where the services in the community are paid at the burden of the hospital. Furthermore, it is evident that there is great interest and active engagement of the health professionals in the field of human rights protection of their patients (for example, the drawing up of questionnaires and brochures aimed at the patients, questionnaires aimed at the staff, there are meetings concerning the topic, and the like). We were also informed that the Centre for Psychoeducation with the Clinic for Psychiatry of the Clinical Hospital Centre Zagreb is preparing a programme for the training of psychiatrists and other staff in the field of human rights protection of persons with mental disabilities.

During the visit, it was established that the accommodation conditions in most departments of both hospitals had improved significantly (from the funds of the City of Zagreb). One of the exceptions would be the premises of the Service for Psychogeriatry which accommodates several times as many patients as are prescribed in the Ordinance on the minimum conditions in terms of space, staff and medical and technical equipment for the performance of the health care activity. The intensive care unit of the said service currently takes care of 23 patients, although the space does not meet the requirements (according to the Ordinance, there should be 6.5 m2 per patient). The space is clean and regularly maintained, and the effort of the staff to maintain an adequate level of care for the patients in view of the conditions is evident. It is essential to review the possibility of expanding the Service for Psychogeriatry with a view to ensuring the minimum requirements in terms of space.

Before the visits to the hospitals, there were conversations with the heads of larger centres for social welfare. The heads of the centres pointed out cases where the psychiatric

hospitals ask the social welfare centres to provide their approval for admission, but the person is not deprived of legal capacity, that is, the procedure for depriving him from legal capacity was not initiated (for example, in the case of those suffering from the Alzheimer's diseases and the like). In accordance with Article 3, item 13 of the Act on the Protection of Persons with Mental Disabilities: "... *voluntary accommodation means the accommodation of a person with mental disabilities in a psychiatric institution subject to his approval. Accommodation without an approval involves accommodation of a person who is not able to give his approval, so the approval must be issued by the legal guardian or the competent social welfare centre. A representative of the social welfare centre must issue or deny the approval at the latest within the term of three days by issuing a decision, which must be based on all available data, concerning the need to take further measures of social protection in relation to the person accommodated in a psychiatric institution without his approval. The decision, as well as all further procedures based on the decision must be recorded in the documentation of the centre and in the medical records of the psychiatric institution to which the person was admitted".*

We hold that only in the cases where the person is deprived of business capacity or where the procedure for depriving the person of legal capacity was initiated may the social welfare centre be asked to issue its approval, and the possibility of appointing a special guardian could also be considered. The approvals are frequently requested in the case of patients suffering from dementia (with respect to whom the procedure of depriving them of legal capacity was not initiated), and there are also individual cases which indicate that the approval of the social welfare centre should be insisted upon so that the institute of forced accommodation of a person with mental disabilities would not have to be used. A wide interpretation of Article 3, item 13 of the Act on the Protection of Persons with Mental Disabilities might result in a threat to the human rights of persons with mental disabilities. Therefore, we are of the opinion that with a view to protecting the rights of persons with mental disabilities the Ministry of Health and Social Welfare should review the need to issue an instruction to the psychiatric institutions and social welfare centres about the way to act in the case of accommodation of persons with mental disabilities in a psychiatric institution.

Taking into consideration the aforementioned, in 2009 the Ombudsman will use even more intensive efforts in this field.

Science, higher education, primary and secondary school education

The Office of the Ombudsman received 14 complaints in the said fields during 2008. Two complaints in the field of primary and secondary education referred to the employment-legal status of the school staff and two to the selection of the principal, that is, the performance of his duties. It should be pointed out that on 15 July 2008 the Croatian Parliament adopted the Act on Primary and Secondary School Education, after the entry into force of which the Primary Education Act and the Secondary Education will cease to be valid, other than the provisions on the procedures for the selection of the principal which will cease to be valid on 1 January 2012.

Complaints in the field of higher education varied in content. Some of them referred to the way of determining the tuition fee and the rules of graduate and postgraduate studies. Considering that the said complaints relate to the issues which belong to the field of academic self-administration at the higher learning institutions in the Republic of Croatia, the Ombudsman was not authorised to intervene. He notified the complainants accordingly in a letter. Two complaints related to the non-acceptance of the funding of a scientific project. Considering that the issuing of decisions about the acceptance of projects and international cooperation is expressly within the autonomy of the university at all higher learning institutions, the Ombudsman was also not authorised to intervene.

The Act on the Scientific Activity and Higher Education stipulates that university and professional studies valid until the entry into force of the said Act are to have equal status as the relevant university graduate or professional studies under the said Act, and that persons who completed them are to have the same rights, including the right to the academic or professional title. In October 2007, the Act on Academic and Professional Titles and Academic Degrees was adopted. Its transitional and final provisions stipulate the obligation of the Council of Polytechnics and Schools of Professional Higher Education and the President's Office to establish and publish the list of professional titles and the abbreviations with which the professional study acquired by completion of a professional undergraduate study in the duration under three years is equalised. The said list was drawn up and published in the Official Gazette on 18 April 2008. After the list was published, several complaints were received showing its inconsistency. The complainants hold that the programmes were valued differently depending on the higher education institution at which the degree was acquired under the regulations in force before the entry into force of the Act on the Scientific Activity

and Higher Education. To be more specific, the programme in economics at the Faculty of Economics in Zagreb, which lasts two and a half years, in the procedure of equalisation was given 150 ECTS, while the same programme at some other polytechnic and school of professional higher education received 180 ECTS points. The complainants point out that the valuation of a completed curriculum with a certain number of ECTS points has multiple implications, primarily with respect to the professional title of the person, the ability to apply for vacancies, assignment, salary, etc. The Ombudsman recommended to the Council of Polytechnics and Schools of Professional Higher Education and the President's Office to review the justifiability of the complaints and to make adequate changes in the list depending on the established situation.

The Office also received two complaints relating to the procedure of recognition of foreign educational qualifications.

Examples:

(1) Case description (P.P.–498/08): The complainant B.L. holds that the Commission for the Valuation of Scientific Projects refused to fund his project based on an unfounded review, which is why he complained to the Ombudsman. He states that the reviewers disputed his competence as the head of the project, although he is a full-time university professor with seven CC works from within the narrow field of the proposed topic. Furthermore, he holds that the valuation by the reviewers is incomprehensible, and the reasons for not accepting his project not argumented.

Undertaken measures: After the Ombudsman reviewed the complaint and the documents submitted, he notified B.L. about the reasons why he is not authorised to act further to his complaint.

Article 67 of the Constitution of the Republic of Croatia guarantees the autonomy of universities. The university decides independently about its organisation and activity, in accordance with law. Autonomy is possible only if the university is both organisationally and functionally independent from other bodies with authority or other power influencing its structure and activity. The provisions of the Act on the Scientific Activity and Higher Education are particularly important for the legislative elaboration of the constitutional guarantee of the autonomy of universities. Article 4, paragraph 5, indent 4 of the said Act expressly stipulates that decision-making about the acceptance of projects is within the domain of the autonomy of universities. The Constitutional Court of the Republic of Croatia assumed the standpoint that the powers which are covered by the autonomy of universities under the

governing law present the basic content of the autonomy of universities, that is, the one that may not be restricted by law and that may not be restricted by the founders, supporters or persons in charge of professional supervision of its work.

Case outcome: The activity of the Ombudsman is complete, and the Office was found not competent.

(2) Case description (P.P.–58/08): The Ombudsman was addressed by S. M. from K. In her submission, she states that she finished a medical school of professional higher education in Bosnia and Herzegovina. She submitted the application for the recognition of her foreign educational qualifications to the National ENIC/NARIC Office on 11 November 2005. Considering that the case was not settled within the legal term, she contacted the Office by phone on several occasions asking for an explanation.

In early 2007, she was notified that for her foreign educational qualifications to be officially recognised she would need the accreditation of the Ministry of Culture and Education of B-H. The complainant obtained the accreditation in September 2007, but despite that the procedure is not finished. As without the professional recognition of her foreign educational qualifications she cannot conclude an employment contract in the Republic of Croatia, she points out that by violating the provisions of the Act on the Recognition of Foreign Educational Qualifications the Agency for Science and Higher Education jeopardised her existence.

Undertaken measures: The Ombudsdman warned the Agency for Science and Higher Education about the violation of the provisions of the Act on the Recognition of Foreign Educational Qualifications at the detriment of the complainant. In the letter of 31 January 2008, he stated: "Article 11, paragraph 3 of the Act on the Recognition of Foreign Educational Qualifications (hereinafter the Act) stipulates the duty of the National ENIC/NARIC Office to issue an instruction by which the qualifications of professional higher education are submitted for valuation to the Council for the Valuation of Foreign Qualifications of Professional Higher Education within 8 days of receiving a duly submitted application for professional recognition.

Considering that the request of the complainant did not contain accreditation by the Ministry of Culture and Education of B-H, the National ENIC/NARIC Office had the duty to request the application to be supplemented pursuant to Article 5 of the Act. The said article stipulates that in the procedure of recognition of foreign educational qualifications the provisions of the General Administrative Procedure apply.

The Council for the Valuation of Foreign Qualifications of Professional Higher Education is obligated to submit the valuation of foreign qualifications of professional higher

education to the National ENIC/NARIC Office within 60 days of the date of receiving the instruction (Article 12, paragraph 2 of the Act). Paragraph 3 of the said Article stipulates that in the case the deadline of 60 days is missed the Council for the Valuation of Foreign Qualifications of Professional Higher Education is deemed to have submitted a positive valuation of the foreign qualifications of professional higher education.

Article 14 establishes the duty of the Agency for Science and Higher Education to adopt a decision on the recognition of foreign qualifications of professional higher education within 8 days of the date of receiving the documentation.

It is evident from the said provisions that the procedure of professional recognition of foreign educational qualifications may last up to 72 days, counting from the date of duly receiving the application concerned. Two years and one month passed of the moment M. submitted her application.

Case outcome: The Agency for Science and Higher Education issued a decision to the complainant on the professional recognition of her foreign qualifications of professional higher education.

Housing relations

In 2008, the Ombudsman received 33 complaints asking the settling of housing relations and relations arising from the use of apartments. The citizens mostly address the Ombudsman asking him to protect their rights, because in view of the poor condition of the apartment they are not in the position to exercise their right to decent living conditions (with respect to apartments owned by the local self-government and the City of Zagreb), because they did not and cannot exercise their right to the purchase of an apartment under more favourable conditions, and because of the obligation to move out of a state-owned apartment which they could formerly freely use. Furthermore, the citizens seek protection before the Ombudsman with a view to settling housing issues in the areas of special state concern and the settling of housing issues of the Homeland War veterans, and many other problems which remain unsettled and relate to the rights of tenants under the Act on the Sale of Apartments Subject to the Right of Tenancy (for example, the award of another apartment which the tenant may purchase under the conditions stipulated in the Act or the recognition of the right to purchase an apartment which may not be sold, and the like). A considerable number of the complaints received by the Ombudsman relates to the management of residential buildings and

maintenance works. However, considering that such complaints are related by their very nature to the relationship between the owner and the activities of building management, they are discussed within the field of ownership, and not housing relations.

In the areas of special state concern, the conclusion of purchase contracts for state-owned apartments and/or contracts on the lease of state-owned apartments with protected rent (controlled rent) is conditioned on the settlement of the debt arising from the use of the apartments. Although in the areas of special state concern (Knin), the procedures of involuntary collection were not conducted until 2006, the total debt includes the debt which is subject to the limitation period (one, that is, three years).

The Ombudsman's Report for 2007, within the field of housing relations, took into particular consideration the issue of the rights of protected tenants in private apartments and the rights of the owners to such apartments. It was pointed out that although the Constitutional Court repealed the provision of paragraph 2, Article 40 of the Act on Apartment Lease ten years ago (through the Decision of 31 March 1998), the preconditions for terminating an apartment lease contract were still not regulated. In 2007, it was established that the direct consequence of the legal void which occurred by the revocation of the provision of paragraph 2, Article 40 of the Act on Apartment Lease was the inequality of citizens before law and the inability to obtain protection of one's right in court.

However, the legal void still exists.

In 2008, the Ombudsman was addressed by the Homeland War veterans who could not fully realise their rights arising from the Act on the Rights of the Croatian Homeland War Veterans and Members of Their Families before the units of local self-government, relating to the settling of housing issues. The complaints involved violations of the right to the municipal utilities in the residential building and the award of building plots for the construction of family houses.

It was observed that in relation to the right of the Homeland War veterans and the Homeland War Invalids the local self-government (municipalities and towns) interprets and applies the Act on the Rights of the Croatian Homeland War Veterans and Members of Their Families differently, on the basis of their individual specific local needs and possibilities. As a rule, implementation of the Act, because it involves material resources, is determined by the budgetary funds.

Although it was established to be an exception, the fluctuating practice of the local self-government shows that the Act is not applied uniformly. The Ministry of the Family, Veterans' Affairs and Intergenerational Solidarity does not have at its disposal a single effective measure

by which the Homeland War veterans and invalids would be ensured uniform realisation of their rights guaranteed by law in all towns and municipalities.

Examples:

(1) Case description (P.P.-267/08): Z. B. from V., a Homeland War invalid, complaints against the work of the municipal authorities in the Municipality V., for a violation of his rights arising from Article 40 of the Act on the Rights of the Croatian Homeland War Veterans and Members of Their Families. Recognition of the right to be released from part of the costs of the connection to the gas network is recognised only partly, pro rata to the percentage of permanent disability.

Undertaken measures: The Act on the Rights of the Croatian Homeland War Veterans to be Connected to the Municipal Infrastructure does not differentiate between full and partial exemption from the payment of the costs of being connected to the municipal network (infrastructure) and does not make a connection under any grounds between the percentage of permanent disability of a Croatian Homeland War veteran and the percentage of participation in the said costs.

The municipal authorities were warned that the Decision on the manner of payment of the fee for being connected to the gas network is not in conformity with the Act on the Rights of the Croatian Homeland War Veterans ... Special attention was drawn to the fact that the realisation of the right to be released from the payment of the costs of connecting a residential facility to the municipal infrastructure is not conditioned on the granting of a housing loan, which is the position maintained by the municipal authorities, but on the fulfilment of the conditions for the realisation of the right to a housing loan.

Considering that on the basis of the submitted statement it was established that Z. B. cannot realise his right guaranteed by law before the local self-government even after the Ombudsman's warning, because the Municipality V. refuses to change its position, the Ministry of the Family, Veterans' Affairs and International Solidarity was notified of this case.

The Ministry of the Family, Veterans' Affairs and International Solidarity issued a similar warning to the municipal authorities in the Municipality V. in the letter of 18 April 2008, in which it is stated: *"... you were under the obligation to fully exempt Mr. B. from the payment of the fee for the gas network, and not only in the percentage of his disability... The Ministry is hereby asking you to re-examine your decision and to fulfil your legal duty in a repeated procedure by releasing Mr. B. from the obligation to pay the said fee...".*

Case outcome: Unknown. The Ombudsman did not receive any notice of the actions taken further to his warning, that is, he received no information on whether the duty to perform the legal obligation was carried out as instructed by the Ministry of the Family, Veterans' Affairs and International Solidarity.

(2) Case description (P.P.-192/08): The County Association for Consumer Protection "P. V." complains on behalf of the citizens of the Town of K. against the actions of the town authorities and the Office for Exiles, because they condition the settling of housing relations on the settlement of the debt incurred as the result of using the apartments in the area of special state concern. The area is an area of special state concern and the claims (water, electricity, municipal charges) are for the period from 1999/2000 to 2007. However, all claims towards the consumers before 31 December 2000 were written off by a special decision of the town and by a decision of the municipal company, and the procedures for involuntary collection were not carried out in the period from 2001 to 2006.

The ombudsman evaluated the problem from several points of view.

The matter involves the realisation of the right to an apartment under special conditions which are set out in the Regulation of the Government of the Republic of Croatia, so that an additional condition for being granted a state apartment for protected lease or purchase may not be imposed on the tenants from K.

It is unacceptable to impose additional conditions for the settling of housing issues which are not set out in the legislation.

Furthermore, the claims are barred by the statute of limitations, while the collection should have been the duty of the municipal company (subject to the care of a good manager). Its negligence in collection is now making the situation of the citizens who live in the areas of Croatia which suffered the greatest damage during the war even more difficult.

Undertaken measures: The Ombudsman warned the Directorate for the Areas of Special State Concern about the impermissible imposing of a special condition for the conclusion of the purchase contract and the lease contract.

Case outcome: Contrary to the efforts of the Ombudsman to try to make the position of the citizens easier, in July 2008 the new Act on the Areas of Special State Concern was adopted, which conditions the award of a family house or apartment in state ownership as a gift on prior payment of all bills for the costs of living, therefore even those subject to the limitation period.

(3) Case description (P.P.-1243/08): K. B. from K. complains against the work of the Regional School K. with the Primary School B. concerning the realisation of the right to the purchase of an apartment located in the school building. The grantor of the apartment for use did not manage to ensure and is not in the position to ensure another apartment which the tenant might purchase under the conditions of the Act on the Sale of Apartments ... The purchaser is now facing a situation where the sale is conditioned on the drawing-up of a floor ownership study for the entire building.

Undertaken measures: The complainants were presented with general legal information and instructions on the legal procedure for the realisation of the right to the purchase of an apartment under the acquired right of tenancy

The grantor of the apartment for use, Regional School K., is under the obligation to ensure another apartment to the tenancy rightholder living in the apartment which is located in the building used to conduct education, which he may purchase under the conditions stipulated in the Act. K.B. may not be placed in a position which would be unequal in relation to other citizens only because another apartment was not provided.

K. B. is entitled to purchase the apartment in which she lives. The owner (and not the purchaser) is under the obligation to meet all conditions to make the sale valid and legal before the conclusion of the sale contract, meaning that the owner must have the floor ownership study drawn up.

Property confiscated during the Yugoslav communist rule

In 2008, the Office worked on 61 complaints in total, 32 of them newly-received and 29 from previous years.

Considering that over the past several years the Ombudsman informed the Croatian Parliament in detail about the problems observed through the citizens' complaints in cases involving restitution of the property confiscated during the Yugoslav communist rule, this year, apart from the statistical presentation, we shall not present any complaints, because they still mostly relate to the inordinate length of the procedures before the first- and second-instance bodies.

The complaints concerned are completely well-founded, especially if one takes into account that the Act on the Compensation for the Property Confiscated During the Yugoslav Communist Rule entered into force on 1 January 1997, so that the administrative procedures

connected with the received complaints have been open for more than 11 years, which speaks plenty of the seriousness of the violations of the complainants' rights – the former owners and their legal heirs.

One should add that the Directorate for Second-instance Procedures with the Ministry of Justice of the Republic of Croatia, as the result of not having accepted the legal positions and remarks made by the Administrative Court of the Republic of Croatia in connection with the procedures, generated a large number of new administrative disputes, thus contributing to the prolongation of the realisation of the constitutional and legal rights of the former owners and their legal heirs. That is why in one of the cases, after the Croatian Government refused the proposal made by the Ombudsman to repeal a decision of the Ministry of Justice, Directorate for Civil Law, pursuant to its right of supervision, initiated an administrative dispute before the Administrative Court of the Republic of Croatia.

Land acquisition (expropriation)

In 2008, there were 7 newly-received complaints relating to the land acquisition (expropriation) procedure.

The complaints received in the reporting year related to the violations or restriction of ownership rights in the procedure of road and motorway construction or the laying-down of the gas pipeline along the main roads, which are regulated under special laws (Act on Public Roads and Energy Act).

A complaint in the said field will illustrate the described example:

(1) Case description (P.P.-1540/07): On 18 October 2007, the Ombudsman was addressed by I. A. with a complaint concerning the performance of on-site preparation works for the construction of the state road Trogir – Omiš on the land that he owns before the commencement and holding of the land acquisition (expropriation) procedure.

In the complaint he stated that the company Hrvatske Ceste d.o.o. (Croatian Roads, Ltd.) had contracted private companies to probe, measure and mark the field without having first notified the owner of the land about the works. He states that he found them on his land, warned them that the plot was his private ownership on which they had no business without his knowledge, and that on that occasion he received semi-excuses and non-sensical answers, because the workers were aware they were acting contrary to law.

In the complaint he wishes to inform the Ombudsman about a serious violation of law and of his constitutional rights, which he wants protected. He states that the works on the said road will be opened in view of the forthcoming elections, but that no owner has received any information about land acquisition (expropriation), intentions, deadlines or the like. He voiced his concerns that a day or two earlier he might receive a land acquisition notification, thus having to face a fait accompli. He is bitter about that the fact that there is no respect for the procedure, the individual, the owner, and he wonders whether the land owners over several generations are second-rate citizens?

Undertaken measures: Further to the complaint filed by Mr. I. A., in accordance with his legal powers, in the letter of 9 November 2007 the Ombudsman requested the Croatian Road, Ltd. to issue a notification and submit the relevant documents.

In the said letter, the Croatian Road, Ltd. was requested to issue a notification whether as investor in the project of building the state road D8, in accordance with its legal obligation set out in Article 26, paragraph 7 of the Act on Public Roads, the company had submitted a proposal to the competent state office for the performance of preparatory works in accordance with the provisions of Articles 12 and 13 of the Land Acquisition (Expropriation) Act and received an approval.

Since the Croatian Road did not send the requested notification to the Ombudsman until February 2008, a rush note was issued.

On 17 March 2008, the Ombudsman received a report of the Croatian Road, Branch Office Split, dated 12 March 2008, which did not provide an answer to the question of the Ombudsman and did not include the requested documents for review.

Therefore, in the letter of 26 March 2008, the Ombudsman warned the Croatian Road in a letter that the report submitted was deficient and requested that the letter should be supplemented. At the same time he called to mind the constitutional guarantees and legislation protecting the inviolability of private ownership as one of the highest values of the constitutional order of the Republic of Croatia, and requested the taking of measures to rectify the irregularities, that is, unlawful acts, if any, which had been pointed out by the complainant.

Despite the Ombudsman's repeated request, the Croatian Road failed to submit the requested documents to the report for a period of 5 months, after which, on 25 August 2008, they were sent a rush note.

On 22 September 2008, the Ombudsman received a letter from the Croatian Road, Branch Office Split, of 17 September 2008, in which the company, yet again, failed to enclose the proposal for the performance of preparatory works on privately owned real estate or the

approval of the competent authority, in accordance with the previously mentioned provisions of the Land Acquisition (Expropriation) Act and the Act on Public Roads.

Considering that pursuant to Article 56 of the Act on Public Roads, the rights and duties of the Republic of Croatia as the founder of the Croatian Road are carried out by the Government, the Ombudsman sent a warning to the Croatian Government and asked it to conduct an inspection procedure in relation to the Croatian Road with a view to examining whether the constitutionality and legality in the performance of their public powers, entrusted to them by law, were being respected. At the same time, he called on the Croatian Government to take measures with a view to submitting specific answers to the queries made by the Ombudsman in the letters of 9 November 2007 and 26 March 2008, and notified the Croatian Road and the complainant accordingly.

Case outcome: On 21 January 2009, the Ombudsman received a copy of the letter which the Croatian Government had forwarded to the Ministry of the Sea, Transport and Infrastructure on 23 December 2008, and to which is enclosed the request of the Ombudsman and in which the Ministry is asked to determine why the Croatian Road had failed to act in accordance with the Ombudsman's request, and to notify the Croatian Government of the reasons.

Use of agricultural land owned by the Republic of Croatia

In 2008, the Office received 5 complaints relating to the way of using agricultural land owned by the Republic of Croatia, while it worked on 8 complaints from the previous years, therefore 13 in total.

The said complaints referred still to the work of local self-government, i.e. the municipal councils and the governments of the municipalities and towns, and the Ministry of Agriculture, Fisheries and Rural Development.

In the received complaints, there are still references to various forms of obstruction, irregularities or favouring in the implementation of the Programme for Disposal of Agricultural Land Owned by the Republic of Croatia in the area of the municipalities where such programmes were adopted and to which the Ministry of Agriculture, Fisheries and Rural Development provided its consent.

The Ombudsman sent all complaints to the competent Ministry of Agriculture, Fisheries and Rural Development, Directorate for Agricultural Land, and to the minister in person,

warning them about the observed deficiencies in the Agricultural Land Act (OG 66/01 – 90/05).

On several occasions, the Ombudsman warned the Ministry that the Agricultural Land Act no longer provided efficient legal protection to persons participating in tender procedures against the decisions of the municipal and town councils on the selection of the most advantageous tender, because they no longer had the option of submitting an objection or initiating an administrative dispute as it used to be regulated in Article 13 of the said Agricultural Land Act (OG 54/94 - 105/99).

However, the Ministry of Agriculture did not submit the requested report or answer in any of the cases and did not cooperate with the Ombudsman at all, ignoring all his warnings and remarks made to this state body and to the competent minister.

The result is the new Agricultural Land Act (OG 152/08) which once again does not provide any legal protection to the persons participating in the award procedure for rights to state-owned agricultural land (through sale, lease and long-term lease) against the violations of their rights in the conducted procedures, which is below the standard of legal protection which the legislation of the Republic of Croatia had 15 years ago.

The new legislation enables the making of arbitrary decisions in the selection of the most advantageous tender on the basis of the tender procedure by the municipal and town councils and the assembly of the City of Zagreb within the area of which the land is located, and in the issuing of the approval of the Ministry itself. That is not only a step backwards in relation to the former standards of legal protection, but it also does not satisfy the standards for alignment with the *acquis communautaire*, which requires that the procedure of making a decision on the award of a right is regulated in a way which does not enable discrimination under any grounds.

The case described below depicts the problem of insufficient protection of the constitutional and legal rights of the former owners and of the persons participating in the procedure of award of (replacement) state-owned agricultural land.

Example:

(1) Case description (P.P.-691/07): The Ombudsman was addressed by B.L. on behalf of her mother S. L., complaining against the inability to implement the replacement of agricultural land in the procedure of restitution of confiscated property, although in the partial decision issued by the Office of State Administration in the County of B-b, Branch Office G.P. dated 26 February 2003, her right to the restitution of 25 acres, 1 280 čhv (*čhv* equals 3.6 square metres) or 14,8470 hectares was recognised.

In the procedure, all applicants for the restitution of confiscated agricultural land

(which is not subject to restitution) issued statements that they wanted another adequate piece of land as compensation, in accordance with the Programme for Disposal of Agricultural Land Owned by the Republic of Croatia, to be adopted by the Town Council of the Town of G.P.

However, considering that the award of replacement agricultural land was not carried out even two years after the adoption of the decision, in September 2005 the complainant addressed the Ministry of Agriculture, Fisheries and Rural Development asking it to issue the approval for the award of agricultural land in the cadastral municipality V.Z.

As the complainant did not receive any reply to the request, on 20 March 2006 she sent a written rush note to the Ministry.

The complainant states how despite telephone calls and requests to have this matter, which is of vital importance to her family, resolved, she received nothing other than unpleasant refusals to talk on the part of an official in the Ministry.

Undertaken measures: In the letter of 17 August 2007, the Ombudsman requested that the Ministry should examine the complaint and issue a report on the reasons for the failure to act and respond to the complainant.

According to the complainant, the Commission granted the land concerned for long-term lease to others.

Therefore, in that same letter the Ombudsman warned the line ministry about the dissatisfaction and the growing number of citizens' complaints concerning irregularities in the use and lease of agricultural land by the local self-government.

In the letter it is stated: *"Namely, although Article 22, paragraph 1 of the Agricultural Land Act (OG 66/01, 87/02, 48/05 and 90/05) clearly states that the Republic of Croatia is entitled to dispose with agricultural land which it owns, other than the land to be returned to its former owners under a special law, in its use programmes the local self-government does not keep a record of agricultural land which is subject to restitution, and grants the land for long-term lease through public contests.*

For example, the current lessee of such agricultural land who duly meets his contractual obligations under the criteria referred to in Article 26, paragraph 2 of the said Act will have the benefit of having the right of first refusal, as the Agricultural Land Act (OG 66/01 – 90/05) in its provisions on the lease of agricultural land (Article 33, paragraph 2) does not foresee the former owners in the order of priority for the right of first lease (as quoted in the provision of Article 22, paragraph 1 of the Agricultural Land Act).

Further to the foregoing, by participating in a contest and if several persons meet the criteria in the same order of priority for the right of first lease, the former owners can only

passively observe how the confiscated land is leased to others who have priority.

Furthermore, the Ombudsman has already warned the Ministry concerned how the Agricultural Land Act (OG 66/01, 87/02, 48/05 and 90/05) no longer provides efficient legal protection to the persons participating in the contest against the decisions issued by the municipal and town councils in the form of objections, appeals and administrative disputes, as was regulated earlier in Article 13 of the Agricultural Land Act (OG 54/94 – 105/99).

If one is to add that the lease money received for the confiscated agricultural land is used to fund the state budget and the budget of the regional and local self-government, it is obvious that the former owners cannot exercise their right to a replacement for confiscated agricultural land in view of obstructions which are conditioned (amongst other things) by the way in which the budget of the local self-government is funded.

Further to the problems observed and arising from the citizens' complaints, the Ombudsman is of the opinion that it is necessary to amend the Agricultural Land Act.

According to the Ombudsman, the implementation of only administrative supervision of the application of the current Agricultural Land Act does not sufficiently protect the constitutional and legal rights of the former owners or the persons participating in the contest.

Further to the foregoing, you are hereby requested to take into consideration the above warnings of the Ombudsman and, if necessary, to conduct administration and inspection supervision and, within the meaning of Articles 6 and 11 of the Ombudsman Act, submit your statement and report to the Ombudsman within a period of 30 days, by reference to the above number."

Considering that the said report was not received for some time, the Ombudsman sent rush notes to the Ministry on 14 May 2008 and 26 August 2008, but received no response.

On 3 November 2008, the Ombudsman sent a warning to the head of the Directorate for Agricultural Land, warning him about his duty to perform the obligation of the state body under Article 11 of the Ombudsman Act and requested the report to be issued speedily, at the latest within 30 days, because to the contrary he would notify the Croatian Parliament and the public about the failure of the body to cooperate.

Case outcome: From 17 August 2007 to the issuing of this Report to the Croatian Parliament, the Ministry of Agriculture, Fisheries and Rural Development did not submit the requested report and comply with the requests made by the Ombudsman.

Note: In view of the evident lack of cooperation by the Ministry of Agriculture, Fisheries and Rural Development, the Ombudsman also sent a warning to the competent minister in the letter of 20 October 2008 (in the matter P.P.-346/07 which is described in last

year's report to the Croatian Parliament on pp. 135-137), and asked him as the head of the body to take action to establish cooperation and more effective protection of the constitutional rights of the citizens, but unfortunately without any effect so far.

Complaints against the work of the judiciary

In 2008, the Ombudsman received a total of 299 citizens' complaints from this sphere, which is slightly more than in 2007 (276). There is still no decrease in the number of citizens' complaints who are mostly dissatisfied with the length of the court proceedings.

Based on their content and structure, the complaints did not differ much from those received over the previous years, as reported by the Ombudsman in his annual reports to the Croatian Parliament. Most of the complaints referred to the excessive duration of the procedures, dissatisfaction of the parties with the judgments issued or the way in which judges were conducting court proceedings, and against the performance of the duties of court and judicial administration, while the slow work of the land registry departments was also noted in the complaints.

Therefore, in this year's report, we find it necessary to single out the complaints (received in the last quarter of 2008) which were connected with the right to a trial within a reasonable term.

Namely, in the said procedures, the parties' requests for the protection of the right to a trial within a reasonable term were adopted as well-founded and they were granted compensation, but in the later stages of the procedures, in view of the failure of the lower courts to act or issue the decision within the set term, the violations of the parties' rights were not remedied.

For that reason, the complainants submitted constitutional complaints for a violation of the rights guaranteed in Article 29, paragraph 1 of the Constitution of the Republic of Croatia and/or re-submitted their requests to the higher courts for a violation of the right to a trial within a reasonable term.

The Ombudsman sent the complaints which pointed to such violations to the Judicial Inspection Sector with the Directorate for the Organisation and Human Resources in the Judiciary of the Ministry of Justice of the Republic of Croatia to be reviewed or for the supervision to be conducted.

The following examples in further text illustrate the described problems.

Examples:

(1) Case description (P.P.-1214/08): L. A. addressed the Ombudsman for a violation of the right to a trial within a reasonable term in an employment dispute (Pr-…./08, formerly Pr-…./00) before the Municipal Civil Court in Zagreb.

It follows from the complaint and the decisions enclosed to the complaint that on 22 August 2006 the request was accepted as well-founded and that the first-instance court was instructed to adopt a meritory decision within a 6-month term, while the complainant was awarded compensation for a violation of the right to a trial within a reasonable term in the amount of HRK 8 000.00.

Considering that the first-instance court did not adopt the decision within the said term, on 16 March 2007 the complainant submitted a request for the protection of the right to a trial within a reasonable term once again and filed a constitutional complaint for a violation of the rights guaranteed in Article 29, paragraph 1 of the Constitution of the Republic of Croatia. Until the date of submitting the complaint to the Ombudsman (10 October 2008), the complainant did not receive any decisions further to the legal remedies exercised.

Although in the meantime the first-instance court did issue a meritory decision with a 4-month delay (that is, after 10 months instead of 6 months), which the second-instance court repealed further to the respondent's appeal returning the case to the first-instance court for a renewal, no hearings in the matter have been scheduled since (15 January 2008), despite the rush notes that the complainant sent to the court on 28 March 2008 and 19 May 2008.

As the result of the foregoing, he addressed the Ombudsman, concluding his complaint by stating as follows: "*Having to face the inability to exercise my rights guaranteed in the Constitution and being denied legal protection in the employment dispute now open for almost 8 years, I decided to address you for help, although first having addressed the Ministry of Justice for help once again."*

Undertaken measures: Considering that L. A. informed us that he had addressed the Ministry of Justice of the Republic of Croatia directly, the Ombudsman requested the Judicial Inspection Sector with the Directorate for the Organisation and Human Resources in the Judiciary to issue a report concerning the actions taken, and forwarded a copy of the letter to the president of the court and the complainant for their information.

Case outcome: Unknown. Until the submission of this Report, the report of the Ministry of Justice about the actions taken has still not been received.

Note: Although the complainant was awarded HRK 8 000.00 in compensation for a violation of the right to a trial within a reasonable term, and although the first-instance court was instructed to adopt a meritory decision within 6 months, the primary goal which the party wanted to achieve, which is to accelerate the procedure and have it finalised within a reasonable term, has still not been achieved, because the first-instance court is failing to fix a term for a hearing, so that the procedure, despite everything that the party did, cannot be concluded within a reasonable term.

(2) Case description (P.P.-391/08): The Ombudsman was addressed by M. L. with a complaint against the work of the Municipal Court in Zagreb, which had not set a date for the first hearing in her case for more than 4 (four) years.

She stated how in view of her age (90 years) and poor health she had addressed a rush note to the president of the Municipal Court in Z., but to no avail, which is why she was addressing the Ombudsman.

To corroborate her claims, the complainant presented a request to the president of the court of 29 January 2007, and a letter of the Office of the President of the Municipal Court in Z. (No. 9 Su-…/07. of 26.2.2007), to which is enclosed a statement by the judge S. Đ. Š. dated 23 February 2007, in which she explains that: *"... the case is in process at the court since 4 February 2004, and in view of its duration and type of dispute does not belong to the group of cases which are conducted according to the summary procedure, so bearing in mind the workload in terms of other cases, and especially those having priority status either because of their duration or type of dispute, the case is to be resolved as soon as possible, in view of the aforementioned."*

Undertaken measures: Considering that the action was initiated by a complaint on 27 June 2003 and that from the moment of receipt of the assigned case from the Municipal Court in K. (4 February 2004), according to the enclosed statement and claims of the complainant, to the submission of the complaint to the Ombudsman (19 March 2008) not even the first hearing was scheduled, the Ombudsman requested the Ministry of Justice to review the complaints of the complainants in accordance with the powers laid down in Article 61, paragraph 1, and Article 62, paragraph 1, items 5 and 7 of the Act on Courts.

Notification was also sent to the presidents of the Municipal Court in Z., the County Court in Z. and the Supreme Court of the Republic of Croatia, and to the State Judiciary Council, because the Ombudsman had received another complaint against almost the same statement by the same judge. (That case was used as an example in the 2006 Report to the

Croatian Parliament – in that case, a hearing was finally scheduled 4 years after the receipt of the complaint by the court, and the Ombudsman used the case to point out the growingly frequent need to conduct immediate review of the correctness and regularity of work of the court administration in the courts and to take measures to prevent harmful consequences –the causing of damage to the State Budget which can be expected after a reasonable term for action and decision-making in the court procedure is exceeded.)

Case outcome: In connection with the complaint, the Ombudsman was informed by the Ministry of Justice in a letter of 28 July 2008 that acting under Article 61, Article 62 and Article 67 of the Act on Courts, a report had been requested from the president of the Municipal Court in Z. The Ombudsman was further informed that in the said matter (for the return of a gift until the settlement of the essential part on a real estate), which had been received by the court on 4 February 2004, taking into account the complainant's age and poor health, in accordance with the available terms, the court had scheduled the main hearing for 5 September 2008.

Note: The first hearing in the above matter was scheduled only to examine the complaint submitted by the Ombudsman (four years and six months after having received the file from the competent court, that is, 5 years and 3 months after submission of the complaint to the court).

One should not neglect the fact that the complainant first addressed the president of the court directly asking him to schedule a hearing, but that no measures were taken to start the procedure and to achieve efficient court protection (although in accordance with the Act on Courts and the Rules of Procedure the president of the court is responsible for correct and timely performance of all activities in court).

It is evident from the described cases that the current legislation, the decisions made by the courts further to the requests for the protection of the right to a trial within a reasonable term, and the actions taken by the presidents of courts in the performance of the activities of court administration and by the Ministry of Justice in the performance of the activities of judicial administration still do not ensure efficient exercise of the constitutional right of the citizens stipulated in Article 29, paragraph 1 of the Constitution of the Republic of Croatia, which is why it is essential to conduct deeper changes in the judiciary.

In that regard, the Ombudsman sent a letter to the Ministry of Justice, pointing out the imperfections in the provisions of the Act on Courts relating to the constitutional guarantee referred to in Article 29, paragraph 1 of the Constitution of the Republic of Croatia, and the observed deficiencies connected with their implementation.

Namely, the received complaints show that currently the state budget is considerably burdened, and that the national legislation does not expressly stipulate the manner of

enforcement or the manner of monitoring and sanctioning the non-performance of obligations arising from the decisions issued by the higher courts.

Further to the foregoing, it can be concluded that the basic purpose of the procedure for protecting the right to a trial within a reasonable term, which is to accelerate the procedure and the adoption of decisions within a reasonable term, has still not been achieved.

PART FOUR

INTERNATIONAL COOPERATION

In 2008, the Office of the Ombudsman intensified its cooperation with the relevant international institutions in the field of human rights. The activities contributed to the strengthening of the visibility of the institution at international forums, the granting of the "status of the National Institution for the Protection and Promotion of Human Rights" and the admission to the membership of international professional associations. In view of the two new roles which the Ombudsman received – the status of the national institution for the protection and promotion of human rights and the Central Equality Body – the Office staff participated in several additional "training of trainers" sessions, that is, educational seminars and workshops relevant to the new field of work of this institution.

a) Status as the "national institution"

The International Co-ordinating Committee of National Institutions for the Promotion and Protection of Human Rights with the United Nations Human Rights Council accredited the institution of the Ombudsman in 2008 as the institution for the promotion and protection of human rights with "status A". It is the highest status that can be awarded to a human rights institution which satisfies the criteria included in the "Paris Principles" (such as independence guaranteed by the constitution or law, autonomy in relation to the authorities, pluralism in terms of its membership, broad mandate for the protection and promotion of human rights, sufficient funds for independent work and the power to take investigative actions).

Namely, in 1993 the United Nations General Assembly issued a special resolution (A/RES/48/134) setting out the minimum requirements to be granted the status of an independent institution for the protection and promotion of human rights, which is better

known as the "Paris Principles". National institutions for the protection and promotion of human rights are crucial for establishing the system of protection and promotion of human rights in any country. The importance which the Office of the United Nations High Commissioner for Human Rights attributes to the national institutions arises from the Reform Programme entitled "Strengthening the United Nations: An Agenda for Further Change" of the United Nations Secretary General, adopted in 2002. The programme emphasises that the establishment or strengthening of the current structures (institutions) for the protection of human rights in all countries will be the primary goal of the United Nations, so that the international standards in human rights protection might be applied as consistently as possible.

The said institutions should serve as a connection between the government, members of the parliament and non-governmental associations for human rights protection with a view to promoting good administration and the rule of law. The national institutions for the protection and promotion of human rights should be funded by the state, while their establishment (or existence) must be foreseen in the constitution or law, and they must have wide powers for the protection and promotion of human rights at national level. Through that mechanism, states perform their international obligations within the meaning of "taking adequate action" (which is a common expression in international documents) for the implementation of international human rights documents in practice. The national institutions for the protection of human rights serve as a link between the authorities and civil society and they are expected to provide an active role in the promotion and supervision of the effective use of international human rights standards.

The said accreditation is a recognition of sorts of the work of the institution to date, of its independence and credibility in the protection of human rights, but also an incentive for further strengthening with a view to fully meeting the criteria contained in the Paris Principles. The accreditation is subject to review after five years. At the time of granting the status, the International Co-ordinating Committee of National Institutions highlighted the importance for the Ombudsman to cooperate with the other Ombuds-institutions to ensure coherence and effectiveness of the national human rights protection *system* and issued the following recommendations:

1) It refers to the Paris Principles and to General Observation “Human rights mandate” and urges the mandate of the Ombudsman to be broadened to include protection and promotion of human rights, based on the universal human rights standards.

2) It also refers to General Observation “Adequate funding”, in particular the importance of having sufficient and sustainable funding for the realisation of the independent work of the institution.

3) The Committee encourages the Ombudsman to interact effectively with the United Nations Human Rights system, in line with General Observation “Interaction with the International Human Rights System”.

4) It further refers to General Observation “Ensuring pluralism”, in particular with regard to ethnic minorities.

5) It encourages the Ombudsman to strengthen the accessibility of the institution by opening regional offices, in conformity with Article 3 of its Standing Orders.

The said recommendations are fully in line with the proposals that the Ombudsman sent to the Croatian Parliament in December 2008 through a formal initiative for changing the provision of Article 92 of the Constitution and through its Report on Work for 2007.

Thanks to receiving the status of national institution, the Ombudsman was presented with an opportunity to become involved in the joint projects of the relevant bodies of the United Nations and the Office of the Council of Europe Commissioner for Human Rights. Thus, a representative of our Office participated at the fifth roundtable organised by the Irish Human Rights Commission, the chair of European Group of National Human Rights Institutions within the United Nations system and the Council of Europe Commissioner for Human Rights concerning the topic: "Domestic Protection of Human Rights - Strengthening Independent Human Rights Structures", which was held in Dublin in September 2008. On that occasion, it was stated that the establishment of new or (for rationality's sake) expanding the mandate of the current institutions (primarily the ombudsman, which is the case in Croatia) has contributed to the strengthening of the protection of human rights and to more extensive implementation of international standards in the member states of the United Nations, and that the process should continue.

The Office of the Ombudsman also participates in special projects of the Office of the Council of Europe Commissioner for Human Rights which aim to achieve better mutual exchange of information, good practice and training of the national institutions in various fields of human rights protection. The employees of the Office take active part at seminars organised within the joint project of the European Union and the Council of Europe for the

establishment of an active network of independent non-judicial national institutions for human rights protection. In 2008, our advisors, specialised in the respective fields, took part at seminars which dealt with the role of the national institutions for human rights protection in the promotion of the freedom of expression and the right of access to information, the protection of the rights of persons with disability and the protection of the rights of sexual minorities. The purpose of the project is to improve the work of the national structures for the protection and promotion of human rights, the encouragement of constructive dialogue with the state authorities with a view to improving the protection of human rights at state level.

Special attention is paid to the training of these institutions in providing mediation in court disputes at the place of their emergence with a view to reducing the workload of the European Court of Human Rights. A material result of the cooperation is a bulletin launched by the Office of the Council of Europe Commissioner for Human Rights which provides regular information on the work of the European Court of Human Rights, summary judgments, most frequent violations of human rights, enforcement of court decisions and the like, which can be important for the operation of the national human rights institutions, that is, finding possibilities for amicable dispute settlement.

A representative of the Office of the Ombudsman participated in an advanced international educational programme in the field of human rights protection for people with disability, which was held in Sweden in October 2008. Experts from 12 countries of South East Europe and Central Asia took part in the meeting. The international programme was organised by SHIA (Solidarity, Human Rights, Inclusion, Accessibility), which is a Swedish umbrella organisation of persons with disabilities international aid association, supported by SIDA (The Swedish Development and Cooperation Agency). Since 2005, SHIA has certified more than 150 experts in the field of human rights from more than 60 countries.

b) Membership of EQUINET

Pursuant to the Anti-discrimination Act, as of 1 January 2009 the Ombudsman becomes the Central Equality Body in the Republic of Croatia. Considering that the field is a new one for the Institution, it is necessary that the employees of the Office undergo further training at specialised seminars organised by the relevant European institutions, in particular the European Network of Equality Bodies – EQUINET. Our employees attended

a seminar concerning two EU directives in the field of suppressing discrimination: Directive 2000/43/EC concerning racial or ethnic origin, and Council Directive 2000/78/EC concerning age, religion or belief, sexual orientation and disability. Key topics at the seminar was the reach of the European legislation in the field, the role of trade unions, non-governmental organisations and equality promotion bodies in combating discrimination and differences in the approach towards discrimination by discrimination grounds, where special attention was paid to discrimination based on age and sexual orientation. The seminar was also aimed at clarifying the basic terms necessary for understanding the two directives, especially those relevant for field workers in the domain of anti-discrimination law, such as direct and indirect discrimination and partial shifting of the burden of proof.

Our employees participated at a seminar entitled "Settling discrimination cases from the perspective of comparative law" which focused on age- and race-based discrimination, the relationship between discrimination and collective negotiation and the possibility for the anti-discrimination bodies to provide support in the court procedure in certain particularly significant cases.

Multiple discrimination, which is discrimination where a person suffers discrimination on more than one grounds (for example, on the grounds of his or her age, gender and disability), is a special challenge for all bodies engaged in the suppression of discrimination. The Croatian Anti-discrimination Act expressly mentions the term multiple discrimination as one of the serious forms of discrimination. Our employees attended a training session where on best practice examples from developed European countries they learned how to recognise multiple discrimination, how to act, and also how to take preventive action.

With a view to establishing connections and cooperation with similar bodies throughout the European Union, the Office of the Ombudsman applied for membership of the European Network of Equality Bodies and at its annual meeting, held in Brussels late last year, our Office was admitted to full-fledged membership. Apart from enabling participation in the working groups which draw up reports and recommendations, membership also provides an opportunity for free participation of our employees at regular training sessions and an opportunity for on-line consultations with colleagues who deal with similar problems in the implementation of their anti-discrimination laws.

c) Membership of the Association of Mediterranean Ombudsmen

After the first meeting in Rabat in November 2007, when the founding declaration was published, the second meeting of Mediterranean ombudsmen was held in Marseilles in late 2008. The said meeting was an opportunity for the institutions of ombudsmen, mediators or human rights protectors (depending on how they are called) to re-confirm themselves as the pillars of democracy and human rights protection. It was precisely at the initiative of several members of the Association of Mediterranean Ombudsmen that the special United Nations resolution was adopted, which, for the first time, emphasises the role of this institution in the promotion and protection of human rights and which was supported in late 2008, in consultations with our institution, by the Permanent Mission of the Republic of Croatia to the United Nations in New York. The resolution (which will be discussed at the next session of the United Nations General Assembly) confirms the key role that ombudsmen play in the improvement of relations between the citizens and the administration and the strengthening of the responsibility of public administration. It stresses the key role of ombudsmen or mediators in delivering fairness and equality for all in society and the rule of law. The resolution also calls to mind the initiative of the ombudsmen in adopting and adjusting the national legislation to the international standards in the field of human rights and in particular calls on the governments of the member states of the United Nations to strengthen the independence of the said institutions and develop cooperation mechanisms by and between the ombudsman institutions with a view to achieving synergy in the protection of civil rights. The resolution also calls on the governments to conduct awareness raising campaigns in cooperation with non-governmental organisations with a view to promoting the importance of the ombudsman institution and to ensure the implementation of the ombudsmen's recommendations and settling of the citizens' complaints in full respect of the principles of lawfulness, fairness and equality for all.

The meeting in Marseilles had as its purpose the establishment of firm organisational structure and the metamorphosis from a "network" into an "association" which would include 23 ombudsman institutions with founder status and the right to vote, and with its headquarters in the capital of Morocco, Rabat. The meeting was chaired by the Moroccan Ombudsman Moulay Mhamed IRAKI, and one of the vice-chairmen was Boutros Boutros GHALI who is the president of the Egyptian National Council for Human Rights. The highest-ranking body of the association is the Governing Board, which meets at least once in two years. The institution of the Croatian Ombudsman was appointed to the Governing Board of the association. The

association was welcomed as a respectable factor in the process of building the Mediterranean Union which can contribute to the solving of common problems in the domain of human rights (for example, the very much current problem of migrants), alignment of the national legislation with the international standards, application of uniform criteria in the protection of human rights in the field and the like.

In 2008, representatives of the Office of the Ombudsman took part at regional expert meetings at which the following current topics were discussed: the functioning and the role of ombudsman in "fragile" democracies, the protection of national minorities, the right of access to information in the possession of bodies vested with pubic powers, and the independence and credibility of the ombudsman institution. The deputy ombudsman participated at a commemoration of the 60th anniversary of the Universal Declaration of Human Rights, which was held in Oświęcim in December 2008 under the auspices of the president of the European Commission, José Manuel Barroso, and the president of the Republic of Poland, Lech Kaczynski. The attendants also visited the Museum Auschwitz-Birkenau where a special programme was organised for them.

In the course of the year, the Office of the Ombudsman was visited by many individuals, representatives of international institutions and embassies active in the Republic of Croatia and interested in the work of the institution.

PART FIVE

ASSESSMENTS AND PROPOSALS

In this part of the report, the Ombudsman, in accordance with the provisions of Articles 5 and 9 of the Ombudsman Act, assesses the level of respecting the constitutional and legal rights of citizens in the fields that are substantial for the realization of these rights and warns of relationships, occurrences and areas that deserve special attention of the Croatian Parliament.

The assessment and proposals of the Ombudsman in this matter are inevitably limited by the constitutional attribute of that institution and its sphere of action, determined by the Ombudsman Act.

Administration and citizens

In 2008, the Office of the Ombudsman received 1 560 new written complaints, which is 318 complaints less than in 2007.

Considering that the number of new complaints against the work of judicial bodies has slightly increased, there was a fall in the number of complaints against the work of administrative bodies and bodies vested with public powers.

Based on the statistical data, it is visible that one of the reasons for the decrease is a significant drop in the number of complaints from the field of pension-disability insurance, the right to reconstruction and the settling of housing issues, and status-related rights (such as citizenship, aliens and the like); therefore, the administrative areas in which the largest number of cases over the past years was connected with the consequences of the war and the dissolution of the former state.

Such a trend, which we announced in last year's report, will surely continue over the next several years and it can be expected that in the future work of the Ombudsman there will be prevalence of cases and complaints which are common for similar institutions in the countries which did not go through the changes experienced by the Republic of Croatia.

Another reason is that in 2008, as opposed to the previous years, the Ombudsman did not spend enough time on missions and did not have working days in the counties. In 2007, the project which lasted several years and was funded in cooperation with the OSCE Mission and

with the financial support of the Ministry of Foreign Affairs of the Kingdom of Norway was concluded. The project provided for regular visits to the counties and on-site working days, as well as direct contact between the citizens-complainants and the Ombudsman.

In the State Budget for 2008, the funds for on-site work were unfortunately not ensured. (Such funds were also not ensured for 2009 for well-known reasons.)

In 2008, most well-founded complaints related to the inordinate length of administrative procedures, including the several-year long administrative disputes before the Administrative Court of the Republic of Croatia. The citizens addressed the Ombudsman in great numbers, because of the missing of legal and reasonable terms, but also because of the failure of the administrative bodies to perform their obligation to notify the citizens about the state of the procedure in the case of missing a deadline (Article 296 of the General Administrative Procedure Act).

There is still no major progress in the promptness of the administrative bodies (especially second-instance) in the property-legal field (denationalisation) in procedures involving the right to reconstruction and the settling of housing issues. Regarding the settling of housing issues, there is a special problem concerning the failure to abide by the rules of the General Administrative Procedure Act, which further aggravates the protection of the rights and the filing of legal remedies on the part of the applicants.

There are many administrative procedures and disputes in the said spheres which last for years, not infrequently even ten years. In several of his annual reports, the Ombudsman warned about serious human rights violations resulting from the unreasonable length of the procedures. There was not much progress even after the judgments of the European Court of Human Rights, which confirmed such violations, but also established the responsibility and the duty of the state to provide for the conditions enabling the settling of administrative matters within reasonable terms, although the judgments pointed out that any deficiencies in the regulations and any shortages in terms of human and material resources in the administrative services should not be used by the state as an excuse.

After the judgments of the European Court, and without satisfactory progress in the spheres concerned, it should be expected that the number of complaints and requests to the Constitutional Court and the Supreme Court of the Republic of Croatia will increase on the grounds of the missing of the reasonable term in resolving administrative matters (disputes).

The length of the procedures, although to a lesser extent, is also present in the settling of administrative matters in the field of construction (where the enforcement of the decisions of

the building inspection poses a special problem) and pension-disability matters, which should be settled in cooperation with foreign insurers under the interstate treaties.

Non-efficiency of the procedure because of the "silence of the administration" and the lack of mechanisms and measures to prevent the repeated cancellation of decisions and repetition of procedures are still a contributing factor in terms of the length of the procedures. The slowness of the Administrative Court, which can be measured in years, poses a special problem.

The said problems, which we pointed out in our previous reports and proposed possible measures for their mitigation and solving, can be attributed to the complexity of the procedures, to deficiencies in the regulations and to the deficit in human and material resources, but the non-taking of the proposed measures and activities is unjustifiably postponed on the grounds of pending preparations and the adoption of new regulations or amendments. As if it is expected that the new regulations will be sufficient to resolve the weaknesses in the system, which lie at the very heart of the problem.

That is why we still hold it necessary to implement the proposals and measures stated in last year's report regardless of the legislative changes and in parallel with them (Proposals 1-5, p. 172 of the Report).

Many laws and other regulations that have been adopted recently or which are to be adopted, and which serve to align our system with the European standards, can contribute to the improvement of the situation in the administration and of the relationship between the citizens and the administration (although some of them are deficient, because of the speed of adoption or an insufficiently critical copying of foreign models) only if those relations in the administrative system and in the supervision of the system which are the true cause of the poor situation change considerably.

Such changes involve primarily true and thorough depolitisation of the administrative services. Instead of political (party) correctness and personal loyalty (infrequently country-type), the entire professional apparatus of the administration, and in particular the highest stratum of the leading state officials must be based on ability, expertise, professionalism and ethics, both at the time of entering the system, and at the time of promotion.

Public recruitment procedures, subject to the testing of ability, equal for all and with an independent control system, are the first and foremost prerequisite for admission to a work post or position, and the objective system of evaluation for promotion.

Only such a depoliticised system can guarantee that the administrative services will act independently and impartially, equally towards all and exclusively according to expert and professional criteria.

Although the changes create normative preconditions, that is, the number of politically appointed civil servants was reduced, the changes needed in practice have not been made. The Regulation of the Government of the Republic of Croatia, contrary to the principles and intention of the legal changes, stipulates a special, less public and objective procedure in the case of recruitment procedures for high-ranking civil servants. Thus, the civil servants holding the positions at this time (politically appointed) were enabled to remain at their duties under less strict conditions and with an emphasised role of the head of administrative bodies, now as the highest-ranking civil servants.

The phenomenon of clientilism and political corruption is a logical consequence of the politicised nature of the administration, especially the decision-making leading stratum, while along with the slowness and disorder it causes every other type of corruption is easier and is detected with more difficulty.

It is notorious that such a situation favours the voluntary and arbitrary nature which in reality brings into question the constitutional principle of equality of all before law. All this hurts primarily the weak and the poor, those without money and influence, who belong to the group which most frequently addresses the Ombudsman, while those with power, influence or money usually realise their interests before the administrative bodies more easily and faster.

In this report, in accordance with the scope of work and powers of the Ombudsman, we evaluate the administration mostly from the point of view of its functions which involve the settling of administrative matters and (inspection) supervision. However, other administrative functions and the overall efficiency of the administration (including the reforms which are announced or underway) will mostly depend on the skill and readiness to change the principles and criteria of recruitment, promotion and appointment to the highest positions; skill, professionalism and independence instead of correctness, loyalty and obedience.

A better system of salaries, as well as rewards and stimulations in the administration should contribute to the needed changes. Unfortunately, it seems that the good years when it was possible to implement the changes more easily were not taken to good use. Salaries in the administration will obviously not attract the best and the most capable to the most expert and responsible positions in the administration for some time.

In conclusion, along with the above proposals and measures, it is necessary to strengthen the capacity and the powers of the still deficient Central State Administrative

Office, but also to significantly improve the promptness of the Administrative Court, without waiting for the announced reform of the administrative judicature.

Complaints against the work of courts

The large number of complaints and calls to the Ombudsman in relation to the inordinate length of court procedures shows that the slowness of the courts, despite certain progress and measures being taken primarily by the Supreme Court of the Republic of Croatia, is still the greatest problem of the Croatian judiciary.

The fact that the citizens address the Ombudsman, although it is well-known that he does not have the power to take direct action towards the courts in such cases also shows that the citizens hold that through courts and the judicial administration (the presidents of courts and court departments, the Ministry of Justice with the judicial inspection) or the State Judiciary Council they can neither influence the acceleration of the procedure nor very frequently receive the right answers to their submissions and complaints.

The increasing number of complaints which are submitted for the protection of the right to a trial within a reasonable term testifies to the reality and the extent of the problem. The number of cases the outcome of which is favourable for the citizens, previously before the European Court of Human Rights, then before the Constitutional Court of the Republic of Croatia, and today before the county courts and the Supreme Court of the Republic of Croatia, testifies to the sheer number of human rights violations, but also represents an additional burden for the uptodatedness of the courts and not a small financial burden for the Republic of Croatia.

The complaints of citizens who received financial compensation on the grounds of violations of their right and who received a deadline within which the courts must adopt a (meritory) decision, which is not respected in many cases, show the dubious efficiency of the legal remedy concerned, which is necessary, but which can obviously not successfully resolve the problem of excessive duration of court procedures. The effects of the legal remedy should be thoroughly analysed and evaluated.

On the basis of the previously expressed standpoint of the Ombudsman for an effective solution to the problem it is key to train and strengthen the court administration in terms of human and material resources, as well as powers at all courts, and especially at the Supreme

Court. Furthermore, in order for the Supreme Court to become a true and efficient beacon leading the court administration ahead, the law should strengthen the role of the president of the Supreme Court in the appointment of the presidents of courts.

The measures and activities taken to resolve the backlog, and the monitoring and control of work of the courts and judges, as well as the re-assignment of cases from the courts with an excessive workload to those with a lighter load, being conducted for some time now by the Supreme Court, with certain results, should be upgraded through a permanent system which would contribute to the rationalisation of the system. Monitoring, control and assessment, with a single system of court administration, should lead to a strengthened role of the Supreme Court in the promotion of judges, but also in the overall work and activity of the State Judiciary Council.

Naturally, the court system, regardless of the extent of strengthening and upgrading, cannot remedy all causes of the slowness. The number of cases, which is extremely high in relation to the number of inhabitants in the Republic of Croatia, depends both indirectly and directly on the state, the legislative and the executive branches, the legislation and the implementation of the legislation, which, as it is well-known, generates a large number of court disputes.

Laws which are of poor quality or insufficiently prepared, but also laws which under the influence of daily political needs and populist motives prescribed rights which are realistically not achievable, are the source of a large number of disputes, frequently with a foreseeable outcome, but only after the cases end at the Supreme and the Constitutional Court or at the European Court of Human Rights after years in court.

Unfortunately, the State Attorney's Office does not have sufficient funds or powers to use settlement in such cases to alleviate the workload of the courts as the result of long and expensive disputes.

Efforts being used to improve the promptness of the courts in the long run should be aimed at reducing both the inflow of new cases and the number of cases being processed, but also at rationalising the court network, improving their efficiency and the quality of work of the judges, and at supervising their work.

These would be the joint tasks of the judiciary and the Ministry of Justice. In last year's report, we welcomed the announcements that the Supreme Court would assume a more active role in the initiatives and proposals of systematic solutions. However, it seems that the initiative is left too much to the executive branch. That is not good, because it does not contribute to either the quality of the solutions, or to the readiness of the judiciary to apply the

solutions as its own. Lack of initiative, requirements and even pressures from within the court system shows that the situation in the system is not regarded as sufficiently critical.

Nonetheless, the slowness and the inordinate length of procedures is partly caused by the poor quality of the trial process, which can be seen from the number of repealed judgments, which is also a contributing factor. It also seems that despite the legal changes, which are adequate, not all judges use their powers sufficiently to prevent the stalling of procedures.

Despite the notorious fact that some judges were not appointed to permanent duty only on the basis of their expertise and ability, in the court system there is no mechanism which would be used to eliminate those who cannot satisfy the standards of efficiency, quality and impartiality and who, although they are not that numerous, have the greatest impact on the poor image of the judiciary and distrust of the system.

Insufficient transparency and lack of objective and public criteria of the State Judiciary Council in the appointment and promotion of judges do not give much hope that the quality of the human resources in the judiciary will improve any time soon.

Dissatisfaction of the citizens and the public with the situation in the judiciary, along with the unreadiness to improve and change things within the system result in requests for intervention and for even greater influence of the legislative and the executive branches.

National minorities - returnees

Just like last year, the greatest number of complaints filed by the persons belonging to national minorities related to the administrative fields in which a large portion in the total number of cases was connected with the consequences of the war and dissolution of the former state. The procedures mostly involved pension-disability insurance, reconstruction, settling of housing issues and citizenship. Although the number of such complaints is decreasing both in absolute and in relative amounts, it is still one of the most important areas of work of the Ombudsman, because most frequently the administrative procedures concerned are inordinately long. The complainants are to the largest extent Serb returnees, but also those who left the Republic of Croatia and who wish to return and/or realise the rights to which they are entitled under the regulations of the Republic of Croatia.

In the first part of this Report, we wrote extensively about the problems they face and about the actions taken by the administrative bodies which make decisions about their requests.

In our earlier reports, we warned about illegal acts and omissions made by the competent services, but also about the objective difficulties preventing faster resolution. It is visible from the report that our warnings and recommendations helped a lot of people, but that they were indeed necessary, because the principles of the administrative procedure or of good and friendly administration were not always applied.

In such cases, the complainants usually did not state their nationality or ethnic origin. One could make a conclusion about their nationality or ethnic origin only indirectly from the state of the file. One's nationality is stated only in a small number of cases where the complainants feel that they are being discriminated against based on their nationality. Such complaints were received in the field of job recruitment, employment and civil service, citizenship and against the acts by the police or prison staff. In the case of such complaints, so far the Ombudsman has acted within the powers granted to him under the Ombudsman Act. In his work on the complaints submitted in late 2008 and to be submitted in the future, the Ombudsman will also use new greater powers granted to him under the Anti-discrimination Act.

The Croatian Parliament will be especially informed about work on such complaints and about nationality- and ethnicity-based discrimination in accordance with the obligations arising from the said Act.

Just like in the previous years, the number of complaints filed by the Roma was very small, especially if one bears in mind the conditions in which they live and the problems they encounter.

There were individual complaints in the form of requests for an intervention in the case of eviction and other housing problems in families with many children, problems with the acquisition of citizenship and residence, and problems connected with the actions of the police.

In two cases, we reported journalists to the Croatian Journalists' Association for completely inappropriate articles about the Roma. The Croatian Journalists' Association issued a warning to the journalists concerned in both cases.

Concerning the position of the Roma and discrimination, the Ombudsman will also report to the Croatian Parliament in his reports on the implementation of the Anti-discrimination Act.

Annual Report for 2007

The year 2008 marked full affirmation of the institution of the Ombudsman, its role and meaning both in the domestic and in the international system of human rights protection.

By the adoption of the Anti-discrimination Act, the Ombudsman became the central body for the implementation of the said Act which entrusts new significant powers to the Ombudsman, amongst other things in relation to the judiciary and the wider circle of legal persons. As the central body, the Ombudsman has the task of coordinating special ombudsmen in certain activities, but also the task of cooperation with the civil society and social partners.

In terms of its international activities, in 2008 the institution also received significant affirmation. Thanks to its good marks in independence, credibility and functionality received over the past several years and the recommendations issued by the experts and bodies of the European Commission, the OSCE, the UN and others, the Ombudsman was given the highest status "A" as the national institution for the protection of human rights in the Republic of Croatia, and became a full-fledged member of Equinet – the European Network of Equality Bodies and a member of the Governing Board of the Association of Mediterranean Ombudsmen.

In 2008, the plan of strengthening the institution which I proposed in my first annual report, which was accepted by the Croatian Parliament in 2005, was achieved (with a one-year delay).

At the same time, in 2008 there was a change in the relationship between the Croatian Parliament and the Ombudsman, which deviates from the standard relationship and (good) practice.

We should point out that the occasional and logical tensions and objections voiced by certain ministers or other heads of administrative bodies as the result of the criticism and warnings issued by the Ombudsman against the work of the administrative bodies and services have never affected the overall relationship with the Croatian Parliament or the Government of the Republic of Croatia. The relations in this term of the Ombudsman have always been marked by full respect of the constitutional role of the Ombudsman. There have never been any pressures or attempts at influencing the independent work of the institution.

However, as opposed to the previous three years when the Croatian Parliament adopted a conclusion accepting the report after a discussion, last year, after a discussion concerning the

report for 2007 (in September 2008), the Croatian Parliament adopted a conclusion by which it only took notice of the report of the Ombudsman.

Such a change is unexpected and confusing, because the said conclusion was adopted after all parliamentary committees had either adopted conclusions accepting the report or proposing to the Croatian Parliament to accept it.

Such a conclusion is even more confusing, considering that it was not possible to discern the reasons even after a very careful examination and reading of the discussions held in the Parliament or at the sessions of the committees. Furthermore, the report did not differ from the previous ones in content, tone or criticism.

The reasons can only be discerned from the fact that the review of the report in the Government of the Republic of Croatia was unusually long (around three months), after which the Croatian Parliament received a report that the Government had taken note of the report.

Many, including the representatives of international organisations and states, were interested in our appraisal and opinion whether there had been a shift in the relationship towards the institution of the Ombudsman and whether that was a sort of pressure against an independent institution, considering that the report mentions certain ministers because of lack of cooperation.

I could answer such questions only by saying that the conclusion would in no way affect the work of the Ombudsman and that the notice to the Croatian Parliament concerning insufficient cooperation was not a matter of choice, but a legal obligation of the Ombudsman. Therefore, significant changes in the relationship towards the institution of the Ombudsman should not be expected.

What should be stated on this occasion is that there is place and need to make better use of the reports and recommendations of the Ombudsman as the authorised person of the Croatian Parliament to advance his role in the control of work of the administration and in the creation of the framework for its work.

The institution of the Ombudsman was created to ensure better protection of human rights before the growingly powerful administration and as an independent supervising mechanism which helps the Parliament in its control tasks.

In that sense, it is not sufficient to have verbal support and it would be good to develop and create a mechanism which would enable the Parliament to provide effective encouragement and monitoring of the proposals and recommendations of the Ombudsman which it accepts and considers worthy of attention.

The Ombudsman does not have any authoritative powers. He does not make decisions or solutions or issue compulsory orders to the administrative bodies. The power of his proposals and recommendations lies in his professional foundedness and credibility. However, that is not always enough and it is then that the support of the public, but primarily an effective support provided by the Parliament, becomes necessary.

Working conditions

In 2008, the plan of strengthening the institution which was accepted by the Croatian Parliament in 2005 was achieved.

At the end of 2008, in accordance with the plan, the number of employees (including the Ombudsman and three deputies) was 31.

For the work of the Office in 2008, the state budget provided HRK 6 976 000.

The budget for 2009 foresees HRK 7 257 039 for the work of the Office, which is by 4.03% more than in 2008.

Considering the tempo of recruiting new employees in 2008, the funds foreseen for salaries in 2009 do not cover the salaries for all employees by the end of the year. In addition, the funds for working days outside the Office are also not ensured.

Although pursuant to the Anti-discrimination Act, which was adopted in mid 2008, the Ombudsman became the central body for suppressing discrimination with numerous new duties, the amount of HRK 1 200 000 foreseen by the Act for 3 new employees and other expenses is not ensured for this year.

The activities and duties foreseen in the Anti-discrimination Act will be carried out within the framework of the funds which are available and through the re-assignment of the employees to appropriate working tasks.

The matter of space for the Office has still not been settled. The temporary solution, where the Ombudsman uses office space at three different locations in Gornji Grad is also no longer possible, as the premises at 3 St. Mark Square should soon be vacated.

We have still not received a reply to our repeated request that the Office be granted the space in Demetrova Street, which is currently used by the State Electoral Commission (which should move to Visoka Street), as a temporary solution.

In terms of the permanent solution, we proposed that a decision should be made that the building at the corner of Demetrova Street and Basaričekova Street, after reconstruction and adaptation, should be granted to the Office of the Ombudsman as a permanent solution.

With a view to resolving the matter of office space, as instructed by the Central State Administrative Office for State Property Management, in 2008 we tried to find adequate working space by commercial lease. Although we did select office space and agreed on the price, the lease did not come through, and we were promised that a permanent solution would be ensured in the form of state owned property.

In view of the material and financial problems which the institution of the Ombudsman faces, but also other state institutions and bodies for the protection of human rights, we hold it useful to point out once again the need for the Croatian Parliament to launch a discussion on the further development and rationality of the system as a whole.

The current system which includes numerous bodies and institutions with very related scope of work and tasks is too expensive, but it also does not enable the use of the full potential and of the resources at its disposal.

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